

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

WITNESS (*via teleconference*)

Erin Dale, Assistant Commissioner, Tobacco and E-Cigarette Whole of Government Taskforce, Australian Border Force.

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

I begin by acknowledging the traditional Aboriginal owners of the land on which we are meeting, and we pay our respects to them, their elders past, present and emerging as well as elders from other communities who may be here 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 is protected by parliamentary privilege. However, comments repeated outside this hearing may not be protected by this privilege. Witnesses will be provided with a proof version of the transcript to check. Verified transcripts, presentations and handouts will be placed on the committee's website.

I welcome you, Erin Dale, Assistant Commissioner, Tobacco and E-Cigarette Whole of Government Taskforce, from the Australian Border Force. We are not going to have an opening statement or presentation; we are going to go straight to questions. Erin, I am going to hand over to Mr Tak for the first round of questions.

Meng Heang TAK: Thank you. Hi. I have just got one or two questions, depending on the time. Can you tell us what factors are contributing to the growth of illicit tobacco in Australia and in Victoria?

Erin DALE: Thank you. My name is Erin Dale. I am the Assistant Commissioner with border force. Illicit tobacco is perceived by criminal syndicates to be a low-risk, high-reward criminal activity, and there are well-documented links between the distribution and sale of illicit tobacco products in Australia and the serious organised crime networks. Continued consumer demand for cheaper tobacco products is enabling serious organised crime to infiltrate the market. These groups generate significant profits, which are frequently reinvested to fund other criminal activities, such as illicit drugs, trafficking and so on. This is some of the evidence that is playing out currently.

Meng Heang TAK: Okay. Do we know the proportion of the illicit tobacco trade that comes from overseas compared to what proportion is locally produced?

Erin DALE: I do not have those stats, but what I can comment on, from a border perspective, is that we are seeing an increase in the illicit tobacco that Australian Border Force is detecting at the border. For example, in 2022–23 we had over 120,000 detections, which equated to over 1.7 billion cigarettes and more than 867 tonnes of loose-leaf tobacco, so we are seeing a significant increase. Also, the funding that government has provided to Australian Border Force gives us the opportunity to not only work at the border but also work with our Commonwealth and state and territory counterparts to strengthen our efforts, recognising this is a national issue involving multiple jurisdictions. With the various state and territories having diverse regulations and legislation, there is an opportunity – through developing an end-to-end illicit tobacco compliance model, which the funding goes towards – to harmonise this to get stronger regulations and to detect not only at the border but also to enforce the domestic prohibitions.

Meng Heang TAK: Okay. Thank you. No further questions, Chair.

The CHAIR: Thank you, Mr Tak. Ms Kathage.

Lauren KATHAGE: Thank you, Chair. Thank you so much for joining us. You spoke a little bit just now about this being a national issue. We have heard from various other levels of government and agencies on their roles, and there have been various calls for increased clarity around roles and relationships. Do you have any reflections on that?

Erin DALE: Yes, definitely. The national vaping working group is chaired by the Australian Border Force commissioner and also the New South Wales health secretary, and one of the key tasks of that working group is

to develop a national vape enforcement framework. What that does is bring together not just a Commonwealth perspective but also the states and territory counterparts across health and law enforcement to be able to tackle this issue from a holistic perspective to clearly define the roles and responsibilities of those agencies and how they actually share information together to be able to assist each other to tackle this crime not only at the border but also from a domestic perspective.

Lauren KATHAGE: Thank you. You have got international partners as well, is that right?

Erin DALE: Yes, definitely. Look, what I will say is that Australia is widely recognised as a world leader in tobacco and e-cigarettes for implementing a comprehensive range of controls. The new legislation presents an opportunity for us to further solidify the approach that we are doing. One of the key pillars is working with our international counterparts, and to this end one example that I can share is that we have been working with the World Customs Organization's Asia-Pacific regional assessment to undertake an assessment to understand the threat of illicit tobacco in our region and to share lessons learned with our regional counterparts to actually stop these products before they get to our shores.

Lauren KATHAGE: Thank you. We heard from Victoria Police this morning regarding organised crime and how new controls and additional controls will, I guess, seek to disrupt the criminal activity but that there is no silver bullet. Do you have any reflections on the barriers that the proposed licensing regime will put in place for organised crime and what sort of impact it might have on their activities?

Erin DALE: What I will comment on is not so much their licensing from a state perspective but just to come back to the Commonwealth perspective. On 1 January stage 1 of the border reforms were introduced, which saw disposable vapes prohibited, and then from 1 March we introduced reforms to make re-usable vapes and all associated vaping products prohibited. What that does is it actually makes the Commonwealth, Australian Border Force and Therapeutic Goods Administration no longer required to determine if a vape contains nicotine. The new border controls have streamlined the process for ABF to detect these and destroy vape products, helping to stem the flow of vapes into the Australian community. If I use some stats, since 1 January over 611,000 vapes were detected, which had a street value of \$18.3 million, and in addition to that we had over 76,000 other vape-related products detected. We have made significant progress in stemming the flow of vapes into Australia through these controls. Some early positive signs by industry have shown some online vape stores are no longer selling to the Australian market, but having said that, we are also seeing attempts to misdeclare goods at the border. So we are very vigilant to this type of behaviour, and our efforts at the border are having a significant impact. However, I should stress again: stamping out illicit vapes will require a multifaceted approach across all levels of government, including education, outreach, regulation and enforcement actions.

Lauren KATHAGE: Thanks for those reflections. In terms of the importance of stamping out illegal trade in tobacco and vapes, we have heard quite a lot of evidence around health impacts on community. We have also heard a little bit of evidence, and I think you might have some insights into this, on the profits from these illegal activities being used for further criminal activity relating to arms and human trafficking. Is that something that Australian Border Force has identified?

Erin DALE: Certainly we have not actually identified it specific to those – human trafficking and so on. But what I would suggest is that in the instances in Victoria where Australian Border Force has been working very closely with Victoria Police and AFP, it has seen the linkages between organised crime groups and some of this importation of tobacco. That is what I can say in that space.

Lauren KATHAGE: In terms then of it also being, then, a tax crime, your relationship with the ATO – is that something that is longstanding? Is that something that requires or would benefit from some improvements?

Erin DALE: No, we work very closely with our tax counterparts. In fact on our Illicit Tobacco Taskforce we have a number of agencies, including Australian Taxation Office, as part of that tobacco taskforce. We actually work together in various operations, including intelligence sharing and information sharing, to be able to identify and detect those various entities playing in this space.

Lauren KATHAGE: We have heard from VicPol about the increase in the sale of illegal products over the last 10 years. Is that reflected in what you are seeing come across the sea? Has it predated that, or do you see a more recent increase?

Erin DALE: No, we have actually seen, for example, illicit tobacco increase from 356 tonnes in 2016–17, and in 2021–22 we detected over 1679 tonnes, so there is a definite increase. That actually will be further assisted by this additional funding to be able to bring together a holistic end-to-end approach. It is not just at the border but also how we work internationally – our border intervention – to stem the flow, working with our international counterparts; connecting all the key stakeholders across the Commonwealth, states and territories and across health and law enforcement to improve our collective effort and the effect; and also enhancing our detection and disruption both at the national border as well as from a domestic enforcement perspective, working with our state and territory partners.

Lauren KATHAGE: Fantastic. Thank you. Thank you, Chair.

The CHAIR: Thank you. Mr Hilakari.

Mathew HILAKARI: Thank you so much, Assistant Commissioner, for joining us. I just thought I would like to hear a little bit more about the new enforcement model. You describe it as ‘end-to-end’. Could you just outline a bit more specifically what that means in terms of our international partners but also in terms of what is going on in the states and territories?

Erin DALE: The new illicit tobacco end-to-end compliance model will span across three key areas. The first area is enhancing a pre-border intervention to stem the flow of illicit tobacco. What that means is we will work with international partners in priority locations to stem the flow of illicit tobacco to Australia. As well, we will work with source and transit countries to target and disrupt illicit tobacco before it reaches our shores. So that is your first element.

The second element in that end-to-end model is connecting all the key stakeholders across the Commonwealth state and territories and across health and law enforcement to improve our collective effect. Illicit tobacco is a complex issue involving health, police and revenue agencies. It spans across federal, state and territory jurisdictions and powers. With this new approach what we will do is bring together all key stakeholders to deliver a coordinated multi-agency, multijurisdictional response, which is the most effective way to tackle this crime.

The third pillar of that end-to-end model will be enhancing our detention, disruption and destruction, I should also add, both at the national border and alongside our state and territory partners for enhancing our domestic enforcement approach. We will work with states and territories to align the country’s regulatory approaches to illicit tobacco and boost disruption activity. As you know we have different approaches, so how do we actually best align them to get the best effect? We also seek a hardening of the regulatory environment, including licensing and stronger penalties to deter and contain the illicit tobacco trade.

Those are the three key pillars. We are actually working together to see how we can actually bring a holistic approach to this crime.

Mathew HILAKARI: Thank you for that. I just wonder if you could talk a little bit more about the demand side. Obviously, the import of illicit tobacco is because there is a demand within the community to purchase it. How are we addressing those demand-side factors, and what support should be provided to make sure those demand-side factors are addressed and dealt with?

Erin DALE: I think the demand side is probably, I would say, better directed to a health perspective, but what I could say from a border perspective is that the continued consumer demand is what is actually driving serious organised crime to infiltrate this market. That is where our activities at the border are actually working together with our key counterparts to be able to share and collect information. It is not just about, now, tobacco importation. Is there an organised crime nexus? How do we actually tackle that together?

Mathew HILAKARI: No, that is right, because I guess if we do not address the demand side and suitably support that – I do note that one of the key roles of the Illicit Tobacco Taskforce is to protect Commonwealth revenue, and part of that is to address the demand side and to actually take in that taxation support. Just a little bit earlier you mentioned, and this Illicit Tobacco Taskforce is, I believe, about six years old now, that we have seen maybe an uptick in those tobacco and vapes that are being seized. Is that a result of larger amounts being imported, or is it that we are doing a better job of catching them, or a little bit of both?

Erin DALE: I would like to think it is a bit of both. Obviously, we have a direct injection of funding from government as well around increasing our resource on the ground to be able to look at more containers or consignments coming through. That is one component of it. The other one is around additional injection into intelligence collection, collecting intelligence not only from source and transit countries but also from previous detection and working with our counterparts as well as better training for our officers and making sure that our intelligence is shared so we are actually on the front foot – the criminal syndicates, as we all know, evolve and adapt to the different detection methodologies – to be able to keep ahead of the curve and make sure that our officers are trained and capable to be able to identify this.

Mathew HILAKARI: Fantastic. Thank you. That is all from me.

The CHAIR: Thank you, Mr Hilakari. Mr Galea.

Michael GALEA: Thank you, Chair. Thank you, Assistant Commissioner, for joining us today. Just to start with, can you please outline the prominent ways by which illicit tobacco is arriving in Australia? My assumption is shipping, but can you talk us through how much comes through shipping or any other particular means by which it arrives here?

Erin DALE: Yes. They are containerised. When you say ‘shipping’, that is the containerised cargo that illicit tobacco can come through. But also we see airmail shipments. It comes through air cargo – in express air cargo we see tobacco come through – but also international or mail. It comes through in literal packages. But we are actually seeing more that we are having larger shipments – that is, more containerised cargo. There is less detection, but there is a bigger weight coming through. That has been the latest trend. That gives us an indication that there is organised crime involved in this.

Michael GALEA: Interesting. So it is quite across the board, but the containerised imports are increasing. Is that what you are saying?

Erin DALE: It is the weight. Yes, that is right. It is not the number, it is the weight.

Michael GALEA: Sure. And what are the predominant countries of origin for illicit tobacco that comes to Australia?

Erin DALE: We obviously are seeing that China and UAE are the prominent sources of origin.

Michael GALEA: I realise this is an estimate, but insofar as you can tell me, how much of what gets illegally imported does border force capture?

Erin DALE: Say that again.

Michael GALEA: Of the illicit tobacco that is imported into Australia, what is your best estimate as to how much ABF captures?

Erin DALE: I mean, we all know that we are not capturing everything. I do not have exact figures here, but there is still a large amount that is getting through. That is why it is important for us to actually leverage our intelligence partners overseas but also to work with our other Commonwealth partners and the state partners to be able to do that. One thing that I would say of the illicit tobacco and e-cigarette commissioner brought in by the government, is that one of the key roles of that position is to be able to understand the end-to-end nature of the leakage, because it is not just at the border. But also, from a domestic perspective, it is about bringing together all the various players in this chain to be able to understand the effect and the investment that is being put into implementing our enforcement, health and all the different measures and what effect it is actually having in reducing the take-up of vapes or smoking in our community and so on.

Michael GALEA: Interesting. As you said to a colleague earlier, it is the demand side as well that is going to drive it irrespective of all the things there, and I note the considerable work that the agencies, including ABF, do. Are there any particular international counterparts that you have that you look to as doing interesting or innovative things in this space that you are looking to emulate?

Erin DALE: I would say we have a lot of outreach from various countries. We have been recognised as a world leader in tobacco and cigarette control, and we have outreach from other countries. We work with other

countries on a lot of intelligence sharing and best practice. But we can always improve the way that we do things at the border and across the continuum, so we are always looking to learn from others and pick the best out of their different models to enhance and continue to refine our approach in Australia.

Michael GALEA: Yes, so always learning. But it sounds like you are saying that it is more a case of them looking at Australia as an example of how to address the problem. Is that right?

Erin DALE: Yes. We are considered as one of the world leaders in this space.

Michael GALEA: Yes, thank you. Obviously, as you say, end-to-end regulations are quite variable as well in the end-to-end process. It can have a lot of influences on different ways. In Victoria we are currently in a situation of a recent announcement that tobacco shops will be regulated by the state government. From the border force perspective, do you see that having a helpful impact for the work that you do?

Erin DALE: Oh, yes, definitely. When I started to say that it is the criminal syndicates, they see this as low risk, because when they are bringing drugs and offloading that into the community, it is very different to doing that with the tobacco. So it is very vital that you not only have a border system but also a domestic system which complement each other to be able to make life difficult [inaudible]

Michael GALEA: Thank you, Assistant Commissioner.

The CHAIR: Thank you. Mr O'Brien.

Danny O'BRIEN: Thank you, Assistant Commissioner. Just a couple of questions from me. How difficult is interception of illegal tobacco when we also have legal tobacco coming in? Is that part of the challenge you have as compared to, for example, other illicit drugs?

Erin DALE: There are still challenges when tobacco is actually misdeclared or not declared properly. These are some of the fundamental things that our officers are trained to be able to detect and understand. Also, the important of the intelligence collection, not only from Australia's perspective but working with our overseas counterparts, and this where we continue to refine our approach and to be a step ahead of the criminal networks to be able to identify and target better.

Danny O'BRIEN: So how do you determine, particularly on shipping and with container trade, what is legal and what is not? I assume it is about the paperwork?

Erin DALE: So, it is declared. Everything that comes into Australia is actually declared, and from the declaration we have intelligence and databases run across that information and identify the ones that are the legitimate versus illicit tobacco. So that is how we have identified it, without going into too much methodology.

Danny O'BRIEN: Yes, okay. In a broad sense, not just tobacco, what percentage of imports are being screened in terms of shipping containers but also goods, imports coming in via air?

Erin DALE: Our methodology is very different. Everything is reported, and intelligence mechanisms run across that information, and then anything identified as high risk is actually screened or further inspected or looked at. As I said, as the volume of [inaudible] our officers can only look at so many of them, so it has to be based on risk threshold for us, otherwise we would be impeding legitimate cargo which has no criminal intent or association with it.

Danny O'BRIEN: What sort of percentage then is actually physically checked?

Erin DALE: It varies, but it is based on risk assessment.

Danny O'BRIEN: Okay. All right, I will hand over to Mrs McArthur.

The CHAIR: Mrs McArthur, yes.

Bev McARTHUR: Thank you very much. Beverley McArthur here now, Assistant Commissioner. Do you need more sniffer dogs?

Erin DALE: We have a number of sniffer dogs that can actually detect tobacco. I would not say, 'No, we don't want more,' it is always good to have more. But they are very effective in identifying tobacco.

Bev McARTHUR: What about e-cigarettes?

Erin DALE: For e-cigarettes, we have not got any, to my knowledge. Obviously this is something that is not easy to request; the complications are, as you know, that the vapes have got metal and lithium batteries and a whole lot of other various components in them, so it is difficult but something that we will need to look into.

Bev McARTHUR: So do you need more resources? Because there seems to be a flourishing market in this illegal product. What do you need to solve the problem?

Erin DALE: We actually were funded through the last budget with \$188.5 million to tackle illicit tobacco over the next four years and also \$25 million for vapes over the next two years. So we have additional frontline officers, additional intelligence analysts, additional equipment and so on. Where we need to put the effort in is bringing the whole system together, not only at the border but also at domestic enforcement and internationally, to have an end-to-end systems approach that is more effective.

Bev McARTHUR: We are hearing that even primary school children are using vapes. Do you need to be on the spot at primary schools checking what is going on?

Erin DALE: Our role is at the border, so I think I will leave that question to the state and territory counterparts to answer.

Bev McARTHUR: So you have got enough funding to carry out your actions?

Erin DALE: Yes, we have, as I said, \$188.5 million over four years to be able to deliver a comprehensive approach. But the important part is that the border is one component; we just need to work together collectively to deliver the best effect.

Bev McARTHUR: And why hasn't that been happening?

Erin DALE: It has been happening on a small scale, but obviously we might need to look to the states around the priorities there. But as I said, we include the Illicit Tobacco Taskforce, which we have been working on together with our Commonwealth counterparts but also our state counterparts, which has been proved a huge success. That is why the government has actually funded this \$188.5 million to actively enhance that and work from that to bring everyone together.

Bev McARTHUR: So the states are dragging the chain, are they?

Erin DALE: I would not say that. We have been working very closely with Victoria Police on some of the recent operations that we did, not only from a tobacco-based perspective. Everybody has got their priorities, so how do we actually navigate that through? But I would not say 'dragging the chain'. We have been working very collaboratively with the states, and we have had nothing but support from the states.

Bev McARTHUR: That is a very good political answer. Do you find that the players involved in the illegal tobacco and e-cigarette trade are also the same players involved in the illegal drug trade?

Erin DALE: There are definitely organised crime linkages. I would not go into specifics. I think in some of the Victorian cases that have played out it is very clear from that. So that is why we are working very closely with not only the Commonwealth but all the state counterparts to make sure that we are establishing the links much earlier and we can better target those syndicates and individuals involved in that. There is evidence that shows that the funds raised from the illicit tobacco activity is actually funding other criminal activities such as illicit drug trafficking and so on.

Bev McARTHUR: I think that is probably enough. Is that the end of the –

The CHAIR: No, we have got Ms Kathage. I think you have other questions.

Lauren KATHAGE: Thank you, Chair, I appreciate that. I noted your comments around the relationship between border force and the Victoria Police. Are you able to share about your relationship with other Victorian agencies and departments? Do you work at a subnational level with, for example, the Victorian Department of Health?

Erin DALE: Yes. We do have, as I said previously, the national vaping working group, which is co-chaired by the ABF commissioner and the secretary of NSW Health, which is the one actually looking at developing the national vaping enforcement framework. The membership comprises representatives from state and territory health and police organisations, including Victorian health and so on. In addition to that, the illicit tobacco enforcement and compliance working group that ABF chairs – the membership in that represents state and territory health agencies. The focus of that is to understand the challenges posed by the different areas: how do we share intelligence information, how do we actually assist with equipping the states with national information to better do domestic enforcement? Those are two examples. We do actually work very closely with not only law enforcement but also health counterparts across the states and territories.

Lauren KATHAGE: Working as you do, then, across the jurisdictions in Australia, are you able to reflect on the benefit of a uniformity of approach, or do you actually believe that each jurisdiction needs to have a bespoke approach?

Erin DALE: Obviously each jurisdiction has got its approach for its requirements, but how do we actually make it more consistent across the board? That is one of the roles of the illicit tobacco and e-cigarette commissioner, to be able to advise government around where the strengthening is required either at the state or at the Commonwealth level. How do we make it more consistent? How do we work together? I think that is where the work needs to be done around understanding what the differences are, what works well and where we actually go as a whole mission.

Lauren KATHAGE: Thank you. Do you see a role in that for the establishment of the illegal tobacco and e-cigarette commissioner?

Erin DALE: The ITEC commissioner's role will be to bring together the national approach and then also advising government around any strengthening and improvement, so definitely there is a huge role, and also, to a previous question, understanding the effect that these activities, enforcement models and all that are actually having on the consumers – all the children taking up vaping and so on. So there is that role for that ITEC commissioner.

Lauren KATHAGE: Is there currently a way to monitor impact that follows the thread all the way from your work through to council-level enforcement?

Erin DALE: Is there currently –

Lauren KATHAGE: Yes, monitoring of impact of activities.

Erin DALE: No. At the moment obviously we understand the border perspective and also understand the domestic perspective, so that is why the government recognised that to bring a whole end-to-end approach to understand the effectiveness of various approaches.

Lauren KATHAGE: What would you see as being the most important outcomes or indicators that border force would be reaching for?

Erin DALE: It is a collaboration. As I said, border force is one component. It is a cross-jurisdictional, multidimensional issue: how do we actually come together as a collective to tackle this issue?

Lauren KATHAGE: Fantastic. Thank you so much.

The CHAIR: Thank you, Ms Kathage. Assistant Commissioner, we have come to the end of the time for questions. Is there anything else that you would wish to add on your own here for the committee's interest?

Erin DALE: Nothing further. Hopefully I answered the group's questions, but no, I have got nothing further.

The CHAIR: That is excellent. Thank you very much for taking the time to speak to the committee 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 break before recommencing the hearing at 2:35 pm. I declare this hearing adjourned.

Witness withdrew.