

IN-CAMERA PROCEEDINGS BEFORE

PORTFOLIO COMMITTEE NO. 5 - JUSTICE AND COMMUNITIES

INQUIRY INTO THE ILLEGAL TOBACCO TRADE

UNCORRECTED

RESOLVED TO BE PUBLISHED BY THE COMMITTEE ON 26 FEBRUARY 2026

At Preston Stanley Room, Parliament House, Sydney, on Friday 20 February 2026

The Committee met in camera at 09:05.

PRESENT

The Hon. Robert Borsak (Chair)

The Hon. Greg Donnelly

Ms Cate Faehrmann

The Hon. Stephen Lawrence

The Hon. Cameron Murphy

The Hon. Nichole Overall

The CHAIR: Welcome to this in-camera session of the Portfolio Committee No. 5 inquiry into the illegal tobacco trade. Evidence in this session is confidential. This means that your evidence is not being broadcast and the transcript of your evidence is confidential to the Committee. However, in certain circumstances the Committee may find it valuable to publish some or all of what you say. If so, the Committee secretariat will consult with you about this, taking into account your circumstances. Ultimately, the decision as to what is or is not published rests with the Committee. Parliamentary privilege applies to the evidence you give today. However, it does not apply to what witnesses say outside of this hearing. I urge you to be careful about any comments to the media or to others after completing your evidence.

Evidence in camera by **WITNESS A**, Philip Morris Limited, before the Committee via videoconference, sworn

Evidence in camera by **WITNESS B**, Philip Morris Limited, affirmed

Evidence in camera by **WITNESS C**, Philip Morris Limited, sworn

The CHAIR: Would any of you like to make an opening statement on behalf of Philip Morris?

Witness A: Good morning. Philip Morris Australia thanks the Committee for its invitation to give evidence before this inquiry, which comes at a critical juncture in the regulation of tobacco and nicotine products in Australia. As a legal, taxed and regulated participant in Australia's tobacco and nicotine products trade, Philip Morris takes seriously our responsibilities under Federal and State law. We abide by every Federal and State law, we pay taxes and we invest significantly in illicit tobacco prevention. From the outset, we are not here to contest the legitimate public health objectives that inform tobacco and nicotine regulation. Those objectives are well understood and broadly shared. We are here to provide industry insight into a regulatory framework that has failed consumers, communities and taxpayers, and that is now attracting international attention for all the wrong reasons.

A functioning regulatory framework for tobacco and nicotine relies on regulated industry participants who abide by the law and are held accountable when they don't. As Australia confronts what can only be described as an illicit nicotine crisis, we consider that the regulated industry has a legitimate role to play as part of the solution, as the only law-abiding participant and as a reliable partner in intelligence and enforcement. Our evidence is intended to contribute to the Committee's consideration of the available levers—regulatory, physical and enforcement—and how those levers can be recalibrated to restore control and end the obscene levels of criminality within the tobacco and nicotine markets. In just six short years, Australia's illicit cigarette consumption has grown from 15 per cent to 60 per cent. Illicit vaping, with its well-intentioned pharmaceutical channel—the only type in the world—has remained stubbornly high, with illicit levels of 95 per cent.

Illicit is unarguably now at a tipping point, where bold and urgent action is needed to bring the illicit industry to heel before its dominance becomes permanently entrenched. There is no other product category in Australia with such a broad and culturally permissible scale of noncompliance. Globally, the World Health Organization estimates that illicit tobacco consumption represents around 10 per cent of all consumption. Why is Australia, a country with broad observance of its laws, so high? There is only one logical explanation: Tobacco excise, while well intended to reduce smoking prevalence, has been stretched beyond the consumer's capacity and willingness to pay. Excise is one tool of tobacco control that has pushed at least half of consumers beyond the reach of all tobacco control measures—price, packaging and point of sale.

In just 15 years, excise taxes on cigarettes have been raised by almost 500 per cent, from around 30¢ a cigarette to \$1.50. Excise alone makes up \$30 in a pack of cigarettes, before GST or any other costs are added. This gives Australia the most expensive legal cigarettes in the world. Despite 15 years of aggressive excise increases, real excise collection is plummeting, from \$16.3 billion in 2019-20 to \$5.45 billion in 2025-26. If this tax revenue had been realised, a significant portion would have gone to New South Wales residents in the form of federally funded infrastructure and services. Instead, it has become the profit pool of organised crime. Consumers, unable to absorb these taxes or access legal nicotine alternatives, have sought a cheaper substitute via organised crime. Over half of smokers are now accessing illicit cigarettes at pre-2010 prices. That means every above-inflation excise hike since the Rudd Government's first 25 per cent has been rolled back by a criminal illicit market. Premier Minns has said:

Smoking rates have increased ... This would be the only tax in the world where it's doubled but the rate of revenue collection has halved ... Something is obviously happening here.

As recently as yesterday, health Minister Ryan Park said the "public health failure" fuelled by the excise was leaving jurisdictions to pick up the bill for policing costs and health care related to the booming trade. Excise is now serving perverse policy outcomes: cheaper cigarettes, more cigarettes smoked, a proliferation of illegal tobacconists and communities endangered by the tactics of highly motivated criminal networks—according to the Australian Criminal Intelligence Commission, over 200 arsons, several murders, and illicit profits invested into drugs, guns and sex trafficking. Legal retailers are facing intimidation, theft and threats of violence. They and their employees no longer feel safe for staying within the law.

In the past four years, the number of tobacconists in New South Wales has increased from 14,500 to around 20,000—so 60 for every one McDonald's. That must necessarily demonstrate how illicit tobacco has become. Bold and urgent action is needed before we reach a point of no return. We commend the leadership of the New South Wales Government for enacting strong laws backed by meaningful enforcement. As we have seen in Queensland, strong laws strictly applied can make a difference, but Australia must confront the profit motive behind the criminally run illicit tobacco market if we are to see its end.

With the Committee's indulgence, I would now briefly like to speak to key recommendations that, if implemented, would return the tobacco and nicotine markets back into the hands of regulators, not criminals. The New South Wales Government has taken important steps in tackling illicit tobacco, including store closure powers and penalties for landlords. We submit the next logical step is harmonisation of powers and penalties with Queensland, particularly around the wider supply chain, cost recovery through destroying illegal products, and a dedicated illicit tobacco regulator. What we have seen in Victoria is that weaker laws in one State create opportunities for organised crime to move in and exploit these vulnerabilities. For instance, members would not wish to see the Tweed become an illicit tobacco hub for Queensland consumers.

Noting the recent announcement of an additional 30 enforcement officers, we recommend that New South Wales commits to an annual target of store closures to send a strong message to organised crime that New South Wales is not open for their business. As the Premier and others have stated, enforcement is a key part of arresting the illicit tobacco and nicotine markets, but it must be alongside a critical examination of the fiscal and regulatory pull factors that have created the profit incentive for organised crime. Policy settings that drive demand for illicit tobacco and nicotine products can no longer remain unaddressed. As several senior law enforcement officers around Australia have said, governments cannot simply enforce their way out of this challenge.

Last year Premier Chris Minns called for the Federal Government to examine tobacco excise rates. Several other States have expressed similar concerns about the excessive rate of the Federal excise and its consequences for community safety. Calls for excise reform are not intended to direct more people to smoke. If anything, widespread excise evasion is driving a resurgence in smoking uptake, undoing Australia's previous success. The availability of tobacco products at pre-2010 prices has undone 15 years of tobacco control for at least 50 per cent of consumers. Excise reform is necessary to arrest the growth of the illicit tobacco market and return consumers to a regulated framework. This will get Australia back on course in reducing smoking rates and removing the profit incentive that is driving organised crime and violence in our communities—crime that has been left to the State and Territory governments to deal with.

Finally, New South Wales should, through its inquiry recommendations, urge the Federal Government to review the current therapeutic vaping policy framework where, over four years since its commencement, at least 95 per cent of vaping remains illicit. This has resulted in at least 1.6 million of the 1.7 million Australians using alternative nicotine products in an unregulated environment. There has been a dismal uptake of S3 over-the-counter nicotine products. Australia's approach is wholly out of step with like countries—New Zealand, Sweden, Canada, the United Kingdom and the United States of America—which are seeing sharp declines in smoking in favour of regulated non-combustible nicotine products. A strictly regulated and taxed nicotine framework through legal retail channels would provide an alternative to smokers, as well as the 1.7 million existing consumers of nicotine products. Consumers of illicit don't set out to break the law. They want to do the right thing if they're given a reasonable pathway back to a legal and regulated market. Thank you for the opportunity to appear before this inquiry, and we're happy to take the Committee's questions.

The Hon. CAMERON MURPHY: I might start by saying that the main thrust of your opening statement and submission really is this issue about the excise being too high. What should happen with the excise? Should it be frozen until it catches up? Should the excise be cut? If so, where should it be cut to?

WITNESS B: We have to think about what are the market's long-term objectives around excise reform. One of the really important objectives of it is to actually arrest the pace of consumer migration to the illicit market—that's a really important objective—and then actually increase participation in the legal tobacco market once again. There was recently an Oxford Economics report that was released early this week which actually spoke to where excise reform needs to go. The report actually put forward an excise reduction of approximately 30 per cent, back to around 2019-20 levels. The evidence base in that report that was actually suggested was that at that point it's approximately when Australia collected over \$16 billion of tobacco excise revenue, which was its highest collection over the last 10 years.

What that indicates is that this was the time in history at which legal participation was at its highest point, and that consumers were willing to engage in the legal market and participate in the legal market at that price point. The price point there was approximately around that \$1 per individual cigarette stick mark. There is a clear evidence base now as to what was the price point at which consumers were able to participate in the legal market. Since then, because tobacco excise has been continuously increased again and again and indexation has been added on top of that, what has happened is consumers have essentially been forced to substitute that with a cheaper, illicit alternative and have aggressively migrated to the illicit market. As per the Oxford Economics report, that is the evidence base and argument that has been put forward.

The Hon. CAMERON MURPHY: Can you provide a copy of that report to the Committee?

WITNESS B: Of course, absolutely. I'm happy to do so at the conclusion of this hearing.

The Hon. CAMERON MURPHY: Thank you. When we heard evidence from the health department before the Committee, they were saying that we shouldn't be reducing the excise at all because that's just going to encourage more people to smoke. What do you say about that?

WITNESS B: One comment that I would make around that is that the pace of consumer migration to the black market is not yet complete. We are still amidst consumer migration to the illicit market. Year on year over the last five years, on average, the legal tobacco industry has declined by around 26 per cent, and that's continuing to happen. To give you an example, the 2025-26 Federal budget initially forecast revenue for that financial year from tobacco excise at a bit over \$7 billion. Just six months later, the MYEFO actually further downgraded that revenue to \$5.45 billion. The initial estimates for 2025-26 was somewhere north of around \$12 billion to \$13 billion. The objective, once again, around excise is not so that more people smoke; it is actually that people are already smoking and actually smoking more because cheaper illicit prices have once again become an incentive to take up smoking. It's about arresting the migration to the black market and stimulating participation in the legal tobacco products market once again, which then actually helps sustainably achieve long-term public health objectives.

The Hon. CAMERON MURPHY: What makes you so confident that if you were to reduce excise to, as you say, a level of \$1 per cigarette—

WITNESS B: Approximately, yes.

The Hon. CAMERON MURPHY: What makes you so confident that that will stop the spread of the illegal market? I'm wondering whether we've hit a tipping point where the illegal market is there, and reducing the excise by a moderate amount in the way that you're suggesting may not make any difference because people are now used to purchasing illegal cigarettes from those vendors that are out there.

WITNESS B: What an excise correction will do is—there's no suggestion that it will completely eradicate the illicit market or that it will completely, again, remigrate consumers of illegal products back to the legal market. People consume tobacco products across different price segments, and what that will do is essentially help stem the flow, arrest the decline and recover a proportion of consumption back to the legal market so that public revenue is not further downgraded. Also, what that will do is it will actually help a much more manageable enforcement burden for States and Territories so that the illicit problem does not continue to grow further out of control. We're already in a situation where the black market has majority control over Australia's tobacco market, but where that's headed is to its exclusive control. It's not about complete eradication. It's about recovery and arresting the pace.

The Hon. CAMERON MURPHY: Sure, but why would that work? You're saying that \$1 a cigarette of excise—effectively, a legal packet of cigarettes—is still going to be, what, \$30 a packet of 20 or more, whereas you can buy them in the illegal market for substantially less than that. Why would people migrate back to the legal product?

WITNESS B: Witness A, do you have any other thoughts on this?

WITNESS A: It's not a perfect science, but we know, ultimately, Australians will want to do the right thing. With balanced enforcement as part of the mix, reducing that price gap will ensure that those that are already smoking have that legal option and are more likely to make a decision around using a legal packet where, amongst other things, they can be confident that the ingredients have been transparently shared with regulators and government. It's not a perfect science, but we feel that—

The Hon. CAMERON MURPHY: Are you saying they're going to make that decision for health reasons?

WITNESS A: That might seem ironic, but there is a lot of conjecture about the make-up of illicit cigarettes and the ingredients in illicit cigarettes and vapes and other things.

The CHAIR: I'm gleaning from what you're saying that, obviously, reducing excise is one part of it. Coordination with other States is another one, and maximising the closure of shops. It's not just one size fits all in terms of the solution. Is that what you're saying, Witness A?

WITNESS A: That's right. We would say there are essentially three reform levers, which I mentioned in my opening statement. Those are enforcement—and we know enforcement is critical; it is essential, and Witness C can talk to that in more detail—but we've heard from law enforcement officials across the country in all States and Territories and the Commonwealth that enforcement alone will not be enough to manage a demand-driven issue; and, ultimately, an excise reduction, as is noted by many economist commentators and governments themselves; along with ensuring that the 1.7 million Australians that are using alternate nicotine products have a regulated pathway to do so, if they are going to continue to do it, in a regulated fashion where they'll be interacting with health warnings and product standards.

The CHAIR: At what stage does your business become unviable if this move to illegal tobacco continues? It looks like it's really continuing apace, just going by your own graphs.

WITNESS A: It's a good question. It's an extremely tough environment to operate in. Perhaps by way of background, we had a stable illicit environment at about 14 per cent across 2016 to 2018, in Australia. In 2019-20, illicit jumped 6 per cent, from 14 per cent to 20 per cent, and excise revenue rapidly declined. Critically though, between 2019 and 2025 the illicit share of the market grew from 20 per cent to up to 60 per cent, the latter figure according to the Illicit Tobacco and E-cigarette Commissioner, and in that same period industry volume has declined by 76 per cent and a staggering 60 per cent in the last three years alone. If that were a result of reduced prevalence in smoking, then many would probably be quite pleased with that, but the reality is there is evidence of smoking increasing. The New South Wales Premier, as I mentioned, has noted that and also wastewater testing has shown overall that nicotine is going up.

As it relates to us staying in the industry, we consider that there is an essential role for a regulated industry to play in ensuring that there is a regulated market for these products in Australia, and in the absence of that you have criminals that will fill the market. For us, it's about having a continued engagement with the legal system, reflecting the belief that the current trajectory in Australia is unsustainable and it will ultimately require recalibration. Being present, and today is evidence of that, allows us to contribute evidence, comply with whatever framework government ultimately sets and support a transition back to an enforceable regulation, rather than normalising an uncontrolled market.

The CHAIR: Recently the New South Wales Government announced that it had shut down something like 35 illicit tobacco shops. Do you have any insight into how many are actually still being opened around the State?

WITNESS A: I noted in my opening that it's now up around the 20,000 mark, and NSW Health data supports those figures. There's a considerable number that have increased, and we would contend that that increase is largely—

The CHAIR: Are you saying it has gone up to 20,000 illegal tobacco shops?

WITNESS A: No, 20,000 tobacconist stores in New South Wales. The vast majority, we would contend, would be selling illicit products, and I think that has been well confirmed by many. Witness C might be able to talk a bit more to some of those enforcement efforts and the views of law enforcement officials about the role they can play and where the constraints are.

WITNESS C: In regards to the shop numbers, sir, the ITEC Commissioner actually quoted that there has been a 30 per cent increase in tobacco shops in the last four years, and just anecdotally there are comments from mayors, Inner West Council, talking about the prevalence of tobacconists and shops selling tobacco, and even comments from commercial real estate agents who talk about how between a third and 50 per cent of inquiries in relation to commercial property on main streets are tobacco-related. Measuring the illicit market, as you're probably aware, is inherently difficult. How many of those 20,000 are purely legitimate and doing 100 per cent the right thing? How many are purely illicit? How many are potentially dabbling in both? Those are really good questions, but I don't think we really have a grasp of how big that problem is.

The CHAIR: It sounds like the majority of them may well be selling legal and illegal tobacco from what you're saying, if that's what you're saying. How many of those are actually selling illegal vapes as well?

WITNESS C: I would say probably the majority of them, but, again, I wouldn't be able to point to any statistics. I don't think we understand the market well enough at this point to be able to give hard, scientific figures. I would hope that the ITEC Commissioner is working on these sorts of statistics because really, particularly when we start talking about enforcement, if we don't understand the scale of the problem that we're facing, how do we set strategic objectives in terms of what we actually want to do via enforcement? Is it to totally eradicate the market? Is it just to suppress it? And then what are the resource constraints on the authorities that we're asking to do exactly that?

The CHAIR: Do you think that the enforcement still remaining with the Ministry of Health is viable if you're going to get this sorted out?

WITNESS B: I'm happy to respond to this, Chair. We've seen evidence from other State jurisdictions, particularly South Australia when they moved enforcement responsibilities to the South Australian consumer and business services body, that actually transition responsibility to an appropriate standalone regulatory authority. State health departments have many, many other responsibilities, and, quoting Premier Malinauskas when this announcement was made I think about a year and a half ago, they wanted to concentrate the health department's efforts around harm minimisation, which is where the expertise of the health department lay, and that enforcement

should be transitioned to a regulatory body that has experience in licensing enforcement and across being able to manage those sorts of capabilities, which a health department may not necessarily have. The enforcement of this particular issue does require a particular capability and expertise, which is probably better served with a standalone regulatory body which has experience in licensing for other things like alcohol, for instance, and gambling.

The CHAIR: It wouldn't necessarily be the same here, but would it be appropriate for us to set up a separate regulator like they do in the United States with the ATF?

WITNESS B: That's a matter for government. We would be reluctant to comment on what's appropriate and what's not appropriate. But we have seen examples from, as you said, the US and also other State bodies such as SA and even Victoria around transitioning responsibility to a standalone regulator, and we have now seen that that is effective. It is an appropriate consideration for the New South Wales Government.

WITNESS A: Chair, you asked Witness C about our levels of confidence of those that would be vaping. I just wanted to reinforce that the 1.7 million adults figure who we're saying now vape in Australia was evidence shared by the Royal Australian College of General Practitioners, noting that there are now 1.7 million adults vaping in Australia, with that trend steadily growing since 2018. While we don't know exactly the numbers of stores that are selling vapes, on an informal basis they can be found pretty readily in most of the tobacconist stores that one could enter into. That figure was data prepared for the Department of Health and Aged Care.

WITNESS B: The only other comment I would just add to Witness A's comments there is that the fact that vaping products are almost exclusively supplied by the unregulated illicit market is kind of the point. There's no knowledge, there's no control, there's no transparency or understanding of what the actual market looks like. We also need to understand that this particular illicit trade doesn't only operate through the tobacconist channel. They have actually many times spoken about the ability to be able to supply these products through general retail, general groceries, small supermarkets, delis, laundromats and hairdressers. As much as enforcement is part of the solution, this particular illicit market will adapt and evolve until the demand-side policy levers are also addressed.

The CHAIR: Basically, the Federal ban on vapes is also even a bigger failure. Is that what you're implying?

WITNESS B: I think the evidence over the last four years would suggest something along the lines of what you're saying, Chair. The evidence really speaks for itself. The therapeutic vaping policy model commenced in October 2021 when vapes were first scheduled as prescription-only medicines. Now what we are seeing is approximately around, on average, 6,000 applications per month for prescription-based vaping products. If we do that as a percentage of the 1.6 million adult vapers that consume products, it's less than 1 per cent. The ITEC Commissioner in her report in December last year referenced that vaping is around 96 per cent illicit. There is now a very clear and compelling body of evidence that the therapeutic vaping policy framework has not been successful because consumers simply don't want to use that channel to access those products and therefore it now requires urgent and comprehensive review.

Ms CATE FAEHRMANN: I was also going to ask about the failings, as you see it, of the therapeutic-only policy for vaping and just ask you to expand on that a little bit. In particular, your submission talks about the examples of Sweden and New Zealand in terms of offering tobacco products—some of which are less harmful—and having a broader range that are safer. That's my first question. Could expand a bit on that?

WITNESS B: Yes, very happy to. What I would say is that the alternative nicotine products, they are not tobacco products, if I may respectfully correct that, if that's okay. These are alternative nicotine products which are non-combustible forms of nicotine. Just in very simple terms, smoking products, tobacco products, they involve the burning of cigarettes, which is primarily what is responsible for smoking-related harms. Alternative forms of nicotine consumption, such as through the heating of an e-liquid, they are—as international public health bodies have commented—safer and less harmful than smoking. I think, fundamentally, policymakers and governments need to consider what are the long-term objectives. If the long-term objective is that we want to continue to reduce Australia's smoking rates, and that smoking prevalence is really the goal, then other jurisdictions provide a really instructive example.

New Zealand in its own legislation—if I may read out—has said that regulated vaping products are significantly less harmful than smoking. They have drastically reduced their smoking prevalence rates. Sweden has also said that they want to make products such as nicotine pouches more accessible, affordable and acceptable. Now Sweden is really leading the global race in reducing smoking prevalence and achieving near-smoke-free status. If that has been the objective for Australian governments historically, to reduce smoking prevalence, in the context of the illicit crisis that we're now seeing, the proliferation of illegal vaping products we're now seeing, we must look at international jurisdictions as an instructive example.

Ms CATE FAEHRMANN: You talked about governments' objectives then. When you talked earlier, you talked about the market's objective. The market's objective around excise reform, for example—with all the smokers now in Australia, what percentage do you think, or do you know, are purchasing Philip Morris products? Do you have a company objective, a market objective, to increase that to a certain percentage, for example? You're talking of government objective and market objective. Are they the same thing?

WITNESS B: Sorry, I don't mean any corporate or commercial objectives. I meant in terms of what Australia's government objective are. Market is not separate to government objectives, no.

Ms CATE FAEHRMANN: Okay, so the excise that you are suggesting—which is, what, a 30 per cent reduction, to begin with, down to the dollar-a-stick amount?

WITNESS B: That was the figure in the Oxford Economics report that was released earlier this week. That's not an analysis that we have. That's not something that's coming from us specifically. That was as per the Oxford Economics report, yes.

Ms CATE FAEHRMANN: Looking at your submission, you talk about New Zealand's good rate and Sweden's rate. Obviously, our objective is also reducing smoking rates—which is potentially different to yours, with respect. Does that take into account, for example, a goal of a 5 per cent smoking rate within the population? That excise rate, do you know what that has in terms of an overall goal of smoking rate, or does it not address that?

WITNESS B: I'm going to attempt to answer the question, and apologies if we do so in a bit of a roundabout way. The levers of excise reform and then a regulated smoke-free nicotine products framework, they are levers that, essentially, we believe need to work hand in hand. The suggestion around excise reform is not a suggestion around indefinite excise reforms. The objective would be a short-term objective around arresting the pace of consumer migration to the illicit market, but long term—and this is not different to Philip Morris's objective in that globally, and in Australia, indeed, our objective is to actually reduce smoking, in a sense. Our objective is smoke-free nicotine alternative products which are not available in Australia outside of the therapeutic regulatory framework. So, short term, one objective is excise reform, but then, long term, Australia needs to look at what is an appropriate and pragmatic regulatory framework that actually encourages consumers of nicotine products to access less harmful alternatives. That is what is going to sustainably help reduce smoking rates. When it comes to that objective, our objective is no different to that.

The Hon. GREG DONNELLY: Gentlemen, thank you for making yourselves available today, and thank you for your submission. You've referred to the Oxford Economics report at least a couple of times in your evidence. Was Philip Morris Australia, Philip Morris Limited, Philip Morris International or any other Philip Morris subsidiary or entity involved in the commissioning or the co-commissioning of the report you referred to earlier today?

WITNESS B: I don't believe that to be the case. Witness A did you have any other further comments to share?

WITNESS A: I don't believe that to be the case either.

The Hon. GREG DONNELLY: You would be aware that Philip Morris, over the last decade, along with British American Tobacco, Japan Tobacco International and yourselves have been involved in commissioning and paying for reports to Oxford Economics in regard to the illicit tobacco markets around the world. Are you aware of that?

WITNESS A: From time to time, naturally, like all organisations do in all industries, we commission locally and globally reports that help us understand and help us advocate for the solutions that we think are right.

The Hon. GREG DONNELLY: Can I go back to my question that I asked, that with respect to the report that was mentioned at the commencement of your evidence and is being used to support your arguments and the evidence to this inquiry, you're saying, if I understand your answer, particularly the representative on video—and I'll repeat this again—that Philip Morris Australia, Philip Morris Ltd, Philip Morris International or any other Philip Morris subsidiary or entity was not involved in the commissioning and the payment of the report that you're relying on in your evidence that you were referring to earlier? Because the evidence is no. Is that your evidence?

WITNESS A: I'm not deliberately answering this in a circuitous way; I will get exactly to the heart of your question. The evidence that we have referred to with regard to the rate of excise reduction was a contemporary example to highlight one report that's talked about reducing excise to 2019-20 levels of 30 per cent, as one example—

The Hon. GREG DONNELLY: Sorry to interrupt you, but just to go back to a clear, unequivocal answering of my question. I've asked you twice now as representatives of—

WITNESS A: Sure, let me answer that directly. I don't believe that PML, being Australia, was involved in the Oxford report. Not to my knowledge. But I can't speak—

The Hon. GREG DONNELLY: Sorry, hang on. I've referred to the entities Philip Morris—

WITNESS A: Yes, I was just getting to that.

The Hon. GREG DONNELLY: No. Philip Morris Australia, Philip Morris International, or any other Philip Morris entity. That's the third time I've stated that.

WITNESS A: I respect the question. We represent Philip Morris Australia. I can't sit here and speak for every other entity globally that Philip Morris is associated with, but to the best of my knowledge we're not involved in that report. Nor would I have a—

The Hon. GREG DONNELLY: Can I ask you to take on notice, then, that with respect to those other Philip Morris entities that I've referred to, you will check and confirm that none of them were involved—or if they were involved to please confirm that they were involved—in the commissioning of that report that you've relied on earlier and paid at least in part for that report, either in conjunction with the likes of BAT or some other tobacco company in the world?

WITNESS A: Yes.

The CHAIR: That's where we end. Thank you very much for coming today. I note you've taken some questions on notice and the secretariat will be in touch with you to get your answers. Thank you very much.

(The witnesses withdrew.)

(Evidence in camera concluded.)

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At Preston Stanley Room, Parliament House, Sydney, on Friday 20 February 2026

The Committee met at 10:00.

PRESENT

The Hon. Robert Borsak (Chair)

The Hon. Greg Donnelly

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The Hon. Stephen Lawrence

The Hon. Cameron Murphy

The Hon. Nichole Overall

Ms AMBER SHUHYTA, Illicit Tobacco and E-cigarette Commissioner, Office of the Illicit Tobacco and E-cigarette Commissioner, affirmed and examined

Dr JOHN MOSS, Deputy Chief Executive Officer, Intelligence, Australian Transaction Reports and Analysis Centre, sworn and examined

Mr TIM FITZGERALD, Deputy Commissioner, National Operations, Australian Border Force, affirmed and examined

Mr TONY SMITH, Assistant Commissioner, Customs Compliance and Enforcement, Australian Border Force, before the Committee via videoconference, affirmed and examined

The CHAIR: Thanks very much for coming this morning. Does anyone have an opening statement?

AMBER SHUHYTA: No, I don't have an opening statement.

TIM FITZGERALD: No.

JOHN MOSS: No.

TONY SMITH: No.

Ms CATE FAEHRMANN: Ms Shuhyta, just wanting to get a sense with the office, it says that you provide advice to the Government on policy settings and what have you. I've looked at the website and there's a lot of cooperation, and I think the report is telling us what we already know in terms of the illicit tobacco issue. Are you also looking at providing advice around the illegal market itself in terms of the problem of the fact that people are turning to illegal vaping because of therapeutic vaping, and that for illegal tobacco they're wanting to buy cheaper products? That, in fact, is part of the big problem, isn't it, the fact that these products are more attractive and people are going to them? I think no amount of intervention is really going to stop that demand at this point.

AMBER SHUHYTA: I support advice to government on a range of different things that are cross-portfolio and intergovernmental, so I really need to formulate a central view amongst health policy outcomes, revenue policy outcomes, law enforcement policy outcomes and community safety. There's a range of portfolios and agencies that all have perspectives on how to solve the problem and what the drivers of the problem are. My advice to government tries to consider all of that and create some clarity around the way forward. In my report, I've spoken about a number of different drivers. Price differential is one of those drivers. With price differential, excise is part of what pushes the illicit market price up, but overabundance of cheap supply pushes the illicit market price down, so we need to look at both of those things.

Within all of those drivers, I don't think that just focusing on excise is the single solution to the issue. My report provides advice to government on four priorities with which to go forward, which are stronger inter-agency collaboration and capability, stronger centralising of data and intelligence sharing, and strengthening consequences through legislative and licensing reform. It's the combination of all of these ideas that I try to advise government on on a very complex issue.

Ms CATE FAEHRMANN: It sounds to me as though the advice is just synthesising—correct me if I'm wrong; I haven't read the full report that you're referring to—the existing situation in terms of where the various agencies that you're referring to and their position. Essentially, it's failing, is it not? Is there scope for the office to offer advice around policy reform? More data, strengthening this—that's the very same, business as usual. Is there scope? Have you been requested to provide advice beyond what's happening anyway?

AMBER SHUHYTA: The report talks about the priorities moving forwards, so there is advice about what to do next and what to do in the future. Admittedly, what's in the report is very high level. I provide advice to government all the time that's often caught up in Cabinet-in-confidence processes. I'm not going to go into that detail in the report, but I do provide advice on a number of different policy settings. I'm working with States and Territories on policy settings around legislative reform and licensing reform, working with States and Territories and across government in terms of policy around resourcing and addressing demand—the things that we are distilling from all of the advice from a number of subject matter experts about what is important to tackle the issue now.

Ms CATE FAEHRMANN: Mr Fitzgerald, how much is the Australian Border Force making a dent in the illegal tobacco market?

TIM FITZGERALD: Through the Australian Border Force, what we are seeing is a significant increase in the number of our illicit tobacco and vape detections year on year. To that extent, just to give you some context

on that statement, for this financial year, from 1 July to 31 December, we have intercepted about 7,500 detections of illicit tobacco. That's in the range of about 50 detections a day. What we do see is those detections are happening in all our environments—I mean our sea cargo environments and air cargo environments. We now have tobacco couriers coming through our airports. There's the international mail environment as well.

So we do see all our environments where we, as the Border Force, are there to enforce law and detect and intercept illicit cigarettes and vapes. We are seeing an increase. Through that six-month period, we detected just over a billion illicit cigarettes and 147 tonnes of loose-leaf tobacco that we stopped from entering Australia. That's the equivalent of just around \$1.87 billion in tobacco excise, or revenue that would have been lost to the Australian Government if we hadn't seized it. So we are seeing significant increases. For financial year 2024–25 compared to 2023–24, our detections increased by 38 per cent.

Ms CATE FAEHRMANN: How much did your effort increase at the same time in terms of resources and effort?

TIM FITZGERALD: We have had a significant uplift in our resources in terms of our people at the front line in those environments that I mentioned previously. It's probably also worth noting that in terms of illicit tobacco, we approach it by looking at the border continuum. By that I mean we look at offshore—what can we do to disrupt organised crime and the importation of illicit tobacco offshore with our partners and customs administrations overseas? We look at what we can do here at the border in those environments that I mentioned previously. We're also working extremely hard with our domestic partners here—for instance, in New South Wales, obviously New South Wales police and NSW Health—about what we can do and what activities we can undertake post-border. What we have seen is a significant increase in our joint operational activity post-border.

We've seen a significant increase in the number of referrals that we've received from our international partners offshore. Just to give you an idea, we've had over 1,000 referrals of goods coming into this country that were considered high risk by our partners offshore that we've interacted with. That's led to 450 detections and significant volumes. That's an uptick of around four times the previous year. We've really focused on working on the border continuum and with our partners to share information intelligence, but also to disrupt this. Most recently, one of our partners in Asia intercepted 23 containers containing 32 million cigarettes that were on their way to Australia. They took that out at the source.

Ms CATE FAEHRMANN: But it's not as though the supermarket shelves or the convenience store shelves are empty. You're talking about a lot of interception, but at this point it doesn't seem as though supply is an issue. Is that correct?

TIM FITZGERALD: I think you can look at supply at any particular point in time. Obviously, our seizures at the border—post-border, pre-border—do make a difference to supply, so there are occasions when organised crime find it hard to supply illicit tobacco and vapes because of the activities that we're undertaking.

Ms CATE FAEHRMANN: You know that how? As I said, I don't think we're hearing about people finding it hard to get, or stores that stock illicit tobacco not having any.

TIM FITZGERALD: That's a combination of intelligence that we receive. Through the Illicit Tobacco Taskforce, for instance, it's a taskforce that's made up of a number of government agencies. We also have the Australian Criminal Intelligence Commission as part of that taskforce, so we will receive information and intelligence based on what they're seeing, hearing, as well as our other partners in some of our other disruption groups.

The Hon. NICHOLE OVERALL: Ms Shuhyta, there's been much information, both in the media and more broadly and presented to this inquiry as well, that the excise has been the primary driver of what we are seeing when it comes to illicit tobacco. What's your response to that?

AMBER SHUHYTA: I formulated advice on the drivers to the problem in my report based on the subject matter expertise of multiple stakeholders. I have engaged with State and Territory law enforcement, health, business and consumer services. I've engaged with academics. I've engaged internationally. I've engaged with Federal intelligence agencies, Australian Federal Police, Australian Border Force. My team has commissioned research. There is a number of things that, as I said before, are distilled in my advice. I know that the media and the general public hear a lot of simplified views in the media from individuals' perspectives—individuals who may be supported by tobacco companies, who may be driving a particular intent of their own interests, or driving an opinion based on the perspectives and information available to them. I'm trying to give a more comprehensive picture of a trustworthy source of advice for government in this report. Excise has not been found in the evidence in front of me as the sole or primary driver of this issue. That's what I've tried to articulate in my report. If it was as simple as that, I would be putting that advice to government.

The Hon. NICHOLE OVERALL: But I don't—to just interrupt—

AMBER SHUHYTA: I think that I need to continue to actually hold the health outcomes of Australia in my mind at the same time as looking at excise. This isn't purely a financial problem to solve. If we move excise back to what I've heard in the media as this magical 2019 value, I need to look at what that does to people who have stopped smoking because of the price. What other health outcomes matter?

The Hon. NICHOLE OVERALL: Just to jump in there, I don't think anyone is suggesting that the excise in entirety is the problem. I don't believe that's the issue, and of course there are the health outcomes that need to be looked at as well. But we are looking at it from the matter of if we are now seeing smoking rates increasing, and particularly for young people as well, at what point has that altered when even the health organisations suggest that over the last decade those smoking rates were holding fast—not necessarily declining, but certainly not increasing. Something has changed, and it is from that period of 2019, it appears. You did state earlier in response to Ms Faehrmann that your report says that the excise is part of it. Therefore, if you're acknowledging that, then is it also part of the solution for that to be addressed—either lowered or, potentially, frozen—until we're seeing better outcomes. Because we're not seeing great outcomes right now.

AMBER SHUHYTA: Yes. I definitely need to keep that at the forefront of my mind. I don't have any evidence in front of me that anybody has provided in terms of whether the shift will work. That is evidence that we need to develop. When I look around the world, in different countries the excise point or whatever taxation settings they have on tobacco doesn't neatly correlate with the size of the illicit market. You even have countries with some of the cheapest legal tobacco in the world with sizeable illicit markets. You have some countries that, even within the one country, there are different market shares of illicit suppliers, even though there's one excise setting.

I would definitely be considering what solutions we might be able to put forward as advice to government if there was evidence in front of me that that was something that could resolve the issue. Sometimes drivers are drivers and they're not necessarily the solution. I think it's a very important thing to continue to consider, and I hold my advice to government really seriously because we have the health outcomes of the majority of Australians also at stake. I really need to understand if there are trade-offs with those outcomes if I put advice to government about excise.

The Hon. NICHOLE OVERALL: Mr Fitzgerald, 7,500 detections is very impressive; 50 a day is a lot. What happens when it comes to storage and destruction of the product as well? Obviously, if you are detecting more, you're obtaining more; costs in that regard are also increasing.

TIM FITZGERALD: That is correct. As a result of that, we have been funded extra by the Federal Government to assist us with that.

The Hon. NICHOLE OVERALL: Enough to address it?

TIM FITZGERALD: At the moment, yes, noting that we are increasing our seizures, as suggested. It is probably worth adding that, at that point in time as well, there was funding also provided of around \$20.4 million to support State and Territories in terms of their uplift in the illicit tobacco priority and support the model of compliance, but in particular around storage, destructions et cetera.

The Hon. NICHOLE OVERALL: And there is a bit of cross-jurisdictional issues with that? If New South Wales finds that, it becomes their cost; but if you find it on the border, it's your cost?

TIM FITZGERALD: No. When it was first set up in 2023-24 and that funding was provided, there was an absence of legislative authority that allowed us to just hand over the \$20.4 million, as such. It didn't preclude us or stop us from providing some support financially during the period while we made the legislative corrections that were required. During that period, there were 28 times when we conducted joint operational activity with our State and Territory partners. That allowed us to then fund and support States and Territories with the storage and destruction. Post the legislative changes that occurred on 31 October 2025, we're in a position to be able to supply that directly. We've supplied \$6.3 million to States and Territories, including \$1.1 million that was provided to New South Wales police in December 2025.

The Hon. STEPHEN LAWRENCE: Thank you all for coming along, which is appreciated. Firstly, for you, Ms Shuhyta, I've had a look at your written submission and the only mention in it of price seems to be on the second page in the third dot point where you talk about higher pricepoints being a suppressant on tobacco use. I am just wondering why there's no mention—that I can find, anyway, and I stand to be corrected—about the price differential and reducing excise as a way of reducing the differential and impacting on the illegal market?

AMBER SHUHYTA: I don't have it in front of me, but it is mentioned quite a number of times through the report, not just on page 2. I just don't have the references in front of me.

The Hon. STEPHEN LAWRENCE: I was more talking about the submission to us rather than any report.

AMBER SHUHYTA: I think the submission to you pointed to that my full advice would be in my report.

The Hon. STEPHEN LAWRENCE: Sure. But on the second page, for example, you talk about the various things that might address the issue. You talk about strengthening powers to seize profits, steps taken by State and Territory governments to reduce opportunities for criminal exploitation, licensing schemes being introduced and increasing engagement and cooperation. They're the four things that you single out. I'm wondering why you say nothing about the price differential.

AMBER SHUHYTA: Another way to explain this is that I view this as a very multifaceted approach. I need to look at what's happening across the supply-and-demand chain, from international, at the border and post-border. I need to look at money flows outside those pricepoints. There is a number of different ways within which we need to tackle the issue. In terms of my submission to this Government, I understand that you're unpacking this for a State and Territory level, so I probably made it relevant to a State- or Territory-level government. One of our big priorities at the moment is getting the legislative and licensing parameters correct.

The Hon. STEPHEN LAWRENCE: You purported to put in a submission to us on how to combat the illicit tobacco market. We're delving into this complexity around the price differential and market forces, which seems to be an obviously important and protruding issue. Yet the submission that you put to us as a Federal public servant makes no mention at all of price differential. I just want to put it to you squarely: Why isn't it in there? Is it not in there because the Federal Government, as a whole, is not interested in reducing the excise and would rather focus on enforcement because it is a significant source of revenue for the Federal Government, so you don't want to go there?

AMBER SHUHYTA: My advice is my advice, not my Minister's advice. I put in there what emerged as the priorities to me at the time I wrote that submission, with a note to look at my full analysis through the report. As I've said in the report, from what I have distilled from the evidence in front of me, it is not the priority for the Government at the moment. That's why I didn't put it there. My priorities are around strengthening consequences—

The Hon. STEPHEN LAWRENCE: I know it's not a priority for the Government. We're looking at a policy question. We're interested, insofar as we can get it, in objective and meaningful evidence about what might actually work. If it's not a priority for the Federal Government, I understand that. But is that a way of saying that your evidence is conditioned by what's a priority for the Federal Government, rather than what is objectively meaningful for us?

AMBER SHUHYTA: I think I answered that before. Let me repeat my answer: My advice, in my report and in my submission, is my advice. My role, as a statutory appointment, is to put independent advice up to my Government. My submission is my submission, not my Minister's submission. I'm inferring from your question that you're asking is it not in there because I am toeing the line of a government position? I disagree with that.

The Hon. STEPHEN LAWRENCE: Is that the same as saying that reducing the price differential, in your view, would not be effective at all or would not be as effective as the other four things that you've pointed out? Are you saying that it's not a priority or are you saying that it wouldn't help? That's what I'm trying to work out.

AMBER SHUHYTA: I see what you mean. My advice is that the four most important priorities to make the biggest impact, with the evidence in front of me, are strengthening consequences, demand reduction, increasing interagency capability and making sure we have unified data and intelligence-sharing. That is what I think, from everything that my office has done in terms of engagement and research in terms of the priorities, we need to address this issue. Addressing the price differential had not—there isn't evidence in front of me that made that part of the priorities around addressing the issue, if that makes sense.

The Hon. STEPHEN LAWRENCE: I think you said before that the evidence suggested that it wouldn't be a primary way of addressing the issue, but that's not the same as saying that it's not relevant or it's not important. Could you talk to us a bit about what all this work that's being done says about how much impact it might have?

AMBER SHUHYTA: I think we need to build a significant amount of evidence around what consumer behaviour would do and what the trade-offs to health outcomes would be. I don't have anything to substantiate what difference the price change would make. As I've said, there's a number of countries around the world with very different excise settings but very sizeable illicit markets. I also know that an overabundance of cheap supply can actually keep prices of illicit trade down. Say we did decide to reduce excise, we would potentially push illicit

prices down. There's still going to be a price differential that we don't have control over. In regulated trade, you also have tobacco company profit margins, which have also increased over the period. There are different things that changing excise doesn't address. There's no evidence in front of me that illicit prices wouldn't get cheaper if regulated prices got cheaper. There's no evidence in front of me that, even if we made regulated products \$30 or \$20, people wouldn't still opt for a \$10 packet.

The Hon. STEPHEN LAWRENCE: Have you looked at the research from the public health professionals who are advocating for a reduction in the excise?

AMBER SHUHYTA: I have looked at all of the research that has been generated on the issue, yes.

The Hon. STEPHEN LAWRENCE: Did you find any of that convincing?

AMBER SHUHYTA: I am not convinced to put that as a priority to government at the moment, no.

The Hon. STEPHEN LAWRENCE: Have you found research that says that beefing up enforcement is going to work?

AMBER SHUHYTA: Definitely. There is a similar amount of logic and evidence in front of me in terms of we need to engage law enforcement in parameters that support their enforcement activity—so making legislative and licensing frameworks strengthened.

The Hon. STEPHEN LAWRENCE: That's about what we should do to head down a particular path, but is there evidence that compares comparable situations or comparable countries and like issues that point to how effective it will actually be, or is it just hopeful speculation? If it's hopeful speculation, I'm curious why you're attracted to that sort of hopeful speculation but not to the excise reduction stuff.

AMBER SHUHYTA: I understand. I don't think it's hopeful speculation. In terms of gathering the evidence from engaging with a number of different subject matter experts and stakeholders around the country and internationally, that is the evidence that has come in front of me, and I've formed my advice in terms of that being a priority.

The Hon. STEPHEN LAWRENCE: I just wonder how much of that is governmental and focused on revenue, but anyway.

AMBER SHUHYTA: I'd like to remind the Committee that the intent of excise on cigarettes is a tobacco control strategy. The policy outcome is to reduce demand. It is not primarily a revenue-making policy.

The Hon. STEPHEN LAWRENCE: Is that a reliance on what politicians say or is that actually something you can—

AMBER SHUHYTA: This is what the National Tobacco Strategy—it's a national policy. The National Tobacco Strategy is around trying to reduce the smoking rates and reduce consumption.

The Hon. STEPHEN LAWRENCE: I accept that it's a legitimate public health strategy, but what has happened over the last five years in terms of the continuation of the increase in the excise, is that properly described as a public health strategy or revenue raising? It doesn't change its character just because, presumably, there is something written down in a government strategy. You've got to look at why governments actually do things, don't you?

AMBER SHUHYTA: My understanding is that policy decisions to increase excise are around pushing down demand.

Ms CATE FAEHRMANN: I wanted to explore this concept of evidence more. You're pushing back against maybe making recommendations around reducing the excise because there's no evidence. My colleague did ask questions, in some ways, towards this. Mr Fitzgerald, the ITEC report actually calls for providing law enforcement agencies with resources to fight criminals and strengthening powers to seize criminal profits, so essentially increasing resources for law enforcement. What's the evidence to show that the increase in resources and the increase in your detections is bringing down those smoking rates, which is what you've suggested is the goal, Ms Shuhyta?

TIM FITZGERALD: Sorry, is that a question for myself?

Ms CATE FAEHRMANN: Mr Fitzgerald, yes. You're Australian Border Force. What's the evidence to show that all of the work that you're doing—you've just quoted all of these figures and all of these interceptions, but smoking rates are going up. That would be a policy failure right there, wouldn't it?

TIM FITZGERALD: I'm not in a position to comment about smoking rates to be honest, but what I can tell you is up until, I'd suggest, the last few years illicit tobacco smuggling was seen as high reward, low risk. We

went through a period whereby even those that we would intercept, detect and take before the courts, it was low risk in terms of the potential of receiving a custodial sentence, for argument's sake, and the penalties associated with illicit tobacco. We've done a lot of work with our partner agencies, and we are looking at legislative reform to make that, in my words, environment more hostile. For instance, just to give you an idea of some of the operational activities that we do undertake with our partners and the impact it has, in Operation Smoke Haze, an ABF, AFP and AUSTRAC joint operation, which was on the back of a seizure of four million cigarettes in a container that came through here, warrants with the Australian Federal Police and their Criminal Assets Confiscation team resulted in \$24 million worth of assets being frozen, for argument's sake.

Ms CATE FAEHRMANN: We hear a lot of this because the media units do go a bit crazy when this kind of stuff happens. Going back to the commissioner, what's the evidence? Where is the global evidence that strengthening law enforcement is going to make any difference on what people can purchase on the illegal market when it comes to tobacco? What is that evidence?

AMBER SHUHYTA: I don't have the references in front of me, but I know that the one that comes to the top of my mind is a World Bank report—and I'd be speculating if I put the date there in front of you—that looks at countries around the world and the evidence around enforcement strategies and strengthening the—I'm trying to remember the words that Mr Fitzgerald just said in terms of increasing the consequences, making it a more hostile environment for organised crime. This is an organised crime issue. We have police around the country looking at dismantling organised crime networks. There are a lot of things driving and motivating organised crime to push on the tobacco market, including, as I've said before, an overabundance of cheap supply and their sophistication in terms of supply chains.

Ms CATE FAEHRMANN: A couple of things. Firstly, could you provide the evidence on notice? You said you're struggling to recall that. Secondly, in relation to the therapeutic-only nicotine vapes—and again, I feel like we've got the evidence here in Australia. The evidence, you would think, is the very high excise and the prescription-only vapes which are driving this incredible illegal market. I think quite a few other countries' experts are also looking at that because we're providing this example. What has been your advice to the Government around the prescription-only nicotine vape situation and whether that's working?

AMBER SHUHYTA: Vapes are an interesting issue in terms of our previous conversations on price being a driver. Illicit vapes are a similar, if not the same, price as regulated vapes, so there's something that's also in my mind. I know that there's the accessibility of flavours and the accessibility to under-18s that is really a big driver in the illicit vape market. I haven't seen any harm minimisation strategies around the world or in Australia that happen outside a regulated therapeutic environment. For e-cigarettes and vapes to be classified as therapeutic goods in Australia comes under the Therapeutic Goods Act and looking at a harm minimisation strategy in terms of a smoking reduction tool. At the moment, the illicit market is not supplying that, and I think it would be remiss of me to advise government on a harm minimisation strategy that is outside a regulated market. No other drug harm minimisation strategy happens outside a therapeutic regulated market.

Ms CATE FAEHRMANN: Could you just provide as well what research you have undertaken? You said quite emphatically that from your research there is no other example in terms of what you said. Which countries have the therapeutic regulated market for nicotine vapes that you're referring to?

AMBER SHUHYTA: I'm saying Australia has the therapeutic regulation for vapes.

Ms CATE FAEHRMANN: So with all of the other evidence from around the world, are you saying that you're getting your evidence around harm reduction from Australia?

AMBER SHUHYTA: I'm speaking in general drug strategy terms. Around the world there are harm minimisation strategies attached to therapeutic-regulated parameters. Other countries don't necessarily have the same classification of vapes and e-cigarettes as Australia. Australia has it under the Therapeutic Goods Act because it is seen as a smoking reduction tool, and that's how Australia has chosen to look at regulating vapes.

Ms CATE FAEHRMANN: It does sound as though the instruction provided to you by the Minister or the Government is essentially to do your work within the policy parameters that the Government has set, and whether you like them or not you have to defend them as the commissioner. Is that right?

AMBER SHUHYTA: No, that's incorrect.

The Hon. NICHOLE OVERALL: Dr Moss, if I could come to you please. Are you able to give us an idea of increases in how often illicit tobacco is appearing in suspicious transaction reports versus other criminal activity as well?

JOHN MOSS: Absolutely. To date, we've watched suspect matter reports, known as SMRs in Australia, which are only one part of the AML/CTF reporting regime. This is where financial institutions form a suspicion

that there are matters to be referred to law enforcement and government. It's not evidence; it's a suspicion from the reporting entity, the bank, to government of data and entities that we may consider for further assessment. We receive about 850 of these a day from banks. This year to date, this calendar year, we've received about 600 SMRs that explicitly mention illicit tobacco.

The Hon. NICHOLE OVERALL: When you're talking about the other 850 per day, that is for criminal activity across the board, and now you're talking about 600 specifically for illegal tobacco. Am I correct in that?

JOHN MOSS: Yes, over the period from 1 January this year. We've been working with the banks, and the CEO of AUSTRAC has written to the banks. We've indicated to the banks what indicators for illicit tobacco money laundering would look like. Most crime types have typologies; illicit tobacco has a typology. That has now been reverse engineered into bank systems. Banks will now report SMRs of codes, so we can see more that's relevant to illicit tobacco. We would expect to see the SMR numbers increase. They will increase predominantly because of the indicator knowledge of the banks to allow them to see more and report it to government more accurately.

The Hon. NICHOLE OVERALL: So then that can be passed on to law enforcement in order to facilitate—

JOHN MOSS: AUSTRAC systems, including international transactions, SMRs and cash threshold reporting, are available to all our law enforcement partners in near real time. About 35 agencies across Australia, including New South Wales entities such as the police and the Crime Commission, and the Federal agencies that are based here, have access to that system, and they conduct over 10 million searches a year of AUSTRAC systems. In addition to that, we have dedicated staff embedded into the Illicit Tobacco Taskforce, into the Illicit Tobacco National Disruption Group and into the State and Territory taskforce groups, predominantly through the AFP CACT funding streams, to assist law enforcement, interpret those SMRs, and select those that have high return on investment and high likelihood of disruption. Those analysts are very skilled in that typology.

The Hon. NICHOLE OVERALL: That has seen an uplift in funding. Obviously, like the staff resourcing, if you're directing it to that. Has there been an uplift in funding as well?

JOHN MOSS: Yes, there has. ABF funds our Illicit Tobacco Taskforce secondees. There are three staff allocated to the ITTF. The recent Commonwealth package to Federal Police has funded four analysts into the criminal assets and confiscation team, which we also have mainstream analysts in for a long time doing other financial crime work. So, yes, there's an increase in AUSTRAC staff working with Commonwealth agencies and embedded into things like State and Territory strike teams.

The Hon. NICHOLE OVERALL: Just one a little bit more specific, and you may have to take it on notice. Financial intelligence—is there any identification of numbers relating to regional distribution hubs, specifically in relation to illegal tobacco?

JOHN MOSS: I would need to take that on notice, but we could pattern out what our work is showing across State jurisdictions, yes.

The Hon. NICHOLE OVERALL: Just one really quick one for Ms Shuhyta. You talk about in your four points that you've put forward in your report to demand reduction. What are the top priorities in how that might be achieved to reduce the demand for the illegal product?

AMBER SHUHYTA: The tobacco and nicotine consumption rates are definitely a big part of what's driving an illicit market. We need to continue downward pressure on demand. That's in terms of through campaigns, through nicotine replacement therapy, through wraparound support for addiction.

The Hon. NICHOLE OVERALL: Are there campaigns? Are there current education awareness campaigns? It seems to be some time since there's been a broad move towards that.

AMBER SHUHYTA: I can find those for you, if you like. I can read them out.

The Hon. NICHOLE OVERALL: No, that's okay. You can take that on notice. We don't have a lot of time.

AMBER SHUHYTA: There are campaigns.

The Hon. NICHOLE OVERALL: Are you suggesting that's happening now?

AMBER SHUHYTA: There are campaigns happening now in schools. There is more work being done in terms of demand reduction approaches around the country. There needs to be continued work in that space. That's why it's one of my priorities. I think we should be doing more.

The Hon. NICHOLE OVERALL: And the measurement of that as well. How do you conduct measurement of the effectiveness of demand reduction, as opposed to illicit tobacco going down?

AMBER SHUHYTA: It's often in-built with any of the tobacco control measures. The Department of Health would be better to speak to this than me. There's normally in-built evaluations to those projects. I am taking a systemic view and will have my report as my benchmark in terms of monitoring what is happening across the illicit market more broadly than what a health campaign will be able to evaluate. We are working with our partners in terms of developing an outcomes framework to be able to evaluate progress. My report was the first time government has been able to bring together data from all States and Territories, and at a Federal level, to be able to report on the issue. I will be using my report to be able to monitor and track progress—the size of the market, for example.

The CHAIR: Ms Shuhyta, you talk about the excise taxes being levied to discourage people smoking. How do you comment on what's actually happening in the real world with the availability of illegal tobacco? Is the excise system actually working? Forget about how much it's actually earning for the moment. Is the excise system still working as a deterrent for people smoking, especially young people?

AMBER SHUHYTA: I think this is the crux of the issue and why I'm here to try and stamp out the illicit market. It comes at the expense of the hard-fought-for public health outcomes that we've been trying to achieve and that Australia has been trying to achieve over the last few decades.

The CHAIR: They may be hard fought for, but it's failing now. That's what the evidence put in front of us is telling us: The excise system now is so out of step in relation to what the value of illegal tobacco is. I understand the entrepreneurial zealotry of those importing it and selling it, but you drop the price and their price will go down further and so on, and you'll just keep chasing your tail. Isn't there a mixture of what needs to be done in all of this enforcement? Bring tobacco taxes down to a level where they may, for a while, match, and then continue hard on the enforcement all over Australia.

AMBER SHUHYTA: I'm looking at every point possible to try and disrupt the market. My priorities are the four that I've been talking about today. I come back to the point that evidence around excise is really strong, because I know that massive trade-offs are at risk. Being able to increase enforcement, continue demand reduction or strengthen inter-agency capabilities, for me, there isn't a public health trade-off if we pursue those things. They are definitely important priorities to address the issue. The excise issue is such a complicated issue. It is not simple, because you have the smoking rates and population health outcomes that are at risk if we do anything there. So I'm really cognisant of wanting to build the evidence before I can put advice to government on that. That's the sentiment that I've been trying to bring out today.

The CHAIR: We've heard evidence that says that there's an increasing level of nicotine. I suppose that's the thing they look for in the water when it's measured for all sorts of drugs. That is being used as a primary indicator of the fact that people are smoking more, especially in the 18 to 24 age group. What would you say to that?

AMBER SHUHYTA: My advice from the Australian Criminal Intelligence Commission, which commissioned the wastewater analysis around nicotine consumption and around a range of different substances found in wastewater, was that, when you look at comparison between different periods, you can see an increase or you can see a decrease. But, over time, there's a relative stability. I will be looking to the Australian health and welfare institute's national drug survey, which is to be reported on at the end of the year, to monitor consumption rates. I think the evidence needs to be a combination of a range of things Australia has put in place to monitor consumption rates. The nicotine wastewater analysis—when I see people picking out between this month and that month it rose and I look at the graph that goes like this, I think people pick and choose the months that they talk about in terms of whether they want to impress upon you the amount of nicotine consumption going up.

The CHAIR: I think that's being a bit disingenuous, Ms Shuhyta. The reality is that your lack of collections in relation to excise tells us exactly what's going on. That's the reality of it, isn't it?

AMBER SHUHYTA: Sorry, what's your question, Chair?

The CHAIR: My question is why don't you recommend the lowering of excise? For example, we had a very quick National Cabinet meeting after the massacre in December, and all sorts of things were done very quickly. A national approach, just like that—bang, done. Why don't we have a National Cabinet meeting and coordinate what's going on in this tobacco sector right across Australia and address it in that way because there are an awful lot of people dying. A lot more will die because they're smoking illegal tobacco while the Feds sit there and think about money and think about the broad solution, but don't offer a solution.

AMBER SHUHYTA: It's not a matter for me, in terms of what's on the agenda of a National Cabinet meeting. I just want to put that forward.

The CHAIR: You don't think calling a National Cabinet in relation to this is not a big enough emergency—that we get this sorted out on a national scale?

AMBER SHUHYTA: We've been addressing the issue at a national scale in police Ministers council meetings. I have a national illicit tobacco and e-cigarette forum that I chair with all State governments across law enforcement, health and consumer business services and, in the Commonwealth, the Australian criminal intelligence agencies, the Australian Tax Office, AFP, and Australian Border Force. We are taking this seriously as a national issue, and it has been addressed by all governments in Australia.

The CHAIR: Until very recently, the New South Wales Government wasn't addressing it.

AMBER SHUHYTA: The New South Wales Government has been part of the national illicit tobacco and e-cigarette forum and, prior to that, the National Vaping Working Group. Since my commencement in July, I have spoken and presented and sought agreement on priorities at the police Ministers councils twice, and the New South Wales Government is part of that.

The CHAIR: Mr Fitzgerald, what is the Border Force doing to increase the level of interdiction of illegal tobacco?

TIM FITZGERALD: As previously explained, Chair, we're doing quite a fair bit. We are working along the border continuum. So part of that key—if I go back to that example offshore, we're working with our international partners offshore to disrupt organised crime and the export of illicit tobacco and vapes to Australia. As previously provided, evidence is supporting that is starting to work through the number of seizures and detections. Similarly, here at the border, in those environments, whether it's passenger environment, air cargo, sea cargo, international mail—those avenues where organised crime are attempting to import illicit tobacco—we have prioritised tobacco as high priority among a couple of other priorities, including border control drugs.

That then allows us to focus our resources, and that's not just frontline operational resources in terms of Border Force officers opening packages, for argument's sake. We're looking at the improvements around intelligence sharing and information that inform us what are high-risk people and goods crossing our border. We're starting to see, through that intelligence and information improving, that our strike rates, in terms of what we're examining, are improving, and the number of detections are increasing, and the weight of what we're seizing is increasing. Then we work very closely with our partner agencies post-border for those illicit tobacco shipments that might have circumvented our controls at the border—to disrupt them.

The CHAIR: Just, for example, in New South Wales, who would be the partner agency you would work with?

TIM FITZGERALD: From our law enforcement/Border Force enforcement perspective, we work very closely with New South Wales police. We've also worked very closely now with NSW Health, for argument's sake. There are a number of entities that we will work with to disrupt illicit tobacco.

The Hon. STEPHEN LAWRENCE: I might go to Mr Smith online. Assistant Commissioner, could you talk us through how your organisation, in determining what work it does, and also judging the outcome of the work, whether the KPI, in terms of tobacco, is the amount of seizures, or is the KPI also the size of the illicit market over time?

TONY SMITH: Yes, certainly. I think the key comment you were referring to just before—as Deputy Commissioner Fitzgerald just outlined, there is a very strong focus in terms of, obviously, the volume that we are seizing at the border and the volume that we're seizing offshore as well. Yes, from a KPI perspective, that's an important number to be able to track how effective we are in terms of performance but, when you look at it from the organised crime aspect, we know full well that we're talking about a criminal syndicate that operates sometimes commodity agnostic and not necessarily purely from an illicit tobacco perspective. So the focus also has to be in terms of breaking the business model of organised crime.

We have a KPI focused certainly in terms of the numbers that were finding but also how do we actually measure the degradation of organised crime groups that are operating in this environment. When we look at it from an Australian Border Force perspective, we partner strongly with State, Territory and Commonwealth partners in serious organised crime. We're members of the serious organised crime coordination committee as well.

The Hon. STEPHEN LAWRENCE: If I can just interrupt, sorry. Do you have a KPI that looks at what percentage of the tobacco market is legal and what percentage is not legal?

TONY SMITH: Not specifically within the Australian Border Force, but we work alongside the Illicit Tobacco and E-cigarette Commissioner to be able to actually measure that. So we will look at it from a border perspective—pre-, at and post-border. But in terms of the system and the whole picture, we will work alongside the ITEC commissioner for that.

The Hon. STEPHEN LAWRENCE: So the illegal market could continue to grow, as it's done hugely in the past four or five years, and your KPIs might be going quite well.

TONY SMITH: It's an incredibly important point that you're raising in the sense that we have to be in parallel with understanding what that illicit market is to actually measure performance because, you're right, it can't be solely on the statistics of seizures alone. It needs to measure in terms of the effectiveness of degrading the system as a whole.

The Hon. STEPHEN LAWRENCE: Ms Shuhyta, what is the public health risk from legal e-cigarettes that at the moment are prescribed by doctors, I think, or obtained from chemists? What risk do they pose?

AMBER SHUHYTA: There's a number of things that the Therapeutic Goods Administration has to regulate in the e-cigarette market. Once it goes out of the regulated market, there is no control around the ingredients of what's in e-cigarettes and vapes.

The Hon. STEPHEN LAWRENCE: I am asking about the legal market, though—so the e-cigarettes you can get from the chemist. What's the health risk of that?

AMBER SHUHYTA: The health risk from the legal markets?

The Hon. STEPHEN LAWRENCE: Yes.

AMBER SHUHYTA: Vaping still has nicotine in it. There's risks around nicotine. What I was trying to say there is that there is less risk through the regulated market than the illicit market.

The Hon. STEPHEN LAWRENCE: Sure, but what is the actual risk from the legal market on a population level? What is nicotine doing to us that's harmful in and of itself? I ask the question because it just seems interesting to me that the most harmful form of nicotine is legal, and what seemed to be almost indisputably the less harmful forms of taking nicotine are illegal.

AMBER SHUHYTA: I'm just not following. Are you saying the legal e-cigarettes are more harmful than illegal e-cigarettes?

The Hon. STEPHEN LAWRENCE: Smoking cigarettes, which is legal, has a catastrophic health impact in the community.

AMBER SHUHYTA: Sorry, a comparison between vapes and cigarettes?

The Hon. STEPHEN LAWRENCE: Inhaling nicotine through a legal vape might have some ill effect, but it seems pretty small. This seems to me a strange policy setting that we've got, where the most harmful form is legal and the less harmful forms are not legal. I'm wondering if you could tell us why that is.

AMBER SHUHYTA: I think that it's considered a quit support tool. That's why it comes under the Therapeutic Goods Act. Nicotine is associated with gum disease, with pulmonary cardiovascular disease. There's anxiety. There's a number of things. Nicotine is very bad for young people. So there are concerns that we have around that.

The Hon. STEPHEN LAWRENCE: Do you think it warrants illegality, though? I mean, there are a lot of harmful things. Do you think nicotine in and of itself warrants being illegal in the context of a society where lots of people do harmful things to themselves that are not necessarily illegal. I mean, people eat red meat. That's harmful. People do all sorts of things—alcohol.

AMBER SHUHYTA: Nicotine is not illegal in Australia. It's not illegal. Smoking is not illegal. The person who purchases cigarettes—it is not illegal for them to purchase whether that's through a regulated market or an illicit market. I'm here to focus on combating illicit trade in unregulated products. The value of e-cigarettes as a quitting tool is best provided through a regulated therapeutic environment. I'm not sure if I'm answering your question, but I'm not sure that I'm understanding your question.

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

(The witnesses withdrew.)

Mr THEO FOUKKARE, Chief Executive Officer, Australian Association of Convenience Stores, affirmed and examined

Mr JAMES NEWTON, Head of Policy and Regulatory Affairs, Shopping Centre Council of Australia, affirmed and examined

Mr OLIVER EVERETT, Policy Advisory, Shopping Centre Council of Australia, affirmed and examined

The CHAIR: Thanks very much for coming today. Would anyone like to make an opening statement?

JAMES NEWTON: Good morning, Chair and Committee members, and thank you for the opportunity to appear today. As you would be aware, the Shopping Centre Council of Australia is the national industry group representing shopping centre owners and managers. Shopping centres typically accommodate a number of tenants that sell tobacco products, including supermarkets, some newsagents and mostly dedicated tobacconists. Our members have a strong interest in ensuring these tenants operate successfully and can be effectively managed where necessary. Through the SCCA, our members meet regularly to discuss operational and leasing matters, which informs our engagement with governments on policy and regulation. Illegal tobacco has become an increasing concern, and we have worked with regulators, police and health authorities across all jurisdictions to help address it.

Our key interest in closure orders legislation has been to ensure that, once a closure order is issued, lessors are enabled to terminate the lease of a tenant trading in illicit tobacco. We thank the Leader of the Opposition for engaging with stakeholders like the SCCA last year and for her efforts to legislate a practical response. As noted in our August 2025 submission to the Committee, we strongly supported the New South Wales Government's intention to introduce closure orders legislation, and so welcomed the passage of the Tobacco Legislation (Closure Orders) Amendment Bill 2025. We appreciate the engagement of the health Minister's office and departmental staff who supported and have ultimately legislated the SCCA's framework for closure orders and lease termination, which is outlined in our submission. This mirrors our engagement with the Queensland Government, which adopted the same framework.

Under the framework, lessors can act decisively when a lessee receives a closure order. They can terminate a lease without being delayed or exposed by lessee dispute and mediation processes, they can terminate leases on grounds of repudiation, access rental bonds and are immune from claims for damages or compensation, and the "relevant lessor" is defined as the party closest to the store operator. These elements empower lessors to support the policy intent and effectiveness of closure orders. Done right, closure orders can quickly stop illegal tobacco sales which might otherwise be delayed by lengthy court processes. This is why we have encouraged other jurisdictions to adopt the same approach.

Since the updated licensing scheme and closure order powers began in October and November 2025, NSW Health's tobacco register shows 74 closure orders issued, with only five involving shopping centre tenants. This confirms that shopping centres are lower risk environments and illegal activity is more common in independent tobacconists. Members report that the closure orders in these locations immediately boost sales. Accordingly, we also welcome the Government's recruitment of 30 additional tobacco inspectors, bringing the statewide team to 78. While few closure orders are expected for shopping centre tenants, we are reassured that measures now exist to address illegal tobacco in our context. At an industry level, our focus has been on ensuring members can respond appropriately once a closure order is issued. We are aware of wider commentary on related issues, but our key interest remains in supporting landlords to act effectively. I will conclude my remarks there and would be happy to take any questions.

THEO FOUKKARE: Chair and members of the Committee, thank you for the opportunity to appear. As CEO of the Australian Association of Convenience Stores, I represent in New South Wales around 1,800 petrol and convenience stores, and around the country around 7½ thousand. More than half are family businesses who employ locals and are trying to do the right thing and serve their communities. Right now, they're being crushed, not by competition but by organised crime. Illicit tobacco is no longer a public health issue. It is an organised crime issue operating in plain sight.

Retailers are losing legal sales, facing intimidation and watching illegal operators open, in many cases, next door and undercut them with untaxed product. We need to be honest about why this is happening and what the root cause of this is. Premier Minns and Minister Park are right on the money: Federal excise settings are the driving factor behind this black market. The Premier has shown real leadership by saying what many in this debate know, will admit to privately, but not talk about publicly. Now, the new enforcement powers are welcome. Closing around 60 stores sends a really strong signal. But signals don't shut down black markets.

If we're serious about disruption, we need enforcement at scale. Hundreds, if not thousands, of illegal stores shut down for 90 days or more—that's what breaks the model and, importantly, we've seen this before. In Queensland, what's needed is a real shock to the system—where we saw a wide, visible sweep of closures that disrupts supply and accelerates action. They closed 149 stores in a 10-day period, and that number has now grown to just on 200. Something that fundamentally shifts the risk equation for illegal operators, because right now enforcement isn't matching the scale of the crisis. We need more enforcement, greater reach and a real impact. But let me be clear: You cannot tax a product into the hands of organised crime and then arrest your way out of the consequences. If we don't tackle both enforcement and excise and regulation of vaping, this problem will keep growing, and it will be small businesses and local communities who pay the price. Thank you.

The Hon. STEPHEN LAWRENCE: I have a question for the Shopping Centre Council firstly. In your submission you say:

Closure orders are an exceptional policy response, effectively transferring risk and responsibility from government to the private sector in the event that government regulatory and enforcement efforts have failed.

I was wondering if you could unpack that for me. Just explain what that means.

JAMES NEWTON: Certainly, Mr Lawrence. They are. It was a couple of years ago that we first engaged with the Queensland Government when they introduced the concept of closure orders. It's quite remarkable for government to be able to come in and shut down a shopfront. I should say at the outset we support the ultimate intent of closure orders. The issue that we had in Queensland at the time was our capacity to respond appropriately. The prospect of having, for instance, a shopping centre tenant that shut down for up to three months—and now longer—has an impact on the surrounding shops and the landlord as well. It has the prospect of rent not being paid, that tenant never coming back to trade again. It is an impact on the centre and on the landlord.

The Hon. STEPHEN LAWRENCE: Is the impact on the surrounding shops that you don't get the flow of customers that you've leased the place to get?

JAMES NEWTON: Yes, that's correct. Essentially, our expectation is that, when a closure order would be issued, then ultimately the relevant lessor would be bearing the costs of that. That's why we've advocated in Queensland and now New South Wales for closure orders to also give us the capacity to terminate a lease, to remove that kind of risk and flow-on effect. The legislation that was passed late last year in the New South Wales Parliament and also the Queensland Parliament empowers landlords to be able to respond appropriately. We've got much more comfort now with those measures in place.

The Hon. STEPHEN LAWRENCE: When you say that it's a transference of risk and responsibility, you mean basically that your members bear the adverse impact of it because they lose business and they lose rental payments in circumstances where that's a consequence, really, of regulatory failure, perhaps?

JAMES NEWTON: Yes. It, essentially, for want of an easier term, would leave the landlord carrying the can.

The Hon. STEPHEN LAWRENCE: We seem to be hearing a lot of evidence from public health experts and different people that want to not suggest that reducing excise is significant here. I think a lot of questions that I've certainly asked, expressing the opinion that, when you've got a black market that goes from 5 per cent to 50 per cent in a pretty small number of years and the price differential is what it is, it's obviously a significant factor or seems to be—but we just can't seem to get much evidence in terms of what was the point at which the excise increases stopped suppressing smoking and just became a driver of the black market. Is that something that any of your policy research is able to offer an opinion on, any of you?

JAMES NEWTON: I apologise, Mr Lawrence. It's probably not something that we're—

The Hon. STEPHEN LAWRENCE: It's not your area.

JAMES NEWTON: It's not our area. We obviously understand the tobacco excise is an influence and it's an issue that the Illicit Tobacco and E-cigarette Commissioner and Mr Foukkare have got a very keen interest in. But, from our perspective, our interests are essentially enabling our members to be able to respond appropriately when a closure order has been issued. I apologise. It's probably not one for our organisation.

The Hon. STEPHEN LAWRENCE: No worries at all. What about you, Mr Foukkare?

THEO FOUKKARE: I think, if you track back the evidence, 2018 is the year that the legal market fell off the cliff. You only need to look at Roy Morgan's nicotine usage. They've tracked this for about 15 years. They only track nicotine usage. They also track vaping and smoking separately. But ultimately what we've seen from the year 2018 is, when vaping products started to come into the market, a lot of consumers transferred from the

legal, regulated market into—at the time was unregulated completely. There were no rules around vaping. That's when the shift happened and post that—I'll just come back to the Roy Morgan. I was listening to the ITEC Commissioner's testimony. Nicotine levels today—based on the wastewater analysis, to give us some context—are higher than what they were when it was originally first introduced. That has been tracked for 10 years. Nicotine consumption in Australia, when you look at the Roy Morgan data—says it's around 17.1 per cent but 15 years ago, that number was 17.8 per cent.

I think it's been well intended by successive governments to try and address the public health challenge around smoking. From our perspective, as retailers—if I could elaborate, tobacco in the retailers that we represent over the last six years has gone from a peak of 40 per cent of our total in-store shopping sales, excluding fuel. That's now down at around 10 per cent. When you look at the adult smoking rate and the nicotine usage rate, that has only gone one way, which is up. We're not alone. Coles, Woolworths and Metcash, who represent the IGA brand, have all reported significant declines in their legal sales over a long period of time. The numbers are the numbers. If you look at it, at legal retailers—and I'm talking ASX-listed organisations—sales are doing that. You look at the nicotine consumption rates through both Roy Morgan and wastewater. The numbers are doing that. When you put that on a map, around this 2018 period is where it all started to change. Hopefully I've answered your question.

The Hon. CAMERON MURPHY: Does it get to a point where it's no longer viable to stock legal tobacco products?

THEO FOUKKARE: I think legitimate retailers will continue to sell tobacco whilst it's a legal product. Some retailers may choose to get out of it because their insurance premium has gone from \$10,000 to \$100,000, which they've been reported—

The Hon. CAMERON MURPHY: Because of the illegal market and firebombings and so on?

THEO FOUKKARE: Correct. To be honest, retailers actually don't care what the price is. If there was no black market, we wouldn't care. The price is the price. If that's what the consumer chooses to pay, they pay it. I think one of the important points that I'd like to get across—because we heard some evidence just prior that said there's no evidence put before them. That's because Australia has the worst illicit market in the world, and other countries are looking to Australia to say, "Wow, what should we not be doing if we don't want to end up like that?" If I'm speaking openly, it's extremely frustrating when I hear these types of comments made because Australia is trying to look for something that doesn't exist. They've created a policy that has, effectively, whilst well intended, actually put everyone from retailers to the general community to the health of Australians at risk because of the unintended consequences that have happened. We can't just bury our heads in the sand when you look at this and say—our retailers have lost half of their gross profit margin today in comparison to when they were selling at 40 per cent.

The Hon. CAMERON MURPHY: And that's not because fewer people are smoking.

THEO FOUKKARE: Absolutely not. During your break or at any time—I think the New South Wales Government is doing a good job. They've got the settings in place to do what they need to do. But I do feel for them and every other State and Territory because they are cleaning up a mess—a mess that our industry body and many others have been raising with all levels of government for more than 12 years now. Up until recently, it's been ignored completely. Now, all of a sudden, "Oh, we have a problem." That's sort of where we're at. There needs to be change here. But in New South Wales specifically, there are now 78 offices that are doing this. New South Wales GST income from the sale of tobacco products has fallen through the floor—no different to every other State. I believe that the Federal Government needs to step up their funding from whatever excise they're collecting and be able to provide that to the States, because we all know resources are stretched in a lot of areas and the money could well be used to go into other areas.

The CHAIR: What more would you do if you were the Minns Government to take it to the next stage?

THEO FOUKKARE: What we need is more stores shut down. We need people on the ground. We need boots on the ground.

The CHAIR: You're talking about legal stores and illegal stores. We heard evidence today that a lot of legal stores are selling illegal tobacco.

THEO FOUKKARE: Yes, that's correct. In the Prime Minister's electorate, there was some reporting in *The Daily Telegraph* yesterday that said there were 67 stores selling illegal tobacco, of which I think 20-odd might actually have a licence to sell it. It just comes back to this prioritisation. The only way this can be addressed from a Minns Government perspective and any State government is, unless we have a change in policy settings that will address the demand diversion back into the legal market, it's still going to exist. The only thing left that

they can do, outside of continuing to pressure the Federal Government around excise settings, is to invest more. Otherwise, the storefronts will continue to operate.

The CHAIR: Invest more in shutting more stores down.

THEO FOUKKARE: Absolutely—enforcement. You actually need people. In the absence of a change in Federal Government policy settings, we will continue to see a game of whack-a-mole. They will shut down. I can tell you. There's a store in Queensland that has been shut down once. It was a branded store, unlicensed. It was shut down. It changed its name. It shut down, and now it's reregistered as a beachwear and surfwear shop. That's just one example. These people aren't going to just stop. The real issue here is the fact that you have a \$10 packet—on average it's \$15, but you can get them cheaper—versus a \$45 or \$50 packet. That's the root cause of the issue. If I look at the Roy Morgan data, about 12 per cent of the adult population smokes. If I look at the numbers being thrown around by many different people, it probably puts it at about 1.5 or 1.8 million adults that choose to smoke illegally, based on the statistics available today.

If I look at the data available, through Roy Morgan again, there are around 1.5 million adults who choose to vape. The prescription model has failed. In the last estimates that were made available, something like 3,000 consumers have used it. There are 1.5 million adults that are vaping, and they're all buying it—from the ITEC Commissioner's own report, 98 per cent of that supply is being provided illegally. It's a really interesting question that you ask around the Minns Government because he has been the most vocal—as has the health Minister, Minister Park—in terms of actually raising the elephant in the room that no-one wants to talk about, and it has just been ignored.

But, unfortunately, whilst we have that happening, there's only so much that the State can do. I do feel for every State and Territory, and I'll tell you why. There was an Oxford Economics report that was released earlier this week by one of the largest independent supermarket operators in the country, Ritchies. I'm happy to make that report available to the Committee if you would like. It showed that, without a change in current policy settings, what would happen is that by the 2029 financial year the legal supply of nicotine in Australia would be at around 90 per cent. Effectively, that said that the Federal Government excise collection would go from about \$5 billion today to around \$1 billion. At that point, what you have is organised crime actually running tobacco control.

The Hon. STEPHEN LAWRENCE: Do you think, at that point, the public health experts might admit that they were wrong?

THEO FOUKKARE: I would hope that logic prevails somewhere along the line.

The CHAIR: There's no logic prevailing.

The Hon. CAMERON MURPHY: I don't think they will.

THEO FOUKKARE: If you don't mind, I'm happy to make a comment on that because it's quite interesting. The public health advocates in this space are well intended.

The Hon. STEPHEN LAWRENCE: Absolutely.

THEO FOUKKARE: Absolutely. Smoking is bad. I liked your question earlier regarding why a more dangerous product is easier to get. It's illogical, but unfortunately all of the public health advocates are stuck in this ideological view that doesn't allow them to see clearly. It distorts their view on how to address this issue. They don't actually live in reality. I represent retailers. I'm not a health expert but, over the last five years, I've learned a lot about this topic because this is the number one problem for legal retailers in the space that I represent, which is going to cost jobs. It's already costing jobs and the safety of our frontline staff. That's why I've learnt a fair bit about this. The public health advocates are only going to tell us what the Federal health Minister wants to tell us. That's it. Everyone we speak to is delivering the same message, and it's extremely frustrating when retailers who do the right thing are being penalised every day.

The CHAIR: You say in your submission that you believe this Government should transfer the responsibility of enforcement and regulation to Liquor and Gaming. Why do you say that?

THEO FOUKKARE: Firstly, the submission was put in place before stores started to close. There was some scepticism around whether the health department was the right department to do it.

The CHAIR: You might find some sympathy amongst us here in that point of view.

THEO FOUKKARE: I was sceptical. To date, since it has been introduced, we've seen 60 stores close. What I do know is in South Australia, they have moved it to Consumer and Business Services, which is ultimately the same body that looks after liquor and gaming. They're trained to actually deal with different types of

environments, and they had a dedicated taskforce set up, initially with 20 people. That number has jumped to 36 now, because it was their only focus and they were making inroads. They've shut about 150 stores with 28-day closure powers. At the time, Victoria had also presented this model where they would be putting it into liquor and gaming, but they ended up moving it into its own body under Better Regulation. If I look at that, that was the thought process.

Since the time of the submission, the Queensland Government has left the enforcement in Health and I understand the New South Wales Government has done the same, with the support of New South Wales police. What we've seen is that dedicated body has been focused only on this issue. Regarding what we had proposed at the time, I'm happy to say we were incorrect in our assumption, because we have seen health departments, with the right leadership and with the right legislation, actually be able to make a difference. The key point would be we just need a lot more. There's a list published by some of the mastheads in New South Wales of around 1,200 illegal stores that are operating in New South Wales. I'd be suggesting someone should go and find that list and start at store number one and go to store number 1,200. That would be a really good start in terms of trying to address where the illegal stores are.

The Hon. NICHOLE OVERALL: Mr Foukkare, I'll follow on from that. We were told this morning that there are something like 20,000 potential shops, retailers et cetera throughout New South Wales. That was the figure I think we heard earlier today. But just before we get to that, for transparency and because it has been raised by various witnesses throughout the course of our hearings so far, including the commissioner this morning, have any of the groups represented among you here today received any level of funding or financial assistance from the tobacco industry?

JAMES NEWTON: Not at all.

THEO FOUKKARE: Absolutely. What I mean by that is we're a membership-based, non-profit organisation and we have around 120 manufacturers, suppliers or service providers that pay an annual membership fee. They provide that to us on an annual basis, along with retailers who sell legal tobacco products that provide us with a membership fee. Those fees vary based on the decision of each of the member companies. Our membership fees are available on our website for anyone to look at, and the funding we receive from the three tobacco companies is part of their membership fees, but no different to any supplier, whether it's a sandwich supplier, a beverage supplier, a point-of-sale software supplier or anything like that. I also will add that the direction that our association takes is set by our board. Our board is made up of 13 people represented from the industry that does not have any tobacco company representation. It's made up of retailers, of which there are 10, and three suppliers.

The Hon. NICHOLE OVERALL: To come to that point that we were just talking about in terms of enforcement, I have two separate questions. The first is that you state that the Premier has been most vocal in the need to reduce the excise. But, as you say, the Federal Government has the final say on that. What's your view that the New South Wales Government can then rely on that, saying, "Well, in the end it's going to be the Feds who will make the decision on it," to actually avoid further necessary investment of funds to deal with the enforcement and the stronger measures that are needed on top of the tax as well?

THEO FOUKKARE: Just to clarify—is the question whether New South Wales should be comfortable that the Federal Government is going to do something on excise and maybe not spend as much?

The Hon. NICHOLE OVERALL: It's more along the lines of what's your view that the New South Wales Government can't simply rely on the excise tax and avoid the broader issue that you've raised about the need for greater funding when it comes to enforcement and stronger measures. So they can't say, "We can't do that—that's going to be out of our hands," but not do that either. What's your view on that balance?

THEO FOUKKARE: New South Wales—no different to any other State—has a responsibility to their residents, and that's to keep them safe. What we've seen is continual intimidation. We've seen continual violence. We've seen stores being ramraided and firebombed. New South Wales has a commitment to continue to make sure that constituents are kept safe. If the illegal tobacco and illegal vape market continues to grow in New South Wales, there's going to need to be more funding spent because it will become more dangerous.

The Hon. NICHOLE OVERALL: Do you think that increasing funding levels will assist to address it?

THEO FOUKKARE: I think we're stuck between a rock and a hard place, and the reason I say that is that—we believe the Federal Government should provide \$300 million specifically for the States and Territories to share, only on enforcement. We've come up with that number based on some modelling around how many people you would need to tackle this issue. One of the ideas that I've spoken with different members of Parliament on is this concept of, okay, what I know is we have this illegal tobacco problem, and there are all these metrics

that tell us we have it and why we have it. One of the ideas that we're floating is why don't you say, "The market's changed. We were wrong. We're going to firstly at least put a pause—a freeze—on excise. But really what we should do is say we're going to bring it down to this level, and we're going to ramp up our enforcement so that we can start to get on the same page." So put a pause, reassess, spend this money, close down all of these stores, and then you start to apply normal CPI increases onto this.

At this stage we haven't had any takers, but we will continue to push this argument because, as I said earlier, the price is irrelevant if there's no supply availability. Right now we have an abundance of supply which is being driven by an abundance of demand, and unfortunately the enforcement just can't keep up. At this stage, there are no plans from the Federal Government—to our knowledge—to pause or even entertain the idea of a reduction. I must say that when the Federal health Minister was interviewed just a couple of days ago in Perth, the words that he chose to use when he was asked about excise were very different to what have been used up until this point. I do understand that, based on Senate estimates a week or two ago, where the finance Minister, Minister Gallagher, advised that there is some price-elasticity modelling currently going on with Treasury for tobacco. What I would say is hopefully that is going to show that maybe the policy is wrong and maybe it needs to be addressed as part of the solution, not the solution.

The Hon. NICHOLE OVERALL: What you're suggesting is that enforcement can't do the job on its own. But just to come to that a bit more specifically, your submission states that enforcement capacity in regional New South Wales is particularly limited. How is that the situation?

THEO FOUKKARE: I was talking to one of our retail members who has stores in Wagga and Bathurst, and they have not had one inspection done on them or any of the illegal stores around them. They have used the appropriate reporting tools available to them. They've reported stores on a number of occasions—more than 10 times—and there has been no action taken. This retailer said to me that their sales had gone from 200 packets a day to—last Friday—one packet whilst the stores surrounding him continue to boom in trade. That is just one example. But I do know that in northern New South Wales—in the Ballina and Byron area—around Albion Park and around Newcastle, I believe there have been some closures. Outside of that, regional areas haven't seen anyone, and it is a significant issue in regional areas.

The Hon. NICHOLE OVERALL: You mentioned earlier—I think it was Mr Newton, who said 78 inspectors, but clearly there is a huge breakdown when it comes to where those inspectors are from a regional perspective compared to metropolitan.

THEO FOUKKARE: So those 78—I believe 30 have only been announced. They haven't started yet. I have no idea how the prioritisation works for allocation.

The Hon. NICHOLE OVERALL: Nor do we.

THEO FOUKKARE: I would suggest that it comes back to this idea that if the governments believe we can enforce our way out of this to address the issue—it's like you need to send the army in. People might think, "What is this guy saying?" But the amount of enforcement that would be needed to address the illegal supply of tobacco—I don't think anybody has any idea how many billions of dollars this is going to cost. And the reality is—I'll just fast forward for everyone for a moment—three years time, the three large tobacco companies, because there's no commercial viability and the legal market has all gone to the illegal market, decide, "I can't operate here anymore."

Oh my God. We're going to be dealing with crime gangs running all tobacco in Australia, tobacco policy is non-existent, and we will need to bring the army in. I say that genuinely because it will happen. We've seen this market go from where it was to where it is like that, and the speed in the last 12 months, we haven't seen anything like it, and it's going to continue at a faster rate unless there's a step change in policy to be able to move forward. And I don't say that to scare anyone. I say that because they're the facts presented in front of us, looking at what's happened to our retail members' sales versus what they were.

Ms CATE FAEHRMANN: Can I just jump in and ask just what that step change is that you're referring to? Quite a few submissions, I think, are making recommendations based upon almost the existing policy space, if you like, and strengthening enforcement and more officers. But, from my perspective, to be blunt about it, I think we need to be hearing from witnesses about the policy reform that they think is necessary. So you're saying "a policy step". That is, I assume, dealing with the issue of illegal tobacco broadly, which is the—is it the "Prohibition has failed" model? Is that where you're going?

THEO FOUKKARE: So, in our view—and this has been my consistent view for a number of years—there are five things that need to happen. Firstly, the excise as set by the Commonwealth needs to be reduced. To what level is debatable. We believe it needs around a 50 per cent reduction, which would take it to 2018-ish. That's number one. Number two: We believe that vaping products, which, effectively, are prohibited because pharmacists

don't want them and consumers aren't using them, need to be regulated in a responsible way, made available via licensed retailers, behind closed doors, with health warnings, with restrictions on flavours so that they're not attractive to under-18s—sensible policy. That's the second point.

The third point is we need uniform regulation and legislation on this. At the moment, we've got eight different sets of rules. Everyone's doing their own thing differently. So we need the Commonwealth to actually say, "There's one set of rules. Here's what they are. There's one set of fines, and we're also going to run enforcement." I've called for this for a while. The AFP should stand up one big team, and they're responsible for it. They have their own KPIs, and they put people in each of the States, to go out and dismantle this from an enforcement perspective. The fourth part is—you can buy this stuff online. And what we've seen in Queensland, where nearly 200 stores were shut in a very short period, was posters went up with QR codes, and online social media advertising started immediately targeting people. You just scan a QR code, and it goes to WhatsApp, and then you end up meeting someone in a car park or whatever to get your product or online. You buy it online. It's delivered via Australia Post.

We and some of our retail members have reported at least 50 websites that are operating in Australia today on Australian domains, for the last eight months, and not one has been shut down, not one. And this is something that we continue. So we think that there needs to be a strong position on the availability of online. And the fifth piece—I sort of merged it into the third one—is the enforcement piece. It actually needs one body using one set of rules, because at the moment it's like—in Victoria, to give you an idea—and we have, under the new regulations, actually, the people in Better Regulation Victoria, if they go to a store that has illegal tobacco and illegal vapes, they are not allowed to seize the illegal vapes, because it's a TGA responsibility. Some States have made those changes, but in Victoria they haven't. We just need one clean set of rules. So they would be the five recommendations that I would make.

The Hon. STEPHEN LAWRENCE: Mr Foukkare, one issue that we haven't really, I don't think, expressly talked about in the inquiry—but I thought that you might have some views about it because of your members—is the difficulty for smokers being expected to buy cigarettes that are so expensive, in circumstances where the excise is such a significant proportion of the price for legal tobacco. And I'm just wondering if your members, through you—do your members have any insights into just the difficulty that is being caused for people, many living in poverty, in reality, who are addicted to nicotine and having to buy cigarettes at this very, very expensive price? What sort of impact is it having on people's lives? And it seems to me relevant because it is a driver, ultimately, of the black market, I would have thought.

THEO FOUKKARE: What I can tell you is—and this is firsthand evidence that's been reported to me. Consumers will come into their stores. Let's just say in New South Wales we've got a retailer. They'll drive into their store. They'll put in their \$10 or \$30 of fuel. They will have the car parked on site and walk around the corner to buy illegal tobacco. So they're just not buying it, and they're doing what they would need to do. It's extremely—we don't have any sort of specifics on the impact that it's having, but I can tell you the impact that it's having on legitimate retailers, and that example that I gave you is not isolated. There are some that even operate on the same block of land, in a different tenancy.

The Hon. STEPHEN LAWRENCE: I heard an anecdote about a medical professional talking about the black market being a good thing because the mental health of their clients is so much improved because they're less so living in grinding poverty, because their cigarettes aren't costing as much.

THEO FOUKKARE: There's some merit to that. Let's face it: The reason people are buying cheap cigarettes is because they're addicted. And they're buying them because the Government's effectively prohibited them through price. So they're changing their behaviour and supporting criminal organisations based on an effective prohibition, which is pretty sad. But that's what we face today. That's the reality.

The Hon. STEPHEN LAWRENCE: And there doesn't seem, if you go back in time in some of the graphs that we've been given, to be a correlation between increasing price of legal cigarettes and a reduction in smoking. We seemed to reach a flat point at some point some years ago, prior to the recent explosion in the black market. It didn't seem to be suppressing smoking, but it seemed to be having a devastating effect on people, living in poverty, who continue to smoke.

THEO FOUKKARE: That's a fair comment. I think excise policy, when it was originally introduced, around 2010, maybe for eight years had an impact. We were seeing a really good response to that from a public health perspective—when I look at the data available. But, post that, it's flatlined. In Western Australia they have the only 2025 data available, out of all of the States. They recently announced a 20 per cent increase in their adult smoking rate, from 10 to 12 per cent, versus the prior two years, which was the period it was reported on. As I'm sure a lot of people in Canberra are waiting on, we're waiting for the latest data to be made available because I think it's going to be a rude shock, the next time the official government data is made available.

The Hon. STEPHEN LAWRENCE: The whole thing just leads me to ask the question how much money has the Federal Government extracted out of the poorest communities in the country, for no public health benefit. That's what seems to me to be posed by all of this.

THEO FOUKKARE: It's a great question. What I can tell you is I think the Federal Government have to say they've got this wrong. And I think what they—and I hope they do, because any move in excise continues to punish the more disadvantaged that are adults that are choosing to smoke. And those moves by the Federal Government are having unintended consequences on legitimate retailers, on members of the community, on the safety of frontline staff, on insurance premiums. People have been murdered in Victoria. An innocent person was murdered. That's the scale of this. And your question earlier, Chair, about the National Cabinet—absolutely, this should be on the National Cabinet agenda. This is a problem. This is a massive problem that's putting the communities around Australia in harm's way because of failed policy that they refuse to change. And, as we heard earlier, there is no evidence globally, because Australia is the evidence. It's pretty simple.

The CHAIR: We've got to get this tobacco off the streets.

THEO FOUKKARE: Yes, absolutely—the illegal product. We continue to hear things like—in South Australia we heard someone say, "We need to move to a tobacco-free generation and outlaw it." Like that's going to help.

The CHAIR: It has worked with vapes, hasn't it?

THEO FOUKKARE: Absolutely. The health academics need to take a reality check and say, "Here's what's happening in the real world. This is the impact on legitimate retailers, legitimate consumers." This is our world. There's such a disconnect. It's scary. Hopefully common sense will prevail.

The Hon. NICHOLE OVERALL: I have a question that's potentially to all of you. Mr Foukkare, you mentioned earlier about the intimidation of small businesses. What about small-town regional shopkeepers? Is there any evidence or suggestion of them being pressured into selling black market cigarettes, or the need for them to do it from a criminal perspective?

OLIVER EVERETT: I don't think we're aware of that behaviour from our members or their retailers. I might hand back to Theo.

THEO FOUKKARE: Yes, in short. In parts of New South Wales—in northern New South Wales, in central New South Wales—some of our members have personally been stood over.

The Hon. NICHOLE OVERALL: Basically, they have been told that they will sell this illegal product?

THEO FOUKKARE: Absolutely. In some cases they're asked to pay protection money.

The Hon. NICHOLE OVERALL: Again, I presume it's anecdotal rather than evidence-based at this point in time. Do you believe that, anecdotally, there is an increase in that type of activity as well? I'm looking at the regional areas in this, because obviously what we're seeing is the displacement of the problem to regional areas that aren't seeing the same level of enforcement or inspection. They're moving into that and then these strong-arm tactics are—

THEO FOUKKARE: We've seen that happen in regional Victoria. Some of our retailers have had to hire security guards to put out the front of their store to protect their staff. In the regions, there needs to be a significant increase in people looking at this. For context, this started in Melbourne metropolitan and it then spread to Victoria. It has then bled into New South Wales and then it has gone into Queensland. Now it has leaked into South Australia and it has leaked through to WA. Literally, once the markets in metropolitan areas are saturated through illegal supply, they just continue to expand. With that comes threats and intimidation. There are real examples that this is happening today in regional areas. Obviously I won't disclose specifics around the retailers. It's not just in our case; it's in many different retail settings.

The Hon. NICHOLE OVERALL: Are you moving towards documenting that type of information as well?

THEO FOUKKARE: The retailers capture that, absolutely. They all run that—especially the larger corporate-style retailers—and capture that. They have their own processes within that. But within small operators, that isn't being captured specifically. It's being reported to the relevant people. Some people are choosing to report to the local police, and others will report it through to us, as an industry body, in this case.

The Hon. NICHOLE OVERALL: One final point on data and data capture: Does your organisation have data on cumulative losses? I'm specifically referring to regional retailers again in that space, rather than the focus on what's happening for metro.

THEO FOUKKARE: I would need to take that on notice, but I would be able to give you that based on how many of our members are regional-based, and then I would be able to apply that to the cumulative losses.

The Hon. NICHOLE OVERALL: That'd be great.

THEO FOUKKARE: I'm happy to take that on notice. If anyone wants to have a look at this in action and how involved it is, just walk across the road. Out the front of this place there's a store where, if you want, you can go and buy a vape today. I can pay on an electronic terminal that's running through AUSTRAC's processing systems, and they still get away with it. I implore you to have a look. It's just like a normal store.

The Hon. NICHOLE OVERALL: What do you do? Do you just ask, "Can I have a vape, please?"

THEO FOUKKARE: Absolutely. I implore you to have a look.

The Hon. NICHOLE OVERALL: I don't know what I'd do with the vape once I'd bought it.

THEO FOUKKARE: But that's the scale of it. It's right in front of Parliament House, where we have everybody coming every day. Go and have a look. You'll see it. They're not on display, but if you ask, you'll get one.

The Hon. NICHOLE OVERALL: You're suggesting that what's going on is pretty much utterly ineffective?

THEO FOUKKARE: Yes.

The CHAIR: I think the questions have come to an end. Thanks very much for coming. It has been very useful and informative.

(The witnesses withdrew.)

Ms CATHERINE ELLIS, Acting Commissioner, NSW Small Business Commission, sworn and examined

Mr MICHAEL MILLER, Director, Mediation Services, NSW Small Business Commission, affirmed and examined

The CHAIR: Welcome. Would you like to make an opening statement?

CATHERINE ELLIS: No, thank you.

The Hon. NICHOLE OVERALL: I'd like to look at it from a regional perspective, if I might, and any information or evidence on the impact on regional small businesses of the proliferation of illegal tobacco versus the metropolitan areas. Because regional businesses do seem to be being overlooked in all of this. We are hearing of displacement from metropolitan areas to the regions growing. Do we actually have a breakdown on how they are being impacted specifically?

CATHERINE ELLIS: Good afternoon, and thank you for the invitation to appear before the Committee. In terms of that question, we can comment on small business impacts. We've followed the issue of small business concerns about illicit tobacco retailing for some time. We saw concerns start to peak in 2023, and we've continued to hear concerns from small businesses since that time. Generally speaking, we have seen a disproportionate impact on regional communities. For example, the commission undertook a specific survey to ask small businesses about their experiences with illicit tobacco retailing back in June and July last year. We received 772 responses. Three in 10 respondents, or 29 per cent, reported awareness of illegal tobacco being sold in their local area, and 59 per cent of those with knowledge of such activity were located outside the Sydney metropolitan area.

The Hon. NICHOLE OVERALL: Could you expand on that a little further? What is coming from that? What are the next steps? How are you taking that information? Is it being provided in any way for it to specifically be addressing what is clearly being identified?

CATHERINE ELLIS: Yes. I might just explain that a little bit further. Whilst there are three in 10 respondents telling us that they've got that awareness of illegal tobacco being sold in their local area, only a small percentage of respondents, 4 per cent, indicated direct or indirect impacts on their business, such as loss of revenue, concerns about safety and other concerns, mainly around viability for their businesses. The commission outlined some of this in our submission to this inquiry. Subsequently, we have participated in discussions around the reforms that the Government has introduced, some of which passed last year. There is another landlord-related bill before the Legislative Council. We can talk about the inquiries that we have received from small businesses if that would assist you.

The Hon. NICHOLE OVERALL: When you talk about that quite low figure of about 4 per cent, do you believe that there is a level of under-reporting in that or perhaps businesspeople that aren't aware of the avenues in which they would present this sort of information or concern?

CATHERINE ELLIS: There's always, I suppose, a level of concern that we may not hear from small businesses. We can talk to the Committee today about what we have heard—the information that we've got on the much broader percentage of businesses that are aware of this activity in their community versus the very small number that say that they're directly or indirectly impacted. We would take some intelligence from that. We do monitor inquiries coming before the commission on these issues and monitor what businesses are saying to us. For example, between 11 February 2024 and the enforcement of the tobacco closure orders legislation on 3 November 2025, we received approximately 74 inquiries directly related to illicit tobacco via our customer support channels.

Just to give you a sense of that, we would take something in the order of 12,000 inquiries a year from small businesses on all manner of different things. The nature of those inquiries pre the reforms being introduced related to illicit tobacco activity and enforcement concerns, problems obtaining insurance, leasing disputes, financial hardship, requests for lease surrenders and regulatory compliance uncertainty. If we compare that to the period following the commencement of the reforms last year, from 3 November to 2025 to 1 February this year, we received around 16 inquiries directly related to illicit tobacco. That's around five a month compared to before, around three a month.

We have seen the nature of those concerns change a little bit, notwithstanding that they've marginally increased in number. Whereas before they were quite concentrated in terms of impacts on viability on businesses at that individual level, they've been more related to flow-on impacts to neighbouring retailers, calls for more government support for compliant tobacconists, concerns from lawful tobacconists about unfair competition and community-driven enforcement suggestions that really relate to a request from small businesses for increasing

opportunities for citizens to make reports of illicit tobacco retailers. We've also seen a number of closure orders. The commission isn't the authority on that, but we're aware that there have been closure orders issued.

The Hon. NICHOLE OVERALL: Do you have an idea of where?

CATHERINE ELLIS: I think we've had a look at that information. There's been a number of closure orders around New South Wales up the east coast. Also, I think we've seen some closure orders issued in Dubbo and other regional locations.

The Hon. NICHOLE OVERALL: Again, I understand that it's probably not your wheelhouse and all of that, but if there was any further detail from the perspective of your office could you provide that on notice if it does come to hand? Just coming back to the implementation of the regulations and the new licensing requirements, do you believe more broadly from a small business perspective that they, and the penalties as well, are being well understood by retailers, particularly in those regional areas as well?

CATHERINE ELLIS: The commission hasn't done a follow-up survey of the nature that I talked about a minute ago that we did in June and July last year. The information that we've got to draw on at the moment is the inquiries that are coming through the commission, which I just outlined.

The Hon. NICHOLE OVERALL: But it's not a large number, really. Does it suggest that there is a gap there? Perhaps small businesses—the owners and operators—feel that they already do have a good idea of it or they're just not responding or finding more information. I'm concerned that there is a gap that they may wind up falling through and then not complying and not even being aware that they're not complying.

CATHERINE ELLIS: What we can say to that is that the inquiries that we're receiving through the commission—and we support that with the conversations that we have with small businesses every day of the week about all sorts of things—aren't indicating to us that there is a lack of awareness of the reforms that have come in.

The Hon. STEPHEN LAWRENCE: Ms Ellis, I appreciate that your role is a State government role. We've had a lot of evidence about excise issues and the impact of the price differential between legal and illegal tobacco. Is that territory that you'd like to wade into?

CATHERINE ELLIS: As you rightly point out, we're not the expert on the excise discussion. However, we can say to the Committee that we've seen an escalation in concerns since 2023. How that correlates with the movements in excise, we're not the best people to advise on that. But certainly there was a spike there, and for those businesses who feel that they're impacted, or tell us that they're impacted, it can be quite profound. The nature of the concerns raised by small businesses continue to be around competition impacts and loss of revenue for legitimate retailers. That relates not only to loss of sales of tobacco, but also in circumstances where retailers are selling tobacco and also other products in their store—whether it's sports merchandise or it could be other things—that there's a flow-on impact then, because customers are coming into their stores to buy tobacco less frequently, and they're also spending less money overall.

The Hon. STEPHEN LAWRENCE: In terms of the threats and intimidation, which 22 per cent of respondents reported, are you able to give us any more detail on what circumstances that might encompass?

CATHERINE ELLIS: Really, it's concerns for personal safety associated with concerns around the potential for there to be intimidation. A lot of our businesses in New South Wales reflect on the experience down in Victoria where there's been a lot of firebombings and things of that nature. I think there's a level of fear there around what might occur in their own communities, particularly so in regional New South Wales. Also, I guess as an extension of that, where small businesses are having members of their family work in their retail outlets, then there's a concern for the safety of those family members, and concern about whether they should be working in that environment.

The Hon. STEPHEN LAWRENCE: Is that, in the main, black market tobacco operators threatening legitimate businesses because they're selling legal tobacco?

CATHERINE ELLIS: It is. It's also just a general fear around retailers who may not be selling tobacco legitimately but may be located within proximity to a premises where illicit tobacco is being sold. Then what happens if there's a dangerous incident in that area? There might be a shop down or two shops down from a place where illicit tobacco is being sold. There's a concern, then, around their safety, even though they may have nothing to do with the tobacco market.

The Hon. STEPHEN LAWRENCE: In terms of the other shutdown orders that are now starting to be used, are you getting any early reports of illegal tobacco sellers using other methods to sell, i.e. other than the shopfront? Selling out of the boots of cars near to legitimate businesses or any things of that nature?

CATHERINE ELLIS: Prior to the reforms being introduced, we would receive reports—and I must stress that there were small numbers but quite distressing for the individuals who are making those reports—that the selling activity would move. There'd be some enforcement activity in a particular location, then that activity would move to another place pretty quickly and that location would become known to the community. We haven't heard reports like that, I would say, in the same sort of numbers or with the same level of distress since the introduction of the reforms.

The Hon. STEPHEN LAWRENCE: In terms of landlords tolerating illegal activity in exchange for above-market rents, do you have any information on how widespread that might be?

CATHERINE ELLIS: I might ask Mr Miller to comment on that.

MICHAEL MILLER: We don't have data that is going to illuminate that. We do see various reports coming from various sources. We monitor media, and we'll take any information coming in through MPs or some of the businesses that might be coming through our inquiry stage, or even into the mediation program itself. But we really don't have anything solid to illuminate that one.

The Hon. NICHOLE OVERALL: I note in your submission, as well, raising enforcement problems. When it comes specifically to businesses being closed and then reopening—even within days of enforcement action has been identified—have recommendations been put forward in terms of how that might be addressed? Does there need to be a strengthening of the legislation that's currently in place in order to deal with this? How is it happening, I guess, as well?

CATHERINE ELLIS: Our submission reported back on the experience that we were hearing and seeing from small businesses. To that end, we were advocating for a stronger regime in terms of the illicit tobacco market, which there were reforms late last year and then others, in respect of landlords, still before the Legislative Council. Does that answer your question?

The Hon. NICHOLE OVERALL: To a degree, because it also references penalties appearing to be insufficient. There is, from a small business perspective—not necessarily from a direct recommendation, but from a small business perspective—a need for strengthening what's occurring when it comes to illegal operations being closed and then just popping up in some other format, not really addressing the problem, and that the penalties that then arise from it are not dealing with it either. All of these things are continuing to impact legitimate businesses because it's sort of like the mushroom thing, isn't it? Or the whack-a-mole that I think that the Chair referenced earlier. You're pushing it down here, but it's coming up here, so from that small business perspective, they don't feel that it's being adequately addressed as it stands right now.

CATHERINE ELLIS: Since the reforms were introduced late last year—and noting that there are still reforms before the Parliament—we haven't heard the same level of distress from small businesses about that. We haven't heard the reports that said, "There was a shop here, there was some enforcement action, it closed down and then we saw it pop up over there," or, "We saw someone letting people know on social media that they were going to sell illicit tobacco from the hotel car park," or whatever it might be. We haven't seen those same escalated concerns from tobacco retailers since the introduction of the reforms late last year. However, we do in the commission acknowledge that it's relatively early days in terms of seeing how those reforms play out, noting that there have been a number of closure orders issued. We would say, generally speaking, that small business has taken notice of those closure orders being issued.

The Hon. NICHOLE OVERALL: We had it raised earlier—online operations and the fact that even when they're closed down, they can then just move into the online space. Are you receiving any inquiries or concerns from small business operators about how that is all unfolding as well?

CATHERINE ELLIS: No, there's been nothing in our inquiries that have marked out particular concerns in relation to online retailing as opposed to shopfront-related activity.

The Hon. NICHOLE OVERALL: Coming down to insurance and the increasing premiums—and I'm presuming that that's being identified by legitimate tobacco-based businesses that are seeing significantly increased premiums—could there eventually be a knock-on effect for other businesses as well? We've been advised just today that there may be as many as 20,000 different shops, outlets and other ways in which illegal tobacco could be obtained. From an insurance perspective, it wouldn't be too far outside the realms of possibility that they would say because they can't judge or adequately determine what constitutes a legal tobacco business, premiums will need to increase across the board, because of the uncertainty around what's going on in the industry. Would that be a reflection that would not be, as I said, outside the bounds of possibility?

CATHERINE ELLIS: What we've heard from small businesses in New South Wales is that there are two things that they're feeling and experiencing. Again, I stress it's in a concentrated small number of cases. For

those businesses impacted it's quite severe. Number one, if you're in the tobacco retailing industry, then it's harder to obtain insurance in some circumstances. That could be because there are restrictions placed on the policy. It could be because it's more expensive or, in some cases, unobtainable or unaffordable. The second thing is businesses that are not involved in that industry but are operating proximal to a legitimate retailer—or, more so prior to the reforms, an illegitimate retailer. So a florist, a newsagent, a cafe or anything operating in the same strip of shops as an illicit tobacco retailer might find that because there are concerns about criminal activity in that general area, that then has an impact on their ability to obtain insurance.

The Hon. NICHOLE OVERALL: So there is potentially that flow-on effect. There's certainly concern about the broader effect of it when it comes to the insurance platform.

CATHERINE ELLIS: Yes, for a small number of businesses. I should stress that we, again, haven't surveyed or done specific consultations with small businesses since the reforms were introduced late last year. We haven't yet formed a view on how that might have changed since November.

The Hon. NICHOLE OVERALL: When do you think you will do the next round of discussions, surveys et cetera on what the impact might be? I'm presuming that you would look at the effectiveness as well. When would you plan on doing that next?

CATHERINE ELLIS: Generally speaking, the commission would expect to give something six to 12 months before we deliberately consult with small businesses on effectiveness.

The Hon. NICHOLE OVERALL: I'm sorry to interrupt. If you suddenly saw a spike, if a whole bunch of businesses were suddenly saying, "We've got real concerns around this", would you then potentially bring that forward?

CATHERINE ELLIS: Yes. We are always monitoring through the inquiries that we've received directly from small businesses but also stakeholder representations and other things; we monitor every day for key issues for small businesses. When it becomes apparent that there's a growing trend or a systemic issue or something that's really spiking, as you say, for small businesses then we will make more direct efforts to understand more about the problem and make representations to ensure that the voice and the experience of those small businesses are being heard.

The Hon. NICHOLE OVERALL: One of the other areas that has been identified—certainly to me, even from an anecdotal basis—is the significant mental health strain on small and family businesses. Are you seeing increases in that? What are the supports in that regard, and do they also need to be looked at in terms of whether it's enough with everything that's going on?

CATHERINE ELLIS: Certainly the inquiries that we've had and the discussions that we've had with small businesses support that understanding that there is, for some limited number, a very distressing experience, and that goes to mental health. For the broader business community, and community generally, there's obviously that level of concern. In terms of small business supports, I'm not aware of anything that exists specifically for this issue. However, there are programs that offer mental health support to small businesses. One that I might mention to the Committee is Beyond Blue. It's called the NASBO program. I think it's a Commonwealth-funded program for small businesses, specifically working with them on any type of concern that they're dealing with, whether it's safety in a retail environment through to a whole range of other things.

That program, we're aware, is appreciated. We received positive feedback from small businesses who've utilised that program. All indications to us are that it's a valued and appreciated program. It's certainly something that small businesses who are distressed about the impact of illicit tobacco could access. My understanding is that there's no referral needed. They only need to contact the provider to access that service. I think it provides six free-of-charge sessions in the first instance.

The Hon. NICHOLE OVERALL: Of course, there are other small business support programs that have been axed, but we won't go there. You talk about smaller numbers of small businesspeople in distress currently. We're seeing the incredible and rapid rise of issues and the growth of the illicit tobacco market, essentially since 2019. We heard earlier this morning that's within the last year alone, so it's not outside the realms of possibility—it's possible to foresee—that there are going to be increasing issues for legitimate businesses being able to deal with that if the trajectory continues as we're seeing now.

CATHERINE ELLIS: I would bring the Committee back to what I said before about the trend in inquiries that we've had, which is a small number of increased inquiries, but they have changed a bit in their complexion since the introduction of the reforms. There are obviously others before the Parliament. I don't think the commission is yet at a point where it would form a view about broader impacts or effectiveness of those changes.

The Hon. NICHOLE OVERALL: So because you're not looking at that at this point in time, there's no preparedness for or preparatory work for what might eventuate. You're just dealing with whatever is being presented by the minute, which the suggestion is that it's not that significant.

CATHERINE ELLIS: What we've seen in the commission is that for this small number of businesses that are saying it's affected them significantly, it is a profound impact; however, the number of reports we've had of that nature since the introduction of the changes last year, as I've said, have decreased. We do have the mechanisms in place in the commission to detect when we have a rising level of distress reports or concerns from small businesses and their representative bodies about illicit tobacco retailing, or the effectiveness of enforcement regimes or anything else that may be affecting their viability and operations. We'll continue to monitor that as we go through. That's a priority for us all the time, to monitor key concerns for small businesses, and we'll continue to do that in respect of illicit tobacco and the reforms that have been introduced and are currently before the Parliament.

The CHAIR: There are no more questions. They're questioned out. Thank you very much for coming.

(The witnesses withdrew.)

(Luncheon adjournment)

Dr EDWARD JEGASOTHY, Senior lecturer, School of Public Health, University of Sydney, affirmed and examined

Dr JAMES MARTIN, Associate Professor, School of Humanities and Social Sciences, Deakin University, affirmed and examined

The CHAIR: Welcome, Dr Martin and Dr Jegasothy. Would either or both of you like to make an opening statement?

JAMES MARTIN: Good afternoon, Chair, and my thanks to the Committee for the opportunity to present evidence to you today. I'm a criminologist and specialist in illicit markets and their policing, and I wish to declare that I have never accepted any funding from the tobacco or nicotine industries.

The CHAIR: Neither have I.

JAMES MARTIN: Australia is in the grip of a self-inflicted tobacco and nicotine crisis that increasingly resembles the United States' failed experiment with alcohol prohibition a century ago. Nicotine is used regularly by millions of Australians and is the third most popular recreational drug in the country, after caffeine and alcohol. Demand is strong and persistent and, nationally, has increased marginally over the past decade. Yet over that time, the legal supply of nicotine has been subject to increasingly restrictive forms of de facto or formal prohibition. For tobacco, major tax increases have resulted in the world's most expensive cigarettes. An Australian with a pack-a-day legal habit now faces a yearly bill in excess of \$15,000.

At the same time, the Commonwealth has prohibited the sale of vapes, a substantially less harmful tobacco substitute and the most popular and effective means to quit smoking. These restrictions have pushed a majority of nicotine consumers into the willing hands of organised crime groups, who have profited from the creation of one of the largest black markets in our nation's history. Illicit nicotine is now worth an estimated \$7 billion and growing, meaning that this once largely legal market now constitutes roughly 40 per cent of Australia's entire illicit drug economy, worth more than cannabis, cocaine, ecstasy and heroin combined. Competition for control of the market has fuelled an ever-expanding nationwide crime wave with over 270 firebombings, the latest of which was at 2.40 a.m. this morning; multiple homicides; a growing number of robberies, thefts and instances of extortion targeting the legal retail sector; and at least one terror attack, now linked to an infamous tobacco crime boss.

Corruption of the private sector has helped facilitate this trade and, in my assessment, presents a very real and under-acknowledged risk to public agencies tasked with regulation and enforcement. Like alcohol prohibition, it is very unlikely that the Government's efforts to crush the black market through increased enforcement alone will succeed. Criminological research shows that large-scale black markets are highly adaptable and resistant to law enforcement. To give our enforcement and regulatory agencies the best chance of success, we need a major policy reset—one geared around shrinking the black market by diverting as many consumers as possible back to the legal market. This can be done by lowering tobacco excise and creating an accessible, regulated market for less harmful nicotine products, such as vapes and nicotine pouches. This approach has been highly effective in other countries which have, in recent years, seen bigger and faster declines in smoking and smoking-related diseases and deaths than in Australia.

We have a chance to turn this crisis around, but first we need to acknowledge the mistakes that have led us here—to forego our obsession with moralistic, world-first policy posturing in favour of pragmatic, evidence-based reform grounded in harm reduction, and to recognise that a legal, regulated nicotine industry is preferable to one run by organised crime groups who sell the same products but use the profits they make to kill or intimidate anyone who gets in their way. The results of our own failing experiment with nicotine prohibition are now in. It's time to heed the cautionary lessons it so clearly offers.

EDWARD JEGASOTHY: Thank you for the opportunity to appear today. I have also not received any funding from tobacco or nicotine industries—never have and never will. I want to address what this crisis represents from a public health perspective, and that is a major policy failure. Let me outline the policy rationale. High tobacco taxes were justified because price signals reduce smoking, particularly amongst disadvantaged populations who are supposedly more price sensitive. Pharmacy-only vaping restrictions were justified on two grounds: to prevent youth access and to provide a controlled pathway for adult smokers to access these substantially less harmful products for smoking cessation. These are legitimate public health objectives.

However, these policies have now achieved precisely the opposite of what they were designed to accomplish. High tobacco taxes were meant to make cigarettes more expensive. Instead, they have made tobacco cheaper than it has been in the past 20 years. Vaping restrictions were meant to keep vapes away from children and provide adult smokers with a harm reduction pathway. Instead, 95 per cent of vapes are now sold through

illicit channels, which means no age verification, no consumer protections and a highly restricted pathway for adults to access them legally as an alternative to smoking. The policy has failed at both protecting children and enabling harm reduction for adults. It has been confirmed now that at least half of all tobacco sold in Australia is illicit. We have lost regulatory control—no health warnings and no plain packaging. From a health promotion perspective, this is catastrophic.

But, critically, even before the black market emerged, these policies were failing the public health ethics test. On effectiveness, despite claims that tobacco tax is the single most effective policy to reduce smoking, there is very little evidence from Australia—the world-leader in implementing this policy—that this is actually the case. As we can see from NSW Health data, smoking declined no faster after the taxes were increased than before. On equity, the same data shows that the smoking gap between the most and least disadvantaged areas widened over the period of tax increases. The people who are most disadvantaged are now four times more likely to smoke than those who are the least disadvantaged. The populations who were supposed to benefit the most fell further behind and paid the price. The policy achieved the opposite of its stated objective. On substitutes—the only legal form of recreational nicotine now is the most harmful one.

Now that the black market has emerged, it is time to reflect. If this were a medical treatment producing such severe side effects, we would pause and re-examine. Even if enforcement were perfectly successful in eliminating the black market, we would return to policy settings which were already not fit for purpose. Finally, evidence-based policy must be driven by outcomes, not by opposition to industry preferences. If we decide policy based on what the industry does or doesn't like, we will allow industry interests to dictate policy. Instead, our focus should be on the public interest. We only need to ask, do policies reduce harm and help those most affected? If the answer is yes, the fact that the industry might coincidentally benefit is irrelevant. To that end, all policy options must be on the table to address this issue ethically and effectively.

The Hon. STEPHEN LAWRENCE: Thanks to you both for coming along. It's really helpful evidence. And thanks for some of your other work that I've earlier had access to. Dr Martin, are you able to assist us with some information about black markets in other places that might be particularly resistant to enforcement, which might help us by way of analogy?

JAMES MARTIN: Yes, absolutely. Actually, we don't even really need to go that far to answer that question because Australia's experience with other illicit markets, particularly illicit drug markets, is very instructive in this regard. Just for a bit of context, between the 2008-09 and 2020-21 financial years, we tripled our drug law enforcement budget nationally. That's everything from border scanning to State policing, all the way through the pipeline. This is a supply reduction measure that's intended to reduce the accessibility of illicit drugs—not eliminate it entirely—to make sure that there are fewer drugs hitting the streets, and the drugs that do hit the streets are supposed to be more expensive and less pure.

The police have done their best with the extra billions of dollars in funding that have been afforded to them. Each year, we see record levels of arrests and record levels of drug seizures. The problem is, the impact on the market has been negligible. What we've seen is no change in the availability of any of the major illicit drug types over that time. We have seen purity increase and we've seen substantial declines in terms of price once you adjust for inflation. For example, methamphetamine is just as accessible as it was 15 years ago, but at half the price once adjusted for inflation. I think what this really does is demonstrate the limits here in Australia—a country with relatively low levels of corruption, strong enforcement and a relatively strong border—of what enforcement can achieve. Further doubling down on enforcement past a minimal level produces sharply diminishing returns.

The Hon. STEPHEN LAWRENCE: That's helpful. Just going back in time a bit, we've had access to some statistical and graphed information that suggests that as the excise continued to increase, smoking rates weren't dropping. Then, about five years ago, the black market really seems to have started to escalate. This is a question for you both. Are you able to talk through what changed at the point where it started to escalate?

JAMES MARTIN: It was around about the pre-COVID area, 2019-20, where we start to see very significant increases in the levels of illicit tobacco that are being seized at the border, which is a good general level indicator of criminal activity. Of course, it is also an indicator of increased enforcement. But I think we're seeing both things happening simultaneously. I think it's a confluence of factors. We have the increasing price of legal tobacco and, around about 2020, we started to see increasing restrictions on the availability of vapes as well—so, the crackdown on the loophole that allowed vapes to be sold without nicotine, despite nearly all of them containing nicotine. All of those things pushed or shifted demand towards illicit suppliers, and we start to see this tipping point emerge. Suppressing illicit markets is possible, but it is really only feasible when they're very small. You can snuff them out in their infancy and control them and keep them in a suppressed state, but once they cross this critical threshold and become large-volume illicit markets, they are essentially uncontrollable through enforcement action.

The Hon. NICHOLE OVERALL: What is that threshold? That is one of my questions. How close are we to that threshold?

JAMES MARTIN: Putting a precise line on it is very difficult to do. We couldn't do it in this instance, but we'd be talking tens of thousands of users versus millions. We are well past that threshold when it comes to nicotine now. As I said in my opening statement, it's the third most popular recreational drug in the country—millions and millions of users. The reason it's more effective when it comes to smaller illicit markets is because the networks themselves are quite fragile. If you have a law enforcement operation, preferably a large-scale one, and you arrest some key players, those key players might be a critical node or a broker that connects critical suppliers or wholesalers with mid-level dealers, with retailers. You can take those key people out and then the network can collapse. Your efforts at supply reduction can be effective. But once you reach this critical mass—which, again, it's not easy to define, but you'd be talking about tens of thousands to hundreds of thousands, millions, of consumers—then those networks become very dense. Essentially, it doesn't matter how many nodes you take out of that network, the network can still function; you can still find a viable pathway from the point of importation through to the point of consumption.

The Hon. STEPHEN LAWRENCE: Dr Jegasothy, what happened five or six years ago that started the spike?

EDWARD JEGASOTHY: It's difficult to say from my perspective, definitively, what it was that precipitated that change at that moment in time. Of course, at that time, legal cigarettes were already \$40 or more for a pack, so the tax was quite high. That demand pressure for cheaper substitutes was there. But of course, other factors had to come into play for the market to grow from that point. It had to start from somewhere and it had to start some time. It's difficult to say exactly why that moment. Of course, there was COVID and shop closures and lots of other things going on at the same time. It's difficult for me to say.

EDWARD JEGASOTHY: One thing to add to that as well, the cost-of-living crisis and the financial pressures that households were under, I think, is another contributing factor that kicked in around the same time. You had the price of tobacco going up at the same time that people's disposable incomes were shrinking, which adds further pressure on households and therefore incentivises cheaper illicit supply as well.

EDWARD JEGASOTHY: That's actually a good point. Just to jump in again, one of the things that is interesting about the tobacco tax is that it's indexed to wages, because wages usually outpace CPI, consumer price index. But during the COVID period it was the other way around, where CPI was outstripping wages and the tobacco tax actually declined in real terms, which again speaks to that cost-of-living crisis as well.

The Hon. STEPHEN LAWRENCE: Dr Jegasothy, in your opening statement you spoke about what the excise had been achieving prior to the explosion in the black market. What does your research and expertise tell us about that? What was the excise doing prior to the explosion in the black market in terms of suppressing smoking? For example, at what point might it have stopped lowering smoking rates? And in that context, can you talk a bit about the impact of such high pricing of cigarettes on disadvantaged communities?

EDWARD JEGASOTHY: Yes. You've got graphs in front of you. If you could look, perhaps firstly, at figure two. I've shaded the middle section from 2010-20 as that period where the tax increased. Cigarette prices increased from about \$10 or \$12 a packet in 2010 to—

The Hon. STEPHEN LAWRENCE: Figure two, is that this one here?

EDWARD JEGASOTHY: The bottom one on the first page, yes. You can see that before 2010 the price was stable. It was just indexed to inflation. The price of cigarettes stayed the same over that whole decade, and we can see that there was a parallel decline. Each of these lines represents a different quintile of socio-economic status in New South Wales. Looking at the smoking rates, you can see that it's all declining fairly parallel and fairly quickly. The period from 2010 to—

The Hon. STEPHEN LAWRENCE: So the orange one at the bottom, that's the most advantaged people?

EDWARD JEGASOTHY: That's right. That's the least disadvantaged population areas, compared with the purple line at the top, which is the most disadvantaged. We can see that there's a big gap that's maintained by moving down in parallel. But in 2010, when the tax started increasing, what we would expect is an acceleration in that decline. If there is a really strong price sensitivity which relates to prevalence of smoking, there may have been a decline in consumption of cigarettes and people smoking fewer cigarettes. But what we're interested in in public health is how many people actually smoke and how many people smoke every day, because that's what causes the harm.

What we can see is that there isn't a huge decline in smoking during that period and it doesn't seem to have declined any more rapidly than previously, and particularly among the most disadvantaged groups. So to answer your question, what happened is that people would simply pay the price for those cigarettes. The cost of cigarettes continued to go up. They'd pay the price. Maybe they would smoke fewer cigarettes per day or per week, but in the end they're paying a much larger sum of money. We saw that when we observed that the tax revenue went up from \$10 billion to \$16 billion in 2019; that extra \$6 billion was being paid for by those people who continued to smoke, for whom the policy was not helpful.

The Hon. STEPHEN LAWRENCE: We took evidence this morning from the Federal Illicit Tobacco and E-Cigarettes Commissioner. She said that the Federal excise policy is a public health policy not a revenue-raising policy. What would you say about that proposition?

EDWARD JEGASOTHY: I would say that that was the intent of the policy; it was intended to reduce smoking rates. A good thing to do is to reduce smoking rates. They're really harmful products that cause a great deal of suffering and illness in this country and globally. But, once the tax is implemented, there is an issue of path dependence when a government is taxing this product at increasing proportions. Prior to 2010, it was not a health policy. Australia has been taxing tobacco since before Federation. It was one of the first taxes ever implemented, because it was a really effective consumption tax, like GST. You could tax a crate of tobacco as it came off a ship or as it was being warehoused. That would be an effective way of taxing the population, because basically everyone smoked. In 2010 it was implemented as a public health policy, but it still remained in the control of Treasury. It still remained a strong revenue instrument, being the fourth largest tax revenue source in the Commonwealth.

The Hon. STEPHEN LAWRENCE: What would you say to the suggestion that the Federal excise policy, for some period of time, has operated to extract money from the poorest communities in Australia to no public health benefit?

EDWARD JEGASOTHY: On the question of public health benefit, we have to think about proportionality, reciprocity, who benefits and who pays the cost. When you look at the figures in front of you at figure one and figure two on the first page, you can see who benefits and who hasn't benefited. Those who continue to pay the price for cigarettes are the ones who pay the cost. Those who quit smoking or are less likely to smoke are the ones who will see the benefits. When we think about it in those terms, this is a highly regressive policy in both economic and fiscal terms—where it's a transfer of wealth and income from the poorest of society to the richest—and in health terms. It is highly regressive. It is extracting health from the poorest of our society and giving that to the richest.

The Hon. STEPHEN LAWRENCE: I'm not sure who this question is for—perhaps both of you. What would we need to see with respect to changes in the excise level to have a discernible impact in combination with all the other enforcement measures and stuff? Are you able to put a number on it?

JAMES MARTIN: From my perspective, no. That's something that you don't want to do a back-of-the-envelope calculation for. There are some broad parameters we could put around it. I think you would need to go back to 2019 levels, at an absolute minimum, because that's the level at which we started to see the black market explode. But, also, it's not as simple as just going back to 2019 and then the problem goes away. Once illicit distribution networks become established, you can't just get rid of the settings that got rid of them in the first place. They will stay entrenched. You will likely need to reduce tax settings, perhaps even further than that, in addition to doing increased enforcement, in addition to creating a legal, regulated market for nicotine products.

The Hon. STEPHEN LAWRENCE: I was going to finish on that. What is the fundamental problem with e-cigarettes? Are they a real public health threat, such that they should never be widely available? Are they only such a threat if they're on the black market and manufactured in an illicit way? Is there a real public health rationale to heavily restrict their availability or should we be looking at a New Zealand-type model, where, as I understand it, they're more widely available and regulated?

JAMES MARTIN: I think Ed will probably have things to say, but I'll have a quick first go at it. New Zealand, the UK—there's a bunch of jurisdictions that handle this very differently from Australia. They are much more liberal policies when it comes to vapes and other alternative nicotine products. They're based on the Cochrane reviews, which are run by Oxford University and their Cochrane collaboration. They do living, systemic reviews, going out and assessing all the studies that are coming out. The Cochrane reviews are unequivocal that there is no serious risk of significant harm in the short- to medium-term using vapes. Long-term studies are still yet to be done because vapes have only been around for a couple of decades.

Research suggests, looking at biomarkers of harm that accumulate in the body over time, that people who vape have biomarkers of harm closer to people who have never smoked than to people who smoke. What we're seeing in those jurisdictions—New Zealand is the most readily comparable. They have the next highest levels of tobacco tax than we have in Australia. When they introduced their legal, regulated market for vapes in 2020, they had a higher daily smoking prevalence than we had in Australia. Now it is significantly lower. The biggest pause in smoking has occurred amongst priority populations. First nations New Zealanders and people in those lowest socio-economic quantiles have quit smoking through vaping in the largest numbers.

The Hon. STEPHEN LAWRENCE: Have they seen improvements in public health outcomes?

JAMES MARTIN: I think the real world leader in this space—because there is a lag time between the use of these alternative nicotine products that can be quite lengthy—is Sweden. Sweden has a long tradition of snus. The latest iteration of snus is nicotine pouches. They're sort of like a mini teabag with tobacco in it that you put in your upper lip. The nicotine usage rates in Sweden are about on par with the EU average. As many people use nicotine on a regular recreational basis in Sweden as in Germany, for example—the EU average—but Sweden has the lowest rate of tobacco-related morbidity and mortality in Europe. So it is not nicotine usage, per se, that is associated with significant harms. It is the vector by which that nicotine enters the body. We know that tobacco smoking or combustion—ironically, the only legal form of recreational nicotine consumption in Australia—is also by far the most harmful.

The Hon. STEPHEN LAWRENCE: Is there anything you'd add to that?

EDWARD JEGASOTHY: One of the challenges here, when making decisions at a population level, is that we have to make these comparative risk assessments. You might say that vaping is not without risk, especially when, as Dr Martin mentioned, we don't have longer term studies to show what the long-term effects are. But we don't make decisions independently of what is already happening in reality. A lot of the TGA's justification for the ban—while Cochrane and the Law Society in the UK have made recommendations around the risk of vapes, they have been in comparison with smoking. The recommendations and evidence put forward by the National Health and Medical Research Council of Australia through the Australian National University are based on an alternative of nothing. So compared with nothing, there is some risk. But smoking does exist and we can see who smokes. That's the comparison. For those who have never smoked and would never smoke, vaping is an increase in risk. Is that an acceptable level of risk based on the loss of benefit for those people who currently smoke? That's a question for policy. I don't think, from my reading of the decisions made at the Commonwealth level, that that calculation has been done, nor has it been done equitably or justly.

JAMES MARTIN: Could I just add one further, quick point there? That messaging that Dr Jegasothy mentioned is very clear in the public health campaigns that are done in both the UK and New Zealand. The message is if you don't smoke, you shouldn't vape. If you do smoke, you should switch to vaping to improve your health. In both countries now, they actually have taxpayer-funded "switch to quit" schemes, where they give free vapes to smokers to try to incentivise them to quit. Here in Australia, we make vapes harder to get than cigarettes, which you can buy in any Coles or convenience store around the country. From a harm reduction perspective, what we do is a topsy-turvy world.

EDWARD JEGASOTHY: There was one more thing you said about the harms from vapes. A lot of the analysis done, which underpinned the decision-making by the TGA and the Commonwealth, was based on risks from illicit vaping products, so the risks that informed the restrictions were the illicit products, which have been facilitated by the restrictions. So the restrictions drive the illicit market, which then creates harms, which drive restrictions. We're in this feedback cycle of more restrictions and then more illicit market, which could be broken by having a more available, open and highly regulated commercial market that is not through the Therapeutic Goods.

JAMES MARTIN: Just to underline that point, there have been studies done on the vapes that are sold in Australia through the illicit market. Most of them do have what they say on the tin. There is a small proportion that have very dangerous adulterants in them. But we do know that the levels of nicotine, so that's the dependence-forming, addictive part of vaping or smoking, is five to 10 times higher in illicit products as opposed to those most commonly sold in jurisdictions such as New Zealand that have regulated vape markets.

The Hon. NICHOLE OVERALL: That's really fascinating stuff to hear, particularly around the Swedish example. What you're suggesting, though, is that given the international examples, we, in terms of Australia, aren't giving it enough credibility or potentially following international examples that are working.

JAMES MARTIN: Yes, absolutely.

The Hon. NICHOLE OVERALL: I don't know whether you're in a position to answer that, but we aren't even looking at following these examples or a need to review our situation in comparison to.

JAMES MARTIN: Sadly, the Australian policy position has been informed by a lot of—I think we're in a state of moral panic at the moment. There has been a real absence of looking objectively at evidence that has gone through these very rigorous, systemic reviews like those done by Cochrane. I think, sadly, it's a lot easier to inflame a moral panic than it is to provide a nuanced, evidence-based approach. I think part of this has got to do with the stigmatisation that we're seeing of people who smoke and people who vape. The voices of consumers have really been silenced in this space. I think there has been a really sort of stigmatising element injected into public, political and media debate that has characterised people who use those products in very stigmatising terms.

The Hon. NICHOLE OVERALL: We certainly, even from the point of view of this inquiry, have quite disparate views in terms of those who are only looking at it from a public health position and those who are looking at it from getting rid of illegal tobacco. But essentially we're all on the same page. If we're never going to entirely eliminate the black market, we want to reduce it as much as possible and to improve public health outcomes. But what we're seeing now and the policy settings now are simply not achieving that. We do need a review and to find better ways in which we can deliver both of those things.

JAMES MARTIN: Yes, I would agree. I think the overarching goal should be to reduce tobacco- and nicotine-related harms. We want to see fewer harms in society. But I think there has been a shift in Australian tobacco control from reducing smoking, which is by far the most harmful form of nicotine consumption, to one that seeks to eliminate recreational nicotine consumption. Those are two quite different things. I think what we're seeing now is this almost obsessive fixation on eliminating recreational nicotine, and that has facilitated us taking our eyes off the biggest cause of preventable death in the country, which is tobacco smoking.

The Hon. NICHOLE OVERALL: You suggest in your submission that illegal tobacco accounts for about 40 per cent of total consumption, but that's an estimate. The suggestion is that it's probably higher, and if we keep going the way we're going, it's only going to increase further.

EDWARD JEGASOTHY: The submission was put in before the ITEC report had come out. That's correct; it is higher than that.

The Hon. NICHOLE OVERALL: It's about 60 per cent now? Is that the figure?

EDWARD JEGASOTHY: The ITEC report had a higher range of 60 per cent. If the trend is continuing, that would be higher at this point in time.

The Hon. NICHOLE OVERALL: The Hon. Stephen Lawrence took my question about the tobacco commissioner this morning and suggesting public health rather than revenue. The commissioner also essentially stated that she has not been presented with any evidence to suggest that the excise decrease will address the issues that we're seeing, but your research does suggest otherwise.

EDWARD JEGASOTHY: The point that I'm trying to make is that it's not just that it could work; it should work. It's that we need a justification for keeping the tax. It's a policy that's in place. We need to say, is it still fit for purpose as a public health policy when it is driving the black market and when it is, if not driving the black market, causing inequitable distribution of harms in terms of fiscal and economic impacts. From that perspective, we need to rethink that policy, and it should be on the table. The idea that it's a fixed policy and everything—so if we don't do anything with tax, we're not doing an action. The commissioner mentioned something about sort of trade-offs of action on enforcement versus inaction on tax as though inaction is not an action. It is, of course, a decision to make to keep the tax.

The CHAIR: Do you see us getting to a point where the legal market will be so small as to be insignificant? That seems to be the track we're on.

EDWARD JEGASOTHY: To that end, to cut the tax would be a multibillion-dollar policy for the Commonwealth. If it declines naturally through the black market, that's not a decision that the Commonwealth has to make.

The CHAIR: It's not a decision they have to consciously make, but they're certainly making it unconsciously by pretending it's not happening.

JAMES MARTIN: I would agree with that as well. I think the trajectories that we are on now, we run the risk of not having legal tobacco being sold in Australia in the medium term, and that would be catastrophic because, as we're seeing now, that doesn't mean that no tobacco is being smoked in Australia.

The CHAIR: It's also worse because at the same time the legal market's disappearing, and all we're going to do is have an increase in criminality on the other side. We'll literally have wars over it if we do not already have that in Victoria.

JAMES MARTIN: That's right. We know—this has been presented at previous government inquiries in Victoria and at the Commonwealth level—that retailers of legal tobacco are at real risk and they face increased robberies, extortions and assaults happening in their stores, and they're also getting extortion where organised crime heavies will come into their shop and say, "You should sell our illicit tobacco, and if you don't, nice shop you have here. It would be a shame if something happened to it." On that basis, we hear about the store owners that turn them down because their shops get firebombed. We don't hear about the store owners who are coerced and I think have justifiable fears for their safety or the safety of their families who end up unwilling accomplices in the illicit trade. I think it's fair to see that they're participants but also victims by the structures we've created.

The CHAIR: They also have an economic incentive to take it up too.

JAMES MARTIN: Yes.

The CHAIR: We heard evidence this morning from the representative of small shops that their business gross profits declined 50 per cent.

JAMES MARTIN: Yes.

The CHAIR: If they can replace that with illicit tobacco profit, why wouldn't they?

JAMES MARTIN: Yes.

The Hon. NICHOLE OVERALL: I'm very pleased as an historian to see you reference US prohibition and of course the suggestion that, just as it didn't then, increased enforcement won't do it alone. The excise as such won't do it alone. You made the point, Dr Martin, that eventually if we continue on the trajectory that we are, we will cross that threshold. There will be the point of potentially no turning back, and then we will be dealing with even more costs when it comes to health impacts, greater incidence of smoking and the money that will need to be thrown at it in order to look like something's happening. It's only going to compound even further.

EDWARD JEGASOTHY: That's right. The argument we made in our paper early last year was that if we keep the circumstances which created the black market, the restriction on vapes and the high taxes, we are maintaining the forces which drive both demand for illicit products and the supply of those products. No matter how much enforcement you do, those forces will still be there and we will be in a forever war on nicotine the way we are in a war on drugs.

The CHAIR: And an increase in people using vapes instead because there still are people that feel guilty about smoking, but they can reach out for vapes because they're available illegally as well.

JAMES MARTIN: That's not necessarily a bad thing from a harm reduction perspective.

The CHAIR: That's what I'm saying, going by your own graph.

JAMES MARTIN: One thing I can add on the costs that I think is under-explored here is the risk of corruption. The head of the Australian Criminal Intelligence Commission has stated that corruption in the private sector has been facilitating the trade in illicit nicotine products. But I think there is a real risk of corruption of public sector regulatory and law enforcement agencies. The reason I say that is that large-scale black markets have an inevitably corrupting effect on law enforcement and regulatory agencies. There's experience of that both here in New South Wales and all around Australia. I want to be careful I'm not alleging anything specific with New South Wales police, or any law enforcement agency specifically, but the challenge and the risks are there.

This is the reason that we have internal or external integrity units within law enforcement agencies, to guard against that risk. I think one of the real problems here in the nicotine space is that a lot of the enforcement action is being undertaken by civilian public agencies—health departments, for example—that lack those internal integrity units and do not have an organisational legacy of dealing with organised crime figures that are capable of extorting, threatening or corrupting those members. I think as well, unlike the very harmful and dangerous illicit goods and services that there's strong social cohesive consensus against, these products are legal in certain circumstances. You can buy expensive cigarettes and you can get vapes technically from pharmacies, although basically no-one does.

What that does is it creates a thin edge of the wedge for corruption. It allows a moral calculation to be made by people who might be in that vulnerable space, or are being threatened or extorted by organised crime figures, to look the other way. It's a lot easier to do so with these—the Wood royal commission spells it out quite clearly—so-called victimless crimes, ones that involve consenting transactions between suppliers and buyers; markets in which large-scale enforcement activities don't seem to be making a meaningful difference; and then with nicotine on top, the fact that these are largely tax evasion offences and don't attract the same kind of moral condemnation, as we see with trading in methamphetamine or child exploitation material, for example.

The Hon. NICHOLE OVERALL: If you want a localised example, never forget the ACT prohibition on alcohol for nearly 17 years. If you want to know how well that went, look at the profitability of Queanbeyan pubs during that period. And that was before US prohibition. I digress, but there is a local example of how badly it can go, certainly in a contained situation.

The Hon. STEPHEN LAWRENCE: Something that I've found quite striking in this inquiry is that a lot of people have turned up and expressed orthodoxies of long standing—for example, the suggestion that vapes are only to be used for the cessation of tobacco and that price increases suppress use, and therefore are good policy, and that our policy in that respect is internationally leading. I'm curious on your observations about why it is that in this particular area of policy we seem to have a very rigid adherence to orthodoxies that don't seem to be supported by evidence.

JAMES MARTIN: You can start with that one.

EDWARD JEGASOTHY: That's a difficult question for me to answer. It's speculating on what the political forces are within public health or within the academic disciplines.

The Hon. STEPHEN LAWRENCE: It was really clear on the previous day of the hearing, where public health professionals ended up grudgingly accepting that the price differential is driving the black market. But it seemed quite difficult to get that concession. I struggle to understand that, with the greatest of respect to them. Because they were very well-intentioned people and very professional, but it seemed to me that they'd been adhering for a long time to an orthodoxy that seems to have fallen apart in the light of events.

EDWARD JEGASOTHY: I think we all have the same objectives, ultimately, of improving the health of the population. We all have the same objectives of protecting the population from corporate interests and the interests of those keen to exploit inequalities in society and to exploit policy. There is that common goal, but we can see things in a slightly different way and have come through our careers being attached to certain policies and fighting certain fights, which I think can lead us to potentially be a little blinkered.

The Hon. STEPHEN LAWRENCE: I think that's very fair and reasonable of you, except we've got a situation where we've got the most expensive cigarettes in the world and, in terms of comparable countries, we seem to have the worst black market in the world. So I just question where intention translates into meaningful action and policy, because there must be a connection between those two things, to my mind.

JAMES MARTIN: I think maybe part of the problem in this instance is viewing black market outcomes, and the rise of the illicit market, as an externality, as treating tax as a public health policy that's got endorsement from the World Health Organization and other august public health bodies, and saying, "Once we've implemented the tax, we know that that's world leading. Anything that happens downstream of that problem isn't our problem."

The Hon. STEPHEN LAWRENCE: So the tax is a starting point.

JAMES MARTIN: Yes. And the problems that are the result of the tax aren't our problem. That's an enforcement issue. I think that really places an unfair and, I'm not sure if it's unprecedented, but very unusual burden on law enforcement agencies to enforce public health. If we're creating public health policies that require hundreds of millions of dollars in extra enforcement expenditure which, to my mind, does not have any guarantee of efficacy at this point, I wonder whether it's really a public health intervention or something else.

The Hon. STEPHEN LAWRENCE: We seem to be sleepwalking to a situation where the illicit market will eventually be almost all of the market, with the gravest of consequences in terms of organised crime activity and in terms of public health outcomes. Are you guys keen to really sound the alarm about this possibility?

JAMES MARTIN: Yes. I think I first warned about this about eight years ago. Eight years ago, it was unimaginable that we would be in this situation now, but the reason that I started talking about this publicly is that black markets form under predictable circumstances. That is strong, consistent demand and increasing restrictions on legal supply. That's exactly what we've seen, and sadly those predictions have come true.

EDWARD JEGASOTHY: I've taken these concerns, particularly around the distributive effects of the tax, to colleagues in public health and different agencies and different institutions, and have been met with a lot of hostility.

The CHAIR: No more questions. Thanks very much for coming. It is much appreciated.

(The witnesses withdrew.)

Dr RAGLAN MADDOX, Associate Professor, Tobacco Free Program, Australian National University, on former affirmation

The CHAIR: Thanks very much for coming again, Dr Maddox. Would you like to make an opening statement?

RAGLAN MADDOX: Thank you, Chair and Committee, for the opportunity to speak today. I also wanted to acknowledge the Gadigal people of the Eora nation and pay my respects to Elders past and present. I also want to acknowledge Aboriginal and Torres Strait Islander people from across the State, particularly young people who carry nicotine-free cultures, communities and futures forward. Today's discussion sits with a simple but uncomfortable truth: We're dealing with a product that, when used exactly as intended, kills. We've known this for more than 75 years, yet it remains widely available and highly visible in normalised everyday environments.

Walking here just now, I passed dozens of outlets selling tobacco. The visibility matters. Availability shapes behaviour and normalisation shapes expectations, and together they will continue to fuel addiction. Unregulated tobacco supply should not distract from that reality. It's an anomaly. It is part of a broader commercial supply system. We've heard this morning, and will later today, from people who profit from it that addiction, both regulated and unregulated channels, continues to harm our communities. Two out of three people who smoke will die from tobacco-related disease. Most begin young. Most want to quit. Most wish they never took it up.

Cessation support is essential, but we know that it can't compete with the oversupply and saturated markets. Preventing addiction early is easier than treating it. If we reduce exposure, availability and normalisation, fewer young people start, and fewer people who currently smoke will grapple with cessation. Also, as we know, Australia is party to the Framework Convention on Tobacco Control, which recognises that effective tobacco control requires reducing supply and protecting public health policy from commercial influence. Consistent with article 5.3, I don't take any tobacco industry or nicotine industry funding, and don't profit from selling product.

I want to finish with a little story. As we were developing the national lung cancer screening guidelines recently—they went national on 1 July last year—communities were very much excited for the screening and early detection of cancers, but one of the questions that kept coming up was what's the point of detecting cancer early when cancer-causing products remain available everywhere? The question before us today is not simply how do we respond to an illicit tobacco trade? It's what kind of environment do we want to choose to create? One that sustains addiction, disease and death or one that makes it easier to quit and prevent young people from starting? The presence of illicit supply is a signal to strengthen governance and reduce availability, not to weaken measures that are working. Ultimately, this is about what sort of future, what sort of environment, do we want to leave for youth and young people.

The Hon. STEPHEN LAWRENCE: The previous witness gave us a graph. I don't know if you've seen that?

RAGLAN MADDOX: I can't see that.

The Hon. STEPHEN LAWRENCE: It compares the Aboriginal community smoking rate with the non-Aboriginal community smoking rate. Are you able to talk us through the variable, basically?

RAGLAN MADDOX: Yes. How far back do we want to go? The context is very different for Indigenous people and for Aboriginal and Torres Strait Islander people. We think about the impact of colonisation and the introduction of commercial tobacco products: the payment of Aboriginal and Torres Strait Islander people in rations of flour, sugar, tea and tobacco, the exclusion from the cash economy, the exclusion from the education system—all factors that feed into and foster an environment for addiction. That's the starting point for commercial tobacco use.

When people are paid in rations of tobacco and excluded from the cash economy up until the late 1960s, we have generations of families and communities that are addicted to a highly addictive product from an industry that continues to market, sell and target this product to Aboriginal and Torres Strait Islander people. One of the things that's incredibly exciting, that speaks to the strength, resilience and everything that comes with the oldest living culture in the world here in Australia, which we celebrate—Gadigal land, as I acknowledged—is that they continue to push back on industry harms and addiction. We've seen massive declines in smoking rates, particularly since 2010. One of the biggest wins that we've seen is youth and young people not taking up tobacco use, and we continue to see communities—you just have to go out to La Perouse or somewhere like that—that are actually saying, "We don't want this product sold to youth and young people."

The Hon. STEPHEN LAWRENCE: I put up a post on my Facebook page recently talking about the shutting down of tobacco stores in Dubbo. An Aboriginal lady, who's a friend of mine, in fact, commented on the post and had a real swipe at me in terms of it being insensitive to the price impact on people. It made me think about what can we realistically expect, particularly of disadvantaged people who may be living in poverty, in terms of their discretion as to where they purchase tobacco? I wonder if you could talk us through the size of the excise, what impact that pricepoint has had, particularly in Aboriginal communities, and how that is weighed against public health outcomes.

RAGLAN MADDOX: Great question. I'll start with a story because I think it feeds nicely from your previous question. I was in a community recently, at the end of last year, when a lady, an older Aboriginal woman, said to me, "Raglan, I was paid in rations of tobacco, so I took this product up at a young age. I'm addicted to this product. I now smoke this product every day. I smoke seven cigarettes a day," or whatever the number was. I can't remember off the top of my head. And she goes, "Now every day I'm paying for this product that I'm addicted to, that you forced me to be addicted to by paying me in rations of tobacco." She said, "Everyone admits that that's slavery, being paid in rations of tobacco, and now I'm paying for my addiction. Is that also slavery?" I think that really is quite a cutting question. It's a challenge, as a society—how have we allowed a system to continue to profit from that addiction and that harm?

They're some of the hard truths that we need to actually be having. I wonder if creating space—or maybe an inquiry into the harms the industry continues to cause so that people like her, like that Aunty, can tell their story. I think that's really important. To come to your point about Dubbo, particularly over the last 12 months I've heard from many, many community members about "I'm glad I quit when I quit, before this product had been flooding the market" because the health of the person, the health of their family and the cost were the drivers for them to successfully quit. How can we make quitting easier? How can we provide cessation support that's more accessible? It is the same with Dubbo. It's the same in any community—Queanbeyan, wherever. If we can make quitting easier than actually buying a product, regulated or unregulated, then people will quit, and we know that people want to quit and they wish they never took it up. How do we support that? How do we foster that environment?

The Hon. STEPHEN LAWRENCE: We've had evidence that at some point the price increases cease to make more people quit—which was obviously the rationale of the tax.

RAGLAN MADDOX: Yes.

The Hon. STEPHEN LAWRENCE: What would you say to the proposition that, if that's true that at some point increases stopped suppressing use, haven't we just been extracting money disproportionately from the poorest part of the community for no public health benefit?

RAGLAN MADDOX: No. I wouldn't agree with that at all actually because, as I mentioned, the biggest wins that we've had is people not taking up smoking. We see population growth and things like that, but you've got to remember that if we make this product more accessible, cheaper, then young people, who are particularly price sensitive, are going to take up this product. The other reason—I appreciate the conversation about tax—is we also don't know that that reduction in tax is going to flow onto people who are addicted to the product. We see industries manipulate and play with pricepoints as taxes come—particularly if we know that there's a tax increase coming in, say, September, August, December, whenever, prices will gradually increase so that consumers don't actually feel that step change in tobacco use.

We don't actually know that those reductions will be passed on to consumers. We know that those who profit are legally obligated to act in the best interests of their shareholders, and predominantly that's for profit. There are other reasons, other interests, that shareholders might have. But I think the message that we continue to hear, including from youth and young people, is they don't want this product easily accessible; that includes pricepoints. They don't want to be buying cheap product.

The Hon. STEPHEN LAWRENCE: Except isn't the overall effect of what we have done that the community is flooded with cheap product because half the market's illicit?

RAGLAN MADDOX: Yes. What we see is supply chain adaption as we have successes and things across the board. Look at the success of the Tackling Indigenous Smoking program across the country. We see a massive decline in uptake. We see reductions in tobacco use. We see reductions in tobacco consumption, which is part of a comprehensive approach of health promotion, education, smoke-free policies, vape-free policies, taxation, access to health care, access to cessation supports. And what we see is that the market—because they have to act in the best interests of their shareholders, they can't just see their market dwindle and disappear. It's actually a phenomenal market, given that we've known for 75 years that this product kills people and yet it's still

here, still addicting new customers for a lifelong addiction. How do we protect youth and young people from being exposed to an oversaturated, oversupplied market?

The Hon. STEPHEN LAWRENCE: What you say seems to be supported by figure one in that graph because the rate of smoking among Aboriginal people seems, if you go back to, say, 2015 onwards, to have decreased more sharply than for non-Aboriginal people. I presume that's the effect of the higher rate to begin with, perhaps, but also the targeted programs that no doubt you've been involved in. But the rate of decrease doesn't seem to have increased once you go into 2020 onwards—the blue phase, which is when the excise has continued to increase and the black market has exploded. It makes me question this idea that there is a correlation between continued excise increases and smoking suppression. Do you see what I'm saying?

RAGLAN MADDOX: Not really, because we've had tax excise increases for a long time. But the other piece to think about—and I appreciate we had questions last time around comparisons—is there are other countries that have low tax that have high illicit trade. Paraguay, places like Indonesia et cetera.

The Hon. STEPHEN LAWRENCE: But are they comparable? Because they seem like low governance places compared to here.

RAGLAN MADDOX: Maybe that's the question. Is the governance here working? Do we have enforcement working? I think we wouldn't be here if it was working to the ability that communities want it to be working. They don't want to be saturated or oversupplied in their areas. I think this idea that we're going to continue to see shifts in illicit versus licit or regulated and unregulated markets without any change—that's why we have public health, that's why we have enforcement and other things is to adapt as supply adapts, as the market adapts. It's like water. As we block up one crack, the market is going to continue to try and evolve and change so that they can continue to fuel and support their shareholder base.

The Hon. STEPHEN LAWRENCE: Correct me if I'm wrong, you seem to be more in the "let's just ramp up the enforcement" school of thought rather than the "let's review the excise" school of thought. Is that a crude but fair way to put it?

RAGLAN MADDOX: I think we always review excise. We always review all evidence-based policy. It's a constant. As markets and supply change, I think you need to continue that. I would argue that we need a comprehensive approach. We need increased quitting supports. We need increased communication campaigns. Things like the National Lung Cancer Screening Program provide another avenue for people to get quit support, but also to know about their respiratory health. Then I guess to come back to the real fundamental of it is that we know people who are smoking and want to quit or wish they never took it up. So it really speaks to addiction and it speaks to people who are taking up highly addictive products that end up with a lifelong addiction. How we do we actually support them to make informed decisions so that they're not grappling with addiction for 40 years and then end up in the National Lung Cancer Screening Program to have, hopefully, a better health outcome, more options.

The Hon. STEPHEN LAWRENCE: That's really helpful, thank you.

The Hon. NICHOLE OVERALL: Dr Maddox, did I hear you just mention that you may be also of Queanbeyan?

RAGLAN MADDOX: I am. I think last time we connected we were graduating Queanbeyan High year 12 students just before COVID hit.

The Hon. NICHOLE OVERALL: I thought I recognised you. It's nice to see you again.

RAGLAN MADDOX: Likewise.

The Hon. NICHOLE OVERALL: Good to have you here. To be clear in my mind, your evidence is suggesting that young people, particularly in regional areas and Indigenous communities, they're not taking up smoking or not to the same degree. Is that still the case in light of the proliferation of illicit tobacco and it being more easily accessible?

RAGLAN MADDOX: New South Wales is actually incredibly diverse, even in Queanbeyan. Queanbeyan High versus Karabar High is also different population groups.

The Hon. NICHOLE OVERALL: It is, indeed. Different worlds.

RAGLAN MADDOX: We see variations. What we've seen since probably around COVID is that public health hasn't been as responsive to nicotine addiction as we were before COVID. There are a couple of reasons for that. I think the environmental health officers and others have been really stretched. During that period we saw saturation, oversupply of nicotine vaping devices and other things, including in Queanbeyan, where we had a lot

of vape stores. That's shifted, I think. As the industry continues to adapt, we also know people who use vapes are three times more likely to go on to smoke et cetera. We see increasing evidence around the harms of vaping—respiratory health, anxiety, mental health. We heard earlier in this inquiry it is a likely carcinogen.

Those sorts of things are concerning and we see, as the industry and the market adapts to the environment—where we have had supports, we've now got different legislations and reforms around vaping, so vaping devices aren't as easily available. Yes, they are available, but not as easily available, particularly to children, as they once were. So we see that shift and with that we have now seen the oversupply of regulated and unregulated tobacco products. Yes, we are seeing people taking up products, but it's really a grappling process. I think we have seen some successes in Queensland and South Australia in particular around enforcement. I suspect—hopefully based on this inquiry and whatever outcomes, and hopefully we end up with some good outcomes—we'll see governments and others supporting communities to be nicotine-free. Over time we see blips, ups and downs and other things over time. But overall it's been a long trajectory of a downward slope.

The Hon. NICHOLE OVERALL: Queensland has a more strengthened regulatory and enforcement environment than we do in New South Wales. It must be a concern for you, then—the fact that we are seeing this increase of the black market and the availability—that all of these good things or all of the wonderful progress that's been made, if it keeps going the way it's going, that'll be overturned and done away with.

RAGLAN MADDOX: Like I mentioned, we've known this for 75 years. The way that the industry is able to adapt based on the environment—speaking of Queanbeyan pubs, we saw when smoke-free policies came in, it was impossible, until implemented. Then we have smoke-free pubs. All of a sudden it's unusual to go into a pub that doesn't have smoke-free areas. All these things are impossible until they're implemented, and then it becomes normalised behaviour—an expectation—within communities. I think the more that we start to normalise and support people to be smoke free and nicotine free, support young people—the amount of young people that have been grappling with nicotine addiction, particularly vaping; I've heard concerns about anxiety and sleeping with a vape under their pillow. The feedback that we've had is like, "Stop selling this product. If I was actually successful in quitting, it would be not available at every corner store around the State." How do we support them to actually grab the bull by the horns and get rid of an addiction? That's one of the challenges we have as a society, is promoting health and wellbeing.

The Hon. NICHOLE OVERALL: Certainly less availability is obviously going to contribute to that. As you say, if they want the pricepoint as well to make it beyond their means, but when they can go down the back of the oval and pick up a packet of ciggies for \$8, then the temptation becomes ever greater. We need to be dealing with that supply issue as well as that pricepoint. You did mention that it's got to be comprehensively addressed, but the idea that keeping that tax high is going to suddenly have the problem go away is not really realistic in terms of what we've been hearing.

RAGLAN MADDOX: I guess it depends who's been speaking. I think there is that clear conflict of interest around who's profiting and who isn't. One of the things we hear around the country is that pricepoint is actually incredibly important for people to quit. We've got a cost-of-living crisis that's going on. For people to quit, it also then puts an injection of cash back into their pockets. I know that in some rural and remote locations a couple of years ago, people were saying, "Quitting was the best thing that ever happened to me, because I end up with a heap of cash. Where I used to be paying \$70 for a pack of smokes, I'm now getting an extra 70 bucks in my pocket every two days." There is a bit of a grappling effect there, where we want to prevent young people from taking it up, and we know that pricepoint is incredibly important for young people. If a cigarette is 30¢ a stick versus \$5 a stick, not only is it affordable, people are going to take it up, or not quit.

That driver is shifted. How do we support them to quit? I think that's where that comprehensive approach is there. Obviously the industry is a lot quicker and more nimble than regulation, legislation and enforcements at the moment, but if we can be more proactive—this is something we've been seeing for 75 years, as the industry adapts and floods markets and other things, and grapple with how they use the media and other things, then we need to be aware that this is not a surprise. Communities know that it's not a surprise. Aboriginal and Torres Strait Islander people said to us it's not their first rodeo. They need to keep coming back and supporting—particularly their young leaders coming though—to be smoke free and nicotine free so that they can take forward cultures, languages and be the next Queanbeyan High sports star or whatever it might be.

The Hon. NICHOLE OVERALL: I don't disagree with you that we do need to support quitting, particularly when it comes to our younger people. But even when we're looking at prevention, awareness and education programs and strategies, clearly there's much more needed. I know that there's some going on and there has been but, when we're talking about funding and if the tax is going to remain high, then we need to have it going where it needs to go, which includes providing additional resources and funding to these sorts of programs to a much greater degree. Then we need some level of measurement and actual effectiveness that it's not just being

seen to be doing something because we've got an ad on telly or on Facebook—that we're actually having measures that are producing effective outcomes.

RAGLAN MADDOX: Yes, that's a good point. I wonder if maybe, thinking about that, the solution there is around stricter licensing and maybe licensing fees so that those good providers that you've heard from can better track and trace their product and have control over the supply chain. If we know what products are going out to communities, where they are, we can also provide stronger supports and services for quitting and all those things.

The Hon. NICHOLE OVERALL: Better regulation, absolutely.

RAGLAN MADDOX: It would also be easier to enforce if we know where those hotspots are. I heard you talking earlier this morning about the number of retail outlets. If we can reduce that, the enforcement becomes easier because it's easier to detect. It'll make not only enforcement easier; it'll make emergency departments and elective surgery waiting times a bit easier because we won't have the backlog of cardiovascular disease, cancers, diabetes, you name it—all the things that tobacco causes.

The Hon. NICHOLE OVERALL: And which will only continue to be caused if illicit tobacco remains at the levels and even worse than what we're seeing right now, particularly in the statistics that you provide there for Aboriginal and Torres Strait Islander people. Fifty per cent of deaths for those aged 45-plus is appalling. We need to ensure that all of those outcomes are being achieved as effectively as possible.

The CHAIR: Thanks very much for coming, Dr Maddox.

(The witness withdrew.)

Ms MADELEINE STEEL, CEO, Empowering Parents In Crisis [EPIC], affirmed and examined

The CHAIR: I welcome our next witness. Would you like to make a small opening statement?

MADELEINE STEEL: Thank you to the Chair and Committee members for allowing me to give evidence today. I feel honoured to represent families in our community. EPIC supports parents caring for young people, particularly those caring for young people with mental health challenges and engaging in risky behaviours, including substance misuse. I'd like to open with one parent's story—a parent who had to stop putting pocket money into her 14-year-old son's bank account because it kept getting spent at the little tobacco shop near the train station nearby. She can see the transactions and she can smell the smoke on his clothes, yet he insists he's just buying snacks and energy drinks. That detail captures the heart of our problem from the family perspective: minors, based on assumption, accessing illegal tobacco products, families losing trust, and a tobacco retailer potentially tied to criminal supply—because the pocket money was quite low, \$20.

What we hear is that these products are easy to get, ID checks are inconsistent and parents' reports to authorities seem to go nowhere. The result is addiction for young people, conflict at home and young people at risk of nicotine addiction and having transactions with illegal traders. Our practical ask or consideration would be to cut retail access through proper licensing similar to that with alcohol so anyone under 18 cannot enter or buy without an adult; stop tobacconists opening near schools and stations where young people gather; give families and schools better tools to educate young people about addiction and illegal products; and create an easy reporting pathway with real follow-up so people feel heard and action is taken. Thank you.

The Hon. NICHOLE OVERALL: In describing parents' concerns, is all of the basis of your group's information and access to information—is it all anecdotal? Is it evidentiary based as well?

MADELEINE STEEL: When I did a submission to the inquiry, it's evidence based. It's both, I would say. Basically there is a common theme within our community of parents of young people at risk—is that vape products are everywhere. They're within the home and then the conversation around what's in them and those ongoing things—the conversation around the nicotine addiction. Then, with so many young people then taking to the illegal tobacco, to try and reduce the amount of vaping that they're doing because vaping—they can get away with vaping so easily. Certainly in my situation, I've watched it in my own family of a young person then going to the cheapest—I don't know what the network of communication is, but finding where the cheapest cigarettes are being sold at the moment and driving 20 kays out of the way just to go and get them.

So, yes, it is hearsay. It is community conversations, but it is based and backed on evidence. We can see what's happening with our community. Then it doesn't take much to look at—there's Cancer Council research. I've got a few here that I linked on to my submission—Cancer Council and the Australian Institute of Health and Welfare, as well as the Australian Institute of Family Studies. All back so many findings that we see is that the addiction generally starts with the vaping, but the access to vaping is incredibly easy and then the access to illegal tobacco is affordable. That's substantiated, I think, with the inquiry so far as well.

And the links with mental health—you'll see some of the letters that I've submitted today that have concerns from parents. It seemed the common theme with these is it's linked with poor mental health, whether that be anxiety—and I did overhear from the previous person talking about with vape sleeping under the pillow. It's a common thing. It's nearly like the dummy from a baby. To answer your question—I'm sorry, that was a lot of words—is really, yes, it is substantiated but we're also seeing it on the ground in real life. It's very worrying.

The Hon. NICHOLE OVERALL: Coming to that then, and also our previous witness, Dr Maddox, has your personal and through the group and evidence-based experience been that pricepoint can make a difference, specifically for young people? Or is it young people who are in different socio-economic circumstances that—without stereotyping or doing any of that. But if it's a young person from the North Shore who might better be able to pay \$50 or \$60 for a packet of cigarettes, as opposed to an Indigenous young person who is in a rural area and wouldn't do that—are you finding that pricepoint is something that could have a measurable effect?

MADELEINE STEEL: I'm not sure about the upper socio-economic—even though I do live in the North Shore, we're certainly not from that stereotypical bracket. The accessibility is price—yes, potentially—and also ease of access. Vapes can be sold within the school. There are people that are receiving vapes from adults to sell within the school system. Everything is very accessible. I suppose that has always been a little bit of a theme of illegal products like drugs as well. They filter through schools. That's not unusual. But the thing now is that when you walk into one of the shops—and there are so many of them—you see bongos. You see all of the other paraphernalia, as well as lollies. The vapes themselves are marketed as if they're a lolly as well. That's creeping into young people's lives. It's quite normal. If they're allowed to be shops like that where you can walk in and see all this paraphernalia, then obviously it's normalising the actions of using those things. That is going off the track

from the illegal tobacco—I understand that—but I just think the flavour of the market is that everything is then more accessible to them.

The Hon. NICHOLE OVERALL: Yes, the accessibility—you're quite right on that point. You do also raise the need for greater education, awareness and programs around all of that. Are you finding, or is it something that you're looking at, that education and awareness would potentially help positively with young people in saying, "Well, hang on a minute"? Again, from a personal point of view, I don't recall seeing anything for years and years about how bad smoking is. My husband and I don't smoke, but I know that both of my sons—and I'll out them here—do so "socially", but also because of that accessibility. Do you feel that education and awareness programs are really going to do what needs to be done in order to get young people not to go down the path in the first place?

MADELEINE STEEL: I think that it would have to be coupled with the restrictions in the sale and the legislation around it. Just taking liquor, for instance, and the sales of alcohol, you can't buy that. You can't even walk into an alcohol shop without an adult. It must be highly legislated because my son, who's 20 and a university student, has a part-time job in one of the big chain bottle shops. They have secret shoppers. There's a lot of reason and cause that they have to stick to the rules and not sell to minors. He wouldn't even hesitate. He would even ask someone who's 35 for ID—which would be lovely.

The Hon. NICHOLE OVERALL: We've all been asked for ID, haven't we? That's a really important point as well. Coming to the recommendations that have been made through the group, have there been other avenues or other opportunities that you've had to present these? Are we the first to have seen these recommendations?

MADELEINE STEEL: Yes. I actually saw in the local paper that there was an inquiry. It is a common theme within our group, so I do feel honoured to be sitting here. I'm certainly not an academic, but if we can filter in what's happening—parents really are feeling powerless in this situation. They obviously don't want their children to be taking up these products and having these addictions. However, they're presented in every angle. I think one of the letters talks about how young people might engage in these sorts of activities through peer pressure or through wanting to make friends. There are a lot of different reasons why they may start. Then, quite regularly, with young people who are maybe more susceptible to mental health challenges, it becomes even more of a problem. That's the kind of reading that I've done, and that's what we're seeing act out in our community.

The Hon. NICHOLE OVERALL: How long has EPIC been in place? Has it been a result of what we're seeing?

MADELEINE STEEL: Four years. We've just had our fourth birthday. It really was to create a safe space. It started as peer support for parents. If a young person is having challenges, it's not commonly acceptable to talk about it on the sideline or in a normal space. It's a safe space, but what it has become now is that it's not just a safe space to talk but there is what I would call the well of wisdom. There's a lot of hindsight within our group. When people within our community found out that I was coming here to talk today, they all thought that they'd send a letter, but they didn't. They're busy. But we've got a lot of talk about it. It really is that powerlessness in that there doesn't seem to be a way that the system is working alongside youth mental health.

The Hon. NICHOLE OVERALL: How do you see the ongoing position of the organisation? It will continue to provide support, obviously, but is there more of an advocacy-type situation as well, in that we're all working towards seeing this terrible situation resolved?

MADELEINE STEEL: I think advocacy is a big word, yes. I think that there was an outcome from the inquiry into school refusal in 2023, which was an Australian Government thing. It did suggest that there was paid peer support rolled out across Australia so parents could actually connect and discuss their issues and then maybe have a voice for looking at different ways that we could do things, whether that be within the education system or legally like this.

The Hon. STEPHEN LAWRENCE: Thank you so much for your evidence.

The Hon. NICHOLE OVERALL: Is there anything else that you'd like to add?

MADELEINE STEEL: No. I'm very grateful. If any questions come up from the reverse side, then I'm happy to filter it into the community and get back to you.

The Hon. NICHOLE OVERALL: Thank you for coming along today and passing it on. We appreciate that very much.

(The witness withdrew.)

Mr GEORGE GEORGAS, Managing Director, Cigarettes Tobacco Cigars Group, and Managing Director, Tobacco Market, sworn and examined

Mrs FELICIA RAKIC, Business Development Manager, Cigarettes Tobacco Cigars Group, and Director, Tobacco Market, sworn and examined

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

GEORGE GEORGAS: Good afternoon, Chair, Deputy Chair and members of the Committee. Firstly, thank you for extending the invitation to appear here today. I'm very honoured. I have grown up in this industry, working behind the counter of numerous tobacconist stores around Sydney from an early age. My family entered the industry in the mid '50s—1950 or thereabouts—having purchased their first store from Mr Greg Salters, who opened the store prior to the Second World War. At the time our tobacconist was also combined with a liquor store that my family owned until the early '70s before deciding to focus on tobacco retailing distribution.

Those two stores still remain today in their original position in Kings Cross, very much maintaining a landmark holding. Sadly, though, our tobacconist store has been closed for over 12 months as it is impossible for us to operate in the current illicit environment surrounded by what we believe to be stores not operating under the same lawful guidelines as ourselves. I do want to make one point, though—that I'm not here today to lay any blame on any government bodies, health groups or other associated with the industry, but rather to offer assistance, as I've done so in the past on numerous occasions, to help find a plausible and workable solution that meets the needs of all the key stakeholders of the industry, including the Government and the consumers of illegal products. I will now pass on to my daughter, Felicia, who has also prepared an opening statement as I'm conscious of the time constraints on this hearing.

FELICIA RAKIC: Good afternoon, Chair, Deputy Chair and members of the Committee. My family has been in the tobacco industry for over 70 years. Due to the current state of the industry, the last store that we owned and operated was in Kings Cross, where the number of tobacconists has increased from four to currently 15 on the same street alone. As my father has said, this has forced us to close the doors. I grew up in our family stores, and I have been formally working in the business for around 16 years. I have worked the register, managed staff, handled ordering, dealt directly with suppliers and managed difficult customer interactions. Previously I was the general manager of a compliant vaping wholesale business. This business is no longer in operation as the laws that came in on 1 July 2024 made this business model unlawful.

Today I am the business development manager at CTC. I oversee approximately 120 franchisees in New South Wales and 170 nationally. I am also a director of our tobacco distribution business, which was launched in December 2025 to ensure distribution of legal tobacco products remained available to our network. Ten years ago a typical compliant tobacconist ran with modest small business gross profits that supported staff, rent and family income. Today, the average tobacconist in our network has seen an 80 per cent reduction in revenue compared to 10 years ago. It is important to understand that this revenue has not disappeared. The consumer demand has not collapsed. The volume has shifted into illicit supply chains and unregulated retail environments, and legitimate retailers are suffering or closing altogether. Historically the minimum viable monthly volume required to be approved by CTC as a guideline for sustainability was 125,000 sticks of cigarettes or grams of tobacco per month.

As lawful volumes declined, that benchmark gradually reduced, and 12 months ago it was 40,000 sticks per month. As of today, minimum viable volume is not enforced. This is due to the increase in tobacco retailers across Australia, which have increased from 1,500 to approximately 20,000 stores. Over the past two years, 40 stores within our network have either closed or sold. Many faced the reality that business could not survive without selling illicit product and chose to shut down. In other instances, retailers have been offered above market value to sell their store. The price of illicit tobacco in some areas of Sydney can be found as low as \$6 per packet, with flavours like menthol and crush balls available in a variety of brands. These products became illegal for retail sale in Australia on 1 July 2025. For reference, the cheapest packet of compliant cigarettes that you could purchase in a CTC store is \$35.30, including GST.

Yesterday I spoke with a retailer in southern Sydney who has operated for over 25 years. He told me that Australians were always rule followers. His long-term customers remained loyal to brands like Winfield for as long as they possibly could because they did not want to break the law. In the past 12 months, he has watched those same long-term Winfield smokers begin requesting illicit products instead. He described it as the last domino to fall. When historically compliant consumers begin rationalising illegal purchasing due to cost pressures, it signals erosion of respect for the regulatory framework itself. The system as it currently operates is economically selecting against those who remain compliant. We are asking for a framework that does not structurally reward noncompliance and penalise lawful small business.

The Hon. STEPHEN LAWRENCE: I was interested in some more detail about the things in the CTC submission about legitimate tobacco franchisees being menaced and otherwise contacted by organised crime. Can you give us a sense of how prevalent that is?

GEORGE GEORGAS: It has been quite prevalent. We've had situations where franchisees have been either contacted in person or they've received phone calls where they've been questioned if they are selling illicit product or not. Obviously, they're not, and when they say they're not then they refuse to indulge, there have been some threats, in some instances not directly but we've had an incident where one of our franchisees was informed that they were aware of what school his daughter was going to. In other instances, I'm led to believe that they've been a little bit more direct.

The Hon. STEPHEN LAWRENCE: We heard some evidence in the inquiry earlier in the day—I'm not sure if you were watching it, but some people were engaging in some pretty informed speculation, really being concerned that the legal tobacco market might be totally eliminated in Australia and we might actually get to a point, if the current increase in the illicit market continues, where basically the whole tobacco market is illicit. They were saying that in such a situation, it wouldn't just be the public health harm that might be caused from more smoking, because it's cheaper, but also really serious harm that will be caused by organised crime activities. I'm just interested in your perspective because you've obviously got a close business sort of interest in it and understanding of it. Do you see Australia heading in that direction, where the legal tobacco market might effectively become non-profitable, too dangerous and, basically, we just hand it over to the illicit market—to the criminals. Is this a realistic concern?

GEORGE GEORGAS: It is a realistic concern, and it's actually quite concerning for me to have to admit that. But it is very, very true. If we continue on the trajectory that we're going to, there will be a situation where the consumer of cigarettes is basically going to say, "Well, I can't justify any longer paying for legitimate product. The availability of the illicit product is just so prevalent that I'm going to do"—I can give you an example just recently that I had. I had to take my car in to be repaired—I had a minor incident—and the young lady behind the counter where I was registering my car, because the car was registered in the business name, she said, "Oh, you're in tobacco." I go, "Yes, that's my business." She goes, "I had to finally start smoking illicit cigarettes because my favourite brand"—which I can't remember what it was—"has just gotten to the point where I either have to sacrifice a kidney to be able to afford it." I was a bit taken back by that. But that's where we're heading.

The Hon. STEPHEN LAWRENCE: You're businesspeople. How much of this would you put down to the Federal excise—to the high price of legal tobacco? How much is that driving this black market?

GEORGE GEORGAS: I think it's probably one of the key drivers. While it was a well-intentioned policy initially to curb the rates of smoking and it did work for some time—we have to be realistic here; it did—it has gotten to the point where the excise is so significant now that it did open the door for the illicit market. We have many examples in history when you do create a situation where prohibition is basically there, almost there and the price is so exorbitant, that you open the door to that. So I feel that is the key driver and why we're facing the scourge of the illicit market as we have now.

The Hon. STEPHEN LAWRENCE: We've taken some evidence to the effect that, as the excise continued to increase, it may have had downward pressure on smoking rates at various points but, at some point, it stopped to have that effect, so the price was increasing but the use was not dropping any faster or maybe, in some groups, being stable. I'm not quite sure. But, effectively, the evidence is that the increase in excise is not having a corresponding sort of benefit in terms of reduction in smoking. Does that fit with your business figures?

GEORGE GEORGAS: Yes. Most definitely.

FELICIA RAKIC: In terms of business figures, we can see the revenue of legitimate tobacco sales has decreased around 80 per cent in the last four to five years. And, year on year, it's around 50 per cent. So we do see legitimate sales of tobacco completely decreasing. I guess everyone can see the prevalence of smoking is still quite high, compared to that reduction in sales revenue. So do we see smoking rates are still the same? Not exactly, because our revenue has significantly decreased.

The Hon. NICHOLE OVERALL: Thank you both for being here. Just in your own experience and through the CTC Group that you are aware of, how many legitimate businesses, approximately, even in percentage-wise, have you known to close their doors?

GEORGE GEORGAS: Across the whole retail environment?

The Hon. NICHOLE OVERALL: Yes, certainly, that's known to you. We are looking New South Wales specific here. So if we want to restrict it to New South Wales, just approximately—you may not have a precise figure to hand.

FELICIA RAKIC: I do. It's 40 stores that have closed or sold in our total network of 170, approximately, stores.

The Hon. NICHOLE OVERALL: That's in your network.

FELICIA RAKIC: Our network. That's not only New South Wales. That's nationally.

The Hon. NICHOLE OVERALL: Great. Thank you. With your Kings Cross store that can't operate as a business now, from personal experience there, can you see it reopening?

GEORGE GEORGAS: Sadly, I don't know if it's going to reopen. I don't know. I did have a thought of reconfiguring the store to not make it so dependent on the sale of cigarettes, by having other offerings, to make it more like a gift store, because that store traditionally did sell a lot of gifts, and so the offering of legitimate cigarettes was still there to service the legitimate market, but it was not dependent on it. Sadly, I'm concerned that the store may never open its doors again as a tobacconist.

The Hon. NICHOLE OVERALL: So you're not necessarily an avenue for a legitimate tobacconist selling legal product. Is it your experience, then, through the CTC Group and, obviously, 40 stores closing, that, outside of the excise itself—and I'll get to that point in a minute. But its regulation and legislation—if you're talking about 15 other illegal tobacco stores on the same street, clearly, the regulations that are in place and the legislation as it's supposed to be working is actually impacting legal operations instead of impacting illegal operations.

GEORGE GEORGAS: Most definitely.

FELICIA RAKIC: I guess, out of the original four or five tobacconists that were in Kings Cross, been there a very long time, as our store had—I don't want to imply that all of those stores are illegal operators. That wouldn't be correct. Retailers are optimists. They're waiting for the turnaround. So there may come a point, if reform isn't made regarding licensing—the licensing that has been brought in is an excellent idea. And, with the closures that are happening, it should continue to work. But, if a turnaround doesn't happen, where illegal stores are completely shut down and areas are targeted all at once, at different times of the day, then we will see more legal operators closing their doors.

The Hon. NICHOLE OVERALL: So you would agree with greater regulation around where and how and which businesses could sell the legal product. You'd be more than willing to see that.

FELICIA RAKIC: Most definitely.

GEORGE GEORGAS: Most definitely. Deputy Chair, can I just add a further point to what Felicia said. Felicia mentioned the hours of enforcement. This is something that, I think, is very important, and I will make a reference to last Friday night. I was in an Uber, and I was going home. It was about 1.00 a.m. and we drove through Newtown. I was shocked at the amount of stores that were open at that time. If they didn't have identification saying "tobacconist", I would have thought they were a high-end jeweller or something open at that time. And they're within metres of each other, open at that time, one in the morning, selling product.

FELICIA RAKIC: Illicit.

GEORGE GEORGAS: We can't—we have to assume. They're operating at those times. I think part of the problem that the Government is facing with the enforcement side of things is that—currently the health department and the police are working on enforcement. But I think the operators of these outlets are aware that the health officers and that are only working up until probably, say, 5.30 in the day. So they operate outside those hours. So I think we need to be realistic here and, potentially, open the policing of this to a much higher level. And I know earlier it's been suggested that it should come under Liquor and Gaming. I would agree with that because they operate, I assume, during all hours. So I think that's something that needs to be considered.

The Hon. NICHOLE OVERALL: That's a valid point, as well. Now let's just turn to the excise and following on from Mr Lawrence's questioning there. When the excise was lower, from a business perspective, although it was achieving the outcomes of decreasing the number of smokers, as you've attested, you were still able to operate a business profitably. Therefore there was that point in time where the balance was being achieved, in that smoking rates weren't increasing but you could still operate legitimately and effectively.

GEORGE GEORGAS: Yes. Definitely.

FELICIA RAKIC: And 2019 has been mentioned as that tipping point, where a store could modestly operate on modest gross profit margins and it didn't tip over just yet. Around 2019 is when the excise rates tipped over to a point where more than a sustainable amount of the market moved to illicit products.

The Hon. NICHOLE OVERALL: Was it also at that point—and police attest, as well, in other evidence that we've received, that the black market was always there, around 15, 20 per cent. And again they have stated that it's from that 2019 period that it's skyrocketed. Do you think, again, just from your personal experience of the market, that illicit product was increasing anyway? Or has it definitely, absolutely been a result of what you've seen following the introduction of an excise rate that is so high? Was it happening? Was it going to happen anyway? Has it just happened more quickly? Or has it definitely been the explosion of the excise rate being so high and then, all of a sudden, more product available?

GEORGE GEORGAS: Most definitely. I think there was always an element of the illicit market. I can't quote figures, because I can't remember. But I believe it was sub 10 per cent, potentially. Once the excise started to impact on the price, then it just started, we just watched this explosion.

The Hon. NICHOLE OVERALL: Again, from your personal experience and my personal experience, I've spoken with a lot of people, including goodness knows many within my own family, who don't want to be turning to the illegal product—but again, availability, the cost-of-living crisis and the like. What they have said to me is that if the price of the legal product was lower, or at least more manageable, even if it was higher than the illegal product, they would still turn back to the legal product because they don't want to be acting in contravention of the law. They would still be willing to pay more. Also, they're worried about the health aspects of the products as well. If not evidence based but anecdotally, do you believe that would be the situation as well—that it would still turn the market back? Even if it didn't return to 2019 levels necessarily, but a more reasonable price would take the market back to that manageable level.

FELICIA RAKIC: Anecdotally, yes, I agree. A lot of our retailers would say the same thing. As I mentioned earlier, a retailer that I spoke to this week believes that Australians are rule followers. They would like to support small businesses and follow the rules and follow the law. But in the last few years it has become out of reach to regularly buy legal cigarettes with the excise rates in the state they are in.

GEORGE GEORGAS: Legal cigarettes is actually their preference because they're used to the taste of the Australian cigarettes. Throughout the whole world there are different blends for different markets. Australia has a particular blend which they're used to. The illicit brands that are coming in are coming from different markets globally. They prefer the Australian product, and none are available on the illicit market.

The Hon. NICHOLE OVERALL: Are you able or are you aware of—again, through the CTC Group—the effects on regional areas in particular, and businesses that you have that are regionally based? We have heard earlier today that it has had a disproportionate effect on regionally based businesses in this regard. Is that your experience as well?

FELICIA RAKIC: Yes, most definitely. From our experience, it took longer for illicit products to reach the regional areas. Once they did, it became overrun. We've seen a lot of stores regionally have no choice but to shut their doors or sell. Retailers who had been in the industry for 25 or 30 years plus—who were loyal, original members of our network—have had no choice but to close their doors where they previously operated as an owner-operator with maybe two to five staff members. That affects that community. Yes, we definitely have seen that. I would say that around 30 per cent to 40 per cent of our New South Wales network is regional, and the rest would be Sydney metro. It is a quite a large portion of our network, and they are suffering.

GEORGE GEORGAS: One of our multi-siters just recently closed five of his regional stores.

The CHAIR: Thanks for coming today. In your paper you talk about "Other Matters: A Path Forward". At the very top of your list you've got "Reduce tobacco excise". Do you have in mind any particular rate of excise that would bring it back to a level that would basically help you get back into business?

GEORGE GEORGAS: Personally, I'd like to see a reduction of 50 per cent. I know in recent days that the 30 per cent reduction has been put forward by another retail group. That would be a start. Realistically, I think 50 per cent. It's not just the reduction in the excise that's going to have an impact here; it's got to be a two-pronged effect. There has to be a reduction in the excise to a level where the market can—

The CHAIR: I'll come to it. I've read your submission. I hear what you're saying. But we have heard people talk about 30 per cent. You're saying 50 per cent. I would say nothing, if you really want to get back in the game. But then we had the Federal commissioner saying to us, "What would then happen is the illegal tobaccoists would just drop their prices to bring them back under whatever price you could provide, so therefore they shouldn't do it."

GEORGE GEORGAS: I disagree.

The CHAIR: How do you react to that sort of nonsense?

GEORGE GEORGAS: I disagree, because I think it goes back to what we're saying about the Australian consumer wanting the Australian legal product. They're only smoking the illicit product because of price.

The CHAIR: You're saying it's just purely driven by price. Also, I would think availability, too. How many illegal tobacco shops are there in Kings Cross now?

FELICIA RAKIC: Again, we would be guessing, but the number of tobacconists has increased from four, seven years ago, to about 15 on the same street.

The CHAIR: There you go. It's not just price driven. It's also that you step out the front door and there it is available. You just help yourself.

GEORGE GEORGAS: True.

The CHAIR: That gets down to the second point in your paper where you talk about an enforcement taskforce. How would you see that coming together? You mentioned Liquor and Gaming. We've had other government arms—I suppose is the right terminology—recommended by other witnesses. Is there more to it than that? The American model of alcohol, tobacco and firearms is very muscular in what they do. Is that the sort of thing you've got in mind?

GEORGE GEORGAS: The way the market is going, I wouldn't discount that as a plausible avenue to undertake.

FELICIA RAKIC: As well as all of those governing bodies working together. That's important. If we've got a central licensing system, where police understand whether a store is licensed, and the health department can see the same thing, and we can see previous history of offences, I think that would make a big difference.

The CHAIR: I don't know the answer to this question, but do police currently check tobacco licences? Is that part of their role?

GEORGE GEORGAS: No, I don't believe so.

FELICIA RAKIC: No.

The CHAIR: That's interesting, because police have a role in terms of checking alcohol club licensing, for example, and also gaming. They turn up at clubs checking on gaming compliance, but they don't turn up at tobacconists to check whether you're licensed or not.

GEORGE GEORGAS: I don't believe it's under their jurisdiction, that's why. I'm not sure.

The CHAIR: Aren't the licences you've got State issued?

GEORGE GEORGAS: Yes.

The CHAIR: It should be under their jurisdiction then.

GEORGE GEORGAS: Yes.

FELICIA RAKIC: The most recent licensing scheme has come in around September. Not all stores have been approved. There's still a lot of pending applications. In terms of a lot of the legislation, we're still learning it. We're still waiting for feedback from the department of health on exactly how it works. It may begin to be enforced by the New South Wales police, but I'm not exactly sure yet so I don't want to comment on that.

GEORGE GEORGAS: Obviously we applied for licences, and there is a police check we have to go through to get a licence.

The CHAIR: The police will be involved.

GEORGE GEORGAS: Yes.

The CHAIR: Maybe in an active way.

GEORGE GEORGAS: That's correct, Chair.

The CHAIR: That was the next thing you had on your list—mandatory State licensing. Then you talk about heavier penalties. How do you see that operating?

GEORGE GEORGAS: We're in favour of heavier penalties. If you're going to engage in an illegal operation, you should be prepared to suffer the consequences. I think significant fines and penalties are definitely—

The CHAIR: We've had recommendations about the proceeds of crime, criminal or whatever, being part of the penalty. You'd be part of that recommendation as well obviously?

FELICIA RAKIC: Yes.

The CHAIR: You talk about bringing vape products back again. I see in your paper that you had a legal vape business until the Federal Government banned it all in their zeal to be seen to be woke and clean. It has had exactly the opposite effect, as we know. How would you see that happening?

FELICIA RAKIC: Vaping and other next-generation products which have been mentioned today, like snus, are products that work internationally in Europe. Originally, we had a framework where nicotine in vapes was illegal. That's how we operated. But you were able to get a prescription and order products from overseas. That's kind of pointless, because Australian businesses could be selling that same product with prescription or without prescription. I believe that if we could bring the legislation back to govern the quality and the criteria necessary to import vape and next-generation products, that would significantly help with tobacco reduction and smoking incidents. Also, it would combat the illicit tobacco problem, because a lot of people were looking for alternatives due to price. The ability to quit smoking through nicotine products is much easier. We've seen studies from overseas that show that quitting through nicotine next-generation products is much easier than cold turkey.

The CHAIR: My understanding of how it was originally presented all those years ago is that if you could go to vaping you could, in theory, wean yourself off the worst effects of smoke in your lungs and things like that. In fact, we heard an academic talk about that this afternoon.

FELICIA RAKIC: I personally have experience with that as well. I personally quit smoking through vaping over three or four years, and I have not gone back.

The CHAIR: Are you still vaping?

FELICIA RAKIC: No. I have not for a couple of years.

The CHAIR: You're a textbook case.

FELICIA RAKIC: Exactly.

The CHAIR: Basically, your last point is looking for some sort of government insurance scheme support, primarily for landlord protection.

GEORGE GEORGAS: Not just landlord production. It's almost impossible for a legitimate retailer to get insurance for their business. What's also had a flow-on effect now, as a result of what's been happening in Victoria with all the firebombings and all that, is landlords can't get insurance for their premises. What I've also heard of late is adjoining properties are also in the same situation. They can't get insurance because there is a tobacconist there.

The CHAIR: You're talking about just tobacconist businesses.

GEORGE GEORGAS: Yes. That's a huge issue. We've also got the issue now with the banks. Banks are now starting to shy away from wanting to bank with people associated with the sale of tobacco. These are all the flow-on effects of that which are actually hurting the legitimate, honest businesspeople. The landlords are getting to a situation where they can no longer offer tenancies to legitimate retailers.

The Hon. NICHOLE OVERALL: What of the situation of tobacconists being closed through these regulations and new legislation and then reopening under different names and supposed different purposes? What's your experience and knowledge of that?

FELICIA RAKIC: We don't actually have too much experience of that. We have had some experience with stores that were under a forced closure and then their closure has been lifted after 90 days. They aren't reopening under different names or anything; they are legally reopening.

The Hon. NICHOLE OVERALL: What brought on their forced closure?

FELICIA RAKIC: The sale of illicit tobacco.

The Hon. NICHOLE OVERALL: And that's part of your group?

FELICIA RAKIC: It has happened, yes. Our aim is to reform that store. The aim is to get them back on track for legal, compliant retailing. There are instances where we have used a pledge of compliance before. Because we believe that if we reform that store and that operator, it is better than terminating them completely and pushing them out into the black market in totality.

GEORGE GEORGAS: But if they do reoffend, we do—we also conduct our own intelligence on stores that we suspect. We have done so and we are currently doing so, actually. Because we don't want the stores—even though there are situations out there, not just in our group but in all, where the pressure is mounting on them and they can't survive otherwise. We don't want any of our stores to be engaging in illicit markets. We will do what we need to do to ensure and enforce the law to get them away from that.

The Hon. NICHOLE OVERALL: That's good. Coming to that—and on the basis that you've said stronger enforcement and stronger regulation—90 days, is it enough?

FELICIA RAKIC: I believe so, for a first offence. I believe a 90-day closure of a business is detrimental to that business operating.

GEORGE GEORGAS: Most definitely.

FELICIA RAKIC: If the retailer is willing and prepared to reopen after the 90 days, I would say they've significantly invested in becoming a compliant tobacconist retailer. I think for a first offence, 90 days is enough. For a reoffence, it should be significantly longer.

GEORGE GEORGAS: We also have to be realistic in the respect of—that's all good if the Government does move to addressing the issue with the excise and addressing the issue with the illicit tobacco market. I know our Premier, Chris Minns, is very active in that space, but we need it at a Federal level to actually make some real inroads into the reduction of the illicit market. Eventually these stores that we're operating—and not just the stores that we have in the retail environment—if it continues the way it is continuing, will eventually close their doors. They've already been shut down and they've been penalised. I believe the next time, if they do get caught, the fines are so significant that I'm sure that they're not prepared to take that risk, so they would eventually close down.

The CHAIR: Thanks very much for coming today.

(The witnesses withdrew.)

The Committee adjourned at 15:40.