

# SOLUTIONS

## What can we do to fix this problem?

- Go as a bi-partisan delegation to Mark Butler's office in Port Adelaide and tell him what the government's tobacco policies have done to this state
- Get him to reverse course on his prohibitionist policies.
- Get him to significantly lower the price of tobacco in order to take the profits away from organised crime
- If he won't do that, get him to immediately freeze further excise hikes which are currently set at 5% per year. Those excise hikes are literally adding fuel to our fires.
- Price is the key driver of the problem. If we don't want to address the "world leading" price which attracts criminals, then all other actions we might consider are a bit like shuffling deckchairs on the Titanic. We are going to continue to have this growing problem while the price continues to rise.
- I've said that a little more bluntly than the Victoria Police did in their submission (on page 10) but the message is exactly the same.
- While you are there, please ask him to appoint a Tobacco Commissioner as was promised in legislation passed last year. They have been forced to appoint Assis. Commish Erin Dale as acting in the role because they were legislatively obliged to do so by 1 July but they need to find a longer term solution and appoint someone who holds the requisite enforcement background.
- Mr. Butler's Vape Ban is simply wrong. Prohibition doesn't work, never has. This product needs to be strictly regulated in the retail environment and attach a sensible excise rate to it, not one that immediately encourages a black market like what we have done with tobacco. New Zealand have a 15% GST on vapes and it is working well.

## What are your thoughts on a licencing scheme?

- We need more than just a licencing scheme, we need a comprehensive legislative template that provides a deterrent to criminals thinking about engaging in illicit tobacco.
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- When I look for hope on this issue I cite:
  - The road toll as an example of a very difficult problem that we fixed.
  - 1000s dying due to seat belts, alcohol and speeding in the 70s
  - We now have road rules and enforcement of those rules that have substantially changed peoples behaviour and made it a lot safer.
  - We did it by bringing in severe penalties by also greatly increased the likelihood of getting caught. These are the two pillars to deterrence. People considering breaking the law need to think there is a good chance they will be caught and then fear the punishment they will receive.
  - We have neither of those two elements with our current tobacco regime and so criminals continue to be attracted to it.

## Other licencing schemes

- There is no licencing scheme in Australia that has successfully suppressed the availability of illicit tobacco products.
- This is due to a number of factors including the wrong agency running those schemes, not enough funding and staff, insufficient penalties, and a lack of understanding as to how much effort is required to stop it. A few tersely worded letters is not going to cut it.
- It's important to understand that a licencing scheme, while potentially useful, is not a panacea for the illicit tobacco and vape problem we have.
- Some people have suggested the new Queensland model is the one we should follow but that hasn't even started yet so it's hard to evaluate its effectiveness.
- To their credit, the Health Department in Queensland have gone out of their way to liaise with retailer bodies to ensure the new regulations are well understood and have their support. This is the type of pragmatism that is lacking in other states. It's disappointing that no retailer bodies have been asked to address this committee. Neither have any consumers. Retailers and consumers account for about half of the submissions to this inquiry and are the most affected groups by it yet none of them have been called.

## General principles

- I will just outline a few principles that should be considered or included in any scheme we create:
  - You have to work out what success looks like? What is the objective? Will we just be happy with the shutting down of illicit shops and the end of daily firebombings or would we like to see the end of illicit tobacco, its detrimental effect on public health, on lawlessness in the community and the continued growth of organised crime gangs? They are two totally separate things. The first we might be able to achieve, the second, I'm not confident of without reversing course at the Federal level.
  - Has to be the responsibility of the right agency, not health. Follow South Australia's lead by taking enforcement away from Health.
  - It has to be totally focussed on tobacco. The report produced by this committee on gambling and liquor showed that you had to split the functions of the agency responsible in order to develop the necessary expertise and effectiveness. Same goes for tobacco. It needs its own focus.

## Laws

- You should create laws that assume the federal vape ban will be repealed in the future. History suggests that there is always an outbreak of commonsense eventually.
- You need to build flexibility into the laws. At the first sign of enforcement activities, criminals will adapt and pivot to use a new methodology. You need to anticipate those changes.
- Take some of the learnings from the Hobsons Bay Council submission. They outline numerous legislative hurdles they have faced in trying to keep their community safe. Give the investigators powers to make it easy to do their job.
- We need a comprehensive template of criminal offences relating to illicit tobacco, like we have for hard drugs.

## Police

- I applaud the Victoria Polices efforts to address the tobacco-related violence but they have been hamstrung by a lack of appropriate offences to charge people. Charging people using the Commonwealth offences and procedures is inconvenient for state police and dissuades them from getting involved. Make it easy for them to do their job.
- The Police have suggested measures against the Landlords of these shops and yes, they are helping to facilitate these crimes, but there are no crimes on our statutes that address that type of criminal behaviour. The involvement of the whole supply and distribution chain needs to be addressed in state law. This “landlords issue” is an example of the Police having to get creative due to not having the necessary laws to underpin their work.
- You also need to continue and expand the funding to the Victoria Police Taskforce looking at this issue. Even if they manage to stop the fire-bombings, it is critical for a tobacco-focussed taskforce with their police investigative powers and techniques to carry on, especially now that they have a good understanding of the crime type.
- The Police have stated their position to you regarding their reticence to be involved in retail enforcement and I understand their concerns, but they are the only agency in this state that can plan and organise an effective response and have the powers to deal with organised crime. They must be involved in the formation and execution of whatever system is created.

## Laws

- A good place to start for new laws would be with a definition of illicit tobacco.
- That definition needs to include tobacco and nicotine products that do not comply with other laws such as plain packaging and ensuring they are duty-paid goods.
- Since the Health department won't allow track and trace technology on packets, it is sometimes hard to tell if a packet is illicit if it is wrapped in compliant packaging. Therefore, introduce a reverse onus on the retailer who would need to show the paperwork to prove the previous supply chain of the goods and the payment of duty.
- The definition needs to include shisha tobacco. No one ever talks about shisha but it increasingly popular, is very bad for your health and the entire industry is totally illegal. Most, if not all Shisha is smuggled into the country.
- The easiest way to gather evidence of illegal sales is via undercover purchases. I suggest you include provision for lawful evidentiary purchases in your model.

- The punishments for any tobacco laws we introduce should be tiered to reflect the harm caused by the products being sold. Those harms should be judged on the available global evidence. You have been sent a submission by the “world leading” harm reduction expert, Dr. Colin Mendelsohn, but unfortunately he has not yet been called to give evidence.
- It doesn't matter what regulations you bring in if they are not strictly and aggressively enforced. We have 1300 illegal shops in the state. Shutting down 1 or 2 a day isn't going to make any difference.
- Understand that a proper enforcement response is going to be costly. It needs to be properly funded. The Commonwealth should be asked to contribute given their stake in the issues.
- I've seen suggestions that we might introduce a scheme similar to Tasmania where there are very high licence fees and onerous reporting procedures are put on tobacco sellers. That would be a mistake. There is no need to make it more difficult for retailers to sell a legal product. The 2 **major** things that need to be enforced are the selling of illicit tobacco and selling it to persons underage. The fact that no one has enforced those 2 basic things before now is not the legitimate retailer's fault. They should not be punished for the government's mistakes. They have already been punished by a lack of sales where up to 2/3 of tobacco sales in independent supermarkets has now been lost, not to mention the violence their staff have been subjected to by having to store an extremely valuable product. They have businesses to run.

## Money

- Understand that the whole purpose of this type of crime is the money. You can either take away the profit at the start by reducing the cost of tobacco or you can take it away at the end by ramping up the proceeds of crime action. This state did strengthen Proceeds of Crime laws recently but now we need those laws backed by the resources and willpower to go out and use them consistently. These criminals are making about \$50 million per week just in this state so there should be plenty of targets to go after.
- The Committee should also note the AUSTRAC Risk Analysis Report that came out last week where it spoke about the rise of tobacco crime-related money laundering in this country and its links to terrorist financing.

## **Better Regulation Report**

- The Better Regulation Commissioner provided a report containing sensible recommendations to the government more than 2 years ago. The same report has now been provided to this committee. Unfortunately, the problem has expanded in those 2 wasted years and it now makes the job of fixing it substantially harder.
- I support the majority of the recommendations in that report particularly: 1. That Enforcement should be shifted to the Department of Justice, 2, A licencing scheme should enable collaboration with the Victoria Police and 3. The investigators need enhanced powers.
- I do not support the recommendation to include Health representatives on an oversight committee. They are not best placed to direct a law enforcement response.

Lastly, whatever you do, enforce it. A great frustration is felt by the public and retailers when laws are introduced, the lawful people in the industry follow them, the criminals are left to carry on as per normal. This is not a normal crime and needs an aggressive enforcement response. The criminals will continue to ignore any new regulations if they are not strictly enforced.