



COMMONWEALTH OF AUSTRALIA

# Proof Committee Hansard

## SENATE

COMMUNITY AFFAIRS LEGISLATION COMMITTEE

### **Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024**

(Public)

THURSDAY, 2 MAY 2024

CANBERRA

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## COMMUNITY AFFAIRS LEGISLATION COMMITTEE

**Thursday, 2 May 2024**

**Members in attendance:** Senators Cadell, Canavan [by video link], Kovacic [by video link], Marielle Smith [by video link], Steele-John [by video link] and Urquhart [by video link]

**Terms of Reference for the Inquiry:**

To inquire into and report on the Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024

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**GIBLIN, Mrs Dianne, Chief Executive Officer, Australian Council of State School Organisations**

**PHILLIPS, Mr Scott, Chief Executive Officer, Kidsafe Western Australia [by video link]**

**Committee met at 13:01**

**CHAIR (Senator Marielle Smith):** I declare open this hearing of the Senate Community Affairs Legislation Committee into the Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024. I begin by acknowledging the traditional custodians of the lands on which we meet today. I am chairing this meeting from Adelaide, the land of the Kaurna people. I would also like to extend that respect that we pay to Aboriginal and Torres Strait Islander people here today participating in the committee's work as well.

These are public proceedings being videostreamed live via the parliament's website, and a *Hansard* transcript is being made. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence. In accordance with Australia's obligations under the World Health Organization's Framework Convention on Tobacco Control, the committee will decline any request for witnesses to be heard in camera. In accordance with the same obligations, we will also be asking all witnesses to declare their interest in regard to the tobacco and vaping industries.

I now welcome representatives from the Australian Council of State School Organisations, Kidsafe WA and the Australian Parents Council. I understand that information on parliamentary privilege and the protection of witnesses giving evidence to Senate committees has been provided to you all. I thank those who have submitted their declarations of conflicts of interest. I am now going to ask you to make those declarations once more for the purposes of the *Hansard*. Can I get a yes or no from each of you in response to this question. Have you or your organisation received any support, whether financial or non-financial, direct or indirect, from any parties involved in the production, distribution or sale of tobacco, nicotine or vaping products?

**Mr Ellwood:** No.

**Mr Phillips:** No.

**Mrs Branch-Allen:** No.

**CHAIR:** Thank you very much. I'd now like to invite you each to make a brief opening statement if you wish to do so. At the conclusion of your remarks, I'll pass the call to senators for questions.

**Mr Ellwood:** ACSSO advocates and provides a voice for families of 2.53 million students in our government schools. Our paramount concern is the alarming rise of vaping among youth. Recent discussions with parents have revealed the normalisation of vaping even within school communities. Innovations now disguise vaping devices as everyday items, making them concealable by children. For example, you can buy vapes that look like stationery.

Current restrictions, including limiting sales of vapes to those over 18, have failed to curb youth usage. At the end of last year, we undertook a survey. Findings indicate that parents are seeking information about vaping and the risks through many channels but feel ill equipped to discuss vaping with their children, including because information is fragmented. Parents are overwhelmingly concerned about the health and welfare of their children if they are vaping.

Despite government funding for information provision, families lack the tools for confident conversations. While we advocate for stricter regulations on the supply of vapes, including a potential ban and supply-side restrictions, we also stress the importance of public health campaigns to reduce demand among youth. While educational resources, particularly animations, engage younger students, authentic narratives based on lived experience of the negative health effects resonate more with teens.

Although vaping has therapeutic applications under medical supervision, its aggressive marketing and the flavouring and packaging attract widespread use by youth. Further innovations in nicotine products, like nicotine microtabs that people put under their tongues, are also of concern. Families are concerned about the chemicals in vapes and other similar products and the long-term health effects on their children. Efforts to disseminate information about vaping and the risks have fallen short. ACSSO advocates for comprehensive public awareness campaigns and support for schools and families to engage youth on the dangers of vaping.

In conclusion, we emphasise education and support over punitive measures. We call for urgent legislative action to safeguard the wellbeing of the next generation from vaping. We support significant further restrictions on the supply of vaping products to minors combined with measures to reduce the demand for vapes, including restrictions on marketing and flavours targeted at minors and the use of appropriate health and education campaigns.

**Mr Phillips:** Thank you for the opportunity to comment on this bill. Firstly, Kidsafe WA is a strong supporter of this vaping reforms amendment. This bill will put an end to the youth vaping epidemic by closing loopholes and boosting enforcement while observing access to therapeutic vapes for those trying to quit smoking. I represent Kidsafe WA, but Kidsafe WA is part of a broader network of Kidsafe and child injury prevention organisations around Australia and the world. We also see it within the health promotion group within Western Australia looking at e-cigarettes and how they are affecting our youth.

From a Kidsafe point of view, we're the leading independent not-for-profit organisation dedicated to promoting safety and preventing childhood injuries and accidents in Western Australia. Injuries are the leading cause of death in Australian children aged one to 14 and account for nearly half of all deaths in that age group. Many of these deaths by injury can be prevented, so we work in the community by educating families, carers and children on keeping themselves safe.

More broadly, our interest here is in the proliferation of products that have come into the market. We're aware that in 2022-23 a third of secondary school students aged 12 to 17 have tried a vape. We are aware that one vaping device can hold up to the same nicotine as 50 cigarettes. We're also aware that young people that vape or try vaping are three times more likely to then go on to cigarettes.

Specifically, from a kid-safe point of view and an injury prevention point of view, the proliferation of these unregulated devices into the market has raised some concerns, particularly for younger children, around nicotine poison. We're very aware that nicotine is a very toxic chemical for children. We're also aware that it can be inhaled, absorbed or ingested. Small amounts of high levels of nicotine can have major effects on a child.

More specifically, in WA, between 2021 and 2022, we saw a 40 per cent increase in e-cigarette exposure calls to our poisons information service. Alarming, a 124 per cent increase was for toddlers, children under five. Over a five-year period between 2017 and 2024 we saw a 350 per cent increase in calls due to exposure to e-cigarettes. Last week, we saw a report from South Australia that showed a similar thing from their poisons information, with a 47 per cent increase in exposure to nicotine. Eighty-five per cent of that was to children under five and 60 per cent, specifically, of that was due to e-cigarettes.

We advocate for more control and more education to the parents of Australia on regulating these products and making sure that we dispose of them and store them well and, at the same time, making sure that we do preserve the therapeutic nature of trying to quit smoking with them also.

**CHAIR:** Thank you very much. Mrs Branch-Allen?

**Mrs Branch-Allen:** Thank you for the opportunity to speak today and acknowledge the comments made by my colleagues already. The Australian Parents Council's stance on young people vaping is explicit. We believe that vaping is causing harm to our young people, and we do support strong measures being put in place to protect our children.

It's understood that with child and adolescent health we must discourage vaping amongst young people. The potential health risks are, as outlined by my colleague at Kidsafe Western Australia, associated with nicotine addiction and other harmful substances found in vaping. The Australian Parents Council welcomes the minister's announcement and the bill proposals for prohibiting the importation of domestic products distribution, advertisement and disposal. We agree that more information needs to be provided to families so that they can make appropriate decisions around how to support their children with vaping.

We know that in June 2018, in Victoria, an 18-month-old died from following the ingestion of a high concentration of liquid nicotine. So we know there is a potential for it to kill our young people. We want to ensure that every effort is taken to prevent these tragedies from happening in the future.

When we talk to parents in schools, they say it's a problem. They say it's happening in our schools. We talk to teachers; they say it's happening in our schools. We must stop this. It is really, really having an impact on our children. Parents, as you said, are contacting places like the poisons information hotline to get support. But is that enough? And what about those parents who don't know what to do in the case of nicotine poisoning?

From the Australian Parents Council's point of view, we are at a crisis point, and we support the government in taking measures to stop this.

**CHAIR:** Thank you very much. I'm going to move to questions from senators.

**Senator URQUHART:** Thanks to the witnesses for coming along today. I will just throw this out, and whoever wants to have a go at answering them can do that. We are limited for time, so unless you've got something different to say it would be good to just have one contributor. Could you outline to me what's happening on the ground in schools when it comes to vaping.

**Mrs Giblin:** I am aware that New South Wales has a fairly strong presence of it in their curriculum, and many of the other states are just beginning to do that. There needs to be an upsurge in professional learning for teachers because often young people go to them first. If the teachers are not knowledgeable or not understanding, young people will go to their other sources, usually social media, and algorithms will point them to the wrong responses.

**Mrs Branch-Allen:** We're also hearing from schools about behavioural problems. Children are vaping, and it can cause disruption within the school—a lack of them taking instructions from teachers. That in itself is an issue as well.

**Senator URQUHART:** Could you tell me what impact vaping is having on teaching and learning within the school system.

**Mr Ellwood:** I think it's creating a strong disruption. Teachers are struggling to stop children from vaping both in classrooms and in playgrounds and public spaces. I think some children are doing it for different reasons. Some people are using it as a way to manage stress and maybe difficulties in various environments. It's not a very healthy coping mechanism. There would be benefits in having alternative supports for students to help them manage their stress.

It's becoming normalised. Some statistics were mentioned before—one in seven young people aged 14 to 17 are vaping. I think that's significantly higher in some cohorts. It's becoming normalised in populations you might not expect. I recently went to a soccer game. People that were coming off the soccer field weren't reaching for their water; they were reaching for their vape. So it's becoming normalised in youth populations in a way that I find surprising, I guess.

**Senator URQUHART:** How old were the students who had been on the soccer field?

**Mr Ellwood:** Maybe 17—16 or 17.

**Senator URQUHART:** We've heard stories about principals having to lock school bathrooms due to the high level of vaping that's occurring in them. Obviously students go and hide or whatever in the bathrooms. What are some of the measures that schools have had to take in the absence of broader reforms?

**Mrs Branch-Allen:** Being based in Tasmania, we know that that happened in Tasmania and that it caused a lot of outcry within the community. There was a lack of understanding of why the school had taken that precaution. There was a lack of understanding from the wider community of the depth of the problem of vaping in schools. I know we're focusing on a particular age group here, but let's be mindful that younger children are starting to vape as well. This is an addictive product, and, when you are addicted to something, coming off it is very difficult. So, yes, it's happening to an older group, but there are younger children being exposed to it as well. I think schools are having to take these measures because there's not enough support or understanding or training for teachers to deal with these situations. The complexity of that is that we already have schools that are struggling with disciplinary issues within their classrooms.

**Senator URQUHART:** Absolutely. Mr Phillips, could you talk to me about what other impacts vaping is having on young people, socially, in their families et cetera—that flow-on effect. Could you talk about that from your perspective, from Kidsafe.

**Mr Phillips:** From our perspective, and also as part of a broader health promotion community—to jump back a little bit to what you said before—we know that teenagers become more rapidly addicted to nicotine. We know that it harms their brain development at a time when their brain's developing, up until they are 25. The effect that may have, particularly in the school setting, is that it can affect parts of the brain that affect motor control, learning, attention, memory and mood. Anecdotally, we hear from families about the mood and that behavioural issue of children. Backing up what we heard before, there is just enough information for parents to deal with these situations in their home and in the school setting where these vapes seem to be widely available.

**Senator URQUHART:** What supports do schools have to provide to students who are vaping and their families as well?

**Mrs Giblin:** There have been some resources produced but we've noted it's been in an animated form, so it's not really reaching out to the teens of the group—possibly to the younger age group but not to the groups where we see a high surge of vapes. We don't want this to become a disciplinary issue. Rather than being a punitive

measure of suspending young people, we want to equip all those people that support young people with a long-term motion to quit vaping. The issue was originally that vaping came out and was known as the alternative to smoking, or the way to stop smoking, or not as harmful as smoking, and I don't think that message has been changed clearly enough for young people to understand.

**Mrs Branch-Allen:** This is an opportunity where the community must work in partnership with the schools. Parents and schools need to work together to achieve the outcome we want. We've got parents with very little understanding in some cases around this as well. This has to be not just one focus but everyone working together if we're going to achieve a change.

**Senator URQUHART:** Thank you.

**Senator KOVACIC:** Thank you, everyone, for your evidence this morning. I'm trying to think through some of the things that you are seeing here and I'm interested in your insights, particularly in what we just heard about vaping being a safe transition away for smokers but now it's being normalised as something for children to do—but it's not safe for children to do. There is a big difference between it being a smoking cessation tool and a social thing, which appears to be happening with children. What are your insights that you can share as to what are the initial triggers? Why are children initially starting to vape? There's a view that these vapes don't have nicotine but they clearly do, and they become addicted. What is that time line? What is that cycle like? What are you seeing about how it progresses?

**Mrs Giblin:** Our survey gave a number of responses to that. The first was curiosity and peer support. I think the flavouring and packaging is far more attractive to young people than cigarette smoking, and the myth that it's not as dangerous as smoking—so it's seen as an alternative. We know that over the past few years the anxiety levels in young people have risen considerably, and there is a lot of mental health illness out there in our young people through stress, anxiety, cost of living and all the pressures that we as adults are also taking into our own minds. It's often been that known thing that smoking is a relaxant. All those other messages that have accumulated, along with the curiosity, the flavours, and the packaging, came fairly clearly through in our survey last year as to why young people are attracted to smoking.

**Mr Ellwood:** The other factor is it's cheap and readily available to young people.

**Senator KOVACIC:** So the accessibility of it is a clear reason why it's being used. Have you got any insights on why none of the state legislation banning its sale has worked? You're not meant to be selling these things to kids, but we have some 1.3 million vape users across the country.

**Mrs Branch-Allen:** We know older people and older siblings will buy them and give them to younger people; that can be an issue, and that's been identified. We know that some children just pick them up because they're lying around their home; that's how they get access to them. If we look back to when smoking was around when we were young people: my mother was a smoker, and if there was something in the house I might have wanted to experiment with that. Children haven't changed that much, and this is another thing that, with peer pressure and growing up, is there and is available.

**Mr Phillips:** I agree with those comments, but we also have a border control issue here, where these things can be bought online. Obviously not every package that comes into this country is checked. Our young people are very good at the e-commerce side of it and getting access to these cheap vapes. That's how they're flooding the community.

**Senator KOVACIC:** Effectively we may have a challenge, even if we ban the sale of them, with kids jumping online and purchasing these with their Visa debit card, and they'll turn up in the post anyway.

**Mrs Giblin:** We need that two-pronged—

**Mr Phillips:** That goes to strengthening our border control.

**Senator KOVACIC:** My other question is for everyone. I'm curious as to what you would consider to be a measure of the success of this legislation. Is it a stabilisation in the rates of uptake? Is it a reduction in the use, particularly by children, of say 10, 20 or 30 per cent? Or is it purely the fact that you can't go down to the tobacconist or whatever it is and buy a vape at all?

**Mr Ellwood:** Young people shouldn't be vaping outside of medical recommendations. I don't think there's any reason why a young person should be vaping.

**Senator KOVACIC:** I agree, but we obviously have a lot who are vaping. I'm trying to get an understanding of what you would like to see to say that this legislation has been successful.

**Mrs Branch-Allen:** I hope, if this legislation goes through, it's the other things that might happen around it, which are raising that awareness, providing public campaigns that show the importance of making sure that our



young people aren't vaping and showing what other things happen, like the poisoning and the amount of nicotine. The legislation is really important, but it's got to be wrapped around with other things that highlight the dangers to young people and their families.

**Mr Phillips:** I agree with that. I think some harmonisation, some consistency, of legislation across the country is really important, so having that federal lead is really important. I also think that, although regulation is the last step in health promotion, there need to be clear reasons to not be selling these to children and clear penalties for it and basically a little bit more border control, as much as we can. The catch here will be the education piece to families and to the community that's consistent and shows what's happening with this vaping epidemic.

**Mr Ellwood:** I understand that there is a Generation Vape study. I've seen some articles about that. It talks about how young people are getting access to vapes. It might be informative for the committee to reach out to them.

**Senator STEELE-JOHN:** I have a question for the Australian Council of State School Organisations. Have there been difficulties reported by teachers who have been required to act as enforcers? If so, what are some of the difficulties that have been communicated to you in trying to remove vapes from children?

**Mrs Giblin:** I think there is always a difficulty in enforcing anything and making it punitive. Teachers have closed toilets. They've stood outside of school bathrooms to ensure that, whenever they smell the waft of raspberry mint—I've heard that's a lovely flavour to smell!—they can go in. But this then causes a conflict, because the punitive aspect and the taking away creates a negative relationship. I think that being able to educate and rehabilitate is a much better way to do that. So we need to make sure that all teachers have that tool in their kit, as opposed to sometimes teachers—I won't say it's more experienced teachers; it could be any teacher—moving down that punitive line like they did with smoking when I was at school. Any child caught smoking was suspended, but there was nothing that followed that. The consequence didn't match the action; we didn't assist that young person to quit that particular habit. That's where the difficulty lies, because there's not enough information out there. We haven't equipped our teachers with that yet. We have sent some nice, colourful, animated resources but that's not enough. We know that schools are not the only places that need to take this. It needs to be the wrap-around services of the community that Jen spoke about, but it's important that it's a high rise community awareness—like we have done with smoking. Now, there's quite a huge awareness of the effects of smoking. I think we can move down that line but making sure that we're not punitive and aggressive with young people about this.

**Senator STEELE-JOHN:** In that context, do you see any value in charging individuals with possession?

**Mrs Giblin:** Young people?

**Senator STEELE-JOHN:** Yes—students, I should say.

**Mrs Giblin:** I don't think we have an answer for that, but a personal opinion would be: no, there's no benefit in it whatsoever. The place for that would be where they got it from. The supplier is the issue there. The young person needs to have that support and understanding and assistance with quitting. They need to be aware that they shouldn't have it on school grounds, and all those sorts of other things that we have, but charging someone is not going to change the issue for the young person.

**Mrs Branch-Allen:** An interesting conversation developed in Australia this week around what children know and around discipline. If they don't know, how do they know? So, in a way, we have to show children that in life there can be consequences for things that you choose to do. Some of the debate this week was, 'Do we line students up and walk them all off and sit in desks behind chairs, and so forth?' We have to provide young people with some sort of clarification and understanding about what their responsibilities are. Punitive ways to do that have been shown not to work, but we have to provide them with clear boundaries about what is and is not acceptable.

**Senator STEELE-JOHN:** This question is to Kidsafe WA. The issue of children who've been exposed to nicotine and e-cigarettes is highly concerning. How many families have reached out to you for assistance in relation to e-cigarettes?

**Mr Phillips:** We've had to add this to every workshop. We run workshops from antenatal classes all the way through to grandparents, and we've needed to raise this issue. One of the problems we're having is that the messaging going to our children is also going to young parents. We have a number of young parents in our cohorts who are the highest users of vapes, so trying to get the message over to a parent, plus then down to the child, is the concerning thing for us. This is something that's exploded into the community. We're using our normal messaging of, 'Easy ways that you can avoid injury,' to put this to our parent groups. Our biggest concerns here are the poisoning risks to young toddlers, who aren't using the vapes but they're being left around—they're

not being stored properly. We've got nicotine being stored in the house. We're just raising that awareness with parents—new parents, older parents and all the way through to grandparents.

**CHAIR:** Mr Phillips, it's not just nicotine which is the safety risk here for kids. There are things like button batteries contained in vapes too. Is that correct?

**Mr Phillips:** We're also very concerned and we're watching this area. Across most products now we're seeing the proliferation of batteries too. I think, from the campaigning over the last few years, everyone will understand the risk of ingesting button batteries. The fact that these products are disposable means there's a real risk of an ingestion burn, but we're also seeing many reports of the disposal of all types of batteries, from e-scooters all the way through to vapes, causing fires and burns to people. So we're tracking that area very closely. The poisoning stuff is coming out of the background, but we're also starting to see people putting things like vapes in their pocket, and the batteries, which are probably not the best quality, are causing burns. There's also the way they're disposed of in the house. Lithium-ion batteries, when they're crushed, can catch on fire.

**CHAIR:** But then, presumably, the vapes on the market are now therapeutic products that have to abide by Australian safety standards, including the new code regarding batteries and the protection of those compartments. Is that correct?

**Mr Phillips:** I'm not 100 per cent sure about that, but I would assume that's correct. It's the disposable ones that we worry about the most, with cheap versions coming into the market, and how they're disposed of.

**CHAIR:** Could either you or others speak to the impacts of nicotine on young people who are still developing—not just physically but in terms of their mental health and wellbeing.

**Mr Phillips:** I can't speak to the mental health part of it, but we know that nicotine can get to some of the synapses in the developing brain, particularly in teenagers, when they're learning and growing. I've read studies that say there's anxiety and mood changes connected to that. Our biggest problem with nicotine, particularly with toddlers, where we're seeing a huge increase in their exposure to these e-liquids, is that even very low levels of nicotine can cause catastrophic results on a child. Nicotine is a poison that doesn't have to be ingested; it can be absorbed through the skin or it can be inhaled, and that can cause anything from hospitalisation, due to grumpiness and drowsiness, all the way through to coma. These e-liquids are at very high concentrations, even more than a cigarette, so a [inaudible] are refilling. As Jenny has already spoken about, we had an 18-month-old who ingested a small amount of nicotine from a refill, and that was part of a coroner's inquiry in 2018.

**CHAIR:** Perhaps the other witnesses might have something to add. We had evidence yesterday about young people consuming vapes, often not knowing they contain nicotine—they're not meant to if they're on the market—and then developing nicotine addictions, and the impact of that on their mental and physical health, including things like anxiety. Is there anything that you would like to contribute to that debate? Is that something that you're aware of or are seeing in young people?

**Mrs Giblin:** We're definitely aware of it. And, as you know, there is rise in the diagnoses of young people that are neurodiverse, and many of those young people easily form addictions. That's an unsafe space to be working in.

**CHAIR:** Thank you. Senator Cadell.

**Senator CADELL:** Sorry to everyone else here, but, as we have very limited time, I want to stay on some WA stuff. I'm from the Hunter Valley, on the coast near Newcastle, so I couldn't get further away than WA if I tried. In WA they've made the sale of all vapes illegal—nicotine and non-nicotine vapes—though state legislation, haven't they?

**Mr Phillips:** Yes.

**Senator CADELL:** What effect has that had on youth vaping there? I notice you talked about border control. I imagine state border control as well as Australian border control on this legislation is bad. Has youth vaping dropped already, or is it still a problem?

**Mr Phillips:** I think it's still a problem. The implementation of the legislation probably hasn't run long enough for those stats to come through. I couldn't answer that question, personally.

**Senator CADELL:** There's an article in the *West Australian*, from Tuesday 6 February, that says vape stores are still operating in Fremantle and there are still two vape stores operating within 200 metres of a school. Have you seen any enforcement to enforce these laws and stop people selling vapes?

**Mr Phillips:** I think it comes down to the capacity to do that enforcement. Quite often it is about what resources there are to do that. I'm aware that there is enforcement, but, specifically for those two situations, I couldn't answer that.

**Senator CADELL:** The article goes on. They went to specific stores and asked for berry flavoured product containing nicotine and were successful in eight stores. Separately, a University of Notre Dame study found that nine in 10 vape shops in Perth are within one kilometre of schools. This is despite having prohibition laws on the sale of vapes, isn't it?

**Mr Phillips:** Yes.

**Senator CADELL:** So what are the differences to a state law that prohibits the sale of all vapes, other than border control? You have these things in place, and they aren't being enforced. What happens when crime gangs, who are responsible for the illegal import and sale of all of these products to our kids, decide they won't abide by these laws in Australia? We've heard about going online. It's far easier now. I know that we're not talking about dark webs or anything. This hasn't worked in Western Australia. What happens if it doesn't work in Australia and we just move it online and kids still get access? What does success look like?

**Mr Phillips:** I will take all of that on notice. I can't speak for the regulators in Western Australia, but what I will say is that we've heard today a number of times that the way to bring the community along is through consistent education and not always trying to go after the offender but making sure that we have enough consistent messaging in the community that people actually know what this problem is. We try to work it from all angles. Regulation is normally the last step in these things. We saw that with pool fencing many years ago. Sometimes we need to put that regulation in at the end to make sure that it happens. But the education piece is the most important part here in making sure that we don't just have a legislation change here but that we have a lot of resourcing put around it to make sure that all parts of the community understand the dangers of this vaping epidemic.

**Senator CADELL:** That was the evidence from yesterday. I'll open it up now. This is a supply-side piece of legislation. Steps to fix the demand side are still not mature enough. They're still not there. We spent \$63 million. Western Australia has shown the model. We can put the laws in. For a law to work, it has to be enforceable. We're not seeing that. What do we do on the demand side to help kids? I know pokies are bad, but I still have a slap every now and then. That's even though I know they're bad. What do I do to keep vapes from kids? What can I do? What can we spend to make sure kids don't want them?

**Mr Ellwood:** It's like what others said. We definitely need both supply- and demand-side restrictions. Restrictions on the supply side affect the demand side as well. The products are highly attractive to young people. The flavours and the colours very much appeal to young people. Some of the new products that are coming out are vapes that look like stationery. They're specifically for children to hide the products from their teachers and parents.

**Senator CADELL:** I heard of an asthma puffer yesterday.

**Mr Ellwood:** Okay, that's terrifying! I think that the supply and demand angles need to work together. I think we need a public education campaign to be arming families, leaders in the community, teachers and principals—the gamut of people who have influence with young people—with the information about the dangers, having the research and the science readily available. As has been said before, vaping has become normalised very, very rapidly in 18 months or two years. The number of young people who have taken up vaping has increased dramatically. The science and the evidence will increase through time. I'm sure that you're getting other people to talk about the science. We need to be regularly updating the information that's available and then making sure that it's readily consumable by those leaders, by the community and by families so that we can talk to our children.

**Mrs Branch-Allen:** I think it's very sad. I've looked at the news over the last couple of weeks around what's actually happening in education systems across Australia. I think it is paramount that we, as adults, take responsibility and lead by example for children. We have to show that we can demonstrate to our young people what is good and what is bad, what is right and what is wrong. I don't think that we as people in Australia, in general, are putting enough effort in to set good examples for our students. I think along with setting this legislation showing that vaping is harmful we must educate parents, the general community and children to go in a better direction.

**CHAIR:** Senator Cadell, Senator Steele-John has asked for a couple more questions. Are you happy for me to pass the call, or did you want to place one more?

**Senator CADELL:** No, Chair; that's fine.

**CHAIR:** Senator Steele-John.

**Senator STEELE-JOHN:** Thank you for giving me the call again; I'll be very brief. I just want to ask the Australian Council of State School Organisations to clarify a piece of evidence you gave earlier. What supports do schools and teachers require from the federal government, in your view, to assist children to quit e-cigarettes?

**Mr Ellwood:** Properly targeted, well-rounded information to teachers, principals, school-leaders and families. Our survey indicated that most families are concerned about the health effects of vaping. The parents and carers have indicated that they are seeking the information from a whole range of sources but they are not confident about talking to young people about the risks and the issues around vaping. So they really need that information and it needs to be targeted.

For teens, they probably need first-person examples of where things have gone wrong with vaping—the health effects that are coming forward—so that they can relate to someone of their age and the impacts it's having on them.

**Senator STEELE-JOHN:** Is that the same for parents, in the view of the Australian Parents Council? Are the same supports needed?

**Mrs Giblin:** I think there needs to be flexible—

**Mrs Branch-Allen:** Absolutely.

**Mrs Giblin:** Sorry.

**Mrs Branch-Allen:** We need some clarity around the effects. We don't have long-term effects yet, because we're not in that longitudinal study as yet, but we know that we can relate it back to smoking. Some people have said that the term 'vaping' takes it away from the danger of smoking. So going back to calling them 'e-cigarettes' is a minor nomenclature change, but it does actually have some form of effect, and the actual legislation I think sends a very strong message that the country is serious about this, for the youth of our nation.

**Senator STEELE-JOHN:** Finally, for Kidsafe WA: how old is the youngest child you've encountered in your work who has been exposed to nicotine or e-cigarettes, either accidentally or deliberately?

**Mr Phillips:** I spoke about the little child who died in Victoria, who was 18 months old. So it's children in the first two years of life.

**Senator STEELE-JOHN:** In the first two years of life?

**Mr Phillips:** It's the exposure to nicotine. In that case, the mother was refilling one with nicotine and walked away, and the child ingested that. Children watch their parents, and, if we put something in our mouth, they think that is safe, so they will copy us. It's how they learn. The fact is that we may not be storing these things properly. We hear of people buying five-litre tins of refill. They've come across the border. And, after a while, if they're not using it anymore, it might go down the drain or it might be put somewhere in the house; so it is somewhere, stored. From Kidsafe's point of view, we already have enough poisoning problems with the poor storage of cleaning fluids and other things within the house. Nicotine is very toxic.

**Senator STEELE-JOHN:** Thank you for your evidence.

**CHAIR:** Senator Pratt just asked me to put a question to you—an extension to Senator Steele-John's—around what support teachers, specifically, might need when they are confiscating products that children have developed an addiction to and whether or not this is escalating conflict between students and teachers in the classroom.

**Mr Ellwood:** There's the action of taking the product away. But, if that is a support for the child, further action to support the child to get off an addictive product is important, and those wraparound services aren't readily available.

**Mrs Giblin:** They possibly need not so much a script but some dialogue around it that doesn't soften that by any means but allows that removal to not be as confronting, and for the child to be seeing that they're actually getting support.

**CHAIR:** Thank you all for your evidence today. If you have taken anything on notice, we're asking for responses by close of business on Monday because we're reporting the Senate on 8 May.

**DUNNE, Mr James, Policy and Projects Coordinator, Australian Alcohol and other Drugs Council**

**LALOR, Dr Erin, Chief Executive Officer, Alcohol and Drug Foundation**

**MENDELSON, Dr Colin, Private capacity [by video link]**

**TAYLOR, Mr Robert, Manager, Policy and Engagement, Alcohol and Drug Foundation**

**WALKER, Ms Melanie, Chief Executive Officer, Australian Alcohol and other Drugs Council**

[13:50]

**CHAIR:** I would like to welcome Dr Colin Mendelsohn along with representatives from the Alcohol and Drug Foundation and from the Australian Alcohol and Other Drugs Council. Thank you all for appearing today. Do you have any comments to make on the capacity in which you appear?

**Dr Mendelsohn:** I'm a retired medical practitioner and am appearing in a private capacity. I've had a special interest in tobacco treatment for over 40 years. I was on the committee that developed the college of GPs national guidelines for smoking. I was a conjoint professor in public health at the University of New South Wales, and I'm the founding chairman of the Australian Tobacco Harm Reduction Association.

**CHAIR:** Thank you all for submitting information regarding conflicts of interest. I now need to ask you to make those once more for the purpose of the *Hansard* record. The question I want you to answer is: have you or your organisation received any support—financial and non-financial, direct or indirect—from any parties involved in the production, distribution or sale of tobacco, nicotine or vaping products. If you have, please provide details of that support, including the nature of that support, the amount or value provided, the name of the entity or person providing it and any other related information. We will start with you Dr Mendelsohn.

**Dr Mendelsohn:** I've never received payments from electronic cigarette or tobacco companies. I was an unpaid board member of the Australian Tobacco Harm Reduction Association from 2017 to 2021. APHRA accepted unconditional seed funding from the retail vaping industry, which ceased in March 2019. It was approximately \$15,000 for funding and administrative support. APHRA received \$8,600 from a private harm reduction organisation called KAC Communications in the UK. This was money sourced from the surplus of a harm reduction conference. APHRA has never received money from the tobacco industry. I was an invited speaker at the World Vape Show conference in 2022 in Dubai. My travel expenses were paid. I was offered but didn't accept an honorarium. I'm author of a book *Stop Smoking Start Vaping*.

**CHAIR:** To the other witnesses?

**Dr Lalor:** I have not received funding as outlined and neither has the Alcohol and Drug Foundation.

**Mr Taylor:** Nor have I received any funding.

**Ms Walker:** Never have and never will.

**Mr Dunne:** I have not received any funding either.

**CHAIR:** I now invite each of you to make a brief opening statement if you wish to do so. At the conclusion of those statements, we'll go to questions from senators. Dr Mendelsohn?

**Dr Mendelsohn:** I would like to make three points. Firstly, the current de facto ban is not working and it will not work with the proposed changes. Ninety per cent of current vapers have rejected the legal pathway, and only a small number of doctors are willing to prescribe nicotine. This have predictably created a thriving and dangerous black market controlled by criminal networks which are selling high nicotine, unregulated products. There's been escalating violence with that. This has also been the key driver of youth vaping. History has shown that further enforcement and border control has minimal effect on the supply of illicit drugs. The only way to significantly reduce a black market is to replace it with a legal, regulated one. Vapes should be sold as adult consumer products from licensed retail outlets with strict age verification, like cigarettes and alcohol.

My second point is: we haven't got the balance right between protecting youth and helping adult smokers. In Australia, vaping policy is driven by a moral panic about the relatively small harm to a small number of young people. But we also need to remember that smoking is the leading preventable cause of death and illness in Australia and vaping is the most effective and popular quitting aid. Vaping is a huge opportunity for public health. Policies that make vaping less accessible, less appealing and less effective will keep people smoking.

Thirdly, I have been appalled by some of the misinformation presented to the committee in the first hearing and in some of the submissions. I will just give a few quick examples. Firstly, there is no good evidence that vaping is a gateway to smoking. In fact, the evidence suggests that vaping is diverting young people away from smoking overall. Secondly, there is no evidence that vaping harms the human adolescent brain. Thirdly, vaping is not

overwhelmingly used by youth, as some people have stated. Only five per cent of Australia's vapers are under 18. Finally, vaping is not risk-free, but it carries only a small fraction of the risk of smoking. The risk of cancer, for example, has been estimated to be less than one per cent of that of smoking. Thank you.

**CHAIR:** Thank you. We will now hear from the foundation.

**Dr Lalor:** Thanks for the opportunity to appear. I would like to begin by acknowledging the traditional owners of the lands that we are appearing to you from, the Wurundjeri people of the Kulin nation, and pay my respects to elders past, present and emerging.

The Alcohol and Drug Foundation supports the overall purpose of the bill, to better regulate the supply of vaping products in Australia to minimise harm, particularly for young people. However, we are concerned that the bill may have the unintended consequences of criminalising individuals in possession of vapes. Our key issue lies with the offence of possessing less than a commercial quantity and the reversal of evidentiary burden for those changed with the offence. We believe that there is a risk of inadvertently penalising individuals through accidental or deliberate misapplication of these provisions. The bill includes an exception for personal possession, but it is not clear how this will be implemented.

So our recommendation in relation to this bill would be to remove any criminal penalties for possession under a commercial quantity and to set thresholds for a commercial quantity that address the possibility of small quantities of products being used for commercial purposes.

An alternative, which isn't ideal, would be to look to the reversal of evidentiary burden which requires the individual to prove that the vaping products are for personal. In practice, individuals in certain situations may have difficulty proving this. The explanatory memorandum refers to enforcement agents using context and surrounding circumstances to determine if possession of less than a commercial quantity is for personal possession or not. However, this introduces a degree of police discretion, which we have seen in the illicit drug space can lead to inequitable outcomes for marginalised communities where laws are not equally applied. We are concerned that this may lead to inequitable outcomes, particularly for those communities most in contact with police. We also see it as important that the commercial quantities within the bill are defined in regulation, as there needs to be some flexibility in defining these, particularly given that we are still learning how much of a product an individual may have for personal use. Consideration of setting higher limits for liquids and pods and lower levels for devices might also be worth considering.

Finally, implementation of any reforms is going to be important. I think we have had a lot of discussion about things that need to be considered in implementing these reforms, ensuring that barriers to access such as getting a prescription or cost or maintaining people on nicotine are addressed. It will also require coordination across all states and territories as well as the federal government, which points again to the need for re-establishing mechanisms that foster cross-jurisdictional communication and planning, like the previous Ministerial Drug and Alcohol Forum. Thank you.

**CHAIR:** Thank you, and to the council.

**Ms Walker:** AADC is the national peak body representing the alcohol and other drugs sector, and our member organisations include the peak bodies for the drug and alcohol sector in each of the states and territories; other peak bodies within the sector representing other groups, including families and consumers; as well as professional associations representing people working in the alcohol and other drug sector. AADC is supportive of responses to e-cigarette use and vaping related harms that are holistic and inclusive of health promotion, preventative health and harm reduction actions and treatment models that are evidence informed, funded to meet need and avoid sensationalising risks and harms. In that context, I note that, in the previous session, we talked about supply reduction and demand reduction. We're also keen for the emphasis to be on harm reduction in this context, noting the three pillars of the National Drug Strategy.

AADC, like ADF, is concerned that provisions within the current draft bill and its interaction with existing state and territory legislation relating to the authorised possession of prescription medications risk creating a criminalised environment for individuals who use vaping goods. This will foreseeably lead to a range of adverse outcomes, including discouraging those in need of support for vaping related harms from seeking treatment.

We acknowledge the intent of the draft bill and support that it should avoid targeting individual users of vaping goods, and, as such, we recommend the bill be strengthened further by—and this is where we're a little bit different to the ADF—removing the threshold amounts, which define possession for personal use, and replacing these with personal use exemptions that are not contingent on the quantity of vaping devices or products a person possesses. For comparison, we refer to section 128(2)(a) and (b) of the recent Public Health (Tobacco and Other Products) Act 2023, which provides examples of broader personal use exemptions for banned tobacco products,

and we see that as a comparable mechanism in this context. We also recommend that the Minister for Health and Aged Care, through the recently established national e-cigarette working group, work proactively with relevant state and territory ministers to remove penalties associated with the individual possession of vaping goods for personal use and ensure consistency across jurisdictions.

In summary, we're supportive of the vibe or intent of the bill, if you will, but we're about the unintended consequences and ensuring that the road to hell isn't paved with good intentions, in this instance. Thank you.

**CHAIR:** Thank you very much. I'll now move to questions from senators, starting with Senator Urquhart. We'll try and keep them to three minutes each, if you can, Senator Urquhart.

**Senator URQUHART:** Okay, thank you. I would ask the witnesses if they could keep their answers as brief as they could, so I can get through as much as I can. I might go to Dr Mendelsohn first. You've stated publicly that you believe schools should consider allowing students who vape to leave the classroom to vape in a designated area in school grounds. We know that there are lots of smokers and vapers that have gone all around the world in aircraft that can't smoke for a long period of time. So why do you then appear to believe that kids who vape can't wait till after school hours to actually vape?

**Dr Mendelsohn:** That's because that's what we're constantly hearing from schools—that kids are disruptive in the classroom because of nicotine dependence. There are a number of kids—not that many, according to the research—that can't last right through a class session or they can't last through the whole day, because they're going into nicotine withdrawal. It seems compassionate and pragmatic, to me, to relieve those symptoms. Obviously, they need to have their addiction and their vaping behaviour discussed, and, ideally, they should be quitting but some won't. I think it's compassionate that we should allow them to relieve those symptoms until they can leave the school area.

**Senator URQUHART:** Just on that, all vapes that children are smoking in school have been illegally retailed, obviously.

**Dr Mendelsohn:** Yes.

**Senator URQUHART:** You think it's compassionate to allow children that vape to leave the classroom. Do you believe that schools should be compassionate and allow kids who are users of other illegal drugs to actually leave the classroom to use them?

**Dr Mendelsohn:** I'm not talking about other drugs. My speciality is tobacco and nicotine—

**Senator URQUHART:** No, I'm drawing a comparison. We're talking about illegal drugs, illegal substances.

**Dr Mendelsohn:** In the case of nicotine, I don't think it makes any difference. If those kids go and use nicotine gum or lozenges, I'm fine with that. I think we need to relieve their nicotine addiction. It's causing disruption in the classroom. It's unpleasant for them, and I think that's a compassionate approach. I'd much rather they weren't vaping in the first place, but, realistically, they will be.

**Senator URQUHART:** You're a strong supporter of flavours in vapes. Do you agree that there's no example anywhere in the world of an inhalable therapeutic drug that contains flavouring chemicals? I think about 2.5 million or 2.6 million Australians have asthma, yet their life-saving puffer drugs are not flavoured. So why do you think—

**Dr Mendelsohn:** I'm very aware of—

**Senator URQUHART:** Sorry, if I could just finish—

**Dr Mendelsohn:** I'm very aware of—

**Senator URQUHART:** Could I just finish?

**Dr Mendelsohn:** Yes; go ahead. Sorry.

**CHAIR:** Dr Mendelsohn, we do need to let senators finish their questions. We'll provide you with the same courtesy.

**Dr Mendelsohn:** Sorry. I beg your pardon.

**Senator URQUHART:** Why do you believe that vapes should be unique in allowing non-safety-assessed flavours to be somewhere above such regulatory oversight?

**Dr Mendelsohn:** I'm very aware of Professor Chapman's arguments in this area—

**Senator URQUHART:** These are questions I'm asking.

**Dr Mendelsohn:** My answer is that there's very strong evidence that flavours are a very important part of the appeal of vaping. If we want smokers to switch to vaping, the products need to be appealing. Flavours give them

an incentive to switch. Not only that, they increase the likelihood that vaping will be successful and they are associated with a reduction in relapse. And the research from various jurisdictions shows that, if you remove flavours, not only are these products less successful but people find workarounds—they add their own flavours or go to the black market to get flavours, and some of them return to smoking. So I think flavours play a very important role in helping smokers to make a switch.

**Senator URQUHART:** I'll leave that there, and I'll throw this next question out to some of the other witnesses. Are we seeing people who are vaping then turning to cigarette smoking? Is that what the Alcohol and Drug Foundation and the Alcohol and Other Drugs Council are seeing?

**Ms Walker:** Erin, do you want to go first? You've got the disadvantage, not being in the room here.

**Dr Lalor:** Robert.

**Mr Taylor:** I think there has been some evidence suggesting that there may be a pathway from vaping to smoking, but I think we wouldn't say so very strongly at this point, one way or the other.

**Senator URQUHART:** Is that an opinion, or do you have really good evidence to show that?

**Mr Taylor:** We can send evidence to back that up. That is from reading the evidence.

**Senator URQUHART:** Okay.

**Ms Walker:** What we're concerned about is the flip side of that coin in terms of people who have been using vapes as a smoking cessation aid. We're concerned that access inhibitions don't mean, going forward, that they move back to traditional smoking. We're concerned particularly about people in rural, regional and remote areas, where there might not be such ready access to GP services, where bulk-billing isn't as good or where, perhaps, the local pharmacy decides that they don't want to stock vapes. We're concerned that those people might still go through their usual distribution channels. We're keen to make sure that those people aren't caught up in unintended consequences in terms of criminalisation, because it would be a real shame if, in trying to do the right thing and stop the supply of vapes to kids, we inadvertently pushed some people to return to tobacco smoking. That would be really unfortunate. We're keen to ensure that, in trying to do the right thing, we don't inadvertently hurt anyone along the way.

**CHAIR:** Senator Urquhart, are you happy for me to pass the call?

**Senator URQUHART:** Yes, that's fine. I've had my time.

**CHAIR:** Senator Kovacic.

**Senator KOVACIC:** That leads straight into my line of questioning. I share the same concerns as to what the impacts of this will be on individuals who are trying to stop smoking and are accessing vapes legally, doing what they should be doing and not doing anything wrong. They're going to perhaps be driven down a path where they have the choice of trying to access a prescribed vape through a process that may be more costly, that may be more time consuming and that may cause them more anxiety—a cessation tool which is known to be safer than smoking, from what I understand, is taken away from them but they can go and buy a packet of cigarettes instead. Can I get some thoughts around how we manage that and, alternatively, the conundrum that, under this legislation, you can't buy a vape unless you go to a doctor and get a prescription but you can go and buy nicotine gum or a patch. Is there an understanding of why there needs to be a clinician involved in this space, where a clinician is not necessarily involved in other cessation mechanisms?

**Dr Mendelsohn:** This prescription model doesn't work. It doesn't work for vapers. It's not working for doctors. It's not used anywhere else in the world. We're basically setting up barriers for smokers who want to switch to a much less harmful alternative, to obstruct their access to vaping products. The surveys from vapers indicate that a significant number will go back to smoking and a significant number will continue to purchase products from the black market. There will be various workarounds. People will mix their own. This has all the hallmarks of prohibition. It's not going to be effective, like any other prohibition.

**Dr Lalor:** I think it's hard to know how effective the prescription model will be when we actually haven't implemented this prescription model yet. We've had a prescription model that's been operating without as much success as we'd all like to see. I think expanding the health professionals who are able to provide a prescription is really important. As we said, implementation of these reforms is going to be key, removing those barriers to scripts, addressing cost. But the other point we would make is that, for some people, they will not be using nicotine vaping products for smoking cessation; they will be using them for nicotine dependency. I think we need to accept that there will be some people who will be using nicotine vaping products long term, and we need to consider those people when we're talking about access to these products as well.



**Ms Walker:** For all of those reasons, that's why these thresholds in terms of personal possession and use are so important and we need to be mindful of how this is going to pan out. As Erin says, we haven't been down this road before and we need to make sure that we don't catch up people in the mix who we really don't want to be catching. Even when we're looking at young people—we've heard already, from the last session, some of the effects on young people who are already caught up in terms of dependence on nicotine vaping products. We need to be mindful of that. We need to be mindful of not criminalising them, not inhibiting their chances and hopes for the future and focusing as much on treatment and exploring those avenues going forward. Prevention is great, but you need the fence at the top of the cliff and the ambulance at the bottom. We want to be mindful of all of those things going forward, I think.

**Senator KOVACIC:** The thing that sticks out is the criminalisation of something that has become normalised, so we're actually going to change that in a very interesting way. Obviously none of us want to see children vaping—that's something that we want to see stop—but there doesn't seem to be, from what I can understand, enough attention on addressing what happens to adults who are vaping, particularly those who have already transitioned away from smoking.

**Ms Walker:** I think it's very important to look at how this bill interacts with the state and territory legislation as well. That's going to be something that's very important. Certainly our organisation has campaigned quite strongly for some time for the establishment of a national governance framework for the alcohol and other drugs sector, where issues like this, where there is an intersection between federal and state and territory legislation, could be teased out further. But, in the absence of that structure, the national e-cigarette working group will be key in terms of how this pans out where the rubber meets the road. James, do you want to talk about some of the legislation that's in place in the states and territories and some of the ways that unintended impacts could flow from that?

**Mr Dunne:** As we put in our submission, each state and territory has some legislation in place that outlaws the unauthorised possession of prescription medications, which vapes are now scheduled as through the TGA. But, alongside that, there are also a whole range of diversion programs related to illicit drug use. For a small personal amount of, say, cannabis, you might be diverted away from the criminal justice system and receive some sort of counselling. We're finding ourselves in this position within some states and territories where, if you are stopped by a police officer on the street and you are searched for illicit substances and you are found to have vapes and cannabis, you might receive a counselling diversion for your cannabis, but for your vapes you might face fines of up to \$32,000 or 12 months prison in the ACT or, in Western Australia, up to \$45,000 in fines. So it creates an unalignment between tobacco control legislation, vape control legislation and illicit drugs responses.

**Ms Walker:** What we're getting to hear is that there's a bit that needs to shake out in terms of the harmonisation of this bill with the relevant state and territory legislation and ensuring that we're not catching up the users of these products. Certainly, Minister Butler has been very clear in his statements publicly that we're not wanting to catch people who are using vapes for personal purposes. That's not who we're trying to catch. We're just quite concerned that, if we don't look at this more closely, that's actually where this could end up going.

**CHAIR:** Thank you. I'm going to hand over to Senator Steele-John.

**Senator STEELE-JOHN:** Thanks very much, Chair. On the concerns that you have shared around the reversal of the onus of proof, how do you envisage the reversal of the burden of proof impacting people who are accused of criminal possession of vaping products?

**Mr Taylor:** I can speak to that. Currently, the way the bill is set up, if an individual is detected with vaping products, there is an exemption under section 41QD(9)—personal use. But that person, because of the reversal of the evidentiary burden, needs to prove to the satisfaction of the law enforcement agent that it is for personal use. It's then up to the discretion of the law enforcement agent as to whether or not they've met that threshold, and, if not, and they are charged with an offence, if the person wants to dispute that then they're going to have to go through a court process. We think that places an undue burden on the individual who may be detected with vapes and could cause further harm and push people away from support. We see this all the time in the illicit drug space. We see that parallel.

What we would prefer to see is that it be up to a law enforcement agent, if they detect someone with an amount of vapes under that the 'less than a commercial quantity' threshold, using that approach, to have enough of a case to use the context and surrounding circumstances to make the argument and make the case that it is not for personal possession, with the default being that it is, and provide that person with our standard presumption of innocence in that case.

**Senator STEELE-JOHN:** Thank you for that. I would also like to hear a response from your colleagues, who have observed the same issue but have proposed an alternative solution. That would be really useful.

**Ms Walker:** I'd agree with all of the things my colleague just said, but we still have a problem because we don't know where the bar is in terms of what a commercial quantity is, in terms of the current bill or the regulations. We haven't seen the regulations. If there's an arbitrary bar set that says 'Anything above this amount is deemed to be a commercial quantity' then all of the discretion is gone, and it's a very blunt instrument. We've kind of worked through a number of scenarios where that would be problematic. We've already pointed to people in rural and remote Australia where they might not be able to readily access a community pharmacy. You might find them still resorting to ordering things over the internet. You could see how, if you didn't have ready access to GPs and pharmacies in order to secure your supply, you could easily fall foul of the commercial-quantity limit if it was not high enough. I mean, how long is a piece of string? What's high enough?

We just think that, given that there are so many different scenarios that will play out around the country—we can't predict what GPs are going to do. We can't predict the uptake of stocking vapes in community pharmacies and whether there will be full coverage of that across geographical areas. We would like to see the actual threshold amounts not set so that there can be some discretion so that that the logic that our colleagues at ADF have spoken about can be applied more broadly, not just up to an arbitrary amount.

**Senator STEELE-JOHN:** Sticking with both the council and the foundation, in terms of achieving the goal of not criminalising a person who is in possession of a vaping product for personal use, beyond the recommendations that you've just shared with the committee, is there anything else that could be added to the legislation that would help achieve that intent?

**Dr Lalor:** One of them is just decriminalising—not requiring any proof either way for low commercial quantities. The other, which Mel touched on, is recognising the importance of defining commercial quantities at the right level. The other thing is that, given this is a bit of an unknown space, we don't know what the prescription model is going to look like in terms of quantities right now. We don't know how people will access their scripts or have them filled. Making sure that those commercial quantities are defined in regulation, and not in the legislation, will allow us the flexibility to move those thresholds around as we start to see the impacts of the reforms.

**Ms Walker:** I think that's right. Senator Steele-John, do you want me to add to what Erin has just said?

**Senator STEELE-JOHN:** Please add.

**Ms Walker:** Everything that Erin has just said, I totally agree with. Obviously, we're keen on removing the threshold amounts entirely. But, if there were to be threshold amounts, we would be keen to see them be on the lenient side, in terms of erring on the side of caution of not catching people. And very much in line with what Erin said: you would need for those to be captured in the regulations, not in the legislation, so that they can be tweaked over time, when we see whether they're too much or not enough.

I think a comparable model for that is what the ACT government has done recently with decriminalising small amounts of illicit drugs for personal possession. Again, they have set threshold amounts for that, but they're contained within the regulations so that, as they move forward with something that is quite experimental and new, those amounts can be changed up or down by the minister on the advice received from the evaluation. They don't have to go back through a parliamentary process to change the legislation to do that. Obviously, we would be keen for there not to be threshold amounts at all, but if there were it would be very helpful if they were in the regulations, not the legislation.

**Senator STEELE-JOHN:** What needs to be included in the consultation process for determining the definition of 'commercial quantity'?

**Ms Walker:** Speaking to people with lived experience and recognising that there are different groups that we're talking about. The experience of talking to young people, who are underage, about their use of vapes is very different to talking to a middle-aged man who's been smoking a packet a day and has gone to vaping to try and cease smoking. We really need to acknowledge those differing population groups as well as geographical factors. The people that I'm talking about are in rural, regional and remote Australia who might not have such good access to services. People in custodial facilities, for instance, have traditionally had very high rates of smoking, and certainly consultations have been done in the context of moving to smoke-free prisons. We'd be very keen to ensure that consultation was mindful of the very different demographics of the different population groups we're talking about, in the context of what we're doing.

**Senator STEELE-JOHN:** I'm conscious of time. I have two additional questions. Chair, do you want me to stop there and come back to me?

**CHAIR:** We are running quite a bit behind, Jordan. I will try to come back to you. I'll cede my questions to Senator Cadell.

**Senator CADELL:** I have a few different areas to go through. Regarding harmonisation and criminalisation across states, I'm aware that a Mr Williams in Perth was charged with possessing a schedule 4 poison on 8 October last year. Given the rushed nature of this inquiry to get the bill through, 40 submissions were dropped on us a couple nights before, and I haven't been able to read everything. Do we know where that case is at?

**Ms Walker:** No, not that one in particular, but it does illustrate the point that we're raising around harmonisation. It's really important that, in bringing this in, there is that discussion through the national E-cigarette Working Group. But it further illustrates our point about the need for a national governance framework for the alcohol and other drugs sector more broadly. This is exactly the sort of example where it's really key that federal, state and territory legislation work in harmony to achieve the same goals. People are very mobile these days. People move around the country, and we don't want people being confused because things are different in one jurisdiction than they are in another.

**Senator CADELL:** Given that, could a child be charged with the same thing currently?

**Ms Walker:** That's a very interesting point, and that's another one of the things that we're raising in terms of criminalisation. At this stage, we know that we have too many young people being caught up with the juvenile justice system already. We know that those young people are disproportionately from marginalised and disadvantaged backgrounds. We would certainly not want to see another element of criminalisation coming over the top of what they are already suffering. So it is another thing that needs to be considered in the context of the federal and state and territory legislation.

**Senator CADELL:** You mentioned—and I hope I got this wrong—in the ACT I can have some Colombian marching powder and cop a \$100 fine, but if I have a vape with me I can get a \$32,000 fine.

**Mr Dunne:** Under the new ACT legislation, for a personal amount of illicit substances you could have a small fine and may be directed to a counselling service for your substance use, but with a vape you might, possibly, get a \$32,000 fine and up to two years in jail.

**Senator CADELL:** Having a vape on me is 32 times worse than two grams of cocaine?

**Ms Walker:** Again, this goes to harmonisation with the state and territory legislation. So it is very important going forward.

**Senator CADELL:** Wow! Don't vape, kids, out there! Dr Mendelsohn, you had interesting testimony. Your model looks a lot like New Zealand's. There has been some conversation about New Zealand, where youth vaping is rampant. What's your experience or knowledge about that?

**Dr Mendelsohn:** I think it's more nuanced than that. The New Zealand daily vaping rate amongst 14- and 15-year-olds, according to the New Zealand Health Survey, has gone up to 10 per cent, which is three times the Australian rate. But most of that rise occurred before vaping was legalised. So there was a free market until 2020 and vaping rates were rising. They rose to a peak above the legislation. They have now levelled out, and it's likely they are going to start falling soon. What is more important is that daily smoking amongst young people has fallen to one per cent. So smoking has almost disappeared. As vaping rates have risen, smoking rates in young people have fallen faster than ever. That's the advantage of vaping in young people. We are not encouraging young people to vape, but the evidence is clearly showing that, in the age groups that are vaping, their smoking rates are accelerating downwards.

**Senator CADELL:** This is my last question to you all. I am not a man without vice. I think you were in the room earlier when I recognised pokies are a tax on stupidity, but I like to have a go every now and then. Tonight I'm going to the Kingo because I've been told Hard Solo and Tooheys Old taste good together. Those things are out there in the world. Nicotine has never been one of my vices. If I decided I wanted to have nicotine as a vice tomorrow, with the evidence before us, would I be better to start smoking or start vaping?

**Dr Mendelsohn:** There is absolutely no question that vaping is far less harmful than smoking. The Royal College of Physicians and Public Health England have estimated it is at least 95 per cent safer. It has far fewer chemicals at much lower doses. So you are much better off vaping than smoking. You're better off doing nothing, but certainly—

**Senator CADELL:** Air is better than smoking. I get that.

**Dr Mendelsohn:** Yes.

**Ms Walker:** You summed it up with the word 'vice'. Lots of things are bad for you, but we know through evidence over many, many years how terrible tobacco smoking is for people. As someone who watched their dad

choke to death from chronic obstructive pulmonary disease, I'm pretty sure that tobacco smoking is very bad for you.

**Dr Lalor:** The only thing I would add to that is that we don't know what the long-term effects of vaping are right now. We don't have, as we do with tobacco, some of the long-term data. We would propose taking what is called a precautionary principle and being a little bit cautious in the reforms that we put in place around products that are relatively new to market.

Just on the New Zealand data, there are other data—Colin has mentioned some taken from the New Zealand Health Survey—that have different rates of vaping. I am happy to send those through to the committee to have a look at.

**Senator CADELL:** Thank you.

**Senator STEELE-JOHN:** Could I ask, finally, of the council and the foundation: what are, in your view, the benefits of a pharmacy model, as opposed to a commercial model? And how could the pharmacy model be strengthened in order to, particularly, safeguard equitable access to prescribed vaping products?

**Ms Walker:** Gosh, those are some big questions to end on, Senator. What we're responding to is the bill that is before us. In terms of strengthening the approach that is currently on the table, we want to see those threshold amounts that define possession for personal use removed and replaced with broader personal use exemptions that are not contingent on the quantity of vaping devices or products a person possesses. We also want to see a lot of work done through the national e-cigarette working group in the absence of a formal national governance strategy for the drug and alcohol sector to try and harmonise that state and territory legislation. As part of that work, you could bring in organisations like the Pharmacy Guild to talk about how you could increase the engagement of pharmacy with these products. At the moment, there are a lot of wheels in this machine and we're not sure they're all connected moving forward, and that's something that we really need to consider.

**Mr Taylor:** We echo what has been said. This is a relatively new product. There are unknown long-term harms, and to us that signals that taking a precautionary approach is sensible. But, in addition to everything that Mel has said just said, we're ensuring that we're monitoring this very closely. We're ensuring that we're monitoring how effective the regime is, how effective the new legislation is and how effective the border controls are, and that we're being open at all levels of government to adjusting the regime as needed if we find down the track that we're still experiencing harms in a way that we determine to be unacceptable.

**Senator STEELE-JOHN:** We have asked the guild to make a submission. I really hope they take us up on that. Thank you.

**CHAIR:** Thank you all for your participation in this session. If you have taken answers to questions on notice, could you provide them to us by the end of Monday 6 May, because we report to the Senate on 8 May. Thank you very much.

**ISAACS, Mr Greg, Small Business Owner, Flavourhype Distribution Pty Ltd [by video link]**

**JACKMAN, Mr Craig, Managing Director, vape4life [by video link]**

**LEARY, Mr Justin, Private capacity [by video link]**

**MUNN, Ms Jacqueline, Director, The Vape Store [by video link]**

[14:31]

**CHAIR:** I now welcome a panel of independent vape store owners. Thank you all for attending and to those who provided information on their conflicts of interest. I now need to ask you to make those once more for the purpose of the *Hansard* record. The question I want you to answer is: have you or your organisation received any support—financial and non-financial, direct or indirect—from any parties involved in the production, distribution or sale of tobacco, nicotine or vaping products? If so, please provide details of that support, including the nature of that support, the amount or value provided, the name of the entity or person providing it and any other related information. We will start with you, Ms Munn?

**Ms Munn:** No, none of the above.

**CHAIR:** Mr Jackman?

**Mr Jackman:** No, none of the above.

**CHAIR:** Mr Isaacs?

**Mr Isaacs:** No, none of the above.

**CHAIR:** Mr Leary?

**Mr Leary:** No, none of the above.

**CHAIR:** I now invite you to make opening statements, if you wish to do so. Following that, we'll move to questions from senators. We'll stick to the same order. Ms Munn?

**Ms Munn:** Thank you for inviting me. I started The Vape Store in 2013, purely because my partner was a very heavy smoker. He was 43 years old at the time and was starting to really feel the impacts of his smoking addiction. He tried everything to quit and had tried ZYBAN, hypnosis, patches, gums, cold turkey. Vaping or e-cigarettes, as they were pretty much most commonly known as at that time were not really available in Australia, but he did find they were becoming a little bit more common in the US. He found one supplier in Australia and he thought he'd see if that would help him.

His immediate reaction was that this was something that would help. He was able to quit and he did. He found it like a lightning bolt had gone off in his brain and this was going to be a really successful situation for him to be able to vape. He hasn't smoked since and his health recuperated to the point where he ran a half marathon a couple of years later, which is something he would never have been able to do as a smoker.

As a result of his absolute certainty that being able to use an electronic cigarette was life-changing, we started to research the products that were available. We started a small online business, but later—as there was becoming a lot more interest and people were becoming a lot more aware of electronic cigarettes—we expanded into retail outlets, firstly in Adelaide, then later in Victoria and New South Wales. Our one and only motivation has only ever been to help entrenched smokers.

In the years that followed us starting our business, we saw literally thousands of people manage to give up cigarettes. They reported to us daily how much better they felt, how being able to vape while they went through the quit process had made the seemingly impossible, possible for them. I am personally proud of being part of that for so many people. I've seen people as old as 97, including an older lady who was going into care and who was heavily addicted to nicotine, but couldn't smoke because of her changed living condition. Her daughter came to us, absolutely desperate, looking for help for her mother. The mother couldn't wear patches because her skin was too frail. Anyway, she got a vaporiser, and her daughter came back a few months later with a photo of her mum at her birthday party. She looked fabulous. She was sitting up, with all the colour back in her face. Her daughter said her mum hadn't looked so good for so long. They're the people that I've loved helping.

I've had no interest in selling to young people. The absolute majority of our customers have been people who've started to feel the impact of smoking, wanted to stop and saw this as a good way to deal with not just withdrawals but also that ingrained hand to mouth habit that you invariably get from smoking for many years.

I want to personally say that we have never not adhered to any of the regulations that we've been put under. We've never sold nicotine, we've never sold disposable vapes—with or without nicotine—and even if I could I wouldn't because I'm morally opposed to those types of devices.

It's been unfortunate that once the black market took off our business suffered greatly, which had nothing to do with us. We only ever wanted to do the right thing, but there were many unscrupulous vendors out there making a quick buck. It's been disappointing and frustrating, without any real apparent policing, and now all of a sudden we've got many young kids addicted to these high-strength nicotine devices that we were never regulated to sell and never sold. We sat here doing the right thing and now we're going to pay the ultimate price. I really do reject the notion of making independent vendors like myself—who've been doing the right thing—illegal. It's not the answer.

**Mr Jackman:** Thank you for the opportunity to speak today. To give you a quick background on how we started, 13 years ago I was a 60 pack a day smoker. I would wake up, I would lie in bed, I would light a cigarette, I would get out of bed and have a cigarette before getting into the shower. That habit continued. I was 43 years of age and I was walking heart attack material, not to mention the cost.

My wife's cousin introduced me to vaping. He brought one over and said, 'Give this a go.' I said, 'Alright, I will.' I put it aside and thought about it and thought about it, because I loved smoking. Nothing could replace smoking for me. There was no chance I would give up. I had tried every method under the sun, spent a lot of money going to high-end hypnosis in Sydney. By the time I got back to the airport I was smoking.

I finally decided to give this a go and opened it up. I had no idea what I was doing. I'm looking at this thing. Imagine buying something that could help you quit smoking and not know how to use it and not have a shop to go to. Imagine that—not having anywhere to go to that has the time to help you learn how to quit smoking through what has already been a proven method, not that I knew that at the time.

I finally got there through some YouTube videos. When I first started, I was on 18 milligrams of nicotine. I'm now down to three milligrams. Personally, I don't have any plans to quit. I'm 55 years of age. Because of this vape and because I wasn't smoking, I was able to pick up my fitness routine. I dropped 60 kilos, I got my personal-training qualifications and I now train people.

We opened up our vape stores 11 years ago. We really wanted to help people quit. The common phrase a lot of vapers use is, 'If it worked for me, it can work for you.' We would have helped over 50,000 people. We now have four stores, three in South Australia. We provide specialised services and we create long-term employment opportunities currently for eight people.

Since we opened, we have faced numerous challenges due to restrictive regulations imposed not only federally but by the state as well. That has caused us immense financial strain. In 2019, as an example, the South Australian government decided to legitimise our vaping industry by asking us to have tobacco licences, so we purchased those tobacco licences. They then told us we were no longer to sell online from South Australia. Our online store was quite successful, so we had to borrow a quarter of a million dollars to set up a store in Geelong. We had to manage that remotely. The cost has been horrendous.

Like Jacqui from the Vape Store, we have a very high ethos. We only sell refillable vape products. We do not sell to minors. We have never sold to minors. We have knocked a lot of those minors back. I'm a parent. I have three children. I don't want to see other kids doing what I wouldn't want my own children to do. There is a rite of passage where children are going to try things, though you can curtail that.

Since Minister Butler last year mentioned that he would be introducing the bill, I and another vape store in South Australia have spent numerous hours digging deep into the black market. I was at the point where I had spent hours speaking to SA Health, SA tobacco control, SAPOL and the TGA, letting them know exact details of where they could find these illegal products, where they're coming in from and where they are being sold. This has all been done by social media. The final response that I got from SA tobacco control was: 'Online sales aren't our focus.'

Moving forward, this bill as it stands absolutely will not work. There are no two ways about it. As Dr Mendelsohn said before, prohibition has never worked, and this is exactly what it is. We have seen this method being used effectively in the UK, in New Zealand and in many European countries, yet our medical evidence is only taken from Australia. Whoever is in the background—you'll have to excuse me; I'm a business owner; I'm not a doctor; I don't understand all these words—whoever is making the decisions here, should be focusing also on all the evidence that is being presented overseas. This is going to, without a doubt, increase the black market.

Specialist vape stores like mine, Jacqui's, Greg's and many others around Australia should not be seen as a cause of the problem; we should be part of the solution. We can help curtail this disposable issue. We don't want disposables here. We never wanted disposables here, and we completely agree that they should be banned. But we also agree that every Australian has a right to choose how they wish to quit smoking.

**CHAIR:** Thank you, Mr Jackman. Mr Isaacs?

**Mr Isaacs:** My personal story is that I was an ex-smoker and I decided to switch to vaping after my father passed away in late 2010, from lung cancer. That's when I decided to set up my company so I could help other adults give up smoking cigarettes. I own the company Flavourhype Distribution—which is an import, manufacture and wholesale company, for non-nicotine e-liquids—and Vape Generation, a specialist store, and we sell non-nicotine e-liquids through there as well. We've been operating in Australia now for six years, and I have invested a significant amount of my own money to build a bottling facility, using good manufacturing processes as the guideline and reporting back to the governing body, AICIS, Australian Industrial Chemicals Introduction Scheme, on every single ingredient and component used to make these products. They know everything.

Specialist retailers have been trying to prop up the government's prescription model thus far by providing zero-milligram e-liquids and devices and accessories like tanks and coils. Most, like myself, have been subject to checks and visits by the health department to ensure they are not selling nicotine. These genuine small-business owners like me are struggling to survive due to the import ban on nontherapeutic vapes as of 1 March 2024. Yet no domestic ban has been confirmed. And here we are today.

There are currently hundreds of products caught up in the import ban that meet international standards and conformities. This is having dire consequences for small-business owners and responsible adult vapers who are struggling to find what they need in the market. The majority of my customers have told me that they will most likely resort to the black market or just go back to smoking, because they cannot purchase what they need. Pharmacies are pricing these products to be more expensive than a pack of smokes.

Sensible regulation, like for alcohol and tobacco sales, is the only solution to stamping out the black market and ensuring that unregulated vapes stay out of the hands of our kids. An immediate solution to keep specialist retailers open is urgently needed to fill the immediate gap for one million adult vapers in Australia.

**Mr Leary:** Thank you very much for allowing me to come to speak today. I really appreciate it. If there's one thing I can say here today, it's that vaping was an absolute miracle for me. I couldn't believe it. Finally, after 30 years of smoking, I got of the cigarettes. I could finally do it. Like most people, I tried everything. I was on and off for over 30 years. I tried gum, patches, hypnotherapy and books. I've got a library full of books on how to quit smoking, if anyone is interested! Towards the end of my smoking life, I was getting really desperate. I felt trapped. I knew smoking was killing me, and yet I couldn't quit.

About six years ago, I thought in the back of my mind, 'Vaping is illegal, isn't it?' I did some research online and found I could buy what I needed. So I thought, 'I'll give it a go.' I tricked myself. I was originally going to cut my smoking in half and vape the other half. The first day, I got the vape equipment and liquid from New Zealand, and I had one cigarette that day then went the whole day without another cigarette. I thought, 'Wow.' I thought, 'Tomorrow, I'll do the same thing again.' I got up and said, 'Alright, whatever happens, if I want to smoke, I won't; I'll just vape.' And I quit. Like I said, it was an absolute miracle.

For me personally, I suffer from depression and anxiety. The vaping definitely seems to help the depression and anxiety. I feel much better if I vape or with nicotine. Like others here have said, with the prescription model, I don't have any worries if I need to get a prescriptions, because there are doctors online who can write a script. I guess the main issue is the pharmaceutical or chemist model. I got a script from a doctor, and he sent a link to my phone to get these pods. Doing some research, they were like \$200-and-something for three or six pods. I thought, 'Wow.' From what I read from other people who had bought them, they tasted terrible and they gurgled in their mouths.

For me, the reform bill that has been put forward is a de facto prohibition. The device I use is a tank with a mod, and I can add my own liquid. The other benefit is that I can change the nicotine strength. When I started vaping I was on 18 milligrams. Over time, I've gotten it right down to three milligrams. The ability to choose what sort of device, flavours and VG and PG mix you have helps. It all helps make vaping more beneficial in helping people quit smoking. I'd like to see the market regulated, but don't take away the ability of vaping to give people choice to quit smoking.

**CHAIR:** Thank you very much. I'll now move to questions from senators.

**Senator URQUHART:** I might go to the retailers first, and then I've got a question for Mr Leary. Mr Isaacs, you outlined the type of vaping products that you stock; I'm happy for you to add to it. I wonder if the others could give me an overview of what sorts of vaping products they stock and what kind of marketing they display?

**Ms Munn:** We don't display anything—it's under the same as the tobacco legislation, so there are no displays of our products. A customer needs to ask for what they're looking for and then we can provide some help around that decision and make some recommendations about what might be the best device for them. All of the devices we sell are refillable and rechargeable. They are designed for people to add their own liquids into, so they buy that

separately. A lot of customers aren't looking for nicotine; they are looking to use the device while they go through the quit process to deal with that hand-to-mouth action—it really helps them that when they feel triggered to want to reach for a cigarette they can go and get their vape instead. That makes a huge difference. But there are many that wouldn't be able to do it without the nicotine, so what a lot of them have been doing is importing their own personal supply and they add it to their flavours. Like Mr Leary said, they would then be able to step down how much nicotine. They might start off at a higher level and then, over time, step that down as they go through the quit process.

That's what we sell—refillable, rechargeable devices. Some are designed to mimic the feeling and sensation of smoking a cigarette; others provide more of a flavour experience. On the flavours—a lot of people think they want something that tastes like cigarettes. A lot of customers, when they come the first time, will look for a tobacco flavour. They quickly realise they don't actually like the taste of tobacco and want something else, and it helps them to move away from that association with cigarettes. That's why flavours are seen as important in the quit process. People don't like the taste of tobacco. They want to disassociate from cigarettes and they want to move on. Everyone wants to successfully give up cigarettes—that's the name of the game. They're done with it—it's ruining their health, and they see this as a really viable option for them.

**Mr Jackman:** Ultimately, pretty much the majority of the speciality vape shops in Australia sell the same thing. It's really pricing that it comes down to. Thankfully, we sell only refillable vapes. Minister Butler is on record as saying that refillable vapes are the only vapes not used by kids, so it's pretty clear that the kids want only disposables, and the speciality shops are just going to stick with the refillable products.

**Senator URQUHART:** Mr Isaacs, did you want to add anything to that? You did cover a bit in your opening statement, but I'm happy if you want to add anything.

**Mr Isaacs:** When I import these ingredients, I'm watched by Border Force, and I have to report to that AICIS body I told you about. It's kind of like bringing in the Coca-Cola recipe ingredients—I've got to supply cast numbers, which means all the IP property of the recipe. I work with them and they know exactly what's going in it. These come in with SDSs, and there's a mission test report that can be provided that goes with these liquids, which basically means their flashpoints—they burn them off at different temperatures to see the toxins that are coming off to make sure they're fit and good for use. All these liquids are getting done in GMP-compliant labs, then they come into the country. It's not actually manufacturing; it's mixing. The only thing that is added to them is a glycerine and a propylene glycol—there are three ingredients in it.

When people are saying that there's nicotine in all vapes, I strongly reject that—that's not right. You had someone on yesterday from the Australian Council on Smoking and Health, and one of their comments was 'There is no such thing as a non-nicotine vape—they don't exist.' I'm telling you: there is, because I don't manufacture with any nicotine. No nicotine goes anywhere near the machinery and no nicotine gets sold. Everything has been going through the prescription model and through the shops. The shops get the products on their shelves for retail, and they guide their customers to the nicotine and best practices. That's what happens.

**Senator URQUHART:** Can I just ask the retailers to tell me what safeguards are in place to ensure that people underage cannot access vaping products?

**Ms Munn:** We operate in the same way as a liquor store, where we ask for ID from people who look 25 and under. I actually don't have a retail store anymore because of this ban that has been coming in. I couldn't take the chance to renew my lease. But we had the sign there explaining our licence and our regulations and our responsibility to them. We do the general check that anyone selling tobacco products or liquor would do.

**Mr Jackman:** We're exactly the same as Jacqui. We're very clear that we only sell to those over 18 in our shop. Anyone who looks dubious gets asked for ID. In addition to that, some of my staff, and I have done this in the past as well—one of the questions that we ask is: 'How long have you been smoking for?' Occasionally we'll have people coming in who want to try vaping for jollies. We actually talk them out of that, even though they're over 18.

**Ms Munn:** I'd agree with that. We do the same. Some of the questions we ask people are: 'How long you have been smoking for? Do you smoke?' We're really not interested in starting people vaping. It's about quitting smoking.

**Mr Isaacs:** Can I just add something as well? With the kids under 18 smoking, the reason why it's completely and utterly out of control is because there is no security at the borders. Any man and his dog from anywhere could call themselves 'Bob' from 'Bob's Vape Store', order online from a Chinese manufacturer, say they want 200 mango flavoured vapes at 50 milligrams, or whatever it may be, and they get sent. There are no checks, no nothing. Then that person will get it. They will feed off to their friends, their friends' cousins and on the mine



sites. It goes everywhere, and people start talking. Money is being made. It just starts getting larger and larger and larger, and here we are. It's going to be hard for Border Force, but streamlining and controlling those products coming through—I talked about it in my consultation as well—is the only way that we can make sure that we have legal products that meet conformities and standards.

**Senator URQUHART:** Could I quickly go to Mr Leary and ask him one question. He did answer the question that I wanted to ask. But I guess the issue for me is the hand-to-mouth issue. We've heard that for a lot of people wanting to give up smoking, it's about having something to do with the hand and mouth. Why does it really matter about the taste? Obviously, you don't want to taste something that tastes really bad. But why does it matter so much about the taste, and why are we offering so many flavours? With your plan to go onto vapes to give up smoking, was is it then your plan to give up vaping? Is that the longer term plan? I'm interested in that progression of how people do things.

**Mr Leary:** I can speak only for me. With the flavours, when I got the liquid from New Zealand, yes, it did make a difference. You're experiencing something that's pleasurable. The thing is the tobacco flavours don't really taste like tobacco, fortunately, but it was really nice, and I thought, 'Wow, this is okay.' For me, the nicotine was important when I quit smoking. It just took that edge off the withdrawal process. Flavours just enhance the experience. If you just vaped the VG and PG without any flavours, it's kind of okay; it's alright. You'd still get the nicotine if you had nicotine in the liquid, but it wouldn't be quite the same pleasurable experience. I think in my submission I said, 'Look, you want to make vaping attractive as a quitting alternative and as a smoking alternative.' Flavours do enhance that experience of quitting or switching to vaping.

As for the process, like I said, when I quit smoking, I had actually planned to cut down, and I kind of tricked myself into quitting with using vaping. The process for me was that I was cutting down the nicotine strength over time. Like I said, I started at 18 milligrams. I actually was down to zero. About four months ago, I was actually down to no nicotine. About four days later, I was so depressed; I was sitting outside, I felt low, I had no energy and I thought, 'What's going on?' I'd forgotten that I'd stopped nicotine.

My understanding is vaping is so much safer than smoking; I'm not saying it's safe but it's a much less harmful alternative to smoking. For me, nicotine seems to help me function better. The plan was to get off nicotine and then get off vaping, but at the moment I just think, 'It helps my mood and helps me function, so it's a lower-risk solution to what I need.'

**Senator URQUHART:** I think the jury is out on the safety because it hasn't been long enough. Thank you.

**Senator CADELL:** Thank you for coming today. We've had a number of vape store owners approach us individually offline; they are quite scared of coming. They've been approached and pressured by organised crime to sell their products or run their stuff. Have any of you experienced that personally or heard of that within the industry?

**Mr Jackman:** I've definitely heard of it, absolutely. I haven't experienced it personally but there was a shop 150 metres down the road from my Geelong store that was firebombed a couple of weeks ago. It worries me.

**Mr Isaacs:** It's definitely going on. Syndicates see an opportunity to make money. If they want it, they'll move in and that's it.

**Ms Munn:** I personally haven't had any threats or anything like that.

**Senator CADELL:** Your businesses are now closing largely because of the activities of illegal gangs bringing in an unregulated product, aren't they?

**Mr Jackman:** One hundred per cent. Since last year, our sales initially plummeted 60 per cent because of the boom in disposables. We've had to use a lot of our savings. We see time and time again—every year something happens, whether federally or with the state, and we have to be prepared for that. We keep propping ourselves up financially during those losses. Business is picking up again, thankfully, but it's certainly killing the industry; a lot of stores have closed.

**Mr Isaacs:** As to distribution on the whole, you'd be looking at about a 60 to 80 per cent loss within the last six months of the industry. It is catastrophic for small-business owners.

**Ms Munn:** We've closed our stores. We're only operating online in anticipation that we will be closed down altogether shortly.

**Senator CADELL:** My experience in Maitland was that I sat outside what is meant to be a reputable operator—someone who says they act like you—and I watched kids in school uniform go across the road to an unlicensed operator, walk in and be served whilst there was a police car in the street. How do you compete with that when you're a licensed business?

**Mr Jackman:** You can't. Quite a lot of our customers are members of the police force. We had this chat with them, and they say: 'We haven't got time for this. We don't believe this should be happening. We're not going to be doing anything.' I've had a member of the ABF tell me they're not going to do a lot at that end. You can throw as much money in there as you want, but at the end of the day it comes down to prohibition. Once prohibition hits, people are going to try every avenue possible to get illegal products into Australia. They will succeed, and that will grow. That \$15 million heist of disposable vapes last week is a drop in the ocean; we're hearing up to 200,000 or 300,000 of these are getting in per day—so \$15 million is nothing.

**Mr Isaacs:** In regard to prohibition and banning: you can still get 3D printers and things can still be made. All you need is cheap circuits, wires, batteries, lithium batteries—which aren't illegal—and then you can make the juice. You can buy glycerine at the shops. You can buy food flavouring. People will find alternatives. Putting a ban on it is not going to stop it; as a matter of fact, it's going to make more dangerous conditions.

**Mr Jackman:** Allow me to say one more thing here. Just to be clear: all of us vape store owners hate tobacco. We hate tobacco companies and we definitely do not want any affiliation. If Labor were being honest about protecting people's health, they would ban cigarettes and regulate and legalise vapes. What they're actually doing is the opposite: they're trying to ban the better of two evils and they're managing to regulate and legalise the worst of the two evils. It just does not make sense.

**Senator CADELL:** With gun laws in New South Wales—I don't know other states—if I apply for a gun licence, I'm subject to non-warrant inspections and those sorts of things. If this was to change to a regulated consumer model, like New Zealand, would all of you be happy to have an open policy of inspections to ensure the compliance of your businesses? I know, Mr Isaacs, you already have inspections.

**Ms Munn:** We already do. We have visits every quarter by a health inspector from the local council in Melbourne. We are The Vape Store, so we are obviously visible, whereas up the road, two blocks down, they're selling disposables. I doubt they go in there and search them; they probably don't. I don't know if they're unaware or don't care. But, because we're The Vape Store, they come in, they take photos, they talk to us and they send in secret shoppers. I have a great relationship with the lady that does the inspections. I've got nothing to hide. I've got no problems. But they're not doing the same to the people just up the road. There's a newsagency just up the road with them on display; they're selling them for 50 bucks a pop, cash, and people are lined up for them. Like Craig said, our sales have been decimated. People walk in—'Do you sell disposables?' 'No'—and they walk out and go up the road, and that's it.

**Mr Jackman:** We get the same sorts of inspections as well, if not more so because of the amount of shops that we've got. People like Simon Chapman yesterday—when he refers to us as criminals, he's tarring everyone with the same brush, and that is completely incorrect. I'm not sure about Greg, but Jacqui and I have South Australian tobacco licences, which endorses our right to trade. We are not criminals. What he is doing is tarring us now. What happens if it does get regulated? People are going to start to question us, when we're not part of the problem. We want to be part of the solution. Not only do we want to help people give up cigarettes; we want to help the government manage this, because we don't want to see what is happening.

**Senator CADELL:** I'll include Mr Leary and all of you in this. This legislation punishes the people doing the legal and right thing, while creating a market for the criminals in Australia; is that right?

**Mr Jackman:** A hundred per cent.

**Ms Munn:** Correct.

**Mr Isaacs:** It takes away their whole lifestyle. It's destroying their business. Everything they've worked for, everything they've achieved, is gone, finished, with one fell swoop, one decision.

**Senator CADELL:** Wow! Mr Leary?

**Mr Leary:** The places I buy the vaping devices from are like those of the people here today that have vape stores. I buy the vaping tanks, the batteries, the mods and everything from legitimate stores. They have age verification when I sign in online, and obviously I have to use a credit card. A lot of them are having closing down sales. It's pushing the legitimate market out and it's forcing us to go to a chemist, where we buy something that is probably not going to work. To be honest, if I was trying to quit smoking today using vaping, I may not be able to do it; I really wouldn't. The chemist model is expensive, and they're not great. To me, they're basically winding it back to when we had those inhalers—well, we still do—that you bought. They weren't pleasurable and they weren't helpful, and they're expensive.

Vaping was invented by a Chinese pharmacist, I think, back about 20 years ago. His dad died of lung cancer, and he wanted to find a way to quit smoking, so he invented the first vape. The legitimate purpose of vaping is being pushed out with the current model.

**Senator CADELL:** My last question is, again, for you all. There are 50,000 people you say you've helped, Mr Jackman, and, Jacqueline, I can't remember the number you said. What do they do now when they want to get off smoking? What do the people you've got vaping do? Do they go back to cigarettes for their nicotine? What do they do?

**Ms Munn:** A lot of our customers are panicking. We've got a lot of older people that are ringing us all the time. They're stocking up. They're buying up big. The only reason we're having good sales is because people are panic-buying, trying to get ahead of the game. They're not sure. They don't know. Some say they are going to go back to smoking. Some are just scared. They don't know.

**Mr Jackman:** Quite a number of our customers have already intimated that if it changes they will go back to smoking. With the model they are trying to present, the only people who are going to benefit from it are the tobacco companies or companies linked to big tobacco. The pricing isn't going to be as affordable. You might not be aware that a lot of people that were smokers that took up vaping didn't necessarily do it from a health perspective; they did it from a cost perspective. If the cost of the prescription model from the chemist is going to surpass the cost of vaping, they will either go back to smoking or source it from the black market. They are going to be their two avenues. A lot of people have said they know where they can get these disposables from if push comes to shove. They don't want to get on them, but, at the end of the day, at least they can get something from it.

**Mr Isaacs:** Just touching on that, I have heard of four millimetres and a device being sold at the chemist for \$169.95. That four millimetres for a heavy vaper e-cigarette user and smoker would last half the day. So what are we doing here? Are they going to pay \$170 a day? There is no way they are going to go for that. They will just go back to smoking; it's cheaper. Smoking will be cheaper.

**Mr Leary:** I have been stockpiling. I bought four or five different mods and a bunch of tanks and probably two years worth of coils. I've got some nicotine that I have kept in the freezer.

**Senator CADELL:** Careful, Mr Leary—that could be determined to be a commercial quantity now!

**Mr Leary:** I am hopeful that the government will listen. The tide is changing the sentiment. People are starting to challenge what the government is saying and doing. The health outcomes have been challenged too. People are saying the evidence worldwide is different to what a lot of the authorities in Australia are saying. So I am hopeful that it will change before I run out of nicotine because I don't know what I would do. I know I am a mess if I don't have any nicotine at all.

**Senator CADELL:** I note for your benefit that this is under parliamentary privilege and nothing you say will be used against you.

**Senator STEELE-JOHN:** Mr Leary, the term 'commercial quantity' is yet to be defined in legislation. Is it essential that this is a quantity which is defined at an amount high enough that personal users are unlikely to be in possession of more than a commercial quantity? From your experience, what is the maximum amount of vaping devices, liquids and accessories, such as pods, that a personal user might possess at a single time?

**Mr Leary:** I'll tell you what I have now. I have stockpiled, so this is a lot more than I would have otherwise. I will show it to you first. The bottom half is the actual device. It's the part that houses the tank. This is the tank. Inside are coils and liquid. I have six or seven mods and six or seven tanks. A coil will last me maybe two or three weeks. I have probably got two years worth of coils. I have a lot more than I probably would have had otherwise. Had this bill not been being looking at being passed, I probably would have half that. I'd probably have three tanks, three mods and probably six months worth of coils. You would probably say \$1,000 worth of equipment would be a threshold. I can't really say, but I think around \$1,000 worth of equipment would be starting to get commercial.

**Senator STEELE-JOHN:** Thank you very much, Mr Leary. Under those normal circumstances, when you have in your possession those quantities of coils et cetera, how long would that last you?

**Mr Leary:** I never bought the disposables. I wanted to get some devices that would last. I've got a tank that I bought when I first quit smoking, so I've had a tank that's lasted me six years. Some tanks seem to leak or break. And the mod that powers the device—I've still got ones that I've had for four or five years. The good ones, the ones a lot of the vendors here in this forum have mentioned, the good quality devices can last many years. I've got coils that do last a long time. Some coils last maybe four or five days, depending on the liquid. The ones I've got last me about three weeks. I get them in packs of five. At the moment I've probably got twice as much as I would normally have, but normally I would have probably six to 12 months worth of coils.

**Senator STEELE-JOHN:** Finally, can I ask of the various independent vaping store owners giving evidence today: if this bill passes, what amendments would you propose to maintain as much choice as possible for consumers?

**Ms Munn:** I'm not really sure, to be honest.

**Mr Jackman:** I'm just trying to rehash the question: what changes would we like to see? Obviously there are a number of changes we would want to see, but most certainly the right to have flavours. We're not concerned about packaging. You can put them in a square black box, but people still want their bubblegum. It doesn't really matter. I'm 55; I'm entitled to that choice. We do not want to see disposable vapes. We do want to see refillable vapes. We do want to see a national licensing scheme for specialised vape shops to pass whatever requirements are agreed upon.

Interestingly, I was listening to the lady who's sitting in parliament. I don't know what her name is—she has blond hair—but she was talking about an e-cigarette reform committee. I would like to see a member from the Vaping Association of Australia sitting on that committee and being involved in discussions around any changes. I would like to see a tax. Bring the tax in. Bring it in. Let's help the government as well. If you're going to help us, we're going to help you, because we sell a lot of products.

**Mr Leary:** Can I just say—and I'm sure everyone would agree—let's not tax it like we tax cigarettes. For me, one of the salient things that I've got from quitting smoking is that I've got more money. I don't want to see it taxed to the point where it's effectively prohibitive. Look at the chop-chop and all the illegal forms of tobacco. That comes about, in my humble opinion, because of the excessive price of tobacco. Like Craig was saying, I'm happy to pay tax on the vaping equipment and liquids and whatnot, but please keep it as something that we can afford and make our lives a bit better.

**Mr Jackman:** Alcohol is not healthy. We know it. It kills people. It causes domestic violence. But we sell it under a regulatory model. If they can do it with alcohol, they can do it with vapes.

**Mr Isaacs:** If you set up a national register of compliant products—whether it be hardware or liquids that come into the country from whatever wholesalers or distributors who bring them in—shops could pick products that were compliant and ready and approved for the market by the Australian health department or the TGA or whoever has to approve it for sale. Those shops could pick from those products, and they could move ahead with confidence.

In regard to flavours and packaging and all of that, some of it is a bit in your face, but I don't know of anybody who wouldn't have a problem with toning that down. You could have two-flavour words, like the New Zealand model, and tone down the flavours. There's a solution to this. I'm sure the owners of these shops would be more than happy to work with you guys.

**Senator STEELE-JOHN:** Okay. Thanks, Chair. Those were my questions.

**CHAIR:** Thank you. Senator Canavan, for our last question.

**Senator CANAVAN:** I want to get more of a handle on the cost-of-living impacts. This might go particularly to Mr Leary as a user. You mentioned earlier that going to vapes saved you money. Can you give us a rough cost per week or so that you have saved? I think you were going through the prices at pharmacies—it sounds like these legalised vapes are very excessively priced. What's the difference between them and what you were able to pay at a vape store last year, and is that a big cost-of-living impact?

**Mr Leary:** The irony is that, when I was a smoker, I was working at the local government in engineering and I was spending—even then, when I was working, I was poor, and it's because I was smoking. When I quit smoking and started vaping—and the price of cigarettes is much higher now—I think I was spending about \$300 a fortnight, so about \$150 or \$200 a week on cigarettes. Vaping, I estimated, was costing no more than \$30 a week—so probably one-sixth to 10 or 15 per cent of the cost.

I didn't actually go and buy the pods. I got a link from the doctor to a website—I think it was Chemist Warehouse. I didn't buy it, but I researched it, and people were saying they were paying two hundred and something dollars for three or six pods. They said that they'd only last them three days, so you're looking at probably \$300 or \$400 a week for the pharmaceutical alternative. The pharmaceuticals are probably as expensive as or more expensive than cigarettes, whereas vaping is probably 10 to 15 per cent of the cost.

**CHAIR:** Thank you very much.

**Senator CADELL:** Can I ask a follow-up question on a specific thing Mr Leary said in that last answer?

**CHAIR:** Yes, you can.

**Senator CADELL:** Mr Leary, you mentioned Chemist Warehouse and said you got a link from the doctor straightaway. Was that via a 'stop smoking' website? I asked questions yesterday of Liber Pharmaceuticals about their ownership of an antismoking website and the shareholding held by Chemist Warehouse.

**Mr Leary:** I had a telehealth appointment. I googled for nicotine prescriptions online and found a doctor—I don't remember who it was. He sent me a link right to my phone. I'm not 100 per cent sure if it was to Chemist Warehouse—I think it was. I think the product was Nicovape, or nico-something-or-other.

**Senator CADELL:** Okay. Thank you very much.

**CHAIR:** Thank you all for your participation in our hearing today. We do appreciate the time you've taken to make submissions and to provide evidence to us all. If you have taken questions on notice, we're asking for responses by close of business on Monday 6 May 2024. That is because we are reporting to the Senate on 8 May 2024.

**Mr Jackman:** Chair, can I ask something?

**CHAIR:** Not usually, no.

**Mr Jackman:** Can we be unusual for a minute?

**CHAIR:** Normally the questions and answers go the other way, I'm afraid, Mr Jackman.

**Mr Jackman:** I would like to raise a concern that I have. We had to complete that Hansard form and declaration of not having any links and everything else. But I believe the committee was lied to yesterday, because Liber Pharmaceuticals asserted they had no association with any tobacco company, yet their head of regulatory and external affairs, Stuart Prichard, worked for Philip Morris for over eleven years, and now Philip Morris approved prescription vapes. I don't know—I'm not the smartest man on the planet, but I can join some dots there.

**CHAIR:** Thank you, Mr Jackman. The committee will take that advice and discuss it privately. Thank you for your participation.

**MARTIN, Dr James, Private capacity**

**MISON, Mr Andy, President, Australian Secondary Principals' Association [by video link]**

**WEBER, Mr Scott, Chief Executive Officer, Police Federation of Australia [by video link]**

**WODAK, Dr Alex, Private capacity [by video link]**

[15:24]

**CHAIR:** I will now call the next witnesses. Thank you very much for joining us today. Do you have any comments to make on the capacity in which you appear?

**Dr Wodak:** I'm a member of organisations, but I'm representing myself.

**Dr Martin:** I'm representing myself as well. I'm a doctor in criminology, a specialist in illicit markets, but I'm here in a private capacity.

**Mr Weber:** I represent 65,000 police officers around the entire country.

**CHAIR:** Excellent. I understand that we are missing Mr Mison at this point. Thank you very much for appearing before us today. As I believe the committee has not received conflict-of-interest declarations from all witnesses here on this panel, I'm asking you to make those before us now. Also, if you have provided a declaration, I'm asking you to repeat that for the purposes of the *Hansard*. Please note that, if you do not make these declarations, you're not able to appear before us today to give evidence. So my question is: Have you or your organisation received any support, whether financial or non-financial, direct or indirect, from any parties involved in the production, distribution or sale of tobacco, nicotine or vaping products? If so, please provide details of that support, including the nature of that support, the amount or value provided, the name of the entity or person providing it and any other relevant information. I'll start with you, Dr Wodak.

**Dr Wodak:** The short answer is no. I've sent in two declarations already, testifying to the fact that I haven't received any financial support from those organisations. I did point out that I worked in government hospitals in Melbourne, London and Sydney for about 40 years and so therefore received government salaries, and some government income is inevitably derived from the tobacco industry, either through excise or through other forms of taxation, and, like any other person receiving government salaries, I therefore indirectly received money from the tobacco industry.

**CHAIR:** Thank you. And Dr Martin?

**Dr Martin:** I've no conflict to declare.

**CHAIR:** And Mr Weber?

**Mr Weber:** I've no conflict, and we are an apolitical association and it would be in total conflict for us to accept it, so, no.

**CHAIR:** Thank you. I now invite all witnesses here to make a brief opening statement, if they wish to do so. At the conclusion of that, I'll be moving to questions from senators. We'll start with you, Dr Wodak.

**Dr Wodak:** Thank you. I think that the crux of the matter is that Australia, since 2011, has been severely restricting a much less dangerous option for people who want to take nicotine, while the deadly option—cigarettes—has been readily available from about 40,000 outlets. Nobody has been able to justify that, and that's the crux of the problem we're dealing with. Thank you.

**CHAIR:** Thank you. Mr Weber?

**Mr Weber:** I realise you're over time. I think our submission speaks for itself. The biggest questions here are actually: What policy do you want? And what health issues do you need to reframe? Our biggest issue is that this is a health issue that has now turned into a criminal one.

**CHAIR:** Thank you. And Dr Martin?

**Dr Martin:** As we know, at the start of the year, the government prohibited the supply of non-medicinal consumer vaping products. The consequences of this ban have been disastrous, with nine out of 10 vapers having already rejected the prescription model and instead sourcing their products from the black market. With around 1.5 million Australians now vaping illegally, the bans have created the second-largest illegal drug market in the country after cannabis and a massive new front in the war on drugs. The nationwide value of the illicit vaping market is estimated to be in excess of \$2 billion. The battle for control of this trade has resulted in serious criminal violence, with over 70 fire-bombings and multiple homicides witnessed around the country in the last 12 months alone.

The response, so far, has not been to change tack but rather to double down, with yet more onerous restrictions introduced in March on popular flavours and vaping devices that will do nothing to increase the appeal of the prescription model. We're also seeing the same tired tactics and clichés witnessed previously in the war on drugs. We have tens of millions of taxpayer dollars flowing into supply-side prohibition, and press conferences touting record seizures and supposedly serious blows against organised crime.

We know what happens next, because we've seen it time and again with other drugs that have been criminalised. Law enforcement does not and cannot restrict access to the point that consumers who want these products will be precluded from getting them. Rather, markets adapt, and supply goes underground, where it is even more difficult to police. The illegal products that are supplied by the black market are unregulated, meaning that they are more potent, more addictive and more dangerous than their legal alternatives. Increasing penalties and heavier policing do not stop criminal actors from entering the market. They simply allow them to charge more for their services and increase the profits available to organised crime.

Fortunately, we do know what works in reducing drug related harms. Retail licensing, risk-proportionate taxation, strictly enforced age restrictions, plain packaging and bans on advertising, as well as public health campaigns, have successfully reduced rates of both teen and adult smoking and alcohol consumption over the last decade. These successes have occurred, without prohibiting these products and generating billions of dollars for organised crime. I therefore urge the committee to heed the lessons of the war on drugs and adopt a similarly pragmatic and realistic approach to the regulation of vapes as we do with other adult consumer products. Thank you.

**CHAIR:** Thank you very much. I will be passing the call to Senator Urquhart.

**Senator URQUHART:** I might start off with Mr Weber. The question I want to ask you specifically is: why have law enforcement agencies struggled to contain the rise of illicit vaping products?

**Mr Weber:** Firstly, it's not on our radar. Regardless of the money that's been allocated towards law enforcement, it just hasn't translated. There's no commissioner that's been there, and there's no focal point. There's no training either. I do take on board what the good doctors say in regard to prohibition, but, in saying that, we'd like to go to a proper regulatory model—a licensing model, such as what we have with liquor. But, again, that doesn't occur at the present moment. For us, it's just not visible. And also we have a huge recruitment and retention issue across the entire country. Like all industries, we're struggling with our recruitment but even more so in policing because we have an aging police population and extremely hard workloads. And we're the universal 24/7 problem-solver.

I think our question—and you've raised this in a roundabout way—is: what does the government want out of this policy? For us, it's created a crime. I never would've thought, five or 10 years ago, that I'd be even discussing any of these issues about illicit tobacco or vaping; yet we are sitting here talking about it now. It is, as the good doctor said, a real industry for crime and organised crime. We're actually putting more people in harm's way of the health issues. Law enforcement doesn't have either the propensity or the inclination to actually enforce it at the present moment because there's no structure around it. To be honest, we don't know what to do because there are no clear guidelines.

There needs to be a harmonised model across the entire country that tells us: 'Hang on a minute. You need to be a fit and proper person to actually hold a license to sell vapes or tobacco. You actually have to go through a course in regard to selling it to the appropriate people.' There need to be age restrictions and also restrictions in regard to the quality and where it's produced from. Police could then come in there and enforce it, like we do with liquor right now. We could come in and say: 'Hang on a minute. Where's your licence? You don't have a licence? Here's a ticket for \$50,000.' Also, the owner of the premises would get a ticket for that as well. We would confiscate all the illicit vapes and tobacco, and also there'd be a reverse onus for them to prove that they actually had the entitlement to sell and progress that.

For us, it's a huge issue. One of your previous speakers highlighted that he saw kids walk across the road in front of a police car. It is not visible to us. We are not trained in this, and it is not our bailiwick at the present moment. It is not something that we're focusing on. That's not to say that we want to go down a nanny-state path, which I know other people have mentioned previously. But we need actual proper training and education and also the capability to actually enforce this—that is, a licensing regime with tickets—and we can make this work.

But, at the present moment, for my members across the board, this is not our focus. It's domestic violence; it's cybercrime; it's break-and-enters.

That's the other thing, too—and I'll keep coming back to this point: we do not have enough police officers. We have huge vacancies across the entire country. This is not something for us to focus on, unless the federal

government, as I've highlighted in our submission through the Police Federation of Australia, actually formulates a strike force—a taskforce—with every agency involved, including the media and the ATO, so we can actually go out there and stop it at its source. But it needs to be funded by the federal government, because if you ask the states to do it, they're going to say, 'No way. Our priorities are back to domestic violence, break and enters and dealing with serious organised crime,' even though there are huge issues with this in Queensland and Victoria at the present moment.

**Senator URQUHART:** It's different state jurisdiction around the country, but you've eloquently put what you think the federal government could do. Mr Weber, do you think the reforms around the legislation will assist police in enforcement actions or do you think it's still the same story that you've just outlined?

**Mr Weber:** I think it's the same story. The funding—and please correct me if I'm wrong—is about \$180 million, but that hasn't translated on the ground. If you ask any police officer in your local electorate or across the country what they do with illicit vaping, we wouldn't know. On top of that, I was walking through the streets today and I saw numerous people using vapes.

Police officers at the moment do not have the time to go, 'Do you have a prescription for that? Where is your prescription?' We don't have a system. So what do we do? If we confiscate it, where do we book it up? What actually do we do with it? We're taking away something that a person's purchased? So there have to be some protections there for police officers as well. Also, if we're taking it away, do we issue them with a fine? Where does that fine go? Where's the structure behind that?

All the state jurisdictions are absolutely bleeding with regard resourcing at the present moment. This is not their focus. So if the federal government really wants to make this policy and reduce the harm to the community, they have to have a proper structure in place and also fund it.

**Senator URQUHART:** Dr Martin, can you talk to me about the experience on the ground you're noticing when it comes to enforcing laws around illicit vaping products?

**Dr Martin:** I'm a criminologist, so I don't have a police department at my disposal, but I think it would be the experience of any person walking down any high street in the country. It's very easy to find illicit vapes in any of the convenience stores we see around. We've got regular updates and public media statements from Border Force, and from state policing agencies that there are seizures going on all the time. I note that the largest Australian seizure of vapes, which Mr Butler reported, was around \$15 million worth of vapes. If these estimates are accurate—and they're from the Victorian Parliamentary Budget Office—the largest ever seizure of vapes accounted for about 0.75 per cent of the market. That's a rounding error as far as these organised crime groups are concerned, and they're in a very comfortable position to absorb those losses.

**Senator URQUHART:** Dr Wodak, you've stated publicly that nicotine in vapes is not very addictive. Can you explain to me why observational studies of people vaping have recorded puff frequencies that are about 400 per cent, and more, higher than those observed in smokers.

**Dr Wodak:** I base my observations on medical research and the attractiveness of cigarette smoking to people who are cigarette smokers. That attraction to nicotine—which some people call addiction and some people call dependence, or whatever it is—when people switch from cigarettes to vaping, that entity decreases. There's a lot of research to show that. The puffing frequency is a poor guide to addictiveness. It's really symptoms like withdrawal symptoms, for example, that are a better guide to how addictive a particular chemical is. All the puffing frequency—and I'm surprised at the figure you quoted of 400 per cent—reflects is the way in which the person who is vaping is trying to get as much nicotine as they used to get when they were smoking. With most vaping devices, the nicotine delivered is significantly less than they were getting from smoking. There are some on the market now where it is very close to or equal to what they were getting from smoking, and, the more nicotine they're getting from vaping, the lower their puffing frequency.

**Senator URQUHART:** Chair, I might leave it there and give others a go, because I know we're really running short of time.

**CHAIR:** Thank you. Senator Kovacic.

**Senator KOVACIC:** Thank you all for your time and your evidence and, in particular, the information around illicit vapes. I'm after your insights as to how realistic you think it is that this legislation effectively banning all vapes, aside from prescription vapes, will actually cause people to stop vaping or go and get a prescription for a vape? Is this realistically something that you feel will happen?

**Dr Wodak:** I think it's a complete fantasy, and it's a fantasy on several levels. As Dr Martin has suggested to you already, if there is a strong demand for some substance or for off-site betting on races or for buying sex work or whatever it is, and if it's easy to subvert the controls on that good or service, the trade will flourish, and that's



exactly what we're seeing here. The more that the government is piling on more and more severe restrictions, the more severe the unintended consequences. It's as simple as that. But we're basically dealing with a problem where we've got something like 7.8 million containers entering Australia every year, and we have the capacity to search 100,800 of those 7.8 million containers. Most of the vapes are coming in containers. Could anyone believe that that system could actually work? We've got 27,000 kilometres of coastline, most of it deserted. We've got billions of parcels arriving in Australia every year. I would suggest to you that, if unlimited resources were given to law enforcement authorities, we'd still not be able to stem the supply.

**Dr Martin:** I'd echo Dr Wodak's comments there. I'd add an additional challenge. Yes, most of the illicit vapes that we've got—the disposable ones—come from China. China is our largest trading partner. We import around 20 million tonnes of products from China every year. That's a hell of a haystack to hide a needle in. But also these supply lines are already entrenched and established now. The prescription model has already failed. Nine out of 10 vapers are already sourcing their products illegally. For this to work, you would have to have some aspect of the policy that attracted vapers back into the legal market. At the moment, with the restrictions on flavours, the restrictions on devices that vapers actually want to use, I don't see any realistic possibility of that happening.

I will also add that enforcement doesn't just happen at the border; it happens at the street or state level as well. We've heard from Mr Weber about police concerns there. This won't be able to be done without police either. You can't send health compliance officers into stores that are owned by organised crime groups. There's just too much risk associated with that. Trying to enforce these laws at a retail level would be extraordinarily resource intensive, and the only outcome of that would be to drive the trade underground. We know that teens can access vapes. They can also access cannabis. The illegal drugs that we have would have a good similarity with what we would expect to see with vapes if there were a similar crackdown to take place.

**Senator KOVACIC:** I would be interested in any of your insights into what you believe would be a good mechanism. Most of this is obviously focused on the fact that people don't want children to vape or to start vaping. We don't want 12-, 13- or 14-year-olds vaping at school or anywhere, for that matter. What kinds of mechanisms can we put in place? Is banning the disposable vape perhaps a better alternative than banning them all together?

**Dr Wodak:** I think we have the answer to that from New Zealand. New Zealand and Australia for decades had very similar policies and had very similar outcomes from their tobacco control policies. Australia had slightly lower smoking rates. That all changed in New Zealand in August 2020 when the four major parties decided to back the kind of arrangements that Dr Martin already outlined to you. What's happened in New Zealand is that on some but not all measures the vaping rates amongst New Zealand youth are falling. Just as significantly—or maybe even more significantly—the smoking rate in New Zealand is falling at twice the rate as the smoking rate is falling in Australia.

The focus really should be, in my opinion, on reducing the smoking rate in older smokers, because they are the ones at risk of getting cancer, heart disease and lung disease and dying within a few years. I don't want to see any young people in Australia or elsewhere vaping, but really that's a problem that is low risk. It's much lower risk than smoking, and we have decades to deal with that. We don't have that luxury of time in dealing with the older smokers. They are going to get cancer, heart disease or lung disease and die from it in the next few years. We have 21,000 deaths of Australian smokers every year. That should be the focus. I don't think the problem is as difficult as many people suggest. New Zealand, I would suggest, is really where we should be looking for answers and also the United Kingdom.

**Dr Martin:** I would agree with Dr Wodak's comments there. I would say as well that, as we heard in the previous panel session from legitimate vaping retailers in the country on how their business model is being negatively impacted here, a huge amount of the market share of those businesses that will be shut down will go to the black market. If those businesses were able to go back to a previous arrangement or, even better, something along the lines of the New Zealand model, that would decrease the demand for black market products. That's what sucks oxygen out of the black market and decreases the profitability available for organised crime. It also frees up law enforcement and compliance measures to focus on the dodgy operators. On the one hand, you are undermining the demand, which will reduce the profits available to them and, also, diverting that back into legal, regulated and taxable products.

**Senator STEELE-JOHN:** Could I ask a question, first of all, to Dr Martin. What do you see as the impact of the reversal of the burden of proof on consumers or people suspected of supplying vaping products?

**Dr Martin:** Sorry, I don't quite understand the question—the burden of proof?

**Senator STEELE-JOHN:** What we have heard from witnesses today and yesterday is that there is an element of the legislation which reverses the onus of proof to enable an enforcement individual to require that a person provide evidence that they are in possession of a prescribed product. So my question to you is: in your view, what impact do you see this reversal having on consumers or people suspected of being consumers?

**Dr Martin:** I think the main problem here—and I think Mr Weber alluded to this from a police perspective—is the practicality of enforcing that. You would have police officers wandering around places where vapes are consumed and asking people for their prescriptions. That's an incredibly onerous and burdensome thing to do. What happens in those instances when someone doesn't have their prescription on them? I just don't see any other realistic parallel where police officers would be asking people for whatever medical prescriptions or papers they have on them at one time, and I don't know whether police would even be comfortable in enforcing the law like that. That really does look like a nanny state, and there are even worse comparisons that people can make there. Police officers presumably don't want to wander around asking people for their papers.

**Senator STEELE-JOHN:** To the Police Federation of Australia: a common objection to this bill is that it will result in consumers of vaping products being arrested. Is it correct that this would, as currently written, give the power to arrest individuals?

**Mr Weber:** There's always a power of arrest in regard to any form of ticket or enforcement, but, in saying that, police officers around the country go out of their way not to arrest people. If we were to streamline the process and seriously make it like the liquor licensing laws, we could issue infringement notices and progress it further. There'd probably be issues in regard to identification, especially if they didn't have appropriate ID, but, in saying that, police officers in the current form of the legislation and also even the funding—we don't have the training, the knowledge or the time to go and ask individuals. I think the major focus for us is cutting it off at the source—that is, going to those illicit premises that are selling illegal vapes, that don't have a correct licence, that are getting them illegally, that are run by organised crime. That is our major focus.

We're not going to look at an individual person on the street who wants to have a mango vape in the afternoon after work; we want to go to that premises that's run by an outlaw motorcycle gang who's intimidating local communities and threatening local businesses, and go in there and say, 'Hang on a minute; are you a fit and proper person to run this business? No, you're not. Do you have a licence to sell tobacco? No, you don't. Are the tobacco or vapes properly regulated? No, they're not. Ticket, ticket, ticket.' We give a ticket to the owner of the business and the person selling it, and we confiscate all those items there for sale. That's probably our major focus.

In regard to the average person walking down the street having a disposable vape or another vape: it is just not going to come up on our radar. I just cannot see that occurring in the present environment. We also do not have the training, and the workload would restrict it. We're going to do things 10 times more important. Your constituents from any local electorate are going to say to the police officer: 'Why are you bothering my son/daughter/friend/husband in regard to a vape when you should be locking up the person that broke into the local pub/broke into a house or looking into the domestic violence situation down the street?' I think that's where the premise is coming for us.

**Senator STEELE-JOHN:** Thank you for that. I hear that evidence you've shared with us. It's important to combine it with the statement of the author of the bill, in this case the minister and the department, that that's not the intent of the legislation. As currently written, the distinction, as far as we've been told as a committee, between where you would be able to issue that infringement notice, that fine—however you end up operationalising this policy—and the ability of that individual to apply for an exemption is the commercial quantity that they are found to have in their possession. It is the case that if an individual was found by an officer or enforcement agent to have a commercial quantity in their possession, you would be granted, under this legislation, the power to arrest them; correct?

**Mr Weber:** The only time that person would come under our notice would be if they committed another offence. I don't think there's a police officer across the country that would legitimately go and target someone who is having a vape, regardless of the fact that it is banned and illicit. It's just not going to happen. A prime example, as you well know from when you go to Canberra—all drugs there are decriminalised, but now we're talking about illicit vapes having more of a punitive effect. Again, I will get down to the real nuts and bolts of this.

**Senator STEELE-JOHN:** Of course. I hear that. I'm just conscious of time, but I do accept what you're sharing with us. I need to ask you a final question, though. Beyond the practicalities and intent that I hear from you, is there a barrier that you've been able to identify within the bill that would prevent an officer from arresting an individual with a commercial quantity in their possession, as currently written in the bill?

**Mr Weber:** Regardless of the legislation, police can arrest anyone and take them to a police station to ascertain ID and investigate further. Of course, we could arrest, but I think that would be highly unlikely.

**Senator CADELL:** Thanks very much for your evidence. Mr Weber, in summary, the police force does amazing work and a lot of work, especially [inaudible] domestic violence. With the resources and training you have now, and with all the other demands on you, could you enforce this to eliminate illegal vaping in these laws across the country?

**Mr Weber:** No; not at all.

**Senator CADELL:** Dr Martin, thank you for your evidence. The government and the people here have trotted out to everyone that this is all about the kids. None of us want to see kids vaping, but they're saying that the industry has forced tobacco and vaping onto the kids. What has organised crime done about kids and vaping?

**Dr Martin:** That's a great question. Watching this debate from a criminological perspective has been one of the most frustrating things. This really looks like a classic case of moral panic as far as criminologists are concerned. We have an exaggeration of the threat to a particular group. As you say, teen vaping is a concern. But over 70 per cent of teens, according to the government's own statistics, have never tried a vape. Just 3½ per cent of teens vape daily. That's lower than the proportion of teens who were smoking daily a decade ago.

In terms of accessing the black market, this has occurred under a model in which the black market has thrived. Teens find it easier to access products from black markets, not harder, because the legitimate retailers—who we've heard from before—don't sell to underage people. But the black market is very happy to. They don't respect age restrictions. Of course, the products that they're getting have much higher levels of nicotine and other adulterants as well than are available from legitimate retailers. They're more addictive than the products available—

**Senator CADELL:** There's formaldehyde in some.

**Dr Martin:** Yes, exactly. Particularly, there are sky-high levels of nicotine. They're getting more easily addicted to the black market products than they would be if they could get their hands on legitimate products. The black market presents way more of a danger to teens, in my view, than having a legal, regulated market would.

**Senator CADELL:** My personal view—I don't want to push it onto you—is that with this bill the government is being seen to do something but is really outsourcing the health outcomes for our youth and people who want to quit smoking to outlaw motorcycle gangs and organised Asian gangs. Am I reading that completely wrong?

**Dr Martin:** No. I have a very similar perspective. I have a lot of sympathy for the position that Border Force and law enforcement will be put into if this bill passes. My criticism is on the limitations of what law enforcement could achieve. That's not a criticism of law enforcement personnel. This is a strategy that they would be required to follow, but it's a misinformed strategy, and it will not achieve its outcomes. We know that because of what we see with other illegal drugs.

**Senator CADELL:** Along the lines of what Mr Weber was saying, do you think Australians would be more pleased seeing their police force out there keeping women and domestic violence victims safe or picking up people who have vapes?

**Dr Martin:** Absolutely; that's right. I was in the UK a couple of weeks ago. I was in New Zealand over Christmas. You see vapes being not just sold there but advocated by public health departments and agencies as a less harmful alternative. Frankly, I find it absolutely ludicrous that you can walk into any supermarket or corner store and buy a packet of cigarettes, but there are all these obstacles in the way of getting legal vapes. Of course, illegal vapes are very easy to access, and that is the heart of all the problems that we're talking about.

**Senator CADELL:** I think you mentioned an estimated value for the industry of \$2 billion. Is that correct?

**Dr Martin:** Yes, that's a conservative estimate.

**Senator CADELL:** That's bigger than the Australian Federal Police annual budget for last year.

**Dr Martin:** This is exactly what we see in terms of the war on drugs more generally. Essentially this is not a criminal problem; this is an economic problem. There is no level of government intervention that is feasible that can impact the profitability of the illicit trade in vapes and tobacco. You can conflate those markets because it is the same organised crime groups who are involved with supplying illicit tobacco and illicit vapes as well as other illegal drugs. It's an absolute disaster, and I don't think it is feasible in any sense.

**Senator CADELL:** My last question is to you, Dr Wodak. This feels very much like I'm watching a 1930s movie, where you've got a country like America where all of its neighbours are selling a product. It's not even illegal in most countries like cocaine or heroin are—and they still get here. All of our neighbours have this product available and sellable. How can we stop this, will we stop this, and should we stop this?

**Dr Wodak:** You can't stop it. And you're right to put this as a choice between the desirability of trying to do this and the feasibility of doing it. It's the feasibility that really matters. Every year the Commonwealth government commissions a survey of people who use drugs and asks them how difficult or easy it is to obtain heroin, cocaine, amphetamines, cannabis et cetera. I think 87 per cent of people who responded last year said that getting hold of heroin was either easy or very easy. I believe that vaping would be even easier to get than heroin.

**Senator CADELL:** I was always taught in my law 101 course, which I failed a number of times, that a law has to be clear, concise and enforceable. This is not enforceable, is it?

**Dr Wodak:** It isn't.

**CHAIR:** Senator Canavan.

**Senator CANAVAN:** My question is to Mr Weber. Firstly, I want to thank you and all your members for their service as police officers to our nation. You said to Senator Cadell that you didn't think that police had the resources to implement the government's model. Given we're in a situation of high rates of domestic violence, youth crime and terrorism now, what does this mean for police resources? With your scarce resources, if governments were to say, 'We need you to go and raid these vape shops,' would that necessarily mean you'd have fewer resources to tackle those other issues facing our community?

**Mr Weber:** Totally. The only way this would work, as I put in my submission from the Police Federation of Australia, is if the Commonwealth funded that strike force and made it outside the normal police budget. It would have to be a licensing regime where we could actually enforce that fit and proper people are delivering the tobacco or the vapes. On top of that, we need to have the systems in place to issue tickets. But that hasn't come to fruition. So, at the present moment, no. It comes back to something a previous speaker said, when they highlighted: 'Hang on a minute. I saw a police car around the corner.' It's just not visible on our radar. We don't have training for it. We don't know how to deal with it. At the present moment we've got so many other priorities to deal with.

From a policing point of view, no, it's not workable in the current structure. We would welcome it if there was a proper licensing regime in place that could administer this, where we had clear guidelines and clear policy and we could enforce it in that way. But, again, when police officers out on the street are going to a premises and confiscating illicit vapes or illicit tobacco, it's already too late. I think prevention—and I keep coming back to my comments at the start: what is the government's policy? The policy here is to reduce the risks associated with nicotine. That's what I think as a layman police officer. This legislation is not doing that. If anything, we've turned a health issue into a crime issue. We've seen that in numerous states. It is not working, so we need to go back to the health issue.

What that means in regard to taxation and policies is not for me to decide. The police will enforce the law of the land on any given day, but the way this legislation is sitting, and the philosophy behind it, is flawed for us, and it doesn't work.

**Senator CADELL:** Can I quickly ask a follow-up. Do you have a cost for that strike force that's needed? Did any of the state police jurisdictions meet with the federal department to discuss these issues before the model and maybe cost something up of what was needed?

**Mr Weber:** It would probably be, at the absolute most over four years, about \$30 million, which is a drop in the ocean. I know we touched upon \$2 billion, and, to my understanding, that's \$2 billion lost in revenue. The other thing that we're starting to see now is that we don't know how many people are using nicotine products. It's not coming up on the radar, because the taxation is not there like it used to be. You've had a market with regard to taxation of tobacco, to an extreme where you have created an illicit market where organised crime has gotten involved. They're actually turning honest people into alleged criminals or putting them through the criminal system, which we don't want to occur either.

Again, as I said before, 10 years ago, I never thought I'd ever be talking about this issue. The only time we ever dealt with tobacco was when it was being sold to under-age people. Now we're talking about an entire population of Australians that use nicotine products that are going to come under the eyes of law enforcement. That's something we don't want. It's something we can't do. Again, when we come to a resource and supply-and-demand issue for our calls for service, it's just not going to be on the radar. Our members would much rather deal with serious offences instead of dealing with these issues, which, as far as we're concerned, are health issues.

**Senator CANAVAN:** Thank you, Mr Weber.

**CHAIR:** Thank you. I believe Andy Mison from the Australian Secondary Principals Association has just joined us. Unfortunately, we are at the end of the session, but I wanted to check—Senator Steele-John, I believe you requested this witness. Do you have a question to put to him before we move on? We may have lost him. Mr

Mison, before we move to the next session, I'll give you an opportunity to present what would have been your opening statement so we have that for the record, but I'm afraid we need to move to the next witnesses.

**Mr Mison:** I have submitted a statement in writing; I don't know if you've accepted it. I speak on behalf of all the public secondary school principals across Australia. We're responsible for looking after more than 1.1 million children and young people. We strongly support the legislative amendments in the Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024, which seeks to address the growing public health crisis caused by the increasing prevalence of vaping amongst young people. We've endorsed the Cancer Council's campaign to raise awareness about the harmful effects of vaping, and we recently met with the Australian Medical Association to discuss our shared concerns. We're united in our support for these crucial legislative changes, as critical regulatory steps in addressing the vaping epidemic among our youth. Though the regulation is unlikely to stop our young people vaping, it will reduce and hinder supply and will support efforts by education and health professionals to implement preventive approaches and interventions.

There's clear and compelling evidence that vaping poses significant health risks, particularly for children and adolescents. The National Health and Medical Research Council has advised that e-cigarettes may expose users to harmful chemicals and toxins such as formaldehyde, heavy metals, particulate matter and flavouring chemicals, with the potential to cause adverse health effects. A single vape can contain the same amount of nicotine as 50 cigarettes. According to the Australian Institute of Health and Welfare, one in seven Australians aged 14 to 17 and one in five Australians aged 18 to 24 are currently vapers. Concerningly, over 60 per cent of those aged 15 to 24 had never smoked before they started vaping and young people who vape are around three times more likely to take up tobacco smoking compared to those who have never vaped.

Nicotine is highly addictive and the evidence is really compelling and overwhelming that it has detrimental effects on adolescent brain development, containing a multitude of harmful chemicals. The targeted marketing to young people through appealing flavours and packaging is particularly concerning for teenagers, whose physiology and brain chemistry are undergoing significant changes during puberty, leaving them susceptible to lifelong addiction and poor health outcomes.

On behalf of my members I want to say to you that schools across Australia are grappling with the disruptive and damaging effects of vaping on student wellbeing and learning. Our members report an increase in adverse behaviours, which has been well reported in the media, caused by addiction and withdrawal symptoms. Those from disadvantaged backgrounds are at even greater risk during this critical teenage stage of development.

We got on top of smoking over many years and we weren't dealing with so much disruption around responding to smoking behaviours. We got on top of that. Now it's all coming back again through vaping with huge disruption. We need to look after our kids, and we need to support our teachers and school leaders to get on with the job they're there to do. Our students need to be protected from these harmful and toxic substances.

ASPA strongly supports the proposed legislative amendments as a crucial step in safeguarding the health and wellbeing of our young people and ensuring they have the best possible opportunities for learning and for healthy and successful futures.

**CHAIR:** Thank you. I need to ask you, as I asked other witnesses at the start of the panel before you joined, whether you or your organisation have received any support—whether financial or non-financial, direct or indirect—from any parties involved in the production, distributional or sale of tobacco, nicotine or vaping products?

**Mr Mison:** Absolutely not.

**CHAIR:** Can you talk to us about the impacts on young people of nicotine addiction that you're seeing in schools, particularly when they may be developing these addictions—not realising they are consuming nicotine based products—with respect to their learning, their development and mental wellbeing and health?

**Mr Mison:** Absolutely. You hit the nail right on the head when you said they're often not aware that the products they're consuming contain nicotine. The other factor is that with cigarette smoking it's very easy to detect. It smells and you can see the smoke. It's not something you can do in a crowded classroom or school environment. However, vapes look like highlighters. You can put them inside your coat. Kids do that. Vapes are easy to hide. The kids can vape anywhere. They can do it in the playground, the toilet and the lunchroom. They can even do it in the classroom, and you'll often see kids do this. Unlike with cigarettes, the vapour disappears almost instantly and it's almost odourless. They're very difficult to detect.

In terms of how it manifests in kids behaviour, it's the same way that withdrawal symptoms from cigarettes would—agitation, irritation, irritability and a tendency to engage more readily in conflict cycles with other kids and with teachers. It distracts them, they're not focused on activity—healthy or otherwise. When challenged, it

will often lead to what might be considered typical of an addict's response. It very quickly goes to a conflict cycle, which is not in the interest of the learner, the other kids in the environment or the teacher who's trying to get the job done.

It means a decrease of kids engaging in healthy physical activities because of the health impacts that smoking or nicotine and vaping is having on kids' lungs and respiratory systems. They're less inclined to get outside and be active and all those things that we know are really important for our young people. It's very concerning and it's not something we should be dealing with in schools.

**CHAIR:** I'm sure you have enough on your plate already.

**Mr Mison:** We absolutely do.

**CHAIR:** Thank you so much. Unfortunately, because we're due to move on, we're not able to ask more questions, but if there is anything further you would like to provide to us, we're closing answers to questions on notice and suchlike by close of business on Monday 6 May because we're reporting on 8 May. That applies to other witnesses who may have taken questions on notice. Please have them back to us by the close of business on 6 May. Thank you all for participating in our hearing.

**FITZGERALD, Mr Tim, Deputy Commissioner, Australian Border Force.**

**OUTRAM, Mr Michael, APM, Commissioner, Australian Border Force**

**PEARCE, Ms Susan, Secretary, NSW Health [by video link]**

**SCHOFIELD, Ms Kirsty, APM, Assistant Commissioner, Crime Command, Australian Federal Police**

[16:20]

**CHAIR:** Welcome. Thank you for appearing before our committee today. The Senate has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Commonwealth officers are also reminded of the Senate order specifying the process by which a claim of public interest immunity should be raised. A copy of the order is available from the secretariat.

*The extract read as follows—*

**Public interest immunity claims**

That the Senate—

(a) notes that ministers and officers have continued to refuse to provide information to Senate committees without properly raising claims of public interest immunity as required by past resolutions of the Senate;

(b) reaffirms the principles of past resolutions of the Senate by this order, to provide ministers and officers with guidance as to the proper process for raising public interest immunity claims and to consolidate those past resolutions of the Senate;

(c) orders that the following operate as an order of continuing effect:

(1) If:

(a) a Senate committee, or a senator in the course of proceedings of a committee, requests information or a document from a Commonwealth department or agency; and

(b) an officer of the department or agency to whom the request is directed believes that it may not be in the public interest to disclose the information or document to the committee, the officer shall state to the committee the ground on which the officer believes that it may not be in the public interest to disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.

(2) If, after receiving the officer's statement under paragraph (1), the committee or the senator requests the officer to refer the question of the disclosure of the information or document to a responsible minister, the officer shall refer that question to the minister.

(3) If a minister, on a reference by an officer under paragraph (2), concludes that it would not be in the public interest to disclose the information or document to the committee, the minister shall provide to the committee a statement of the ground for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information or document.

(4) A minister, in a statement under paragraph (3), shall indicate whether the harm to the public interest that could result from the disclosure of the information or document to the committee could result only from the publication of the information or document by the committee, or could result, equally or in part, from the disclosure of the information or document to the committee as in camera evidence.

(5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate.

(6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.

(7) A statement that information or a document is not published, or is confidential, or consists of advice to, or internal deliberations of, government, in the absence of specification of the harm to the public interest that could result from the disclosure of the information or document, is not a statement that meets the requirements of paragraph (1) or (4).

(8) If a minister concludes that a statement under paragraph (3) should more appropriately be made by the head of an agency, by reason of the independence of that agency from ministerial direction or control, the minister shall inform the committee of that conclusion and the reason for that conclusion, and shall refer the matter to the head of the agency, who shall then be required to provide a statement in accordance with paragraph (3).

(d) requires the Procedure Committee to review the operation of this order and report to the Senate by 20 August 2009.

*(13 May 2009 J.1941)*

(Extract, Senate Standing Orders)

**CHAIR:** Do you have any comments to make on the capacity in which you appear?

**Ms Pearce:** I'm co-chair of the National Vaping Working Group, along with Commissioner Outram.

**CHAIR:** I note you have submitted declarations of conflict of interest, but I also need to ask you to reiterate those for the purposes of the *Hansard*. Could I get a yes or no answer from each of you to the question: have you or your organisation received any support—whether financial or non-financial, direct or indirect—from any parties involved in the production, distribution or sale of tobacco, nicotine or vaping products?

**Mr Outram:** Neither for me nor for the Australian Border Force.

**Mr Fitzgerald:** No.

**Ms Schofield:** No.

**Ms Pearce:** No.

**CHAIR:** Thank you. I now invite each of you to make an opening statement, if you wish to do so, and then we'll have questions from senators. We will start with the Australian Border Force.

**Mr Outram:** No opening statement from the Australian Border Force. Susan Pearce and I have also agreed there will be no opening statement from the working group.

**CHAIR:** Okay. And none from the Australian Federal Police?

**Ms Schofield:** No opening statement, Chair.

**CHAIR:** Thank you. I'll move to questions, and I'll start with Senator Urquhart.

**Senator URQUHART:** Thank you, Chair, and thank you to the witnesses for appearing. I'll just throw this out: I don't mind who answers, but I'd be really pleased if you don't repeat things as we have really tight limitations on time. If you have something else to add that someone hasn't already said, that would be really helpful. Can you tell me what work has been undertaken with state and territory governments to ensure the legislation is enforceable in their jurisdictions and that they are properly prepared and resourced to undertake that enforcement?

**Mr Outram:** I might kick off, if that's okay, Secretary Pearce. Secretary Pearce and I have been co-chairing the National Vaping Working Group. It was established after agreement with state and territory and Commonwealth ministers, police, the Attorney-General and the health minister. We have been working with Commonwealth, state and territory counterparts for several months. We've had several meetings and we're very close to formalising an enforcement framework, which will describe the roles of all the participants within the enforcement framework from the Commonwealth, including Border Force at the border, to state and territory counterparts, including health regulators and police et cetera. Secretary Pearce, did you want to add anything to that?

**Ms Pearce:** No, thank you; that covers it.

**Senator URQUHART:** And how will the proposed reforms enable greater enforcement activity?

**Mr Outram:** Again, I may just come into that. I'll start at a very high level. Very early on in the piece, when I was talking publicly about this issue of kids being exposed to these vapes and people were sort of talking about a border ban being a panacea, I said: 'A border ban in and of itself won't be a panacea. We need a systems based approach.' So we've had the first two phases, of course, implemented, which gives us—the Australian Border Force—the powers to seize and destroy these goods. But, if we don't deal with the problem of both demand and supply at the domestic level, the border ban will be pretty ineffective, I have to say, because we're going to have a significant volume at the border to deal with and we'll have more regulatory complexity to deal with. I could go into more detail, but, in essence, what I would say is that we have one bookend in place at the border and we need the other in place at the domestic level.

**Senator URQUHART:** Thank you. Can you outline the cooperation between jurisdictions in enforcement action to date? I also want to raise—and I'm sure that you heard this—the previous evidence from the Police Federation about resourcing. Given that there have been discussions over several months, can you just give me some indication of whether or not there were any discussions about the resourcing of the various—and I know it's a state and territory jurisdictional issue, but I just wondered if you had anything to add to that. So just talk about the cooperation between jurisdictions in enforcement action to date, and then, if you have any discussions about the enforcement or the resourcing, I'd be really interested, given the previous witnesses' evidence.

**Mr Outram:** Firstly, obviously, the Australian Border Force has received funding—I'd call it NPP funding—from the Commonwealth government in relation to our role at the border. We are also, of course, working very



closely with states and territories, and we will give you some examples in a moment. The deputy commissioner will give you some examples of the work we've been doing with states and territories.

In terms of the police side of things, Secretary Pearce and I have had a lot of discussions, through the working group, with the police about their role in the enforcement framework. Clearly—and the police acknowledged this—they already have a role in terms of serious and organised crime. Serious and organised crime groups are already bringing these goods into the country and targeting them at children, to addict children. So we've been working with the police on thresholds for referring intelligence or leads, if you like, that relate to serious and organised crime involvement in this market.

There have been a lot of discussions, as well, about the support that the police might be able to give—recognising the constraint on resources that they talked about—to health regulators and other regulatory teams that go out and do the actual enforcement work on the ground based on risk factors—so information that somebody may be violent or have a criminal history or be involved in serious and organised crime and so on and so forth. That's why the enforcement framework is going to be really important, to define roles and responsibilities. It's been made clear that the police on the ground don't have the primary responsibility for the enforcement at a retail level. But I might ask Secretary Pearce, because obviously she's the expert on the health side in New South Wales, and New South Wales is probably a good example of how this system is going to be intended to work.

**Ms Pearce:** Thank you, Commissioner Outram. NSW Health has a very extensive and active statewide compliance and enforcement program around vapes. Indeed, just by way of example, in 2023 the NSW Health team, our environmental health officers and others seized 431,000 vapes, conducted 3,000 inspections across the state and prosecuted 44 retailers.

To the point of your question, in terms of our engagement with the police: obviously we do work with other agencies, and the partnerships are incredibly important. At a state level, what we are already doing, and have been doing for some time, is sharing information with our police colleagues. We're formalising those arrangements at the present time in an MOU with police. Essentially, what is important to us—and for the safety of our staff as well—is that a risk assessment is conducted. If there is any indication of safety concerns for our environmental health staff going into these premises, that's when we seek the assistance, if necessary, of the police. No-one should be under any illusion that at each and every occasion where our staff are conducting these inspections—for example, the 3,000 in the calendar year 2023 that I mentioned—there were police officers present, because the majority of the time they're not. We do respect the workload of our police and call them as necessary. In certain areas, the partnership may look different, depending on the circumstances in the local area. But what's really important to us is that we engage collaboratively and in partnership with our police colleagues to really work hard on achieving the goal of getting these products out of the hands of our young people.

**Senator URQUHART:** Thank you. You talked about 431,000 vapes seized in New South Wales. Commissioner—or Deputy Commissioner, or AFP—do you have any knowledge of the numbers of vaping products seized to date?

**Mr Fitzgerald:** I can tell you from an Australian border perspective—so seizures at the border—that for the first three months of this year we've seized around 611,000 vapes. In terms of your question about that joint operational activity, and to give you another tangible example of the work that we are doing with state and territory police and the sorts of results that's leading to, there is a particular focus on organised crime when it comes to illicit tobacco and vapes more broadly. As a tangible example, on 17 April as part of an operation—Taskforce Lunar—with Victorian police who executed Crimes Act warrants at a number of premises in Victoria that were attended by both Australian Border Force officers and Department of Health and Aged Care and TGA officials, over 460,000 vapes were seized at a warehouse during that warrant activity, along with \$120,000 in cash, and six persons were arrested. I can give you multiple examples of where that's happened across the country—maybe not to that same scale but certainly of significant scale—where there has been joint operational activity focused on organised crime, whether in New South Wales, Queensland or WA et cetera.

**Senator URQUHART:** In that example that you've just given, you talked about Australian Border Force, Health and TGA. So there were no resourcing issues around the requirement for the state police to be there?

**Mr Fitzgerald:** Not in that particular example, because it was part of a taskforce. I think it's probably fair to say that, particularly for the funding that we as Australian Border Force receive for illicit tobacco, there's an element in that where we can support state and territory police and health authorities, particularly if it's a joint operation. That can go as far as storage, destruction et cetera for seized goods, and it can go as far as overtime for officers from state and territory police forces that are attending. So that's the approach we've taken at the moment.

**Senator URQUHART:** Great. I think there was a lot of emphasis put on concerns raised around police being taken away from policing—such as attending domestic violence and those sorts of things—to this, which was seen as a lesser need, if you like. So I think it's important to understand that there are other options from time to time where you guys can actually take that running.

**Mr Outram:** Yes. It would be fair to say that the police have raised those concerns with Secretary Pearce and me through the working group as well, as we've been working up this enforcement framework to make it clear who has what roles and responsibilities. But certainly there's been no argument at all that, where serious and organised crime become involved in these goods, the police have an appetite to get involved. You've seen what happened in Victoria, of course, with various issues with organised crime in that state. Also, the Australian Criminal Intelligence Commission have been taking active involvement in the Serious and Organised Crime Coordination Committee, which is all the state and territory police and the AFP. Of course, we have the AFP here. They have been very focused on organised crime's involvement in this market—and particularly the targeting of kids, I have to say, with these products.

**Senator URQUHART:** I might leave my questions there and share around, if that's okay.

**CHAIR:** Thanks. Senator Kovacic.

**Senator KOVACIC:** Thank you for appearing today and for your evidence so far. I have a couple of quick questions. There's no commercial quantity specifically defined in this legislation. Do you have a view as to what would constitute a commercial quantity and why that would be?

**Mr Outram:** It's a policy question, first of all. Having read the legislation obviously, it's envisaged to be quite high, because there's a provision there for a hundred times less than whatever the commercial quantity is. So I'm imagining it'll be quite high. Until that's determined, I couldn't really make further comment. You've got the TGA coming after us who probably do have some involvement in that particular element of the policy.

**Senator KOVACIC:** That probably leads into the next thing I wanted to ask. When you talk about the vapes that you've seized, the broader quantities that they come in—are they generally very, very large quantities, or is there a distribution of those from smaller to extremely large? Also, do they tend to be disposable vapes or are they the refillable vapes as well?

**Mr Fitzgerald:** Just to answer that question, and probably to give you a bit of our experience in recent times—just to give you one week's example, from last week—from 21 to 27 April there were 745 detections at the border by Australian Border Force officers of just over 95,000 vapes. The majority of those, in terms of volume, came through the air cargo environment. There were 106 detections and 50,000 vapes. That's more your commercial environment. Sea cargo had only five detections, but 40,000 vapes—less detections but your quantities in those detections are higher. From an international mail environment, there were 631 detections and only 5,000 vapes. What that suggests is that there is still an ability for Australians to go on the internet and order for themselves in smaller packages that tend to come through mail. But your organised crime and your facilitators tend to use our air cargo and sea cargo environments.

**Mr Outram:** And the types of vapes too?

**Mr Fitzgerald:** The types of vapes does vary. It tends to be, particularly through the international mail, those single use, disposable vapes. On top of the 611,000 vapes themselves, there were also 76,000 accessories seized. So we do see a wide range.

**Senator KOVACIC:** There are no further questions from me, Chair. Thank you, I appreciate those insights.

**Senator STEELE-JOHN:** Thanks so much to the witnesses that are appearing in this section. My question is to border force. What are the implications of this legislation for people travelling to Australia with vaping products for personal use?

**Mr Fitzgerald:** This particular piece of legislation doesn't impact that. We've had two pieces of legislation already come into play. On 1 January 2024, all disposable and single use vapes were banned. On 1 March, all vapes and accessories were banned unless of course you have a permit—that's generally through our cargo environments. In terms of passengers, each passenger is entitled to two vapes when they travel through. So there is what I'll call a passenger concession of two vapes.

**Senator STEELE-JOHN:** When you say, 'Two vapes,' are we talking about two devices, two coils or a certain quantity of liquid? What's the definition of 'two' there?

**Mr Fitzgerald:** Two actual vapes.

**Mr Outram:** Devices.

**Mr Fitzgerald:** Yes, devices.

**Senator STEELE-JOHN:** Two devices, okay. As a follow up to that, what is the current waste management process for vaping products confiscated at the border? What do you need to improve the process?

**Mr Fitzgerald:** That's a very good question. Because of the nature of vapes, obviously there are a lot of plastics and other materials that mean we do have to dispose of them and destroy them in an environmentally friendly way. We do have a current contractor that does that. I think it's probably fair to say, given our seizure volumes, they are struggling to keep up. We are in the middle of a procurement process with a view to sourcing providers right across the country. That element is a costly exercise, but that was part of the funding that we received as Australian Border Force.

**Mr Outram:** It would be fair to say this would be raised by the states and territories as a big concern too (a) because of the cost, and (b) because of the complexity of pulling them apart. With lithium batteries and all these other bits, it's not like disposing of a cigarette or hard tobacco, so we are working through all of that. The working group's looking at that as part of this enforcement framework too. As the deputy commissioner said earlier, where we work in collaboration with states and territories, we do have funding already made available for border force to support them in the destruction of those vapes that are seized in that context.

**Senator STEELE-JOHN:** This next question is to all who are appearing today. How can individuals legally dispose of excess vaping supplies?

**Mr Outram:** It's probably not a question for us. It's probably more a question for the Department of Health and Aged Care, I would think, in terms of legal vapes that already in the country and how they should safely be disposed of.

**Senator STEELE-JOHN:** Safely, certainly, but, in terms of the legal pathway to do that, is there a process that you are aware of? Say if this legislation passes and people want to do the right thing and dispose of any stockpile they may have personally, how do they do that?

**Mr Outram:** It's a very good question, but again I'd say it's one really for the department of health or TGA rather than the Border Force. Certainly, if we seize vapes or if someone were to hand them into us because they were concerned that they were breaking the law, then we would take action under our powers and dispose of them in the way we've explained to you. But I wouldn't be able to provide that advice to the committee, I'm afraid. I should probably refer that the TGA.

**Senator STEELE-JOHN:** Individuals who have an e-cigarette prescription may encounter situations under this legislation where they need to fill multiple prescriptions at once and could risk exceeding the commercial quantity. Do you expect it to be common in very remote areas where pharmacy access is limited, and how do individuals navigate that situation under the proposed legislation in your view?

**Mr Outram:** Again, it's a good question and probably not one for the Border Force. I don't know if Secretary Pearce, from the health side, has a view on that.

**Ms Pearce:** No. I would have to take that one on notice. It's a good question and something that we definitely should be looking at.

**Mr Outram:** The TGA might be able to give you advice on that afterwards as well. I'll just mention again that the TGA is coming in after us and perhaps might have some answers for that question.

**Senator STEELE-JOHN:** I'll circle back.

**CHAIR:** I wanted to put a question regarding the National Vaping Working Group. Could you briefly explain for us your activities and role?

**Mr Outram:** Certainly. The group was established after a meeting between state, territory and Commonwealth ministers. From memory—Secretary Pearce might correct me if I am wrong—I think it was the Attorney-General, the health minister and state and territory health and police ministers talking about the Commonwealth's policy and the proposed laws. Coming out of that working meeting with ministers, it was agreed that a working group would be established to establish an enforcement framework for the nation that we would all work within. Secretary Pearce and I were asked to co-chair that. We have had several formal meetings now, and, as I said earlier on, the participants include not only ourselves but state and territory health and police and federal police. Secretary Pearce, did you want to add anything?

**Ms Pearce:** In addition to what Commissioner Outram said, part of the work that we're doing through the working group is very much about clarifying roles and responsibilities between health departments and other agencies. Not all states and territories look the same in respect of who does the compliance and enforcement work on the ground. It's really about the partnering, as I mentioned before, and sharing information—for example, the MOU that New South Wales Health is establishing with New South Wales Police. We're able to share that

information with other jurisdictions so that they can look at how that applies to their own jurisdiction. As Commissioner Outram has already mentioned, we are looking at the issues around the disposal and transport of vape seizures. We're really keen to make sure that all of our states and territories have this framework but also that there is flexibility within it that allows them to apply it to their own local jurisdiction so that it meets their needs.

**Mr Outram:** I think we should also mention we are laying the ground for the establishment of the illicit tobacco and e-cigarette commissioner position. The working group have also been considering what success might look like, what success is here. We have talked about children and the rate at which children are being exposed to vapes and getting addicted to nicotine and those things. That's where we are focused. It's on how we build a framework that's measurable in terms of the impact on children who are taking up these devices as well as the operational effects. We have organised crime seizures at the border and all those sorts of inputs.

**Senator CADELL:** I was talking about outlaw motorcycle gangs and serious and organised crime. Over the last day and a half, there has been a lot of talk about industry, with the implication that big tobacco are the ones that are bringing in these vapes illegally. Is that the case?

**Mr Outram:** I have no information. Deputy?

**Mr Fitzgerald:** No, not from our detections. I think it is fair to say that we can link a lot of them to organised crime. As I suggested, that's particularly through the mail environment. That's Australians going online and ordering from sites offshore.

**Senator CADELL:** Prior to immediately coming here, I was at the Port of Newcastle. I have worked with many of your staff and seen the great things they do and the difficulties they face in all of these things. At estimates last year you made a statement that you were picking up about a quarter of the illicit drugs that come to Australia. A colleague asked you what percentage you thought you were picking up of vapes. At that stage, you hadn't formed an opinion. Have you formed an opinion yet on what the percentage is?

**Mr Outram:** No. It's difficult. It's going to take some time. For example, with narcotics we rely on a lot of different data points that have evolved over time. There is the national wastewater analysis undertaken by the Criminal Intelligence Commission and various other studies done around narcotics consumption and weight. We know what we seize at the border, of course. We haven't got that longitudinal data for vapes. That's why I was talking just now about, 'What does success look like?' in terms of the rate at which these things are being consumed by kids in particular. Once we have these measures in place, we will be able to start to collect data and see what effect we are having. That's the first thing I would say. However, we are seizing a lot. The deputy commissioner might be able to give you a sense of some of the stockpiling that occurred before the prohibition came in. We need to see those sorts of stockpiling activities level out over time. It's going to take some time, I think. I will let the deputy commissioner go into more detail for you.

**Mr Fitzgerald:** With the bans that came into play on 1 January and 1 March, we did see, as the commissioner suggested, what we term 'stockpiling'. So there were significant importations to have the vapes available post the ban that has come into play. Again, we are seizing a lot of the border. We have probably seized with our agency partners, such as the police, close to a million.

The other point to this is that it's not necessarily all about seizures at the border. We have put in a significant amount of work with our partners offshore. That's customs administration offshore in those countries that we know are high exporters of vapes to Australia. To give you an example, prior to the ban of 1 January, 74 per cent of single-use vapes were coming from one supplier in New Zealand. As a result of the ban that came into play on 1 January, Australians can no longer order from that website. The suppliers are starting to apply the ban, so it's not easy to order. We have been working with counterparts in China as well. As a result, we have seen a 93 per cent reduction in vapes being exported from China to Australia. So, in terms of the number of vapes coming into Australia, we can see a tangible reduction.

**Senator CADELL:** But, going back to my point, when China banned coal imports from Australia—and I was at the port—we suddenly picked up a number of coal exports to Singapore, which doesn't have a coal-handling facility. Surely stuff coming to Australia can be going through intermediaries?

**Mr Outram:** Absolutely. There is trans-shipment all over the world. Supply chains are used by organised crime, whether for drugs or anything else. But I would say on your question that what is different from drugs is the permit scheme here. It's not a complete ban. That differentiates this from the narcotics market. Unfortunately, as you would be all too aware, we seem to have a very high appetite for narcotics in Australia per capita compared to a lot of other countries. There may be very complex reasons for that. We're trying to get ahead of this

particular market. It's not growing like the drugs market has. It hasn't had time to. As a witness said earlier on, 'We got on top of one problem and this one's evolving.'

We've got an opportunity, I suppose. Operationally, I can see an opportunity to, rather than just prohibit things at the border, to actually put the systems view in place here and deal with the consumption patterns at the domestic level, the regulatory work at the domestic level and tie it all together.

The other opportunity here, with the approach we're taking, is that it does allow us to work offshore, like we've done with China with asbestos, for example, and other producing countries with asbestos. It allows us to do that. So there's a multifaceted approach we can take.

**Senator CADELL:** One of the comments you made last week, and I'll semi-quote you. If it's wrong, tell me. You said, 'The government's plan to abolish retail vapes is a work in progress. There was no funding attached to the budget last year specifically around that.'

**Mr Outram:** Last week?

**Senator CADELL:** Last year it was a work in progress. And there was none then.

**Mr Outram:** We've received funding. Do you want to talk about that, Tim?

**Mr Fitzgerald:** In terms of vaping?

**Senator CADELL:** Yes, in the federal budget. It was after that wasn't it?

**Mr Fitzgerald:** Yes. As Australia Border Force, we've received \$25 million for the next two years specific to vaping.

**Senator CADELL:** We hear evidence of organised crime and \$2 billion in vape sales. That's almost twice your budget, isn't it?

**Mr Outram:** I haven't heard that \$2 billion in vape sales.

**Senator CADELL:** There was evidence here.

**Mr Outram:** There are lots of estimates of the size of the profits of organised crime from narcotics and from illicit tobacco—

**Senator CADELL:** Not profits. It was sales.

**Mr Outram:** I haven't heard that, if I'm honest. But, of course, organised crime is all about profit. That's why they come into these markets. So I think there is a serious conversation to be had about it. I've heard conversations about whether we take a taxation approach like we've taken with tobacco. But what you create there is an opportunity for organised crime to come in and distort the market and underprice goods.

Why I'm so supportive of this approach is because we've got the permit scheme that is different, and it's a prohibition. We're not just taxing it, we're actually prohibiting it, but with a nuance around the permit scheme. So we're not preventing Australians who legitimately need access to these goods from getting hold of them. Or there may be challenges that we've talked about. But from a border point of view and an enforcement point of view, we've got the benefits of a prohibition and the permit scheme coming in together, which makes the regulatory work much simpler for us.

If it's just open, we'll have far more of these goods coming into the border. It'll be harder for us to discern which is legitimate and which is not. It will also be easier for organised crime to divert legitimate goods into the illicit market.

What I'm saying here is that I think this scheme gives us the best chance to limit the size of this market and the access to these goods for kids.

**Senator CADELL:** I once offered a Glock, with 'New South Wales Police Force' stamped on the outside of it, in a box in a Newcastle pub, so I agree with the diversion stuff.

What gets me is chop-chop is illegal, right? We have cigarette factories in the Middle East and other places where there are now brands of illegal cigarettes that are so popular the illegal ones are being copied, and copies of the illegal ones are coming into market. When you are copying illegal stuff in the market, I know the care and the diligence and the improvement that your people show. You can't be expected to stop it, can you, at the border?

**Mr Outram:** We stop a lot.

**Senator CADELL:** But you can't stop it all, can you?

**Mr Outram:** No border in the world can stop everything or everybody that will cause harm. It's impossible. The question is: how do we have the biggest impact we can? How do we target our interventions to the biggest effect? I would say that this legislation—the legislation we've had passed at the border, at least—gives us an

opportunity to do that because it gives us simplicity. We don't have to worry about things like: does it contain nicotine or does it come from a particular place? It's all of it. We can seize it and we can destroy it. That makes our job much more effective at the border.

With tobacco we have to determine whether it's tobacco. Then we have to get it tested. If it's—as you say—coming in as counterfeits, is it legitimate or is it not? We have to get it tested. There's a lot of work to unpack all of that. Moreover, when it gets to the domestic retail level there's regulatory complexity there because when the retailer is selling it over or under the counter when somebody goes to the shop, was it brought in legitimately or was it not? Did they know, did they not?

I think this scheme gives us regulatory simplicity, which is going to be more effective.

**Senator CADELL:** Coming back to your question, is my last question: what does success look like?

**Mr Outram:** Success for me is our children—as has been said—cannot get easy access to these things as they currently do.

**Senator CADELL:** Half of them, all of them, none of them? Are there KPIs?

**Mr Outram:** As many as possible. This is where, again, with the data. We're starting to see data coming through now. I was looking earlier on. For example, *Generation Vape* from the Cancer Council, provides summary findings related to February to May 2023 about how many young people aged 14 to 17 years get access to vapes, can get access to vapes, are using vapes. That sort of data is going to be really important for us in the working group as we go forward to understand how we can measure ourselves against those datasets to demonstrate whether we are being effective or not.

**Senator CADELL:** But we haven't set those KPIs yet.

**Mr Outram:** We've only been going for three months. We're developing them as part of the enforcement framework.

**Senator CADELL:** Okay. Thank you.

**CHAIR:** Senator Canavan.

**Senator CANAVAN:** Thank you all for your service. But, with all respect, you seem to be living in a parallel universe. After this inquiry's hearing concluded yesterday, I went down to my kid's soccer training and got talking to a few parents about this issue. One of them buys chop-chop. It's easily available; there are no problems at all. They've done that for years. Another says there are a couple of stores that sell vapes around here; he does that. Are you seriously suggesting that you're making inroads in the chop-chop market? Everybody I talk to around here just gets it. I realise the vape stuff is only a few months old, so it's a bit hard to benchmark, but chop-chop is growing out of control. Are you suggesting you're getting that under control? It certainly doesn't seem to be the case on the ground in my community.

**Mr Outram:** With chop-chop tobacco and illicit tobacco in general, one of my desires would be that we have an enforcement framework at the domestic level like we're proposing here for vapes. We do have the ability to detect it at the border. We seize a lot and we detect a lot. We work with the state and territory police, we do a lot of work in terms of organised crime's involvement in that market, we work internationally in that market and we make a big dent on it. We don't close it off entirely, but there isn't the same regulatory regime in place in the states and territories as this proposes for this measure.

**Senator CANAVAN:** Take me through the key differences right now.

**Mr Outram:** Sorry?

**Senator CANAVAN:** Take me through the key differences. Why don't you just do it? What are the key differences? What's stopping you from doing that with chop-chop?

**Mr Outram:** At the moment retail outlets can legally sell tobacco over, and illegally under, the counter. But this measure is—

**Senator CANAVAN:** Do you want to ban the sale of tobacco?

**Mr Outram:** I do apologise; I haven't quite finished my answer to the first question. That's a big difference. In this measure, the permit scheme restricts it to chemists, so anybody that has these goods in a shop is immediately selling illegitimate goods. They shouldn't be, and that allows the regulatory work to occur in a much more simple way. It's much more simple. And the offence is—

**Senator CANAVAN:** Now I'm getting confused. You say you want this scheme for tobacco. Is that what you said?

**Mr Outram:** No. What I'm saying is that, from the Border Force point of view, there's a huge demand for tobacco in the illicit market, and there isn't an enforcement framework for tobacco like the one being proposed here for vapes, with legislation to back it up.

**Senator CANAVAN:** I'm trying to be clear, because I thought, and maybe I'm wrong—

**Mr Outram:** It doesn't exist for tobacco. Every state—

**Senator CANAVAN:** To make sure we get the evidence right here: I heard that you want the same system for tobacco as you have now for vapes, and then when I asked what the aspects—

**Mr Outram:** What I'm saying to you is that there is a difference—

**Senator CANAVAN:** I'm finishing my question. When I asked what the differences are between the vaping regulation and tobacco, you said, 'Well, in the tobacco world, you can sell legal tobacco.' Is that your evidence—that that's the key difference and therefore you think we need to ban the sale of tobacco?

**Mr Outram:** The legislation that's being proposed for the domestic-level regulation and enforcement of this does not exist for tobacco.

**Senator CANAVAN:** Alright. I'm trying to drill down here. The only difference you've identified so far that you're saying would make the vaping regulations work is that we don't have a retail market for vapes; we do for tobacco. Are there any other aspects that are different, or is that the only one?

**Mr Outram:** There are a lot of aspects. Tobacco is, of course, a legal product in Australia. There's a huge market for it in Australia. We are awash with tobacco at the border—awash with it. We have it stacked up to the ceilings. It is very hard for our officers to discern what's legitimate and what's not, because tobacco is a legal product in many cases. We have to go through a lot of processes and steps, regulatory wise, to determine whether the import is lawful or not. In this case, with this prohibition measure in place, we'll have a very simple list of permits that are in place. Everything else won't be permitted. We won't have to get it examined, we won't have to get it taken to laboratories and we won't have to get it tested. If it's a vape or it contains vaping products, we can seize it and destroy it, to put it simply. Our role at the border is—

**Senator CANAVAN:** With all respect, I find this—we don't have time. Maybe I'll come back to you at estimates. It sounds so easy. If you can detect every bit of tobacco, why don't you just stop it? It doesn't make any sense. Why is chop-chop so available? It's funding organised crime in my community, and you're saying you can detect every bit of tobacco. Just stop it.

**Mr Outram:** If you think I said that I can detect every bit of tobacco, then I misled you because that's not what I thought I said and not what I intended to say.

**Senator CANAVAN:** It just doesn't make any sense. What percentage do you detect?

**Mr Outram:** What percentage of tobacco?

**Senator CANAVAN:** Yes.

**Mr Outram:** Deputy Commissioner, would you like to let the senator know how much we seize.

**Mr Fitzgerald:** In terms of volume, to give you an example, it is an ever-increasing problem, as you're suggesting. We seized 1,678 tonnes equivalent of tobacco in 2021-22; 3,462 tonnes in 2022-23; and in the first three months of this year we're already up to 870 tonnes. You can see it's increasing.

**Senator CANAVAN:** What's your estimate of the total chop-chop market?

**Mr Fitzgerald:** We tend to use the Australian tax office tax gap, which is suggesting it's about 13.1 per cent—so there's about \$2.3 billion in unrealised revenue through the illicit activities.

**Mr Outram:** But that's not all chop-chop. We seize millions of sticks.

**Mr Fitzgerald:** All forms of cigarettes.

**Mr Outram:** It's all forms of tobacco.

**Senator CANAVAN:** What is that 13 per cent figure?

**Mr Fitzgerald:** That's the tax gap that the Australian tax office publish. Based on that, it's suggesting that that's the gap of illicit sales and volume of—

**Mr Outram:** We can probably provide to the committee the methodology the tax office use to calculate that.

**Senator CANAVAN:** I'm getting a lot of complaints that you're seizing flavourings at the border that have nothing to do with vaping; they're used by bakers and candymakers. I presume these are flavourings that could be used in vapes, but the people complaining to me are saying they're getting wrapped up in this crackdown because

they've been suspected of bringing in flavourings for vapes but they want to supply bakeries and others with them. Are you aware of such complaints?

**Mr Outram:** I'm not aware of complaints.

**Senator CANAVAN:** I'll check with these people. Can I forward that through to you?

**Mr Outram:** Yes, please.

**Senator CADELL:** I've got consignment numbers I can share with you on notice.

**Mr Outram:** We'll take that on notice.

**CHAIR:** Thank you so much to all of you for participating in our committee's inquiry and for making the time to join us today; we know you're very busy people giving great service to our nation. In terms of questions on notice, we're asking for answers to be returned to us by close of business on Monday 6 May because we have a reporting date to the Senate of 8 May.



**BEDFORD, Mr Chris, Acting First Assistant Secretary, Regulatory Practice and Support Division, Health Products Regulation Group, Department of Health and Aged Care**

**BROWN, Ms Karlie, Assistant Secretary, Tobacco and E-Cigarette Control Branch, Department of Health and Aged Care**

**EDLINGTON, Ms Mandy, Assistant Secretary, Vaping Legislation Reform Branch, Health Products Regulation Group, Department of Health and Aged Care**

**GILMOUR-WALSH, Dr Bridget, Principal Legal and Policy Adviser, Health Products Regulation Group, Department of Health and Aged Care**

**GOODCHILD, Mrs Tiali, Acting First Assistant Secretary, Population Health Division, Department of Health and Aged Care**

**GRIEVE, Mrs Jodie, First Assistant Secretary, People, Communication and Parliamentary Branch, Department of Health and Aged Care**

**LAWLER, Professor Anthony, Deputy Secretary, Health Products Regulation Group, Department of Health and Aged Care**

[17:03]

**CHAIR:** Welcome. Thank you all for appearing before our committee today. The Senate has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted.

Commonwealth officers are also reminded of the Senate order specifying the process by which a claim of public interest immunity should be raised. A copy of the order is available from the secretariat.

*The extract read as follows—*

**Public interest immunity claims**

That the Senate—

(a) notes that ministers and officers have continued to refuse to provide information to Senate committees without properly raising claims of public interest immunity as required by past resolutions of the Senate;

(b) reaffirms the principles of past resolutions of the Senate by this order, to provide ministers and officers with guidance as to the proper process for raising public interest immunity claims and to consolidate those past resolutions of the Senate;

(c) orders that the following operate as an order of continuing effect:

(1) If:

(a) a Senate committee, or a senator in the course of proceedings of a committee, requests information or a document from a Commonwealth department or agency; and

(b) an officer of the department or agency to whom the request is directed believes that it may not be in the public interest to disclose the information or document to the committee, the officer shall state to the committee the ground on which the officer believes that it may not be in the public interest to disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.

(2) If, after receiving the officer's statement under paragraph (1), the committee or the senator requests the officer to refer the question of the disclosure of the information or document to a responsible minister, the officer shall refer that question to the minister.

(3) If a minister, on a reference by an officer under paragraph (2), concludes that it would not be in the public interest to disclose the information or document to the committee, the minister shall provide to the committee a statement of the ground for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information or document.

(4) A minister, in a statement under paragraph (3), shall indicate whether the harm to the public interest that could result from the disclosure of the information or document to the committee could result only from the publication of the information or document by the committee, or could result, equally or in part, from the disclosure of the information or document to the committee as in camera evidence.

(5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate.

(6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.

(7) A statement that information or a document is not published, or is confidential, or consists of advice to, or internal deliberations of, government, in the absence of specification of the harm to the public interest that could result from the disclosure of the information or document, is not a statement that meets the requirements of paragraph (1) or (4).

(8) If a minister concludes that a statement under paragraph (3) should more appropriately be made by the head of an agency, by reason of the independence of that agency from ministerial direction or control, the minister shall inform the committee of that conclusion and the reason for that conclusion, and shall refer the matter to the head of the agency, who shall then be required to provide a statement in accordance with paragraph (3).

(d) requires the Procedure Committee to review the operation of this order and report to the Senate by 20 August 2009.

(13 May 2009 J.1941)

(Extract, Senate Standing Orders)

**CHAIR:** Do you have any comments to make on the capacity in which you appear?

**Prof. Lawler:** I'm the Deputy Secretary of Health Products Regulation Group, which includes the Therapeutic Goods Administration.

**CHAIR:** Thank you all for submitting your conflicts of interest. I need to ask you to now make those declarations, once more, for the sake of the *Hansard*. So could I just get a yes or no answer from everyone at the table. Have you or your organisation received any support, whether financial or non-financial, direct or indirect, from any parties involved in the production, distribution or sale of tobacco, nicotine or vaping products?

**Prof. Lawler:** No. I would just highlight that the Therapeutic Goods Administration is a cost-recovered agency, and so we set fees and charges for the assessment of therapeutic goods. Having said that, I'm not aware that we have ever been in the position of evaluating an application for vaping products, and, to my knowledge, we have not received funding support from tobacco or vaping companies or manufacturers.

**CHAIR:** Thank you. Could I have just a yes or no from each of you.

**Mrs Goodchild:** No.

**Ms Brown:** No.

**Mrs Grieve:** No.

**Dr Gilmour-Walsh:** No.

**Ms Edlington:** No.

**Mr Bedford:** No.

**CHAIR:** Thank you very much. Do you wish to make a brief opening statement today?

**Prof. Lawler:** Yes, thank you, Chair; I will make a brief opening statement. The Department of Health and Aged Care would like to thank the committee for the opportunity to discuss the Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024 and to provide this opening statement.

I first wish to acknowledge the Ngunnawal people as traditional custodians of the land on which we are meeting today and recognise any other people or families with connections to the lands of the ACT and the region. I wish to acknowledge and respect their continuing culture and the contribution they make to the life of this city and the region. I'd also like to acknowledge and welcome any other Aboriginal and Torres Strait Islander people who may be here today.

The department's submission to this inquiry outlines the government's vaping reforms against the broader context of tobacco control in Australia and the objectives of the National Tobacco Strategy 2023-2030. The bill under consideration by the committee seeks to amend the Therapeutic Goods Act 1989 to prohibit the importation, domestic manufacture, supply, commercial possession and advertisement of non-therapeutic and disposable single-use vapes. We are aware of comments that we should be regulating rather than banning vaping products. I wish to emphasise that what is proposed under the bill is a regulatory model.

While there continues to be debate on the comparative risks of vaping and cigarette smoking, there is no valid argument that vapes are safe. The level of impact of nicotine, particularly on young Australians, is insidious and significant from both health and social perspectives. The impact of added chemicals in e-liquids, such as those used for flavouring and colouring, have significant short-term impact on the lungs, on the mouth and teeth, and on the cardiovascular system. Many of these additives are known carcinogens. Devices themselves carry risk. Nicotine refills, without appropriate control, carry risk of serious, if not fatal, poisoning, if swallowed by young children. And, perhaps most importantly, the long-term effects of vaping are still emerging.

It should also be noted that the current regulatory framework in which nicotine vapes are only available through prescription has not met the desired objective of reducing nicotine vape consumption, and this is in large part due to the ability of retailers to sell what are badged as zero-nicotine vapes. But we know that over 80 per cent of such labelled vapes tested by the TGA have been shown to actually contain nicotine.

As is fitting for products with identified risk and harm but also potential therapeutic use, vaping products should be regulated as therapeutic goods. The regulatory model proposed through the bill retains a legitimate pathway for access to therapeutic vaping goods for smoking cessation and the management of nicotine dependence, where clinically appropriate. As the committee is aware, this includes a requirement for a prescription from a medical or nurse practitioner to access nicotine vapes, which is consistent with longstanding approaches to the regulation of substances of comparable toxicity and risk of dependence or misuse. The prescription model takes into account the evidence that vapes, or e-cigarettes, may assist with smoking cessation, in the appropriate circumstances, when combined with behavioural support provided by a health professional. The prescription model allows health professionals to provide products that are appropriate for individuals and their clinical circumstances.

The proposed regulatory model acknowledges the potential for health harms arising from vaping, particularly to young people. To date, Australian governments have taken a precautionary approach to the marketing and use of e-cigarettes, in view of the risk these pose to public and population health. The harms associated with vaping are not yet fully known and, as the committee has heard, it took decades from the time that cigarettes became widely available in the early 1900s before groundbreaking studies showed the strong link between smoking and lung cancer in the fifties. Even now, decades later, our understanding of the significant health impacts of smoking continues to evolve. We are now at an inflection point to control vaping rates, and we should act now.

While the therapeutic claims associated with vaping goods are acknowledged, a cautious approach remains appropriate. Even those vaping goods provided through the therapeutic pathways for unapproved goods have not been assessed for quality and safety by the TGA. I'd like to take the opportunity to clarify that the absence of a registered vaping product is not through any omission on the part of the TGA. Application and assessment pathways already exist, and it is open to sponsors to make an application for inclusion of therapeutic vaping goods on the Australian Register of Therapeutic Goods. Contrary to evidence presented to the committee yesterday, the TGA cannot require an application to be brought forward by a sponsor, nor can we simply decide to register a product without such an application.

The bill recognises the need for strong regulation and enforcement. It responds to the challenges that have arisen in current legislative arrangements by prohibiting the importation, domestic manufacture, supply, commercial possession and advertising of vapes outside the therapeutic pathway. In doing so, it acknowledges and addresses the risk that wide availability of vaping products presents to public health, particularly for children and young Australians. Strengthened approaches to compliance will prevent vapes from being readily and effectively marketed and available to young people.

However, it is important to emphasise that, while enforcement will be directed at commercial operators, the bill is not about penalising individuals for vaping. The bill aims to balance the important objective of deterring profiteering from the widespread unregulated availability of vapes, particularly by exploiting young people, with the objective of providing a legitimate access pathway to therapeutic vaping goods where clinically appropriate. The regulatory reforms complement Australia's comprehensive approach to tobacco control in Australia. Importantly, this includes a wide range of supports available to help people quit smoking and vaping, as detailed in the department's submission. We thank you for your time and welcome any questions you may have.

**CHAIR:** Thank you. We do have questions. I note we're on a short time frame, so we'll all try to be quick. I just have one question, which relates to some of the evidence we've heard throughout the course of the inquiry. Why is it important that the minister be able to determine what constitutes a commercial quantity of vaping products, as opposed to that being set out or specified?

**Dr Gilmour-Walsh:** Sorry. Was the question: why is it important for it to be set out in regulations rather than the bill?

**CHAIR:** Yes, why is it important that the minister have that discretion through regulation?

**Dr Gilmour-Walsh:** The commercial quantity of vaping products is important because there is a personal-use defence for possessing under a commercial quantity, so the intention is to set the commercial quantity by reference to a reasonable amount of vapes that a person might have in their possession for personal use. What would be a reasonable amount that a person might have can vary, based on a wide range of factors. It can vary based on the nicotine concentration in the vape, the person's level of addiction, the product range that happens to

be available in the country from time to time, and the prescribing practices of doctors. So putting it in the regulations allows us to adjust the settings according to those varying factors.

**CHAIR:** Thank you. Senator Urquhart?

**Senator URQUHART:** I ask that you be as brief as you can in answering the questions, because obviously we're running really late. Can you outline your understanding of the current evidence on the health impacts of vaping?

**Prof. Lawler:** Thank you very much for the question. We are in constant communication with our international collaborators, and we also obviously liaise closely with the professional groups. We have undertaken significant consultation, for instance, with the Royal Australian College of General Practitioners in the development of the guidelines for smoking cessation. Indeed, we have regular contact not only with individual general practitioners but also with that professional group.

It's clear that there is significant impact, and not only with respect to isolated vaping. We have also seen recently published, earlier this year in the *New England Journal of Medicine*, evidence that there is particular risk with respect to dual nicotine use, which is the instance in which individuals are not only using cigarettes but vaping as well. We recognise that there's a significant challenge: when people are using vapes to come off cigarettes, sometimes it's just a transfer from one nicotine delivery system to another, not a cessation tool. There is a significant proportion of the population who continue to both smoke and use vapes.

The effect of vaping on cardiovascular disease, which includes not only cardiovascular but also neurovascular in terms of stroke and metabolic dysfunction, is comparable to smoking. The effects of vaping were lower for some respiratory diseases, but, in those who are dual smokers and vapers, there is an increased risk. Also, we note that the effects of vaping on a number of these conditions is higher than those for non-vapers.

We also recognise that there has been a recent Cochrane review—I might be straying; Senator, please stop me if I'm straying—that shows, under the appropriate circumstances, there is some supporting evidence for the use of vapes to assist in smoking cessation. Again, this needs to be in the context of appropriate clinical supervision and appropriate behavioural supports. We also do see that a suite of studies has shown that those who have never smoked before are more likely to take up smoking if they vape than if they don't. So we see smoking cessation rates to a certain extent with vaping, but we need to understand that that whole pipeline needs to be considered in its entirety, including the use of vapes as a gateway to smoking.

**Senator URQUHART:** That's some really great information there. You indicated that you had consultation with the Royal Australian College of General Practitioners. Can you tell me what other consultation was undertaken to develop the proposed reforms?

**Dr Gilmour-Walsh:** In late 2022, we held a public consultation, to which we received approximately 4,000 submissions. We engaged in extensive consultation with the states and territories in developing the proposal and through the e-cigarette working group and now through the National Vaping Working Group. We also held a second targeted consultation in around September last year, and we have engaged in a range of consultations with stakeholders in relation to the implementation of the reforms over the last five to six months. Those are continuing. We held a webinar for stakeholders just this week.

**Senator URQUHART:** So there has been a lot of consultation across a lot of different areas. My final question is: what additional resources have been provided for smoking cessation?

**Mrs Goodchild:** We have a number of elements going on to help support people to quit. We have two national campaigns to help raise awareness of the harms of vaping. That includes a national tobacco and e-cigarette campaign targeted to adults, particularly those in priority populations and at-risk groups, and a national youth vaping education campaign, which kicked off in February. We also have an online support hub, which is a national resource for consumers to help them quit both smoking and vaping. We have an app called My QuitBuddy, which has also been redeveloped to include help and resources for vaping. We've also done education and training for the health workforce—we developed the National Best Practice Support Service for Nicotine and Smoking Cessation (Quit Centre), which is delivered through Cancer Council Victoria. That has a whole lot of best-practice training packages and resources. As you've heard, we're updating the clinical guidelines for health professionals to assist with that.

The Pharmaceutical Society of Australia is also updating its guidelines to support pharmacists in this space. We're scaling up the quit services—the phone numbers that people call. They're throughout every state and territory, and we've provided funding for them to also scale up those services. There are also a number of research grants that we have given through MRFF and NHMRC. The minister and other state and territory ministers have written to all the school principals to make them aware of the measures and the supports available. We're also

developing conversation guides for parents to help them talk to their children. As you would be aware, there are a lot of programs run through the states and territories as well.

**Senator URQUHART:** That's significant. Very quickly, do you have any numbers on the people that take up those various options? Do you keep details around how many people take advantage of those different options?

**Ms Brown:** A number of those measures are new measures which are being implemented and will be tracked and evaluated—the cessation hub in particular and the upscaling of the My QuitBuddy app. We will have that data over time. Access to the quit services through the states and territories is data that we don't hold but which will be incorporated through evaluation of the funding.

**Senator URQUHART:** Fantastic, thank you.

**Senator KOVACIC:** Thank you, everyone, for your time today. Can the department confirm for me that it is currently legal under state and territory law for retailers to sell non-nicotine vapes to persons aged over 18?

**Dr Gilmour-Walsh:** Yes, in most circumstances. The exception would be if that vape made therapeutic claims, in which case—yes, in most cases except for Western Australia.

**Senator KOVACIC:** Can the department confirm that this bill will ban the domestic supply of non-nicotine vapes under Commonwealth law?

**Dr Gilmour-Walsh:** It will, unless they have a therapeutic purpose. Some non-nicotine vapes do have a therapeutic purpose—for example, as the final stage in a smoking-cessation program.

**Senator KOVACIC:** Is it your understanding that the states and territories will be required to update their own legislation and regulations in response to this piece of Commonwealth legislation?

**Dr Gilmour-Walsh:** States and territories are considering the interaction of the legislation, particularly with their tobacco legislation. The tobacco legislation reflects a different approach to the regulation of vaping goods, so, yes, most jurisdictions are in the process of considering that.

**Prof. Lawler:** I would also highlight that one of the key collaborative mechanisms that we've undertaken in developing the reforms is the National Vaping Working Group, which has representation from chief health officers or chief health officer representatives. In many states, those individuals have carriage of the relevant tobacco control legislation. We also, as with the last witnesses, been discussing state-and-territory-based enforcement action through the National Vaping Working Group.

**Senator KOVACIC:** Are you able to tell me what Commonwealth heads of power under the Constitution will apply to this legislation?

**Dr Gilmour-Walsh:** The Therapeutic Goods Act is part of a state and territory cooperative scheme that seeks to avoid the Constitutional limitations on Commonwealth power. The Commonwealth has enacted a Therapeutic Goods Act within its Constitutional power; the states and territories—except for Western Australia—have enacted corresponding laws which adopt the Therapeutic Goods Act from time to time in order to fill any regulatory gap in Constitutional power. That is why amending the Therapeutic Goods Act allows us to create a national approach. As an addendum, Western Australia has a bill in its parliament to join the cooperative scheme.

**Senator KOVACIC:** Thank you. No further questions from me.

**Senator STEELE-JOHN:** There have been multiple items that have been mentioned in the bill that have not been defined. Instead, Minister Butler's office has ensured us that they will be defined in rules and in regulations. Given that is the case, what is the process being followed for drafting some regulations in relation to this bill?

**Dr Gilmour-Walsh:** We've issued drafting instructions to the Office of Parliamentary Counsel, and those regulations are in the process of being drafted. There are also a range of instruments that will be required that we are drafting in-house at the TGA.

**Ms Edlington:** Further to that, we are working together with states and territories to formulate those numbers in order to proceed with the regulations.

**Senator STEELE-JOHN:** Are you able to share with the committee the instructions that you have given to the drafting office?

**Dr Gilmour-Walsh:** I might have to take that on notice, but we would certainly be happy to share some more information about that, yes.

**Prof. Lawler:** You've mentioned that there are a number of items that will be defined and proscribed by regulation; we can provide clarity on what those specifics are—not necessarily what the drafting instructions are, because, as mentioned, we will take advice on that. One example of where we've been engaged in significant consultation with key clinical experts is around the appropriate limits on nicotine concentration within e-liquid.

These are the issues we are working through at the moment. We're not working through them in isolation. We are undertaking significant stakeholder consultation to inform those views.

**Senator STEELE-JOHN:** Okay. If you could take the question of whether you can provide the drafting instructions to the committee on notice, that would be very useful. In relation to the question of nicotine consultation, have you been able to consult people with lived experience of relying on vapes for therapeutic uses—cessation, for example—in that consultation process?

**Dr Gilmour-Walsh:** Yes. In the 2022 consultation, we received many submissions from individual stakeholders who vaped and were able to make submissions on proposals. We did propose options around concentrations in that stakeholder submission. In our targeted consultation, we also sought to engage consumer groups. There has been consultation on that.

**Prof. Lawler:** I would also highlight again that that consultation has been further informed by clinical advice and evidence and an understanding of what the international practice is.

**Senator STEELE-JOHN:** Which groups are being consulted in the drafting process of the rules and regulations? We've just touched on nicotine concentration, but there are a number of other areas. Which groups are being consulted?

**Dr Gilmour-Walsh:** Broadly speaking, it's the people supplying to the pharmacy supply chain, medical professionals, pharmacists, health experts, consumers and states and territories.

**Senator STEELE-JOHN:** Would you be able to provide to the committee on notice a list of those being consulted?

**Dr Gilmour-Walsh:** Yes.

**Senator STEELE-JOHN:** Thank you. Will there be visibility of a draft of the rules and regulations? If so, when would it be released?

**Dr Gilmour-Walsh:** At this stage, we weren't proposing to consult on the draft, given the timing issues. If the scheme is to commence around 1 July, that makes the timing to consult on an actual draft very tight. However, we certainly will consult on the details.

**Senator STEELE-JOHN:** For how long can individuals legally dispose of excess vaping supplies?

**Prof. Lawler:** Thank you for the question. One of the things we are undertaking significant consultation on is in fact the storage and disposal of products that are seized, as you heard from a previous witness, Commissioner Outram. But it's also those that have potentially been subject to either stockpiling or personal use. We're also undertaking some strong liaison collaboration with environmental agencies within states and territories. I might ask Chris Bedford to add to that.

**Mr Bedford:** There's not too much more to add. The current requirements around disposal of these devices are at a jurisdictional level. As Professor Lawler has indicated, we've been working with the jurisdictions and our environmental agency colleagues at the Commonwealth level around what could be an approach. I can also say you heard from Commissioner Outram and Secretary Pearce about the working group. It has been raised at that enforcement working group to try get a consistent approach there too. The team are looking at it that way.

**CHAIR:** Senator Cadell has a few questions to place as well. I'm not sure if you're able to place your last ones on notice.

**Senator STEELE-JOHN:** I have two more, and they were recommended to the TGA from other departments, but I will be very quick. Individuals who have an e-cigarette prescription may encounter situations under this legislation where they need to fill multiple prescriptions at once and could therefore risk exceeding the commercial quantity to do this. This would be likely to be common in very remote areas where pharmacies and access to pharmacies are limited. How do these individuals navigate this situation?

**Dr Gilmour-Walsh:** We have been doing some work on what method we would use to determine what a commercial quantity should be, looking at (a) what a person might reasonably need to use and (b) what sort of quantities a person might reasonably hold. We were thinking that perhaps something around three months supply might be adequate, taking into account that people in remote areas might need to stock more than the one-month standard, but we're open to having further discussions about that and receiving further information about that to inform that decision.

**Senator STEELE-JOHN:** Thank you. My final one is: has there been any consideration of moving vaping products to schedule 3 and, if so, what was the reasoning against making that decision?

**Prof. Lawler:** Thanks very much for the question. As I think we've highlighted, in late 2021 there was a decision by the scheduling delegate under the scheduling framework to schedule it under schedule 4. That was, as with any assessment, in light of the safety, quality and efficacy and, importantly, the potential for risk and toxicity. So that decision was taken at that time based on the clinical evidence. There has not since then been an emergence of clinical evidence that would change that benefit-risk profile, and that is one of the reasons why the proposed regulatory framework outlines a schedule 4 prescription by a medical or nurse practitioner and then dispensing by a pharmacist. So that's the basis upon which the scheduling decision was made and why it remains at that schedule currently.

**Senator STEELE-JOHN:** Thank you.

**CHAIR:** Senator Cadell.

**Senator CADELL:** Very quickly, at the beginning you mentioned TGA and cost recovery. From nicotine—not just tobacco—have you received money from any nicotine providers?

**Prof. Lawler:** Thank you for that question. My understanding is that that we have not—

**Senator CADELL:** Johnson & Johnson?

**Prof. Lawler:** We have a funding model which is fees and charges based. My understanding is that we have not. I'm very happy to confirm that and come back to you.

**Senator CADELL:** Johnson & Johnson specifically.

**Dr Gilmour-Walsh:** Yes—Kenvue. There are registered NRT products which would be—yes.

**Senator CADELL:** Thank you very much. Given that tobacco and nicotine removal is so strong, I think on 28 February Philip Morris wrote to you, Dr Gilmour-Walsh about some tobacco pouch products being sold on .au websites. What has happened to that?

**Dr Gilmour-Walsh:** I might have to refer that to Mr Bedford, who's responsible for our compliance area.

**Mr Bedford:** Yes, we received the letter. A response has been provided, and we're looking into the matter.

**Senator CADELL:** So nothing has happened? Are the products still up?

**Mr Bedford:** We're looking into the matter at the moment.

**Senator CADELL:** So no compliance action has been taken? 'We're looking into it'?

**Mr Bedford:** It's still under active investigation.

**Senator CADELL:** Two months later?

**Mr Bedford:** Yes.

**Senator CADELL:** Strong! As to the 4,000 submissions you raised, Dr Gilmour-Walsh, the quote we have is: A large number of the submissions from the general public appeared to be campaign responses that advocated changing the current regulatory framework ... (which was outside the scope ...) Is that included in the 4,000, or is that on top of the 4,000?

**Dr Gilmour-Walsh:** They were part of the 4,000.

**Senator CADELL:** How many were not disregarded, then? How many were not part of that general campaign?

**Dr Gilmour-Walsh:** We considered all responses that we received. We did not do an independent analysis to determine which were campaign responses, but it was evident that there were campaign responses.

**Senator CADELL:** Do we know how many were campaign responses?

**Dr Gilmour-Walsh:** No, we didn't tally those.

**Senator CADELL:** Can you take that on notice and try to get back to us?

**Dr Gilmour-Walsh:** Sure.

**Senator CADELL:** Thank you very much. We had the Border Force commissioner in earlier. What I've been asking all through this is what constitutes success. You've been working on this for a while. I come from a corporate background. We have a return on assets. We have KPIs. We have market. We have all these things. What percentage reduction in teen vaping are you modelling that we need to get from this?

**Mrs Goodchild:** Our work on this is always going to be guided by the National Tobacco Strategy. It includes clear objectives in it of what success looks like, and that is preventing the uptake of e-cigarettes by young people and those that have never smoked; preventing and reducing nicotine addiction; and denormalising and limiting the marketing and use of e-cigarettes. Through these measures we would expect to see that vaping products are no

longer readily available to young people, and adults who need access to vapes for smoking cessation or to manage nicotine dependence have increased access through supervised pathways and increased assurance about the contents of their products. We will look at opportunities to strengthen our monitoring and evaluation activities. We have commenced work with states and territories already, and other key partners, to develop a post-evaluation framework and outcome indicators that will be used to monitor the progress of this.

**Senator CADELL:** There are lots of nice phrases there; there's not a number. There is no modelling that says we'll reduce youth vaping by half, by 50 per cent, by 20 per cent. There is no number done in the department on what the success—

**Mrs Goodchild:** There will be an evaluation framework that outlines that, but we're still working on that with our states and territories.

**Senator CADELL:** But we have a policy and legislation coming to parliament that has no expected results or quantifiable results to be judged against—at the moment.

**Prof. Lawler:** If I might, one of the aspects of the regulatory framework is about access. I appreciate you're talking about outcome measures. We also need to have a mind to process measures, and the regulation of legal access to these products for children and for young Australians is an outcome.

**Senator CADELL:** But you're asking us to vote on something prior to having what that is.

**Prof. Lawler:** Thank you for that observation. There is also a clear body of evidence that indicates there is significant health impact, that indicates there is significant—

**Senator CADELL:** That's not in question. I'm asking about results. There are no KPI results.

**Prof. Lawler:** Hang on; I'm endeavouring to respond—

**CHAIR:** Senator Cadell, can you allow the witness to finish his answer.

**Senator CADELL:** I asked for numbers.

**Prof. Lawler:** Well, as Mrs Goodchild has highlighted, that will be a feature of the evaluation framework.

**Senator CADELL:** Okay, so nothing on success. What does failure look like? What percentage of youths are uptaking smoking because they can't get vapes? Is it one per cent, two per cent, 20 per cent, 50 per cent, 100 per cent on youth smoking increase? What does failure of this policy look like in your modelling?

**Prof. Lawler:** Thank you for that question. I would posit that what failure looks like is the threefold increase we've seen in vaping—

**Senator CADELL:** That isn't this legislation. What is failure for this legislation?

**CHAIR:** Senator Cadell, please allow him to finish his answer.

**Senator CADELL:** His answer isn't an answer to my question.

**Prof. Lawler:** You've asked me what failure looks like.

**Senator CADELL:** To this legislation.

**Prof. Lawler:** You've asked me what failure looks like—

**Senator CADELL:** To this legislation.

**CHAIR:** Senator Cadell, can you just allow—

**Prof. Lawler:** Senator, can I—look, we've had a back and forth. Can I have the question just one more time?

**Senator CADELL:** You want the question again? What does failure look like in this legislation on youth smoking?

**Prof. Lawler:** My view on that question, in line with what we have discussed previously around the measure of success in our evaluation framework, is that we don't realise the benefits that Mrs Goodchild has highlighted under that—

**Senator CADELL:** So what you're asking us to do is to vote on something with no measure of success that's clear, no measure of failure. Aren't you just throwing health outcomes to law and order because it's too hard for your department? Aren't we putting this in the hands of police and Border Force and saying, 'You look after it, because we've given up?'

**Prof. Lawler:** I'm not entirely sure what testimony has come before, but I am aware of the testimony that we've provided and also that of the witnesses immediately before us. What has been stated really clearly is the level of collaboration and work that multiple agencies have undertaken. This is not Health throwing it away to other organisations. This is a significant regulatory reform by the health regulator. This is a significant investment



in smoking cessation support by the health department of the Commonwealth that actually is charged with providing that support. We are working with the Australian Border Force. We are working with the Australian Federal Police. We are working with state and territory health and police departments. This is a collaborative effort with a guide on clinical evidence that provides for a better regulatory protection for Australians, particularly young Australians. This is not throwing it away to law enforcement.

**CHAIR:** Thank you. Senator Cadell—

**Senator CADELL:** You can't improve what you can't measure—

**CHAIR:** Senator Cadell, we—

**Senator CADELL:** and you aren't prepared to measure your improvements.

**CHAIR:** Senator Cadell! You don't have the call. We've gone over time. I'm going to give you an opportunity to place anything remaining on notice, given you were the last questioner. Is there anything you wish to place on notice?

**Senator CADELL:** There is so much. This whole thing is a farce.

**CHAIR:** Would you like to place a question on notice?

**Senator CADELL:** I will do so in writing.

**CHAIR:** Thank you, Senator Cadell. Thank you, officials, for your time today and for your participation in our hearing. I apologise that we have kept you longer than we advised. We need your responses to questions on notice back to us by the close of business on Monday 6 May, because we're reporting to the Senate on 8 May.

That now concludes today's hearings. Thank you to all our witnesses, Hansard, Broadcasting and our secretariat for your assistance. The committee stands adjourned.

**Committee adjourned at 17:40**