

**REPORT ON PROCEEDINGS BEFORE**

**PORTFOLIO COMMITTEE NO. 5 - JUSTICE AND  
COMMUNITIES**

**INQUIRY INTO THE ILLEGAL TOBACCO TRADE**

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**At Macquarie Room, Parliament House, Sydney on Wednesday 17 December 2025**

**The Committee met at 10:05.**

**PRESENT**

The Hon. Robert Borsak (Chair)

The Hon. Greg Donnelly

The Hon. Stephen Lawrence

The Hon. Natasha Maclaren-Jones (Deputy Chair)

The Hon. Cameron Murphy

The Hon. Nichole Overall

**PRESENT VIA VIDEOCONFERENCE**

Ms Cate Faehrmann

\* Please note:

[inaudible] is used when audio words cannot be deciphered.

[audio malfunction] is used when words are lost due to a technical malfunction.

[disorder] is used when members or witnesses speak over one another.



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**The CHAIR:** Welcome to the first hearing of the Committee's inquiry into the illegal tobacco trade in New South Wales. I acknowledge the Gadigal people of the Eora nation, the traditional custodians of the lands on which we are meeting today. I pay my respects to Elders past and present, and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of New South Wales. I also acknowledge and pay my respects to any Aboriginal and Torres Strait Islander people joining us today. My name is Robert Borsak, and I am the Chair of the Committee.

I ask everyone in the room to please turn their mobile phones to silent. Parliamentary privilege applies to witnesses in relation to the evidence they give today. However, it does not apply to what witnesses say outside of the hearing. I urge witnesses to be careful about making comments to the media or to others after completing their evidence. In addition, the Legislative Council has adopted rules to provide procedural fairness for inquiry participants. I encourage Committee members and witnesses to be mindful of these procedures.

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**Dr KERRY CHANT, AO, PSM**, Chief Health Officer and Deputy Secretary, Population and Public Health, NSW Health, sworn and examined

**Deputy Commissioner DAVID HUDSON, APM**, Deputy Commissioner, Investigations and Counter Terrorism, NSW Police Force, sworn and examined

**Assistant Commissioner SCOTT COOK, APM**, Assistant Commissioner, State Crime Command, NSW Police Force, sworn and examined

**The CHAIR:** Welcome to the hearing today. Would any of you like to make an opening statement?

**DAVID HUDSON:** Probably more a comment than anything else, Mr Borsak, if possible.

**The CHAIR:** Please.

**DAVID HUDSON:** Because of recent events, Mr Cook and I, and I presume Dr Chant, have been exceptionally busy with other matters, so I apologise. We are probably not as well prepared as we might have been otherwise for this hearing. We might have to take more questions on notice than we would like or what we would normally do, but we'll endeavour to answer all of the Committee's questions.

**The Hon. NATASHA MACLAREN-JONES:** First of all, I'd like to acknowledge the work of the NSW Police Force and also of NSW Health in light of the recent terrorist attack. I think I can say, certainly on behalf of the Coalition but also I'm sure on behalf of all Committee members, that we appreciate everything that has been done and will be continued to do to support the community. Thank you very much, and thank you again for appearing today because I know how much work that you all have on. The New South Wales Government hasn't provided a submission. Was there a particular reason for that?

**DAVID HUDSON:** Ma'am, not to my knowledge. I'm unaware. I've had no contact with broader government about this, so I'm unaware.

**The Hon. NATASHA MACLAREN-JONES:** Did the Minister's office or the Premier's office contact NSW Health in any way in relation to making a submission?

**KERRY CHANT:** I was aware of the inquiry and was selected on behalf of NSW Health to attend. I really can't recall. There has been a lot of work done in terms of tobacco legislative reform over the recent years, and our focus in the recent months has been implementation of the new laws. We do have a regular taskforce meeting, which has been meeting weekly and now meeting fortnightly. There was a meeting last week that was removed and we're meeting on Friday. I can't recall a specific—there may have been some general discussions about the parliamentary Committee, but we were certainly nominated to attend.

**The Hon. NATASHA MACLAREN-JONES:** That's fine. I'm happy to move on to the taskforce. Could you give an outline of the structure of the taskforce, staff numbers and how different agencies are involved?

**KERRY CHANT:** In terms of the taskforce that's co-chaired by Mr Hudson and myself and supported by the TCO, the taskforce represents a multitude of government agencies, from Service NSW, Fair Trading, Office of Liquor and Gaming—I'm just trying to remember all the members of the committee—so a broad across-government representation of portfolios that have either had experience in regulatory or small business perspectives, how to communicate with landlords or how to communicate with Planning. The taskforce has enabled Health and police to leverage off whole of government in its communications, its knowledge transfer and also the secondment of a significant number of staff from different agencies that have supported the creation of the Centre for Regulation and Enforcement. NSW Health has moved to increase our presence to about 48 officers within the regulatory and enforcement branch, and created a new branch which also represents statewide assets across the State. We've also had secondees from New South Wales police be embedded in that team to assist us with risk assessment and also to liaise with local operational commands for police assets, to support the work of our officers.

**The Hon. NATASHA MACLAREN-JONES:** The centre that has 48 staff—are they all Health or a mixture of Health and police?

**KERRY CHANT:** They're Health staff. We've currently got 42 and we're moving up to 48. We've also brought on some additional legal staff to support the significant prosecution workload and compliance workload. Police have seconded an officer to sit within our team. As I said, the purpose of that officer is a liaison function, plus also to assist us with risk assessment of the properties that we're potentially attending for compliance activities, in order to maintain the safety of our staff, which is at the forefront of our thinking.

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**The Hon. NATASHA MACLAREN-JONES:** What is the overall budget for both the taskforce and the centre? Is that out of existing funds or a new allocation?

**KERRY CHANT:** We did receive some additional funding that the Commonwealth has flagged for us, and I can provide the details of that. If you'd like, I can take on notice the various components of the funding sources that have been used.

**The Hon. NATASHA MACLAREN-JONES:** Have New South Wales police been provided any additional funding to support the taskforce, or is it just purely current workforce?

**DAVID HUDSON:** New South Wales police, we haven't received any additional funding. We're working through a process with Border Force to access funding that they've been provided. However, there are some Commonwealth barriers to that in relation to their financial structures, certainly for destruction of tobacco and vapes that we seize, which is very expensive, but also any ongoing operations. Subsequently, we try as much as possible to do joint operations with Border Force or Health, who are funded under a different model, for that destruction of any exhibits we might find.

**The Hon. NATASHA MACLAREN-JONES:** That takes me to my next question around data sharing. What are the interagency challenges at a State level and then, obviously, at a Federal level as well?

**KERRY CHANT:** Early on in our efforts in strengthening tobacco compliance and enforcement, we entered into an information-sharing arrangement with police—an MOU. But I've got to say that there have been no barriers to information sharing with police. We've got an embedded officer that really facilitates that information sharing. We also work with Australian Border Force and TGA, and do a number of joint operations, some of which take a while for them to become evident to the community, tackling more of the wholesale distribution side.

**The Hon. NATASHA MACLAREN-JONES:** What about Fair Trading and the Office of Liquor and Gaming? Have you got MOUs with them?

**KERRY CHANT:** The Office of Liquor and Gaming are on the taskforce, and we've also drawn heavily in some of our secondment arrangements from staff of Liquor and Gaming because of their strong regulatory background. They've provided input into our policies and procedures, our processes. There have been no barriers identified in the operational discussions to accessing Liquor and Gaming information. It hasn't come up as something that we need a more formal arrangement for. It has not presented any operational barriers to us.

**The Hon. NATASHA MACLAREN-JONES:** In relation to identifying high-risk premises and areas, can you outline what the process is that NSW Health goes through to identify these areas, particularly the shopfronts?

**KERRY CHANT:** There are two different areas. I suppose I was talking, in terms of risk assessments, more from the lens of the risk assessment from an occ health and safety perspective, such as is there something about the premises which is already known to New South Wales Police which would change the risk profile? That's a different risk assessment to perhaps our strategy of enforcement, given the widespread nature of noncompliance in this field. We do have a strategic approach to enforcement activities. Part of that is based on complaints and part of it is based on logistic and organisational arrangements, whereby we've tended to work in particular regions that align with the police operational zones. It's easier for us, when we're doing perhaps a series of closure orders, to work in one geographical area. Police can then program that work to support our officers. That operational work program has been effective in the first six weeks of Operation Freeze. We will probably continue that, but they are ongoing discussions as we outline our operational approach in 2026 with police.

**The Hon. NATASHA MACLAREN-JONES:** Do you think NSW Health is the best agency to lead this, particularly in light of obviously all the changes and what has come to light over the last few years in relation to legal tobacco or should it be looked at as a different agency?

**KERRY CHANT:** I suppose, I'd just like to comment that that's—

**The Hon. NATASHA MACLAREN-JONES:** That's no reflection on Health, by the way.

**KERRY CHANT:** I think that's really a matter for the Government. All I can say is that we've appreciated that we've needed to recruit a different skill set and develop a separate centre for better regulation enforcement, drawing on expertise across agencies that have had a stronger regulatory experience, such as Liquor and Gaming, the Food Authority or Fair Trading. We are appreciative of the support that police have given us and the operations to date. For the first six weeks of Operation Freeze, I think we've been working effectively.

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**The Hon. NICHOLE OVERALL:** I reiterate Mrs Maclaren-Jones's comments and thank you all. We are all here with incredibly heavy hearts. Deputy Commissioner, can you give us an idea of the proliferation of illegal tobacco when it comes to regional areas?

**DAVID HUDSON:** Our experience has been that there are significant holdings of illicit tobacco in regional areas. Most of that, that we detect, are in traffic stops. We have seized, over the last couple of years, significant amounts of illicit tobacco and vapes. At one stage—I think Mr Cook will have the latest data—we had 250 tonnes of it at our exhibit centre at Potts Hill, plus at commands in regional New South Wales, down the South Coast particularly but also up the North Coast and Western region. They had to purchase shipping containers to store the amounts that they were seizing.

The transit routes of illicit tobacco in vans and trucks follows fairly well-trodden paths from down south. We believe most of it's coming from Victoria at some stage. Highway patrol and other uniformed police were seizing significant amounts when they had justification to search vehicles during traffic stops. How much of that seized product was destined for exclusively the regional market, I can't tell you. Working with Health, and the visibility of the Health operations that we have through our liaison officer, and the assistance we provide from police area command level and district level in the regions would indicate there are significant outlets that sell illicit tobacco in regional New South Wales, similar to what's happening in metropolitan Sydney.

**The Hon. NICHOLE OVERALL:** Are you able to assert that there is an increasing level of regional crime that can be directly linked to the proliferation of illegal tobacco?

**DAVID HUDSON:** That nexus hasn't been established—all of those links. Obviously, there is criminality involved in obtaining the tobacco for sale and when it's transported in those volumes. As I said, we've detected a large amount of illicit tobacco and vapes, but to suggest that other criminality in those regional areas is linked to tobacco—we haven't seen those links.

**The Hon. NICHOLE OVERALL:** A number of the submissions have stated that the information, figures and statistics being used around the increasing rates of illegal tobacco may be somewhat overblown, but what you are suggesting—yes, this is in relation to the regional areas but more broadly—is that there is most certainly and definitively an increase in the illegal tobacco trade.

**DAVID HUDSON:** I think the Commonwealth tobacco commissioner would indicate it's in excess of 50 per cent of the market now. They recently released a report, and I think that's the statistics. I think it was released last week, and I read it last week. Illicit tobacco has always been present. When I was doing Mr Cook's job, 15 years ago, we had tobacco companies pestering us to do something about the sale of illicit tobacco. I think, historically, law enforcement has approached it very much as a Commonwealth issue in relation to importation because, at the time—although certainly in New South Wales the offences have been strengthened—there was no real charge that we could charge with, apart from avoiding of a tax excise. But, through the work of the taskforce and other things, it's significantly enhanced in New South Wales now with our ability to prosecute with offences.

Probably 15 years ago it was about 15 to 20 per cent of the market—very much underground and very much not being sold in public displayed tobacconists, the proliferation of which opened up very quickly overnight following the decision making vapes illegal. But it's always been there. I think it has increased, and that would be supported by the seizures that we have made. That would be supported by the seizures that Border Force makes and seizures that other law enforcement agencies are making around the country.

**The CHAIR:** Mr Hudson, do you think that the highest tobacco taxes in the world are contributing to the growth of the illicit tobacco industry in Australia and, certainly, New South Wales?

**DAVID HUDSON:** I don't think there's any doubt of that, Mr Borsak. You must admit that there's no appetite—and I'm not suggesting there should be—to penalise people for buying it. You have ostensibly law-abiding citizens who are faced with an option of spending \$65 for a product or as low as \$7 for a product, and there's no penalty in buying it.

**The CHAIR:** No, there's no penalty. Before I go to Dr Chant, are you also saying, or is it your evidence, that you're not funded properly enough to be able to help crack down on this industry in New South Wales?

**DAVID HUDSON:** No. We see it as a component of what else we do. We have applied for Commonwealth funding in relation to destruction, but we've worked around that—storage and destruction, which we are not specifically funded for. However, we are getting around that with the majority of our large seizures being done in conjunction with an agency that is funded for that or does have the capacity for that, either in Border Force, the Therapeutic Goods Association or NSW Health.

**The CHAIR:** Are you able to give us any evidence in relation to the increased level of criminal activity that's been brought about by the growth of this industry in New South Wales?

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**DAVID HUDSON:** Not specifically. Obviously, policing in the organised crime environment operates under two distinct models. One is illicit commodity targeting, and one's environmental targeting. Illicit commodities, such as illegal guns, prohibited drugs and perhaps other illicit commodities—we will follow the trail of those commodities through importations. The other form of targeting we use is environmental targeting, where we would target an organised criminal network or an outlaw motorcycle gang. In that process, if outlaw motorcycle gangs—and we have examples of this—or other organised criminal networks are selling tobacco or coordinating the sale of tobacco, we will target that organised criminal network to bring them before the courts.

**The CHAIR:** Yes, and I would expect you to. My question was really around can you identify a change in the level of criminality and criminal involvement. For example, houses being firebombed and shots being fired into houses is pretty common activity for criminals. Is there a growth in that side of criminal activity related to the illegal tobacco industry that you can identify?

**DAVID HUDSON:** No, sir, and I can ask Mr Cook to further elaborate on this, but the number of arsons that can be attributed to tobacco is very, very low in this State as an overall percentage of the number of arsons. I think Mr Cook can produce those figures.

**The CHAIR:** But is it a growth industry? Maybe you can comment on that, Mr Cook.

**SCOTT COOK:** Certainly, sir. No is the answer. None of the recent violence we've seen in New South Wales is linked to tobacco at all. It's cocaine and meth importation and firearm importation. It's not linked to tobacco. In terms of arsons, in the last four years we've had about 13,100 arsons in New South Wales, and 24 of those are on tobacconists and a further 13 are on premises that are not tobacconists but are selling illicit tobacco. That's about 37 out of 13,100. It's less than two-tenths of 1 per cent. We're seeing marginal increases of one or two a year, but it's not even statistically significant in any way.

**The CHAIR:** In your view, is the criminal activity around that in Victoria greater as a percentage? Do you have a view on that?

**SCOTT COOK:** Yes, Victoria has a completely different organised crime environment to New South Wales, particularly around tobacco. The concentration of ownership of tobacconists in Victoria is far more singular. It's almost monopolistic, in terms of the illicit market. In New South Wales, almost every organised crime group dabbles in tobacco at some level, and so the market is far more diversified here in a criminal sense. Even if you take it into a legitimate sense, it's far more diversified in terms of ownership too. They're completely different crime environments. New South Wales is impacted by what happens in Victoria, because a lot of the market involves Queensland which has another different context. We get a lot of traffic from Victoria to Queensland, and that's where we're getting most of our seizures on the highways, with Pantech trucks full of this stuff.

**The CHAIR:** Dr Chant, just to ask you the same question I asked Deputy Commissioner Hudson, are the world's highest tobacco taxes contributing to the illicit tobacco problem we're getting in New South Wales?

**KERRY CHANT:** I would defer to my colleagues in police in relation to that response. When we've had these conversations, the police point out that criminal elements chase—

**The CHAIR:** In other words, you're saying you agree with them—yes.

**KERRY CHANT:** I suggest that I would rely on the fact that there has been an incentive for people to dabble in illegal cigarettes because of the profit to be made, but I do also want to say that the excise on tobacco has been an important harm minimisation in driving it down.

**The CHAIR:** That's where I was going to next.

**KERRY CHANT:** I do want to acknowledge that. I'm not an expert on at what point it will tip over into the criminal elements, and I will rely on my police colleagues to advise on that. All I can say is that Australia has had a proud record in tobacco control, and excise has been an important component of that. I'll leave it to others to determine the critical thresholds for that.

**The CHAIR:** That's fine, I expect that. But in relation to your role, what is the effect, in your view, of the high level in relation to the mitigating effects on health?

**KERRY CHANT:** The issue that concerns me, notwithstanding—there are two elements here. Obviously, we're interested in illegal vapes supply, and we were particularly interested in young people being addicted to illegal vapes and the harms associated with that, particularly, for young people. But in terms of illegal tobacco, clearly, if you have got a pricepoint, it can make people reflect on whether they want to reduce their consumption of tobacco, whether they want to support them with their quit attempts, so having a price signal. Removing that price signal, potentially, removes that nudge to give up tobacco, but also may promote individuals

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to consume more than they would otherwise. For me, those things concern me in terms of removing those sorts of controls.

**The CHAIR:** Is it your evidence that you're saying that if you drop the taxes on the legal product, you will be encouraging people more to smoke?

**KERRY CHANT:** I'm not providing evidence on that. I was commenting on the fact of the differential in the price. If you've got a packet that might be \$15, as opposed to \$45, \$50 or \$60, then an individual would be able to purchase that with greater ease. Where they might purchase three packs instead of one pack, that is counter to the public health intent of having price signals to provide a nudge or a disincentive, or to reduce consumption. I'm not going to speculate on the intricacies of the supply and demand curve but just present those facts that concern me.

**The CHAIR:** Isn't that the conundrum? That if you drop the legal price, getting close to the illegal price—I've heard most recently they were selling packs of cigarettes for \$7 a packet, almost half the price that has been touted recently. Do you have a view in relation to how that could best be addressed?

**KERRY CHANT:** I think that's a complex policy issue. Price has been a really important lever to reduce demand, so I'm very conscious, from a public health perspective, of not removing that lever. But as I said, we have—

**The CHAIR:** But it's all failing. It's all failing. We need some original thought here.

**KERRY CHANT:** With respect, Parliament has passed very significant legislation in recent months in New South Wales that gives significant new powers that will hopefully disrupt the market. We're only perhaps week six into—five or six weeks following the 3 November enactment of that legislation. We are working with police. Do we think we will be able to dismiss and eradicate the trade? No, but we are certainly hoping to disrupt it significantly, and for the availability for the general public, who are finding it very easy to access illegal tobacco—we're hoping that we can disrupt that with the legislation that Government has passed. But it is early days. It's going to be a long journey, and it requires all the government agencies, including the Commonwealth agency like Border Force and others, to really work assiduously at this problem.

**The Hon. STEPHEN LAWRENCE:** Thanks, Chair, and thanks to all of you for coming along. On behalf of the Government MPs, I want to acknowledge the dangerous and life-saving work that your agencies have done over the weekend. The ATO data suggests that 5 per cent of the tobacco market was illicit, I think, in 2016-17, and the percentage now is over half, around 55 per cent. Could I ask you, Dr Chant, and then you, Mr Hudson, what is your agency's views about the causes of that dramatic escalation? We will start with you, Dr Chant.

**KERRY CHANT:** I think we actually have seen a significant burgeoning in the trade in illegal tobacco and the availability of illegal tobacco. It is widespread.

**The Hon. STEPHEN LAWRENCE:** But what's the cause of the increase in the percentage of the tobacco market that is now illicit?

**KERRY CHANT:** In my discussions with Mr Hudson, there is more deliberate—people will trace profit. When profit can be made, people will chase it. I think we've seen a reflection that businesses are drawn to the profit. Some of those will be, frankly, criminal. Others will be, not the pointy end criminal, but drawn to do illegal activities. For me, in the discussions with police—understanding that they understand the ecosystem of criminal activity better—the message I've taken is that it's driven by profit motive.

**The Hon. STEPHEN LAWRENCE:** Is that a suggestion that, from 2016-17, the excise reached a tipping point or reached a point where the price differential was such that the black market exploded?

**KERRY CHANT:** I think that's best addressed to police because I'm conscious that there are many factors, which are the behaviour of those exporting the product from other countries, the proliferation and the cost structures. There'll be multiple—there's usually not a single factor here, and this is not an area that I feel I have expertise in. I think it's better directed to police to understand how those multiple factors can contribute to that.

**DAVID HUDSON:** I think that in 2016 the percentage would have been more than five—I'm not too sure. It's always, up to a point, been 15 to 20 per cent in our minds. That's based on the number of seizures that we made with Commonwealth partners during joint operations and such, and the petitioning from tobacco companies of us to try and eliminate it. But it was quite steady at that 15 to 20 per cent for some time. I think it's ballooned in the past three years or so. I think it's become highly visible, with tobacco shops popping up in suburban areas, in regional areas and in the CBD of Sydney—sometimes three in one street. People know it's available for sale. I think that's one fact or one reason that caused the requirements for licensing, which are now

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in place—to be actually licensed to sell tobacco products, which the Government has done and pushed by NSW Health, who monitor that and license individuals to actually sell the product.

I think there was significant change. The Commonwealth decision to ban vapes, I think we saw another escalation of shops that emerged when vapes became highly expensive and individuals turned away from vapes as an anti-smoking or stop-smoking strategy and turned back to illicit tobacco, because it was cheaper. I think there's a number of factors that played on that. Whether 50 per cent of the market or just over is enough, I don't know. I think there's some suggestion by others that it's even higher than that. But, when you look at the growth, it only grows because of the market and the demand for it. There's significant demand out there from individuals who are addicted to tobacco. Organised crime will modify its business model to be able to accommodate that demand and make profit from it. That's the way organised crime works.

**The Hon. STEPHEN LAWRENCE:** In the submissions that we've got, there seem to be two themes that come out of them which are competing, if you like. One is the suggestion that a response needs to be a substantial reduction in the excise to reduce the differential in price. The other theme seems to be that there needs to be an increase in regulation and prohibition, if you like. At this stage, the response has obviously been to increase powers and penalties, and there hasn't been a reduction in the excise. Starting with you, Dr Chant and then going to you, Deputy Commissioner, is there an evidence base for the proposition that an increase in penalties and regulations will reduce the illicit market in tobacco? Is there modelling that's been done on it? Are there examples from overseas jurisdictions, or is it a "hope that it works" type of approach?

**KERRY CHANT:** We have shared the learnings from other jurisdictions that have introduced similar penalties and shared direct conversations with what that does to the market. From our discussions with police, it is very difficult to model this, but we know that there will be businesses where they're generating a small amount of income relatively from the sale of products whereby if they see the threat or the risk of compliance they will choose not to engage. We also hear when we go out and about the fact that some people are drawn into it because everyone is perceived to be doing it. "If I don't do it, I'm going to miss out," or "The whole market's been taken away from me." Having a strong enforcement regime allows businesses that are doing the right thing and that want to do the right thing. There are a significant proportion of businesses that, with a nudge and with some disincentives for them to make that value proposition, will desist.

We also are bringing on board the role of landlords and other business entities that are knowingly providing the premises to allow this activity. Parliament has passed those legislative changes. We've created an ecosystem that I think will support a disruption to the front-of-face sale. Will it get driven underground? Our conversations with police indicate that the model of access will change, but it will probably not be as accessible, and that in itself will reduce the demand. To be fair, this is going to take a little while to play out. We are just committed to learning the experience of other States and Territories, but also aligning that with the police, because as you've heard from the evidence given by police, the operational context in different States is actually different as well.

**The Hon. STEPHEN LAWRENCE:** I'll just ask the same question of you, Deputy Commissioner.

**DAVID HUDSON:** I think the current enforcement model needs to be given time. We've now got a licensing regime where Health have to license people who sell it. As Dr Chant said, for the last six weeks, we've been engaged in enforcement operations with NSW Health and assisting them. I'm very hopeful—and we've talked about this at length with the police Minister and the health Minister—that the deterrent effect of the closures that we are doing, whilst we can't do all of them at once, as Dr Chant said, those businesses on the periphery that are not tobacconists, but are small goods shops that are selling illicit tobacco, will start to consider the closure orders and whether their business is worth closing for 30 days for the small amount that they make from illicit tobacco and cease to sell it. We're seeing anecdotal evidence from that now that that might be occurring, which will reduce that availability. I think the current model needs to play out for a while and see what impact that does have.

Our discussions and the penalties available for the high-end offending in this area for possession and commercial possession and supply of illicit tobacco—the five- and seven-year thresholds—are futureproofed for when the visible tobacconists disappear and the market's driven underground again, and Health will not be able to identify the visible points of sale. When it goes online and it goes into the back of vans and goes into pubs, it'll become more of a law enforcement responsibility. Those penalties are futureproofed for us to be able to utilise crime scene warrants under LEPR and telephone intercepts, if needed, for organised crime at seven-year penalties and things.

We think the current enforcement strategies will change the model, but there will always be a market there and people will be out to meet that market, but it will be less visible. It will go underground. But, hopefully in that process, the law-abiding public who are currently buying it from tobacconists will be less inclined to purchase it through the dark web, through a pub, in the backstreets or through some other process or through

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delivery. When you have undesirables potentially attending your home to sell it, you wouldn't want to give your address out. We expect law-abiding people to be less ready to purchase it in a different environment. But at the moment, until the current strategies start to bite a bit deeper, it's readily available through those tobacconists and small goods shops that we're all aware of and which caused the change in thinking on this.

**The Hon. STEPHEN LAWRENCE:** It seems to me that even some of the submissions that accept that the price differential has played a role in the black market don't necessarily accept that the excise should be reduced. It's tempting to think if the differential has caused the increase then the differential should be reduced. But we've got a submission, for example, from the NHMRC that says:

Reducing the excise tax on tobacco to compete with this illegal trade would require a substantial reduction, which would increase the demand for tobacco products and likely lead to an increase in smoking, particularly among young people (hence leading to an unintended impact of growing the overall consumer market for tobacco ...

In light of that, I wanted to ask a few questions about the 50 per cent or so of the market who's not buying illegal tobacco. Is there something that defines those people that are choosing to spend more than they have to? Are they people that aren't aware of the illegal option? Are they people that are choosing to be law abiding? Has there been any research on that issue? Because it seems relevant to me in considering the issue of a reduction in the excise. If a reduction in the excise wouldn't necessarily change the behaviour then there might not be a point in doing it, but if it would change it then maybe there is. Do you have any research or thoughts on who are these people that are purchasing legally and what's motivating them to purchase legally as opposed to illegally?

**KERRY CHANT:** Just to put on the record that I, as a population health physician, really support price as an important signal and deterrent. In terms of the information, we are attempting to more systematically understand where people are accessing their tobacco from and get some longitudinal data. That's going to take a little bit of time. Obviously, it has got some sensitivities for people disclosing some of those areas. I agree with you, I think understanding the behaviours of individuals and how they intersect and approach it—I suppose at the moment it's just so ubiquitous. I think there'd also be some segments of the population that potentially are not even aware, because some of the illegal product does have health warnings. They're not the approved health warnings. I think there's probably a combination of factors, but I think that's a really important area, as we're going on this journey, that we've really got to unpick. We've got to make very careful policy decisions in this complex environment. We do not want unintended consequences.

**The Hon. STEPHEN LAWRENCE:** Have you got any thoughts on that, Deputy Commissioner?

**DAVID HUDSON:** We haven't done any research in relation to that. I'm not aware of any that's been conducted in relation to why the legal market is pursued by some and the illicit market by others. The capacity to pay that amount might have something to do with it. I don't know. I'm unsure.

**The Hon. STEPHEN LAWRENCE:** In terms of the public health issues, Dr Chant, apart from the increase in tobacco use that might be caused by cheaper tobacco that's being offered to more people as the black market is a bigger percentage of the overall tobacco market, is there other public health detriment that we should be aware of? For example, is the illegal product more dangerous in some way? Is it more carcinogenic? Is there impurities in it? Is there other issues? There's obviously the public health warning issue as well and that not being on the product.

**KERRY CHANT:** There is a potential risk, particularly with the loose-leaf product and some things I've historically been aware of, some of the quality control issues—not that I support tobacco. Tobacco is not a good product for anyone. The best thing is not to smoke. But there have been potential issues with some of the quality aspects of some of the products. I particularly recall some stuff with loose leaf, so perhaps we could provide the Committee with some information about quality aspects of the other product.

**Ms CATE FAEHRMANN:** To Deputy Commissioner Hudson, I assume, for this one. Do you have any idea within New South Wales the estimate of how much of the illegal supply of tobacco and vaping products that are coming in is being intercepted?

**DAVID HUDSON:** I don't have particular numbers on that. As a percentage of the overall market, I know there are significant seizures made by Border Force. But what percentage of overall consumption that might make, I'm not sure, similar to illicit drugs. The number of containers searched by Border Force, I think, is 1 or 2 per cent, and most of that is based on intelligence. It's obviously getting into the country. It's all produced overseas. I know they have a focus on illicit tobacco, as they do with prohibited drugs, but the amount seized I'm unsure of.

**Ms CATE FAEHRMANN:** You said in response to an earlier question—and I missed some of it—that there is no issue here with links to organised crime and tobacco in New South Wales compared to Victoria.

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**DAVID HUDSON:** No, I think it was Assistant Commissioner Cook who commented on that. I'll hand to him in a second. Certainly, we don't dispute that organised crime is involved in the importation and distribution of tobacco. We work those environments and we investigate those environments. What we don't do are the shop visits, which Health do. Although, certainly, we attend with them for the closure orders. Dr Chant will, I'm sure, correct me if I'm wrong, but it has historically been a Health responsibility in relation to the sale to minors and other things that have historically been associated with illegal tobacco. Obviously, we have now a new regime of licensing closure orders. We are assisting Health in that regard.

But organised crime targeting will still be our responsibility at that high level, which we do significantly through the squads at State Crime Command and through local operations. We've targeted the Comancheros, who had a string of shops that were all linked. We've targeted money-laundering operations. We've targeted other criminal networks that are involved in making substantial profits from this. But, as I said before, it's not targeting, necessarily, the commodity; it's targeting the criminal group, whether they're selling drugs, tobacco, child abuse material or whatever. We will target that group for whatever we can to minimise their criminality.

**SCOTT COOK:** Sorry, Ms Faehrmann, just to correct the evidence for the benefit of the Committee, I was referring to other crimes related to tobacco. It was in the context of a question around other violence and other things where I said it's not significant. In terms of organised crime involvement as an entity, it's extremely large. There's no doubt that organised crime is involved in the tobacco industry now, but that wasn't my evidence. My evidence was concerning the associated violence or the associated other offences.

**Ms CATE FAEHRMANN:** Thank you very much for clarifying. I wanted to get clear in terms of what role the police have at the moment in terms of illegal tobacco. One of the submissions—in fact, we'll hear from this person later in the day—gives a couple of examples of illegal tobacco stores in his area down the South Coast around Bega and Narooma. He says that a number of times he was trying to get the local police involved after giving them proof that illegal tobacco was being sold in a particular store—or, in fact, quite a few stores. But at some point, isn't it something that the police can do if the evidence is there? If a product is being sold illegally and a member of the public says, "Here's this illegal product being sold in this store," the police can go in and do something about that, can't they?

**DAVID HUDSON:** In relation to illicit tobacco, I don't think we're officers under the Act for that. We will take that information and work with NSW Health. They have regional enforcement officers; they're not just restricted all to Sydney. We have done hundreds of operations prior to the current legislation or the current operating model that we're operating under. We have done hundreds of operations in conjunction with NSW Health in regional New South Wales and, of course, across metropolitan Sydney. But it's very much a Health-led response and we are there to, in essence, prevent a breach of the peace during that operation.

**Ms CATE FAEHRMANN:** I hear you when you say it's a Health-led response. However, there's nothing to prevent the police—just to be clear—if there is proof. If somebody comes and says, "There's a gigantic pile of illicit tobacco. I've been shown it. It's clearly illegal. It's at that shop," are you saying that even then, in a situation anywhere, the police are unable to—in terms of the law as it currently stands—go in and do something about that?

**DAVID HUDSON:** I'm sure Dr Chant or Mr Cook will correct me if I'm wrong, but I don't think we're authorised officers under the Act. I think that we are under the Poisons Act for vapes. In relation to tobacco specifically, we don't do inspections of shops, unless we're with NSW Health. That's why we conduct our operations in conjunction with Health. That's my recollection, unless it's changed. Dr Chant, is that your understanding?

**Ms CATE FAEHRMANN:** If illegal tobacco was found offsite or if somebody was selling it from their car or something like that, it becomes a different matter, I assume.

**DAVID HUDSON:** Correct.

**Ms CATE FAEHRMANN:** Dr Chant, you've said there are 42 compliance officers, moving up to 48, and that the NSW Police Force is assisting with risk management and what have you. Is 48 the increase that Minister Park committed to six months ago, or whenever it was, and is that across the State? Is that 48 compliance officers for the 20,000—or however many outlets—that have been listed as selling these products now?

**KERRY CHANT:** In terms of the compliance officers, yes, that is across the State and that encompasses our licensing and other enforcement officers. It doesn't take into account some additional legal officers. You're right, yes, that is consistent with the announcements that Minister Park has made in terms of the officer numbers. We have just moved the arrangements to bring regional staff under a more centralised model to work in a more efficient way. I want to acknowledge the support of New South Wales police that have been assisting us with risk

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assessments and also accompanying our officers. They have done that previously, but I think this is more a systematised way of engaging with the appropriate regional commands.

**Ms CATE FAEHRMANN:** I have a quick question about whether the police witnesses know the extent of illegal tobacco products and vapes bought outside of outlets—on the street, online and all the other ways—compared to that bought in stores, and whether that's being looked at research-wise.

**DAVID HUDSON:** We do come across that. I'll hand to Assistant Commissioner Cook in a little while, but certainly we're aware that the current retail outlets that Health provides enforcement to, with our assistance, store small amounts of illicit tobacco and vapes. We're obviously aware that they are readily stocked by larger storage facilities of illicit tobacco and vapes, so that there's not a significant amount on premises at the time. We have been successful in targeting those illicit storage facilities when we link them to an entity that we have interest in and have made quite significant seizures from those storage facilities. There is a large amount of illicit tobacco and vapes stored outside of the shops we're talking about because they keep very limited amounts on premises. I think that's the experience through the 50 closure orders that we've done so far. On a broader level, I'll probably hand to Assistant Commissioner Cook, if I can.

**SCOTT COOK:** I think this needs to be put in some sort of context in terms of the entire environment we're operating in. New South Wales police sees NSW Health, Therapeutic Goods and Border Force as all part of a partnership arrangement where we try to enforce tobacco law across the board by leveraging everyone's skill set. Our skill set is focused on serious and organised crime. We're really focused on money laundering with the NSW Crime Commission so that we can take the warehouses full, we can take their assets, so that we can focus on the organised crime groups. But we're also there to leverage NSW Health's legislative powers and we will assist them in exercising their duty. We are assisting Therapeutic Goods at the national level to exercise their duties, and we assist Border Force with their duties.

We see ourselves as a force multiplier rather than having to have police seize 20 or 30 vapes from a shop. We'd rather know where the warehouse is and take 200 pallets of the stuff because that's where we're going to get the biggest impact. New South Wales police has a clear role. We know what our role is. We're engaged at a national level with the tobacco commissioner at a national level. We're engaged with all our national partners—AFP, ACIC—so we really need to focus on where we can deliver the biggest hit to organised crime and the biggest hit to supply. We will support all the other agencies as best we can. In the circumstance you outlined where there's clear evidence, we can facilitate an action through NSW Health or at a local level in that circumstance as well.

It's also got to be said that some of the illicit tobacco—we call it "illicit tobacco"—just simply hasn't had the duty paid; it's otherwise a legitimate product. Some of it's not a legitimate product. Some of it's not packaged correctly. Our biggest concern is actually around vapes and the illicit production of vapes because we've had some organised crime groups try to put other types of chemicals into vapes and other types of drugs into vapes. We're focused on that sort of thing where there's maximum harm, where we can get the maximum bang for our buck in terms of shutting down the supply side. But, to be really clear, the market will never disappear unless demand is dealt with. That's the fundamental principle of everything we're dealing with in tobacco, so we're going to do as much as we can on the supply side of it. We're going to leverage every partner we can right across the country and internationally to do that, but I think the fundamental thing—the elephant in the room—is demand.

**The Hon. STEPHEN LAWRENCE:** In terms of vapes, in New Zealand—I think it was in 2020—they legalised vapes, Dr Chant, and their smoking rates have dropped more than ours since. I was wondering if you could give us your thoughts on the New Zealand approach—how it compares to ours, and how it might affect overall public health outcomes?

**KERRY CHANT:** I would like to get some more recent experience and provide the Committee with a written submission on the New Zealand response because sometimes we're comparing different data with different data and also things do have a lag for the impacts. I would like to get some more contemporary information, if that would be appropriate.

**The Hon. STEPHEN LAWRENCE:** Sure, absolutely. Thank you so much.

**The Hon. NICHOLE OVERALL:** Just very briefly, of the 42 to 48 enforcement officers, you're talking about regional staff under a centralised model. How many regional staff specifically?

**KERRY CHANT:** We're recruiting regionally, so I just don't want to mislead the Committee. I'll give you the exact breakdown by regional and metropolitan staff, but we have staff located in all of our local health districts across the State.

**The Hon. NICHOLE OVERALL:** Can you take that on notice to give us the breakdown?

**KERRY CHANT:** I will take that on notice and give you that.

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**The CHAIR:** The time for questioning has ended. Thanks very much for coming today. I know that some of you may have taken questions on notice. The secretariat will be in contact with you in relation to the return of the issues taken on notice. Thanks very much for coming.

**(The witnesses withdrew.)**

**(Short adjournment)**

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**Councillor KENRICK WINCHESTER**, Vice-President Rural/Regional, Local Government NSW, before the Committee via videoconference, affirmed and examined

**Mr DAMIAN THOMAS**, Director, Advocacy, Local Government NSW, affirmed and examined

**Mr MAL McDONALD**, Executive Manager, Strategic and Place Planning, Northern Beaches Council, affirmed and examined

**Mr BERNARD SMITH**, General Manager, Glen Innes Severn Council, sworn and examined

**The CHAIR:** Thanks very much for coming in today. Would any of you like to make an opening statement?

**BERNARD SMITH:** Thank you very much, Mr Chair, for the opportunity to present here today. I won't cover off a lot of the issues which everyone is aware of, but what I do want to do is reinforce the concerns of rural and regional New South Wales with regard to this matter. I note that our submission also had formal support from Uralla, Inverell, Narrabri and Tenterfield councils as well. The impacts of the illegal tobacco trade are very real and very tangible, whether that is in terms of impacting people's lives or impacting their financial situation as well as in terms of local small businesses. These aren't small businesses which are just focused on tobacco sales. These may be small businesses which sell a multitude of products. It's impacting on their revenue. It's impacting, particularly, on their insurance premiums—six-figure excesses and tripling of insurance costs. Businesses which have vacated because of their proximity to illegal premises—their insurance costs have gone through the roof.

These are the very real, tangible impacts particularly felt in a small community such as ours. Those businesses, of course, are further frustrated by the fact that they meet all their legal and legislative compliance requirements, whether that's GST or whether that's taxes or whether that's how they manage their payroll. That adds to that financial impost. They are law-abiding businesses. Council is also concerned around the health impact, increased youth access to vaping and tobacco products and exposure. I just heard the tail end of the last session, where it referred to the composition of vapes and where that may lead to. We're concerned around that and, of course, the erosion of trust in public health.

At the moment, one of our particular points is around the regulatory framework; our inability to apply site-specific conditions to assess potential health and locational impacts, like proximity to schools; and the inability to refuse proposals in areas we consider inappropriate. What council is strongly urging is a standalone land-use definition for tobacconists and to explicitly exclude tobacconists from existing shop retail premises and specialised retail premises. To conclude, we just want to reinforce the impact on a location such as Glen Innes, a town of 6,000 people; the impact on business; the financial impact; and the imperativeness of planning reform. Thank you for the opportunity.

**MAL McDONALD:** On behalf of Northern Beaches Council, our submission and our representations address part (d) of the inquiry's terms of reference—specifically, the adequacy of existing legislation. Northern Beaches Council, as with other council submissions and Local Government NSW, have recommended that the New South Wales planning system should have a role in the regulation of stores or shops that sell tobacco-related products. Currently, there are no specific planning controls that restrict the establishment and the number of tobacconists within New South Wales, and this has been accepted by the Minister for planning in recent correspondence to our council last month. The reason why there are no planning controls is that tobacco shops are treated just like any other shop or retail premises. Where shops are a permitted use—which is everywhere from low residential zones across LGAs to local centres—and where a shop is a change in use from one type to another, it doesn't require development consent. As a result, councils play no role in the assessment or regulatory functions. In relation to tobacco stores, councils have no role.

The Minister for planning recently wrote to Northern Beaches Council in response to its submission and advised that the planning system, in the Minister's view, should not be involved in regulating the sale of tobacco products. He saw no minimal policy justification, from a planning perspective, to introduce the changes that have been recommended. We would agree with the Minister's position that it is not the role of the planning system to oversee the regulation of sale of tobacco products, but the introduction of tobacco stores as a land use, in its own right, is distinct from the sale of tobacco-related products. We do say there's a function within the planning system for that. There are precedents with the introduction of sex services premises as a distinct land use and the introduction of supporting guidelines and development control plan and land use permissibility frameworks that were introduced through the back of a ministerial inquiry. We see there is a corollary between the regulation of tobacconist stores with previously unregulated sex service premises.

**KENRICK WINCHESTER:** Thank you for the opportunity to appear today. I'm attending in my capacity as Vice-President Rural/Regional of Local Government NSW, the peak body for local government in our

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State. I'm also the proud Mayor of Queanbeyan-Palerang Regional Council. As council's submission to this inquiry will attest, local government is on the front line, responding to our community's call for more action to control the proliferation of illegal tobacco traders in New South Wales. At the 2024 Local Government NSW annual conference, councillors unanimously resolved to call for the New South Wales Government to urgently amend planning laws to mandate that tobacconist stores require development approval. As part of this, there should be the ability to limit and reduce the number of these stores operating in New South Wales and in any given local government area.

These outlets are appearing in every neighbourhood and main street, and it's time they were stopped. A new bottle shop requires a full development application and social impact assessment but, currently, tobacconists can open and trade after filling in a few forms. There are obscene examples of how these stores are branded in ways that seek to appeal to children. When our children are referring to them as the lolly shop, it's clearly time to draw a line in the sand. Councils and their communities have had enough. Not only are they worried about health and safety but some are also deeply concerned about potential links to organised crime.

Tobacco retailers can operate under the guise of convenience stores or shops due to broad planning definitions. These shops can be set up anywhere—near schools, bus stops, childcare centres—in an attempt to attract new and younger generations. We welcome legislation the Minns Government has enacted to require licensing of tobacconists and crack down on illegal sales to black market vapes and tobacco, but licensing alone is not enough. Councils need new planning powers to prevent these shops from proliferating. Specifically, we would like new DA powers to stop the spread of these shops throughout our suburbs and towns.

With my mayoral hat on, I would like to state that regional communities are not immune from the impact and spread of these stores. Indeed, the impact on regional communities can be even greater, with the significant effect on existing small businesses, both through illicit competition and through the impact on small commercial hubs. If and when planning changes are introduced, it is important that cross-border arrangements are considered, to drive a national framework to avoid preferential arrangements based on borders. This applies to Queanbeyan and Canberra, as it does to Tweed and the Gold Coast, Albury and Wodonga, and other border areas. We are looking for leadership from the New South Wales Government to assist and act to reform the planning system so that more appropriate consideration can be given to the location and number of these outlets. We therefore welcome this inquiry. Mr Thomas and I are happy to answer the Committee's questions regarding any of the matters raised in our submission.

**The Hon. NATASHA MACLAREN-JONES:** Thank you all for your submissions. I note that submissions were made before some of the reforms by the Government were introduced. I appreciate, particularly, your opening remarks around some of those planning suggestions you've made. But I did want to touch base on the taskforce. We heard this morning that there's obviously a taskforce working cross agency, and then there's also the centre with 42 staff, which will then increase to the 48, which is what the Government announced. I am interested to know about your level of engagement in relation to that taskforce. This is probably more for Local Government NSW. Have you been engaged? Do you participate in any way? What consultation is there with Local Government and with our individual councils?

**DAMIAN THOMAS:** For Local Government NSW, we haven't been directly engaged in the taskforce. That perhaps reflects that local government does not have a clear role at the moment in regulating tobacco premises or the sale of illicit tobacco. But, as a sector, we have broadly welcomed the extra enforcement activity and the taskforce, particularly the enforcement action during November and December from the New South Wales Government to take action on the illicit tobacco sales. Something the Illicit Tobacco and E-cigarette Commissioner has noted is that there is a clear view that's emerged that there's no single solution to addressing the illicit market and that a multi-pronged approach is needed. I think that's why, as a local government sector, we're calling for all levels of government to work together, and that includes looking at the planning system and how that can help to combat this challenge.

**The Hon. NATASHA MACLAREN-JONES:** A broader question that is probably for all—currently, that's obviously managed and run by NSW Health. Do you think it should remain with Health, or do you think another government agency or department should be running it?

**DAMIAN THOMAS:** I would say that that's a matter for the New South Wales Government, to look at where the enforcement powers may best lie and who's resourced to enforce those new laws as well. I know that some councils have made submissions that the New South Wales police may be better placed, or Liquor and Gaming NSW, with their existing powers to enforce this kind of regulation.

**The Hon. NATASHA MACLAREN-JONES:** More broadly, I'm interested to know if there have been any complaints to council in relation to increases in shops or premises that are requesting cash only or use of ATMs.

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**BERNARD SMITH:** Certainly we aren't aware of any, no.

**MAL McDONALD:** That's the same for Northern Beaches.

**The Hon. NICHOLE OVERALL:** This is probably to you, Mr Thomas, and you, Mr McDonald, as you raised the response. Given that LGNSW wrote to the planning Minister 12 months ago, and you were advised that they were reviewing the planning pathways, the response must be pretty disappointing. Is it your view that it could actually provide good, tangible assistance to deal with the ongoing problem?

**DAMIAN THOMAS:** For Local Government NSW, we did, as you say, write to the Minister to share the conference resolution that came out of our 2024 annual conference. Minister Scully's response at that time was that the department was currently reviewing the planning pathways applying to tobacconist stores. I know Mr McDonald has referred to subsequent correspondence but, as a sector, I should repeat that we are broadly happy with the increased enforcement activity that's taken place. That's been a really positive step.

**The Hon. NICHOLE OVERALL:** Mr McDonald, what's your view on the response?

**MAL McDONALD:** The Minister did recently write, as I mentioned, to council in response to its submission. I think the position that it's not the role of the planning system to focus on the sale of tobacco products seemed to be the primary lens with which the planning sector viewed tobacco stores and its role in the planning system. I do feel that there is a precedent that has been demonstrated to be successful. Previously, as I mentioned, sex services premises were introduced as a defined land use. That approach then enabled councils to undertake merit-based assessments for development applications, and we're able to assess sex services premises based on a consistent statewide approach that was established through a subsequent guideline prepared by the State Government.

The Government also produced model development control plan provisions that councils were able to adopt and apply. That went to matters that that has some parallels with tobacco-related stores. For example, sex services premises have provisions or matters for consideration for consent authorities in relation to the location in which they can be appropriate. Similarly, with tobacco stores, council would argue that it's not appropriate for a tobacco store to be located near a sensitive use, such as a school or a park or places where children regularly congregate, including bus stops, for example. They're matters that could be the subject of a merit-based assessment, were tobacco stores to be a defined land use.

The introduction of supporting development control plan provisions could then extend to further related matters—for example, signage and advertising of tobacco-related stores. Sex service premises also introduced provisions relating to anti-clustering—so a purposeful attempt to seek to prevent red-light-related districts. We see in the Manly town centre alone there are 15 tobacco stores. They're an unregulated use, from a planning perspective. Were tobacco stores to be introduced, the State would provide subsequent guidelines. Councils could then tailor an approach that would address a merit-based assessment on health-related aspects, as well as amenity-related concerns. Council would argue that these are relevant, planning-related matters, which I don't feel was addressed in the Minister's response.

**BERNARD SMITH:** Taking a step back, land use planning is about putting activities in an appropriate area. There are two parts to the illegal tobacco. One is the illegal side of it, and the other one is if it's appropriate for them to be in proximity to a school, for example. There's plenty of precedent. I think around alcohol there are aspects too in terms of location and planning approvals. You put factories in certain areas because they're factories. I don't think there's any great inhibitor to acknowledging that that's a particular land use, and it needs to go into a particular area.

**The Hon. NICHOLE OVERALL:** Mr McDonald, one of the other recommendations made in the Northern Beaches Council's submission is around the ambiguity of definitions when it comes to retail premises. What response have you had to that?

**MAL McDONALD:** I don't believe the Minister, in his response, turned his mind to that specifically.

**The Hon. NICHOLE OVERALL:** But you have raised that with the Minister as well?

**MAL McDONALD:** Yes, we certainly raised that, as is in council's submission to this inquiry, which was provided to the Minister, and I think it informed his response.

**The Hon. NICHOLE OVERALL:** Why do you think that that might also assist in the broader picture?

**MAL McDONALD:** The reason that's recommended is that, as the Minister's correspondence acknowledges, tobacco stores are a type of shop. Land uses, in the definitions, are a statewide approach regulated through the planning Act, and it's the ministerial order that sets a consistent approach to land use definitions. Local government has no power to introduce a new land use term or a new land use definition. Under section 3.20 of

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the planning Act, it requires a ministerial order to amend what's known as a standard instrument—LEP. To distinguish, council would argue tobacco stores as a particular type of shop or retail shop. By doing so, that could then establish a new subsequent set of planning-related considerations.

By doing so as well, in a related State policy called the exempt and complying development SEPP, similar to sex services premises, the introduction of a definition could ensure that a change of one use to another would require a development application to address the existing situation, where shops can appear as tobacco shops without any role of councils. By doing so, I think councils would then have an impact assessment related function in relation to the assessment of a particular application or proposal that could involve, for example, referral to police through a plan of management, which occurs under existing sex services provisions. It would also introduce a regulatory function for local government in relation to land use related matters, for example, where tobacco stores would then operate without consent or contrary to relevant conditions of an approval. As Damian mentioned, that would complement State-led enforcement functions relating to other aspects of the tobacco industry.

**The Hon. NICHOLE OVERALL:** That's the important point. I have other questions, Chair, but I'm also mindful of the time. I'm happy to come back later if there's more time available.

**The Hon. CAMERON MURPHY:** Chair, if I can just follow on from that point. I just wondered what you mean, Mr McDonald, by a tobacco shop as such. Do you mean any premises that's licensed to sell tobacco? In terms of your analogy about clusters, we already have clusters of stores that sell tobacco, including service stations that are all next to each other on a main street and so on. Is that what you're talking about? Or are you talking about having some provision in the planning Act that deals with a store that might be primarily something else but is also licensed to sell tobacco products at the same time?

**MAL McDONALD:** I think it would require some consideration about what an appropriate definition of tobacco stores or tobacco-related shops are. Because, as you mentioned, a number of stores, for convenience related matters, sell a whole range of products. They may also sell tobacco. It's probably under those circumstances that they would be called up to be within the umbrella of what a tobacco store could be.

**The Hon. CAMERON MURPHY:** So really it's about working out what the definition of a tobacco store is. Of course, that may not capture other types of stores that are selling illicit tobacco out of the premises.

**MAL McDONALD:** That's right. In those circumstances, council would continue not to have a role. It would really be through the licensing framework and other State-related regulatory functions.

**The Hon. STEPHEN LAWRENCE:** I have a question for Mr McDonald, but other witnesses could answer it too if they wish. If the law was changed to require a DA approval for tobacco shops, could you talk us through what the local government's enforcement role would then look like? For example, if tobacco products were all of a sudden being sold from a shop in Dubbo in a situation where the regime exists and there has not been a DA, what would then occur in terms of enforcement?

**MAL McDONALD:** If tobacco stores were introduced as a defined land use that required a development consent, then a development application would be submitted and council would undertake a merit-based assessment. It would seek referral advice. There would be conditions of consent imposed related to signage, location, hours of operation and the like. That would be the basis on which that operation could undertake its activities lawfully. The regulatory role of council, the local government, would be to ensure compliance in relation to those conditions of consent. Where, for example, signage didn't meet the requirements of its approval or hours of operation or location or whatever, that provides local government with regulatory enforcement powers. In circumstances where a tobacco store was operating without an appropriate approval, that also would be a land use matter that would trigger council's regulatory functions.

**The Hon. STEPHEN LAWRENCE:** What would council actually do in that scenario? If it finds out that tobacco products are being sold from a shop on the main street of Dubbo and there hasn't been a DA for that, what does council actually do? Do officers go there and shut it down?

**MAL McDONALD:** Yes, there's a range of functions. There's ability to show cause. There's ability to issue an order, which is to prevent the continuing operation of those activities. There's fines associated with that as well.

**The Hon. STEPHEN LAWRENCE:** If the law was changed to do that, are there going to be any unintended consequences? I'm just speculating as I sit here. For example, could it lead other levels of government to say, "It's a local government problem, because it's a DA issue. We're going to leave it to local government." Is there any risk of that, do you think?

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**DAMIAN THOMAS:** I think it's a real risk. You've touched on the challenge about enforcement and resourcing that enforcement function in local government. It is a real concern. I don't think the sector is calling, for example, for the New South Wales Government's licensing powers to be withdrawn to produce these new planning controls. It needs to be that multi-pronged approach. All of these avenues need to be explored. The benefit of the local government response is that it's proactive. It's not focused on enforcement powers after the fact; it's a proactive solution that should work in concert with these other controls.

**The Hon. STEPHEN LAWRENCE:** The thing that worries me about it is that in respect of this market, we've got other evidence that, at least in part, we're dealing with serious organised crime that is willing to brazenly commit pretty serious criminal offences. I've got some understanding of what local councils do when unapproved activities occur and so forth. The regulatory reach and strength of local government could be compared to being a bit of a softer touch than the much harsher mechanisms that the State and the Feds might have available to them. I'm wondering, in the context of the type of activity and the type of actors we're talking about, does local government really have a lot to offer in terms of enforcement? Are a few letters from the planning department telling you that it's unapproved and asking you to show cause going to realistically make a difference to what are pretty hardcore criminals, on the evidence before us?

**BERNARD SMITH:** I think it goes back to that multi-pronged approach. There's not one single knockout blow. Yes, there is the illegality. There are the excise issues et cetera, which obviously isn't local government's role. We play just one part in the land use planning. As I said, that's not the whole solution, but it's that multi-pronged approach from a number of agencies.

**The Hon. STEPHEN LAWRENCE:** Lastly from me, before I hand to Mr Donnelly, I have been aware for a while of this question of vapes causing fires in garbage collection trucks and in waste areas. I think it's mentioned in the LGNSW submission. How widespread is this problem of these embedded batteries becoming alight when they're in trucks or at council waste facilities?

**DAMIAN THOMAS:** It's a very, very serious problem. The latest figures from the Illicit Tobacco and E-cigarette Commissioner talked about 95.7 per cent of the vape market being illegal, which is an extraordinary figure. This has serious impacts on worker safety in local government for those who are working in waste management. It has serious impacts on contaminating the waste stream when these hot loads in garbage disposal trucks catch alight. It's a really serious challenge. The New South Wales Government has taken some good steps in taking the lead on producer responsibility schemes for batteries, but when vapes are being illegally imported, it's important to capture them to ensure that those producers do take responsibility for these dangerous products.

**The Hon. GREG DONNELLY:** Thank you, gentlemen, for participating today. I'm just teasing out this idea of the potential definition around a tobacco store or tobacco shop. My observation is that there's a lot of deliberate work done to mimic what are typically referred to as convenience stores, like a 7-Eleven. They have just got sort of one row of everything to provide that image that they are a convenience store, but we reasonably suspect we know what they're up to. Next to that, there's the idea of an establishment called a shop which only sells tobacco and perhaps tobacco-related items. Once upon a time, we used to have a lot of tobacconists around. We don't have them so much these days. I'm setting aside supermarkets and petrol stations, which also sell cigarettes. Around the definition of a tobacco store or a tobacco shop, is it your position—this is to any of the witnesses—that we're talking about exclusively selling tobacco or could it be exclusive and/or tobacco and other products? I'm just teasing this out. I'm not putting you on the spot. If we take the northern beaches, because that's probably been looked at, how does one come to terms with the distinction?

**MAL McDONALD:** It is a challenge, as you mention. Sometimes in planning we look at what's a primary and what's an ancillary use. For example, one approach may be to seek to define tobacco stores to be those premises where the primary function is the sale of tobacco-related products.

**The Hon. GREG DONNELLY:** Can I just press you a bit further on that? Would that be based on some turnover calculation or based on an inspection and what looks like the preponderance of the product is that they sell? How is that established?

**MAL McDONALD:** It would be a challenge because it would be in the proponent's interest to demonstrate that it's not the primary purpose.

**The Hon. GREG DONNELLY:** Of course, and that's what these mimic 7-Elevens basically are.

**MAL McDONALD:** The alternative is to have an umbrella that captures any store that was to sell tobacco-related products. But, as you mentioned, that would pick up 7-Elevens and a much broader range of businesses.

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**The Hon. GREG DONNELLY:** It would go right through to supermarkets as well, like Woolworths and Coles and what have you. If anyone else has any sort of view about definitions, please—there are certainly some challenges around how we—

**DAMIAN THOMAS:** I'll just touch very briefly on that. I think it's a really genuine concern and it's a real challenge, but I think it would be reasonable to have a public consultation to sort of tease out those figures. I think some of the venues that seem to be the worst offenders are those smaller businesses that phoenix and that can close down and reopen in a neighbouring location very quickly, whereas I think perhaps the larger supermarkets or petrol stations are less likely to be doing so and offending in this way.

**The Hon. GREG DONNELLY:** I think that's probably right.

**BERNARD SMITH:** I would think also that with some clever crafting of words in terms of the regulation, you'd quickly dispense with the Woolies and the Coles and so forth, and then really focus on—

**The Hon. GREG DONNELLY:** Yes, exempt.

**MAL McDONALD:** The approach through the introduction of sex services premises as a land use under the planning Act—a recommendation from the 2001 ministerial taskforce on brothels established a multi-agency and stakeholder panel that prepared these industry-wide guidelines, and that led to the preparation of land-use definitions, matters for consideration for consent authorities and then supporting development controls.

**The Hon. GREG DONNELLY:** But is it not true you could drive a Mack truck through that? If you go into the CBD of a typical suburb, there are Thai massage places along every other corner, and I think people have a general understanding that there's a bit more than massaging going on in these places. This is sort of a workaround that's done in that regard, is it not? The sex service analogy has been sort of put forward by at least a couple of witnesses as being a formula or a framework, but is that not the workaround that happens in those instances?

**MAL McDONALD:** Where there are activities that are disguised as sex services?

**The Hon. GREG DONNELLY:** Yes, Thai massages. There are [inaudible]. What's your response to that? What do you say is going on in there?

**MAL McDONALD:** From my understanding, there's a range of different types of classifications of what constitutes a sex service premises, and these 2004 guidelines sought to distinguish those and sought to introduce separate matters for consideration depending on the particular type of service offered.

**The Hon. GREG DONNELLY:** As I said, Mack trucks are being driven through this like fleets in terms of the reality of what's going on in this area.

**The Hon. NICHOLE OVERALL:** Mr Smith, if I could come back to you, please. You stated in your opening statement that the impacts are real and tangible and, as you noted, in a variety of ways but also pronounced ways in the regions and to a degree disproportionately as well. Are you confident that the Government's strategy as it now stands, including regional enforcement officers—although of the 48 that are planned, we're yet to have those numbers confirmed and they're now to be centralised, which is the term used, so I'm thinking that that is more of a metropolitan focus in that regard. Do you think that the strategy as it is now is going to adequately address the growing problem from a regional perspective?

**BERNARD SMITH:** Noting the difficulty of the task, I wouldn't be confident, no. I would describe it as a start, and we'll need to wait and see. But that, as I said, is against the backdrop of the difficulty of the task.

**The Hon. NICHOLE OVERALL:** Has local government more broadly—and this might be to you, Mr Thomas—received much or comprehensive information about how it will work when it comes to the regional enforcement officers specifically?

**DAMIAN THOMAS:** We haven't received further information on that, but I note that the new closure order powers only came in on 3 November in New South Wales and there has been action since that time.

**The Hon. NICHOLE OVERALL:** Okay, so we want to explore that a little more fully as well. Mr McDonald, one of the recommendations put forward in your submission is about—and I note that Mr Thomas has also said—at this point, local government doesn't have a clearly defined role in any of this. Obviously, that's what we're getting to. That could be of additional help in terms of being a multi-pronged method of looking at what we need going forward. But in relation to your recommendation of an enhancement of intelligence sharing and enforcement coordination between State agencies and the local government, have you received any feedback or communication or engagement about that?

**MAL McDONALD:** No.

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**The Hon. NICHOLE OVERALL:** Not at all?

**MAL McDONALD:** Not as such.

**The Hon. NICHOLE OVERALL:** And nothing from Local Government NSW either in that regard?

**DAMIAN THOMAS:** No, not at this stage.

**The Hon. NATASHA MACLAREN-JONES:** In relation to instances of pop-up stalls, have councils either been required to monitor, or do you monitor, any of that activity?

**MAL McDONALD:** No, not as such, because these uses appear as an exempt development and they are treated as a shop, as any other type of shop is, unless it relates to matters that spill onto the public domain. If there's signage that's blocking a footpath, for example, then councils have regulatory functions, or if there's excessive car parking or noise, for example, then we play a role, as we do with any shop. But councils have no current visibility because proposals and developments don't come through councils for an assessment or approval, so it's only through anecdotal evidence.

**The Hon. NATASHA MACLAREN-JONES:** Have you had any commercial businesses that are legitimately operating reach out, particularly following the recent changes, seeking advice, information or guidelines from you guys?

**BERNARD SMITH:** No, we haven't.

**MAL McDONALD:** No.

**DAMIAN THOMAS:** No. Sorry, I should add that when the new laws did come in, we were contacted by NSW Health and encouraged to disseminate the new enforcement powers to local government, and we did do that, to our members, so that they're aware of this information and where to escalate issues.

**The Hon. NICHOLE OVERALL:** Just one more question, in the three minutes that we have. Local Government NSW, again in relation to the point that you make in your submission, have you received any guarantees that there won't be a move to shift the newly introduced illegal tobacco regulations onto councils—that it doesn't become another State to local government shifting exercise? I note you've said, "We don't want that to happen."

**DAMIAN THOMAS:** No, that's absolutely right, we do not. There hasn't been a suggestion that it would happen, but during discussions—

**The Hon. NICHOLE OVERALL:** You're just qualifying—drawing the line in the sand before it does.

**DAMIAN THOMAS:** Yes. But during discussions with NSW Health, we made clear that councils, for example, and environmental health officers were fully stretched and not equipped to undertake any kind of enforcement task in addition. It wasn't proposed to us that that should happen, but we just made it clear that it wasn't something that local governments were resourced to be doing.

**The Hon. NICHOLE OVERALL:** To clarify the point that the Hon. Stephen Lawrence made previously about the opportunity for councils to enforce compliance, when it comes to your recommendation about DA approval, again, it's local government, councils, trying to be proactive in the way this is being addressed rather than needing to necessarily rely on that compliance and enforcement. Is that right?

**DAMIAN THOMAS:** That's absolutely right.

**MAL McDONALD:** That's right. As I mentioned earlier, one of the benefits of introducing it through a development application framework would be in order to set some parameters around locational aspects. A key community concern that's raised is the proliferation of these stores in places that are visible to children. That triggers a broader public health matter, which is a relevant consideration through the planning Act as a matter for assessment.

**The CHAIR:** I think that's it. Questioning has finished for this session. Thanks very much for coming, and thank you for your evidence.

**(The witnesses withdrew.)**

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**Professor CORAL GARTNER**, Director, NHMRC Centre of Research Excellence on Achieving the Tobacco Endgame, the University of Queensland, affirmed and examined

**Dr CHENEAL PULJEVIC**, Australian Research Council Discovery Early Career Researcher Award Senior Research Fellow, the University of Queensland, affirmed and examined

**Adjunct Professor TERRY SLEVIN**, Chief Executive Officer, Public Health Association of Australia, affirmed and examined

**Associate Professor RAGLAN MADDOX**, Co-Convenor, Public Health Association of Australia, Alcohol, Tobacco and Other Drugs Special Interest Group, affirmed and examined

**The CHAIR:** Thank you very much for coming. Perhaps starting with you, Ms Gartner, would you like to make a short opening statement?

**CORAL GARTNER:** Good morning, Chair and Committee members. I'll begin my statement first by acknowledging and paying respect to the traditional custodians of the land, the Gadigal people of the Eora nation, their ancestors and descendants. I'd like to thank the Committee for the opportunity to appear at this hearing. I confirm that I have not accepted any funding from the tobacco industry or commercial entities associated with tobacco companies. Australia is a party to the World Health Organization Framework Convention on Tobacco Control and hence has an obligation to protect tobacco policymaking from the influence of the commercial and vested interests of the tobacco industry. I'd just like to make a point that when organisations representing commercial and business groups and private consultants appear before this Committee, they should be required to provide a full disclosure of which of their members or clients are or have links to tobacco companies.

Reducing tobacco use is an Australian Government priority because it is critical to improving life expectancy and the quality of that life as well as boosting productivity. The New South Wales Government has committed to reducing smoking through State tobacco strategies and endorsement of the current National Tobacco Strategy, that aims to reduce smoking by 5 per cent or less by 2030. It is important for the Committee to keep this in mind when considering approaches to reducing illicit tobacco trade, because these need to also support the goal of reducing tobacco use overall, not just shifting consumers back to the legal market. Our research shows that illicit tobacco trade has rapidly grown over the past five years and has become a widespread problem in the retailing sector in Australia. It threatens the excellent progress that successive State and Federal governments have made on reducing tobacco-related disease and deaths. Reducing illicit tobacco trade is crucial to reaching the 5 per cent smoking prevalence goal. Tobacco retailing needs to be much more tightly regulated and closely monitored. Inadequate regulation has created an opportunity for criminals to exploit.

Some witnesses appearing at this inquiry may present the idea that over-regulation has caused the increase in illicit tobacco trade and proposed winding back public health measures, such as tobacco excise, as a solution. This is extremely misguided, as the current situation shows that we need more regulation and controls over tobacco supply, not less. Allowing anyone to set up shop as a tobacco retailer and gain access to everyday consumers in a normal and anonymous retail setting has provided the opportunity for organised crime to expand their illegal revenue streams by facilitating contact with a wider range of customers.

The participation of existing retailers in the illicit market by selling a mix of legal and illegal products shows that they are also vulnerable to infiltration if they have inadequate governance and security measures. Imagine if a pharmacy selling cheap smuggled morphine, fentanyl and other regulated substances just started popping up all over the place. Significant government effort would be put into shutting them down and controlling the pharmacy sector. No-one would be suggesting that an appropriate government response would be to weaken or water down existing regulations and public health policies regarding these substances.

Queensland is now having success in closing down retailers involved in illicit tobacco trade. This has been enabled through strong investment in increasing the enforcement capacity—with nearly 200 authorised officers across the State, including a dedicated flying squad—and the strengthened powers that have been given to those officers, including a range of penalties to enable them to take fast action. Queensland Health recently closed 148 stores within a 10-day period, so it shows that these can work. The New South Wales Government also has some similar powers, such as the landlord provisions, to encourage landlords to end leases of tenants involved in illegal trade. However, much more action is needed.

This situation warrants throwing everything you have at it as fast as you can. This includes removing barriers to accessing comprehensive quit support, such as the cost of quit smoking medicines. Keep in mind, most people who smoke actually want to quit. Helping them quit should be part of a strategy to reduce illicit trade because it will reduce the potential customer base. If Australia reduces smoking to 5 per cent within the next five years—and hopefully even lower than that into the future—we need fewer businesses supplying tobacco than we

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have now. We already have too many retailers for a product that 90 per cent of the population do not use. Helping small businesses to exit tobacco retailing should also be part of a strategy to control illicit tobacco trade. A more tightly regulated tobacco supply chain should include much fewer retailers, with stronger governance and monitoring requirements for those who remain in the industry. Thank you.

**The CHAIR:** Thank you. Anyone else? Short statements?

**CHENEAL PULJEVIC:** Thank you. I, too, would like to pay my respects to the traditional custodians of these lands, the Gadigal people of the Eora nation. I, too, confirm that I have not accepted any funding from the tobacco industry or any other commercial entities associated with tobacco companies. I thank the Committee for the opportunity to appear at this hearing. For the past three years, I've been funded by a fellowship awarded by the Australian Research Council, which involves a program of research investigating consumers' patterns of illicit tobacco use and the drivers and deterrents of Australia's illicit tobacco market. To investigate these issues, I've led three studies over the past year. The results of these studies are still being drafted and, as such, have not yet been subject to peer review, but I would like to share some of these findings.

For example, in a national survey of 2,500 Australians who smoke that we conducted in November last year, 28 per cent of participants reported smoking illicitly traded tobacco products at least weekly. Of these participants, 92 per cent were purchasing their products from a tobacconist or a convenience store. When asked about their reasons for use, 72 per cent reported choosing these products because they are cheaper than taxed products, 27 per cent because they did not want to pay any more taxes to the Government, and 23 per cent because they found it more convenient to purchase than taxed products. When asked which factors might deter their future purchases, 31 per cent of participants reported that they would stop if the products were no longer available in retail shops. This was the most commonly selected reason.

These findings highlight the crucial importance of addressing the widespread availability of illicitly traded tobacco products from retail outlets. Further analyses showed that participants who reported difficulty paying bills or rent, as well as those who smoked more than 20 cigarettes per day, were most likely to be frequent consumers of illicit tobacco. These findings highlight the central roles of financial hardship and nicotine dependence in shaping consumers' decisions to purchase these products.

Next, we conducted a street intercept survey in September this year, which involved approaching approximately 400 people who were smoking on the streets around Brisbane to find out what products they were smoking. Of these 400 people, 20 per cent were paying \$10 or less per pack of 20 illicitly traded cigarettes, showing that these products are widely available at a very low price. Considering the ongoing debate about reducing tobacco tax excise, we then asked participants who were buying the illicitly traded products how much cheaper the legal, taxed products would need to be for them to go back to the legal market. Seventy per cent said that taxed tobacco products would need to be the same price as illicitly traded tobacco products for them to go back to buying legal, taxed products. This suggests that modest reductions in tax are unlikely to discourage consumers from purchasing from the illegal market, and all available evidence indicates that large reductions in tax would inevitably increase smoking.

One of the most concerning findings across these studies was the number of participants who did not believe that smoking tobacco poses significant harms to their health. Furthermore, many participants were unaware of essential quit support services like Quitline or did not believe that nicotine replacement therapy is effective in supporting smoking cessation. These findings highlight an urgent need for improved public communication about the harms of tobacco use and the range of support options that exist to help people quit. Every Australian should know that tobacco use is one of the leading causes of preventable death and results in more illness and death than alcohol and other drug use combined.

Critically, quit support must be accessible and affordable. Currently, the cheapest box of nicotine patches available online is \$25 for just seven patches, which is more than double the cost of the \$10 packs of cigarettes that many consumers are buying. Providing consumers with free and easy access to nicotine replacement therapy coupled with new education campaigns about the harms of smoking is essential to reduce the number of people who smoke tobacco, including illicit tobacco.

**TERRY SLEVIN:** Thank you to the Committee for inviting us to speak to you today. I also want to pay respect to the Gadigal people of the Eora nation and pay my respects to Elders past, present and emerging. I also want to declare that I have never in my life received any form of funding from any tobacco industry connected entity. My first job in public health was in April of 1984, when I got the job of starting the "Quit For Life" campaign in my home town of Newcastle—go the Knights! At that time, smoking rates for men in the Hunter Valley were in the early 40 percentile range, and smoking rates for women were around 25 per cent. We're now closer to 10 per cent for smoking rates in those groups in my home town. From 1990 to 1992 I was the director of the "Quit For Life" campaign that was funded then by the New South Wales State Government.

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As a kid, at age 10, 11 or 12, I worked in my grandfather's corner store in Newcastle in Waratah. I sold smokes to the locals as a kid, entirely oblivious to the impact of doing so. In 1993 my father, a lifelong smoker, died of a smoking-related disease. I have a close family member—I won't identify them, to protect their anonymity—who is continuing to be a smoker today of loose-leaf tobacco. He tells me that, because he can get it cheaply through the illicit market, he can continue to do so. If he was paying full freight, he would be forced, pretty much, to reconsider his smoking. The fall in smoking in Newcastle, in New South Wales and in Australia has been driven by a number of factors, but the cost of tobacco has been a vitally important driving factor in that trend.

I sit before you today to urge you to not be conned by the notion that cutting the tax will fix this problem. Illicit tobacco exists around the world and, yes, this is an important business issue that all parts of Australia must wrestle with—local government, State governments and Federal Government. Importation, transportation and retail networks—the entire machinery of this industry. Rest assured, this is an industry that's not going away. Australia is a very small part of the tobacco market worldwide, but it's a dark market. We've seen the introduction of plain packaging and many other reforms that have been picked up around the world.

The tobacco industry remains a multibillion-dollar multinational sector. They are determined to stamp out efforts by governments that successfully reduce the sale of their product and their profits. They do so ruthlessly. This campaign that they're using, in the context of illicit tobacco, to create government as the evildoer in this scenario by having high taxes is the trick they use to put pressure on that government to reduce an effective tobacco control strategy, pure and simple. They have deep pockets, and they are very effective at running these campaigns.

I've fought many of them over the past 40 years, whether they fought against the removal of sponsorship of sports, arts and racing, whether they fought against the plain packaging campaigns or whether they fought against the funding of the campaigns that I've run when it comes to tobacco control. I urge you in your considerations on this issue to ask yourself this question: What role does the tobacco industry at a multinational level play in the supply and creation of this exploding illicit market in New South Wales? I don't for a moment believe that the Comancheros or the Bandidos are building cigarette manufacturing facilities on the outskirts of Sydney or around Tullamarine airport. These factory-made cigarettes, which are being sold on street corners around your State, are coming, ultimately—whether through the well-established British, American or Japanese tobacco companies or new players in the market—from big tobacco.

Don't get conned by big tobacco and buy into their framing that says this is because the Government's charging too much tax. I put it to you that we need to continue with our efforts with regard both to enforcement of the law of this country—don't let a multinational industry con you into weakening our laws that benefit our people with clear evidence of doing so. The solution here is not simple; no-one pretends it is. But a key function is—as the commissioner, I believe, gave evidence this morning and in her recent report—about proper enforcement, appropriate penalties and fines, and also efforts with regard to demand reduction that you've already heard of.

We know if we continue with the campaigns that have been successful over some decades, not relent on those efforts, and if we support existing nicotine addicts to quit—nicotine replacement therapy is free through the Quitline in Queensland. It costs about \$2 million a year. Rolling that out nationally, I believe, would be something in the vicinity of south of \$15 million a year to offer every smoker the opportunity to have a crack at quitting. I will offer you one final observation, particularly with regard to the notion of "drop the tax is the solution". There's a quote that's been manipulated and used in many ways, but the original wording is "There is always a well-known solution to every human problem—neat, plausible and wrong." That's a German philosopher—H. L. Mencken, 1921. Thank you for your time.

**RAGLAN MADDOX:** Thank you, Committee, for the opportunity to speak with you today. I also wanted to acknowledge the Gadigal people of the Eora nation and pay my respects to traditional owners here in Sydney, but also across New South Wales. I also wanted to acknowledge and celebrate youth and young people who will be hopefully taking nicotine-free languages, cultures and celebrating ways of being into the future. It's really important that we consider youth and young people, and that we are active in fostering a safer space for young people to grow up, particularly given the challenges across the State. I wanted to touch on a few things. I was reflecting—as the other witnesses have spoken about—that we've known that smoking, when used as directed, kills.

For at least 75 years we've known that smoking causes lung cancer, and yet we continue to sell this product on pretty much every street corner. Just walking here from Central Station this morning, I've walked past dozens of stores actively advertising their product through trading signs and other things. This is a challenge that, as a society, we have to question ourselves: How much do we allow the normalisation of this product that, when

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used as directed, will kill people? We know of people that smoke, two out of three people will die. We know the majority of people take up smoking at a young age—under 18—and we know that price has a direct impact on them. We also know that the majority of people who smoke want to quit, and the majority of people who smoke wish they never took it up. This speaks to the challenges of addiction, and I want to really highlight that access makes quitting incredibly hard.

I agree with Adjunct Professor Slevin, and the other witnesses, that increasing cessation support is incredibly important. But it doesn't make quitting an addiction easy; it makes it a little bit easier. I think that's incredibly important. I think preventing addiction is the easy bit. If we prevent young people from taking up products that when used as directed kill you, that are highly addictive that people do not want to use, that it's important. No parent I've ever met across the country has ever said, "I can't wait for my kid to grow up, turn 18 and smoke a cigarette with them." It's not necessarily something that they've highlighted. They generally highlight that they want their kids to grow up—young, fit, healthy and live prosperous lives and thrive. I think that's incredibly important.

I also wanted to remind us of the World Health Organization Framework Convention on Tobacco Control that obviously has Federal, State and local implications. I also state that I don't receive any financial compensation from the tobacco industry or nicotine industry in any way, shape or form. I think that's incredibly important: I wanted to highlight that the work we do across the country and across the State is independent from commercial influence. I wanted to leave us with a thought about what sort of state we want to leave New South Wales in for future generations; how we want to enforce current rules and regulations so that people who want to quit can quit, and quit successfully. I'll finish with a story from someone I had at a focus group at a health service many years ago, but I think the message rings true.

They caught a bus to the health service and they get off at the shop and they walk to the health service to get cessation support. But when they get off at those local shops, there's seven stores that sell tobacco and so they go past those seven stores. As everyone knows, if you have an addiction, you know each and every store that sells you that product. Then you go to your doctor and you get your NRT, your patches or whatever it might be, and advice, but you then leave the store with your patches and you walk past seven of those retailers again to sell the product. They said to me, "Raglan, you're asking me to quit and I have to walk past those seven stores both going into the doctor and then leaving the doctor. The best thing you could do is make it easier for me to quit. If I was on crack, would you make me walk past seven crack dealers to go and see my doctor to get off this addiction? Are you setting me up to fail?" I'll leave you with that story from the Venice of the Eden Monaro, in Queanbeyan. But I just want to remind us of our responsibilities to make sure that our communities have healthy, happy spaces where kids can grow up and thrive.

**The Hon. NATASHA MACLAREN-JONES:** I will actually put a number of my questions on notice, only because we've got limited time. I've only got two questions before I hand over. One is in relation to if there's been any work done in your studies looking at the different channels where illegal tobacco and vapes are being sold. Obviously we know that it's online as well as tobacconists and things. Which is the largest growing cohort—as a means of selling it?

**TERRY SLEVIN:** I'll allow my research colleagues to search their databanks—

**The Hon. NATASHA MACLAREN-JONES:** I'm happy if you need to take that on notice.

**TERRY SLEVIN:** The starting point in answering the question is when you're pursuing data on illegal activity, the reliability of the data is a fundamental problem. The extent to which people are likely to accurately record their own illegal activity is always going to be a fundamental challenge in getting accurate answers to your question.

**CHENEAL PULJEVIC:** From the studies that I've been involved in, it's around 62 per cent of people who are buying these products from tobacconists and 30 per cent from convenience stores. I do believe we need to keep an eye on online outlets. Just going a quick google of "cheap smokes" brings up three or four websites that will deliver very cheap tobacco to your house within 24 hours. But at the moment it's very much still the bricks-and-mortar retail outlets.

**CORAL GARTNER:** I concur with that. At the moment, the main channel is definitely through bricks-and-mortar stores. But we should be keeping an eye out, as enforcement starts taking effect, that there will be more use of the online retailing through messaging apps and so on. We see that overseas. In other countries they have more of that happening. We also see that in the vape sector; there's more delivery services for the illegal vapes. But in terms of the illicit tobacco, it's still very much through tobacconists, convenience stores and other retail outlets.

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**The Hon. NATASHA MACLAREN-JONES:** Is there any data in relation to a micro breakdown by geographical area and also age grouping as well?

**CORAL GARTNER:** I will take that question on notice, if I can, and get back to you with that.

**The Hon. NICHOLE OVERALL:** I want to commend and thank you for the important work that you all do, over a number of years as well. However, we also need to be able to formulate effective solutions to what we all acknowledge is a very dramatic and impactful problem that is continuing. Let me start by asking, smoking rates were previously decreasing and we were doing exceptionally well as a nation in that regard; what about now?

**TERRY SLEVIN:** I'm happy to take that in general and invite my colleagues to add detail. Undoubtedly, there was an extraordinarily clear downward trend in smoking rates in Australia over the last 40 years. That happened to coincide with the time I've worked in it, but I'm not claiming credit. There is concerning evidence of, firstly, declining in that reduction and then, secondly, a very gentle increase in smoking. Our concerns relate to access for young people, particularly for those low-priced products. We know young people are amongst the most price sensitive.

Whether you're earning small amounts of money through part-time work or an allowance or pocket money provided by parents, kids have always been very price sensitive. Back in the very early days, I can recall we had to pounce on retailers who were opening packets of cigarettes and selling them singly for the purpose of giving access to kids because of that low entry price. Price accessibility is a very important consideration. Kids are less likely to want to use an illicit product and have the courage to go to an illicit retailer, but they are so ubiquitous. It's becoming a very significant concern for us, with a return to an increase in uptake of smoking, particularly in young people.

**The Hon. NICHOLE OVERALL:** Indeed. In acknowledging that point, to suggest that an excessive excise on tobacco hasn't damaged the great work and all that has been achieved—and it's not suggesting that reducing the tax now is going to be the panacea, because the horse has bolted on this situation. But it can't realistically be denied that a tipping point has been reached that has now seen what's occurring going backwards.

**TERRY SLEVIN:** I would contend that the tipping point is not about tax and price. The tipping point is the investment of the industry to create the infrastructure to make that product so ubiquitously available. The price difference 10 years ago was probably in the order of \$20 on a pack basis. That would have been absolutely profitable to establish the same kind of network. But the level of investment that has been generated—and there's a legitimate question for your Committee to ask about where that investment has been coming from. Let's not pretend that there's an enormous capital pool available to the illicit retail network.

**The Hon. NICHOLE OVERALL:** Let's go to the supposition around all of that and the suggestions being put forward that it's all the industry and the illegal tobacco numbers are inflated. Police are confirming that the illegal tobacco trade, which they acknowledge has been around for a long period of time, has gone from 15 to 20 per cent to more than 50 per cent. What do you attribute that to otherwise?

**TERRY SLEVIN:** It's very simple: the network available and the investment in the availability in the marketplace, which started particularly at a period of time over COVID when all health resources were clearly targeted towards dealing with an international pandemic. It has been a business decision by the tobacco industry to expand its illicit network on the basis of having very little fear of the kind of penalties we're now starting to see governments put into place. Let's not pretend there's a magic point at which the tax is at the right level to avoid the illicit market. The illicit market exists around the world. My contention to you is that the decision by the tobacco industry as its next strategy to hold onto its profit motive is to move in the direction of the ubiquity we're seeing with regard to the illicit retail trade, not some magic point in a graph with regard to the allocation of the tax excise rate.

**The Hon. NICHOLE OVERALL:** On the basis of this somewhat oxymoronic argument, the suggestion is that, no, the tax as it stands now is fine—leave it as it is. We want to introduce—and should, rightly so—more cessation programs and greater engagement and awareness of why smoking continues to be a bad thing. That requires funding. But, as the situation now stands, revenue is noted as decreasing because of the move to the illegal tobacco market. Therefore, there is less funding available in order to provide these programs that you recommend. It's a perpetuating cycle that isn't actually going to give us the outcomes that we need. Again, I acknowledge the point that lowering the tax isn't necessarily going to give us what we need either. But we're kind of going in circles here and not coming up with actual solutions that are going to give us the outcomes that will be most productive in terms of reducing smoking rates and providing more funding for the programs that we need to advise people—particularly young people—why they don't want to go down this path. We seem to be at this adversarial point that's not terribly constructive or helpful.

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**CORAL GARTNER:** May I potentially make an observation here? I would probably commend to you the report from the Illicit Tobacco and E-cigarette Commissioner and the observations that she's made in her research that she's done into this issue. It really highlighted that this is a really multi-factorial issue. Just focusing on the excise rate really ignores the supply side of things. Talking to my colleague at UNODC, the United Nations Office on Drugs and Crime, he sees what's happening in Australia very much as being supply driven—that it's not just a matter of the tax being high, but there's also the supply side.

This is happening on a regional and also an international basis. To just be focusing on one piece here is really, maybe, making it too simple and not acknowledging that there are a lot of players in here and that in other markets they're also trying to manage this issue of illicit trade, and they've often got much lower excise rates than Australia has. It's a much more complex situation that has caused it, and it's also going to require multiple measures to bring it under control. I think we've already heard this morning a range of different measures that have been suggested, such as the planning laws and things like that, trying to bring the—

**The Hon. NICHOLE OVERALL:** That aren't progressing at the minute.

**CORAL GARTNER:** Yes, and bringing in some more control over the supply. There's a lot happening also internationally around things like track-and-trace ideas and so on, trying to have better control over the supply internationally too. With all due respect, just focusing on the excise and saying that there are no other solutions is not really accurate.

**The Hon. NICHOLE OVERALL:** No, we're definitely not saying that. I absolutely take your point that it is about supply and how that can be addressed as well. I'm just coming to the points that are made in numerous submissions that we've received—that there is a focus on the excise tax, while doing nothing about it. The other clarification I should make is that point around the balance between the tax that has then—have we reached that threshold that then saw the work go backwards, and trying to maintain that.

**CORAL GARTNER:** I think that idea of a tipping point where there's just one magical number where everything just goes over is ignoring what was happening in the background with these supply chains being built up and so on. We had a real decrease in the illicit tobacco trade after the growing licences and so on were phased out. Look, I used to be an environmental health officer up in North Queensland back in the 1990s. I came across chop-chop when I was in that role. That was the main market—the chop-chop market. That was coming from growers in Dimbulah and so on. After the licences were phased out for growing, and manufacturing has disappeared and so on, that local market kind of collapsed. We had a real decrease in the illicit trade happening, and we've got these new supply chains that have opened up in the meantime. That's kind of just been going on. Sorry, I'm trying to explain. It's a lot more complex. There's a lot more going on than just simply it's the excise and that's it.

**The Hon. NICHOLE OVERALL:** I know. I appreciate that.

**TERRY SLEVIN:** At its simplest level, enforcing the law.

**The Hon. STEPHEN LAWRENCE:** I thank you all for coming along. It's an incredible array of experience and knowledge on these issues. Starting with Adjunct Professor Slevin first, it's been suggested to me that, at some point in the past, increases to the level of excise stopped suppressing smoking. Would you accept that or not accept that?

**TERRY SLEVIN:** The only change to the downward trend with regard to smoking has come about as a result of the extraordinarily wide availability of very cheap product. If the question is exclusively, as the price goes up, is there a point at which it stops suppressing demand—

**The Hon. STEPHEN LAWRENCE:** Yes, that's the question.

**TERRY SLEVIN:** —we haven't reached that point. There's a research group based in Chicago—famous economists in the academic world internationally coming out of Chicago—who've focused on this specific area of research. Last time I had engagement with them, they had not identified a point at which those tax increases driving the price up stopped having an influence. The greater the price pressure, the greater the motivation to quit, and so the industry solution is to bypass that effective strategy. Whether I talk about someone in my own family's individual experience or from a market economics point of view, as price goes up, demand is largely suppressed. That applies to this product, acknowledging it's an addictive product.

That is absolutely a part of the consideration, but millions and millions and millions of people have successfully quit smoking, many motivated by their own health, health of family members, exhortation from their children and pricepoint. It was consistently the case through my career that when we saw a price increase as a result of a tax adjustment at a government level, that always triggered an increase in demand in terms of Quitline and cessation attempts. The pricepoint is a very key factor. If we can enforce the law so that that cheap option is

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far less available, I'm not going to pretend to you there's a magic wand that fixes that, but enormously reducing the availability of those cheap options will further increase motivation for smokers to quit and, very importantly—a point that's often forgotten—decrease the opportunity for young people to start.

**The Hon. STEPHEN LAWRENCE:** It seems to me that accepting that the price differential has fuelled the black market is not the same thing as saying that the price differential should be reduced. I say that because, if there's some other response that can reduce the black market, then you might not need to resort to the price differential, which could have other impacts. Prefacing my question with that comment, do you agree that the price differential has been a driver in the increase in the black market? I might start with Adjunct Professor Slevin and then go to Professor Gartner.

**TERRY SLEVIN:** It sounds like Raglan wants to jump in on that one.

**The Hon. STEPHEN LAWRENCE:** Sure.

**RAGLAN MADDOX:** I'm easy but, yes, good question. I want to use a metaphor here as well. If we think about speeding in school zones, the solution isn't to increase the speed limit in a school zone so that we don't have anyone speeding in school zones. The challenge here is to enforce the law so that doesn't happen. I also wanted to reiterate what Terry was saying in terms of, for us, our most recent data has shown that, actually, there's been an increase between the amount of people who are quitting smoking because of price up until the last point. I admit that the illicit market in the last year or so has boomed, and so the next data point will be interesting to see. I think that's incredibly important. The more supports we can get around people to quit, the better.

**TERRY SLEVIN:** By way of an observation, the 5 per cent increases that have been occurring at Federal Government level by both political persuasions have been important in terms of driving cessation behaviour.

**The Hon. STEPHEN LAWRENCE:** I'm not talking about quitting, though. I'm talking about the increase in the percentage of the market that is illicit. Do you accept that the price differential—which is a different question to whether it should be reduced or not. Do you agree that the price differential has accounted, at least in part, for the increase in the black market?

**TERRY SLEVIN:** There is no doubt that the provision of cheaper products certainly has an impact in terms of people's behaviour.

**The Hon. STEPHEN LAWRENCE:** That's not quite my question. I'm not talking about the availability of cheaper products. I'm talking about the fact that there is a difference between the price of legal and illegal, and that that difference appears to have increased. Do you accept that, at least in part, that has caused the expansion of the black market?

**TERRY SLEVIN:** It's a more profitable industry for people who are prepared to break the law. That is self-evident.

**The Hon. STEPHEN LAWRENCE:** Do you accept that as well, Professor Gartner?

**CORAL GARTNER:** Yes, but I'd also add that it's also the lower penalties that you get for selling this product. For example, these criminal organisations—they're making a lot of money also by selling illegal drugs. It's whether they also sell this product. It provides another income stream. It also gives them access to a different consumer group. I know you're saying you don't want to focus on the availability, but it has provided them with an opportunity to have that interface with a different consumer group. There is also this lower risk. If you get caught for trafficking tobacco, you're going to have a lower penalty imposed than if you get caught for trafficking cocaine. It is also the differential in the risk and reward here. It's not just about the excise. There is also an incentive there for criminal organisations to avoid the higher penalties as well.

**The Hon. STEPHEN LAWRENCE:** Accepting that the differential is playing a role in the black market then—one of the opening statements was talking about those using the illicit market are those that are more disadvantaged or more susceptible to price pressures. Accepting that, why wouldn't reducing the differential be at least part of the solution? I might start with you, Professor Gartner. Why is it something that we ought completely exclude from consideration? I would have thought it's not a binary—that you either reduce or you don't reduce, or you reduce to completely eliminate the difference. Why wouldn't a modest reduction in the differential be part of the possible solution here?

**CORAL GARTNER:** What sort of reduction are you talking about?

**The Hon. STEPHEN LAWRENCE:** A 30 per cent reduction in the differential, I assume, would, from an economics point of view, have some impact on the black market. You might say that it also has a negative impact in terms of an increase in smoking in the cohort who is currently complying with the law, but I suppose

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these things are often a question of balance. Why wouldn't a modest reduction in the differential be something to consider, at least?

**CORAL GARTNER:** There are several factors here. One is, of course, the goal of what the Government wants to achieve here, which is to reduce smoking. It's not to collect excise tax, even though that's a nice benefit. That's not the primary goal here. It's a health measure. Reducing that is taking away this primary goal, which is to reduce smoking. Our research was suggesting that you'd have to virtually eliminate the tax, because the prices that you can purchase the illicit product at are so much lower. There is a very wide range of prices that they can sell this product at. Just the 30 per cent is not going to cut it.

**The Hon. STEPHEN LAWRENCE:** Isn't that to suggest a false binary, in effect? It is to suggest that you need to completely eliminate the differential, or eliminate it significantly, for all people in order to achieve a benefit. What I am putting is, perhaps in contradiction to that, is it not a question of degree? For example, if a 30 per cent reduction in the differential led to a 30 per cent reduction in the black market—I'm not saying it would, necessarily, but assuming it has some impact—on balance, might it not be part of the solution?

**CORAL GARTNER:** I think it's a lot more complex than that. I think that's a simple way of thinking about it. You're thinking that these people will move over there, but you could also be growing the market, in which case you've got more consumers looking for a good deal too. I don't think that it's worth going down the route of trying to say, "Should we reduce the tax? How much by?" I don't think it's going to make a substantial difference here. You also have got a whole lot of this—

**The Hon. STEPHEN LAWRENCE:** Is that based on research or modelling?

**CORAL GARTNER:** No. This is more to do with what the consumers are saying, when we're interviewing them, about how much cheaper does it need to be.

**The Hon. STEPHEN LAWRENCE:** That's what actually flagged my questioning, because that part of the opening statement talked about how, I think, three-quarters of consumers reported that it would have to be the same price for them to choose licit. But, again, isn't that the false binary? Isn't it a question of degree rather than absolutes?

**TERRY SLEVIN:** I want to take that on.

**The Hon. STEPHEN LAWRENCE:** Please do. This is not my opinion, by the way. I'm just trying to test the proposition.

**TERRY SLEVIN:** The answer is no, because it's not a false binary about smoking. Either you do or you don't. That's where the binary is absolute. The issue about accessibility of price, also in your theoretical model, creates the hazard of accessibility to new smokers and young people because, on your model, a reduction in 30 per cent of the differential, making it cheaper in the legal market, certainly risks an increase in uptake of young people, which is contrary to all public policy objectives. With regard to the prospect of whatever the price elasticity proposition you're putting generating a reduction in demand in the black market, that offers the scenario that it's a continuum.

What we've created now is a binary of legal versus illegal, and the illegal product is so ubiquitously available that smokers don't have to go through that continuum. Either they continue to smoke or they don't. When they're more price sensitive, they'll go for the cheapest product. Now that they've got a cheaper product—whether they save 10 bucks a packet, 15 bucks a packet or 20 bucks a packet—unless we tackle the supply chain, they're still going to go for the cheaper product.

**The Hon. STEPHEN LAWRENCE:** I think that could be the binary, though. Anyway, just lastly, have you got any evidence or modelling for the proposition that an increase in enforcement and regulation is going to be able to put the genie back in the bottle, or is it sort of wishful thinking? Is there a comparable country who has managed to do it? Is there modelling that says that we can do it, not through reducing the price differential but through more enforcement, more penalties et cetera?

**RAGLAN MADDOX:** We can probably learn from vaping. I think we've seen over the last five years—and, in my mind, to come back to these questions as well—that the industries have saturated the market with illicit product during COVID, when the country was under immense pressure and communities were under immense pressure. There were essentially no implications. It took time for legislation and regulations to catch up and then enforcement. Now the challenges we have with vaping, after reforms and enforcement, are very different to what we've seen before. We know in Australia that we have a water border. We have different challenges, but we know that enforcing laws is not only possible but it's what communities expect.

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Communities expect us to uphold the law. They expect—to go back to the school example—for people not to speed in school zones because we want to have a healthy, prosperous Australia, and there's no reason why we would see any different. I've had focus groups and interviews across the country where people who have quit recently have said to me that they're really glad that they quit before this illicit trade was here because, if it was 15 bucks a pack or five bucks a pack, they'd still be smoking. But because they'd already made that commitment and they had quit—because of price, health and the health of their families—they were able to quit and have successfully quit. But it's a new ball game now for people who are trying to quit or for young people trying to avoid uptake of nicotine addiction.

**The CHAIR:** Can I ask one quick question to you, Mr Slevin. You mentioned in your opening remarks that illicit tobacco is a problem around the world, and I would expect that that's 100 per cent right. Can you cite any explicit examples where the illicit tobacco rate has actually got up to 55 per cent of the market?

**TERRY SLEVIN:** I'm not aware of the data of any other country that provides that assessment because of—and I think the commissioner mentioned this in her report—the difficulty of getting a decent and accurate assessment of that. The answer is I don't know the answer to your question.

**The CHAIR:** Has anyone else got any insight into that?

**CORAL GARTNER:** Yes, certainly. I think Malaysia is up around that. There are other countries, and some with very low tobacco tax have got some of the highest rates—probably even higher than 50 per cent of the market.

**The CHAIR:** With low tobacco taxes with high illegal tobacco?

**CORAL GARTNER:** That's correct.

**The CHAIR:** Anyone paying any tax doesn't like it, so they go and buy—there's still that big gap. Is that what you're saying?

**CORAL GARTNER:** That's correct. Also, each market has a different driver. Sometimes it's not just about the price. It may be about different products that are available and things like that.

**The CHAIR:** Thank you very much. I don't know that anything was taken on notice. Thanks very much for coming today.

**(The witnesses withdrew.)**

**(Luncheon adjournment)**

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**Emeritus Professor SIMON CHAPMAN, AO**, Sydney School of Public Health, University of Sydney, affirmed and examined

**Professor BECKY FREEMAN**, Prevention Research Collaboration, School of Public Health, Faculty of Medicine and Health, University of Sydney, affirmed and examined

**The CHAIR:** Thanks very much for coming. Would either of you or both of you want to make an opening statement?

**SIMON CHAPMAN:** First of all, I'd like to acknowledge that we're meeting on the Eora nation of the Gadigal people, and pay my respects to Elders past, present and emerging. I've worked in this area for 50 years and I've just put the last lick of paint on a memoir which covers an awful lot of things that over the years people said would never change and couldn't be changed, things like complete advertising and sponsorship bans, smoke-free areas, removing packs away from displays, plain packaging and so forth. This present perfect storm that we're seeing at the moment is another major challenge, but one that I'm confident can be overcome.

The main reason that I see the perfect storm that we have is this that during the Morrison Government, the health Minister, Greg Hunt, introduced a bill in I think quite a rushed sort of way. It had a lot of problems with it. Essentially, it was going to prevent people bringing in vapes for personal use from overseas and it was going to allow only pharmacies to sell vapes. There was a backbench revolt led by Matt Canavan. I think something like 28 backbenchers rolled Hunt in this exercise. As a result, we saw a tremendous surge in the availability of vapes through places that should have never been selling them—the precursors, if you like, to the situation that we face today with illegal tobacco and vapes.

The experience of those people who were opening those shops was that nobody knocked on their door and nobody visited them and said, "You shouldn't be doing this." There was a little bit of debate about it in the media and so forth, but nothing seemed to stop it and it just grew and grew and grew. I think it's taken the last couple of years for States to start, one at a time, getting their act together and start treating this seriously. It was led by South Australia and Queensland. New South Wales, I'm very pleased to say, has most recently come to the party with the legislative reforms so that we now have weapons-grade penalties and deterrents for people getting involved in this. I'm of course talking about closures; I'm not talking about what was known within the tobacco trade as the tobacconist's long weekend, where they would be closed down for three days. They're now being closed down for three months or longer if the matters go to court. We're talking about total seizures with non-return of all the stuff that's being seized, and we're talking about massive fines.

What we're seeing—and you may have heard this from previous people giving evidence—is that there are huge numbers of prosecutions, and on-the-spot fines are happening in the States that I've mentioned. Yesterday I was on a teleconference and heard that there were 190 shops that have been closed in Queensland. I believe in South Australia the figure is around about 100, and the latest time I looked at the New South Wales one, I think 51 had been closed down there. I live in the inner west of Sydney, and I often walk past these shops. I'm starting to notice them being closed as well. I think this is pretty good.

The final matter I would want to raise is that there are issues in this whole problem that are the responsibility of all levels of government—the Federal Government, State governments, and, I would hope, local governments. I'll start with local governments. Local governments, of course, collect rates and so forth from people who have got businesses. They know every business owner in their municipalities. They know their addresses and they know the buildings that they're responsible for, and therefore those people know who is paying them rent. They know exactly who is operating things because they're in a financial transaction with these people all the time. I had words with Darcy Byrne, who I believe has spoken to you earlier today.

He was telling me he was very keen to get involved because he thinks that these are absolutely lowering the tone of the business districts. A lot of the other shops don't like them. There are insurance issues facing buildings which are adjacent to them if we started seeing all the firebombings and things we've seen, especially in Victoria. The State Government have an awful lot of responsibilities that they can pursue, as we're seeing in the States that I've mentioned, where most of the action up there, if not all of the action, is being driven by State government initiatives. There are many things that we can say about the particulars of that as we go through our evidence.

At Federal level, of course, the main issue is border security. If you look at the figures of stuff which is being seized, it is astronomical in the last 12 months. There's no sign that that's going to abate. I'm not an expert in this area, but my gut feeling is that that's unsustainable for this industry to be losing so much stuff coming in the border, and now it's being taken seriously. The tobacco tax issue is another one. I was sitting in and listening to the previous evidence, and I've written about this extensively in a blog that I publish regularly. If we got rid of

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all tobacco tax, legal tobacco would still be way more expensive than the products which are currently being sold illegally. I'm told that if you buy illegal cigarettes by the carton, you can get them for as low as \$7 per pack.

If you're asking about a low-income smoker faced with the ability to buy a packet for \$7 versus a pack that might cost double that at \$15 or even higher, to me, it's a no-brainer. If you said to someone, "Do you want a \$7 pack or a \$15 pack?" they'd say, "Don't be silly. I would take the \$7 pack." We still don't know how low the illicit products can go. They're still obviously profitable at even \$7 a pack. They may well be able to go down \$4 or \$5 a pack, for all we know. There's no intelligence on this from anyone that I'm speaking to. I'll leave my opening statement at that.

**BECKY FREEMAN:** First of all, thank you so much for having me during what is a very sombre and sorrowful time for our city, State and country. I'd also like to acknowledge the Gadigal people of the Eora nation, on whose lands we meet today. You've heard a few of my colleagues mention their lack of conflicts of interest with the tobacco industry. I would like to do the same, to have it noted that I have never and will never receive money from the tobacco or vaping industry. Another reason this is important and is not just a trite matter is that New Zealand, which is of relevance to this Committee, was prepared to enact world-leading supply-side measures, which included slashing the number of retailers from 6,000 to 600. That legislation was overturned because of interference from the tobacco industry. It is very important that we are transparent about who is influencing our policies, particularly when they have such intense public health implications.

I lead the highly impactful Generation Vape study in partnership with Cancer Council NSW. It is generously funded by NSW Health, the Cancer Institute NSW and the Ministry of Health at the Federal level. This is a fantastic example of how academia, NGOs and government can all work together on a complex problem like vaping and come up with solutions that work for the community and protect young people. I'm very happy to answer any questions about that study. I've heard a lot of fairy tales recently about illicit tobacco, my favourite one being "The genie is out of the bottle," implying that there's nothing we can do. These people haven't read the whole fairy tale. You put the genie back in the bottle by granting three wishes.

My three wishes for this Committee are, firstly, that New South Wales must work rapidly to adopt best practices in tobacco licensing. We're the second last State to get on board with this very basic policy that if you want to sell a highly addictive, incredibly dangerous and highly taxed product, you need a licence to do so. We need to ensure that the system of licensing meets the high standards that are now being set by Queensland and South Australia, and we need to surpass them. Our State should be a leader. We have always been a leader in tobacco control. There is no reason not to continue in this way.

My second wish for this Committee is I would like to see an end to finger-pointing that this is a policing matter, this is a health matter, this is a Federal issue, this is a State issue, this is a local issue, this is a smoker issue or this is a retailer issue. This is a complex public health problem that cannot be solved by three-word slogans or blaming one particular entity or person. I would like to see the removal of barriers to people working together to solve this very important, pressing issue. I'm kind of dismayed how sometimes we are losing sight that the whole reason we have tobacco control is because of how deadly these products are. I would be shocked if there was anyone in this room who hasn't either personally experienced having a family member or a friend who has had their health impacted by tobacco use. It's ubiquitous in our communities, but it doesn't need to happen. This is preventable. We know how to prevent this from happening.

My third wish for the Committee, so that the genie does go back in the bottle, is that we shut down the shops and that we move from this idea that tobacco is an everyday good that should be sold everywhere. I've said this before. When I get off my bus stop to come to work, I glance around and can see seven places where I can buy cigarettes. This is a product that less than 10 per cent of the population uses on a daily basis. We clearly have an oversupply of this product. If you are a shift worker or if you work different hours that are not nine to five—which a lot of smokers do—and you come home at midnight, it's easier for you to buy a pack of cigarettes than a fresh banana or some carrots to eat before you go to bed. It shouldn't be that way. It makes no sense. It's policy incoherence.

We've also heard some myths today that somehow there's a demand for cheap products and that the reason why these are here is because they're being demanded by the community, by smokers. Supply drives demand. These products are oversupplied. They're easily available. Now, with the advent of a burgeoning illicit tobacco—let's call them an industry, because that's what they are. Even if they're organised crime, they are an industry. It is driving demand, and making these products available and enticing. This is taken from the tobacco industry playbook. I think if my three wishes were granted, we would be able to see that this situation we find ourselves in, where our success in tobacco control is being threatened and, frankly, being turned from something that we should be so proud of to something that we're concerned that we can no longer hold dear and hold up for

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the rest to the world—let's not make this a trend. Let's make it a blip. Let's make it so that we can go back to being proud of our success in this area.

**The Hon. STEPHEN LAWRENCE:** Is the rise in the black market—the increase in the percentage of the illicit tobacco market—causing an increase in smoking? That's a question for both of you.

**SIMON CHAPMAN:** That's a popular conception, and people swear black and blue that it must be surely happening. The alternative explanation is that it's simply seeing customers cross the road to get the same supplies. We, in this country, have triannual surveys. The last one was published last year. The next one won't be due for a while. We've got other indexes. In the meetings that I've attended where people have been talking about State-level stuff, there seems to be a small rise. In epidemiology, you never look at a trend by just one data point. There can be a lot of noise explaining that. There can be sampling error. There can be differences in questions asked et cetera. I'm not confident that we are going to be seeing a rise, but I'm very worried that there could be a rise because of the cheap cigarettes. We know that people on low incomes smoke more than people on higher incomes.

**BECKY FREEMAN:** I would just add to that that, yes, we should be ensuring that we're using prevalence data that we can benchmark against previous years, rather than just "I've got a feeling that cigarette smoking is rising." I think everyone who works in this field is very concerned that could be a reality, particularly for that 18- to 24-year-old age group, because they've got two strikes against them. One, they were the first group to begin vaping as teenagers in Australia. We know that teenagers in Australia, from the Generation Vape study, are five times more likely to go on to smoke. They've got that risk attached to them. Now they have this market of cheap cigarettes available to them. Cheap cigarettes are being sold at tobacconists and convenience stores. Young people go out more. They're out in pubs, clubs and bars more. They have more opportunities for social smoking. I'm very concerned that if we do see an increase, they will be the canary in the coalmine. They will be that first group that we will see that in.

**The Hon. STEPHEN LAWRENCE:** In terms of other data on prevalence, accepting that we don't have this year's, since the significant increase in the black market, which I think goes back to the 2016-17 year—probably before that, but the stats I've got suggest a jump from then—has there been any increase in smoking prevalence in any of the previous years?

**SIMON CHAPMAN:** The most recent data from the AIHW showed that the fall between the year before, which I think was 2019, and the one after that, which was 2022-23, was the largest fall that we'd seen. That was flying in the face of that idea that it was driving it. Since that time, the expansion of these illegal outfits has been tremendous.

**The Hon. STEPHEN LAWRENCE:** I asked some questions earlier in the hearing. I'm not sure if you saw them. I asked about if the continual increases in the excise were continuing to suppress smoking. The evidence that we got in response to that question was yes. It had been suggested to me that at some point in the past—I'm not sure exactly when—we'd reached a point where increases in the excise weren't suppressing smoking. I was curious to ask that question. The answer we got earlier was no, that's not correct, and that the increases are continuing to suppress smoking. I'm just wondering how that sits with the apparent evidence that the widespread availability of very cheap cigarettes has not led to an increase. I'm just wondering how those two things fit together.

**BECKY FREEMAN:** Not yet. I want to make it very clear that when the AIHW data—which is our gold standard for "this is the prevalence of smoking in our country" that we can rely on—comes out at the end of this year for our next wave, I am very scared that we could see an increase because of what you've just said. We have not yet. We're researchers. We don't want to be throwing around "probably, could've, should've". We need to have reliable data. For the same reason, I was very relieved to see the Illicit Tobacco and E-cigarette Commissioner has released her report. We now have reliable data about the size of the illicit market. That has been a huge problem over the past year and why we've seen so many fairytales about the illicit market. We haven't had that reliable data.

Like I said, particularly 18- to 24-year-olds are a target of the tobacco industry in general because they're the most likely to take it up, have this influence of vaping already making them more vulnerable to smoking, are price sensitive and are out and about more and are more exposed to cigarettes. I think if we do see an increase, they will be our first group we see it in. As someone who has worked in public health in this field for 25 years, I have to say that's pretty devastating.

**The Hon. STEPHEN LAWRENCE:** I'm not sure who is the right person for this question, so both of you perhaps if you wish. It was suggested by Adjunct Professor Slevin in the session before lunch that the increase in the black market is attributable to the tobacco industry, and I didn't get a chance to ask him about this. I note that he's here. I wasn't sure whether he was suggesting that the tobacco industry is somehow involved in the supply

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chain or driving it. I'm just wondering if you're aware of what he was talking about. I'm sure we all agree that he's very eminent in this area. I just wanted to get some evidence on that issue. What is the tobacco industry doing that might be causally related to the increase in importation and the black market in distribution?

**SIMON CHAPMAN:** I edited the *British Medical Journal's* specialist journal called *Tobacco Control* for 17 years, and in that time we published a number of papers exactly on that issue. These papers were inspired by the frequent observation that there was a big difference between the amount of export volume happening country by country and the amount of import volume happening, so where was the missing stuff going? And the answer was it was going into illicit trade where it's not accounted for in official statistics. At the time, there was a lot of revelation through what was called the industry's secret documents, which were made available through litigation in the United States but they are for all over the world. I had a four-year project looking at Australian and South Asian documents in this area, and there were a lot of documents showing that the big tobacco companies were involved big time in supplying illicit trade. They all had hands on their hearts saying, "That might have been in the past but we would never think of doing such a thing today."

**The Hon. STEPHEN LAWRENCE:** Was that deliberate involvement in the illicit trade?

**SIMON CHAPMAN:** Absolutely.

**The Hon. STEPHEN LAWRENCE:** How is it occurring in the source countries?

**SIMON CHAPMAN:** It usually starts in chaotic countries with high corruption indexes and things like that where it's easy. You go to some countries and illicit cigarettes are just about all that's available. My daughter used to work in Cambodia. We went and visited there and of course I snooped around and looked at all the cigarettes for sale. At the time, I don't think they had any tobacco tax up there. That's sort of common in poor countries. There's a lot of corruption. There's a lot of smuggling. There's a lot of onward smuggling using those countries as halfway houses to smuggle onto other countries and so forth.

If you look at a packet of Manchester or the cigarettes that you can buy, they're beautifully packed. They weren't made in backyard factories by amateurs; they're made in factories that know what they're doing. I think it's plausible. I was shown recently a document that was prepared by the Parliamentary Library in Canberra for a Government Minister, and it was about this very issue. I wasn't given permission to share that document or distribute it, but it was fairly unequivocal that international intelligence suggests that the companies are likely to be still involved in it.

**The Hon. STEPHEN LAWRENCE:** Interesting. I understand that New Zealand legalised vapes I think in 2020. They have a different model of regulation than what we have. I'm told that there has been a bigger decrease in smoking in New Zealand than here. I was wondering if I could have you both just talk about what has been done in New Zealand. Is it analogous? Is it not comparative? Is it useful?

**BECKY FREEMAN:** It's very useful to look at other countries that are similar to ours and learn best lessons. We do the same thing. Plain packaging spread over the globe because we did it here first, so we absolutely should be looking to other countries. I actually have a lot of experience working in New Zealand, having lived there myself, and worked in tobacco control in that country as well. What happened in New Zealand was Philip Morris actually challenged the laws that were in place in New Zealand, saying that the tobacco Act did not cover vaping products or heated tobacco products and therefore did not apply. They successfully won that challenge.

The Ministry of Health in New Zealand was left in a situation where there were no laws applying to vapes at all. I was living there at the time, and essentially what happened was there was a regulatory vacuum where vapes were being advertised on television using influencers—a well-known chef, a graphic designer, someone who worked in fashion, music. It was shocking to me. It was like stepping back in time, because there was just this absence of controls. It was a very useful exercise, in a way, because it showed this is what the industry will do when they say they can self-regulate—when they can say they can be responsible and do their own thing. They will absolutely do exactly what they've always done; they will market to young people using influencers that matter to them.

As that regulatory black hole was filled and some laws were put in place about they have to be sold in this way, this concentration of nicotine et cetera, it was at a point where vaping had absolutely skyrocketed amongst young people. Vaping rates in New Zealand amongst teens are far higher than they are here, particularly daily vaping. Thankfully, daily vaping among teenagers in Australia is still relatively low. That is not the case in New Zealand. I'm very happy to table a study led by one of my PhD students looking at New Zealand data to show how the introduction of vaping in New Zealand decreased the rate of smoking amongst teens in New Zealand. I have a comparable study published in the *MJA* by the same student. It showed the same effect here in Australia, though not as pronounced. The idea that vapes are good news for public health, that they're somehow this technological advantage and that we don't need to do anything in tobacco control anymore because

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we have this secret weapon called a vape ignores the fact that young people have taken this up in droves—young people who never would have smoked, who will now struggle with a lifelong addiction.

Immediate health effects include mental ill health, including anxiety and depression, which we all know is a huge crisis here in Australia as well. Mental health is the most pressing problem young people are facing right now. We also know that the physical effects of that are coming more online as well. COSA, the Clinical Oncology Society of Australia, just two months ago issued a report saying that they feel that the data is warranted now—that they are happy to speak confidently that there is a likelihood that vape use has carcinogenic properties. The idea that we just don't know how harmful these products are and, therefore, we can treat the public like guinea pigs and let them use them is not founded.

**SIMON CHAPMAN:** There's another problem with just cherrypicking a particular country like New Zealand. I think it's always wise to look at a whole range of countries where they have comparable models of selling vapes. In the UK, in the USA and Canada, they have far more liberal policies of selling vapes, availability of vapes, than we do in Australia where, in principle, they're only legal through pharmacies. In each of those countries that I've named, the smoking prevalence is, with the exception of New Zealand—where you rightly point out that it is lower across the whole population—higher than it is in Australia. So every time I get into a debate with an individual saying, "Look at New Zealand," I go, "Well, why not let's also look at England or Canada or the United States, where it's not lower than it is in Australia and where the streets are awash with vapes?"

**The Hon. NATASHA MACLAREN-JONES:** My first question is to Professor Chapman. In your submission, at page 12, you refer to a stand-off between Health staff and police tackling illegal tobacco. We heard this morning about the taskforce that's been set up and, in particular, an MOU that's now been established. I'm interested to understand some of the cultural barriers and whether it's regulatory changes that are needed—I'm sure both of you will be able to comment on that—or whether it's all been resolved now with this taskforce.

**SIMON CHAPMAN:** I wrote that submission in July, I think it was. There have been some big changes happen since then, and I'm very pleased to see those changes. Kerry Chant, who I speak to reasonably often, has assured me that things are much, much better. I think we saw the same thing with the reluctance of police to get involved in other social problems such as domestic violence, smoking in cars—they didn't want to touch that for a long time. There are other ones that have escaped my mind. But I think that the problem has been—a good friend of mine was the head of a public health unit, and he said his staff were afraid to go into shops where there was a criminal kind of overlay that these are probably owned by criminals and run by criminals. They didn't want to do that, and so he said, "Well, I won't allow my staff to do it." I don't think he was Robinson Crusoe in that. I think that things have changed now. When you look at the reporting that's online—I think it's changed every Friday—it's going up substantially each time I check in and see what's going on there. Whatever is happening is working, I think. Whatever is changing is working, I should say.

**The Hon. NATASHA MACLAREN-JONES:** That leads me to the second point that you raised in that section, which was around the variation of how Health investigates, and there's a disparity between areas. Could you elaborate a little bit more on that and, again, whether or not you think this taskforce and the additional staff through the centre are addressing it, or is it too early? I'm happy to hear both views.

**SIMON CHAPMAN:** I think the most meaningful thing I can say is that the concept of best practice is common to all areas of health and medicine, where we look at who's getting the best results for whatever the problem is—who's got the best strategies, the best systems approach to things. In this case, nobody is doubting that Queensland and South Australia have led the way. South Australia is probably a more simple place to operate such a thing because of the sparseness of population outside the Adelaide conurbation. But in Queensland, there are populations—cities all up and down the coast and inland and whatever, and yet they've managed to get their act together really well. As I've said—and I don't want to repeat myself too much here—I think New South Wales is well on the way, and I had a talking point here to come in and congratulate the New South Wales Government on what they're doing.

**BECKY FREEMAN:** I would just add—like Simon, I've been working in this field, not quite as long as him but a long time, and I've never been in a meeting with someone representing the Police Force, ever. Just last week I was in WA, attending an event put on by the Australian Council on Smoking and Health, who is going to appear at this hearing next. I sat next to the police Minister for WA, and that was a first for me. It was a real green flag to show this is a matter that has now got attention outside of health—that it is going to have all the partners sitting at the table, and that's really positive, rather than a resistance to being involved.

The other point I'd like to make is Queensland is getting overly mentioned at this hearing. We need to catch up to them, of course, but credit where it's due. Queensland has hired quite a large workforce to help with enforcement. Several of the people in that workforce, is my understanding, are former police officers as well,

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which I think is fantastic. That's building that capacity. It's going to open those dialogues as well. I think that's a very good move. A colleague of mine had a friend come to stay over the weekend from the Gold Coast, and this is just following the raids we've seen in Queensland. She actually stocked up on cheap cigarettes while she was here in New South Wales, because she can no longer buy them on the Gold Coast. So this is possible. It is possible to get this under control.

**The Hon. NICHOLE OVERALL:** Obviously there's no doubt—there's no contention otherwise—that it is a serious public health issue. We can't afford not to be addressing it in a proactive and constructive way, because that will only incur additional costs moving forward, let alone when it comes to the area of crime as well. But can I just clarify some of the points that you were making to Mr Lawrence's questions. Your view is that increasing the tax—and I believe one of the other submissions mentioned that currently that's at about 80 per cent, but correct me if I'm wrong. I think it's WHO, the World Health Organization, recommends the level at about 70 per cent.

**BECKY FREEMAN:** We're not quite at 80 per cent yet but, yes, point taken.

**The Hon. NICHOLE OVERALL:** That's correct? That's what that threshold is?

**BECKY FREEMAN:** Yes, correct enough.

**The Hon. NICHOLE OVERALL:** But your assertion is that increasing the tax has had no effect, and it's all the tobacco industry propagating the illegal trade?

**SIMON CHAPMAN:** No, I think you've misunderstood—

**The Hon. NICHOLE OVERALL:** So you believe that the tax has had an effect?

**SIMON CHAPMAN:** The activity—it's a supposition, of course, that it is big tobacco companies behind this. But it's a supposition that's grounded in the history of their involvement, the demonstrated history of their involvement in it. They are trying to do whatever they can to counteract the effects of tax. Every year throughout my career, at pre-budget time, the tobacco companies plead with the government to not put the tax on cigarettes up, and yet they do, every time.

**The Hon. NICHOLE OVERALL:** I get it. Obviously, they're going to know in their factoring that that's going to continue. There's no suggestion that it's not. Just for my own mind, just for the argument—and not suggesting that it's not something that does need to be addressed and looked at—if that supposition holds true, that it is the tobacco industry that is propping up the illegal tobacco trade in order to avoid or bring attention to the tax, why would they bother? Because, clearly, the illegal tobacco trade is proving far more lucrative to them in the current circumstances.

**SIMON CHAPMAN:** We don't know what their margins are. I have no idea what the take to the retailer and to the manufacturer is. They don't declare it. They don't go to conferences and show the graphs and so forth. We do that from public data with legal cigarettes, of course; there's plenty of data about the impact of tax. The World Bank did a major report on it quite a long time ago now. It's now at a point that's really beyond debate about the relationship of the price of cigarettes, largely tax driven but also by the companies using tax rises as air cover to quietly increase their own margins as well. They will often come out and trot out welfare workers saying, "I've got clients who are suffering. They can't put food on the table because of the cost of cigarettes." At the same time, if you do purchase studies and then look at the margins for the retailers, the manufacturers and the Government's tax, the people who are retailing and the people who are manufacturing are quietly sticking their margins up as well.

**BECKY FREEMAN:** I'd just add that I think we have an oversupply of tobacco products in this country.

**The Hon. NICHOLE OVERALL:** But what has led to that?

**BECKY FREEMAN:** I'm about to get to it. We have what I will term "the tobacco industry", as we will call them, the multinationals—British American Tobacco, Philip Morris, JTI. But there is also now a tobacco industry operating in Australia that is feeding the illicit market. To me, if you want to call it a new kind of industry, it's the same product, it's the same tactics. It's selling cheap, addictive, highly dangerous products to vulnerable people, and doing that in broad daylight, I might add, in shops where people are supposed to be able to go and buy fresh fruit and vegetables.

**The Hon. NICHOLE OVERALL:** Let's look at a couple of solutions then. Your recommendation 3—I think it's yours, Professor Freeman—reducing the number of tobacco outlets across New South Wales, I think it was Professor Chapman who talked about councils. Now, councils and Local Government NSW are suggesting that they could potentially be doing more, and also stated that they don't have a clearly defined role at this point in time when it comes to how we might further enact a plan in this regard. Theirs is based on the potential

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opportunity for development application approvals to assist in minimising those sorts of proposals that could come forward. Now, the Government has essentially sent them a letter saying, "No, we can't see that that would be a policy lever that would achieve anything." What's your view on that?

**SIMON CHAPMAN:** The most obvious thing that I can think of that local government can do—I mentioned before that they have intelligence on rates. They collect rates. Public health officers could go around doing shoe leather counting of the number of tobacconists. They can then look at the list of licensed tobacconists and go, "Look, here are a whole lot of shops which don't appear on the list of licensed tobacconists who are selling tobacco. They're doing something illegal."

The law now in New South Wales is that landlords can be fined big money for allowing illegal tobacco trade to occur in premises that they own. So what would prevent State government authorities saying to each local government authority, "We'd like the names and addresses and contact details of"—

**The Hon. NICHOLE OVERALL:** There could be privacy issues around all of that, potentially, that would need to be addressed.

**SIMON CHAPMAN:** If I could go to that, suppose these criminals who are doing this with tobacco decided, "We got away with it with vapes and we got away with it with tobacco. How about we take prescribed pharmaceuticals that you can only get from chemist shops, and we open up shops so you can go and get your antibiotics, your Ozempics, your Viagras and whatever, no questions asked, across the counter." They would be closed down in a nanosecond. The same thing would apply if people started selling liquor out of corner shops. That would not be tolerated and, dare I say, if the same thing happened with firearm sales, that would not be tolerated. Somehow, with tobacco, it's "Oh, it's just tobacco. It's too difficult—privacy concerns."

**The Hon. NICHOLE OVERALL:** There would also potentially be, when it comes to councils, funding and financial pressures, additional to what they're already facing, that would have to be addressed in that. But coming to a point, finally, about funding, isn't one solution that does need to be more elevated and really prioritised as a top-level solution that there is more funding needed for quit programs, education and greater awareness? That is, you would think, a solution that would be immediately obvious and easier to address from tomorrow.

**BECKY FREEMAN:** To address your first point, I didn't get a chance to say my third wish about shutting down the shops. I think that we don't want this to be slow, to only apply to new premises or to be a cap. This has to be about—like they did in New Zealand—modelling. They said, "We have 6,000. In order for this to have an impact on prevalence and consumption, we need to chop that by 90 per cent. We need to get to 600 shops." We should be doing that same work here and asking how many shops. Is it "enough"? We don't even know what the real number is in New South Wales right now. It looks like 6,500 retailers have applied for a licence and been granted one, but I know there are thousands of other retailers who are in the process of still applying and still being granted. That's what I mean by shutting the shops. This is not a slow trickle or suppressing a few shops in a local area.

The other point I would make about funding—I would agree that we either have to pay now or we're going to pay later. There's no time where we won't pay, because the health and social costs will be tremendous if our smoking rates continue to go up. I don't want to introduce a new policy at this point, but I know that Canada, for example, has enacted a cost recovery scheme where the tobacco companies will be paying a bill for the first time, later this year, that has to cover the tobacco control costs for Canada. That includes campaigns. That was enacted by regulatory measures at a federal level in Canada. I think it's fantastic. It's a great idea, and it's a fantastic source of revenue to pay for the things that you were just talking about.

**The Hon. STEPHEN LAWRENCE:** If there was a decrease in the excise that reduced the differential between legal and illegal, and that reduced the share of the market that was illicit, that would be of benefit to the tobacco industry because it would push more of the market into the legal. I want to ask you whether there might be any truth to this proposition: Public health professionals might be reluctant because of longstanding and very virtuous positions that you have against big tobacco. Is there any truth to the suggestion that some of you might be reluctant to embrace policy proposals endorsed by big tobacco that might actually assist to reduce this black market?

**SIMON CHAPMAN:** If the differential still existed. I mentioned in my opening remarks the case study of someone who's saying, "Here is an illegal shop where they're \$7 a pack, and here is a tax-reduced legal pack where they're \$22 or \$15, even." Which one are you going to buy?

If you go back to the days when there was not much of a black market, you looked at the fierce competition between the three tobacco companies to get market share. They would kill for half a point differential and that's far, far less than what we're talking about with consumer behaviour—\$7 versus \$22. So I just don't accept that you can take half-measures here. There is one commentator in this area, a guy from Deakin University,

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who actually told *The Straits Times* a couple of weeks ago that the Government should perhaps abolish all tobacco tax in an attempt to sort of drive the black market out of town. Then he said that this would help the Government get money back through tobacco tax, which he'd forgotten that a sentence ago he'd said that all the tobacco tax would be abolished. So the absurdity of some of the argument around is staggering, frankly.

**BECKY FREEMAN:** I've been told I'm obsessed with the tobacco industry. I'll try not to be insulted by that. But I'm actually obsessed with not allowing corporations to profit off death and disease. Fool me once, shame on you; fool me twice, shame on me—whatever the expression is. We have been fooled so many times by this industry. Their latest claim is that the only reason they want to sell vapes and heated tobacco products is because they care about middle-aged smokers who aren't able to quit. Yet they turn around and market a brand new product—nicotine pouches—to young people. I don't understand why I'm being compelled, "Well, maybe you should just hear what they have to say." They don't have a track record of honesty or transparency. If they could fix that track record somehow, magically, and be as transparent and open as everyone else who has appeared on this panel has been so far, then perhaps I might be willing to listen, but I cannot see that day happening.

**The CHAIR:** Thanks very much for your evidence today. Thanks very much for coming.

**(The witnesses withdrew.)**

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**Ms ANITA DESSAIX**, Director, Cancer Prevention and Advocacy, Cancer Council NSW, sworn and examined

**Ms ALECIA BROOKS**, Manager, Tobacco Control Unit, and Chair, Tobacco Issues Committee, Cancer Council NSW, affirmed and examined

**Ms LAURA HUNTER**, Chief Executive Officer, Australian Council on Smoking and Health, before the Committee via videoconference, affirmed and examined

**Mr MARK BROOKE**, Chief Executive Officer, Lung Foundation Australia, before the Committee via videoconference, affirmed and examined

**Mr SIMON COWIE**, New South Wales General Manager, the Heart Foundation, affirmed and examined

**The CHAIR:** Would any of you like to start with an opening statement?

**ANITA DESSAIX:** Good afternoon, Chair and Committee members. I begin by acknowledging the traditional custodians of the lands that we're meeting on, the Gadigal people of the Eora nation. I pay my respects to their Elders past and present. We thank the Committee for the opportunity to appear before the inquiry. I am here today on behalf of Cancer Council NSW, along with my colleague Ms Alecia Brooks. As you will have heard earlier today, Australia is a signatory to the World Health Organization Framework Convention on Tobacco Control. Article 5.3 of the convention requires governments, including Parliament, to shield health policy from the vested interests of the tobacco industry and its affiliates. Article 5.3 makes it clear that industry has no role to play in developing or determining tobacco control policy.

To uphold that obligation, we respectfully request that any witnesses appearing before this Committee declare any direct or indirect conflicts of interest relating to support from entities involved in tobacco industry, production, distribution or sale. On behalf of Cancer Council, we have no conflicts of interest to declare. Cancer Council NSW is the leading cancer charity dedicated to reducing the impact of cancer. Alarming, two in three people who smoke will die from their addiction to tobacco, making it the deadliest consumer product on the market. Tobacco kills 66 Australians every day and two-thirds of people who smoke want to quit. Tobacco smoking also imposes significant economic and social costs on the health system and the wider community, estimated at about \$155 billion.

We have made excellent progress in reducing tobacco use over the past 20 years, with just 7 per cent of adults in New South Wales now smoking every day compared with 17 per cent in 2002. We want to see this downward trend continue. There are, however, disparities in tobacco use. Twenty-one per cent of Aboriginal adults still smoke every day, reflecting ongoing impacts from colonisation that entrenched tobacco use. To continue to drive down smoking rates in New South Wales, we must remain committed to comprehensive tobacco control action as outlined in the NSW Tobacco Strategy.

We must prevent young people from starting to smoke as well as support people to quit. Much more must be done to reduce the supply and availability of both legal and illegal tobacco. Easy access to cheap, illegal tobacco risks increasing smoking uptake amongst young people, making it harder for people to quit, and widens the socio-economic gap in tobacco use. There is a clear role for the New South Wales Government in regulating the wholesale and retail environments and ramping up compliance and enforcement action. Cancer Council NSW welcomed the recent introduction of a positive licensing scheme for tobacco sellers in New South Wales, something we have advocated for over the past 10 years.

We also commend recent New South Wales Government efforts to specifically address illegal tobacco, including establishing a multi-agency taskforce and introducing temporary closure orders, increased fines and penalties and landlord provisions. I close by saying that further declines in smoking can only be achieved through preventing young people from starting, keeping ex-smokers quit and supporting people who currently smoke to quit. We are happy to answer any questions from the Committee, referring to our submission to this inquiry and the recommendations we have made.

**SIMON COWIE:** I also thank you for the opportunity to address the Committee, and I also would like to acknowledge the Gadigal people of the Eora nation, on whose lands we meet today. I appear today on behalf of the National Heart Foundation of Australia, which for over 65 years has worked to prevent heart disease and improve cardiovascular health in New South Wales. The Heart Foundation urges the Committee and the New South Wales Government to uphold article 5.3 of the World Health Organization Framework Convention on Tobacco Control by ensuring all interactions are transparent and by rejecting the data, funding and influence of the tobacco industry and its allies. I would like to affirm that I have no conflicts here today. The Heart Foundation does not have any relationship with tobacco companies.

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Cardiovascular disease remains a leading cause of death in our State, responsible for more than 15,200 deaths in 2022, almost a quarter of all deaths that year. Tobacco smoking dramatically increases the risk of heart attack, stroke and sudden cardiac death. People who smoke are 2½ times more likely to have a heart attack and three times more likely to die from heart disease compared to non-smokers. The illegal tobacco trade poses a direct threat to public health. It undermines decades of effective policy that has reduced smoking rates and saved lives. Cheap, unregulated tobacco products make it harder for people to quit and easier for young people to start, risking a new wave of preventable cardiovascular disease and placing further strain on our healthcare system.

Addressing illicit tobacco is not just a matter of law enforcement; it is a critical public health priority. Curbing the flow of illegal tobacco demands a combined strategy that brings together all tiers of government to tighten laws, boost enforcement and reduce consumer demand. Interventions must span the entire supply chain, from border controls and distribution networks to wholesalers, retailers and individuals.

**LAURA HUNTER:** Thank you, Chair and Committee members. I'd like to begin by acknowledging the traditional owners of the land I'm joining from today, the Whadjuk Noongar people here in Boodja-Perth, and pay my respects to Elders past, present and emerging. In line with our recommendation within our submission for transparency of funding, I would like to declare that ACOSH has never provided nor received services, assistance or support, directly or indirectly, from the tobacco, vaping or nicotine industries. That independence matters deeply to us. ACOSH exists for one reason only, and that is to protect the community, and Australians more broadly, from the grip of addiction and the enormous harm it causes.

I'm here today on behalf of the Australian Council on Smoking and Health, Australia's leading tobacco control advocacy organisation, representing 33 leading health, research and education organisations across the country. Our council is deeply concerned about the illicit trade of tobacco and vapes across Australia. Tobacco kills 66 Australians every day. We've made remarkable progress in this area, but that is now being actively undermined by the illicit market. We have been advocating for a number of reforms that we know will go a long way to addressing the illicit tobacco issue. One of these reforms, which is relevant to this Committee, gets to the issue of enforcement and how difficult this can be in the current tobacco retail environment.

Right now, 8 per cent of Australians smoke daily. That 8 per cent is serviced by more than 40,000 tobacco retail outlets across Australia. To put that in perspective, we have roughly 7,000 petrol stations serving about 70 per cent of Australians who drive petrol cars and fewer than 3,000 major supermarkets supplying 27 million of us with essential food. While far fewer people smoke today, tobacco remains one of the most widely available, addictive and deadly products in Australia. It's more available than fuel, alcohol or basic groceries like bread and milk. No other legal product that kills two in three of its long-term users is sold on almost every street corner. If we are serious about tackling illicit trade and protecting community health, that imbalance has to change. I'm very happy to expand on this concept and, in particular, how we can address this imbalance. In the interest of time, I'll leave my opening statement there. I am very happy to take any questions.

**MARK BROOKE:** I, like my colleagues, acknowledge the traditional owners of the land in which we meet today. For me, I'm in Brisbane on the lands of the Turrbal and Jagera people. I pay my respects to any Aboriginal and Torres Strait Islander people and colleagues. The Lung Foundation Australia is the leading national lung health charity. For over 35 years we've supported Australians living with lung diseases created by tobacco addiction. One of the things I'm very clear about in presenting to your Committee today is that we are not about to demonise individuals who are addicted to a drug. It is very important that we raise our gaze in terms of talking about those that are profiting from the ill health of our fellow New South Wales people and Australians.

I won't regurgitate the statistics that my colleagues and other witnesses today have provided, but I also want to make sure that, under article 5.3, you understand that the Lung Foundation does not accept funding from tobacco, vaping or nicotine product providers or suppliers. Whilst we are government funded by both Federal and State and Territory governments, we've arrived at an independent, evidence-based perspective. One of the points I would make is that the Clinical Oncology Society of Australia has recently handed down a very definitive health impact statement on nicotine, e-cigarettes and vapes. For those of you that aren't aware of COSA, the Clinical Oncology Society is our nation's leading cancer doctors. It said:

Nicotine-based e-cigarettes are likely to be carcinogenic to humans who use them. E-cigarettes are likely to cause lung cancer and oral cancer.

I think that's an incredibly important consideration for your Committee. As you've heard, two in three long-term users of traditional tobacco products will die prematurely. The point that we would make, as we did in our submission, is that the illicit tobacco trade will undo decades of public health benefit as a consequence of having a national focus in and around the reduction of use of tobacco. That's going to happen because of two things: People will continue to smoke because of the cheap availability of these products, or a new generation will take it up. It is as simple as that.

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No discussion or debate about the excise will balance the ledger in terms of the true cost of smoking-related illnesses and how much that is going to cost the economy, not just today but in the decades to come. We absolutely commend the bipartisan approach to tobacco control that's being seen in New South Wales and around Australia. Illegal tobacco, vaping and nicotine products are a serious threat that we need to understand in the context of people's behaviours. We strongly suggest that measures are enacted with immediate effect to strengthen your legislation, so that all tobacco and vaping products, whether legal or illegal, are understood for the harmful impact they have on human health. Our recommendations are very clear.

If I was to register my car in New South Wales, it would cost me about \$1,000, on average. To achieve a tobacco licence costs me \$1,100. As Ms Hunter has already pointed out, the oversupply of tobacco in the community, whether legal or illegal, should be actively debated by this Committee. We want to see a reduction in the number of venues through enforcement and winding back of licences between now and 2030. The Lung Foundation is very clear that a 50 per cent reduction is absolutely possible to continue to support those that choose to smoke or are addicted to tobacco products. We want you to continue to strengthen penalties for licensees found to be selling illegal tobacco products. I make the point that once you've been identified and fined, your next licence should not be coming automatically to you, and should come with a substantial penalty, as a good citizen. We would recommend a penalty of \$50,000 to apply for a new licence if you've had your current one suspended.

We ask the New South Wales Government to not fall into the trap of arguing about price differential on tobacco excise and continue to support that excise. I've heard witnesses before us talk to this issue, but I think there's a very commonsense analogy here. Dropping the tobacco excise by \$20 to \$30 will not be price matched by the organised crime gangs that are selling these products. A year 8 economics student will tell you that. The price difference is now far too high. We also note that we need to do much more to strengthen our quit programs, including, as Queensland is now doing, offering free nicotine replacement therapy to those that are seeking to quit. I'm really happy to answer any questions about our submission.

**The Hon. STEPHEN LAWRENCE:** Ms Hunter, I go to your submission on page 4, the first paragraph under the graph, which is a really helpful graph. It states:

One of the most powerful drivers of Australia's success in reducing smoking has been the steady increase in the price of tobacco.

I'm far from an expert in any of this, but I understand that in 2010 there was a very substantial increase to the excise, and I understand that in recent years there has been a very significant increase in the black market, which has led to the availability of much cheaper tobacco. I understand it's now around the point where half of the market is illegal and therefore much cheaper. In terms of those two events, the 2010 increase and the black market explosion—and I note your stats here and in 2022-23—I'm struggling to extrapolate from that graph that there has been a relationship between price and prevalence of smoking. Are you able to speak to that?

**LAURA HUNTER:** Yes, absolutely. I think I can speak to it a little bit more broadly. The price is one factor of a comprehensive approach that has resulted in reductions in the prevalence of tobacco use in this country. It's a very important factor and it's one that we don't want to play around with.

**The Hon. STEPHEN LAWRENCE:** It's described in your submission as the most powerful driver.

**LAURA HUNTER:** I would agree with that. Absolutely I would agree with that. The evidence shows that.

**The Hon. STEPHEN LAWRENCE:** I'm particularly interested in how, if it's the most powerful driver, is there no discernible impact on prevalence from 2010 onwards and then around the more recent years in terms of the black market, which has led to much more widespread availability of cheap tobacco. I just want to directly ask you: How do those two things fit together.

**LAURA HUNTER:** I'd say it's one of the most important factors, but I would say, in isolation, I would talk about it in the context of a comprehensive approach. In the context of the tax and the excise and the discussions that have been happening via this Committee today, I would be saying the outcome is the biggest most important factor when we talk about this excise. If the excise was cut down to almost nothing, then what we do know is that the major tobacco companies would be benefiting from that. Those people who currently use very cheap brands manufactured by small players in Asia and eastern Europe might return to brands produced by the major companies, so tobacco industries recover customers.

People who still smoke legally supplied tobacco would smoke greater quantities of legally supplied tobacco because it would be cheaper, meaning that you would have more sales among existing customers of the tobacco industry. Reducing the tax should reduce the wholesale price for which companies sell tobacco products to wholesale retailers. However, there's nothing stopping the tobacco industry from retaining some or all of the wholesale price of products, even though the tax has gone down, so they increase their margins. Also, higher consumption would reduce quitting and that would prevent future loss of customers. We're looking at a simple

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equation and formula here when we talk about the tax and we talk about health being at the centre of the illicit trade issue, more customers, times greater volume of purchases, times increased margins, equals higher profits. Increased addiction means the sustaining of those higher profits in the long term.

**The Hon. STEPHEN LAWRENCE:** But if, for example, this Committee recommended that there should be a 30 per cent reduction in the excise because we've formed the view that that would contribute to reducing the differential and therefore contribute to reducing the black market—I'm struggling to see how that would lead to an increase in smoking in circumstances where the very significant hike in 2010 doesn't seem to have led to an increase and the explosion in the black market, on the evidence before us, is yet to be proved to lead to an increase in prevalence. I'm just struggling to see how your last answer is not based on the same assumption that I suppose I'm sort of testing, which is the fundamental relationship at this stage between price and prevalence. I'm not suggesting that there is no relationship between price and prevalence, but I think what I'm asking is based, maybe, on a possible assumption that at some point in the past we reached the point where price increases were no longer impacting prevalence.

**LAURA HUNTER:** It's my understanding that the prevalence did drop between 2010 to 2022.

**The Hon. STEPHEN LAWRENCE:** It certainly did, but not in a way that is inconsistent, for example, with the previous decade, but it might be a less sharp drop. I'm not sure. It's your graph, on page 4 of your submission.

**LAURA HUNTER:** Yes. I would say that reducing it by 30 per cent, if I was thinking about the consumer's perspective and if they're choosing to purchase an illicit product, the reduction in legal tobacco by 30 per cent—I'm not sure. I don't have any evidence to suggest that that would result in them choosing to purchase the legal product as opposed to the illegal product. If you were to talk about that in the context of changing behaviour, you would be looking more at reducing it altogether and getting rid of the tax altogether, which fundamentally would result in increases in prevalence of tobacco in this country.

**The Hon. STEPHEN LAWRENCE:** I think that might though, mightn't it, be to create a sort of binary of absolutes that you can only impact behaviour by going all the way to 100 per cent and completely reducing the differential. I am more interested in whether you actually might be able to somewhat impact on the problem through some reduction of the excise, which reduces the differential. I think the size of the differential, not the mere fact of a differential, has to be relevant to what produces the tendency for a black market. We took evidence this morning that it is a multifactorial thing: There is no one, absolute answer. I am keen to know whether the reduction of the differential is being opposed by a lot of public health professionals not because it might not make some contribution to eliminating the black market without unduly affecting public health, but is being opposed because it might benefit the tobacco industry. Speaking for myself, I'm more interested in the elimination of social harms and the maintenance of public health rather than what directly benefits the tobacco industry or the illegal market. I am more interested in the former.

**ANITA DESSAIX:** I might be able to comment on that, if that is okay, just to add to what Laura has responded to already. Again, I'm obviously speaking from a public health and a Cancer Council NSW perspective. I say this from the perspective of someone who has worked in tobacco control for the better part of 20 years. Our own evidence and our own track record has demonstrated that three of the most impactful policy measures that have driven down smoking rates have absolutely been price, public education campaigns—education campaigns that do remind consumers of the health harms of smoking—as well as expanding smoke-free environments. To the point that Laura Hunter is making, it is a comprehensive approach that has successfully driven down smoking rates in Australia as well as prevented the uptake of smoking amongst young people.

The other point that I will make—and it's a very important one to remind the Committee of—is that we do know that most smokers want to quit. The two key reasons that they cite as motivation for quitting is, firstly, price as well as health. If we're considering, and certainly not from our perspective—we do support and do recognise that price has played an incredibly important role in driving down smoking rates. This isn't about, in principle, opposing the tobacco industry. I remind the Committee that we have very clear views that the tobacco industry has no role to play in dictating tobacco control policy. This is about looking at Australia's track record and what has proven to be effective. Price has proven to be effective. We are supportive of sustaining what has been proven to be a very effective policy measure for Australia.

**The Hon. STEPHEN LAWRENCE:** I think—

**The Hon. NICHOLE OVERALL:** Mr Lawrence, can I just quickly make a point on that?

**The Hon. STEPHEN LAWRENCE:** Sure.

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**The Hon. NICHOLE OVERALL:** Sorry to interrupt. Backing what Mr Lawrence is saying, and also acknowledging and hearing what you are saying, if we try to go backwards with this, if we make legal tobacco too cheap—that is, the tax—then that could continue to exacerbate the problem. I think the point that Mr Lawrence is making, and that I am making as well, is that we were clearly at a point that the balance was right when it came to that price point. You were achieving the goal that you were rightly trying to secure, which is a decrease in smoking rates. That was demonstrated over an extended period of time. Now that has been flipped on its head, and we're doing the opposite. We've gone over the cliff. You're probably quite right in terms of—can we get back to that? No, not necessarily. Should there have been more analysis and research about what that point was rather than a sledgehammer approach and just continuing to increase the tax until we've seen the results that we are now seeing?

**ANITA DESSAIX:** I disagree that what has been applied is a sledgehammer approach. I would also point to the fact that at no point can Australia pick a time point in the past and say that at that point in time we got it right in tobacco control, and therefore rest on our laurels. We certainly have heard, from Professor Freeman, about the fact that we do have an industry which has continued to evolve in its tactics to try and sustain the next cohort of smokers, in terms of young people. Price and increasing price have continued, for the better part of the past 10 years, to have a really important role in driving down smoking rates, as evidenced by data that still demonstrates that most Australian smokers do cite price as being a critically important reason to motivate them to want to quit, and we want to support them to quit.

**The Hon. NICHOLE OVERALL:** We do want to support them to quit, but I think that there's still this balance—this point at which we've somehow now gone to the opposite of what our goals and ambitions are in that regard.

**The Hon. STEPHEN LAWRENCE:** We've taken a fair bit of evidence about how the enhanced enforcement measures might stop shops operating. Obviously, shops operating is really important because people walk or drive past them and see them, and that can be a brand advertising of tobacco. I'm interested in your thoughts on, if we suppress shops and we drive shops away through a combination of local government, State government and Federal measures, is there a risk that the illicit market will move online, where lots of us live all the time and get as much advertising as we do through walking down the street? Is there a risk that that market will move online or more online? I think it's already online. If people move into a situation where they're ordering their illicit cigarettes online, how are we going to tackle that? I'm just wondering, if we put all this pressure on shopfronts, is that really going to reduce the illicit market? Maybe we'll start with you, Ms Dessaix.

**ANITA DESSAIX:** It's a great question, and I agree that that is definitely a risk. Something that we've certainly highlighted in our submission is that enforcement is key here. I suppose if I was to point to a recent example in terms of e-cigarette and vaping products, I will say that obviously online as a method of acquiring e-cigarette products was certainly an avenue and something that New South Wales experienced. But, equally, we did say that there is a huge role that traditional bricks-and-mortar stores play in certainly making those types of products highly available. I am agreeing with you. I think that that is a risk. But I will also say that that's where we need enforcement and looking at ensuring that the New South Wales Government is working very, very closely with the Australian Government in a comprehensive approach to tackling illicit tobacco as a problem.

**ALECIA BROOKS:** To complement what Anita has said there, the Generation Vape study asked young people where they bought their products from and, overwhelmingly, the highest number were still buying them from bricks-and-mortar stores. That's despite that legislation coming in. We've done this before in a different area, and we haven't seen that huge surge towards the online environment. It's particularly important, though, that we monitor and we continue to monitor that space so that it doesn't then become another channel for use.

**The Hon. STEPHEN LAWRENCE:** The questions I asked Ms Hunter before were in relation to a graph as to prevalence of Australians who smoke on a regular basis. There's also a question about how much smokers smoke, and I'm wondering if this black market has impacted on how much people smoke. It might not have impacted on prevalence as to who regularly smokes, but are people who regularly smoke smoking more because it's cheaper, and is that causing more cancer and more other illnesses?

**ALECIA BROOKS:** I think we can all safely say that there is no safe level of consumption around cigarettes. We can definitely take that question on notice and provide the National Drug Strategy Household Survey data that shows where people are purchasing their products and consumption habits. That's something that we'll continue to look at over time. You can imagine that smokers will purchase more and will use more. They will also use tobacco differently as a result of the price as well. That's something that we can definitely come back to you on.

**The Hon. STEPHEN LAWRENCE:** That's really helpful.

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**Ms CATE FAEHRMANN:** I'm not sure who to ask this to, but I think people are just lobbing it out there and you're all jumping in when you want to. It was said before that if we reduce the excise, it will lead to basically more people smoking at some point. If we try to deal with this illegal market in some ways—like trying to clamp down on it in a way that, frankly, may be more impactful than trying to stop all the tobacco coming through the borders and what have you—then smoking would increase a bit.

I just wanted to ask about what we're prepared to tolerate for the other potential benefits of people being able to be—it's like the illegal drug thing, if you like—more open about the fact they smoke, access and possibly better products. Because I'm listening to all the witnesses today, and there's no way that the illicit tobacco market is going to take a massive hit. It's like a lot of people have discovered it now in terms of being able to buy their cigarettes cheaply, as well as vapes. I think this whole focus on trying to stop people accessing those vapes in stores—it's interesting, to be honest, to hear that we all think that that's actually going to be possible.

I just wanted to know, from the public health perspective—from your perspective—why aren't we able to tolerate a little bit more smoking? It's terrible. Both my parents died of cancer—heavy smokers. I hate it so much. I get it. But why is that the most important thing at this point? Isn't it trying to stamp out this illegal market by being a bit more clever with them? I support a reduction in the excise, because it's really clear that that is what is driving people to buy things more cheaply. My last thing, it also correlated with the change in the status of vaping. I think that combined was a perfect storm: the cost of living, the high excise change and people trying to seek illegal products. Why are we obsessed with trying to keep the smoking limit at the lowest it can possibly be when there are all of these other terribly negative effects now as a result of that?

**ANITA DESSAIX:** I'm happy to make some really brief comments. I can see that Mark has got his hand up. I think from my perspective, a couple of quick things—I'm certainly obsessed with trying to reduce the impact of cancer in New South Wales, first and foremost. Australia has set a target to reduce smoking rates to under 5 per cent by 2030. That is a nationally agreed target, and we are certainly right behind that pursuit of trying to reach that target that has been set by Australian governments. Again, I will reiterate that most smokers do want to quit. So anything more that we can do to help smokers to want to quit—this is something that we're not imposing. Most smokers want to quit, again, for both price and health reasons.

My last comment before I hand over to Mark is just to say that the reforms that we've seen introduced by the New South Wales Government this year are still fresh. Despite the fact that Cancer Council has called for a New South Wales tobacco retailer licensing scheme for the better part of over a decade, it is still really new. I think I would be cautioning against throwing our hands up and saying it's not working and we should do an about-face. It's still new. I think that we would want to see it bedded down and ensure that that policy is given a chance to be implemented to its fullest extent to succeed. That requires strong enforcement and, obviously, making sure that we are seeing retailers comply with the laws that have been introduced.

**MARK BROOKE:** It's a very good question. As you heard me say, we don't seek to demonise individuals who are addicted to tobacco. But you need to know that it's not binary either. I'm not hearing other committees suggest that we reduce speeding fines as a concept or we reduce speed limits in school zones, because that's something no-one is suggesting. I say this with some trepidation: Tobacco excise is a Federal matter, and it will be up to the Federal Government to make that decision. Certainly, any reduction, or any suggestion that you're making, would be an outlier against the evidence of reduction of tobacco usage in Australia.

The other point that I think is really important is that we actually need to examine the health system cost of continuing smoking. As you say, what would a 1 per cent increase in New South Wales for smoking over the long term cost versus an enforcement package to try to crack down on that? I'm in Brisbane now. I've walked around the streets. I can overwhelmingly tell you that communities are rejoicing at the fact that these shops are being closed in Queensland. As Ms Dessaix described so eloquently, we've got to be able to give the enforcement time and allow the community to continue to put pressure on these particular illegal operators.

Your comments about vaping, I think we also need to acknowledge that it was bricks-and-mortar stores, both legal and illegal, that were already supplying these products to feed the demand. It's really important that we focus in on the criminality or the illegal behaviours of both legal and illegal stores, corner stores and other retailers, because that's where we will start to see the greatest change. You can't simply take a sledgehammer approach and say, "Let's reduce it by"—the number I keep hearing is 30 per cent—without actually saying, "What's the true cost to your healthcare system?" which is already burdened with avoidable hospital presentations for things like emphysema and chronic obstructive pulmonary disease.

**Ms CATE FAEHRMANN:** Again, I hear what you're all saying. I think it's just grappling with the situation of many people out there who are terribly addicted to nicotine. Again, I had very close members of my family—and I saw this throughout my whole life—terribly addicted to nicotine, who will do anything, I tell you. My mother would probably have tried to find an illegal tobacco shop to continue—she hasn't done anything illegal

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in her life, but hearing that she can get something for \$15—if she was still alive—or however much they are, instead of paying \$50 or \$60, she'd do it. Pretty much everybody I've spoken to in the last couple of months who either vape or smoke are doing the same thing. Of course, that's the pure policy perspective. Obviously The Greens are often found guilty of that as well. In reality, out there, there are lots of people who are very addicted and don't want to go to their GP to get off cigarettes—they don't. There will always be a market for them.

This is the whole point with prohibited drugs, as we say as well. But they will be looking. It'll be the car down the end of the road. I heard somebody the other day who went to their regular, very lovely deli and saw the guy, under the counter, getting it. I feel like it just seems to be very unbelievable and impractical. We've got this problem that will continue to exist. As a committee, we've got to look at what those solutions are. It's not clamping down supply. There will always be a demand. The problem is that cigarettes are so expensive. It's an addictive product. It's almost like making it unattainable for people to obtain in a way that's sensible or regulated, if you like, so they're going to the illegal market. It's not really a question; it's pushing back a little bit. However, I do want to finish by saying I really do appreciate all the great work you all do. It's awkward to be sitting on the opposite side of the room with most of you guys on this.

**MARK BROOKE:** I think you've just answered your question. We're talking about individuals that are highly addicted, and reducing the excise will do zero for that addiction. They will continue to go and find \$15—I think this is an issue of equity, particularly for low SES communities and for communities that have priority populations, people with mental health problems and people living rough. We need to find bespoke solutions that enable those individuals to be able to quit.

**Ms CATE FAEHRMANN:** I've also spoken with a fair few people who would not be doing it if it was a mid-range price. It is a big deal for a lot of people to do something illegal, to go in and do something that they think they might get in trouble for. For a lot of people, they do it just because of the cost of living and how expensive cigarettes are. I again say that I absolutely hate the things. Anyway, I've made my point.

**SIMON COWIE:** I think it was Professor Freeman who said, "You either pay for it now or you pay for it later." So, to Ms Faehrmann's point, we know that there is a range of evidence-based smoking cessation programs. That is where the focus should be. Rather than concentrating on how do we make it cheaper for people, we should concentrate on how do we make it easier for people to quit and what services can be provided by government or by not-for-profits or by community groups that would make it easier for someone to quit entirely—not necessarily to satisfy their addiction by making it cheaper.

**Ms CATE FAEHRMANN:** Maybe those who have done some awesome research have views on this. I have a question around the desirable factor when something is illegal, for young people particularly. I've heard, for example, research done in Switzerland, which has heroin available by prescription, which is not a desirable drug for a lot of people. Again, the illegal nature—when vapes became illegal, it's now available everywhere. Everybody's talking about it. Can you quote any research or anything else on what happens with that, in terms of young people being enticed or attracted to something that is a bit more dangerous and a bit more cool and illegal to do? Maybe I'm asking the wrong witnesses.

**ALECIA BROOKS:** You're asking the right witnesses. We can come back to you as well if there's further information that we come across. If you look at the comparison with e-cigarettes, similar arguments were made around e-cigarettes that this is a riskier type of behaviour. Young people will take that riskier type of behaviour, especially if it is moved to a pharmacy-only model, which we now have in Australia. That has definitely not been the case. I think what was shown through the e-cigarette model is that you need a comprehensive approach to do that. We've seen a fantastic—and we've got some data that we will come back to the Committee with; we're just finalising it at the moment, so in early January.

It shows that we have sustained declines around e-cigarette use amongst our young people in New South Wales for this reason, because of that comprehensive approach that's taken. It's not just, as you say, moved into a pharmacy-only model, so the supply has been reduced significantly. On top of that, there's been substantial investment in public health campaigns and public education campaigns, as well as working with schools and teachers, which we know are the front line dealing with a lot of these issues as well, particularly for young people. From that regard, we haven't seen that perpetuated in the e-cigarette market. So I imagine, and I would hope, that we wouldn't see that perpetuate in the cigarette market either.

**The Hon. CAMERON MURPHY:** Can I just ask, those young people have just moved into smoking, though, haven't they? There might have been a decline in the use of e-cigarettes but, because of the lower price, anecdotally, at least, I can see that young people used to vape. They're now all smoking because it's cheaper to smoke than it is to vape.

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**ALECIA BROOKS:** We've actually seen an overall decline in young people ever using a vape product, or even for a few puffs. That is declining overall. You will get some young people who will use it as a different product, but I would be cautious about why they're using it. It's not just because of price. E-cigarettes are a highly addictive product. They were waking up in the middle of the night and using it at 2.00 a.m. You can't do that as a 17-year-old at home with a cigarette. Cigarettes are a lot more noticeable. So they're using cigarettes in a way to try and reduce their nicotine consumption overall. I think that's where further research will come to light over the next couple of months. I know that Becky and I would be very happy to come back and present in a further hearing, if needed, around that data itself for New South Wales residents.

**The Hon. NATASHA MACLAREN-JONES:** This came out of the Cancer Council's submission in relation to the taskforce. I'm mindful that some of your submissions were put in before the Government made its announcements. I'm interested to know, particularly in light of the suggestion around local government, whether or not you think the taskforce as it currently operates is adequate, or does it need to have broader engagement with government agencies or non-government agencies? I'm happy for others to comment on that as well.

**ALECIA BROOKS:** Tobacco use is a health issue. Its leadership by NSW Health is exactly where it needs to be. We welcomed the taskforce being established. It's always lovely to look back at a submission and say, "That one has already been green ticked and worked on." The evidence that we heard this morning from Dr Kerry Chant around who makes up that taskforce in New South Wales is particularly important. I would like to continue to see that happen. At the same time, we'd also like that ongoing relationship that exists between the Federal Government and State governments to continue as well. If there is a role for civil society, in terms of non-government organisations, to play to provide advice to that group, I would welcome that opportunity as well, and local government at the same time.

**The Hon. NATASHA MACLAREN-JONES:** In relation to your comments around real-time public reporting about enforcement actions, how do you see that operating? More importantly, what data are you trying to get out of that that would drive change?

**ALECIA BROOKS:** The recent report delivered by the ITEC federally provides us with the most reliable data that we've had in years around illicit tobacco use. That's where we need to continue to focus. We need that data to be going through to a relevant State or Federal body to be able to analyse that data, instead of relying on potentially misleading data that comes from industry around where that use is coming from or that sale is coming from.

**The Hon. NATASHA MACLAREN-JONES:** So you don't think there's anything more the State needs to be reporting on at this stage?

**ALECIA BROOKS:** At this stage, what I would love to see and what we've discussed previously would be something like what we are starting to see already around shop closures et cetera so that we can see real-life evidence around how enforcement actions are happening. That is being updated, it is my understanding, on a weekly basis. We would like to continue to see that happen. At the same time, it would be really important to look at prosecutions. That's really important for the public to see, because a lot of the anecdotal information that we get through from the general public is that they've made a complaint but they still see that shop trading. It's really important to see those closures ramping up and that data available online in a transparent manner.

**The Hon. NICHOLE OVERALL:** I'll turn to the Heart Foundation's submission, but it is something that each of you may want to contribute to. It's noted that "People in the most disadvantaged areas of New South Wales are more than twice as likely to smoke regularly compared to those in the least disadvantaged areas." Does that include regional areas?

**SIMON COWIE:** Yes, it does.

**The Hon. NICHOLE OVERALL:** I'll turn to the Cancer Council's recommendations in its submission. You've noted, specifically 19, 20 and 21, that the New South Wales Government continue to invest and support campaigns about educating the community about harms of tobacco smoking and the benefits of quitting, and the potential of the NGO sector to bolster provision of smoking cessation to support priority populations. Rather than asking the Government to just continue to invest, shouldn't we really be calling for an increase in that investment, and, to the point of those statistics, that it's actually proportionate support to those areas where it's most needed?

**ANITA DESSAIX:** I think the short answer to that is yes, absolutely. Those recommendations certainly come from where we know evidence exists that these are important support mechanisms to help prompt and support people who smoke to quit. I think ensuring that there is—you're right—increased funding and support given to services like Quitline, ensuring that where we are doing public education campaigns that they are funded to levels which are ensuring that they are being seen by people who smoke but equally really importantly by people who don't smoke, so young people are being educated about the health harms of tobacco use, not

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necessarily illicit but tobacco harms. Yes, we would be supportive of increased resources being directed to those recommendations.

**The Hon. NICHOLE OVERALL:** But that's also proportionate, that we do need to be looking at regional areas—

**ANITA DESSAIX:** Correct.

**The Hon. NICHOLE OVERALL:** —and disadvantaged populations et cetera to ensure that the help is going where it needs to go.

**ANITA DESSAIX:** Absolutely.

**The Hon. NICHOLE OVERALL:** Is the suggestion, then, that that is not as clearly defined as it might be or not as clearly resourced in terms of a pathway? It's a bit of a one size fits all at the moment. Is that correct?

**ANITA DESSAIX:** I think that is a fair point. These are very, very important strategies across the New South Wales population, but you're right; we would welcome additional resources being directed towards where we do know that there are higher rates of smoking, and that absolutely does include rural and regional areas.

**The Hon. NICHOLE OVERALL:** Mr Brooke?

**MARK BROOKE:** Just to reinforce I think it's an excellent point you make. Certainly campaigns across the population, we are very strong supporters for, but we also need to have bespoke and tailored quits and smoking cessation strategies for high-risk populations. COPD or emphysema and lung cancer prevalence are much higher in rural and remote communities than they are in metropolitan communities. There are certainly strong justifications for communities like rural and remote communities, like the LGBTQIA+ communities, like Aboriginal and Torres Strait Islander peoples, and culturally and linguistically diverse, newly arrived and migrant communities having appropriate interventions that are tailored and locally co-designed. It is a mixture of population-wide but tailored interventions. I would strongly suggest the Committee look at the data from the Queensland quit campaign, which is now supplying nicotine replacement therapy to communities that are reaching out.

**The Hon. NICHOLE OVERALL:** Just one final point. Recommendation 18 from the Cancer Council is:

The NSW Government advocates for illegal tobacco to be a standing agenda item at the National Health Ministers Meeting.

Has that been accepted? Is it being considered? Have you had any response at all?

**ALECIA BROOKS:** I think it has been a standing item on the agenda because the health Ministers have put it there on the agenda of most meetings, if not all. I don't know that it is an ongoing standing agenda item. However, I can follow up and take that one on notice.

**The Hon. GREG DONNELLY:** In reading the submissions from yourselves and submissions from other contributors, whilst it's sort of not said explicitly, the way they're framed in terms of much of what they say and their recommendations, and sort of reading between the lines, is there's almost an acceptance that there is no way, or no way that's obviously visible to anyone, including the highest enforcement authorities and policing and security authorities, of breaching and stopping the entry of illegal cigarettes entering Australia. So many of the submissions have got how we're going to deal with the fact that these are in here and how do we try and control the circumstances we find ourselves in.

Can I ask you, if it's not going to compromise you in any way with any discussions you've had with law enforcement and maybe other authorities, the Australian Federal Police and Border Force and what have you, is there a sense that really there is no way that we're going to actually stop this, there is just no way of controlling, particularly not just our airports—although they may be coming in through air services—but our seaports, the entry of what are obviously massive quantities of tobacco products, particularly cigarettes?

Is there a sense that that's just something we have to accept as a reality, that we'll never have a budget big enough to apply the resources to stop it, so we have to look at other policies? I'm not saying those other policies are not meritorious in their own right and that's not what we have to do. But I'm interested to know, from your experience and background, is there a sense that this is a fait accompli, that it is what we're living with, so we've got to see what else we can do?

**ALECIA BROOKS:** In the tobacco control space we've discussed that illicit tobacco is a burgeoning issue worldwide—globally. Australia is not isolated or alone when it comes to this.

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**LAURA HUNTER:** It's a great question because it really gets to the bottom line of where this is at. We speak to Border Force, we speak to police, we meet with police commissioners across the country on this issue, and I can categorically say that nobody has a white flag. No-one is saying this is not achievable. I've even spoken to police commissioners recently, where I've said to them, "You will get narrative that if we stamp out the bricks-and-mortar stores, and they shut down, that it will go underground." The police have said, "Bring it on. That's my backyard, that's my playground. When it goes underground the visibility of some of these stores will reduce, the normalisation of these stores selling illegal products will go and we'll get the criminals, because that's our job." I think that it's an important question, and it's an important concept that this is absolutely achievable.

When you look at what Queensland and South Australia are achieving—and yes, they're pouring resourcing into this, but not everything. They're not pouring all of their money into it, but they are absolutely achieving huge outcomes from their enforcement efforts. This is absolutely an issue that needs to be tackled. It can be done well, and I think no-one has a white flag in our sector—absolutely not. This is doable, this is achievable, and I would say that there are things that every witness today has presented in terms of solutions.

**The CHAIR:** I think we've come to the end of questioning. Thanks very much for coming today and for your evidence.

**(The witnesses withdrew.)**

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**Mr DAVID ALLEN**, Licensee, Cobargo Hotel, sworn and examined

**The CHAIR:** Thanks very much for coming, Mr Allen. Would you like to make a short opening statement?

**DAVID ALLEN:** Mr Chair, members of the Committee, thank you for the opportunity to appear today. I am the licensee of the Cobargo Hotel on the far South Coast of New South Wales, and I have worked in hospitality for 35 years, including the past 10 at my current venue. I appear today as a small business owner and community member to speak to item (f) of the terms of reference, the real-world impacts of the illegal tobacco trade in regional New South Wales. Since COVID my business has lost around 75 per cent of its tobacco trade due to the widespread availability of unregulated and untaxed tobacco, sold openly through retail outlets and online. That loss has reduced foot traffic throughout the hotel and materially affected the rest of the business. That 75 per cent correlates with the figures that came out today in the MYEFO. The estimate for 2025-26 is \$5.4 billion in excise that will be collected. That's down from the \$7.7 billion that we collected in 2024-25, and it's down from the \$16.3 billion that we collected in 2019-20.

In six years, we've seen a one-third reduction in the amount of excise collected, and in the same time period we've seen a 60 per cent increase in the actual level of excise. My loss of trade basically correlates to pretty much what is happening all over Australia. The financial impact is severe: approximately \$100,000 per year in lost gross profit, resulting in fewer staff hours and reduced services for patrons, and around \$400,000 annually in excise and GST that we are no longer collecting on behalf of the Federal Government. Hospitality is a highly regulated industry and rightly so. Products like alcohol, tobacco and gaming carry risks and are subject to strict controls. Tobacco presents a unique challenge. It remains legal despite having no safe level of consumption. Smoking rates in regional and disadvantaged communities remain significantly higher, around 12 per cent, compared with approximately 7 per cent in metropolitan areas. While strong enforcement against illicit tobacco is necessary, my experience shows that supply-side enforcement alone is failing, largely because of the massive price gap between legal and illegal tobacco.

As of yesterday, NSW Health listed 51 premises subject to closure orders, nearly half—or 23—which did not hold a valid tobacco licence. So the 51 premises have been breached for selling illicit tobacco, and of those 51, 23 also did not have one of the current legal licences. Before licensing, with the old TRN system—tobacco retailing number system—there were an estimated 19,000 outlets in New South Wales selling tobacco. Obviously, no-one can give an exact figure, and some of those businesses may have closed or whatever, but about 19,000 TRNs were in circulation in New South Wales. At current inspection rates, it will take years to bring the market under control.

In the 10 years I have operated the Cobargo Hotel, I have never had an illicit tobacco inspection, and in the last four years, I have not had any New South Wales official visit my premises. Despite media reporting that up to half of New South Wales service stations sell illegal tobacco, no service station appears in the 51 outlets that have been breached on the NSW Health website. I have lodged 12 formal compliance reports with NSW Health over the past year, supported by photographic evidence. None have resulted in closures. Repeated approaches to local, State and Federal parliamentarians also has produced no visible action. This raises a fundamental question: Why is there no serious effort to address the price differential when all available evidence shows it is the primary driver of the illicit market?

Around 2019 marked a tipping point. Excise revenue began to fall while illicit trade surged. Organised crime has responded exactly as history predicts. Some estimates now suggest that up to 80 per cent of the tobacco market could soon be illicit. In August next year, New South Wales tobacco licences are due for renewal. If nothing changes, I will not be renewing mine. The trade is no longer viable, risks have increased and insurance costs are rising. Many legal retailers in regional areas face the same decision. Once the market becomes overwhelmingly illicit, tobacco will resemble the illicit drug market: no excise, no effective regulation, and rising smoking rates, particularly among young people. Reasonable and sensible ideas like plain packaging—they'll basically become moot, because all the illicit tobacco has got colourful packaging with no warning labels et cetera, so it's basically handing over that market. Plain packaging, which led to fantastic things in reducing smoking rates, will become basically moot.

There are also unintended consequences. In hotels, lost tobacco revenue is increasingly replaced by higher poker machine revenue as smokers redirect savings from cheaper illicit tobacco. The Federal Government loses excise, estimated at around \$12 billion from the latest ITEC report, whilst States benefit from increased gaming tax revenue. If Australia is to regain control of the tobacco market while still pursuing the 5 per cent smoking target by 2030, an holistic approach is required. Enforcement alone, given the current price gap, is not enough. Resetting excise to 2019 levels, bringing legal prices back to approximately \$25 to \$30 per packet, would

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significantly undermine the black market. Combine this with strong licensing, effective enforcement, education and fully subsidised cessation support funded by restored excise revenue, this approach offers a credible path forward for public health, government revenue and regional communities like mine. Thank you.

**The Hon. NATASHA MACLAREN-JONES:** Thank you very much for coming and also for coming to Sydney for the hearing. You're probably the first witness we've heard from at the hearing in relation to how it's directly affecting you and your business. Could you just outline what you've effectively observed at a local level, not just around illicit tobacco and sales, but also vapes and pouches? Also the youth influence, because you did mention that a bit in your submission as well.

**DAVID ALLEN:** Yes, absolutely. Obviously I'm in a regional area. I'm on the Far South Coast of New South Wales. We do have a high level of smoking patrons in the hotel. They have switched out to the cheaper product. They bring it into the hotel openly. We talk about it. I don't judge them and I can understand why they're doing it. They can buy it in places in Bega, in places in Narooma, close by in Cobargo for \$15 to \$20. Where my cheapest cigarette, I think, is \$38 up to almost \$50 a packet. I don't blame those people, but that's the reality of it. The vaping we don't see a lot of because the median age on the Far South Coast is about 53. It is an older cohort of people, so we don't see the vaping that you may do in Sydney. It's principally cigarettes down there. And there's no snuffs or any of those other smoking products. It is basically pretty much cigarettes and rolling tobacco.

**The Hon. NATASHA MACLAREN-JONES:** Have you seen any changes? Obviously the Government's legislation has only rolled out in the last few months, but have you seen or heard—whether it's from patrons or other businesses—that there's been a decrease or if it has made much of a difference in your area?

**DAVID ALLEN:** No, none. As I said, I haven't had an illicit tobacco inspection in the 10 years I've been in my current hotel, and I haven't seen a NSW Health official in my hotel for four years.

**The Hon. NATASHA MACLAREN-JONES:** That was bringing me to my next point. Do you believe it goes back to not enough resources? We heard this morning about the centre upscaling of more staff, but you've just said you haven't had an inspection.

**DAVID ALLEN:** There is a Daily Telegraph article in my submission that relates to our one, sole NSW Health official who's in charge of this. I've known him since I've been at Cobargo for 10 years. He's enforcing an area the size of Denmark. It is a huge area. He's based out at Wagga, which is five hours drive from us. It is a huge area that he's got to cover. The amount of places that are selling illicit tobacco—as you see in my submission—they're everywhere, and they're just not being shut down. I've put 12 submissions into NSW Health on their portal—one place, five different times. That place, as of this morning, is still operating. I know it's still selling illicit tobacco in Bega.

**The Hon. NICHOLE OVERALL:** Welcome, Mr Allen. Thanks for joining us. I note a couple of your points in terms of attempting to bring attention to this matter, reaching out to your local Federal member for Eden-Monaro. Did you receive any response? Was there any—

**DAVID ALLEN:** No. I had some emails from staffers, but no response from Kristy. I have asked for a meeting in the new year, but I have not received any response of a time for that meeting.

**The Hon. NICHOLE OVERALL:** It's not as though it's just a one-off contact. You've been putting this forward.

**DAVID ALLEN:** The last two years, the amount of emails, the amount of phone calls to her office, the in-house visits—I'll go into Bega, I'll purchase illicit tobacco at all three or four outlets, if they're open, then take them down and show her, and nothing happens. The same for Michael Holland, as well.

**The Hon. NICHOLE OVERALL:** Yes, the member for Bega.

**DAVID ALLEN:** I do the same thing. They all get sick of me ringing them up and annoying them and sending them emails, but I just said, I'm not seeing anything happen.

**The Hon. NICHOLE OVERALL:** You have, though, also had communication and engagement with the New South Wales police Minister. You said that she's stayed at the hotel.

**DAVID ALLEN:** Yes.

**The Hon. NICHOLE OVERALL:** You also talk about a meeting on 21 May. Was that a formal meeting or just a call in and bit of a chat about the situation?

**DAVID ALLEN:** It was a scheduled meeting. We just had it in the hotel. As I said, I went to a convenience store in Narooma before that meeting to get some evidence to show her what was happening down

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here. I don't know if you saw the pictures in there. What I saw there was shocking. I just could not believe it, and this place was 50 metres from the Narooma Police Station.

**The Hon. NICHOLE OVERALL:** Again, nothing was forthcoming.

**DAVID ALLEN:** Nothing. I went to the Narooma Police Station—nothing they could do. The other story I had with the *Bega District News* and the editor there was, I went around to all three Bega illicit tobacconists, bought the vapes and the illicit tobacco and went to Kristy McBain's office. At that stage there was a protest for Gaza there. There were people there banging pots and pans together. There were two policemen supervising that demonstration. They did not want to know about it. They said, "Go to NSW Health."

When NSW Health is invisible in our area, where do we go? Our Federal and State politicians down there don't want to know about it. Sorry, it's not that they don't want to know about it, but there's nothing effective being done about it. We can say, "We're going to enforce this. We're going to do this." Our police resources, as we've seen in the last few days, are very precious, and they shouldn't be wasted knocking over tobacco shops. That was Yasmin's point, and I totally agree with her. At any one stage, we haven't got enough police in New South Wales. They're hard to recruit. What I've been told by police who I speak to is that, at any one time, 20 per cent of police are either on sick leave or stress leave or are just unavailable. The stresses on police to carry out what they're trying to do—then, to tack on that they just go and do all this tobacco compliance. It's a nonsense.

**The Hon. NICHOLE OVERALL:** We've heard some suggestion today that illegal tobacco activity has potentially been distorted or overblown by the tobacco industry, but you're speaking to us with real-world and measurable experience of the impacts on your own business personally. Can I come to the point that you made about the increasing insurance premiums? Is that directly an impact of organised crime in that way—of the industry? What's the reason for that?

**DAVID ALLEN:** Absolutely. It's been very well reported in the media that tobacconists and shops that are around tobacconists are seeing increases in their premiums. My premium went up by \$5,000 this year. I'm paying almost \$80,000 a year to insure my hotel. My broker says, "If you continue to sell tobacco, that premium will increase." I've heard of other places that just can't get a premium because they sell tobacco. Because the industry is looked upon so poorly now because of the firebombings and the criminality, the insurance industry doesn't want to know about it. As I said, it's making my decision very easy next August not to renew my tobacco licence because of the lack of sales, the criminality involved and the cost of getting the product. It makes no sense to be in that legal market anymore, when the illicit product is a third of the price of the legal product.

**The Hon. NICHOLE OVERALL:** You could see it as, if you are no longer in a position or willing to offer a legal product, that potentially exacerbates the illegal problem because, if people have nowhere else to go for their addiction, that's what they're going to turn to.

**DAVID ALLEN:** Absolutely. Go online and google "illicit tobacco" or "cheap tobacco"—whatever you like—and the amount of sites will pop up. You'll see it. Virtually every time I look there are more sites there. They have an "Enter". Make sure you're over 18 to click on the button. They use Visa logos and Australia Post logos. They have the smoking warning logos on there. They all seem very official, but then they take you to a site where you can buy a carton of Manchesters for \$140, \$150 or whatever they are.

**The Hon. NICHOLE OVERALL:** Yes, it's much more prevalent.

**DAVID ALLEN:** Who is stopping that? Who is shutting those websites down? Where is ITEC? Where is the new organisation that Tony Burke recently announced? What are they doing to stop these online sites?

**The Hon. NICHOLE OVERALL:** You're clearly upset, and rightly so. Given your experience, your confidence level obviously isn't high in what has been announced and the new regulatory and enforcement strategy, particularly when it comes to regional areas.

**DAVID ALLEN:** They're all words. They're just words. All we're hearing is words. We've seen no action at all.

**The Hon. STEPHEN LAWRENCE:** Thanks, Mr Allen, for your evidence. It's really appreciated. It was good hearing from all of the academics, but it's really good to hear from a member of the community who isn't working as some sort of specialist in tobacco but is a businessperson who offers us this real-life perspective, so thank you for engaging with the Committee in this way. On the insurance point, I was going to ask about that as well. Have you got any evidence that you could forward us in terms of showing that the increase is attributable to the black market issues?

**DAVID ALLEN:** No, I haven't, because I just can't provide that. They just give you a level of premium and that's it. They don't give you a break-up. But I have been told by my broker, who I've had for 10 years—he's

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a very reputable hospitality broker, and he does many hotels and motels in our area and up and down the coast—that they are factoring it in. There are credible media reports out there. I'm not Robinson Crusoe; it's happening everywhere. What will basically happen over the next few years if nothing is done about the illicit market is the cost of insurance will basically run legal tobacconists out of town, because they won't be able to afford to have their shops open. The wholesaler that I get my cigarettes and pouch tobacco off is in that same spot. His insurance is getting to the point where it's just becoming untenable to have his legal tobacco business. He's basically the only legal tobacconist from Batemans Bay down to the border.

**The Hon. STEPHEN LAWRENCE:** To your understanding, is the increase in insurance because legal tobacco retailers have been attacked and subjected to arson by the criminals?

**DAVID ALLEN:** Absolutely. We saw one in our area at Moruya about three months ago. A guy wanted to set up an Italian grocery or an Indian grocery—whatever it was. There was an illicit tobacco operator in Moruya, obviously warned them. They opened up and traded for a few days, then they got the Molotov cocktail through the window. That's happening everywhere and—rightly so—insurance companies are saying, "We don't want to be involved in that." So they're either putting—

**The Hon. STEPHEN LAWRENCE:** So illegal traders attacking legal traders in order to increase their share of the market, basically.

**DAVID ALLEN:** Yes, correct, because it is such a lucrative market. The ITEC commissioner said it the other day in her report: We're losing \$12 billion in excise. I'm not sure if there's GST as well, but there are huge amounts of money to be made, and other witnesses—I'm not sure what happened this morning. But the amount of money that's being made—what I've read is that criminals are making more money out of tobacco than the next five illicit drug types, so the market is huge and it's growing. You can see from the decrease in legal sales and the increase in illegal sales that these people aren't going away.

**The Hon. STEPHEN LAWRENCE:** The majority of the public health experts who we heard from today were basically saying that price is among the most powerful suppressants for smoking. The higher it is, the less people are going to smoke, and most of them seem to reject the proposition that reducing the difference in cost between the legal and the illegal would reduce the percentage of the market that is illegal. I struggle to see how those two propositions really sit together because, from a basic economics point of view, while any price difference might not have an absolute effect, it will have an inducing effect. I'm just curious about your view as a businessperson. If you reduce the price differential by 10, 20, 30, 40 or 50 per cent, would you expect to see some impact on the black market?

**DAVID ALLEN:** Absolutely.

**The Hon. STEPHEN LAWRENCE:** And the degree of impact would depend on the degree to which you reduced the differential?

**DAVID ALLEN:** Absolutely. In my submission I keep talking about the COVID time, around 2019 and 2020, which is the tipping point. Excise was \$16.3 billion in 2019-20. It's now estimated to be \$5.4 billion in 2025-26, and that could be less—when the real figure comes out, we could be less than \$5 billion. So it's a precipitous drop in excise. Imagine that \$12 billion—what could be done to help people quit, to fund cessation services, to fund our roads, to fund our hospitals, to do good for the community, rather than going into the pockets of criminals. To me, that makes no sense. Our customers have told us that they will come back to us if the price goes down. With illegal tobacco, there's no quality control. There's no supply chain control. No-one knows what's in it. People just buy it because it's cheap. They will pay a small premium for the products they used to smoke prior to COVID, when we didn't have—if we get excise back to 2019-20 levels, this problem goes away. The black market business model goes away. It's as simple as that.

**The Hon. STEPHEN LAWRENCE:** I'm not sure how much of the expert evidence you saw this afternoon. I did see you were sitting here for a while.

**DAVID ALLEN:** I've been here since lunch.

**DAVID ALLEN:** I've been here since lunch.

**The Hon. STEPHEN LAWRENCE:** Oh, you have? Good. It seemed to me that one interpretation of much of the public health evidence is that their primary focus is on tobacco use as a whole, whether it's illegal or legal. They don't want to have any overall reduction in the price of tobacco because they think that price is the biggest suppressant of use. I'm not sure if you saw the questioning that I asked of one of them this afternoon where I pointed out that if you look at the graph on use and you factor in the fact that in 2010 there was a massive hike in excise, there doesn't seem to be a corresponding drop in smoking. There's just a continuation of a gradual drop.

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In terms of your customers that you sell to and the people that you mix with and talk to, do you accept this proposition that continually hiking the excise will continue to reduce smoking in some way?

**DAVID ALLEN:** No. They will just find other avenues and other channels to get to tobacco. That's what's happening at the moment. It's as simple as that. We shouldn't complicate that. I'm not a health expert, obviously. Tobacco is an addictive product. There's no safe level of consumption, but people choose to smoke. It is still a legal product. But if we abandon control of the market to the black market, as I said, plain packaging becomes moot. There's no purpose to it anymore. We're losing all this excise. If Australia was ever to bring in what New Zealand tried to bring in or what Britain is proposing to bring in, which is the grandfathering clause—so if you were born after 2009, I think it is, you're not allowed to buy tobacco. If we wanted to bring those sorts of controls in, if we just abandon the market and give it to the black market, we'll never be able to do that. We've got to regain control back of the market, and then we can do some of the good that will help us try to help people who want to quit and give them those cessation products that they need to be able to quit.

**The Hon. STEPHEN LAWRENCE:** It was suggested before to Mr Donnelly's question of one of the witnesses that it might well be the case that you basically can't stop importation—

**DAVID ALLEN:** I don't think you can.

**The Hon. STEPHEN LAWRENCE:** —that there's not the technology or the resources to search all the shipping containers and whatnot.

**DAVID ALLEN:** The other thing, too—if people say, "Just check every shipping container," that would grind the economy to a halt.

**The Hon. STEPHEN LAWRENCE:** Exactly.

**DAVID ALLEN:** The microeconomic costs—we already have problems with ports and the cost of shipping, as you know. We can't add to those costs. That's just a ludicrous suggestion.

**The Hon. STEPHEN LAWRENCE:** The view from some of the experts in light of that may be, implicitly, that if you can stamp down on the retail shops so it's not visible on the main street of our communities, somehow that will reduce the demand. I'm interested in your view on that. Is that naive? Is it the case if the cigarettes are getting in that somehow distribution will occur, whether it's online, whether it's out the back of car boots or whether it's in any other ways. I won't speculate to give people ideas. Is that your view?

**DAVID ALLEN:** Yes, absolutely. The thing is, because we're losing control—and you look at the wastewater studies that have recently come out; you look at the Roy Morgan research report that came out a few months ago saying smoking rates are starting to pick up in Australia. Our alcohol rates are coming down, our sugar consumption rates are coming down and our tobacco use was coming down. They were all coming down naturally. People are leading healthier lives; they're making better choices. But the problem is because of all this illicit tobacco out there—very cheap illicit tobacco—people are now starting to smoke again. The other issue, obviously—I don't sell vapes, I've never sold vapes, but people do vape. They're not buying them in chemists; they're just buying them at these illegal tobacconists or corner stores or wherever. But you're just not going to stop this. People are choosing to do it, and the best thing we can do is take control back of the market and help those people who want to quit to quit. As I said, I'm not a scientist and I'm not a health official. But as a businessperson and as someone who sees society every day, that's what I think should happen.

**The CHAIR:** Thanks very much, Mr Allen, for coming. Thanks for your evidence today.

**(The witness withdrew.)**

**The Committee adjourned at 16:00.**