

# **SELECT COMMITTEE ON PERSONAL CHOICE AND COMMUNITY SAFETY**

**INQUIRY ON PERSONAL CHOICE AND COMMUNITY SAFETY**



**TRANSCRIPT OF EVIDENCE  
TAKEN AT PERTH  
FRIDAY, 22 FEBRUARY 2019**

**SESSION ONE**

## **Members**

**Hon Aaron Stonehouse (Chair)  
Hon Dr Sally Talbot (Deputy Chair)  
Hon Dr Steve Thomas  
Hon Pierre Yang  
Hon Rick Mazza**

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**Hearing commenced at 9.48 am**

**Mr NICHOLAS BOOTH**

**Head of Corporate and Government Affairs, British American Tobacco Australia, sworn and examined:**

**Mr NAT OPENSHAW**

**Government Affairs Manager, sworn and examined:**

**The CHAIRMAN:** On behalf of the committee, I would like to welcome you to the meeting. Before we begin, I must ask you to either take the oath or affirmation.

[Witnesses took the oath or affirmation.]

**The CHAIRMAN:** You will have signed a document entitled “Information for Witnesses”. Can you confirm that you have read and understood that document?

**The WITNESSES:** Yes.

**The CHAIRMAN:** These proceedings are being recorded by Hansard and broadcast on the internet. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of this hearing for the record. Please be aware of the microphones and try to talk into them and ensure that you do not cover them with papers or make noise near them. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today’s proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

Would you like to make an opening statement to the committee?

**Mr Booth:** Thank you, yes I will. As I have stated, my name is Nick Booth and I act as the head of corporate and government affairs for British American Tobacco Australia. With me is Nat Openshaw, corporate and government affairs manager for British American Tobacco Australia. BATA is thankful for the opportunity to appear before the Select Committee on Personal Choice and Community Safety. BATA’s area of interest in regard to the committee hearing are potentially reduced risk alternatives to smoking, in particular vapour products, also known as e-cigarettes.

Vapour products are legal for sale in jurisdictions comparable to Western Australia, such as the United Kingdom, New Zealand and the United States of America. However, as the committee will be aware, generally speaking, vapour products containing nicotine are illegal for sale in Australia. Further, the legal classification of nicotine-free vapour products varies across states and territories. Despite this, the federal government estimates that around 120 000 Australians are vaping daily. In the most part, these people access their products via the black market. Due to the current legal framework in this country, BATA does not sell vapour products. However, British American Tobacco, the broader group of companies globally, is marketing and selling these products in the likes of New Zealand, the United Kingdom, the United States of America and in the European Union, where there are supportive legislative frameworks in place. From this experience, we know that there is

a growing body of evidence in support of regulating for vaping. Of note, the UK government has said that vaping poses only a fraction of the risks of smoking and switching completely from smoking to vaping conveys substantial health benefits. The New Zealand Ministry of Health has stated that smokers switching to vaping are highly likely to reduce their health risks. The United States Food and Drug Administration Commissioner, Scott Gottlieb, has said —

... if more adults are able to fully transition from combustible tobacco products ... we might be able to significantly reduce the overall morbidity and mortality associated with tobacco use.

In Canada, the government's position there is that switching from tobacco products to vaping products will reduce a person's exposure to many toxic and cancer-causing chemicals.

There is an upside to Australia being late to regulate for these types of products; and that is the opportunity to cherry-pick the best elements of vaping regulations in comparable jurisdictions. This would ensure that adult Australian smokers seeking a potentially safer alternative to smoking will be able to do so within a world-leading framework. Such a framework is outlined in BATA's submission, but at a top line should include: access for 18-plus only, best practice electrical regulation standards, restrictions around ingredients, product testing and disclosure and child-resistant packaging. Western Australia can drive this change on behalf of the country. As such, BATA respectfully suggests that the committee review the available evidence on potentially reduced risk alternatives to smoking and particular vaping products and advocate for an appropriate regulatory framework to be developed at a national level.

We thank the committee for the opportunity to appear today and can take any questions that members may have.

**The CHAIRMAN:** Thank you very much. In previous hearings it has been put to this committee that vaping, e-cigarette use, may act as a gateway into tobacco use, cigarette use. There have been studies conducted in other jurisdictions with varying results and varying conclusions. What is your view of the evidence available that e-cigarettes act as a gateway to tobacco?

**Mr Booth:** Thank you. There is a growing body of evidence that refutes that argument. Even this week, I believe, there was a piece of research released from the University of Queensland that stated that transition, that gateway theory, is not terribly robust. There is a solid piece of research from Action on Smoking and Health in the United Kingdom, which, again, refutes that people who have never smoked before using vaping are going across to smoking. They are demonstrating that it does not stack up.

**Hon Dr SALLY TALBOT:** Good morning, gentlemen. I would just like to draw your attention to some of that research that you just labelled as—I think you said—not terribly robust. The report I am referring to is the 2017 Australian Secondary School Students' Alcohol and Drug Survey. I will give you a sentence from that report —

Our findings suggest that students who experiment with e-cigarettes are more likely to later try tobacco cigarettes than those who have never vaped.

What is your issue with that research and that conclusion?

**Mr Booth:** I am not going to argue backwards on a particular piece of research. What I can do is point to the experience in other jurisdictions, whether that is the United Kingdom or New Zealand, where the governments there have regulated for these products, looking at the evidence which has been generated from these countries which have had these types of products for sale for a period of time and the evidence in those areas where those products are legal for sale does not support that theory.

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**Hon Dr SALLY TALBOT:** What is that evidence? I mean, you must have done some work on this; this has clearly caught your argument.

**Mr Booth:** Yes, top of mind—and I think we have something here which we can table with the committee—the UK government body Public Health England has a piece on this, as I mentioned, and Action on Smoking and Health in the UK, similarly.

**Hon Dr SALLY TALBOT:** So in your view it is just a question of scientists saying yes/no?

**Mr Booth:** My view is that there is a growing body of evidence and support for regulating vaping products.

**The CHAIRMAN:** Just on this, there have been some studies, as mentioned, that show links between e-cigarette use and cigarette use. However, if we look at youth smoking rates across the UK, they are continuing to decline; in fact, smoking rates in many other jurisdictions where e-cigarettes have been legalised continue to decline. Do you have an insight into why some youth cohorts may take up smoking and cigarettes after using vaping while smoking rates continue to decline at a steady rate and we are not seeing an increase in smoking rates in the aggregate, I suppose? Do you have a view on that?

**Mr Booth:** All I can look to is in countries such as the UK or USA or various countries within the European Union. They have e-cigarettes, vapour products, legal for sale, so whether that plays a key role it could be assumed. We can look to the United Kingdom where they talk about increased numbers of quitting attempts or successful quit attempts by using vapour products. Again, we can table that research for the committee to review.

**The CHAIRMAN:** If you have got some documents, the committee can receive them.

**Mr Openshaw:** I will provide those.

**Hon RICK MAZZA:** Mr Booth, you spoke about the fact that BATA currently is not supplying any of the vaping market in Australia.

**Mr Booth:** That is right.

**Hon RICK MAZZA:** If it was to be legalised in Australia, would BATA be looking at supplying both the liquid and the implement?

**Mr Booth:** That is what we have done in other countries where there is a regulatory framework in place, but we would have to take it on its merits in Australia depending on how it pans out.

**Hon RICK MAZZA:** Yes, your market research.

What would be the value of the Australian market if this was to be legalised and companies such as yourself could supply it?

**Mr Booth:** Top of my head, I would not be able to tell you. But what we can look at is that there are 120 000 Australians using these products daily, according to federal government statistics, and that is operating in an environment where these products are illegal, so we can only assume that if there was an appropriate regulatory framework, the number of vapers would increase.

**Hon RICK MAZZA:** The question of what the Australian market would be worth, could you take that on notice and provide that to the committee?

**Mr Booth:** I have to take that on notice, yes.

**Hon Dr SALLY TALBOT:** One more question really by way of background for members to get a feeling for the depth of your experience. Do either of you use tobacco products?

[10.00 am]

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**Mr Booth:** I do not.

**Mr Openshaw:** Yes, I do.

**Hon Dr SALLY TALBOT:** Do either of you use e-cigarettes or vaping?

**Mr Booth:** I do not.

**Mr Openshaw:** I have occasionally used e-cigarettes, yes.

**Hon Dr SALLY TALBOT:** Is it your view that they are helping? Are you trying to quit tobacco?

**Mr Openshaw:** On occasion I have tried to quit, yes.

**Hon Dr SALLY TALBOT:** Has the vaping helped you?

**Mr Openshaw:** I have not been able to use one to do that. I have tried the various patches and gums and mints and things. They work to a point, but if I was to make a real go of quitting with a vapour product, I would need to get a prescription via my GP and, frankly, my view of that is that I am going to have to go and sit in a doctor's surgery for several hours for that doctor to then tell me to go back and try something that I have already tried before and I know it not to work. That is just my personal experience. I cannot speak for anybody else. That is my personal experience

**The CHAIRMAN:** If I can jump in on that, if you wanted to use a vaping product to quit your current nicotine addiction, you would either have to sit in a doctor's surgery and hope that your doctor would give you a prescription for liquid nicotine. If you lived in the state of Western Australia, you would not be able to buy the device to deliver that liquid nicotine—you would not be able to buy an e-cigarette in Western Australia, would you?

**Mr Openshaw:** That is my understanding, yes.

**The CHAIRMAN:** This alternative to smoking combustible cigarettes, which I am sure you would admit is certainly not good for your health, this much safer alternative, if you wanted to access that, you would have to break the law if you wanted to try vaping here in Western Australia.

**Mr Openshaw:** Yes, that is my understanding.

**The CHAIRMAN:** That is very interesting. Thank you.

**Hon RICK MAZZA:** This whole inquiry is about personal choices, at the end of the day, if someone wants to smoke tobacco or vape. Has BATA done any research to establish how many people wish to vape rather than smoke or vice versa? Is there any research done about people wanting a choice to use vaping implements?

**Mr Booth:** No. But vapers are a typically very active and online community and there are a number of vaping advocacy groups. It does not take too long to go online, have a look at those and just get a feel for how the consumers actually want access to these products within a regulatory framework.

**The CHAIRMAN:** Does BAT in other jurisdictions make therapeutic claims about their e-cigarettes products?

**Mr Booth:** No, we do not. Typically, looking at other jurisdictions, these vapour products are sold under a consumer regulatory framework.

**Hon Dr SALLY TALBOT:** You did, however, in your opening statement, refer to risk reduction; how do you distinguish the two?

**Mr Booth:** We consider it one and the same. We refer to potentially reduced risk products.

**Hon Dr SALLY TALBOT:** So risk reduction does not make it a therapeutic good?

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**Mr Booth:** In our nomenclature—it is just BAT's—we refer to things such as vaping products containing nicotine as potentially reduced risk, and that is on the basis that we are not going to say that anything is 100 per cent, you know, safe. But what we can look to is a piece of research, such as from the UK government, which states these types of products are 95 per cent safer than a traditional cigarette.

**Hon Dr SALLY TALBOT:** I see. So if I can just be clear, when it comes to the health effects of long-term use of e-cigarettes, you concede that there is a risk.

**Mr Booth:** We are conceding that we are not going to say anything is 100 per cent safe. But we will say that we can look to the evidence which supports that these products are considerably safer than traditional tobacco products which are combusted and inhaled.

**Hon Dr SALLY TALBOT:** So you do not make any claims about e-cigarettes or these other forms of heatless—is that a phrase I can use?

**The CHAIRMAN:** Heat not burn.

**Hon Dr SALLY TALBOT:** Heat not burn. You do not make any claims about them being a therapeutic device or a therapeutic good.

**Mr Booth:** No.

**Hon Dr SALLY TALBOT:** Because they are not.

**Mr Booth:** As I say, we are not in the health business. We are not going to say that anything is 100 per cent safe. What we can do is look to the evidence from comparable countries to WA—the UKs of this world—and look at how they have regulated for these products and the benefit they see in them and the research and evidence which supports that. You have probably heard it before, but the UK government's Public Health England statement is that these products are 95 per cent safer than traditional tobacco products.

**Hon Dr SALLY TALBOT:** Okay. I am just trying to tease that out. You are saying that BATA is not in the health business.

**Mr Booth:** That is correct.

**Hon Dr SALLY TALBOT:** Which is kind of self-evident. But you are also saying that you can reduce the risk to health by using e-cigarettes.

**Mr Booth:** In my opening statement I gave some examples of the UK government, the New Zealand government, Canada and the US, and they have made those statements.

**Hon RICK MAZZA:** This talk about e-cigarettes being 95 per cent safer than traditional cigarette smoking, what is that based on, because my understanding is that one of the biggest issues with e-cigarettes currently in Australia is that people import stuff from overseas, and they do not know what the ingredients are? When you measure the safety spectrum of e-cigarettes over traditional cigarettes, surely that has a lot to do with what is inside the liquid itself, as far as ingredients are concerned. In countries like Canada and the UK, where it is legal, are the ingredients of those liquids fairly consistent across those countries?

**Mr Booth:** Within cooee. It is a really important question that, if these products are to be legalised in Australia, there needs to be robust or stringent regulatory framework around them. As I say, we can cherry-pick from various jurisdictions. The EU has some great examples, whereby you could look to having disclosure on ingredients and limits on certain types of ingredients so that consumers know what they are getting, because, to your point, at the moment there are 120 000 Australians, and most of them do not know, because it is within an unregulated framework.

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**Hon RICK MAZZA:** That is probably a very good point, that currently it is unregulated, and people in Australia are importing these products. Some of those toxins or chemicals within those liquids might only be 50 per cent safer than cigarette smoking, or maybe even more dangerous, depending on what is in them. Would that be a fair observation?

**Mr Booth:** That reminds me of a study that came out of Curtin University, perhaps last month—I am afraid we do not have it with us, but we can send it through—which had tested a number of products in the Australian market, and what the constituents were. Some were claiming to be nicotine-free, but they had in fact had nicotine in them. That is what will need to be addressed in a regulated framework, and I think what would be important as well is to ensure that there is enforcement around that, so if the regulatory framework is to be generated, someone needs to be policing it.

**Hon PIERRE YANG:** In terms of the size of businesses of BATA in, say, New Zealand and Canada, and the UK, are you able to give us a rough figure?

**Mr Booth:** They are very embryonic at the moment. New Zealand —

**Hon PIERRE YANG:** Sorry, in terms of the overall size of business, not in terms of the e-cigarette area.

**Mr Booth:** In terms of tobacco and everything like that?

**Hon PIERRE YANG:** Of BATA.

**Mr Booth:** We are not able to give that information out. It is commercially sensitive, because we are listed on the London stock exchange so it would be share price sensitive, but in New Zealand we are the market leader in the tobacco business and we recently, I think it was just before Christmas, entered into the vaping market.

**Hon PIERRE YANG:** In terms of the percentage of your traditional tobacco products and also the e-cigarette sales in the UK, what would be the percentage of the two of your products?

**Mr Booth:** It is growing, and that reflects where consumers are heading. As a group, globally, we are investing a lot of money in research and development in this area. We have invested around about \$3 billion in the past six years, and we see this as a significant part of our operation. We look at it as a choice. We want to be able to provide consumers with a choice between traditional tobacco products and potentially reduced risk alternatives, such as vaping products.

**Hon PIERRE YANG:** Sorry, I was looking at the percentage of the e-cigarette side of the business, and you told me that you invested \$3 billion globally. Are you able to give us a rough figure in terms of five per cent, 10 per cent of your business dedicated to e-cigarettes, and how much dedicated to the traditional tobacco products?

[10.10 am]

**Mr Booth:** I can take that on notice. I know that we have those numbers somewhere.

**Hon PIERRE YANG:** Is it right to assume that BATA is likely to get into the e-cigarette space in Australia if it is allowed?

**Mr Booth:** We would definitely consider it, yes. Being here today is a great opportunity to put forth our position, and if there is to be a regulatory framework created, we would like to be involved in those discussions, yes.

**The CHAIRMAN:** Just a quick one along that line. Maybe we are thinking the same thing, but what is BATA's long-term goal? Do you see yourselves offering both traditional tobacco products and vaping alongside each other, or is your intention to eventually phase out tobacco products, and offer solely liquid nicotine and e-cigarette products?

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**Mr Booth:** In Australia, if there was to be a regulatory change in relation to the likes of vaping products, we would look to provide a choice for adult Australian smokers and vapers, whether it is the traditional tobacco products or the likes of vaping products.

**The CHAIRMAN:** So, at least in the medium term, you would continue to offer those traditional cigarettes—tobacco products—alongside vaping products?

**Mr Booth:** Yes, that is right.

**Hon Dr SALLY TALBOT:** That figure that you just gave to Hon Pierre Yang, was that three point —

**Mr Booth:** It was \$3 billion over the past 6 years.

**Hon Dr SALLY TALBOT:** It was \$3 billion in six years—okay. And that has gone into what—research on alternatives to tobacco?

**Mr Booth:** Research and development at our headquarters in the UK into these potentially reduced risk products.

**Hon Dr SALLY TALBOT:** Can you give us an idea of how that \$3 billion over six years has been spent? What sorts of things has it funded?

**Mr Booth:** It has funded things such as the development of our products which are being sold in New Zealand, the UK and elsewhere in the world.

**Hon Dr SALLY TALBOT:** Has any of that \$3 billion gone into advertising?

**Mr Booth:** This is research and development purely.

**Hon Dr SALLY TALBOT:** It is only research and development?

**Mr Booth:** That is right.

**Hon Dr SALLY TALBOT:** Okay, so it applies only to the markets in the countries where e-cigarettes are legal?

**Mr Booth:** As I say it is done out of our headquarters into these types of products, so the benefit is wherever these products will eventually be sold.

**Hon Dr SALLY TALBOT:** In preparing for today's hearing, I had a quick look at your website, as well as reading your submission, and I did note that on your website it says —

For decades we have built our business on meeting the preferences of adult smokers with leading cigarette brands, superior products and market leading innovations.

So, that \$3 billion, where has that gone in terms of superior products, cigarette brands and market leading innovations?

**Mr Booth:** That \$3 billion is purely in this potentially reduced risk product category. It is not with the traditional tobacco products.

**Hon Dr SALLY TALBOT:** Okay, so would it have included research and development of the menthol additions to cigarettes?

**Mr Booth:** No.

**Hon Dr SALLY TALBOT:** Can you describe those menthol additions? I am a little bit hazy, having not partaken of these products.

**Mr Booth:** Sorry, menthol additions to —

**Hon Dr SALLY TALBOT:** Tobacco. I am curious as to whether the addition of menthol to traditional cigarettes is somehow enticing people who would not have otherwise smoked into tobacco and e-



cigarettes. I am talking specifically—I will just give you the name, I am sure you are familiar with this. There is something called Winfield Optimum Blue Crush, which has got the menthol granules in it or something. Can you describe that to us?

**Mr Openshaw:** It has a capsule within the filter which, when crushed, adds a menthol taste to the cigarette.

**Hon Dr SALLY TALBOT:** What does that do? Does it make it more palatable?

**Mr Booth:** It adds flavour to the cigarette.

**Hon Dr SALLY TALBOT:** Would some of that research and development money have gone into that area of research? This is a new product is it not?

**Mr Booth:** No. The traditional tobacco products are separate to the \$3 billion we have been speaking about.

**Hon Dr SALLY TALBOT:** Just one quick follow-up to Hon Pierre Yang's question. That quote I read to you from your website about building your business on meeting the preferences of adult smokers, I think it is a reasonable question for this committee to be asking you, and I am sure it is the subject of wider interest as well, but there are these two paths that are possible for you to go down. One is to replace the sale of traditional tobacco with e-cigarettes, to keep your market up and keep your profits up, and the other would be to use e-cigarettes to increase the consumption of the traditional products. Which one of those is it? We are not asking for market sensitive information, we are just asking what your business plan is.

**Mr Booth:** Thank you, Dr Talbot. Our business plan is around choice. We want to be in a position where we can offer adult consumers the choice between traditional tobacco products or the likes of vaping products, the potentially reduced-risk products.

**Hon Dr SALLY TALBOT:** Adult consumers who already smoke?

**Mr Booth:** Smoke or vape—yes.

**Hon Dr SALLY TALBOT:** So, you are not interested in adults who do not smoke?

**Mr Booth:** Our focus is on those adults who currently smoke or vape and we would like to provide them with a choice within a regulated framework.

**Hon Dr SALLY TALBOT:** Is that where all your advertising is aimed—at people who already smoke?

**Mr Booth:** I know in Australia that we have some of the strictest regulations when it comes to tobacco products. If you go down to the closest shop, you will go in there and it is steel doors and green packs and so forth, so there is not really any advertising going on.

**Hon Dr SALLY TALBOT:** You have just gone back into Formula One, though, have you not?

**Mr Booth:** We announced last week a sponsorship arrangement with McLaren. It is very embryonic, but that will be for our reduced-risk products and not our traditional tobacco.

**Hon Dr SALLY TALBOT:** Just remind me—what is a reduced-risk product?

**Mr Booth:** A reduced-risk product is something which could be a vaping product or an e-cigarette. It is entirely separate from our traditional tobacco business. The announcement last week was very much about these potentially reduced-risk products—not the traditional tobacco products.

**Hon RICK MAZZA:** Obviously, BATA has done a fair bit of research to establish there are 120 000 people in Australia who vape.

**Mr Booth:** Sorry, that was a government —

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**Hon RICK MAZZA:** That was a government assessment?

**Mr Booth:** That is right.

**Hon RICK MAZZA:** Has BATA done any research on how many of the 120 000 people who are choosing to vape were previously tobacco smokers?

**Mr Booth:** No, we have not. I am pretty sure there is research which we could send through to the committee. I am afraid I do not have it top of mind. But, typically, it is smokers who are looking to stop smoking and move to something else.

**Mr Openshaw:** In the UK last year, Action on Smoking and Health published a media release, which I have tabled with the committee, which showed that in the UK there are now three million vapers. About 1.5 million of them have said that they have come off smoking onto vaping products.

**Hon RICK MAZZA:** About half of vapers were previously tobacco smokers.

**Mr Openshaw:** A bit over—yes.

**Hon RICK MAZZA:** The other half, basically, just started vaping.

**Mr Openshaw:** No, I do not think it goes that far. It could either be people who were past smokers who now vape, or people who were perhaps using cigarettes and vapour products.

**Mr Booth:** Just as a supplementary response to that, we reference the UK a lot, but it is an established market for these products. There is a great deal of evidence. In October, the British government runs a quitting program. Last year, they recommended e-cigarettes. I think it was for the first time. GPs and so forth were recommending those products to smokers who are looking to transition out.

**The CHAIRMAN:** Some of the figures you have quoted there of almost three million e-cigarette users—do those numbers distinguish between those that use e-cigarettes with nicotine and those that use them without nicotine?

**Mr Openshaw:** I would have to check, but, off the top of my head, I believe it is with nicotine.

**The CHAIRMAN:** Just a moment ago, Mr Openshaw, you were telling us about your tobacco use and that if you wanted to use an e-cigarette—a less harmful product than a cigarette—to do so would be illegal, especially in this state.

**Mr Openshaw:** With nicotine—yes.

[10.20 am]

**The CHAIRMAN:** With nicotine. Currently, and correct me if I am wrong, the importation of liquid nicotine without a prescription is illegal. That is regulated by the federal government. In this state, the sale of devices that simulate smoking—e-cigarettes—is also illegal. How then are people getting these products? I am not sure if you saw, but outside this window before we began, there was a gentleman vaping just near the garden. People are still getting them. How are they circumventing federal and state regulation to get these products? Do you have any insight?

**Mr Openshaw:** I think you would have to assume that it is via the black market.

**The CHAIRMAN:** Despite the current prohibition of vaping and liquid nicotine, people are still able to get these products. There have been some recent cases of liquid nicotine poisoning. I put it to some previous witnesses that without consumer regulations around this space, without appropriate labels for liquid nicotine, without appropriate containers for liquid nicotine, that poisoning may continue, especially in children, who do not know what they are getting. Do you have a view of how

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regulating this space could reduce harm to consumers as opposed to the current black market that exists?

**Mr Booth:** I read those stories too about the recent poisonings. Your heart drops when you read it. Without knowing the details of it—all the details—if there was to be a regulatory framework in place for these products that contained things such as tamper-evident bottles and childproof lids, I think that would go some way to creating a robust regulatory framework. In the same way, regulations around what ingredients can be used and what cannot be used and ingredient disclosure—all these types of things should be part of a regulatory framework for these products.

**Hon Dr SALLY TALBOT:** Why do you not just submit the product to the therapeutic goods people—the TGA—for assessment? That would fix it overnight.

**Mr Booth:** I thank you for that question. As the law and the legal framework exists at the moment, it was created at a time when vaping products did not exist. They had not been invented. We are looking at an old piece of regulation that will not fit this technology. Where we look to comparable jurisdictions—the New Zealands, the UKs, the Americas, the EUs of this world—these products are being regulated under more of a consumer regulatory framework as opposed to therapeutic. I guess, in a nutshell, the framework as it exists in Australia will have to catch up to regulate these products.

**Hon Dr SALLY TALBOT:** Which framework needs to catch up?

**Mr Booth:** To your point about the Therapeutic Goods Act and so forth, that is not geared up to regulate for these products.

**Hon Dr SALLY TALBOT:** Are you saying it is actually not possible for you to submit the product to the TGA?

**Mr Booth:** Anyone can submit a product to the TGA, but if you took a product which was being sold in the UK within a robust regulatory framework or the US or elsewhere and tried to get it across the line in the current Australian framework, it would not be approved.

**Hon Dr SALLY TALBOT:** But there is nothing technically preventing you from submitting the product to the TGA.

**Mr Booth:** Not at all.

**Hon Dr SALLY TALBOT:** You are not suggesting it has to be legalised and regulated before it goes to the TGA, are you?

**Mr Booth:** No. What I am saying is that the regulatory framework around these products needs to be reviewed. The current framework was created before e-cigarettes were even a twinkle in someone's eye. It is not geared up to be able to generate supportive regulation for them. There needs to be a review and it needs to be done federally. Our respectful suggestion is that this committee may consider a recommendation that there is a federal review of how the regulation could be developed to enable Australians the choice to access these types of products.

**Hon Dr SALLY TALBOT:** I am sorry to press you on this, but I still say that there is no impediment to you submitting to the TGA. It may be that you feel that the TGA would be prejudiced against you because it is not a legal product in Australia but, nevertheless, you could make that submission and they would do an assessment which did not have regard to the fact that it is not regulated under any other act. That is what they are able to do. That is part of their job.

**Mr Booth:** Thank you for the question, Dr Talbot; hopefully, I can answer it. It is our understanding that if a product, as I say, that was regulated for in any similar jurisdiction was to be submitted to

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the TGA in Australia, it would not pass through because that assessment framework is not geared up for this new technology.

**Hon Dr SALLY TALBOT:** What does it need to gear it up? It does not need a change to the TGA?

**Mr Booth:** That would need to be a discussion had by bigger minds than mine, but there would need to be a regulatory framework set up specifically for these types of products.

**The CHAIRMAN:** We have heard previously from the Cancer Council and they talked about the weight of evidence suggesting that the harms of the long-term use of e-cigarettes were still unknown and, therefore, they recommended a precautionary approach. When pressed on it, they were unable to point to a single study that informed their position, merely the weight of evidence. Are you able to point this committee to a single study that you would say is the most informative study, in your view, of the harms of e-cigarettes?

**Mr Openshaw:** I think Public Health England would be a good place to start. Also, we are awaiting, out of the US, an FDA—Food and Drug Administration—decision regarding e-cigarette regulations as well. I think there is any number of pieces that you could look to that could inform any potential regulatory framework here in Western Australia.

**The CHAIRMAN:** The Public Health England study you mention is the one conducted by—it is the Nutt study, is it not? It is the one where they get the 95 per cent less harmful figure.

**Mr Openshaw:** That is right.

**The CHAIRMAN:** The FDA study that is forthcoming —

**Mr Openshaw:** Well, that is more of a review than a study.

**The CHAIRMAN:** A review—thank you.

**Hon PIERRE YANG:** Gentlemen, can you tell me when e-cigarettes became regulated in the UK?

**Mr Booth:** It was almost the opposite of the situation in Australia whereby there was not any regulation preventing their use and so the UK has caught up and created a regulatory framework after the fact. That is kind of the benefit with Australia; if these products are to be regulated, the regulators can look to and cherry-pick from other jurisdictions and say, “This is what is best practice.”

**Hon PIERRE YANG:** When did the UK catch up with the regulatory framework?

**Mr Booth:** So the opposite of Australia. The products were legal, then they —

**Hon PIERRE YANG:** Are you able to tell me a year when they were regulated?

**Mr Booth:** I would be plucking one out of the air, but I can definitely take that one on notice and get back to you.

**Hon PIERRE YANG:** I will tell you where I am getting in terms of the question. Given that in your submission, e-cigarettes can contribute to quit rates and the amount of people who quit cigarettes, I am hoping to get from you the percentage of smokers who used traditional tobacco products before the regulatory framework came into existence and afterwards, say to this year or last year, and look at the percentage of smokers who used e-cigarettes. Hopefully, as a committee we can gauge how substantive these claims are.

**Mr Booth:** Of course, and I guess the best—if we go back to the UK again and to what Nat was talking about is that the number of successful quit attempts from using vaping products, the government has stated there, is above and beyond the other tobacco quit devices, the patches, gums et cetera. I think we have tabled that.

**Mr Openshaw:** Yes, we have tabled that.

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**Hon PIERRE YANG:** I am not disputing what the report says. But in terms of how many numbers of people, because we know that 80 million people live in the UK, so in terms of the percentage of smokers or the percentage of the population who smoke—if we dive into more looking at the percentage of smokers who use e-cigarettes and the percentage of people who use traditional tobacco products, looking at the time when e-cigarettes became regulated would give us a good indication so that we can form our views on that. Are you able to take that on notice?

**Mr Booth:** Yes, we will provide that to you.

[10.30 am]

**The CHAIRMAN:** Do you have any data available on the harms of second-hand vapour to bystanders that may catch some of the vapour of an e-cigarette?

**Mr Booth:** When we talk about second-hand vapour, it is often through the lens of second-hand smoke and, yes, we have to make the definition that vaping products are very different to tobacco products. In terms of second-hand vapour and any health impacts, there is very little evidence to support any claims there. Again, we can take that on notice and lodge research with the committee.

**The CHAIRMAN:** As I understand it, there are different vaping products out there that can produce anything from a large cloud to vapour that is almost undetectable. The products that BATA are looking to sell, are they more discreet products or are they the types of products that generate large clouds?

**Mr Booth:** That would be consumer preference as to what people want, but where we are selling these products in New Zealand at the moment, where we have just entered into the marketplace, we are selling what is called a closed system e-cigarette, whereby it has a capsule, which is inserted into a device. We have got one here to show the committee if you want to see that, or are you guys across the difference between an open and a closed system?

**The CHAIRMAN:** I would certainly like to see it if you have got there.

**Mr Openshaw:** Sure, I will just grab it.

**The CHAIRMAN:** I do not think this can be admitted into *Hansard* exactly! Perhaps while Mr Openshaw is taking that out, can you comment on moves by some regulators to ban vaping indoors or in public spaces? Do you have a view on that?

**Mr Booth:** I think it is representative of the patchwork quilt of regulations across Australia when it comes to these types of products, and that is why, as I say, we respectfully request that this is an issue that is raised nationally so there is consistency. I think there is perhaps an education issue with some of the policy that is being generated. These types of vaping products are not tobacco products. They are very different, so they should not be considered and regulated in the same way, would be our position on that.

**Mr Openshaw:** This is the product that we are currently selling in New Zealand. You have your battery-powered device and your pod containing your liquid. It is inserted into the device, and that is essentially all it is. I might just add that if I have just broken any advertising rules with regard to the video, that the committee consider that before publishing it. I do not think I have, but I just thought I would put that —

**The CHAIRMAN:** It is broadcast live.

**Mr Openshaw:** Well, I did it at the request of the chair.

**The CHAIRMAN:** Thank you. I appreciate that. I am not sure if I have seen that product before, so it is helpful to see it and get an idea of what we are looking at. A lot of people accessing these devices

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on the black market are carrying around a large black box with what appears to be a pipe coming out of the side of it, large batteries, large tanks, so it is helpful to see what kind of products might be offered in a regulated market, I suppose. Look, I think that might be all the time we have.

**Hon Dr SALLY TALBOT:** This might be a sort of summary question. I would just like your comments on BATA's attitude to regulation of traditional tobacco, bearing in mind that we are segueing into e-products here. You will be aware that organisations like the WHO, the World Health Organization, and other health authorities have a range of methods to curb smoking. Did BATA support plain packaging?

**Mr Booth:** No, we did not.

**Hon Dr SALLY TALBOT:** Did you support bans on advertising?

**Mr Booth:** Not to my awareness, but it was before my time.

**Hon Dr SALLY TALBOT:** Did you support increases in taxes?

**Mr Booth:** No, what we have seen with the increase in taxes—and there have been rather significant increases on tobacco tax over the past five or six years—is that it has grown a substantial illicit black market in tobacco products. Last year, it was estimated by KPMG to be worth about \$1.6 billion in lost excise, lost revenue to the government, so, no, we are not supportive —

**Hon Dr SALLY TALBOT:** So you have actually never supported any of the regulatory body's advice and the health authorities' advice on the regulation of tobacco.

**Mr Booth:** What I am saying is that you have spoken to various pieces of tobacco control legislation and at the time we have taken certain positions. The position we are taking today is to push for the regulation of what is considered by many to be a reduced-risk product compared to traditional cigarettes. So, that is the regulation we would like to see discussed and debated and respectfully ask this committee to consider doing that.

**The CHAIRMAN:** Thank you very much. Thank you for attending today. A transcript of this hearing will be forwarded to you for correction. If you believe that any corrections should be made because of typographical or transcription errors, please indicate these corrections on the transcript. The committee requests that you provide your answers to questions taken on notice when you return your corrected transcript of evidence. If you wish to provide additional information or elaborate on particular points, you may provide supplementary evidence for the committee's consideration when you return your corrected transcript of evidence. Thank you.

**Hearing concluded at 10.36 am**

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