

# **PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE**

## **Inquiry into Vaping and Tobacco Controls**

Melbourne – Monday 29 April 2024

### **MEMBERS**

Sarah Connolly – Chair

Nicholas McGowan – Deputy Chair

Michael Galea

Mathew Hilakari

Lauren Kathage

Bev McArthur

Danny O'Brien

Aiv Puglielli

Meng Heang Tak



## WITNESSES

Rosemary Hancock, Manager, Health and Local Economies, and

Naree Atkinson, Policy and Project Adviser, Municipal Association of Victoria; and

Dr Varinder Sapehiyia, Board Director, Environmental Health Australia.

**The CHAIR:** I declare open this hearing of the Public Accounts and Estimates Committee. I ask that mobile phones please be turned to silent.

I begin by acknowledging the traditional owners of the land on which we are meeting, and we pay our respects to their elders past, present and emerging as well as elders from other communities who may be with us today.

On behalf of the Parliament the committee is conducting this Inquiry into Vaping and Tobacco Controls. I advise that all evidence taken by the committee today is protected by parliamentary privilege. However, comments repeated outside of this hearing may not be protected by this privilege.

Witnesses will be provided with a proof version of the transcript to check, and verified transcripts, presentations and handouts will be placed on the committee's website.

I welcome Rosemary Hancock, Manager for Health and Local Economies, and Naree Atkinson, Policy and Project Adviser, from the Municipal Association of Victoria, as well as Varinder Sapehiyia, Board Director of Environmental Health Australia. I am going to invite MAV to make an opening statement or presentation of no more than 5 minutes to be followed by an opening statement or presentation from the EHA. This will be followed by questions from the committee. Rosemary, do you want to take us off?

**Rosemary HANCOCK:** Thank you very much, Chair. Thank you for inviting the Municipal Association of Victoria, MAV, to present to the Victorian Parliament's Public Accounts and Estimates Committee's Inquiry into Vaping and Tobacco Controls. We appreciate the opportunity to expand on our submission and to contribute to this important discussion. Victorian local government has a long history of positively impacting public health through community engagement, program delivery, regulatory activity and health and wellbeing planning. Councils have contributed significantly to tobacco and e-cigarette education and enforcement across the state for many years. These roles mean that councils have a unique perspective from on the ground of the concerns of local communities of the harms, particularly for young people.

Our submission draws on our specific experience in administering the tobacco and e-cigarette education and enforcement program over more than 20 years and councils' decades-long involvement in working with local communities on preventative health initiatives. While most Australians do not smoke or vape, the rapid increase in e-cigarette usage and growing rates of tobacco usage among young people have been noted as issues of concern by many councils. Local government is keen for local communities to be places where children and young people grow and thrive without addiction, dependency and the burden of preventable disease.

Recent announcements of measures to reduce harm from e-cigarettes and tobacco at the federal and state levels are very welcome. These include the Commonwealth's e-cigarette reforms announced in May last year and the Victorian government's recent announcement of a licensing scheme for tobacco retailers. In particular we are keen to see how these important reforms will be supported at the state level to ensure that any role for local government is appropriately resourced and coordinated. Council officers have delegated authorisations which are fit for purpose of enforcement of tobacco laws. Any expansion in councils' role would require expanded resource capacity to be effective, including personnel, training and coordination with other state authorities.

Key recommendations from our submission are focused on the need for strong cross-sectoral leadership and coordination across jurisdictions, including education, enforcement, regulation and information sharing. Waste management also continues to be an issue from a council perspective, with cigarette butt litter still occurring. E-cigarettes present a triple threat. They generate e-waste, hazardous waste and plastic waste, all complicating their safe disposal. Collaboration among all levels of government is essential in tackling this challenge effectively. Councils are willing and able to assist the Commonwealth and state governments to address the harms of vaping and smoking, provided the roles align with their legislative responsibilities, resource capacities and expertise. We would welcome the opportunity to be involved in the development of an integrated

education, regulatory and enforcement framework with other levels of government. The impact of a joined-up government response will support local communities in engaging in a cohesive approach to reversing the harms of tobacco and vaping products. Thank you for your attention. I am very happy to respond to questions.

**The CHAIR:** Thank you, Rosemary. Varinder.

**Varinder SAPEHIYA:** A few points have already been touched on today, so I will be just focusing on a couple from my end. First of all, I want to thank you for inviting EHA, and on behalf of EHA I am going to present to the Victorian Parliament's Public Accounts and Estimates Committee Inquiry into Vaping and Tobacco Controls. In relation to our submission, as already Rosemary has mentioned, there has recently been a significant increase in the vaping rate in Australia. The tobacco and vape industry have deliberately marketed vape products to young people. Retailers sell falsely labelled non-nicotine vapes to children. Retailers seem more interested in the profit margins.

I would also like to draw your attention to a recent systematic review and its findings regarding use of vaping and e-cigarettes and detrimental health outcomes, particularly for non-smokers and children, adolescents and young adults. As per this review, the effects on many important health outcomes are uncertain and unexplored yet, in a similar way as we did not know the unknowns of asbestos and silica products at the time of their interventions in the market – but we know now – whilst dealing with the aftermath at all levels such as asbestosis and silicosis.

Being an environmental health professional at a regional local government, I often come across complaints about alleged illicit tobacco and vaping business activities. Complainants express their concerns regarding the composition of chemicals used in e-cigarettes and their adverse health impacts. But there is a dearth of literature and findings. One of the findings on chemical analysis has concluded that the effects on many important health outcomes are uncertain and yet to be discovered. Hence, to make an informed decision, quality research and evidence are required to ensure that we are providing safe and healthy environments for our community in which children and young people grow and thrive without addictions, dependency and burden of preventable diseases.

In Victoria local government EHOs provide tobacco education visits to premises and conduct test purchases of tobacco across the state. Barriers to enforcing legislation using penalty infringements and/or prosecuting any noncompliant premises include low fines, lack of licensing and cost of legal action. Furthermore, the cost of legal action is redirecting funds from other activities which promote and protect communities' health and wellbeing. Even after a successful prosecution and conviction, low penalties fail to deter such businesses, as they restock their shops and resume operations quickly. Consequently, EHOs as boots on the ground face many challenges whilst using current legislation and tools in compliance capacity.

When much of this new industry is engaged in illegal activities, EHOs are not appropriate people to be policing these illegal activities, especially when premises selling illicit tobacco and vapes have been shown to be connected with organised crime. Such activities should rightfully be addressed by more appropriate legislation and personnel, such as state and federal police, with substantial penalties to deter illegal activities. Recent announcements to strengthen the legislation via a licensing scheme to align Victoria with the WHO framework Convention on Tobacco Control and harmonise with other Australian states and territories are a significant and commendable step to reduce harm from e-cigarettes and tobacco at the federal and state level.

Our key recommendations from our submission are focused on the following: stronger regulation and licensing of tobacco retail stores; increased penalties for retailers found to be selling illicit tobacco and vape products; increased powers for authorised officers under right-of-entry provisions to investigate tobacco retailers; provision of training and body-worn cameras for authorised officers given right-of-entry powers; stronger collaboration among all the units right from Victoria Police to the state agency to the federal agencies, noting that EHOs are not trained or equipped to manage this type of illegal activities; and last, strong cross-sectoral leadership and coordination across jurisdictions, including education, enforcement, regulation and information sharing as required.

EHA would welcome the opportunity to be involved in this journey together and are keen to contribute to the development of an integrated education, regulatory and enforcement framework with other levels of government and stakeholders. The government announcement to enact new legislation and a licensing scheme

will share and support local communities' aspirations and expectations, whilst engaging in a cohesive approach to reversing the harm of tobacco and vaping products. Thank you again for this opportunity. I am happy to respond to any questions. Thank you.

**The CHAIR:** Thank you very much for that. Mr O'Brien.

**Danny O'BRIEN:** Thank you. Varinder, you have made your view very clear I think from an EHA perspective on who should not be responsible for the enforcement. I am wondering: from an MAV perspective, are the MAV or the councils looking forward to handing this over to someone else?

**Rosemary HANCOCK:** There are a couple of things at play here. Just to clarify, there are the tobacco laws, which councils are familiar with; they play a role in enforcing the requirements around signage and displays of tobacco products as defined under the Victorian *Tobacco Act*. Illicit tobacco is obviously a separate issue, so I think it is helpful to be clear about what we are talking about here. E-cigarettes are also interesting in that the Commonwealth is obviously proposing that they be banned for general retailer sale, so depending on how those reforms play out in terms of the Commonwealth Parliament and then the Victorian Parliament as well, that raises some other questions.

To go to your question about tobacco products, councils, as we described in the opening statements, have had a longstanding role in that, and we would expect that to continue. They would no doubt expect that to continue for products defined under the *Tobacco Act* – sale, signage, displays.

**Danny O'BRIEN:** Does the MAV believe that is appropriate, that the councils are enforcing those rules?

**Rosemary HANCOCK:** Yes, I think so. There has been a very productive partnership with the Department of Health for quite a long time. The Department of Health funds councils through a service agreement program which the MAV administers, where there is that real top-down, you know, 'Where does the Department of Health want regulatory priorities to occur?' informed by a bottom-up experience from council officers on the ground. So that is enabled. Retailers are obviously a very high profile priority at the moment. The agreements are negotiated every three years or so, where again, depending on the level of reforms coming through at a particular time, the state then says, 'These are priorities for us.' That then drives what the councils actually deliver, and you get a reasonable level of consistency across the state because it is according to protocols that are developed. There are training programs for council authorised officers as well. Over the years – obviously this really commenced when smoking was banned in restaurants and cafes back in the early 2000s – there have been various other reforms in that intervening time, and I think we would recommend that that system continue. It is obviously one part of the regulatory system.

Hearing from Victoria Police just before us coming before you, clearly illicit tobacco is a different kettle of fish, and that is where councils have legitimate concerns about allocating staff who may not be trained, safety of officers and whatever. It would be more appropriate for the illicit products that it is other agencies and not a council responsibility per se.

**Danny O'BRIEN:** So in terms of a licensing system that is proposed by the government, you would expect that councils will not have any role in that? Or they will not be the lead role in that?

**Rosemary HANCOCK:** They will not be the lead role would be our advice. They would have a role in the sense that there would be that close cooperation, but it would need to be clarified and worked through. We would hope that if you are making recommendations about these matters, there would be some sort of co-design with the local government sector about what a council role might be. But certainly councils know the traders emerging in the streets that they are already visiting all the time with their food safety inspections; they observe and respond to local complaints. If there was a licensing scheme – and perhaps going beyond your question here – they would certainly want to be able to have mechanisms to report in new traders or to check if new traders are licensed, so to speak. They would also be able to let Victoria Police know of premises that appear to be unlicensed. Again, it is having sufficient penalties and those protocols of information exchange between a licensing regulator who we think is appropriate in the state level. That could definitely strengthen current arrangements.

**Danny O'BRIEN:** Thank you. Apologies, Chair, I am about to duck off.

**The CHAIR:** Okay, thank you. Mr Galea.

**Michael GALEA:** Thank you, Chair. Thank you, all, for joining us this morning. I would actually like to pick up where my colleagues just started, and that is, Ms Hancock, about various types of illicit tobacco compliance and the roles that are currently undertaken by your members. A fortnight ago we heard from Greater Shepparton City Council and the work that they do. Obviously they are, for a regional area, a relatively well resourced council, being one of the larger populations, especially in that region. I am curious to know from your perspective of how your members currently manage illicit tobacco issues about the differences that you see between, say, urban, outer metropolitan and rural councils?

**Rosemary HANCOCK:** It would really depend on a particular council area, and it does vary. Some councils do enable or give permission to their officers to participate with local Victoria Police operations. There will be other councils, however, who actually do not feel comfortable with putting their staff to those activities. I think from MAV's perspective it would be relevant to note there is a considerable diversity, and given the serious cautions from those councils who do have problems, it would be difficult to come to a statewide position in that regard, on illicit tobacco particularly.

**Michael GALEA:** And in terms of the ones that do and do not, is there a theme? Is it the large councils that are doing that work, or is it more just arbitrary decisions by their executives or councils?

**Rosemary HANCOCK:** It will be decisions of the executive or – you know, it is probably where there are some serious issues too. But that said, that is not by definition – it will be a council approach, also informed by local relationships with local police.

**Michael GALEA:** Yes. I would be curious – and perhaps this might be something to take on notice – if you can provide us with a list of, as far as your knowledge, which councils do what? Is that something you would be able to –

**Rosemary HANCOCK:** We do not collect that data, I am afraid, not on illicit tobacco.

**Michael GALEA:** Yes, okay. Just staying on illicit tobacco for one more minute, in your submission you did ask for a tobacco licensing scheme, and it is good to see that that has now been announced and that work will obviously be undertaken and our committee will hopefully be able to provide some good information to inform that work. From your perspective, I guess firstly, what is your response to the announcement, and secondly, how do we make this system the best it can be?

**Rosemary HANCOCK:** Yes. As MAV, in our submission we have welcomed the introduction of a licensing scheme. I think to amplify what Victoria Police spoke to you about earlier this morning, it is not going to be the silver bullet and it is not going to solve all issues. However, it does make clearer – it will actually help honest traders, if you like. They will pay a small licence fee, no doubt, but at least it is then known that they are behaving within the law. Councils through their inspections will be able to determine (a) that they know where they are, or that there are proprietors and then there are premises. It is actually something in the design of a system, whether it is about a proprietor who may have multiple premises, but that will be in the finer detail that would need to be worked up in the design of a system and what information is available. Certainly councils would be able to go to a premises and hopefully ask, 'Are you licensed? Are you not?' If they were not licensed and they found that they were selling tobacco products, then obviously that would be cause to refer that to another agency – to say, 'There's evidence of an unlicensed operator happening here.' If there were sufficient penalties as well, then clearly that would be an addition to the current system that does not exist at the moment.

**Michael GALEA:** Thank you very much. Thanks, Chair.

**The CHAIR:** Thank you, Mr Galea. Mrs McArthur.

**Bev McARTHUR:** Thank you very much. Why should local government be involved in this area?

**Rosemary HANCOCK:** Well, they know their local businesses. They are there already regulating – say, for example, under the *Food Act*, councils are already regulating food premises and smoking in those jurisdictions. So they are already regulating a number of other state legislations with local premises. They have local knowledge, which is very useful for state agencies and authorities to be aware of, and again, we see a state

agency, with a proposed licensing system, leading that work. It does enable that bottom-up action to in turn then respond to the really serious issues arising from the illicit trade.

**Bev McARTHUR:** Is local government totally compensated for the cost involved in any of this regulatory activity imposed on them by state government?

**Rosemary HANCOCK:** No, but councils have for a long time – I think it is one of the features of councils since they really commenced in Victoria – been involved in maintaining public health. All councils have municipal public health and wellbeing plans that they have to develop under the *Public Health and Wellbeing Act*. They are developed every four years. They have to have regard for the state health and wellbeing plan. For quite a long time now under various governments the state health and wellbeing plan has had an emphasis on tobacco control and minimising use of tobacco products. Council municipal plans have reflected that as well. Their work can be fairly broad. It might be promotional activities locally to not take up smoking. In fact really those robust arrangements of councils being involved have been instrumental, we would like to assert, in the reduction of smoking rates of cigarette use in the community over the last 20 years or so.

What is really concerning at the moment – and it is of concern to councils and is coming through from councillors as well as authorised officers – is that since the introduction of e-cigarettes in particular the research is showing, and this is evidenced on the streets as well, that smoking rates of 14- to 17-year-olds in 2018 was 1 per cent. Four years later, or three years later, in 2023, it was 12.8 per cent – a huge rise in smoking activity amongst a young cohort. If there is nicotine in some of those products, which it is assumed that there is, there is certainly a real shift of future generations becoming more addicted to nicotine-based products.

**Bev McARTHUR:** How much is local government out of pocket for being involved in this regulatory activity?

**Rosemary HANCOCK:** Look, it is really up to the council. Each council will determine themselves the priority that they give to this area of effort, both from a regulatory perspective but also health promotion perspective. We think that is an appropriate level for councils to determine. It is not imposed by the state. The fact that councils are involved is because they actually see the benefits for their community.

**Bev McARTHUR:** Ratepayers are getting increasingly concerned about the cost imposed on them in the activities that local government is getting involved in – many areas outside its real role, which is fixing the roads and the footpaths and the public spaces. State government is increasingly imposing areas of activity on to local government and not fully compensating them. It is cost-shifting on a grand scale, effectively. Even if you get a grant to start with, it will decrease inevitably over time, and you will find that the ratepayers are picking up the further burden. Why aren't you advocating that governments, if they want these regulations imposed, fully compensate councils for the cost of enforcement? Isn't that your role as the MAV?

**Rosemary HANCOCK:** Interestingly, this is one of the models that we have supported as a really good example that we would love other departments to take up, actually, because the funds have increased year on year over the 23 years that the program has been running. In fact we would actually love this to occur in some other areas of regulatory activities that councils do on behalf of the state. I think councils help the state in many, many areas of regulation.

**Bev McARTHUR:** Councils have just become a service provider for the state government, haven't they?

**Rosemary HANCOCK:** In tobacco areas, more than that. They do work with their local community organisations, and they do actively see the benefits of health prevention measures and municipal public health and wellbeing plans, yes, as statutory documents. But they actually originated with local government in the first place before they were in state legislation.

**Bev McARTHUR:** For the record, I have been a councillor, and I am well aware of the health and wellbeing plans, which in my view are a total waste of money – having to employ a consultant to conduct the survey and get 10 people to respond and so on and so forth.

**The CHAIR:** Mrs McArthur, I apologise, but I need to move on to other members. I am just conscious of time; we have got 14 minutes left.

**Bev McARTHUR:** Sure, okay.

**The CHAIR:** Mr Hilakari.

**Mathew HILAKARI:** Thank you. I might just take us to some of the training that you have called for for employees of tobacco outlets in the future. Could you just talk us through some of that training that you would like to see and also maybe comment on over 18s only being able to sell tobacco products?

**Rosemary HANCOCK:** I might hand to Naree Atkinson to respond to that.

**Mathew HILAKARI:** That would be great, thanks.

**Naree ATKINSON:** Thanks for that. What we have seen is that under the current system a manager of a retail store has to undertake education of their staff. The staff then sign a form that says they received that education. It is mainly about sales to minors and things to do with sales. What we have found is that where a breach of the Act has occurred, where a council has had a test purchase assistant go into a store and the shop assistant has sold to that child and the council has then gone in and said, 'Could we see your training form, please?' and there have been instances where the retailer has not been able to provide this signed paper form, it will then go through a process to prosecution and then, magically, the form will appear, and so then the case will be dropped by the magistrate. What we would like is some sort of education system where it is documented somewhere, like an electronic system. We all do training electronically where we –

**Mathew HILAKARI:** Like on the Service Vic app or something like that?

**Naree ATKINSON:** Yes, something like that – some system where you have done your training and it is ticked, it is proved that you have done your training – would really help the council officers in undertaking their enforcement work.

**Mathew HILAKARI:** Would you propose as part of that regime to have penalties like in liquor licensing apply to the individual who is selling at the shop?

**Naree ATKINSON:** Currently they do.

**Rosemary HANCOCK:** Perhaps I will comment on that. I think that would be an important design feature that would need to be considered, because clearly the costs of a licensing system need to be worked out to obviously be as low as reasonably needed, if you like. So it is difficult to comment at this point.

**Mathew HILAKARI:** That is okay. In your view should tobacco outlets be separate or mixed businesses? I think about this in a similar space like a liquor store – typically it just sells liquor and maybe Coca-Cola or something like that that aligns with that. Do you see them as being businesses that should be entirely separated from any other retail sales, or do you see it as being beneficial to have them, say for example, at service stations et cetera?

**Rosemary HANCOCK:** I think it is definitely an issue that would need to be considered in the design of a licensing system, particularly if there are different regulators already. The liquor stores also are regulated by the liquor commission. That would certainly need to be worked through as to the practicalities between regulators – 'How many licences you are using?' for example.

**Mathew HILAKARI:** Great, thank you. I appreciate you have called for a register of tobacco sales places as one of the calls in your documentation. Just in terms of the past, what action have you been aware of that has been taken by councils and their staff and do you see that that has been effective? Or has it been ineffective – for example, the young people purchasing on behalf of councils to demonstrate their sales to minors through their sales to minors program? We were told when we were up in Shepparton that this had been an effective program, that retailers had then no longer sold to minors. Is that your view as well?

**Rosemary HANCOCK:** Yes, we collect the data from all the councils across the state and certainly it has been identified, even though it has now been quite a long-running program. It can happen at any time. Retailers do not know when it is going to happen when there may be a test purchase that is being done within a lawful framework.



**Mathew HILAKARI:** Do you have data that you could share with the committee on –

**Rosemary HANCOCK:** We have an annual report that is available to you. I am happy to make sure that you have a copy.

**Mathew HILAKARI:** Fantastic.

**Rosemary HANCOCK:** One of the issues that is emerging at the moment, however, which we would like to alert you to is with e-cigarettes. This is where if there was a ban on the general retail sale of e-cigarettes as opposed to a more therapeutic health related or pharmacy-related distribution at the moment – again, it is a bit of a perfect storm; as I have described, councils regulate more under the *Tobacco Act*. If a product falls under the *Drugs, Poisons and Controlled Substances Act*, and e-cigarettes containing nicotine can fall under the drugs regulatory regime, then it actually is an illegal act for a child or a minor to actually purchase an e-cigarette if it does contain nicotine. Councils are a little bit risk averse at the moment in terms of test-purchasing e-cigarettes, and so this is actually a weakness at the moment. MAV on behalf of the local government sector is encouraging federal and state governments to ban the general retail sale of e-cigarettes in particular. If they were sold through pharmacies and for health and therapeutic purposes but not for smoking, they have their own regulatory systems. Councils do not regulate pharmacists, for example, so that certainly is an anomaly.

**Mathew HILAKARI:** I have noted that in your submission as well, those exact words. Thank you.

**Rosemary HANCOCK:** And it is a problem at the moment.

**The CHAIR:** Thank you. Ms Kathage.

**Lauren KATHAGE:** Thank you, Chair. I might carry on a little bit from that. In your submission you said that through the Department of Health funding in 2023–24 you conducted 11,000 visits. How is that broken up between, roughly, stores selling tobacco, pubs and clubs, restaurants et cetera?

**Rosemary HANCOCK:** We do have that breakdown in our report that we will make sure that you have a copy of. Again, it comes back to the priorities. These are largely set by councils, although there is a formula about where the priorities should go. Retailers have been the prime area of activity versus an eating establishment being a prime area of activity, noting of course that with eating establishments we still have complexities of the regulatory framework relating to outdoor dining and drinking. Therefore it does require council attention to that cohort as well. For example, cigarette products and e-cigarettes, because they are currently able to be retailed, can be used in outdoor drinking areas where food is not being served, which is rather ironical given that we are trying to drink healthily as well. Certainly that remains another area councils still give attention to in particular in their inspections.

**Lauren KATHAGE:** The treatment of e-cigarettes under legislation or how they are sold – does that then also impact your ability to monitor and enforce the use of them in contexts like restaurants?

**Rosemary HANCOCK:** Absolutely, yes.

**Lauren KATHAGE:** Right. So it is not just the purchases.

**Rosemary HANCOCK:** Well, they are legally available now if they do not contain nicotine, and it is difficult to actually know if a product has nicotine or not. The consumer of it may or may not be aware.

**Lauren KATHAGE:** Does council's role extend also then to council owned and managed sportsgrounds? Are they places where enforcement or compliance activities take place?

**Rosemary HANCOCK:** It does.

**Naree ATKINSON:** During under-age sporting events and training and if there is a council's local law that goes beyond those times, then yes.

**Lauren KATHAGE:** Just in reference to the increase in young people that are taking up tobacco, I guess they are more likely to be at a sportsground than a pub.

**Rosemary HANCOCK:** Yes, that is true.

**Lauren KATHAGE:** You have spoken about the long relationship you have had with the Department of Health. Are there any learnings from that relationship that you think could be applied to a potential new regulator?

**Rosemary HANCOCK:** Again, it is actually the ability to share information between jurisdictions, because knowing who may not be licensed is relevant information then for an appropriate enforcement agency. Now, this would be for more illicit, illegal tobacco products, and that is likely not to be councils. As we have described, their staff do not have the necessary training or councils are not willing to deploy their staff to locations where there is potentially criminal activity being undertaken. But certainly council information will assist and strengthen the ability of a regulator to take relevant action and know hotspots and whatever as well. If it is collected by the state, it would be known where there is proliferation, and then councils may choose to be part of joint operations.

**Lauren KATHAGE:** Thank you. In your submission you spoke about the multiple referral channels that council has, such as Crime Stoppers et cetera. Does that reflect the diversity of the contexts that you come across, or is it more around a lack of clarity of the roles and relationships?

**Rosemary HANCOCK:** It is probably a bit of all, actually. It does depend on the context, but yes, often councils will observe potential illegal activity, and they want to just make sure that within the relevant federal or state agencies the right people have that information so that they can join dots as well.

**Lauren KATHAGE:** Thank you. In terms of the collaboration and clarity, you spoke in your submission around the disposal of products. What do you see as being a potential benefit of that? What is not happening that you would like to see happen?

**Varinder SAPEHIYA:** Thank you for this question. Based on a bit of lived experience, the challenges we, boots on the ground, face when we end up with a situation where there is an illegal business trying to sell these products – it is a bit challenging, especially when it comes to the regional areas where there are smaller populations and it is easy to get targeted. We often struggle to have that clarity and support from other agencies – for example, VicPol. VicPol will sometimes answer – and it has happened in the past – ‘Oh, that’s actually the federal police or this.’ There is that kind of murkiness within the system. Who has got what accountability and where the jurisdiction starts off with who – that needs to be, I think, clearly outlined moving forward. Also, in relation to confiscating and that kind of stuff, my understanding is it would be better if we leave that with the police, because when it comes to break-ins and those kinds of activities – organised crime – and these businesses, I think the police would be the safest agency to handle all of those matters, from confiscating to disposal under the appropriate Act, because we as the EHOs at local levels, especially in regional and rural areas, regardless of whether we want it or not, may get targeted if we indulge in those activities.

**The CHAIR:** Thanks, Ms Kathage. Mr Tak.

**Meng Heang TAK:** Thank you, Chair. Just to follow on, in your submission you talk about the environmental health officers, enforcement and all of that. What additional power do EHOs require to effectively enforce typical –

**Varinder SAPEHIYA:** Under the current framework, where we can see the legislation, we do not have empowerments, if I compare it with the food area. In the food area it is easy and straightforward – that organised crime is not there, and we have those empowerments where we can go into the premises and we can seize the products and we can actually take the actions based upon case by case. But in this particular area, we do not have very strong legislation. When it comes to the penalties, they are very minimal, and we do not have empowerments until we engage the police, with the support of police. We have witnessed these illicit or nicotine based, those vapes, widely available, while they have been kind of showcased openly. We have to rely on police and other relevant agencies to in a way come and join us and rescue us. We do not have those empowerments to seize those products at all in the current licensing system. Currently we are only sort of visiting those premises, which we know are somehow on our list, but we do not have any clue if under the nose illicit drugs are selling from home or on the website – we have no idea what is happening, and mostly EHOs and local government’s position is we do not want to take that risk sending those officers into those kinds of

activities. Our prime contact is VicPol. We always try to update other relevant agencies, but that is where the murkiness is.

**Meng Heang TAK:** Thank you. So in that sense, what would be adequate penalties that you would like to see from your point of view? What would deter –

**Rosemary HANCOCK:** If I could perhaps comment on that, just to add to Mr Sapehiyia's comments, certainly the current regulatory role of local government would appear to be appropriate, which is really focused on the *Tobacco Act* and not the health frameworks that may be more relevant for an e-cigarette regulatory system. Just in terms of the penalties, if council prosecutions are to occur, we would like to see the penalties be pitched at the level where it is worth going through a court process, which is obviously very expensive with lawyers and evidence collecting and all of that. At the moment it would be fair to say that with prosecutions that councils have undertaken, often the penalties awarded by the courts are way lower than the costs that the councils have incurred. So a significant disincentive for councils to prosecute is the legal cost, with sometimes disappointing outcomes with the final court decision.

**Varinder SAPEHIYIA:** May I add a little bit with the lived examples, just without giving too much detail? In relation to the cost, for example, in one of the cases in my area, we are dealing with a case that has cost us already \$40,000 from our budget. This is not illicit, but I am talking about prosecution in the food area. When people choose to represent themselves, then there is always that leniency from the court as well, but at the same time, as Ms Hancock mentioned, that cost to us goes exponentially way beyond what we can think of – \$50,000 is kind of minimum I would say what it costs to council to prosecute.

**Meng Heang TAK:** Chair, just one more question, if I may. In terms of the public health measures, what measures are being taken by council to educate, if I can say, and raise awareness, especially among our younger generation?

**Rosemary HANCOCK:** Well, it is education with obviously retailers, when they are visiting retailers, to check compliance with the *Tobacco Act* sale and signage provisions. It will be through health promotion activities, and again this will vary between councils and their priority work with their communities. That will be really outlined in their municipal public health and wellbeing plans. So it really does vary, actually, but because it is in their community development plans or whatever, it certainly is undertaken through local communications and whatever.

**Meng Heang TAK:** That is all.

**The CHAIR:** Thank you, Mr Tak. Just a quick question from me – really yes or no – do councils prosecute, and if so, how many in the last 12 months?

**Rosemary HANCOCK:** They do, but it is very few, for the reasons that we have outlined. Again, this will be in our report that we can provide you with.

**The CHAIR:** Okay, thank you very much. I just want to personally thank you all on behalf of the committee for appearing before us today. The committee will follow up on any additional questions or questions taken on notice in writing, and responses are required within five working days of the committee's request. The committee is now going to take a short 15-minute break before recommencing the hearing. I declare this hearing adjourned.

**Witnesses withdrew.**