

TOBACCO PRODUCTS CONTROL AMENDMENT BILL 2017

Second Reading

Resumed from 14 August.

MR S.K. L'ESTRANGE (Churchlands) [7.01 pm]: I rise to speak on the Tobacco Products Control Amendment Bill 2017. It is an important bill that the opposition supports. Of course, the opposition, when it was last in government, introduced the bill to Parliament in 2016. The new government brought it back in 2017, and that is why we are here today. One of the main reasons that this amendment bill exists is because section 127 of the Tobacco Products Control Act 2006 requires a review of the operation and effectiveness of the act at specified intervals. That review was undertaken by the Department of Health during 2011 and included the release of a discussion paper for consultation with the public and stakeholders. In 2016, as I said, the previous government tabled in Parliament the Tobacco Products Control Amendment Bill 2016, which has now been brought forward by the new government as the Tobacco Products Control Amendment Bill 2017, in order to address some of those issues identified during that 2011 review. We support the bill because it is essentially a bill that we were keen to introduce, so we will not go into the consideration in detail stage today. We know that this bill has had some minor amendments made to it, but, in essence, it covers what the previous bill was supposed to cover. It was also introduced in the Legislative Council. I know that the Legislative Council spent a fair bit of time going through each of the clauses in the bill and nutting out any concerns members had, and that they made some slight amendments to the bill we are looking at today. Therefore, the opposition does not see any reason to go into the consideration in detail stage, given that we are comfortable with the clauses in the bill.

The bill continues our efforts to make smoking history. That is something that we, as members of Parliament, must always bear in mind. There is a very compelling reason to remain focused on this goal.

[Quorum formed.]

Mr S.K. L'ESTRANGE: Our effort to make smoking history is a very compelling reason to remain focused on continuing to address smoking in our society and to reducing the incidence of smoking. We know that smoking increases people's risk of cancer and that it is a leading cause of preventable death and disease in Australia. I would like to share with members some notes on this goal from the Cancer Council Western Australia. I want to read into *Hansard* a brochure put out by the Cancer Council WA. Under the heading "Smoking increases your risk of cancer", it states —

Tobacco smoke contains more than 7,000 chemicals, including 69 chemicals known to cause cancer (carcinogens). When you breathe in—or inhale—cigarette smoke, these chemicals enter your lungs and spread through your body. Most smokers are addicted to nicotine, one of the main chemicals in tobacco smoke.

Lung cancer was the first major disease to be linked to cigarette smoking in the 1950s and 1960s. Since that time, the list of diseases caused by smoking has grown to include many cancers in different parts of the body including cancer of the lung, mouth (oral cavity), throat (pharynx), oesophagus, stomach, bowel, liver, pancreas, nasal cavity and sinuses, voice box (larynx), cervix, ovary, bladder, kidney, ureter and bone marrow (myeloid leukaemia).

Tobacco smoking is the most common cause of cancer and is responsible for almost 1 in every 5 cancer deaths.

In 2014, about 12.5 per cent of Western Australian adults smoked and around five per cent of 12 to 17-year-olds smoked. Those figures are down where we want them to be, but we can still go further. But this was not always the case. In fact, in 1971, around 39 per cent of adults smoked. From the Cancer Council documentation I have read, we only started looking properly at the statistics on children aged 7 to 12 in 2010, when eight per cent smoked.

It has been a long and difficult journey to tackle smoking since 1971. I would like to step members through some of the key events to tackle smoking since 1971, because that is when the Australian Council on Smoking and Health—known as ACOSH in WA—was formed. Some of this time line information from the Australian Council on Smoking and Health makes for interesting reading. We know that in 1971, 39 per cent of adults smoked. That is when ACOSH was formed. One of the first events of any significance was in 1973 when the government implemented a ban on direct tobacco advertising on radio and television in stages through to 1976. In 1974, metropolitan trains, buses and ferries in Perth became smoke-free. In 1975, a federal law banned cigarette advertising on television and radio, and the state government required that all persons involved in the sale of tobacco products be licensed. Then, moving forward to 1982, the Metropolitan (Perth) Passenger Transport Trust Act 1957–1980 prohibited smoking in any vehicle on Transperth premises. In 1983, 34 per cent of Australian adults smoked, so smoking has dropped five per cent over that period of time—maybe these efforts were starting to have an effect.

In 1985, believe it or not, Western Australian libraries went smoke-free. It is hard to imagine that in 1985 a person could be reading a book in a library with people smoking at the table next to them. In 1986, smoking was prohibited on all domestic aircraft, phased out in all federal workplaces and Western Australia initiated an agreement with all health ministers to introduce strong health warnings. In 1987, stronger health warnings such as “Smoking causes lung cancer”, “Smoking causes heart disease”, “Smoking damages your lungs” and “Smoking reduces your fitness” were introduced on cigarette packets under the Tobacco (Warning Labels) Regulations 1987. In 1989, the Western Australian public service became a smoke-free workplace and the Australian government banned all cigarette advertising in print media. In 1989, 26 per cent of Western Australian adults smoked. Between 1971 and 1989, these efforts created a 10 per cent reduction in the number of Western Australian adults who smoked.

In 1990, the Tobacco Control Bill was passed in Western Australian Parliament and Healthway was established to replace tobacco sponsorship of sport and the arts. The fine for selling cigarettes to a person under 18 increased to \$5 000 and free samples of cigarettes and competitions involving cigarettes were banned. All billboard advertising of tobacco products was phased out. Interestingly, in 1991, Western Australian schools went smoke free. Some members may remember their teachers smoking in the classroom. I do not know.

Mr D.R. Michael: I had one who would come back with Tic Tacs after lunch.

Mr S.K. L'ESTRANGE: There you go!

In 1991, the *Prospector* to Kalgoorlie became smoke free and, at that point, 23.9 per cent of Western Australian adults were smoking, which was a 15 per cent reduction from 1971. In 1992, Western Australian taxis went smoke free and, in 1994, the Australian government banned tobacco sponsorship of sport and the arts and increased the minimum age to purchase cigarettes from 16 to 18 and 25 per cent of Western Australian adults smoked. In 1997, the federal government removed all remaining tobacco sponsorship, including sponsorship on international events, and the Western Australian government established a task force on passive smoking in public places. In 1999, the Western Australian government prohibited smoking in any public place that served food. Some members will remember that change happening. In 2000, Burswood Casino implemented smoke-free gaming areas. By 2004, the number of adults who smoked reduced to 22 per cent. In 2005, the Western Australian government introduced the Tobacco Products Control Bill and, in 2006, Western Australian hotels, nightclubs and clubs became smoke free. In the context of history, 2006 is not too long ago. In 2007, 19 per cent of Australian adults smoked, which was a 20 per cent reduction from 1971 when all this started. From 1 January 2008, all Western Australian Department of Health facilities became smoke free. It is hard to imagine being allowed to smoke in hospitals as recently as 2008. The Perth Royal Show went smoke free and several local governments implemented their own smoke-free policies. The message was clearly starting to get through. By 2009, smoking in cars carrying children was prohibited. All tobacco products had to be placed out of sight at point of sale in retail premises, patrolled beaches became smoke free, children's playgrounds became smoke free and all alfresco dining areas become smoke free, with the exception of up to 50 per cent of a hotel's alfresco area. It is interesting to go to those areas because we are so used to having everything smoke free and when you suddenly see somebody smoking in an alfresco area, you think, “What's going on here?”

In 2010, Perth Zoo went smoke free so the animals finally got a break! By 2010, the number of adults smoking was 14.9 per cent. That is also when the Australian Council on Smoking and Health first recorded statistics for kids and found that eight per cent of Western Australian kids between 12 and 17 years smoked. By 2012, all tobacco products in Australia were required to be sold in plain packaging and the Australian government banned tobacco advertising on the internet. In 2012, 13 per cent of Western Australian adults smoked.

In 2013, City of Perth pedestrian shopping malls went smoke free and, in 2014, the Western Australian Supreme Court decided that e-cigarettes resembled tobacco products and could not be sold in WA. In 2015, the federal government announced that the revised Tackling Indigenous Smoking program would receive a budget of \$116.8 million over three years and all TAFE campuses became smoke free. In 2016, the federal government announced four 12.5 per cent annual tax increases pushing the price of cigarettes to \$40 a pack by 2020. The Western Australian Supreme Court highlighted that products that resemble tobacco products, regardless of whether or not they contain nicotine, could not be sold in WA. The Western Australian Minister for Health advised of his intention to introduce the Tobacco Products Control Amendment Bill 2017 and here we are. I share that history with members because it is important that we put on the record the context with which we are addressing tobacco in Western Australia because it has been a fight. Since 1971, it has been a fight to make it clear to Australian and Western Australian citizens that smoking causes serious harm. Since 1971, all these collective efforts have got the public health of Western Australians to a better place compared with what it was in 1971 when it all started. The Tobacco Products Control Amendment Bill 2017 continues our collective efforts to make smoking history in WA.

I will briefly go through some of the key clauses in the bill. Clause 4 creates new section 18A, which prohibits people under 18 from selling tobacco products. In his second reading speech, the Minister for Health outlined the reason for this and we on this side of the house agree with the rationale for creating this new section. It is not reasonable for children to ask their own age group for proof of age before they sell them a tobacco product. It is

not fair to put kids under that type of pressure. Imagine what happens, particularly in an area in which everybody knows each other, when a 16-year-old who serves tobacco products is approached by their 16-year-old mate from school who says, "Come on, mate. Nobody's going to know". That type of pressure is unreasonable.

Mr R.H. Cook: Member, research shows that that is the most accessible way that underage people get access to cigarettes.

Mr S.K. L'ESTRANGE: That is right. The Department of Health also notes that younger sales staff are more likely to sell tobacco products to people under the age of 18. That closeness in age is a reason to sell them to underage people as well.

I move to clause 5, which creates new sections 21A and 21B. Proposed new section 21A prohibits the breakdown of packaging into groups of less than 20. If we are able to break cigarette packs down into smaller groups and wrap them up in paper and sell them across the counter, that defeats the purpose of all the efforts to make tobacco products expensive through a taxation regime and to make cigarettes financially out of reach for certain people, particularly kids. The bill bans the breakdown of packaging. Proposed section 21B prohibits fruit and confectionery flavoured cigarettes. That is interesting. Some people might think that I am talking about the old candy or lolly-type cigarette, but I am not. It is actually flavoured cigarettes. We know that candy cigarettes or lollies are already banned, and with good reason. I found some information in "Tobacco in Australia, Facts & Issues" which was produced by the group Tobacco in Australia. The article talks about products and packaging that is created to appeal to new users. It says —

Research from the US in the 1990s found that children who bought confectionery cigarettes were almost four times more likely to have tried real cigarettes.

It goes on to say —

More recent (2007) research from the US has shown that adults who had used confectionery cigarettes in childhood were about twice as likely to take up smoking as adults who did not have the lollies.

That is an interesting side note on the candy side of things. Moving on to the reason for proposed new section 21B, cigarettes with specific characterising flavours are also something that need to be understood. I came across an article called, "Flavoured tobacco products attract kids". It reads —

Tobacco companies market products in many kid-friendly flavors such as gummy bear, berry blend, chocolate, peach, cotton candy, strawberry, and grape, and more seem inevitable. "Candy-flavored" is, in fact, an appropriate way to describe these products since a recent chemical analysis has shown that the same flavor chemicals used in sweet-flavored cigars of various sizes and smokeless tobacco products are also used in popular candy and drink products such as LifeSavers, Jolly Ranchers, and Kool-Aid.

That goes to show that these flavours have a marketing impact. The same article reads —

Flavoured Products Appeal to Youth and Young Adults

Research shows that no matter what the tobacco product, flavors appeal to youth and young adults. ... data from the government's 2013–2014 Population Assessment of Tobacco and Health ... study found that 80.8 percent of 12–17 year olds who had ever used a tobacco product initiated tobacco use with a flavored product and 79.8 percent of current tobacco users had used a flavored tobacco product in the past month. Moreover, for each tobacco product, at least two-thirds of youth report using these products "because they come in flavors I like."

So members can see the rationale in the bit of research I found for clause 5—proposed new section 21B—being important.

Clause 6 amends section 23. Amended section 23 relates to current section 22, which says tobacco products cannot be displayed. The reason for amending section 23 is pretty clear—that is, displays obviously have an impact. Page 3 of a June 2008 Cancer Council of New South Wales submission titled "Proposals to Protect Children from Tobacco" states —

If cigarettes were *not* available for sale, smoking occurred during some stage of a four hour period in 32.8% of cases. However, if cigarettes *were* seen to be available for sale, smoking occurred in 47.7% cent of cases. The association between the presence of cigarettes for sale and smoking behaviour was particularly pronounced for recent quitters in this study ...

That basically tells us that if there is advertising of smoking products around a smoker, they are more likely to start smoking because it triggers in their mind, "Oh, cigarettes; I'd better have a cigarette." Without that advertising they are less likely to do that, as shown by those statistics.

Amended section 23 will allow a specialist retailer to display cigars and cigar cutters within relevant premises. A specialist retailer is defined as a business that draws at least 80 per cent of its average gross turnover from the

sale of tobacco products, but still a health warning sign is required to be displayed adjacent to that display. The impact of particularly graphic warnings on people's smoking habits can be significant.

A report put out by the Australian government's Department of Health and Ageing had a paragraph headed "Attitude Change and the Graphic Health Warnings". It says —

Recent quitters also displayed a number of key attitudinal movements between 2000 and 2008; for example:

- there was a greater proportion of recent quitters (67% in 2008 versus 40% in 2000) who agreed that they worried 'more about the effects of cigarettes on my health since the picture health warnings were put on cigarette packs'. The greatest change was in the proportion who 'agreed a lot' (from 25% in 2000 to 45% in 2008);

So these efforts to warn people are having an effect. Although we allow specialist retailers to exist, it is still important to have health warning signs clearly visible for people to contemplate.

The key to child safety is to prevent the uptake of smoking; that is the main premise of the Tobacco Products Control Amendment Bill 2017. Although current efforts are aimed at trying to get smokers to stop and make smoking history, the best way we can support that into the future is by preventing kids from taking it up in the first place. For the opposition, and for me as the shadow health spokesperson, we are focused on making sure we do our absolute best to prevent kids from taking up smoking; that will have huge benefits to the health of Western Australians down the track. That is the goal. The key to child safety in preventing the uptake of smoking is to ensure children cannot see the product; and, if they do, to ensure they see a very effective health warning sign. That is always important.

Aligned with clause 6, clause 7 requires a health warning sign next to cigarettes and tobacco price boards and tickets. That is important. We went to all this trouble of creating plain packaging and hiding cigarettes, but there still needs to be a warning sign near the ticket boards that look pretty blank and may have the brands in black and white writing. So even though we cannot see the product on the ticket boards, a warning sign is still needed.

Clause 8 inserts proposed new section 33A, which will ban loyalty reward schemes that encourage the purchase or use of tobacco products. For obvious reasons, proposed new section 33A(2) exempts credit card use with their own points schemes. It would be very, very difficult to police that. There is no correlation between a credit card points scheme and what people spend their money on, whereas receiving points from the product itself obviously has risks. I have with me an interesting bit of research I came across. The article is titled "Effect of tobacco loyalty programmes on low-income smokers", and it states, in part —

In the United Kingdom, Gallaghers Ltd and Imperial Tobacco Ltd operate the Benson and Hedges Gratis Points scheme, the Embassy Regal Focus Points scheme and the Kensitas Club Gift Certificate scheme. These tobacco loyalty programmes are based on fairly rudimentary techniques to enable customers to collect loyalty points, typically in the form of paper coupons or gift certificates. The coupons or certificates can be collected from packs of participating brands and then exchanged for household products selected from a gift catalogue. These products include brand-name audiovisual equipment, baby wear, child-care products, sports equipment, jewellery and fashion clothing. They are also used to promote sports events sponsored by the participating brand by offering access to 'free' tickets.

The products offered are often described as 'free gifts', so that the actual cost to the smoker is extremely difficult to calculate.

Members can see the dangers in that. The article concludes by saying —

The research indicates that tobacco loyalty programmes appeal more to low-income smokers and that rewards based on material incentive help to explain this popularity. More specifically, tobacco loyalty programmes give the appearance of improving access to material wealth, while in reality deny access to obviating any need for smokers to consider the economic consequences of maintaining their smoking habit.

So clearly there is a very, very good reason for making sure we get rid of those loyalty schemes.

Clause 10 amends section 39, which prohibits licensees to sell tobacco products at events that it is likely under-18s will attend—that makes perfectly logical sense—and also at sporting, cultural and other events. If we stay focused on making sure children do not take up smoking, it makes sense for us not to expose them to any type of advertising where they are likely to congregate.

The Australian Council on Smoking and Health and the "Western Australian Health Promotion Strategic Framework 2012–2016" provides us with some clear data that these efforts are working. The ACOSH time line I talked about earlier outlined that in 1971, 39 per cent of Australian adults smoked. That has progressively dropped over time. I have with me the records here for 2014, when 12.5 per cent of Western Australian adults smoked—no doubt that will have dropped further—and 4.8 per cent of 12 to 17-year-olds smoked. So 4.8 per cent is a small

figure, but the goal should be to make that figure zero. Our efforts tonight in ensuring this bill gets through are part of achieving that.

It is important to remain vigilant and support those who smoke to help them quit, as is making sure we prevent kids from taking up smoking. All members in this place will at some point have seen the ads on TV featuring Terrie Hall—the lady with the blonde wig who speaks through a hole in her throat. When she started smoking she was a young woman in high school, and her story is that she was a healthy athlete in her youth. She was not allowed to go into the designated smoking area, which is interesting in itself for a young person, because she was an athlete, so the coaches would say to her, “You’re not allowed to go over there; you stay over here.” She would sneak into those designated smoking areas with her peers and they would help hide her from the coaches so that she could smoke with her friends. She said she was eventually smoking up to two packs a day at the age of just 25. She started having a sore throat that never seemed to go away and in 2001 at the age of 40 she was diagnosed with oral cancer. Later that same year, she was diagnosed with throat cancer and the doctors informed her that they would need to remove her larynx. Further along the line she had to speak with the help of an artificial voice box. In total, Terrie underwent 33 radiation treatments for her cancers. She then continued to battle on with a strong positive spirit and made that very powerful series of advertisements encouraging others to stop smoking. She died on 16 September 2013 of smoking-related cancer and she was only 53 years old. Most of her life was dominated, very sadly, by the impact of smoking. Think about an attractive young woman, a very strong athlete, who took up smoking and then, progressively, had to deal with health issues related to smoking until her death at age 53, and think about what she lost out on with her kids, her grandkids and whatever, and what she would have had to have dealt with.

To finish with, the Cancer Council’s “Make Smoking History” document of May 2018 is something we should all focus on. It says —

Smoking is a leading cause of preventable death and disease in Australia, contributing to more drug-related hospitalisations and deaths than alcohol and illicit drugs combined. Tobacco use harms nearly every organ of the body, being a known cause of cancer, cardiovascular disease, chronic obstructive pulmonary and respiratory diseases, peripheral vascular disease and many other disabling and potentially fatal conditions. It is well established that exposure to second hand smoke also poses a serious risk to health. Second hand smoke is a cause of premature death and disease in children and non-smoking adults, with no amount of exposure being risk-free.

It says that in Western Australia tobacco kills over 1 700 Western Australians each year. In 2015, tobacco was responsible for 83 941 hospital bed days and 19 150 hospitalisations in WA. The social cost of smoking in WA was approximately \$3 billion in 2009–10. Continuing to fight the scourge of tobacco is why I and the opposition support the changes to the act, and, like the Minister for Health, I commend the bill to the house.

MR C.J. TALLENTIRE (Thornlie — Parliamentary Secretary) [7.33 pm]: I rise to speak to the Tobacco Products Control Amendment Bill 2017 and to add my support to it. I begin by saying that for many of us this is personal. I attended the funeral of former Senator Jim McKiernan, father of my dear friend Steven McKiernan less than a month ago. Jim passed away on 10 August age 74. We could say he had his three score and 10, but the life quality of the last 15 years of Jim’s life were seriously diminished because of the smoking-related illnesses he was suffering from. He had lung cancer, the removal of a lung, the removal of a kidney and chemotherapy. He put on a brave face throughout the 15 years of the treatment, but there was always a serious diminishment of his quality of life. Smoking costs people. It costs us in terms of the years of life that we can lose and quality of life, and it costs our hip pocket as well. It has tragic consequences.

In many ways, in Australia we can be very proud of the way that we have brought into effect good tobacco control legislation. I note that the very first bill I spoke on in this place was the Tobacco Products Control Amendment Bill 2008. Celebrating that anniversary of having been a member of Parliament for 10 years, it is interesting to reflect on how we are reviewing this legislation again. I must say that the amendments to the bill in 2008 were of more substance than those we see this time around. I will come to those that we have this time around, but there was a very clear prohibition on smoking in outdoor eating areas in 2008. That is when we brought in that prohibition. There was a prohibition on smoking near children in open playgrounds or sportsgrounds. There was a prohibition on smoking in or on vehicles if a person under 17 years of age was present, which I recall was almost controversial at the time. There was a prohibition on smoking near entrances of buildings used by or open to the public. Those were some of the features of the legislation that went through in 2008. I recall the then shadow Minister for Health, Hon Jim McGinty, saying that he could foresee the day when smoking in public would be banned—the sale of tobacco products would be banned, except to addicts, recognising that the very addictive substance nicotine has captured people and we would have to find some way of meeting their addiction, but hopefully with the objective of getting them off it altogether.

The member for Churchlands spoke very well about the types of cancer-related diseases that people can get from smoking tobacco, the 7 000 chemicals or so that are in tobacco smoke and the risks of inhaling second-hand smoke.

He also touched on the statistics of the steady decline in the number of people smoking—the percentage of the population. I have to say that it is a bit hard to pin down at a Western Australian level, and perhaps the minister will be able to enlighten us further, but we like to say that around nine per cent of the population still smokes. I would love to know a bit more about the robustness of that figure. I was looking at the Australian Bureau of Statistics website on smoking and there was a very interesting figure that showed that the financial cost to Australia in social and economic terms in 2004–05 was \$31.5 billion. I am not sure why the ABS has not been able to revive that figure since 2004–05, but clearly a social and economic cost of \$31.5 billion is absolutely enormous. Yet, when I walk from the train station up to Parliament in the morning or in the evening if it is around five o'clock, I see a lot of people still smoking. I often find I am walking behind people who still smoke. I notice office workers coming down from their office to smoke. I see them outside Dumas House. There is a collection of ministerial advisers who come down to the bottom of Dumas House to smoke near the Japanese garden. We still have a lot of work to do. It is amazing that the message has not been heeded, but I suppose that is just a further indication of the addictive nature of tobacco and nicotine.

Overall, as I say, I think we have done very well. I will make a comparison to two European countries I have been to in the last couple of years—France and Spain—that have moved a long way in tobacco control, but they have not gone as far as us in the control of smoking in outdoor eating areas. It is a terrible thing. A person can be at a really beautiful restaurant with great food and magnificent views, but somebody at the table next to them is legally entitled to light up. That is a really distressing thing. I would say it is one of the few things I dislike about being in France or Spain.

Mr R.H. Cook: You wouldn't know it from the number of times you've been there!

Mr C.J. TALLENTIRE: I think they could learn from us. This is something we should be really proud of. We can continue to be global leaders and not shy away from it. There are many spheres in which Australia should take on a global leadership role, and the control of tobacco is clearly an area in which we are ahead of most other countries, and we should continue to be so.

Another thing about smoking is the amount of litter it causes. One has only to participate in Clean Up Australia Day, or look at the car park outside my office in Thornlie, to see the number of cigarette butts that are chucked out by people emptying their car ashtrays. I continue to work with the Department of the Premier and Cabinet to insist that the landlord provide a better cleaning service, but clearly we should treat the problem at its source and stop people from smoking altogether.

Constituents often talk to me about scams—enraged after someone has phoned them to suggest that something or other is going on. In a common scam they might have had a car accident and they are told that they should give their contact details over to a friendly insurer, or whatever. Scams are a source of great concern for our community, but I put it to members that the biggest scam is smoking: a scam that damages people's health, robs them of years of life and costs them a lot of money. It is the biggest scam of all.

It is important that we acknowledge in this debate the good work done by the former Minister for Health in the previous Labor federal government, Nicola Roxon, in bringing about plain cigarette packaging. At the time she received a lot of undue criticism and was subjected to very intense campaigning from the economic rationalist and libertarian right of politics—the Institute of Public Affairs, for example. It was absolutely merciless in its attacks on Nicola Roxon. Again, her initiative was an example of how we led the world—in this case, by introducing plain cigarette packaging, and we have seen the benefits of that. Interestingly, though, there was a big campaign to try to debunk that initiative and to claim that no benefits had resulted from the introduction of plain packaging.

To its shame, in 2014 *The Australian* ran a very strong, front-page exclusive article to claim that plain packaging laws were not working, after the laws had been in place for some two years. It made all sorts of claims, along with the IPA, about how Australia could be facing billions of dollars in damages claims. The headline was, according to my notes, "Tough new plain-packaging laws for cigarettes don't even work". An article that appeared in *The Australian* on 6 June 2014 stated —

LABOR'S nanny state push to kill off the country's addiction to cigarettes with plain packaging has backfired, with new sales figures showing tobacco consumption growing during the first full year of the new laws.

What was the truth behind that? There was none. Fortunately, *Media Watch* did a very comprehensive report, drawing on the expertise of Professor Mike Daube. I would like in passing to acknowledge the latest award Mike has received—Western Australian of the Year—and the amazing work he has done. Rather like Nicola Roxon, he has been the subject of merciless attacks from the right and people who love to throw around titles like "nanny state leader"; they have even described him as a "health Nazi", or something of that nature. However, Mike Daube was able to completely debunk that front-page article in *The Australian*. He pointed out that it was a totally dodgy report that merely ran the line of companies such as British American Tobacco. Members could look at the website

of British American Tobacco today and they would see that it is much the same as what one would read in, for example, *The Spectator*. I know some members opposite probably read *The Spectator Australia*, but the sorts of things it puts out are just terrible. It still refuses to accept that plain packaging has reduced the number of smokers.

What was the basis of *The Australian* article? It relied on tobacco companies' claims that they had sold 59 million more cigarettes to retailers in 2013 than they did in 2012. In fact, even the industry has admitted that the number of smokers fell by 1.4 per cent over that time. Did that mean that people who were continuing to smoke were smoking more? No, the average number of cigarettes smoked per person also fell by 1.4 per cent. Clearly, the whole basis of the article was wrong.

The Australian and the IPA ran this campaign, in cahoots with some of the UK media, because at that time plain packaging laws were about to be introduced in the UK, and there was a big anti-plain packaging campaign there. I know that members opposite are inclined to trust *The Spectator* or *The Times* or *The Telegraph*, but it should be borne in mind that they were all running this stuff hard. A *Times* headline of 7 June 2014 stated "Australian anti-smoking laws backfire as sales rise". An article that appeared in *The Spectator* of 10 June 2014 was headed "Plain packaging has backfired in Australia—don't bring it to the UK". An article that appeared in *The Telegraph* on 11 June 2014 stated —

Talk about unintended consequences! The Australian plain package cigarette initiative, introduced in 2012, has backfired. Instead of curbing smoking, smoking has actually gone up ...

They were all running the line put out by the tobacco industry, but thankfully we have people like Mike Daube and others who have the facts and figures to counter these sorts of false claims made by people who really want to put profits before the health of others. The minister's second reading speech revealed that we still have 3 700 tobacco licences in effect in Western Australia. If I were a holder of one of those licences, I would have to question myself: am I really prepared to put my profit before the health of the community? There are 3 700 licence holders that I think should be challenged.

There are clearly some really good initiatives in this latest round of amendments to the Tobacco Products Control Act. The member for Churchlands mentioned the fact that we are making it illegal for children under the age of 18 to sell tobacco. That is clearly a good thing. It is good that, under this legislation, it will no longer be legal to purchase tobacco products using loyalty reward schemes. However, programs in which a gift or benefit may be obtained by a purchaser of goods on the basis of the method of payment used, such as the use of a particular credit card, will not be affected. I wonder if that means that the finance sector has said, "We don't want to be part of this." Other people were prepared to say, "We're not going to allow the purchase of tobacco products to count for credits in our reward scheme", but the sorts of reward schemes offered by credit cards will remain untouched. If someone buys a whole lot of cigarettes on their Visa card and is already in a reward scheme, it is my understanding—I am happy for the minister to correct me on this—that they will get some sort of additional credit, such as frequent flyer points, for example, on their ANZ credit card; something like that. I really think it is important to eliminate that.

There is mention of specialist retailers in the Tobacco Products Control Amendment Bill 2017 and I am trying to think where the specialist retailers are. I remember that there was one at the bottom of London Court at the St Georges Terrace end, but I think that place has been replaced by a nail-polishing place.

Ms J.M. Freeman: He's moved further down. He's on the corner of Barrack and Hay Streets now.

Mr C.J. TALLENTIRE: He has moved to the corner of Barrack Street and Hay Streets. Perhaps the rent there is a little bit cheaper. The legislation before us continues to tighten our control over the sale of tobacco in Western Australia, but I think there is more to be done. The member for Churchlands touched on the fact that people can still go into some beer gardens where 50 per cent of the beer garden will be open to people who want to smoke and drink at the same time. I remember that was a hotly debated point in 2008 when the Australian Hotels Association pushed very strongly to keep that 50 per cent of beer gardens open for smokers. I think it is time to review that as well. We have to look at tightening it, as the community accepts these things. Hopefully, people have quit smoking, but those who still smoke realise now more than ever the damage that they are doing to themselves and others. There is still more to be done and I hope that in the near future we will be able to walk through the CBD area and not have to encounter second-hand smoke. At one stage, the City of Perth made quite a play of the fact that it was going to tackle people and make the CBD a smoke-free area. I do not know what it did; it got the headline, but I do not think anything was implemented. There is still plenty of work to be done but, on the other hand, we can be very proud of the fact that we are leaders on a global scale. We should be talking about that very loudly to encourage other countries to follow our lead and show them what can be done. I am pleased to note that other countries have followed our lead with the plain packaging of cigarette packets. Various court challenges around the world have been unsuccessful. We, as Australians, can be proud of our actions but there is still more to be done. I commend the bill to the house.

MR Z.R.F. KIRKUP (Dawesville) [7.52 pm]: I rise on behalf of the opposition to make a short contribution to the debate on the Tobacco Products Control Amendment Bill 2017 this evening. After listening to the words of the member for Churchlands and the member for Thornlie, I thought I might relate my own personal experiences because, as the member for Thornlie rightly pointed out, much of this debate is often personal to many people. I, thankfully, have yet to lose a family member or loved one to any sort of smoking-related cancers or the like, but many members of my family still smoke and I find that unusual behaviour. My mother reminds me regularly about how vigilant I was as a very young child in basically very often having a go at her for her smoking habit. My father went through long periods of giving up and he has now returned to smoking, and my mother is now in a period of giving up through prescription assistance. Plenty of people in my family—my grandparents and the like—also smoke and I find it unusual behaviour. As the member for Thornlie commented, I think we are very lucky in Western Australia that with the vigilance of many previous governments, Liberal and Labor, good legislative frameworks have been put in place to make sure that this public health message is prevalent in our legislation to reduce the habits of smoking. The member for Thornlie talked about the Perth CBD going smoke-free. I think that was a good initiative. The new council in Mandurah also made a similar move to make sure that our CBD is smoke-free as well. They are all very good moves. Personally, I have had the same experience as many members in this place when walking through Perth behind someone who is smoking. It is a very bizarre thing to experience nowadays, certainly for someone like me who has never smoked.

A member interjected.

Mr Z.R.F. KIRKUP: Well done, member for Armadale. Many of us —

Mr R.H. Cook: Nicotine, or —

Mr Z.R.F. KIRKUP: That is right; we are talking about tobacco products, member for Armadale!

Many of us work in smoke-free environments and live in smoke-free households but on the street we can be stuck behind someone smoking a cigarette. It is not an enjoyable or comfortable experience to say the least. I find it particularly unusual when young people start smoking. All the information in the world is available to them now. Michelle is younger than I am and a number of her friends in their mid to late 20s smoke. I find that unusual behaviour. In this case, it is mainly confined to young men who take it up and I find that unusual because for a long time we have all been made very well aware of the dangers of smoking. The member for Churchlands rightly pointed out that since the 1970s, a consistent public policy has been in place to make sure that we reduce the habit and that public information about the risks of smoking are well known and well circulated to many people in the population. To see otherwise very engaged, very intelligent and very aware young people in our community take up that habit is unusual. We need to make sure we do more to combat it, and I think a much more specific focus is needed. There is often a disconnect with governments that are typically representative of, or have within them, an older generation. I think messaging needs to target younger people specifically, and I know some work is being done around that. We also talk about the disparity not just with young people; the member for Churchlands rightly pointed out that research into tobacco use in Australia showed that between 2013 and 2016, males aged 25 to 29 years were the only age group in which the rate of smoking increased. They are going backwards; they are not paying attention to the message or listening to any of the experiences of people around them in this more connected day and age. The rate increased from 20 per cent to 22 per cent of males aged 25 to 29 years who smoke on a regular basis. The rate reduced or stabilised in every other age group. Males in that age group, consistent with my own experience and what I have seen in Michelle's group of friends, still take it up. I find that unusual behaviour and I think there needs to be much more focus from government. I hope that we can bring down the rate as time goes on.

A lot of research has gone into the socioeconomic disparity that exists. Typically, those in lower socioeconomic groups have a higher prevalence of smoking. Over the last 20 or 30 years, the reduction rates have been significantly smaller for lower socioeconomic groups compared with the rates for higher ones. We also need to target that area. Aboriginal people are another area of concern as 39 per cent of Aboriginal people smoke on a regular basis, yet I think the figure is now 14 per cent for non-Aboriginal people. Clearly, there are some challenges in regional and remote environments. All of us in this place are well aware of the disparities that exist for Aboriginal people, which the government needs to focus on actively. The fact is that 39 per cent of Aboriginal people smoke regularly, which definitely needs a lot more attention. I have seen some fantastic campaigns by Western Australian organisations around the consumption of alcohol, including the dangers of drinking during pregnancy. I think a similar concerted effort is needed—although, it is probably happening now but I would not see that message in all reality. I think we need a much more concerted focus on that area. I found it interesting that in every single area, Aboriginal people have a much higher representation of regular tobacco use. In major cities, it is significantly higher and in regional, outer regional, remote and very remote areas, it is, unfortunately, disproportionately higher. I think we can do more. Western Australia, unfortunately, holds the record of being the state with the highest rate of Aboriginal people who smoke regularly. The Northern Territory has the highest, but of course it is a territory. In a wealthy state like this, with a very large public health department and funding mechanisms, I think we can do more to address that issue.

Part of that should also extend to e-cigarettes, or vaping, as it is defined. The party itself has not established a position on this; this is just my perspective, but I point to the 2015 independent health expert review by Public Health England, I think it was, that showed that e-cigarettes or vaping is 95 per cent safer than tobacco products. In most cases they could be used as a substitution for people who would like to try to wean their way off tobacco into e-cigarettes or vaping. This is a product or technology that according to this review and the Royal College of Physicians, I think it was, said it is 95 per cent safer and has a 67 per cent higher chance of success for people who might quit rather than go cold turkey. We have seen countries introduce and allow for the legalisation of vaping. Countries such as Sweden have a significantly higher rate of reduction in smoking habits. It is a good thing. It is unfortunate that in Australia the Therapeutic Goods Administration does not allow or does not legalise the importation of liquid nicotine—the Minister for Health is agreeing—and that we are now stuck in a situation in which we have a clearly safer product, something that to me makes a lot of sense if we are trying to shift people away from tobacco. I am thinking of my personal circumstances within my family. It would be great if they could take that up; unfortunately, in Australia people do not have the legal ability to look at it. I am aware that Hon Aaron Stonehouse in the other place has tabled a petition or some other mechanism to look at this issue as well, but of course it is not going to do much unless we can get it through the federal legislative hurdle. It is something that should be brought up perhaps in the Council of Australian Governments forum that exists for health ministers across the country. I hope that is something that will be championed by Western Australia, when we look at the fact that it is a safer alternative and has been shown to reduce smoking. It is an important thing to look at. There is a good prospect that if we continue this concerted effort, we might see these continual reductions across the board. I am interested to see when we will reach that plateau point and what that will look like. As the member for Churchlands quite rightly pointed out, we need to reduce it as much as possible. I am very interested to see what that looks like. Hopefully, if there is ever a zero point, it would be very interesting to me. Perhaps e-cigarettes might go some way to get us there.

That is my contribution to this important legislation. I also want to point out—I wish the manager of government business was in the chamber for the moment—that we are likely to rise within the next hour or so. The opposition has been told time and again for weeks and weeks in a threat, often written in correspondence to the manager of opposition business, that we will be sitting late if we do not go along with the government's legislative agenda. We will be rising relatively early today, yet tomorrow we will probably be dealing with the ridesharing bill in some iteration, which is a significant piece of legislation. I suspect we will have to sit late tomorrow, perhaps even Thursday, in order to deal with very complex legislation. It reminds me of what happened the last time we sat when this place had to deal with the Strata Titles Amendment Bill. We rose at 12.30 am—past midnight.

Ms J.J. Shaw: Toughen up!

Mr Z.R.F. KIRKUP: I appreciate the member for Swan Hills' interjection to toughen up, but the reality is that this government, which she is loosely a part of, and new to this place, cannot manage its own legislative agenda in a manner that I would think is relatively easy to do.

Mr P. Papalia: Ha!

Mr Z.R.F. KIRKUP: It cannot, minister. He has a situation —

Mr P. Papalia interjected.

The ACTING SPEAKER: Minister!

Mr Z.R.F. KIRKUP: —whereby the member for Swan Hills might balk at the prospect of risking people's occupational safety in this place by making them sit late, travel home, then come back early the next day.

Mr P. Papalia interjected.

The ACTING SPEAKER: Minister!

Several members interjected.

The ACTING SPEAKER: Members to my right; member for Swan Hills!

Mr Z.R.F. KIRKUP: Then on the Thursday of that same sitting week this house rises at 3.30 in the afternoon. I find it fascinating.

Several members interjected.

The ACTING SPEAKER: Members!

Mr Z.R.F. KIRKUP: It is deplorable that this government cannot manage its own legislative agenda appropriately. It is a shame that the very experienced ministers on the other side cannot get their act together and put together a comprehensive and relatively easy to manage legislative agenda.

Mr P. Papalia interjected.

The ACTING SPEAKER: Minister for Tourism!

Mr Z.R.F. KIRKUP: What we see instead is this lumpy sitting pattern when we sit extremely late, and that risks the safety of many who have to travel home—far distances, member for Swan Hills—in order for us to make sure that we go along with the government's misguided priorities.

Ms J.J. Shaw interjected.

The ACTING SPEAKER: Member for Swan Hills!

Mr Z.R.F. KIRKUP: Then on the Thursday we rise early. I find that a condemnation on this government, and that is where I would like to finish my contribution this evening.

MS J.M. FREEMAN (Mirrabooka) [8.04 pm]: That bit of oxygen theft that just happened would have continued us a bit further into the evening, but I rise to speak on this very important Tobacco Products Control Amendment Bill 2017. I note, like my colleague the member for Thornlie, that we spoke on the Tobacco Products Control Amendment Bill 2008 all those years ago. That was 10 years ago, member for Thornlie and member for Kwinana. This week we celebrate our tenth anniversary, and in the spirit of the member for Dawesville, I will take a few moments to reflect on that in this house this evening, as the member for Dawesville feels that he wants me to take as much time as I possibly can. I will reflect on how the debate in this house has often been colourful and how over the years when we were in opposition, I have watched us say to the member for Dawesville's now colleagues—when he was a staffer—how they could not manage the parliamentary time. The management of the house always takes into account time for matters of public interest, of which there did not need to be such a time this afternoon. Perhaps that is why the leader of government business can ensure that members can drive home safely this evening. I also remind the member for Dawesville that that very important residential tenancies legislation we sat here until 12.30 am looking at fell because his opposition spokesperson found that she had interrogated the bill enough and it went through. She had the call.

Mr Z.R.F. Kirkup: I don't think that's true.

Ms J.M. FREEMAN: She had the call. I have been on that side, member—10 years. We had not anticipated in 2008 that we would necessarily be sitting on that side at that time. I recall that when we came into this place 10 years ago, we had not quite expected that we were going to be debating the Tobacco Products Control Amendment Bill 2008 from the opposition benches. I recall when we had any number of pieces of legislation that the member for Dawesville's colleagues, the then government, kept us here until very late at night; I recall once around four o'clock in the morning. We continued to analyse and prosecute the debate and look through the legislation to critically question the legislation. We did not just let it fall. The member's criticism is completely out of order to say that the leader of business in this house and the government benches cannot manage its legislative agenda. We have had a lot of legislation go through this place. I know, because I have been here for 10 years and I watched the member's side, when they were in government, flounder around looking for legislation.

Mr R.H. Cook: How long have you been here?

Ms J.M. FREEMAN: Ten years, member! How long has the minister been here?

Mr R.H. Cook: Longer!

Ms J.M. FREEMAN: I would remind the member for Kwinana that he was elected for a shorter period than I was.

Mr R.H. Cook interjected.

Ms J.M. FREEMAN: Yes. He had to wait two weeks after that fateful election on 6 September 2008. In fact, the person who they had thought was the member for Kwinana had picked up her laptop and car and then she had to give them all back when the member for Kwinana came in. That was the mayor.

Mr Z.R.F. Kirkup: Was that Carol Adams?

Ms J.M. FREEMAN: Yes.

I thank the member for Dawesville for allowing me the space and the time to reminisce about how bad his colleagues were at managing this house, how many nights I had to stay in this place until the early hours of the morning, and how exceptional we were as an opposition. Our matters of public interest never fell down, and the legislation we looked at was well prosecuted, critiqued and analysed, so that when similar threats were made to us, we stayed and did the work.

After 10 years as a member, I remain completely committed to public health intervention. It was one of the areas I worked in before I came to this place. There is absolutely no doubt that smoking is a scourge on our community. The discussion paper that was a precursor to this bill outlined the impact of tobacco use in Western Australia. The opposition spokesperson, the member for Churchlands and the manager of opposition business, went very concisely through the history of the controls and public health campaigns against tobacco use in Western Australia, and how successful they were. The minister's second reading speech also outlined our proud history. That is absolutely without question, and the member for Churchlands went through that. The prevalence of smoking has

decreased, but this has stagnated, and recent reports show an increase in cigarette sales. We know that we need to do more. I am fully aware of the damage, the detriments and the health impacts from a personal perspective, because my grandfather died from lung cancer as a result of cigarette smoking. I, like the member for Thornlie, went to Senator Jim McKiernan's funeral, and I would like to record his passing and what a great loss it was for the community, and his contribution to the community over many years. We also lost Tony Cooke to the scourge of cigarette smoking. We can talk about how appalling tobacco is.

The provisions in this bill are definitely to be applauded. Tightening the restrictions on the sale of tobacco, particularly to children, and making it illegal to sell it to under-18-year-olds, and for under-18-year-olds to sell tobacco at retail outlets, is to be congratulated. Restricting supply has been absolutely effective in achieving historic lows in cigarette consumption, as have the great education and Quit campaigns. It is not just about restricting supply; it is about changing behaviours. When I talk about changing behaviours, I want to talk about e-cigarettes here tonight. There is a massive cost of continuing to smoke for someone who is addicted. There is a health cost to the individual and to the community. There is a cost to the smoker's family to see them doing something that is so detrimental to their health, but there is also the massive cost of the cigarettes themselves. All the studies show that prevalent among cigarette smokers are some of the people who can least afford to smoke cigarettes. I was standing in the local IGA the other day, and a gentleman came in and bought a packet of cigarettes. There are 20 in a packet these days—I do not think they sell superpackets anymore. The cigarettes were all closed in, but he knew what he wanted to buy and it cost him \$40 for a packet of cigarettes. I may have misheard, but it was \$40, which is \$2 a cigarette. That is an enormous amount of money. I went through my stage of smoking as a university student, but I could not believe the price. I have a big economic imperative in the things I consume. I like to go to op shops. I am told I do not need to do that anymore, because I am on a salary that means I do not need to. I get that increasing price should decrease demand, but we have stagnated. We are increasing the price, and people who are addicted are still in the demand space. They are paying a health cost, and we as the community are paying a health cost. They are also paying a financial cost that many of them cannot bear.

Apart from the other reports, the Education and Health Standing Committee did a report on e-cigarettes. I want to point out that at no time am I a supporter of the tobacco industry. I see the issue of e-cigarettes as a public health issue. That is where I want to come to this debate from—as a public health issue. We have to review it as a public health issue and consider how we can assist in stopping that stagnation and starting the process of further reducing tobacco smoking. We have to note that people smoking e-cigarettes are not smoking tobacco. We have to be really clear about this. People smoking e-cigarettes are inhaling nicotine. There is a question of whether they are also inhaling other stuff, but at this point in time we do not really have any control over that. We cannot control people buying them online. If they buy a cheap product online, they may be inhaling stuff that we do not want them to be inhaling, which has other health consequences, but if they are buying a reasonable one, they might not be. We cannot measure any of these products. There are products in the eastern states that are measured, because they do not have the same restrictions. That is what happens in the eastern states, but in Western Australia it is illegal to purchase vaping apparatus. We have no control over what people are using. It is legal for people to buy them through the internet. It is legal for people to inhale flavoured liquids. It is not legal in Western Australia for people to be inhaling nicotine, but it is legal for them to buy nicotine over websites under federal law. What a mess! It is imperative that we do something about it. The reality is that people are vaping, and public health officials argue that we should apply the precautionary principle. There is not enough evidence to support regulation. We do not know whether it is a gateway thing; we are not sure that it is not bad for people, and we really cannot work these things out. In Western Australia, it grows unregulated and untaxed. People can smoke a tobacco product cigarette for \$2, but if they purchase a vaping product, for each similar hit—it is questionable what a similar hit actually is—the cost is probably between 20c and 40c. Quality and safety go unchecked, and age limits for online purchases go unchecked.

Since the Education and Health Standing Committee report, there have been two other important reports that I wish to make the house aware of. The member for Dawesville pointed out the UK parliamentary report on e-cigarettes by the Science and Technology Committee, which was published on 17 August 2018. The bit about e-cigarettes being 95 per cent safer is really questionable. To tell members the truth, it really has not helped because it means that everyone is concentrating on trying to disprove that figure. What comes out in most research, and even in the most recent CSIRO report, is that smoking an e-cigarette is less harmful than smoking a cigarette. It is not less harmful than not smoking at all. Clearly, it is not less harmful than that. There is no evidence that I am aware of that vaping is more harmful than smoking a cigarette. If we think about it in that context, because it gets all messed up with other stuff, the reference to e-cigarettes being 95 per cent safer is really not helpful.

In the UK, e-cigarettes were introduced in 2007. New rules were introduced in May 2016 to regulate them better. In 2016, it was estimated that two million consumers in England had used e-cigarettes and completely stopped smoking, and a further 470 000 were using them as an aid to stop conventional smoking. The jury on that evidence is still out. When we look at places where there is mass use, there seem to be some compelling arguments.

This report states that the Department of Health in 2017 found that —

... the evidence is increasingly clear that e-cigarettes are significantly less harmful to health than smoking tobacco.

As the member for Dawesville mentioned, the report also states that —

Public Health England has concluded that “vaping is at least 95% less harmful than smoking”

I am not happy to rely on that.

[Member’s time extended.]

Ms J.M. FREEMAN: If we look at the submissions that our Department of Health and other health departments in Australia made to the federal Parliament’s review of e-cigarettes—I will go to that—there was so much emphasis on trying to dispel this 95 per cent stuff that they could not get their heads around moving to the much more important question, which is: is it a harm minimisation practice? Our argument is that there is not enough evidence to say that it is, but I do not think that that is the case. Is the onus upon e-cigarette sellers to show that there is some sort of benefit? The onus might be upon them, but, meanwhile, if we are into harm minimisation, people are buying these goods over the internet. Therefore, we are not minimising the harm to people.

It is really interesting that the big argument that vaping is a gateway to smoking is addressed in this report. There is a real concern that young people are going to use vaping to start smoking and that big tobacco companies, which we in this house all agree are not our friends, are using vaping as a gateway for young people to start smoking tobacco. This report states that smoking in the UK has had —

... an 8% decrease amongst 18 to 24-year olds since 2011 ...

It further states —

Concerns about the risk of e-cigarettes potentially providing a ‘gateway’ into conventional smoking, or that the variety and type of flavours could attract young non-smokers in significant numbers, have not materialised.

That differs somewhat from the recent CSIRO literature review in June this year, which suggests that the use of e-cigarettes is a future predictor of smoking. It does not say that it is a gateway; it says that it is a future predictor of smoking, but that same report states —

- E-cigarette use beyond once or twice is very uncommon amongst people who are not current or ex cigarette smokers.

I find it really hard to match that with this whole idea that vaping is creating some sort of gateway to cigarette smoking. It seems to me that e-cigarettes are used by smokers, and if young people are using e-cigarettes, they would probably have been using cigarettes, because it is a future predictor.

The Standing Committee on Health, Aged Care and Sport in the federal Parliament released its report in March 2018. It had a dissenting report and a majority report. Interestingly, the dissenting report came from the chair. He lamented that there was not enough consensus around this issue and that there had to be a minority report. That shows the opposing sides of this debate. This debate really gets down to the argument that it is just big tobacco trying to find a way to remarket its product and should be resisted completely. Then the argument taken up by other countries is that e-cigarettes are less harmful than tobacco or cigarettes; cigarettes and tobacco are legal and the alternative should be legal because we should be using them as a tool to continue to reduce conventional smoking. I think what is important is how we do that and how we regulate and introduce and tax and all those things to use vaping as a tool. The chair, Mr Trent Zimmerman, MP, said that although he acknowledged Australia’s leadership, as we all have, in tobacco control policies such as those that we have been looking at this evening —

... progress has stalled with the daily smoking rate only dropping from 12.8 per cent to 12.2 per cent between 2013 and 2016.

He called for e-cigarettes to be another weapon in the arsenal. That is his term. “A weapon in the arsenal” is probably not a term I would normally use. He suggested that —

The familiar hand-to-mouth movement and the ‘hit’ of nicotine provided by E-cigarettes may appeal to those hardened smokers who have struggled to quit using traditional nicotine replacement therapies. While the evidence base regarding E cigarettes is still emerging, there are clear indications that E-cigarettes are significantly less harmful to human health than smoking tobacco cigarettes.

The opposition to this position is that if e-cigarettes are therapeutic, companies should take products through the Therapeutic Goods Administration process so that doctors can prescribe products for their therapeutic benefit. My understanding is that maybe one company has tried to take its product through the Therapeutic Goods Administration, but I am not even sure about that, and that has not occurred. I just cannot recall that at this time.

The argument against regulating e-cigarettes is based on harm minimisation and the precautionary principle. The federal report addresses this by referring to the UK research and reports on this. The federal parliamentary report noted that Professor John Newton of Public Health England outlined that the precautionary principle was a judgement to wait for definitive evidence 20 years henceforth instead of acting on what is known now about e-cigarettes—that they are less harmful than cigarettes. This is what we are talking about. The precautionary principle is: let us not do anything because we do not know enough. We know that people are using them but we do not know enough about how harmful they are. We know that they are less harmful than cigarettes, but we do not know how harmful they can be, so let us not do anything. Let us rely on the fact that they are illegal and all these things and let us not do anything. That is what we say that the precautionary principle is. Professor John Newton of Public Health England says that the precautionary principle is not that black and white. The precautionary principle is that we have to look at the evidence before us at this time and work out whether, as a precautionary exercise, as a judgement, as an action, we should be doing something in that area.

With respect to the harm minimisation, based on the known harms from the toxins in tobacco—comparing e-cigarettes with tobacco and nicotine with tobacco; not comparing e-cigarettes with nothing—the Royal College of Physicians adopted a policy in 2007 that if smokers cannot quit, policy should encourage a switch to a less hazardous source of nicotine. The report also noted that opposition to harm-reduction strategies was often based on the belief that if the risk of an activity is lowered, more people will undertake that activity. It is almost like saying, “It’s okay, we know people are getting vaping items from the internet and, even though it’s illegal, we know they’re getting nicotine from the internet, but it is such a small number of people. If we allow it, more people will do it and we’re worried about that because that just lets big tobacco in.” Meanwhile, for those people who are accessing things that may be less healthy for them, we are not regulating in those areas.

There is a sort of argument that because the use of e-cigarettes in countries that have very low rates of smoking would not result in a reduction in disease and mortality—that is based on the World Health Organization’s Framework Convention on Tobacco Control in 2014—why legalise it if it makes no difference to a health position? But that differs from the CSIRO literature review that I talked about before, which was on 22 June, that indicated that it is likely that there are overall health benefits in replacing regular cigarettes with e-cigarette use. However, the health effects are likely to differ according to what devices and fluids are used, how they are used and who uses them. At this point in time we have no control over how they are used and who uses them. I accept that the evidence is still out in terms of the health impacts of e-cigarette use because the technology has been available only a short time. I accept that any use of nicotine-based products will have adverse health consequences. The question for me is whether they will be worse than smoking tobacco. The CSIRO literature also highlights that more adolescents and young adults have tried e-cigarettes than any other age group, and most adolescent users of e-cigarettes also smoke regular cigarettes. It is an issue. Given the restrictions that we are putting in place tonight to restrict 18-year-olds selling and purchasing tobacco-based products, it is a concern that the procurement of e-cigarettes is effectively still available to them via the internet and that we cannot restrict that.

I would like to finish by saying that the federal parliamentary recommendations from the majority report—I have talked about the minority report—were that the National Health and Medical Research Council fund an independent and comprehensive review; that the federal Department of Health convene an international meeting with respect to all of this; that there should be a national approach; and that the Therapeutic Goods Administration should continue to classify nicotine exemptions and whether e-cigarettes are a therapeutic good. The majority report was still very much “Let’s sit on our hands.” I do not think we can afford to sit on our hands any longer. I commend the bill.

MR R.H. COOK (Kwinana — Minister for Health) [8.33 pm] — in reply: I did not wish to stop any member of the chamber from speaking, particularly if I were to destroy the consensus that seems to have wafted over this chamber! It is lovely to see that consensus break out on this particular occasion. I begin by thanking the opposition for its position on the Tobacco Products Control Amendment Bill 2017. It is good to see consensus on an issue about which there has been generally a lot of discussion, debate and lived experience in relation to the tobacco debate. I will have more comments about that later.

The opposition gave it a bloody good go in the other place and, as the member for Churchlands observed, there was rigorous analysis of the bill. I appreciate the stance that the opposition is taking about not needing to go into consideration in detail tonight. Some changes were made to the bill on its journey, both before entering the Parliament and during that process, and I think what we have now is a modest and suitable way forward.

I enjoyed the contribution from the member for Churchlands because he talked about the history of these sorts of things. Some of my earlier memories about political activism was around the BUGA-UP campaigns in the 1970s when rogue doctors would go out—I know they were doctors, because in their later years some of them fessed up—and take to billboards that featured tobacco advertising; that is, chop them down or graffiti them. It was a period of great civil disobedience. As the member for Churchlands pointed out, that history that he talked about

since 1971 has really taken us on this journey. In 1971 in Western Australia, 39 per cent of adults smoked daily, and in 2015 that figure was down to nine per cent. That was down from 17 per cent in 2002. There have been great advances in relation to this but it has been part of a long journey; one that many people have participated and continue to battle against big tobacco. There are still some challenges. Even though overall, in terms of the general population, we are reaching some really good numbers: in 2013 the number of Aboriginal people in Western Australia who reported smoking daily was around the 40 per cent mark. We still have a significant way to go in order to eliminate this particular poison from our community.

As the member for Mirrabooka said, Western Australia was once a leader in the tobacco debate. She observed that that is not so much the case at the moment, but I am very pleased to let the member know that in some respects some of this bill restores our respectability as a state in taking a stance on tobacco law reform. The laws around the banning of under 18-year-olds selling tobacco particularly puts us at the forefront of the national debate. Other states will be very much looking forward to seeing us legislating that tonight as an indication of where they might go in their tobacco law reform legislation.

The member for Churchlands discussed the history of tobacco law reform in Western Australia. That was a valuable contribution to get on the record. He also described the clauses associated with it and talked about the toll—that is the price associated with people using tobacco and the impact that has had on our community. One in five cancer deaths is a terrible price to pay for tobacco and cigarette consumption. From that point of view, we must continue to be strong and resolute in what we do in this place to support the overall community efforts to stamp out smoking. We can do this. We can only do that if we continue to drive the consensus and the debate about this. The member for Churchlands made a really important observation. He said that the key is to stop young people taking up smoking in the first place. That is probably a paraphrase rather than a quote, but I think the member is absolutely right. This is why a lot of our legislation has been put in place to protect the most vulnerable in our community—children. We know that if we can stop young people taking up smoking in the first place, that is the very first important beachhead in terms of reducing the incidence of tobacco consumption. That is why I am particularly pleased that a feature of this legislation is the elimination of people under the age of 18 being able to sell cigarettes. We know from research that that is one of the best ways that young people can access cigarettes.

The member also made some observations about the power of promotion, and that is very much a potent attraction to tobacco consumption. I remember very well the cigarette advertising of my youth, and even the branding as it exists in the retail environment is a call to attract people to smoking. Plain packaging and the elimination of promotion boards in the retail environment are important steps in driving down the incidence of smoking. The member for Mirrabooka raised the issue that one of the costs in the tobacco debate is the price of cigarettes now. Although that is no longer part of the state government's weapon in tobacco law reform—it is now the sole purview of the federal government—it is true to say that price drives a lot of people away from smoking. It is a real motivator to stop them from smoking. Although it is hard, I am constantly reminded by Carly about how much the price of cigarettes impacts on her family, who are for the most part smokers. It is an important part of stopping people from smoking and in particular it stops young people from taking it up in the first place. I accept that it is hard, particularly on people from lower socioeconomic groups, but it is also one of the most effective mechanisms to prevent people from taking up smoking or to encourage them to stop smoking. The member for Churchlands highlighted the case of Terrie Hall and I thank him for that. Terrie Hall's contribution to the elimination of smoking campaign through her personal story is a very powerful message and one that really goes to the point of just how much tobacco wrecks people's lives.

The member for Thornlie made a good contribution, particularly with his observations of the activities of big tobacco companies, which are insidious players in this scene. We know from evidence right across our modern history the role that big tobacco has played in duping people in the first place by saying that smoking was good for them and lying to communities about the nature of smoking and the impact it has on our health. Smoking kills people and big tobacco makes profits from killing people by pushing their products. In particular, I draw the member for Thornlie's attention to the fact that big tobacco is selling one of the most addictive drugs known to human kind. Nicotine is a very powerful drug. We know from a lot of personal experiences, including from our friends, how difficult it is to give up, and that is why it is important that we put everything in place to make sure that we regulate it as a drug. I am also reminded of the role that big tobacco played in the 1980s when it convinced people that low-nicotine cigarettes were somehow better for them. In fact, a lot of women were encouraged to take up low-nicotine cigarettes as a healthy option. We all know now that a lot of those women repent this decision. An increasing number of people in that particular cohort to whom the advertising was targeted at that point have graduated to contracting fully blown cancers, and we see the impact that that is having on the community.

The member for Thornlie highlighted big tobacco companies' constant presence in the tobacco debate. The other big constant in the tobacco debate has been Professor Mike Daube. We are indebted to people like him and other warriors in the public health debate for the work they have done to cross-examine the lies of big tobacco and point

out the important opportunities we have for tobacco law reform. We are indebted to him and others for the work they have done over many years.

The member for Dawesville raised the issue of young people smoking and the incredulity that we all have when we watch young people smoke. The one thing they have is their youth, but the one thing that can take away their youth is sucking down poison on a regular basis throughout the day. I share his complete confusion that despite the amount of information out there, it is seemingly apparent to all of us just how dangerous cigarette smoking is, yet people do it and young people take up the habit. That again goes to the fact that nicotine is an incredibly powerful drug. It is easy to get on but really difficult to get off, which is why we must do everything in our power to assist people to avoid it, and that goes to targeting the promotion of these products, which is around advertising and other features. It goes to the issue of access to these products and of making sure that we constrict the opportunities that people have to get hold of these products through retailing restrictions, a restriction on the age of people who can get it and the situation in which they get them. Of course, price is one of the key drivers to stop people smoking and it acts as a further barrier to smoking in the first place.

The member for Dawesville alluded to the numbers that continue to plague us in Aboriginal communities. He also raised the issue of Aboriginal health statistics right across just about every aspect of life, which are incredibly high and, of course, this has parallels with the alcohol debate in that we know that we have to take positive steps with alcohol because we see the harmful effects of alcohol in our community, particularly in remote communities. As part of the public health debate, we must continue to put pressure on to make sure we move forward. The member for Dawesville also talked about e-cigarettes clearly being a safer product. Of themselves, possibly, as Simon Chapman puts it, basting your lungs in the fluid of e-cigarettes is potentially less harmful than inhaling smoke and the substances that come with that. We know that the particulates in e-cigarettes, such as vapour, are harmful, but e-cigarettes are potentially less harmful than smoking of itself. If we substituted one for the other, we could make a case that e-cigarettes are potentially less harmful, but the fact of the matter is that most people who consume e-cigarettes do so on a dual basis; that is, they continue to spend some portion of their time consuming nicotine through tobacco cigarettes and that simply militates against any of the “health” aspects that can be identified with e-cigarettes. I confirm for the member for Dawesville that e-cigarettes do not have Therapeutic Goods Administration approval. Despite the impartiality of the Therapeutic Goods Administration, the federal Minister for Health is reported in an online ABC article dated 15 August this year to have said —

... he will never lift the ban on e-cigarettes despite an ongoing Senate inquiry into their use.

Ms J.M. Freeman: A different health minister now.

Mr R.H. COOK: No; it is the same health minister—the federal minister, so Minister Hunt.

Ms J.M. Freeman: Is it still the same?

Mr R.H. COOK: Yes. It is still Minister Hunt. Although I note the member for Dawesville says that his party is currently hedging its bets on the issue of e-cigarettes, his federal leaders have very strong views on this.

Dr D.J. Honey: Many of us are with you, minister.

Mr R.H. COOK: Excellent! I thank the member for Cottesloe.

E-cigarettes are banned in Western Australia under section 106 of the Tobacco Products Control Act because they resemble and are used in a way that mimics smoking. From that point of view, they fall foul of the current provisions of the tobacco control act.

The member for Mirrabooka talked about the personal cost of tobacco. I join her and the member for Thornlie in acknowledging the passing of Senator Jim McKiernan. He was a lovely bloke, who was, as we know, a regular smoker. We all miss him dearly.

I have covered the issue that the member for Mirrabooka raised about the effectiveness of federal taxes, but I will now cover some of the issues she raised around e-cigarettes. One of the key premises of her argument was that with our current provisions in relation to e-cigarettes we have no control over what people consume and put in their lungs. That is true. Under the current prohibition laws it is illegal to have e-cigarettes, and from that perspective, short of sending out squads to confiscate these items on the street, we are not in high-level regulation. But it is true to say that in places where e-cigarettes are legal there is still no control over their content. So even though they are regulated in the form that they are legal, in terms of what people utilise in the cartridges and what they consume, there is still not that level of control that the member for Mirrabooka rightly said is an important aspect of the regulation.

In August 2018 the Commonwealth Scientific and Industrial Research Organisation put out a review into the use and impacts of e-cigarettes and personal vaporisers. I will go through some of the key findings from that. This is basically a literature review of current research in relation to e-cigarettes. The review says —

... the evidence available suggests that regular use of e-cigarettes is likely to have adverse health consequences. There is a lack of clarity about the magnitude of adverse health effects, and the quantity of e-cigarette use required to trigger adverse health effects.

That is part of the problem. We simply at this stage do not know the impact of e-cigarettes. The review says —

In many countries where appropriate evidence is available, it appears that e-cigarette use occurs with cigarette use.

That is the dual use issue. The review continues —

However the evidence is consistent in suggesting that use of e-cigarettes by non-smoking youth predicts future smoking. While many smokers and former smokers state a preference for e-cigarettes as a smoking cessation method, the effectiveness of this method compared with other smoking cessation methods is not known.

The review also makes the observation that when e-cigarettes are used by smokers instead of conventional cigarettes there is evidence for improvement in the individual's health, probably mainly due to the reduction in smoking. So that is, if someone substitutes one wholly for the other there is evidence that suggests that it does have a positive health impact. However, the review goes on to say —

However, use of e-cigarettes may also introduce independent health risks, and 'dual use' (using both e-cigarettes and conventional cigarettes) is popular.

The fact is that particularly in relation to some of the particulates that people inhale from e-cigarette vapour, we do not know the health impact. The review continues —

On present evidence, it is not possible to determine whether less restrictive access to e-cigarettes would reduce rates of smoking in Australia.

I draw the house's attention to an online article the ABC recently put out about early evidence in relation to e-cigarettes. The article was co-authored by Professor David Thickett. He makes the observation —

"It has been suggested electronic cigarettes are safer than traditional cigarettes, and this narrative is increasingly supported by tobacco companies that have established research institutes devoted to generating supportive data ...

"E-cigarette users have been given advice based on relatively little information.

"We hope that by disseminating this data as widely as possible the public can at least make an informed choice; the public must be aware these devices are not harmless."

I think one member made the observation that e-cigarettes were 95 per cent safer than tobacco, based upon, I think, a 2015 UK study based on the Nutt report. That was a small study of 12 experts, some of whom acknowledged that they had relationships with big tobacco companies. It was not a strong, quantitative, evidence-based study, and that is the one thing lacking in relation to e-cigarettes. Nicola Roxon, who was awarded the 2017 Bob Elphick Award by the Australian Council on Smoking and Health, observed last year that if e-cigarettes are a way out of tobacco consumption, why is big tobacco investing so much in e-cigarette companies. I have said that one element has been a constant in the whole tobacco story of our community, and that is big tobacco is out there to score a profit off the consumption of nicotine and tobacco, and it destroys lives. These are the same people who originally told us that smoking was good for us, withheld evidence that they knew that smoking killed people and that told us in the 1980s that menthol cigarettes were somehow a healthy option. These are the same people who are now investing heavily in e-cigarettes, and they are not doing it because it is good for us or they think it is a path out of nicotine consumption. That unfortunately is the reality of the tobacco debate over the decades that the member for Churchlands earlier described for us.

I think it is fair to say that we have to be cautious around the e-cigarette debate, because the evidence is fairly new and emerging. From that point of view, I take note of Simon Chapman's recent observations in the *British Medical Journal*. He said there might be good some outcomes from e-cigarettes, and if they could be made available to people on a prescription basis and under a carefully managed program as a way of exiting from tobacco and nicotine consumption, that is probably a good thing. It might be the one thing that comes out of e-cigarettes that works well.

I will make some remarks about what I described earlier as the consensus around the tobacco debate. It has been heartening this evening to hear members right around the chamber make comments on this point. We know that these sort of public health campaigns and ideas are under challenge at the moment, and for a whole range of reasons we have recently seen the establishment of the Select Committee on Personal Choice and Community Safety, which has been referred to as the "nanny state select committee". That I think some of the subtext around that is really about challenging some of the long-held beliefs in relation to the consensus on public health. I have been at

times surprised in this place when people whose intellect I would otherwise respect have come back at me from time to time with some of the most absurd arguments that suggest we should not continue to go hard on tobacco reform. One of those is that somehow anti-tobacco law reform is somehow anti-working class, because we all know that good working class people like to smoke, and if we put in place laws and measures that try to reduce that, it somehow is attacking their way of life. It is just ludicrous that somehow we are supporting working class people by withholding policies from them that would prolong their lives and those of their families. I actually find it extraordinary. One of the other anti-nanny state sentiments is that people should be able to do what they want. The fact of the matter is that tobacco, and many members have said this tonight, costs the community a huge amount of money through the impact it has on our economy, the impact of ill-health, the impact on our health system and the impact on the wellbeing of our community. People who are caught in the trap of nicotine addiction and who die as a result leave their families and friends earlier than they should. There is the trauma associated with a long, slow death that the member for Churchlands described in relation to Terrie Hall earlier. Tobacco is not something that does not hurt others. The other argument that often gets run out about smoking is people saying, "I'm doing it myself; it doesn't harm others." It does; it harms others. We know the impact of second-hand smoke and the fact that in many cases it is more carcinogenic than first-hand smoke. We know the harm from the ill-health that tobacco wreaks on the community. We know the harm that tobacco causes, because as a community we are all diminished by the impact of smoking. The so-called anti-nanny state people also say that people should take responsibility for themselves. The fact of the matter is that nicotine is one of the most addictive drugs in our community, and as a result of that, we all have an obligation as governments and leaders in the community to put in place measures that regulate drugs. The other very potent drug in our community is alcohol, and we also have to be vigilant in relation to alcohol and the impact it has on our community. We have to make sure that we are not shy of having laws that protect the community from the impact of drugs such as tobacco and alcohol. People are impacted by the marketing of these drugs, they are impacted by the socialisation that goes on around these drugs, the easy access to these drugs, the promotion of them and, as we have seen recently through the big liquor barns in the community, the price competitiveness and how easy it is to get hold of these drugs.

I would just like to make the observation before I finish that one of the features of the Tobacco Products Control Act is that every four years it is subject to a review. It is a little bit sad, but today in 2018 we are actually discussing the outcomes of the review undertaken in 2011. I heard some of the members saying tonight that the 2009 bill was one of the first pieces of legislation they debated. The first bill that the member for Thornlie actually spoke on was the Royal Perth Hospital Protection Bill, because I remember bullying him into doing that! That was in 2008, just after the former government was elected.

Ms J.M. Freeman: We do not say "bullying" anymore, minister!

Mr Z.R.F. Kirkup: Encourage!

Mr R.H. COOK: I strongly encouraged the member for Thornlie!

This bill is the result of the 2011 review, so obviously even though we are legislating tonight and hopefully about to complete the passage of this bill, the 2018 review is upon us. That will provide everyone with an opportunity to have their voices heard in relation to e-cigarettes and things like that.

I hear the Leader of the House encouraging me to swiftly conclude my remarks. Can I just say some thankyou's. I would like to thank the Department of Health for its support. We will now be putting together a new discussion paper about tobacco law reform and we will start the process again. That process will begin pretty much straight away, so I thank the Department of Health for its work on that. I particularly thank the public health officials Denise Sullivan, Linda Taylor and Dishan Weerasooriya—I apologise if I demolished your name there, my friend! They ran the gauntlet of the committee system in the upper house and did a fantastic job, including oversight of the Standing Committee on Uniform Legislation and Statutes Review and the Committee of the Whole stage. I would like to thank the parliamentary secretary, Hon Alanna Clohesy, who undertook stewardship of the bill in the other place. I thank my own advisers, in particular Gino Marinucci for the work he has done on the bill. Finally, can I thank some lasting members of the public health lobby who, as the member for Churchlands recognised, were in the debate from 1971 onwards. In particular, I thank Professor Mike Daube, who I have acknowledged before and who has since retired from the Australian Council on Smoking and Health. I also acknowledge Mr Terry Slevin, who was at the Cancer Council and who would have been the author of a lot of the material that the member for Churchlands used tonight. He has now moved on to bigger, better, brighter things as the head of the Public Health Association of Australia. I also acknowledge Mr Maurice Swanson, who has recently left the Heart Foundation and put in many years into the public health debate.

Mr S.K. L'Estrange: He is now with the Australian Council on Smoking and Health.

Mr R.H. COOK: Indeed, he is now with ACOSH. There are many younger members of the public health lobby who are coming through the ranks, and I am encouraged and really pleased to say that most of them are women.

Extract from *Hansard*

[ASSEMBLY — Tuesday, 11 September 2018]

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Mr Sean L'Estrange; Mr Chris Tallentire; Mr Zak Kirkup; Ms Janine Freeman; Mr Roger Cook

They will be great leaders in this debate and I hope they will continue to carry the torch of tobacco law reform in this state. Once again, I thank all the members for their contributions and for the speedy passage of this bill.

I commend the bill to the house.

Question put and passed.

Bill read a second time.

Leave granted to proceed forthwith to third reading.

Third Reading

Bill read a third time, on motion by **Mr R.H. Cook (Minister for Health)**, and passed.

House adjourned at 9.06 pm
