

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

Inquiry into Vaping and Tobacco Controls

Melbourne – Monday 15 July 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

Rohan Pike, Rohan Pike Consulting.

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 and their elders past, present and emerging as well as elders from other communities who may be joining 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 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 you, Rohan Pike from Rohan Pike Consulting. I am going to invite you to make an opening statement or presentation of no more than 5 minutes, and this will be followed by questions from the committee. Over to you, Rohan.

Rohan PIKE: Thank you, Chair, and good morning, committee members. My opening statement will address the cause and extent of organised crime's involvement in the illicit tobacco problem, with the hope that we might learn from past mistakes. I am able to offer my thoughts on possible solutions during questioning. The terms of reference for this inquiry state that the committee should inquire into the 2022–23 annual reports of the Department of Health and VicHealth. I note that there is not one mention of illicit tobacco or illicit vapes in either of those reports. This omission is an example of why we are faced with a flourishing law enforcement problem. Not only have this country's health policies been the key driver in creating the black market, but health authorities, particularly in this state, have made no attempt to fix it or even acknowledge its existence. If it were not for the criminals bringing attention to themselves by killing each other and firebombing each other's shops, we would not be having this hearing. Fortunately, the existence of this crime industry and the damage being caused by it can no longer be denied or ignored.

We are here today talking about the explosion of illicit tobacco and vapes because Australia's tobacco policy has failed to change with the times. That policy is based on the World Health Organization tobacco convention that Australia signed in 2003, which asked countries to consider appropriate tax measures as a means to reduce tobacco consumption. Since 2010 the tax measures we have taken have not been appropriate. The artificial price put on tobacco is tantamount to a prohibition policy. The WHO did foresee that the growth of illicit tobacco was a likely outcome of their own convention and so included an article which warned countries that eliminating all forms of illicit tobacco was essential to tobacco control. Successive federal governments have ignored that warning. In 2012 the WHO established a further convention, this time solely focused on illicit tobacco. This set out the global template for what countries should do to protect their citizens. Almost 100 countries have signed up to that. Australia refuses to do so. That convention outlines world's best practice, and we have ignored it.

While federal health authorities have created this crime industry, here in Victoria we are left with the almost impossible task of trying to mop up the mess. The difficulties in addressing this organised crime problem became obvious to me shortly after I founded the border force's tobacco strike team in 2015. This dedicated team soon became the foremost repository of information on illicit tobacco in the country and uncovered the true nature and size of the problem. However, efforts to alert government to its growing threat were stymied by illicit tobacco deniers within the bureaucracy, and that type of interference continues to this day.

The size of illicit tobacco has been significantly under-reported, and as a consequence no urgency has been brought to the response. The result has been a free-for-all for organised crime. As an example, Quit Victoria's current website states that the illicit market comprises a mere 4.9 per cent, and Victoria's Parliamentary Budget Office, quoting Cancer Council Australia figures, state in their submission to this inquiry that the illicit tobacco

problem is 6.1 per cent of the market today. Based on my own understanding of the market I would be staggered if the true figure were not already 40 per cent and likely to be 50 per cent within a year. If we were to believe the Cancer Council figure of 6.1 per cent, there would be no need for this inquiry. It is deeply concerning to see these figures still being put forward despite the obvious crime problems this multibillion-dollar industry has created.

The policy of regularly raising tobacco excise was underpinned by a key assumption that smokers would either quit or pay the higher tax. In the early 2000s the policy had some influence on smoking rates because those were the most accessible options available to a smoker, but context is everything. The operating environment has completely changed. The fact is that since 2010 there has been an easily obtainable third option – illicit tobacco. It is an inconvenient truth for those who wish to stick with what they know. But those same policy settings in the current environment have fuelled a massive black market industry run by organised crime, thereby defeating the original health and revenue objectives of getting smokers to quit or pay the higher excise.

Criminologists talk about illicit tobacco as being a low-risk, high-profit crime. Let me give you some examples of how low risk it actually is. Federal health introduced world-leading plain packaging legislation. Health have never attempted to enforce that legislation. Tens of thousands of packs like this are sold every day without fear in the illicit tobacco industry. Just two months ago Mr El-Kurdi fronted this state's County Court for illegally importing over a tonne of tobacco. He was found guilty of avoiding paying over \$1.6 million in duty. He received a good behaviour bond. What message does that send to prospective criminals?

And of course two weeks ago Australia introduced world-leading vape bans before making any attempt to determine who was actually going to enforce them, not to mention giving no thought to the effect of those laws on chemists and consumers. Domestic illicit tobacco enforcement has been like a slippery pig that no agency has been willing to tackle or take responsibility for. Our community is suffering from the lack of foresight health authorities have given to the consequences of their tobacco policies. You simply cannot put the same people who created this problem in charge of the solution. A changed operating environment requires a changed response. I am hopeful that this committee will learn from some of those past failures. Thank you.

The CHAIR: Thank you, Mr Pike. We are going to go to Mrs McArthur for about 3 minutes.

Bev McARTHUR: Okay. Thank you, Mr Pike. Have governments gone soft on crime?

Rohan PIKE: I would not put it like that. I am mainly particularly interested in this topic, but certainly successive governments and both sides of the house have dropped the ball on this, federally and in this state.

Bev McARTHUR: You are extremely experienced in this space, and thank you very much for coming today to present to us. Based on your experience combating illicit tobacco, what do you think we should do?

Rohan PIKE: I have got a number of solutions written down here –

Bev McARTHUR: Good. Let us hear them.

Rohan PIKE: if we have time. Thank you. Firstly, the most important thing or most effective thing that the committee could do is go as a delegation to Mr Butler's office in either Canberra or 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 will not do that, get him to immediately freeze further excise hikes, which are currently set at 5 per cent per year. Those excise hikes are literally adding fuel to our fires here in this state. Price is the key driver of the problem. If we do not want to address the world-leading price, which attracts criminals, then all the other actions that 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.

Now, I have said that a little more bluntly than the Victoria Police did in their submission, but if you look at page 10, their message is exactly the same. While you are speaking with him, please ask him to appoint a tobacco commissioner, as was promised in legislation passed last year. They have been forced to appoint an acting person in that role, but we need a longer term solution. And Mr Butler's vape ban is simply wrong – prohibition does not work; it never has. This product needs to be strictly regulated in the retail environment

with an attached, sensible excise rate. New Zealand have attached a 15 per cent GET, and it is working well over there.

In relation to the proposed licensing scheme, in addition to that we need a comprehensive legislative template that provides a deterrent to criminals thinking about engaging in illicit tobacco. When I look for hope on this issue, I think about our road toll, which was out of control back in the 70s – thousands were dying due to a lack of wearing of seatbelts, alcohol and speeding. We now have road rules that enforce those rules and have substantially changed people's behaviour and made it a lot safer. We did it by bringing in severe penalties but also greatly increasing the likelihood of getting caught. These are the two pillars to deterrence. People considering breaking the law need to think that there is a good chance they will be caught and then fear the punishment they will receive. We have neither of these two elements with our current tobacco regime, and so criminals are actually attracted to it.

There are no licensing schemes in Australia that are successfully suppressing the availability of illicit tobacco products. This is due to a number of factors, including the wrong agency running the schemes, not enough funding and staff, insufficient penalties, and a lack of understanding and willpower to actually go enforce it. It is important to understand that a licensing 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 that we should follow, but that has not even started yet, so it is 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 is disappointing to see that no retailer bodies have been asked to address this committee – and neither have the consumers. Retailers and consumers account for about half of the submissions to this inquiry, and they are the most affected groups.

Just in terms of some general principles about a regime that we might consider, you have to work out what success looks like. What is the objective? Will we be happy with shutting down the illicit shops that are on the street and the end of daily firebombings, or would we like to see the actual end of illicit tobacco and its detrimental effect on public health, on lawlessness in the community and on the continued growth of organised crime? They are two separate things. The first we might be able to achieve; the second I am not confident of without reversing course at the federal level.

Of course a regime has to be given to the right agency. Follow South Australia's lead by taking enforcement away from the health department. It has to be totally focused on tobacco. The report produced by this committee in relation to gambling and liquor, which was very comprehensive, showed that you have to split the functions of the agency responsible in order to develop the necessary expertise and effectiveness. The same goes for tobacco – it needs its own focus.

The CHAIR: Mr Pike –

Rohan PIKE: Yes.

The CHAIR: If I can just interrupt, I am just conscious about time, and I know committee members have got a couple of other questions. Mrs McArthur, if you are happy to move on, we will go to the next question.

Bev McARTHUR: From me –

The CHAIR: No.

Bev McARTHUR: or from him?

The CHAIR: Yes, we will go to Mr Galea.

Bev McARTHUR: If there is time afterwards, I will get Mr Pike to finish his suggestions.

Rohan PIKE: Sure.

Michael GALEA: Thank you, Chair. Good morning, Mr Pike. Thank you very much for joining us. You spoke about a few things in relation to best practice. You also talked about the New Zealand excise, which is 15 per cent. Can I ask: in your view, what is the right sweet spot in terms of the excise amount – is there even

one while we have such a proliferation of illegal tobacco in the market? Is there a sweet spot that you think should be the right amount of excise?

Rohan PIKE: Thank you – good question. Yes. As I say, in New Zealand the vaping excise rate is 15 per cent; here our tobacco rate is 70. Seventy is clearly too much. We have dropped off the cliff in terms of people being willing to accept that level of tax. You may have heard of the Laffer Curve, which outlines a curve that shows where the sweet spot is in terms of the excise rate compared to the revenue being collected by the government. The level that we want to set it at is one that does not encourage people to go over to an illicit market that is able to undercut them easily. At the moment our illicit tobacco market is able to be priced at half or less of the legal market, and that is just attracting people to it.

Michael GALEA: Thank you. You spoke before with an example about someone who was sentenced in relation to selling illegal tobacco and avoiding \$1.3 million, was it, in excise?

Rohan PIKE: \$1.6 million.

Michael GALEA: \$1.6 million – and that they were given a good behaviour bond. Is the solution there – is that a judicial fault or is there legislation that needs to be looked at in order to toughen up those penalties?

Rohan PIKE: Well, I think it is both. The judiciary are familiar with historical precedents in relation to tobacco. The precedent has been set many years ago that tobacco crime is not a serious crime. They have traditionally set very low sentences and they continue to do so. So they need to be educated that the government is taking this matter seriously and that the penalties have increased but the sentences have not.

Michael GALEA: Thank you. You have spoken as well in response to Mrs McArthur of some of the suggestions that you have for the best practice model, and you are aware of course that Victoria is implementing regulation of tobacco stores – that has been announced just this year. Further to what you have just said, is there anything else in particular that you think needs to be incorporated as part of those reforms that we should be mindful of?

Rohan PIKE: Thank you. Yes, there are.

Michael GALEA: I know it is a very big topic, but I will ask you to be relatively brief.

Rohan PIKE: I will try my best. The laws that you implement should assume that the federal vape ban is going to be repealed. History suggests that there is always an outbreak of common sense eventually around these things. You need to build flexibility into the laws. At the first sign of enforcement, the criminals are going to adapt and pivot to a new methodology. We need to anticipate those changes. I would encourage you to re-read the Hobsons Bay council submission; that outlines numerous legislative hurdles that they have faced in trying to keep their community safe. We need to allow investigators powers to make it easier to do their job.

I applaud Victoria Police's efforts to address the tobacco-related violence, but they have been hamstrung by a lack of appropriate offences to charge people with. They have been asked to charge people with Commonwealth offences, and that is inconvenient for them; they are not used to that. They have suggested measures against landlords, and yes, they are helping facilitate these crimes, but again that is just an example of them trying to get creative with the law and not having the necessary laws to underpin their work. So I would encourage you to expand and continue to fund the Victorian police taskforce. Of course the police came here and stated their position regarding their reticence to get involved in retail enforcement. 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.

Michael GALEA: Sorry to cut you off. Thank you.

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

Aiv PUGLIELLI: Thank you, Chair. Good morning. You spoke earlier in your opening remarks about what success looks like in this space. To you, what is success in relation to vaping and tobacco control?

Rohan PIKE: As a community member, do you mean?

Aiv PUGLIELLI: Yes – in any way you would like to answer.

Rohan PIKE: I would love to see the illicit market completely abolished. I understand that is difficult. I am disappointed that it has already been created, and as I say, I think the only way to eliminate it is to reverse course on the policy that has created it.

Aiv PUGLIELLI: In relation to the legal trade – and I look at other countries around the world where policy settings are different. In several of those countries we see a high uptake of nicotine pouches, for example, as an alternate product used by consumers that is often marketed as tobacco free. An uptake of that in Australia – would you classify that within your view of success of what we are working towards?

Rohan PIKE: I think we are delving into the area of medical answers there, and I am not a medical expert.

Aiv PUGLIELLI: Sure. I do appreciate that. I suppose when we are talking about success, though, if I am looking at a future potentially where we still have a really high rate of nicotine dependence across the community via other products, like nicotine pouches – I think they are called snus in some countries – I think to many in the community that would still be a disturbing outcome if that were still continuing in high prevalence. In your view would that be success or not?

Rohan PIKE: As I said, I am not a medical expert, but I can read, and I do read the international evidence and I do read documents and reports from people who are in the harm reduction industry. It is obvious from that that some of the products, such as vaping but particularly nicotine pouches, are far safer than cigarettes, which are the worst possible form of ingesting nicotine. Therefore if all of the people who were smoking went over to nicotine pouches, I think that would be a good outcome for the community.

Aiv PUGLIELLI: But you do not, for example, see an outcome where none of these products are being used across the community?

Rohan PIKE: Nicotine has been ingested for whatever reason for thousands of years. There are a billion people in the world that still smoke. There are 15 per cent in Australia that use it for whatever reason. I certainly do not, but a lot of people do. Some of those people do it for enjoyment reasons, and it is very difficult to get them to stop using an addictive product.

Aiv PUGLIELLI: Do you have more of a view you could offer to the committee around limiting access of these products, legal or illegal, to under-18 individuals – to children?

Rohan PIKE: I think we do a reasonable job of that with alcohol in terms of the legislation and the regulations we put around restricting access for youth to alcohol. Obviously that is because we enforce those regulations and people in pubs and so on are wary of being caught doing the wrong thing. So I would think that a regulatory model along those same lines could achieve the same outcomes.

Aiv PUGLIELLI: I might pass back. Thank you.

The CHAIR: Thank you, Mr Puglielli. We will go to Mr Tak.

Meng Heang TAK: Thank you, Chair. Mr Pike, I have a very short question for you.

Rohan PIKE: Good morning.

Meng Heang TAK: Should vaping be licensed rather than made illegal?

Rohan PIKE: Yes.

Meng Heang TAK: Thank you.

Mathew HILAKARI: I am going to take over then in the 1½ minutes remaining. So a licensing regime – what are the key elements to get it right?

Rohan PIKE: To get it right – enforcement.

Mathew HILAKARI: Enforcement; great. The enforcement agency you mention – are you in favour of a standalone tobacco enforcement agency, one linked in with VicPol? I just want some clarity from you.

Rohan PIKE: Yes, something that falls under the department of justice, with clear links to VicPol where organised crime is obvious. When I say that, Victoria Police have stated that they do not want to be involved in the retail enforcement area but just when organised crime becomes evident. I would say that organised crime controls the whole thing. Those 1300 shops that we have in Victoria are the windows into organised crime. That is where they make their money.

Mathew HILAKARI: And should those shops – you know, if we click our fingers tomorrow and they get closed down, what do you foresee as happening next?

Rohan PIKE: As I said, the criminals will pivot and use some other methodology, either going online, having safe houses where they store their products or using other types of technology to get their product to the customers or in fact getting the customers to them to pick it up.

Mathew HILAKARI: Do you think customers would be less likely to purchase from a garage or through the post et cetera?

Rohan PIKE: Yes. It certainly creates an inconvenience for them, which should diminish the availability for it.

Mathew HILAKARI: Thank you.

The CHAIR: Thank you, Mr Pike. Our time today has been very brief, and I apologise for the briefness. I know that there will be a lot more questions that we would like to ask you. Are you happy, if we have other questions, that we can write to you?

Rohan PIKE: Certainly. I will also send my notes that I have prepared to the committee.

The CHAIR: Wonderful. I love people that are prepared. Thank you very much. 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 going to take a very short 5-minute break before recommencing the hearing. I declare this hearing adjourned.

Witness withdrew.