

## **Public Accounts and Estimates Committee's Inquiry into Vaping and Tobacco Controls**

### **Questions on notice provided by Professor Coral Gartner**

I am a professor of public health at the University of Queensland, where I lead the NHMRC Centre of Research Excellence on Achieving the Tobacco Endgame. I commenced my career in public health 30 years ago and have focused on tobacco control policy research for the past 18 years. I do not accept funding from or provide services to the tobacco or nicotine product industries. My comments are provided in my personal capacity as a tobacco control policy expert and are not intended to represent my employer or the funders of my research.

Thank you for the opportunity to appear before the Public Accounts and Estimates Committee's Inquiry into Vaping and Tobacco Controls to discuss the issue of regulation of tobacco sales in Victoria. As requested by the committee, below I provide a summary of the advice I provided at the hearing. This is intended to supplement the oral testimony I provided. This submission focuses on the regulation of smoked tobacco products and the illicit trade in these products.

Tobacco remains the leading cause of avoidable premature death and disease in Australia<sup>1</sup> and globally<sup>2</sup>. This is an entirely man-made and unnecessary disease burden that falls hardest on populations that are already experiencing the most hardship<sup>3</sup>.

Most people who smoke started when they were children or adolescents or before they reached full brain maturity around age 25<sup>4</sup>. Hence, smoking is often considered a paediatric disorder because the rate of uptake of smoking among mature adults is infinitesimally small. The proportion of the population who smoke by 'choice' rather than to avoid unpleasant withdrawal symptoms due to nicotine addiction is small<sup>5</sup>. Analysis of survey data from the International Tobacco Control Policy Evaluation Project found that the majority (around 80%) of Australians who currently smoke would prefer to not be smoking within the next 1-2 years<sup>6</sup>. This rate has not changed much over the past two decades<sup>7</sup>. Sadly, many of these people who would prefer to stop smoking will continue to smoke until they die from a tobacco-related disease due to addiction, not because they want to keep smoking. To suggest that smoking is a 'free choice' ignores the reality of the difficulty that many people experience when trying to stop smoking. Regretting taking up smoking is a near universal experience of people who smoke (around 90%)<sup>7</sup>.

I would like the Committee to keep these facts foremost in mind – this inquiry is about the regulation of a product that causes the early death of around two thirds of people who use it long term<sup>8</sup>, and that 80-90% of consumers who purchase this product would

like to stop using it<sup>9</sup> but are doing so because they became addicted to it while they were young and unable to make an informed decision about its use<sup>10</sup>. Most people who smoke would also like their children and grandchildren to be protected from taking up smoking. Regulation of tobacco retailing is not about ‘telling people what to do’, this is about consumer protection against an addictive deadly product.

### **It is government’s role to regulate businesses whose operations can harm the health of the public**

Virtually all business activities that carry the potential to harm the public are regulated in some way. This is a basic expectation of people living in a modern society like Australia, that the government representatives they elect enact laws to constrain businesses from operating in a harmful way. It is, therefore, appropriately the role of government to protect the public from being exploited for commercial profit through the sale of addictive and deadly products. There is no other consumer product that is as harmful and addictive as tobacco cigarettes and yet it is one of the least regulated products in terms of its safety (e.g., there are no standards for the levels of carcinogens in tobacco products), who can sell it and where you can sell it in Australia<sup>11</sup>. Many other harmful consumer products have been removed from market or are now regulated under much stricter access requirements under medicines and poisons regulations. A few notable examples include asbestos-containing materials, leaded paint and petrol, and phenacetin (the harmful addictive ingredient in Bex powders).

The fact that tobacco products, particularly smoked tobacco products are allowed to be sold as consumer products with such little regulatory control of the product is a legacy of governments taking a very slow incremental approach to regulating tobacco with no defined ‘endgame’ of what would be an appropriate final regulatory framework and a plan with which to implement it. This is what the Tobacco Endgame Centre of Research Excellence is focused on – what would a better regulatory model for tobacco products look like that protects vulnerable members of society, such as adolescents, from becoming addicted to it for commercial profit and that supports people who do not want to die from a tobacco-related disease to stay smokefree, while minimising adverse impacts such as criminalising people who are addicted to smoking.

Tobacco wholesale and retail licensing is a very basic form of government regulation and it is astonishing that in 2024, there are still jurisdictions in Australia, such as Victoria, that have not implemented this. When I mention to international public health colleagues that Australia does not yet have tobacco retail licensing throughout the country, they are usually shocked that a country as advanced as Australia allows businesses to sell an addictive deadly product without this most basic requirement of having to obtain a licence to do so.

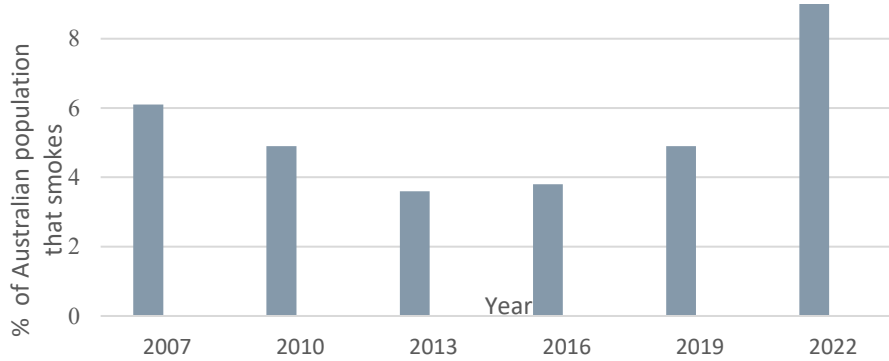
## **Has government regulation of tobacco products caused the increase in the illicit tobacco market?**

A simplistic explanation, often repeated by tobacco industry representatives or people aligned with industry interests, is that government regulation is responsible for a growth in the illicit tobacco market. In particular, high tobacco taxation is often suggested as **causing** the illicit tobacco trade. However, there are good reasons to be sceptical about claims that reducing the tax on tobacco products will reduce the illicit tobacco market.

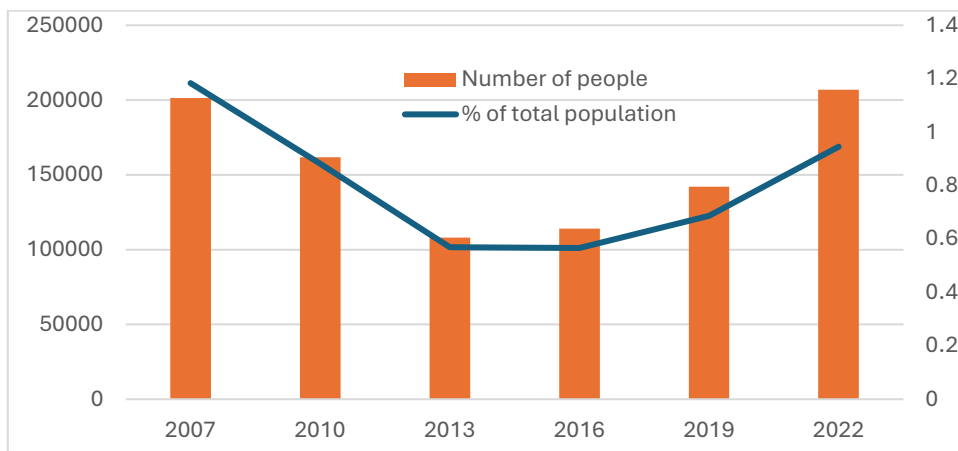
Firstly, purchasing of unbranded tobacco (a marker of illicit tobacco purchasing) has not consistently followed the tax rate in Australia. In 2010, a 25% increase in the tobacco tax rate was implemented followed by a series of annual 12.5% annual tax increases from 2013 to 2020. Yet, the proportion of the population who smoke regularly who reported purchasing unbranded tobacco in the National Drug Strategy Household Survey (NDSHS) decreased from 2007 to 2010 and decreased again in 2013, then remained virtually unchanged in 2016 and was only slightly higher in 2019. That is, the use of illicit tobacco remained less than 2007 rates, which is prior to the large tobacco tax increases that commenced in 2010, during nearly the entire period when taxes were rapidly and substantially increased on tobacco products in Australia. It is only in the last three years that we saw a substantial increase in use of illicit tobacco in Australia. The last 12.5% tax increase was in 2020 and there were no other tobacco tax increases prior to the last NDSHS data collection in 2022/2023. Therefore, it suggests something has happened between 2019 and 2022/23 to cause a substantial increase in the illicit tobacco market, other than just tax increases. Internationally, countries with low tobacco tax rates often have much greater illicit tobacco markets than Australia has, and factors such as a country's capacity to manage tax compliance, level of crime and corruption, and differential taxation levels in close neighbouring jurisdictions (e.g., different states within the USA) appear more important than the tax rate<sup>12</sup>.

### **Figure: National Drug Strategy Household Survey**

- a) Proportion of the population who smoke reporting currently smoking unbranded tobacco**



**b) Total number of people and proportion of total population reporting currently smoking unbranded tobacco**



Other government regulation on tobacco products was also implemented in 2012 in the form of plain packaging regulations and yet, further decreases in use of illicit tobacco was observed between 2010 and 2013. Research carried out by Dr Michelle Scollo also found no evidence of an increase in the availability of illicit tobacco products in retail stores following implementation of plain packaging regulations<sup>13 14</sup>. Yet, the tobacco industry and organisations such as the Institute of Public Affairs were very vocal about the tobacco plain packaging leading to greater illicit tobacco product use (Note that the Tobacco Tactics Website<sup>15</sup> and the Tobacco in Australia online resource<sup>16</sup> detail relationships between the IPA and tobacco companies). There is no convincing non-industry evidence that implementation of tobacco plain packaging caused an increase in illicit tobacco use. Indeed, as seen in the figure above, illicit tobacco use decreased following the implementation of plain packaging.

Relaxing government regulation of tobacco, such as tobacco taxation is unlikely to reduce the illicit market, rather it may well grow it because the size of the population who smoke will likely grow larger due to more young people taking up smoking and adults finding it harder to quit if tobacco control measures are relaxed. The Committee needs to also think about the overall population who are purchasing illicit tobacco which is a factor of the size of the population who smoke and the proportion of that

population who purchase it (See Figure, panel B). In 2022/2023, <1% of the whole Australian population are estimated to have smoked unbranded tobacco, while in 2007, the proportion of the population who smoked it was 1.2%<sup>17</sup>.

The best way to reduce the demand for illicit tobacco is to help people who smoke to become smoke-free, because the only people who purchase illicit tobacco are people who smoke. Given the majority of people who smoke would like to quit smoking, helping people realise their personal goals by providing comprehensive smoking cessation support and environments that support people to remain smokefree should be a government imperative. Removing barriers such as cost and accessibility to best practice smoking cessation support is needed.

Research has shown a relationship between tobacco retailer density and smoking prevalence. The easy availability of tobacco products is a factor that leads to smoking relapse during quit attempts and can influence the uptake of smoking by normalising tobacco products<sup>18 19</sup>. Hence, the widespread retailing of tobacco is also a factor that maintains smoking among people who want to quit.

### **Elements of an ideal tobacco licensing scheme**

Eliminating as far as possible illicit tobacco and nicotine products from retail stores is a critical component of addressing the current increase in illicit tobacco because the availability of these products in a normal retail setting rather than from a private dealer is likely to make purchasing the products more acceptable and 'normalised' to a greater proportion of the population who would not ordinarily purchase illicit tobacco.

The entire tobacco supply chain (importers, wholesalers, transporters, retailers) needs to be licensed and monitored. All incoming and outgoing stock figures should be regularly reported in a standardised form. This includes sales data reported by each retailer. The Committee should look at the Tasmanian licensing scheme which includes sales data reporting requirements. Licenses should only be issued for a year at a time, with no guarantee of a license renewal each year. While the immediate focus should be on getting a licensing scheme in place and operational to secure the legal supply chain, tobacco retailers should be encouraged to consider stopping retailing tobacco given this is a product with a declining customer base. It is therefore unsustainable for the current number of tobacco retailers to expect to continue generating substantial sales income from retailing this product that has a declining customer base.

Under the National Tobacco Strategy, the Victorian government has joint responsibility for implementing licensing and working towards a nationally consistent licensing regime. But also for exploring options to regulate where tobacco products are retailed, including regulatory approaches to control or restrict the number, type and location of

tobacco outlets. This could include a cap on the number of licences that are issued. When Hungary brought in tobacco retail licensing in 2013, the government also commenced a program of decreasing the density of tobacco retailers, and has decreased the initial 40,000 tobacco retailers in 2013 by 85% down to less than 6,000 in 2020<sup>20</sup>. The Smokefree law that passed in Aotearoa New Zealand but unfortunately repealed by the new government, would have reduced the number of tobacco retailers by 90%<sup>21</sup>.

Hence, the Victorian licensing scheme should be designed to facilitate a graduated reduction in licences over time, once the scheme is in place. Fewer tobacco retailers will also make securing the legal market more manageable as well as creating healthier retail environments that assist people to become and remain smoke-free.

The scheme will need a strong monitoring and enforcement mechanism that should include covert controlled test purchases and a zero-tolerance approach to the supply of illicit products via licensed retailers, with immediate licence cancellation and lifetime bans on holding a tobacco retail licence or working in a licensed retailer. This is likely to be a far greater deterrence than a monetary fine alone, which can be factored into such operations as a business cost. Illicit tobacco smuggling and wholesale supply should be treated as serious crimes, similar to other drug smuggling. It is the lower perceived risk, lower penalties and larger potential customer base for tobacco compared to other illicit substances that has likely attracted organised crime syndicates to increase their involvement in illicit tobacco.

License fees should be substantial to cover the significant costs of setting up the scheme and adequately monitoring and enforcing it, including funds for police to assist with enforcement and cross-border cooperation. A coordinated multi-agency approach is needed.

The legislation should include broad entry and search powers including at premises and vehicles that may be used for storing illicit products off-site. I have heard anecdotal reports of this occurring in Queensland with tobacconists storing products off the retail premises and sending a staff member to retrieve small quantities as needed for a small number of sales to avoid being caught with large quantities on the premises at any time.

More broadly, reducing the global illicit trade in tobacco products via international cooperation will also assist with reducing the amount of illicit tobacco products that reach Victorian retailers. Australia is not currently a part of the WHO Protocol to Eliminate Illicit Trade in Tobacco Products. Becoming a party to the protocol and assisting global efforts to reducing tobacco product smuggling should also be part of the approach to dealing with this issue.

Licence fees should also consider building in an Extended Producer Responsibility Scheme to fund the cleanup of cigarette butts that are littered in both urban and natural environments<sup>22</sup>.

### **The public support better regulation of tobacco retailing**

There is substantial public support for licensing tobacco retailers (68% in last NDSHS), raising legal age of purchase to 21 years (65.4%) and for making it harder to buy tobacco (64.8%)<sup>17</sup>. Research from Cancer Council Victoria also found three quarters of the population supported retail licensing and also restricting tobacco sales to stores that did not allow children to enter (76%).

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