Mr DEAN (Chair) - Members, I have arranged for these proceedings to be audio recorded so if any speaker has any concern with that please shout out now. The audio will be transcribed and provided to everyone. Parliamentary privilege does not apply so if there is anything you want to say in a confidential manner you will need to speak up and identify it so we do not record it.

I will introduce Professor Jon Berrick. I think he is known to most of you because he came in earlier last year and had a session with us. We are very grateful, Professor, that you are able to make the time to be here today. I realise you will be going to Abu Dhabi in due course for the world conference on tobacco.

Professor Berrick has a long list of letters after his name. He attained a D Phil from Oxford University and became a member of its mathematics faculty before joining Imperial College, London. He moved to the National University of Singapore in 1981, where he has been a full professor since 1996. He is an Inaugural Professor of Science (Mathematics) at its Yale-NUS College. He has authored research articles and authored and co-authored three monographs and edited several others. He has published more than 60 research articles, predominantly in mathematics, but has also had research collaborations in neurophysiology and anatomy, in addition to tobacco control. For the work on the mathematics of braids, Professor Berrick received Singapore's National Service Award in 2007.

His involvement in tobacco control was triggered in 2003 by a multinational tobacco company's attempt to establish a university scholarship in Singapore. He argues for a tobacco-free generation approach to tobacco eradication. We are privileged to have Professor Berrick here.

Prof. BERRICK - Thank you very much, Ivan, for arranging this event and for getting the amendment to the stage it is at now, where it has been tabled and is coming up for discussion next month. It is an important step and, as you pointed out, I was in this very room in October 2013. That was as a consequence of your bringing it up for debate in August 2012 where the Legislative Council unanimously backed the recommendation to the government for the tobacco-free-generation approach.

That attracted enormous publicity internationally. I think that was the first instance where it got the tobacco-free-generation proposal out of the academic journals and into the public spotlight. We had newspapers and media from around the world focus attention on Tasmania for that role.

Subsequent to that, the following year the International Conference on Public Health Priorities for the Twenty-first century in New Delhi had a declaration. They acknowledged Tasmania's role in bringing forth the tobacco-free generation proposal into the public light. The reference to Singapore there was reference to a 2010 academic journal article that originally proposed it. That was the year following the recommendation from the Legislative Council.
Then the year following that, the British Medical Association - last year, in June - had its motion overwhelmingly carried. Since the slides are not going to a written transcript I should state what the British Medical Association said:

That this meeting acknowledges both the substantial harm to health caused by smoking cigarettes and that nicotine addiction is very hard to break. It therefore calls on the BMA to campaign to ban forever the sale of cigarettes to any individual born after the year 2000.

So that in a nutshell is what the tobacco-free generation approach is. You notice the emphasis is on the sale of cigarettes; there is not a constraint on consumption. It is on the prevention of harm to others by selling cigarettes.

As well as the fact that it is highly addictive, I also want to focus on the fact that use starts mainly amongst children. What I want to do initially is present to you some of the evidence behind the tobacco-free generation approach.

The big question that politicians always have - lawmakers have to have - is will this work? Basically there are three reasons we know why it will work. The first one is evidence, which I will be saying something about. The second one is history - I will mention a little of history - and the third one is what is known in the public health community as the screen test, which refers to how excited the tobacco industry gets about the person.

Mr VALENTINE - Professor, I assume we can get the presentation?

Prof BERRICK - Sure, I will work on that.

We have a number of medical luminaries in this room who can help us out with the importance of this legislation - how important it is to achieve a breakthrough in tobacco control.

The two key facts we have to bear in mind are the fact that tobacco is highly addictive; it is rated by the experts as being at least as addictive as cocaine and heroin. So we are talking about something way in excess of addiction of marijuana or alcohol.

The other important thing to remember is that use starts mainly amongst children. That has long been known by the tobacco industry and you can see that there has been a lot of marketing over the years directed at young people - children, young teenagers. As Philip Morris said in 1999, 'the ability to attract new smokers and develop them into young adult franchise is key to brand development'. The US Secretary of Health and Human Services, Kathleen Sebelius, summed this up by saying that, 'In the end, the most effective way to prevent tobacco addiction is to stop people from starting'.

The point is, because it is so highly addictive, it is very difficult for cessation campaigns to be successful. If you really want to cut down on smoking prevalence, and smoking is 'the' big killer - we will be hearing I am sure from medical colleagues as to how serious that is - but if you really want to make inroads into that then you have to work on the
prevention. Cessation is all very well but prevention is really where you are going to achieve the greatest result.

As she commented, nearly 90 per cent of the adult daily smokers smoked their first cigarette before their eighteenth birthday. That means you are directing the attention towards teenagers if you are going to stop this initiation from occurring. When she said that nearly 90 per cent smoking their first cigarette before their eighteenth birthday, that is in the presence of laws saying you cannot smoke if you are under 18. That is under the present laws, that that is clearly not successful. The obvious response to those facts was the one that became embedded in underage laws - you just say to people, 'You can't smoke before the age of 18'.

As the World Health Organisation has pointed out, the evidence of effectiveness of such laws is rather limited. For many people they do work. In Tasmania, maybe three-quarters of the population get the message, but for one-quarter there is far too much damage for the population for us to be enduring.

In order to understand the evidence and why these underage laws are not being successful we have to analyse why it is that you would start smoking. I do not want to go too much into the technicalities of that but from the evidence, which is well researched, it is clear the two main initiators are peer influence on the one hand and the desire to appear grownup on the other. Because those are the two key drivers, we discover the flaws in the underage legislation.

First we have a right-of-passage effect - so a 15 or 16-year-old is delighted to have the chance to show to themselves or the rest of the world that they are quite grown up now, behaving like an 18-year-old and this gives them the opportunity to indicate that. The tobacco industry has been very keen to exploit that with slogans such as 'Kids don't smoke under 18. It's the law'; they have funded campaigns to this effect. The other big problem with the underage law is this unconvincing message that it somehow claims there is this magical transformation of the human body that takes place on the eighteenth birthday, that something that was unacceptable up until that date suddenly becomes acceptable. It completely confuses the message that tobacco is too dangerous a drug to be taken at any age.

The tobacco industry exploits that by saying it is a legal product. So the legality of the product is essentially their way of saying it is government-approved; it has this acceptability aura that they are trying to promote.

As one of the most successful in terms of popularity is concerned, one of the UK prime ministers in modern history, Tony Blair, has made the observation that it is the signals that matter. The point about legislation is you do not just make laws and hand it over to enforcers to make sure that the public obeys them. It is a matter of designing laws that have the power to change social norms that actually become publicly acceptable. They have to send the right signals that are not confusing. If they send confusing signals then the people don't see the logic; they find it difficult to obey those laws.

Here is a slide I prepared, too late to get Julie Bishop's office to add the emoticons to, but what is happening is, in 1915 in the USA, the precursor of what is now the Food and Drug Administration when they started their list of substances that they needed to
monitor and control, decided because of protests by certain southern United States states that are tobacco growers, they would grandfather tobacco products, that they wouldn't include them under this control. So when this organisation later became the now FDA, then still tobacco was grandfathered. That is one of the important reasons that it has been able to be marketed so successfully around the world.

What the TFG is proposing - the tobacco-free generation - is that instead of grandfathering the products, we now grandfather the consumers. What that means is that existing legal consumers are untouched by the tobacco-free generation approach. The amendment will not affect existing consumers in any way but it will mean that people born from the year 2000 - that is people who are now maybe reaching their 15th birthday or coming up to that - that those people, when they reach the age of 18, it will not be possible for the retailers in Tasmania to be selling them cigarettes.

Ms FORREST - Can I ask a question at this point?

CHAIR - I wonder whether it may be appropriate to continue on, Ruth, because the professor may cover some of those issues.

Ms FORREST - If he is that is fine, but I want to ask if he is going to cover a point.

Prof BERRICK - Ivan, I don't know how you want to handle the Q&A side of this? Would you like each of us to present and then have general Q&A?

CHAIR - The reason I said that, Ruth, is that Dr Seana Gall has to leave by a certain time so I was hoping to have Professor Berrick finish off and then go straight to Dr Gall's presentation, and then come back to questions because of Seana's inability to remain here. You can raise that issue now.

Ms FORREST - You say you are grandfathering consumers, but the bill itself doesn't stop people born after 2000 consuming cigarettes. I assume this is going to be covered - it doesn't stop anyone born after 2000 from actually smoking.

Mr VALENTINE - You're grandfathering resellers, people who sell, not consumers.

Prof BERRICK - Yes, that's true.

Mr VALENTINE - I wonder about that statement.

Ms FORREST - It will be a question I will ask later on.

Prof BERRICK - It is grandfathering -

Mr VALENTINE - Sales.

Prof BERRICK - Yes, the sales.

Mr VALENTINE - Not grandfathering consumers.

Prof BERRICK - That's true, I think you're right.
Ms FORREST - It doesn't stop them from consuming.

Prof BERRICK - So the emoticon should be a bit more …

CHAIR - inaudible.

Prof BERRICK - Yes, that is a valid point.

As to why then this amendment would work is that we are changing the social norms so that smoking no longer becomes an adults only activity like R movies or alcohol that loses appeal for teenagers because it is seen as being something that is not for their generation. It becomes very much a last century activity; it will be seen very much as being a twentieth century phenomena. As this generation, those born in 2000-01, etcetera, and you get further and further away from the twentieth century, this is going to steadily lose appeal for the rising generations. It is going to be seen as something that belongs to a previous generation.

This idea of something being off limits for life, there has been research on motorcycle helmet use in the US and it was found that when you had under age laws for motorcycle helmet use in US states there was much less compliance with the legislation amongst the youngsters than there was when you made the law universal. Even though both laws equally applied to people under age, it is when you have you have the universal law that people get the message that you are serious about the legislation, that you are not just doing it in order to control young people. You attack the peer pressure because people are knowing that no peers will ever be permitted to be sold tobacco.

I showed a graph last time I was in this room. Since then one has to update this because earlier this week we had the Sacks Report indicating that the death toll from tobacco is about one-third higher than had previously been realised.

Mr MULDER - Isn't that assuming that people don't smoke, rather than not purchase them?

Prof. BERRICK - You are getting a roll-on effect as the years go by.

Mr MULDER - The point we are making is that it's not the effect of TFG smoking on death that causes that decline, it is the effect of people not smoking that causes that decline. You are stretching the point a bit by saying that introducing this legislation will do that if you're not banning the smoking.

Prof. BERRICK - The point is you are trying to change the social norms. It is not a question of law plus enforcement; it is a question of the law helping to change the social norms.

The World Health Organisation says the best laws are those that become self-enforcing. So that has to be what is driving it. One of the things that indicates why that is going to happen is that, whenever there have been surveys and opinion polls, this has received strong public support. Not just from non-smokers, which I guess you might expect, but also from smokers because the smokers have seen the addiction hell they have gone through and they don't want their children to have to endure that also. That is that quote
from the World Health Organisation, that the best law is one that shapes social norms that it becomes self-enforcing.

**CHAIR** - This is highly unusual, but can we hold your presentation and resume later as Dr Gall has to leave shortly.

Dr Gall is a Senior Research Fellow, Menzies Institute for Medical Research, UTAS.

**Dr Gall** - I am an epidemiologist at the Menzies and specialise in cardiovascular disease. The other hats I wear that are relevant to being here today are that I am on the board of directors for the Cancer Council Tasmania; and a chair of the Tobacco Control Coalition, which provides policy advice to the Minister for Health on tobacco control policy issues for the state. Across my research over the past decade or so I keep getting drawn back into looking at the effect tobacco has on people's lives. I have looked again in relation to older people who suffer from strokes. I have looked at it in relation to children who are exposed to their parents' smoking; and I have also looked at younger people in their 20s and 30s and the effect that smoking is having on their lives.

Some of the things that I have found, to give you a run through of the types of things that match up with the things that Professor Berrick has been saying, is that we have found that people get hooked very quickly and it doesn't take very much. We looked at children in the 1980s and children who were reported to having just one puff of a cigarette were up to 300 per cent more likely to be smokers as adults, and that was over a 25-year period.

We also know that if we look at the quality of life of people who are smokers in their 20s or 30s - so these are very young people - that their health actually looks like people about 10 years older than they are. So this is having big effects on people we consider to be healthy.

The most alarming part of the research that I have been involved in is looking at the influence on children who have parents who smoke, and particularly what happens to them in the long term. One of the things we know, and this touches on the social norms and the peer influences that Professor Berrick was talking about, is that having parents who smoke increases your risk of being a smoker very substantially, by about 50 to 100 per cent - again over a very long time that we have looked at.

In some of the most disturbing analysis we have done we have looked at the cardiovascular health of young people - people in their 20s and 30s - and those people who had been exposed to their parents' smoking as children and those that had not. People who had been exposed have thicker arteries - the arteries don't work the same way - and they have the beginnings of atherosclerosis, which goes on to cause heart attacks and strokes. It didn't matter if these people went on to smoke themselves, the damage was already there.

We know that smoking is a pervasive habit, and I have some information on how this is relevant to the Tasmanian population which puts it into more context. We know from data collected from the Australian Bureau of Statistics that in Tasmania 22 per cent of the population are current smokers, which is much higher than the national average of 16 per cent. But this doesn't really tell the whole story. If you look at particular age groups
there are very disturbing levels of smoking. In the same survey by the Australian Bureau of Statistics, 37 per cent of men aged between 25 and 44 smoke, and 30 per cent of females ages between 25 and 34 are current smokers. So this is not something that is affecting the minority of the population here; it is a very substantial problem and it is greatly affecting the health and welfare of our state.

The poor figures are not just about adults in the Tasmanian population. The Australian Schools Alcohol and Drug survey which was last conducted in 2011 and supported by the Cancer Council, shows that kids in Tasmania smoke a lot more than kids in the rest of Australia. Nine per cent of 12 to 17-year-olds in Tasmania are reported to be smokers compared to 6 per cent nationally. As Professor Berrick has said, there is a very rapid increase in smoking across the adolescent years. Between the ages of 12 and 15, only 6 per cent of people say they smoke and this goes up to 16 per cent between the ages of 16 and 17 years. So you get this very large increase. This particular legislation really should send that message that this isn't something you go on to take up as you get older.

There are two compelling reasons why I think we should focus on this. The first is that we need to focus on things that prevent people from taking up smoking, as Professor Berrick said. We know that most smokers do not want to be smokers themselves. There was a very large survey conducted around the world called the International Tobacco Control Survey which included 20,000 people from various countries, including Australia. From this, if you look at any one year, 40 per cent of smokers will try to quit. Those people who do try to quit will try at least twice in that year. The most interesting thing is that the people who are most likely to try to quit are people aged between 18 and 24. So 60 per cent of those people will try even though they are the people who have only just started. One of the most unfortunate things, and I am sure other people will touch on, is that most people will not be able to quit on the first or second time they try. It is estimated that it will take people somewhere between five and 15 times, trying to quit before they can actually do it.

I have given some figures on the background. I will move into why I think we should support this from a Tasmanian level, and that started from the Tasmanian population themselves. The Cancer Council of Tasmania undertook telephone surveys in 2013 and 2014, and these included 12,000 Tasmanians from across the state, equal sampling of various areas. The purpose of the survey was to gather information about smoking and public health. They were asked several questions about smoking among young children and 99 per cent of the people who responded said that it was very important to do more to protect young people from smoking. Importantly there were specific questions regarding whether respondents supported the idea of a ban on the sale of cigarettes to people born after 2000, so this is the Tobacco-Free Generation Bill. Seventy-two percent of people in Tasmania supported the idea of this ban and the support was not just limited to non-smokers. So 64 per cent of people who were current smokers supported this idea. These are Tasmanian people, this is up-to-date research conducted over the past two years, showing that the Tasmanian community supports this idea.

Ms FORREST - Did you ask them if we should ban people from smoking, or just selling it to them? Was that question asked? What was the question that was asked?

Dr GALL - It was the ban on the sale of cigarettes to people born after 2000, as the bill amended would stand.
Ms FORREST - So the other question wasn't asked?

Dr GALL - No. There was a series of questions around smoking and young people, and one of them was around, 'Should we do more in terms of education?'. It was particularly around this proposal.

Mr VALENTINE - So you think the people filling out the survey definitely understood it was a ban on the sale, not on smoking?

Dr GALL - It was worded about the 'sale' of cigarettes.

We have a high burden of smoking here in Tasmania and I think it is something we should definitely be considering.

Ms FORREST - Why didn't you ask, regarding the sale, about making it illegal for them to smoke it afterwards? In some respects you are sending a mixed message by saying, 'We're going to ban people from selling it', so we are going to demonise the seller to some degree, but it is okay for people to continue to smoke. Isn't that a mixed message?

Dr GALL - I don't think it is demonising the people selling the cigarettes. To me, it is more about the social norms aspect of the message. It is an historical thing that this product is allowed. If you tried to get this approved now, it would not happen. This is bringing that up to line with what we understand now. I am not the best person to comment on it, but my understanding is that having it this way is that banning cigarettes and smoking is not something that would be possible.

Ms FORREST - Anything's possible.

Ms BARNESLEY - Are you saying it is not strong enough, the legislation is too weak?

Ms FORREST - Yes. I think it is sending a mixed message. You are saying you can't sell it but it is okay to keep smoking it.

Prof. WALTERS - It's the way the vast majority of people get it.

Dr STANTON - There is evidence on your question that we have from Victoria, Hong Kong, and a few other places, but we can provide that at a later time. It is a very good question you ask and I think there is growing interest in a complete ban, but we see this as a stepping stone to a longer-term social change.

Mr MULDER - You are basically phasing in a ban rather than going back?

Ms FORREST - I have said that, but I am interested in whether the question was even asked and whether there was support for that?

Dr GALL - Not in this particular instance. As Kathy said, a paper has come out this week from Hong Kong where they specifically asked people if they would support a ban. It was very high, around about 70 per cent.
Dr STANTON - There is a study from Victoria as well.

Mr MULDER - I'll bet you all the respondents were people who didn't smoke.

Ms BARNESLEY - No, they are smokers.

Ms FORREST - Is that broken down in the research?

Dr GALL - Yes.

CHAIR - Seana, will that survey report be available for distribution to members?

Dr GALL - Yes. It has only recently been analysed, but I believe we can get that data for the debate.

CHAIR - This is a report we have been seeking for a long time. This survey was put into place approximately three years ago.

Dr GALL - It was in 2013.

CHAIR - We have been seeking it for a long time. So what Seana brings to the table today is excellent from our point of view. It shows where Tasmania sits in relation to this, so thank you for that, Seana. If you can bring that forward to us, we would appreciate that.

Mr ARMSTRONG - The bill you are putting forward, it is illegal to sell cigarettes to people born after 2000 but it is not illegal to smoke. So can a person buy cigarettes and give them to people who were born after 2000?

Dr GALL - Yes.

Ms FORREST - And they could pinch their parents' smokes out of the packets and smoke them and it would still not be illegal.

Mr ARMSTRONG - There is nothing to stop someone that was born prior 2000 and give those cigarettes to -

Mr MULDER - In 10 years' time that 25-year-old can ask his mum to buy some cigarettes for him.

CHAIR - They can't sell them. It is designed to make it harder; it is a stepping stone to outlawing tobacco over a long period of time. It is a starting point and it was always believed that to do it and stop smoking would be too difficult, that you would not get it in. We know - and I use the word here - that prohibition in that form doesn't work and there is a lot of evidence to show that. That is what we are very careful of -

Ms FORREST - Where's the evidence for that, Ivan?

CHAIR - We can look at what happened in America and a lot of other areas. Prohibition is very difficult - when you outlaw something that has been a legal product straight out.
Ms FORREST - We are not though.

CHAIR - No, we're not, that's what I'm saying, we are careful not to do it.

Ms FORREST - The question is: it is currently illegal to smoke until 18. If the ban on smoking as well as buying, or selling to someone, is illegal then it is not changing anything.

CHAIR - Yes, it is.

Ms BARNESLEY - The provision about prohibiting children from smoking was actually supported by the tobacco industry. When the bill first went through, it prohibited children from smoking with no penalty. The tobacco industry lobbied for that. They want people to be prohibited.

Ms FORREST - I know what you're saying, because it makes it an illegal activity but there is no penalty.

Ms BARNESLEY - Yes, so it is better if you don't have a penalty.

Prof. WALTERS - The average age of starting smoking is about 16. They start getting the cigarettes from mates who tend to be about a year older than them. So it is a 16 to 17-year-old thing. We also know that taking up cigarettes at the age of 21 is extremely rare and once the smokers get into their 20s they are sorry they took it up in the first place. That is very different to most of the things we talk about in terms of bans and things - alcohol is one. It is very popular and you are trying to stop a popular thing. This is very unpopular amongst smokers, but they are addictive. How do we get them up into their 20s and beyond that without starting? We have to do something. This may not be perfect but it is a major next step.

CHAIR - Are there any question of Seana because she has to go. Thank you Seana for being here and if we could get that report that would be wonderful.

Dr GALL - Certainly, I will get it for you.

Ms FORREST - If you do ongoing research it would be good to ask that question in Tasmania to get the sense of whether there is any appetite for it.

Dr GALL - A blanket ban.

Ms FORREST - No, not a blanket ban, a ban for people born after 2000. I am not talking about a blanket ban, there are all those people out there who are too addicted and would go crazy and it would just create a black market. I am talking about a ban that sits beside this.

CHAIR - We are talking about a black market at the moment.

Mr VALENTINE - I would be interested to hear about that; that is one of the issues.

CHAIR - We will return to Professor Berrick.
Prof. BERRICK - We have been discussing evidence. Seana has given us the results of the Cancer Council's survey, which are totally in line with previous surveys that have been conducted elsewhere. We are getting over 70 per cent support amongst the population in general, and over 60 per cent support amongst smokers because they don't want to see their children endure what they are currently enduring. That is evidence side of it.

The next port of call is the question of history, the question of 'has something like this been done before'. The answer is yes and no. It hasn't been done for tobacco, so for tobacco it would be a world first from Tasmania, but it has been tried before in regard to opium smoking early last century. In a number of Asian countries it was introduced. The two well-documented cases I am aware of are British Ceylon and Japanese Formosa - Ceylon is now Sri Lanka and Formosa is now Taiwan. In both those cases the phasing-in was very successful. They had a register of people who were opium smokers at a certain date and from then on no new smokers could be admitted to the register. In both cases you achieved very substantial reductions quickly. Formosa was an 80 per cent reduction in 15 years and Ceylon was eradicated within 35 years.

Mr VALENTINE - Isn't that on the person being banned rather than the selling of the product to people?

Prof. BERRICK - There was a whole raft of measures. I can show you the details later. They had government control of the places where people went to smoke opium, for example. You have to have registration for people who are allowed to smoke.

Mr VALENTINE - That's the individual, which is slightly different to this legislation. The big distinction for me in banning or not banning is a ban on the selling not a ban on the individual. That seems to me that because it is the individual who is being recorded it is banning the individual from accessing as opposed to the selling of the product.

Prof. BEGGS - Isn't it the same as saying it is the banning of buying rather than the banning of selling? That comes back to the individual and I guess that is the distinction. We are not trying to say it is a ban on the person from selling; it is a ban on the person who buys the product.

Mr VALENTINE - Because of their age.

Prof. BEGGS - Yes. People get a bit concerned about, in terms of the responsibility of which person is responsible for taking authority of that purchase, it is banning the person from buying.

Mr VALENTINE - But it is not banning them from smoking.

Prof. NELSON - No, in effect your new users, your incident users, will be young people. You establish your whole-of-life habits, whether you run, do regular exercise, smoke, etcetera, in adolescence. This is, in essence, a very similar thing to what is being proposed.

Mr VALENTINE - This is the same as what we are -
Prof. NELSON - Yes, because your incident users of opium would be the oncoming generation. Those who are going to use it in older generations will have either been established in that practice, or almost they never take it on. I picked up a student who was making up a patient because he claimed she took up smoking at 32. I said, 'Oh, that is amazing'. On further questioning, he had made up the case because he hadn't seen the patient. I knew that because nobody takes up smoking when they are 32; they take up smoking when they are 17. It is the same sort of thing here, they will take up drug use at those younger ages.

Prof. BERRICK - I have a couple of references here and we can have a look at those in detail later on.

We now come to the screen test. I have the list of organisations supporting the tobacco-free generation amendment and to that we have to add one organisation that is clearly believing it is going to work. I understand they have been lobbying politicians in Tasmania quite hard recently, and that is Imperial Tobacco. Kathy will address the question of the tobacco industry and what their role has been. It is certainly well known amongst people in the tobacco-controlled movement that when the tobacco industry lobbies hard, you know that their own research is showing them something significant.

I should point out that these are international tobacco companies; there are no local Tasmanian tobacco companies. They are international companies. For them, Tasmania represents less than 0.01 per cent of their international market so they are not here lobbying about Tasmania. They are not really interested in Tasmania as such. What they are really frightened about is that Tasmania will set the scene for other countries to follow. They are worried about the Tasmanian model becoming seen internationally, as what has followed for successful eradication of the tobacco epidemic.

I want to address a couple of points. One that is diametrically opposed to what Ruth has been saying is the argument we hear from civil libertarians. A lot of them are inspired by John Stuart Mill but I think they haven't read their John Stuart Mill very closely. Being an academic I have read 'On Liberty' from cover to cover and very closely, so I can say with confidence that he is being misrepresented in the media when the civil libertarians talk about what the Mill approach would be.

You might have heard that one of his principles is the harm principle, which says that the state has a duty to protect people from harming - to act against people harming others. If they want to experiment with things themselves that is up to them but what you should not be allowing is people to harm others. He also has a couple of extra constraints on that. He says, for example, that people who are too young to make up their minds on such matters should be protected. He also says that no person has a right for any contract - he was thinking of slavery at the time - that is going to enslave them for the rest of their lives; it is going to inhibit their free will.

At the time, of course, there wasn't a tobacco industry - this was the mid-1800s. The tobacco industry was formed subsequent to that. Tobacco is now a prime example of something that does inhibit free will because it is marketed to children, they become addicted, and they have lost their free will. That is a famous Australian philosopher, Peter Singer's, point. Even setting aside the harm that smokers inflict on non-smokers, the free-to-choose argument is unconvincing with a drug as highly addictive as tobacco.
and becomes even more dubious when we consider that most smokers take up the habit as teenagers and later want to quit - and we have been hearing evidence about that.

What should the state's role be in this? In the UK, the Wolfenden Committee Report was considering the obligations of a state in order to protect its citizens. They are saying that the law's functions is to preserve public order and decency, to protect the citizen from what is injurious or offensive, and to provide safeguards against the exploitation and corruption of others.

That brings us to the 'nanny state' argument. Australia has a rather long and proud history of regulation in the interests of its citizens. It shouldn't really be a debate about quantity of regulation; it should really be a debate about quality of regulation. The important thing is not to have no regulation; the important thing is not to have complete regulation; the important thing is to have the right regulations. I was saying earlier that these under age laws are an example of regulation that is not right, that is not fit for purpose.

We have quite a history in Australia and it is very interesting to see the political parties that come up in some of this; there is quite a variety. In chronological order, we have Henry Bolte's introduction in Victoria of compulsory seat belt legislation - that was a world first. That was added to by his successor, Rupert Hamer, of random breath testing. Together, those two measures in the space of four decades, had reduced the death roll in Victoria from road accidents by more than 75 per cent, so it was hugely successful.

Mr MULDER - That raises the other issue about sending a message versus rigorous enforcement, because both those measures were subject to rigorous enforcement.

Prof. BERRICK - There are others that are so obvious that they become self-enforcing. For example, we are all prohibited from driving on the right-hand side of the road, yet there are no police required to enforce that law simply because it is so logical that we should all drive on the same side of the road.

Another one from that era was when it was discovered that thalidomide was causing defects to children at birth. That had been a legal drug. That was an Australian discovery and Australia was then at the fore of preventing sales of thalidomide. The Whitlam and Fraser governments introduced bans on radio and television cigarette advertising. Jeff Kennett introduced the compulsory fencing of backyard pools in Victoria. I don't think that required a huge amount of police enforcing.

In Tasmania, there was the incident that prompted John Howard to introduce the ban on semi-automatic guns. Most recently, also in Tasmania, we have the ban on tanning salons introduced approximately three months ago because there is reckoned to be about two deaths per year due to skin cancer caused by tanning salons. That is in comparison with the reckoning for tobacco deaths in Tasmania - also two deaths but not per year, it is per day.

Mr GAFFNEY - These are all examples where everyone in that state was treated exactly the same, whether it was a pool or banning semi-automatic gun. Have you any examples where a section of our community will have a different regulation than the rest of the community? To me, this is all fine and it is examples of the nanny situation, but are
there any examples where a certain sector of our community has been banned where others have not?

Prof. BERRICK - That is a good point. Any financial advisor will be able to tell you of numerous examples where grandfathering comes in and people born before or after a certain date are affected differently by financial legislation. It is quite common in the financial world for you to have age discrimination.

Mr GAFFNEY - And whether they smoke impacts on that. Have you had any discussion with, say, civil libertarians who may think this is discriminatory legislation? Is there a case there that you have encountered through your work in other places, where you have had groups say, 'You can't do this because of the rights of X and it is a civil right you are taking away'?

Prof. BERRICK - That is interesting. In a number of countries that have been considering this, there is always the question of how this affects the constitutionality. In a number of countries I have looked at constitutions in order to address this very point. It is quite common to see constitutions written so as to prevent discrimination in gender, race or religion, but I have not seen one yet that says you can't discriminate for birth year. In Australia, for example, we have the financial examples. When I was young we had conscription in Australia and it was done by means of drawing birth dates. So there is certainly precedence in Australia.

That is the conclusion of my presentation.

Ms FORREST - I would like to flesh out the point about the mixed message issue, that people can't sell it to you but you can still smoke it. The situation is still the same - you can smoke as an adult, even with this legislation you can still smoke even if you are born later than 2000.

Prof. BERRICK - From the civil liberties point of view, the principle is that if you want to do that experimenting you are allowed to. However, the idea is to make the practice as difficult as possible. The kid who has just come out of school, who passes the corner store just out of school, can't go in there on impulse and buy cigarettes to hand around to his or her mates and show them how grown up they are. The practice is going to be that, yes, people could grow tobacco in their window box - that would be untreated and pretty foul-tasting; they could go online to buy it - there would that loophole; but again that would not be an impulse decision - you would not be getting it immediately. There is the possibility of having people supply it to you. Again, that is cumbersome. All these things will militate against the impulse action we have now, it will make it all that much less likely.

Ms FORREST - But wouldn't it show that you are grown up and brave if you turn up with a packet of cigarettes in your backpack that you can share with your school friends? It would also appear grown up because you got your mum's packet from home. The peer influence and the wanting to appear grown up doesn't go away with this.

Mr VALENTINE - And it is illicit.
Ms BARNSLEY - In Tasmania, when we raised the smoking age in 1997 from 16, the age of uptake was 14. The median range of uptake was two years below the legal smoking age. Now, the median age of uptake in Tasmania is 16, so it is two years below. What we are expecting we will get is because 62 per cent of kids get cigarettes from their peers it is that those first two cohorts we will move through the tobacco-free generation. There will be some of them who continue to smoke. If you remember that graph that Jon did, as you go down the ages there will be fewer of them smoking. That is what we think will happen and that is what the projections show. That is based on what has happened in the past: that in Tasmania, we get this cohort two years below the actual smokers.

Ms FORREST - That's because you've banned smoking until that age. We are just banning the sale. When you raise the age we are banning smoking from 16 to 18. I am not disputing the intent with any of this. Some people in our Chamber have expressed concerns about passing legislation that is not perfect, and we have had plenty of people refusing to pass it because it wasn't deemed to be perfect. This is clearly not perfect.

Mr WILKINSON - My argument is that perfect is the enemy of good.

Ms FORREST - Yes. I am just saying that this is an argument that has been used many times, and we are all aware of situations where that has occurred. Clearly, it is not perfect, and in fact you could say it is quite flawed in that area. In the absence of knowing what Tasmanians really think about imposing a ban on smoking as well as selling, it is a bit hard to know whether it would be accepted or not.

Assoc. Prof. BEGGS - Getting it in without being punitive against people I guess is the main idea. It is the same as decriminalising something so the act of doing it is decriminalised but the actual purchase of it is not legal. It is trying not to make it -

Ms FORREST - Halfway house.

Assoc. Prof. BEGGS - It is not really a halfway house, it is not a process that is not used in other areas as well. You have an act that you don't want people doing but you don't want to have to divert a whole lot of resources attacking the individual who happens to become addicted whatever way it happened at that age still. We do not want to see it being promoted as 'You can still smoke if you are born after 2000 but you just can't buy it'.

Ms FORREST - But that's the way the tobacco companies will deal with it.

Mr VALENTINE - The legislation says it is on the seller.

Assoc. Prof. BEGGS - It is on the seller.

Mr VALENTINE - And the seller pays the price, not the buyer. I know it is a fine line but I am saying it isn't on the individual, it's on the seller.

Prof. BERRICK - John Stuart Mill would say that it is the seller who is causing the harm to someone else.

Mr VALENTINE - I know. I think it is the strength of the legislation that it is on the seller because public acceptance of this legislation is important.
CHAIR - That currently applies now. It is all on the seller now. It is the seller who is the one responsible for sales to younger people. They are the ones who are targeted by police or by the control buyers.

Dr REYNOLDS - I am Clinical Director of the state's Alcohol and Drug Services. As a doctor working in medicine for more than 30 years - and I remember as a medical student observing very quickly the significant age differences in patients the same age who smoke versus those who didn't. It just struck me. Over 30 years, seeing the suffering and tragedy associated with this drug, I have been astounded - in fact the medical profession hasn't been clearer or stronger in its advocacy, thought, action and leadership around public policy in this space. It is a terrible drug that does terrible harm. I do not need to sell any of you on that matter. When it becomes to industry that sell or manufacture, there is no respect for me for that behaviour, and I am sure once again I don't need to persuade you of that moral compass issue that I raise with you.

What we are looking at here is a population effect. We are trying to use the principles of public health through legislation and regulation that we know work. We do know, as has been suggested, that if we go in really hard and say, 'We're going to prohibit this drug', I think we have some lessons of history through alcohol, as has been mentioned. But if you use the principles of public health - and we have heard the examples in Formosa. I am not suggesting the Formosa model is the one where - it is different, but populations do respond to changing social norms. Very clearly, the tobacco industry shapes and has shaped and continues to try to shape, social norms. As does some other industries that do great harm. You would expect me to mention the alcohol industry. I am concerned that we use the principles of -

Mr MULDER - Like we could talk about the sugar industry.

Dr REYNOLDS - We could, Tony. Food, as we know, causes obesity and inactivity now parallels to smoking as the major preventable cause of illness and premature mortality in our country. But what do we do about it? We have knowledge but we are not applying that knowledge. We also tend to engage in faulty thinking, faulty analysis. In my field in addiction, part of the core part of the treatment is around cognitive behavioural therapy where we identify unhelpful and negative styles and content of thinking and restructure that thinking. We talk about de-catastrophising.

I hear some concerns here that this will not work because - it will not be perfect but that is the nature of any regulation. Indeed, your roles as legislators is just that. You give direction to how civil society in this state and beyond behave so we minimise the harm to ourselves and no other.

Our health budget in Tasmania is burgeoning and getting out of control in the sense that we can't afford the health harms. No man is an island unto himself, so even if I take John Stuart Mill's principle that he has espoused, it is not possible to behave in a way that harms one's self that doesn't affect others. As a doctor I see this every day. I see the suffering in the families and loved ones of people who smoke, but it costs our health care system enormously. We simply cannot afford to keep doing nothing or not enough. This is the next breakthrough in public health in our state and then beyond in our nation and
internationally, so I would encourage you to have the courage of your convictions and give this very serious consideration. I ask you to support it at the end of the day.

Mr GAFFNEY - Professor Berrick, if the cornerstone of this addictive element is perhaps the younger the person the more addictive the nicotine or whatever is to the person, so physiologically, sociologically and emotionally - as we have heard today a 32-year-old is less likely to take up an addictive substance because they have that maturity - surely another way of looking at this would be to ban smoking until the age of 25? We lifted the age from 16 to 18 and that was still not far enough because the 16, 17 and 18-year-old becomes addicted and we have that 30 to 45-year-old person still smoking later on.

Would it not be easier to just lift the ban to 25 and at the end of that maturation, if someone wants to smoke, or imbibe in a lot of alcohol, or some other type of drug, we have got them through the years where their behaviour patterns have reached a stage where they adult enough to make those decisions from a physiological base?

Prof. BERRICK - That is an interesting point. The big problem with having any underage law, no matter what you make the age - 25, 35, 45 - is you still have this faulty logic that says there is a birthday which you reach beyond which this is no longer harmful or unacceptable, that somehow you have some magical body transformation taking place. I think that weakens the whole signal when you have that kind of confused logic.

Mr MULDER - I had the same issue Mike did. My suggestion was 27. There are two compelling pieces of evidence I have heard this morning. One is that the take-up occurs two years before the so-called legal date. So it becomes a challenging thing. That is also in the context of the maturity of the person which is that bit about if you can get them to 25 you are clean. But if you put those two pieces of compelling evidence together, what you are saying is if you ban it - I would suggest 27, so you get them to at least 25 because they are outside those immaturity, peer-pressure regimes that lead teenagers to take the smoking up. I think it is a pretty valid point about lifting the age to the age where people are mature enough to make a decision without peer pressure. The idea that at 25 I am just as susceptible as I was at 16 to peer pressure is countered by the argument that most people who get through 20s and 30s without taking up cigarettes don't smoke.

Prof. BERRICK - These are valid points if you are designing laws completely in the abstract. If you are designing laws to say, 'Here's the law', someone out there is going to enforce it and make sure that everyone obeys it and everything is hunky-dory. In fact, if you want laws to be obeyed, if you want them to be successful, they have to be laws that change the social norms. One of the ways they change the social norms is because people see the logic in them and people understand and make sense of them. You take an age like 25 or 27 and they are going to say, 'Why that age, I don't understand?'.

Mr MULDER - Because the evidence points to the fact that when they get to that age they won't take it up.

Prof. WALTERS - If you trap a lot of people who are addicted to nicotine within that and they are not yet ready to give it up, then it will encourage all sorts of other goings-on - parallel imports, and somehow rorting the whole system which will undermine the law. It will undermine this confidence the community has that we are doing sensible things gradually. This is what we are trying to do.
Prof. BERRICK - Kathryn, you can correct me if I am wrong, but doesn't this law actually have provision for review?

Ms BARNSY - I didn't want to interrupt but we put in the legislation a provision for a review in 2021 and in 2025. In 2025 - 10 years from now - we can look at what has happened because there will be a lot of things that would have happened. There will be new research, there might be new drugs that will help people quit. There could be all sorts of things that have happened by then, and we will know whether it is working. If it is not working it might need some tightening up. There might be some legal problems. The tobacco industry might say, 'We've found a loophole in this - page 5, paragraph 3'. That is why there is provision, and Ivan put these in deliberately so that all the issues you are talking about that, that there may be concerns about, can be looked at over the passage of time to see what happens.

In relation to plain packaging, when we introduced plain packaging we had some tiny evidence that it might have an effect on the uptake of smoking. We thought, 'This will work, we'll try it' and what happened? It actually reduced smoking rates and we weren't expecting that. People said it changed the taste of the tobacco when they got plain packaging. That was what smokers were reporting. When you introduce legislation like this there are unseen consequences and there are spinoffs and things that were even better than you thought. That is why there are these provisions. So there is the opportunity for it to come back to this House because the Legislative Council will have introduced this legislation and you will get a chance to have another go at it.

Mr MULDER - We are talking about - and I am pleased to say we are getting away from it, which was what my concern was with that big graph - that in the end we will have no smoking-related deaths because we are talking about legislation creating the perfect world and it's not going to happen that way. People will be smoking irrespective.

Ms FORREST - And kids will be exposed to secondary smoke.

Mr ARMSTRONG - Do you have any stats since they introduced the plain packaging and also the advertising of cigarettes of television was banned? Has there been a decrease in the percentage of people who now smoke compared to when these measures were introduced?

Mr WILKINSON - Can I add to that question? A number of years ago when smoking was banned in clubs and pubs I moved an amendment that it should be banned immediately and there was a furore, but it was passed in the end. At each stage how has it decreased the smoking uptake of individuals?

Dr STANTON - I have been directly involved for about 30 years in reducing tobacco use in Australia. Much of the information we are discussing is available in a very good source book, *Tobacco in Australia*, which comes out of the Cancer Council of Victoria. All the issues we have been dealing with, apart from tobacco-free generation, are dealing with demand-based issues rather than supply-based issues. No place in the world has ever taken this supply-based issue as seriously as is now happening in Tasmania. For me, that is a very important strategy.
The reason I believe this proposed amendment of the Public Health Act is appropriate is that, while the tobacco industry is a licit industry, it has an illegitimate product, which is anachronistic in terms of time. If you were trying to introduce it today, there would be product recall immediately because it would not be seen to be legitimate to sell a product that kills two-thirds of its users, losing 10 years of their life. In Tasmania that is about 500 deaths a year.

Coming back to the issue of what the influences have been, I think you can see at every stage when we introduced a ban on tobacco advertising in 1990, where I was directly involved, there was a decrease in smoking gradually over time. The plain packaging introduction has been extremely effective, even though the tobacco industry has tried to deny the validity of it by false information through the media that there was more distribution. There weren't more sales. There was something like a 6 per cent reduction in sales over the period since the introduction of plain packaging. They are doing the same type of thing right now in England and Ireland because they are talking about introducing plain packaging as well. That information is available and I would be happy to provide it if you would like some further detail on the impact of particular measures over time that have been introduced within Australia.

Mr ARMSTRONG - It would be good if we could have that information.

Mr WILKINSON - Does that include lifting the age from 14 to 16 and the supply and inability to sell to people under age? It would be interesting to get an idea as to the measures - and I am all for people not smoking - that have been undertaken with that aim in mind and how it has helped.

Ms BARNESLEY - I have a graph that shows that. I mapped what happened when. Sometimes two things happen at once - for example, you have a price increase at the federal level and at the same time we might have banned smoking last year. I have a graph that will show you that.

CHAIR - Can you provide that graph?

Ms BARNESLEY - I can send it to you.

Mr ARMSTRONG - That graph - you were saying you have two things happen at once, does it separate -

Ms BARNESLEY - No, you can't always say -

Mr MULDER - Cause and effect isn't quite that easy on social issues.

Ms BARNESLEY - We do know that price is the most important thing and the Commonwealth Government controls that. Price effect reduces uptake.

Mr VALENTINE - I want to make it quite clear that anything we can do to stop tobacco companies' insidious manipulation of the community is welcome to me. But it is what is acceptable to the community at the end of the day. I am concerned that this legislation is right. If you don't get it right this time, then you are probably shooting your chances for the next decade.
I have some concerns. Marijuana is totally banned. It hasn't stopped people smoking it, everybody smokes the stuff.

Mr MULDER - Rob, some of us don't.  

Laughter.

Mr VALENTINE - I don't either. All the kids do. It is banned but is available at every major rave or wherever you go. It is banned but people still smoke it. So my first question is, why should this work? The second question: the insidiousness of e-cigarettes. This legislation doesn't seem to deal with e-cigarettes. It talks about tobacco products but it doesn't talk about nicotine.

Ms BARNESLEY – E-cigarettes are illegal in Australia, they are banned.

Mr VALENTINE - Are they?

Ms BARNESLEY - Yes.

Dr RANSLEY - With nicotine, the nicotine themselves.

Ms BARNESLEY - And the ones that are sold in Tasmania as supposedly non-nicotine cigarettes, the public Health department has analysed them and some of them have nicotine in them - they are illegal.

Mr VALENTINE - You see them advertised, Tassie Vapes. I saw it advertised on a van sitting in a primary school ground for three months. It is out there. People are selling the products. 'No nicotine in the stuff we sell'. They get the capsules from somewhere else and they use them. I am just wondering how you handle that in this legislation if it's needed. If you are telling me it's not, that's something I have to look at. The real question is with something that is banned, like marijuana, it doesn't stop people smoking it, and that is the issue for me.

I am wondering how this legislation is going to work. It is an ideal. I understand the ideal, I appreciate the impetus, I am with you on that, but it is just whether the legislation will actually work.

CHAIR - Rob, it is a good point that you raise but when you look at the laws right across the whole spectrum of laws, 99 per cent of the people obey laws. It is only a very small percentage that don't. If you look at driving, for instance, the law says you can't drive unless you have a licence. But we know that a lot of unlicensed people drive. It is the same as random breath testing. You can't drive a vehicle if you are exceeding 0.05, but we know very well that a lot of people still drive cars while they are exceeding 0.05. So there will still be infringements, they will still occur.

The point I make is that most people, reasonably thinking people, are more compliable of the laws. This is simply there to make it more difficult to get. The marijuana point is a good one. There are a lot of people smoking marijuana and I think in time there may be some changes there.
Mr VALENTINE - But how do you stop the tobacco companies supplying the black market?

CHAIR - The black market is an interesting one and others will address this. How will a black market ever develop when the substance will still be legal? Why would a person want to go underground to access a product that they will be able to access legally anyway?

Ms FORREST - From their mates.

CHAIR - From their mates, or to get their parents to buy them, or whatever.

Mr VALENTINE - I'm talking about the long term not just the first five years.

Ms BARNSLEY - So you are worried about 50 years' time.

Mr VALENTINE - Yes. We are putting this in place now, probably for good.

Mr MULDER - Your argument is completely shot down, Ivan, by the existence of chop-chop.

CHAIR - When putting this legislation together all those things were considered - and I must thank our parliamentary people who helped us - and brought all these issues out, saying we need to ensure we have legislation that people can, and will, accept and it will most likely have an impact. We thought about the black market and if it would develop a black market. You are going to have a small number of people turning 18 each year and in Tasmania I think that is probably about 400 to 500 in a year, but then only a small percentage of those would smoke - probably 5 per cent. Over a long time, norms will change. We are talking about 80 years, I think, for it to be stamped out totally. That is an inordinate period of time.

Mr VALENTINE - The best ally is the social stigma.

CHAIR - There is no position available for a black market to develop and that is unreasonable to suggest that might happen. If you look at the whole way this has been set up, if you look at the legislation, it is designed to look at all those issues. There may well be amendments if people have their view on it and might want to put amendments forward.

Dr REYNOLDS - I want to comment on Tony's comment about chop-chop. It would be good to get what information you have on that, Tony, because our information is that it is not an issue. Rob has mentioned the fact that the industry is well-known to have fed the black market internationally. That is scurrilous behaviour from a doctor's perspective, as you would expect me to observe, but I think we come back to the point that Jon made. This is a behaviour that when people get to their 20s and beyond wish they hadn't taken up. It is very different to many other behaviours we might seek to regulate in this way. It is a population effect we are looking for. Nothing is perfect, as you are all identifying, but over time you get very substantial reductions.
You are right, Rob, legal status is not of itself necessarily for other drugs sufficient in itself if other forces come into play. It is the legal drugs that I see every day that cause the most harm - alcohol, tobacco and prescription drugs. We doctors have to get our act together in a whole range of ways around what we prescribe when and how. There are other factors that we need to deal with in that broader equation.

CHAIR - Imperial Tobacco raised with me that it would create a black market and I put to them the position that I have espoused here today. They have now gone away from the discussion they have had with me and what British American Tobacco now is focusing on is that it will be too hard to police and hard for retailers to manage. They have now gone on that tack, so it would seem they are probably are not all that enthused with the black market now declining.

If you look at their two areas of policing, policing won't change. There will be no more requirement for policing other than there currently is about the controlled buys for under 18s. There will be no more impost on policing of this by the Health department, Tasmania Police or anyone else. It will be much easier for retailers to manage because all they have to do is look at a birth certificate. If it says 2000 or beyond, they can't legally sell them tobacco products. So, it will be much easier for retailers to manage, and the policing doesn't change one iota.

Mr ARMSTRONG - In 20 years' time, or 10 years' time, people can get their mate to buy their cigarettes and there is going to be that age barrier later on in years. Don't you think the black market will then come into effect? An 18-year-old would have to get a 30-year-old or 40-year-old person, who is not smoking, to buy them cigarettes. Do you think then it is going to be harder for an 18-year-old to obtain cigarettes so they are going to go interstate or get someone to send them interstate?

Ms FORREST - Or go online.

CHAIR - They can go online with his legislation. That is not a problem. I am not certain why you would go online unless you can get a very cheap product that way.

Ms FORREST - There could be a whole new market set up. Is that the point you are making: that there could be a new market set up?

Ms BARNESLEY - But there has to be smokers to have a market and if you have declining smoking rates, which we have, and this increases the decline, then there is no market.

Mr ARMSTRONG - You say we have declining smokers now?

Ms BARNESLEY - Yes, it is declining. This will make it worse.

Mr MULDER - This is the point I having been trying to make a couple of times now. We talk about this data - it came in the context of the plain packaging, 'Yes, the smoking rates went down'. That's nice but we are not interested in smoking rates per se, we are interested in declining take-up rates.

Ms BARNESLEY - Yes, that's what this is about.
Mr MULDER - As you start throwing data, facts and figures around, if you focus on what is effective in dissuading people from taking up rather than increasing the price and all those other bits and pieces because it is too late then, they are hooked, I would like to know whether the take-up rate is declining, at what rate the take-up rate is declining, and what particular measures in the past had an impact on the take-up rate so that we can better inform ourselves as to whether we think this is likely to increase the decline - if that is not an oxymoron - of the take-up of cigarettes.

All these other measures, like prohibition and stuff like that, is about targeting. I commend Ivan for bringing this forward, it is really interesting debate to have because it is about targeting the starting and not the continuing. All our efforts in the past have been to say, 'Quit smoking'. Isn't it easier if you never took it up in the first place? If we can get that data through and use that as a comparison then that gives us a better judgment as to whether we think it is likely to work.

CHAIR - It is a good, strong point and captures what Jim was on about and the graph that Kathryn is going to provide us.

Ms BARNSLEY - One more thing I might add in relation to enforcement and compliance. Tasmania has a 98 per cent compliance rate with retailers in not selling to minors. When we first started it was 20 per cent and it is now up to 98 per cent compliance.

Mr GAFFNEY - Now that you have brought up the retailers - and I am suggesting that the groups around you have had input into the legislation - I want to ask a question about 67J(1) where it says 'A person must not sell or offer to sell'. I gather that is an individual who doesn't have a business retailing. Section 2 is about the retailing side of it. Kathy, you mentioned 98 per cent which is significantly good for Tasmania but the penalty units are the same for a person who is not making a business, has no business overture in this, and I wonder if that is a legitimate place for the legislation.

I would have thought that, for the person who is selling, the penalty units would have been higher because they are making a profit out of it. It also surprised me a little that in 67J(2) you had the gift of a tobacco product but in (1) you didn't use the same term. I think that should be included so mum or dad can't say, 'Here son, for your 17th birthday, is a carton of cigarettes'.

I am interested from a legislation point of view. This may not be the forum to answer that, it might be closer to when it comes to the table, but they would be a couple of questions I would ask. Why are (1) and (2) worded differently; and why are the penalties in (1) and (2) not different? I think you said you want the seller to have the responsibility, not the mum and dad giver. It may not be here, but I will be asking those questions when this comes to the table, about the consideration of those things.

CHAIR - The OPD helped us put a lot of this together and it is their views on things as well. There was a lot of discussion about this. It was always going to be designed so it would not criminalise the mums and dads and the other people who give the cigarettes to their children or go into a retailer and buy the product for them. We are very careful not to criminalise those people. That is not what it is about and it would be highly unlikely to get through. We took a lot of advice on that over a long period of time.
Mike, the point you now raise about those differences is a good point and we will look at it.

Ms BARNSLEY - Those provisions are in the existing legislation in relation to children. We agonised over whether to do this for people once they got to 18, about whether sibling supply or family supply should be criminalised. First of all we were told by the Department of Public Health that the legislation had been in effect for 15 years and there had been no prosecutions, so it wasn't happening. Second, people said to us, 'I have a 20-year-old son and an 18-year-old, what happens if…?' We talked about this and decided not to do it. The fine penalties are similar to what is in the existing legislation, so we can fiddle about with penalties, I'm sure.

Mr GAFFNEY - If the aim is to go to the seller, I would have thought the penalties for the selling would have been higher than the person who is not getting a profit from what they are doing in relative parity to the offence, I suppose.

CHAIR - It is a very good point and we will have more discussion about that.

Mr GAFFNEY - And the word 'gift' in (2) compared to 'gift' in (1). Why has OPC changed, whether there is any reason for them to not -

Ms BARNSLEY - The first one is for anyone; the second one only applies to the holder of a tobacco licence.

Mr GAFFNEY - I would be surprised if a holder of a tobacco licence would gift anything to anyone.

CHAIR - Maybe at shows and other things. I have seen them giving the product away as a marketing ploy. That was designed for that very purpose, to try to stop that.

Mr MULDER - We just heard that the compliance with selling to underagers is running at approximately 98 per cent and that there is a continuing decline in the take-up rate, so without this legislation when will we achieve a smoke-free generation?

Ms BARNSLEY - Possibly never, because you get fluctuations. When governments stop spending money, for example on mass media campaigns, smoking rates go up again. We don't know.

Dr STANTON - The Jim Bacon effect is quite short lived and it needs to come back again and again in the media. Some countries are talking about aiming at getting a 4 per cent level of smoking as achieving a smoke-free position.

Mr MULDER - I didn't mean an absolute - I meant a minimum level where we cannot get any lower.

Prof. WALTERS - We also have to realise in Tasmania we have a particular problem. We are way behind in public health.

Ms FORREST - Or way ahead.
Prof. WALTERS - [inaudible]. We are par excellence at the place where we need to step up, and that is in spite of government doing a lot of stuff here. We need to move and we particularly need to move, as you have been hinting at, at the nexus between the tobacco industry and young people. It is their business model; they have to keep addicting more and more people in the teen years and young 20s because otherwise they would go broke. That is the nexus that no-one has yet attacked.

Assoc. Prof. BEGGS - The thing to remember also is the highest rates of smoking are amongst the socially disadvantaged. The more educated people are not the ones you would be wanting to target. You want to help the people who are already disadvantaged and where the impact is going to be greatest. I think the rate of decline in that group is much lower so there needs to be some help in helping them not take up smoking.

Mr MULDER - I would even suggest it has plateaued more than it has for the last 20 years in that group. That is the sort of data that would be interesting to break down.

Prof. WALTERS - One thing I was asked to particularly address is how popular this would be amongst the medical profession, and I can tell you it would be hugely popular. We have had enough of the suffering that has been happening for the last 50 or 60 years from this drug. We want dramatic things to happen, we want them to happen as soon as possible and there would be huge support for it, as there is in the general community. There is unanimous support from the medical profession. We have letters from everyone saying that.

Ms FORREST - I would be surprised if I could find a doctor who would disagree with you, but what is the appetite amongst the medical profession to look at banning it as opposed to just banning the sale of it?

Prof. WALTERS - It is about what can be achieved. If this could be achieved it would be a huge step.

Ms FORREST - I accept that, but is there a view on that?

Dr COOLING - We are just about to do a study in the north-west of the state with Nick [inaudible] looking at attitudes of doctors regarding the tobacco-free generation but also whether they are supportive of banning smoking, and a few other issues as well. A lot of that data has not been collected about doctors. We have a lot of learned societies that are against it but we have not done surveys of Tasmanian doctors yet, but we are about to in the next few weeks.

Ms FORREST - It might seem irrelevant but to me it is relevant for a number of reasons, what is the percentage of doctors who smoke?

Dr COOLING - Not many now.

Prof. NELSON - It is less than 5 per cent.

Dr. JULIA WALTERS - Doctors universally support this and are desperate to see less smoking but they are not legislators. They just wring their hands and hang their heads and get on with their work. They advise individuals and talk to patients who smoke and
who universally would say, 'I don't want my children to smoke', and they are in the position of feeling that they are bad role models by smoking and they would like public health measures that help their children not take it up.

**Ms FORREST** - But in terms of community acceptance and getting legislation supported in this place, we as legislators look to the support from bodies such as those that have an understanding and a direct influence and if they are silent on it -

**Dr JULIA WALTERS** - It's not good.

**Ms FORREST** - No.

**Dr JULIA WALTERS** - We have approached and asked people to put it in writing and we are getting the returns and we are sending them off.

**CHAIR** - I should have identified the positions of the speakers. Julia is the coordinator of Australian Satellite of the Cochrane Airways Groups, Senior Research Fellow Breathe well CRE, School of Medicine, UTAS. Nick Cooling is the Director of Electives and Internationalisation and Senior Lecturer in Medical Practice at the School of Medicine, UTAS.

**Dr STANTON** - I make one comment because all the issues related to addictions have been covered at various points in the discussion today. In the development of the WHO Framework Convention on Tobacco Control, the Director-General is Dr Gro Harlem Brundtland. She said on one occasion in Berlin, 'Cigarettes are one of the most highly engineered products available. You have no idea of the technology that has gone into the production of cigarettes today.' What this begins to do, in the development of the Framework Convention on Tobacco Control, which has now been ratified by 178 countries in the world and it is at floor level rather than the ceiling, we are trying to raise this up towards the ceiling a little more in Tasmania. That is what this legislation is really about because it is dealing with the supply side issue. That has rarely been touched in any of the countries. The retailers and marketers of tobacco have included in the definition of the tobacco industry within the WHO Framework Convention on Tobacco Control and that is a very important understanding because it is an anachronism of time that has enabled this to carry on for such a long period. I really appreciated the questions you have put to us today.

**CHAIR** - We all know Harley's credentials and background but I will go through them again. Doctorate in Public Health, Masters in Public Health, former scientist with the World Health Organisation, and Past President of the Asia Pacific Association for the Control of Tobacco. He comes as a well credentialed person in this area. Thank you, Harley, for that.

I will go back to Sean if there is anything you want to add. Sean is a Staff Specialist Paediatrics, Director of Paediatric Education, Royal Hobart Hospital, and Clinical Associate Professor, School of Medicine UTAS.

**Assoc Prof BEGGS** - We know there are very proven and emerging effects on kids in regard to respiratory illnesses particularly. The other thing that has emerged recently is that tobacco control has been shown to have a big impact on those things. There has been an
analysis done across tobacco control interventions across a number of countries that have shown decreased rates of premature births and decreased the rate of small for gestational age babies, which all have their own complications going through life in terms of cardiovascular diseases and other things. As a paediatrician I see a lot kids coming in recurrently to hospital. One of the biggest things you could do to prevent those admissions would be to get their families not to smoke. I am sure most of you here are already convinced of those.

CHAIR - Thank you, Sean.

Dr JULIA WALTERS - Quickly to add that you will get double benefit because helping the young people as they turn 18, they are the ones who are moving into the child bearing age. If they do not take up smoking, as we would hope, from this measure, then the children they carry will not be exposed to the effects of smoking. You help the generation of smokers but you help the next generation of children as well which means that two generations benefit fairly quickly.

CHAIR - Thanks Julia.

Dr COOLING - Like Julia was saying, doctors can only make impacts with small numbers of people but this is one opportunity in a lifetime to some extent. This legislation may not come in for a while to make a huge change to Tasmania's health in one piece of legislation. Doctors and other health professionals can plug away at it and help people quit and all the rest of it but you have the opportunity and the power in one piece of legislation to make a magnificent change in health promotion in Tasmania. That is the power you have - much more than us as doctors - to change a particular addiction than we have plugging away individually or in small groups.

Prof. NELSON - Haydn made the point that we are the end users of the legislation that you do. There is a limited effect we can have on our patients and we get sick of treating patients again and again for smoking-related diseases and trying to convince our adolescents not to take it up.

You were talking about the decline in the uptake of smoking at the time. It is relatively slow and when I speak to my international colleagues they say, 'Whatever happened to Australia?' We led the world in the 1970s and 1980s in legislation that had profound effects on public health and improvement in public health. We sat on our hands for about 20 years and it is only recently that we have started going again, and things like the increase in the federal excise and the plain packet packaging has got Australia back into the international headlines when it comes to that. We are seeing unforeseen circumstances with plain packet packaging. We expected it only to affect uptake. It actually put people off who are current smokers and we were quite surprised. Probably the tobacco industry knew about it and that's why they went to all the legal necessities.

You, as legislators can be greater health workers than any of us sitting on the other side of this table who are doctors, and you should recognise that. As was pointed out, this is a great promotion. When I travel internationally - I was in Japan - they were talking about Tasmania. This is all part of our international reputation if we adopt this sort of legislation. Clean, green and healthy Tasmania - who wouldn't want to go there?
CHAIR - Thank you very much, professor, we appreciate that.

Prof. CROCOMBE - I am with oral health, which hasn't been mentioned. About $7 billion is spent on the industry in Australia. People of lower socioeconomic status have the worst oral health in Tasmania. Tasmanians have the worst oral health in Australia. We know that smoking is directly related to oral cancer. Oral cancer has a low survival rate - about 40 per cent of up to five years, depending whereabouts in the mouth it is - and 30 per cent of all gum disease in Australia is directly correlated with smoking. So we would save a small fortune in oral health expenditure -

Ms FORREST - And premature birth.

Prof. CROCOMBE - Yes. That is right, oral health is linked to other aspects of health - premature birth, small birth weights, cardiac disease and diabetes.

CHAIR - Thank you. Any questions of any of the speakers.

Mr GAFFNEY - Kathryn, it was mentioned earlier on and I hope I didn't miss it, but you were going to talk about the convention with cigarette companies being able to approach members of the public and how we have been lobbied. Could you spend a couple of minutes and explain that because it is a little different to other groups that may lobby us with other issues.

Ms BARNSLEY - The tobacco industry is different to other industries. It is a rogue industry; it is recognised by the World Health Organisation as such. Included in the Framework Convention on Tobacco Control, which has been ratified by all these countries, is that there is a provision - article 5.3 - which talks about interaction with the tobacco industry. There are all these provisions that say what you should do when you are dealing with the tobacco industry and how it should be managed by officials, legislators and so on - anyone in the tobacco industry. Because the tobacco industry has lied - and I have some of the things they have done. For example, they have been found guilty of racketeering in the United States. There is a 1700 page decision from Judge Kessler about that, which I am not going to give you.

Mr VALENTINE - Are you talking about a black market?

Ms BARNSLEY - Racketeering. The whole racketeering was about everything. It was about telling lies, about marketing to children, it was smuggling.

Mr MULDER - It is about corrupt organisations.

Ms BARNSLEY - Yes, it is about corruption. They were found guilty and that was heard on appeal and it was confirmed.

In Australia, the ACCC has found tobacco companies guilty of misleading and deceptive conduct. They have been engaged in smuggling in Canada. They were fined $200 million - Imperial Tobacco, British American Tobacco, and Philip Morris were involved.

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CHAIR - In addition to that, in the Mercury today you will find on page 22 on the left hand side where another group of people took on Philip Morris and another couple of big tobacco companies and they were successful in being awarded quite a lot of money in relation to tobacco issues and problems. It is just a very small piece in the Mercury page 22.

Ms BARNSLEY - They have also been found guilty of smuggling in Asia. I have papers on all these if you want to read them all.

In the United Kingdom, the Public Accounts Committee berated the tobacco industry for the way they were engaged in smuggling. So when Imperial Tobacco came here and started to talk about smuggling, we thought hello, you have been doing this overseas and so suddenly they stopped talking about smuggling. They denied addictiveness.

In Tasmania, Jim mentioned this Council has done a lot on tobacco and it has pushed government to do things and made provisions stronger because some of the legislation that came up from the other place was not very good and you fixed it. The Legislative Council has a very strong record on tobacco control. The tobacco industry, even in Tasmania, challenged the provisions of the Public Health Act legally, and we had to come back into this Chamber and amend the Public Health Act. It is another reason for having these provisions for review so you can go back and look at it and see if there is a problem. With public health legislation in relation to tobacco control you have to employ your own lawyers because the tobacco industry come back at you all the time and you are always having to fix it. You will never get perfect tobacco legislation because they will have 196 lawyers working on it and we will have one.

Mr GAFFNEY - If you could elaborate on us meeting representatives, where that falls, because it is not illegal but it is part of the convention. I want to make that clear because -

Ms BARNSLEY - It is not illegal for you to meet with the tobacco industry, no, but it would be much better if you could be transparent about it, if you recorded it, if you had a witness with you -

Ms FORREST - I think we should have briefing with them. Ivan needs to organise a briefing with them as the leader of this bill so it is in this sort of format and there is nothing hidden.

Ms BARNSLEY - That is right.

Mr MULDER - My approach to these sorts of things and with a lot of briefings is that we have in the Legislative Council a very good practice process which you are occupying right now where people come in, brief us, where we can ask questions, and all of us can know what the other people's questions are, the answers are let alone our own, and there is no disputing about what has been said particularly with the tobacco industry. I have put my foot down quite firmly that there will be no one-to-one meetings because of this process.

Ms BARNSLEY - They will try to do that.
Mr GAFFNEY - To be fair, I was never approached for a one-to-one. We were invited to attend a luncheon with committee members. So it was never - I think, to be fair to the industry, I did not see it as a one-to-one.

Mr VALENTINE - I was approached as a one-to-one. In fact I had a one-to-one.

Mr ARMSTRONG - Yes, so did I.

Mr GAFFNEY - I refused that.

CHAIR - I am prepared to take that up. I was conscious of the World Health Organisation protocols and the fact Australia is a signatory to that. I have been very careful not to do anything contrary to what we are a signatory to. I was taking some advice on that because it was originally raised that they would want to talk to us today following on from this briefing. I said I would not be a part of that until I had a better appreciation and understanding of where we stand on that. So if it is clear that can occur, and I will talk to Kath and others, then I will facilitate that. I need to be fair.

Ms BARNESLEY - There are two provisions in the Public Health Act which prevent the tobacco industry from telling lies about legislation anywhere. If they have a one-to-one off-the-record meeting with you, they can say things to you which are unlawful. But if they say that in public, then we can prosecute. If they say something about the law somewhere else - if they come into the room and say, 'In Puerto Rico, they allow you to have this and this', that is the problem. It is the lack of transparency. If you can be transparent about it, you can deal with the issue and we can prosecute them if they breach it.

Ms FORREST - In this place we pride ourselves on listening to both sides of any debate, so I believe they should be invited. They should come and brief us and have it recorded. It probably needs approval from the Clerk again, but then it is there and people can make their own assessment.

CHAIR - I will take that up with the President and take further advice on that. If members are wanting that, I need to be a part of that because of my position here.

Mr VALENTINE - I come back to this issue of nicotine. You say these cigarettes are banned, so wouldn't it be sensible for this legislation to ban the sale of products containing nicotine? You know how people duck and weave around things - nicotine is the problem, isn't it?

Dr STANTON - Not entirely. The lethal dose of nicotine is between 40 to 60 milligrams - the amount in about 4 to 6 cigarettes. One of the major problems is the delivery method. It goes in within 10 or 19 seconds. It is delivered on a large area and goes to the brain and the brain, after one, two, three cigarettes, says, 'I want more of this'. It is not packets; it is just two or three cigarettes. It is often the first cigarette that causes this. So it is a combination of both nicotine and the delivery method. It is a dirty delivery method.
Mr VALENTINE - Would it be appropriate to say 'cigarettes and other products containing nicotine'? We don't want to be coming back again dealing with this in 10 minutes time because someone has found a loophole.

Ms BARNESLEY - We did discuss this in a possible amendment.

CHAIR - We didn't want to compromise this bill by introducing the other facets of it. I have also been asked to introduce legislation that has been talked about on the mainland in relation to cigarette butts, about cigarette butts being handed in - if you want a packet of cigarettes, you have to hand in 20 butts. I have corresponded with those people and said I don't want to compromise this legislation by bringing in other issues.

Mr VALENTINE - The other point is the unintended consequences. Presumably when you have been putting this together you have tried to consider what the unintended consequences might be. I have been made aware that in the US with regard to marijuana that there is a movement on the net where on 20 April every year students of colleges get together and all smoke marijuana because it is something that is illegal. Is there a possibility we get unintended consequences arising from this that works against what you are trying to achieve? That is what I am a bit concerned about, that it becomes an illegal thing almost, a demonstration of 'you might make it illegal but we're going to make it happen'.

Ms FORREST - That is what I was saying earlier.

CHAIR - In the original legislation we put together, after looking at it closer, I and others identified there were certainly some unintended consequences of that original legislation. One was criminalising the person walking in off the street, the mum or dad if they went in to buy it to give to their child - somebody who was over 18. It would criminalise them, and we don't want that. Is anyone able to answer Rob's point?

Ms BARNESLEY - An unintended consequence is an unintended consequence and we don't know what will happen. That is why we have reviewed it.

Dr REYNOLDS - Once again, it is an important question you have raised. I have said before that as a legislative theory you are alone, it looks like, Rob. A legal status isn't the only factor that will shape this. If we look, and Ivan has made the point too, that by and large the community is law abiding and wants to. College students do these things and, look, a lot of problems with alcohol.

Mr VALENTINE - It would be just white noise, you think?

Dr REYNOLDS - I am not saying it would not be a concern and a problem, but I think we have to stand back from it once again. I keep making the comment about a population level effect. We have also said, though, that we want to review this in five and 10 years and see what needs to be adjusted. Some of the comments from Ruth and others, in some ways I hear them saying they would like to go further in some ways, but I think we temper it in a way that we think is manageable and then see how we go.

Mr VALENTINE - If you went that far, my personal opinion is it would not get through.
Dr REYNOLDS - That was our confusion

A witness - But maybe in 10 years' time it would.

Mr VALENTINE – Yes, because I think the social stigma stuff is going to take over.

Dr REYNOLDS - That's right, Rob, I think you're right.

Prof. WALTERS - I think one of the things, which does demarcate marijuana, say, in the United States, particularly, is that this move is extremely popular with the general population, and with patients and smokers themselves. Whereas there is a sort of underlying popularity -

Mr VALENTINE - You see that side coming through. The general populace won't see that. You see that coming through, and I congratulate for arguing against your own jobs. I know -

Prof. WALTERS - There are plenty of other things to do.

Mr VALENTINE - You are people who are surgeons in this space. You are obviously dedicated to public health and I appreciate that.

The going it alone issue is the other question, the last question I have. This is just little old Tasmania, so is this a principle thing for you? That you know very well it's not going to work as effectively right upfront because people can go to Melbourne often and can buy their products over there and bring it back - that it is just hopefully a snowball that builds, is that what it is?

Prof. WALTERS - Yes.

Dr STANTON - The other thing, Rob, I would like to put on the record, the interest that Professor Berrick and others of us at this table have had in doing this without any support from any organisation. We have no funding, and it has all been done in a volunteer role because we believe in the cause.

Prof BERRICK - It's an interesting argument because you have all the arguments and evidence on one side and all the money is on the other side.

CHAIR - It has around-the-world interest in it, Rob, and I have been dealing with Ireland, for instance, who have been in contact with me in relation to our position here and have asked for a copy of all the information we have, and the bill that has all been provided for them. They are looking seriously at it. Ontario in Canada has been to me, England, quite obviously, people from Scotland have been in contact as well. It just goes on and on.

Mr VALENTINE - The Government's appetite here?

CHAIR - The Government's appetite here?

Mr VALENTINE - Yes.
CHAIR - As you probably saw in the paper today, looking at the Greens first of all, they are now having second thoughts about it and they are looking at the legislation now. They believe it has merit.

Mr VALENTINE - There was a ban in the first place.

CHAIR - That is right, first of all they didn't really give it support because I don't think they - to be fair to them - at that stage the bill had not been done and very clearly I guess mixed messages were coming out. Now that the bill has been done, and they know what it is and have heard more of it, I think they are more comfortable with it. There are other members in the other place who have spoken to me. They have some issues and they have raised those. They have some concerns and they have raised those, but there seems to be a warming to it.

Prof NELSON - Tasmania is an ideal state to be the first in Australia to do it because we don't have those broader issues. We do not have an Albury-Wodonga or Tweed Heads-Gold Coast circumstance. You are right, you can get on a plane, so you are going to spend $240 return airfare for a packet of cigarettes.

Mr VALENTINE - Or one of the Spirits and bring back a boot load.

Prof NELSON - It adds cost and cost is a big disincentive to young people smoking.

CHAIR - Other places looking at a copy of my legislation - I think they are putting it together and I have not followed up on this - are the Falkland Islands, a small place. This is how far it is reaching.

Mr VALENTINE - Have you been to the Argentinean Government?

Laughter.

Ms BARNSLEY - Tasmania has done things first a lot in tobacco.

Mr VALENTINE - I don't doubt the spirit across here and the willingness and the idea. It is just when I look at legislation I like to make sure that the unintended consequences are not going to basically bring down in a screaming heap.

CHAIR – Thanks, Rob. I thank very much all of the people we have here today who have given their extremely valuable time to be a part of this briefing. I cannot express that strongly enough to all of you for making the time available.

Particularly to Professor Berrick who has come from Singapore with the position of wanting to talk to the Legislative Council personnel and to other members as well in this state, other people and the Lower House members as well. Professor Berrick, we extend to you our sincere appreciation for you being able to be here today. We know that this briefing was brought forward because of the situation with the conferences that take place, World Conference on Tobacco. Professor Berrick and some others will be presenting there on that stage. That is wonderful. We have a student in Launceston from
the university who is also engaging in that and will be presenting and will be speaking with me on that, hopefully shortly.

Mrs ARMITAGE - I was listening and I did not think it was relevant to make any comment. I do not need comment. I was just listening to the answers so it was good.

CHAIR - We thank you too as well for being there because I know you had other appointments as well. Thank you very much for making the time available to be on the phone. A transcript will be done of this. We thank Pat for that and her involvement in this. We will get that out to you as soon as is possible. If any other member wants that or persons here today presenting would like that we would provide a copy of that to you as well.

Thank you very much.

Briefing concluded.