



COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON HEALTH AND AGEING

**Tobacco Plain Packaging Bill 2011, Trade Marks Amendment (Tobacco Plain
Packaging) Bill 2011**

(Public)

THURSDAY, 4 AUGUST 2011

CANBERRA

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**HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON HEALTH AND AGEING
Thursday, 4 August 2011**

Members in attendance: Mr Georganas, Mr Irons and Mr Lyons.

Terms of reference for the inquiry:

To inquire into and report on:

Tobacco Plain Packaging Bill 2011, Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011

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Committee met at 10:47

CHAIR (Mr S Georganas): Good morning. I ask that one of my colleagues move a motion allowing the media to record and report this public hearing.

Mr LYONS: So moved.

CHAIR: It is so resolved. I now declare open this public hearing for the inquiry into tobacco plain packaging. This inquiry examines the Tobacco Plain Packaging Bill 2011 and an associated bill. On 7 July 2011, these two bills were referred by the House of Representatives Selection Committee to the Standing Committee on Health and Ageing for this inquiry. The health and ageing committee promoted the inquiry through its website and through advertisement in the national press. Interested organisations and individuals were invited to make submissions. The committee has received 63 submissions. Submissions were received from representatives of the tobacco industry, retailers, the public, preventative health advocates and government departments. In view of the committee's remit—that is, as a committee concerned with matters of health and ageing rather than a committee that deals in economics and legal issues—the health and ageing committee has undertaken to inquire and report on the health related aspects of the proposed legislation. The program has been developed with that focus in mind, so I request witnesses appearing today to be mindful of this.

Before proceeding, I would like to comment further on the program for today's public hearing. The committee notes that only two of the three large tobacco companies operating in Australia made submissions to the inquiry; although both of the large tobacco companies that made submissions were invited to appear before the committee today, only one accepted the invitation, the other responding that it was unable to provide a spokesman at such short notice.

On that note, I take this opportunity to thank everyone who has accepted the committee's invitation for making time to speak with the committee today. I welcome our first witnesses. The committee does not require you to speak under oath. You should understand that these hearings are formal proceedings of the Commonwealth parliament. Giving false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. I will ask you to make a brief introductory statement and then we can proceed to questions.

Mr Crow: We will take the opportunity to give a brief introductory statement, which will hopefully help the discussion and the questions you have. Firstly, thank you for having us here and inviting us here today to make representation on the Tobacco Plain Packaging Bill 2011 and the Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011. We are representing British American Tobacco Australia. We welcome this committee's investigation into the plain packaging proposal. Yours is the first such parliamentary committee in Australia to hold an inquiry solely into plain packaging.

Let me say at the outset that there is no question that smoking tobacco can cause serious and fatal disease. We believe that tobacco products are only suitable for adult consumers and we do not want children to smoke. I do not think anyone in this House or anyone in society wants children to smoke. As a result, tobacco should be regulated, and we do not wish to prevent workable tobacco regulation.

We support regulations that are the product of evidence based and consultative policymaking, and in the development of the plain packaging proposals we are talking about today such a process did not occur and has not occurred. There has been a lack of engagement, consultation and transparency in the development of this legislation. Not only is this unfair and unworkable but it will inevitably bring with it significant unintended consequences. Government documents released to us under the Freedom of Information Act show that due diligence and robust investigation into the evidence base or the possible consequences of plain packaging, including a regulatory impact statement, were not undertaken. As this is a standard procedure when developing new laws, we would respectfully ask the committee to recommend further investigation, including a RIS, a regulatory impact statement, to be carried out before these bills proceed further in the House.

The time we have today does not allow us to go into the full detail and complexity of the concerns as laid out in British American Tobacco Australia's submission, but I note you have copies of that submission. However, I will state that BATA is opposed to the introduction of plain packaging. The government's power to introduce plain packaging is constrained also by domestic and international law, including the World Trade Organisation

agreements that this country has signed. Accordingly, we ask the committee to recommend that further investigation be undertaken into the ability of the government to take away our intellectual property rights.

Should the plain packaging proposal pass without robust investigation, a series of significant unintended consequences could and will unfold. This stripping of property rights could lead to growth in the illegal trade of tobacco, which would in turn lead to greater availability of untaxed, cheap products in the market and a possible increase in tobacco consumption.

Furthermore, the structure of the bills and the draft regulations mean that the tobacco industry would not be able to comply with the legislation within the short time frames provided for. We would need at least 12 months preparation period, with a minimum of six months retail flush-through—this is where a product is moved through retail—to ensure that the legitimate market can adapt to the new regulatory regime. This was the case when we moved to the reduced fire risk cigarettes and also when we moved to the graphic health warnings back in, I think, 2004 and 2005. It is standard practice, in consultation with the ACCC, and an 18-month period seems to be the norm not only in Australia but also internationally. If it assists the committee, we extend an offer to tour our factory in Sydney to obtain an understanding of the manufacturing process for tobacco products and the time frames involved. It would allow you to see firsthand how it looks and the size and scale of what we would have to change so you can get a really clear understanding. Over 1,200 submissions have been lodged with the Australian government on the draft bill, coming from countries, retailers, retail associations, professional bodies, individuals and a raft of others. The majority of the submissions raise concerns about the plain packaging proposals. The bill has also been discussed at the World Trade Organisation where it was questioned by a significant number of member states and we understand that it has also been discussed in the EU forums in the last couple of weeks.

There is a great deal to consider and we wish to assist this committee as much as we are able to. At the end of the day, this bill is about removing intellectual property from a legal product. It will be the very first time this has ever been done in Australia. I respectfully ask the committee members—in fact, I ask all members of this House and the Senate—to think about the implications of this very seriously. Are you sure that removing intellectual property rights will not result in compensation being paid to tobacco companies? Furthermore, would you be comfortable removing intellectual property rights if it meant that an illegal market grew and made tobacco more available to young people? This is an issue which concerns us.

It is worth considering whether voting to remove intellectual property would create a dangerous precedent that would be used for other products in the future, not just for this parliament but obviously for parliaments for the next 100-odd years. This bill is really about the removal of a legitimate company's property, legitimate brands, legal product, legal industry. Is that really the role of this parliament and the Australian government?

Thanks for allowing us to make some introductory remarks. Mr Chairman, if Mark and I answer questions that go beyond the scope of this committee's inquiry, please let us know. I take this discussion to be around the plain packaging bill and the Trade Marks Amendment Act, if that is right. Thank you very much for the time.

CHAIR: I take your last points that you made about the trademarks et cetera. I will just make it quite clear again that we are the health and ageing committee. We cannot control what is referred to us, but we will look at the impacts on health. That is our duty here. That is the expertise that we have. I do feel that perhaps some aspects of this bill should have been referred to the economics or the legal committees as well as they are better equipped to deal with those particular aspects.

Mr Crow: That is understood.

CHAIR: Certainly we are quite happy to deal with the health impacts and to ask questions and get some ideas of where we are heading. Why, in your view, should the fact that other national governments who have not implemented this type of legislation unnecessarily deter Australia from leading the way? What are the reasons? I am reading that in your submission.

Mr Crow: We have seen a lot of governments have a look at this in the past. The Australian government had a look at this in 1995. It took advice from many parts of the government, including the Attorney-General, and made a decision not to progress for whatever reason. There were obviously some issues in that Attorney-General's report and that is subject to some work by us at the moment to see if we can get a view of that. I recommend if you can see that report—obviously we cannot—to do so. It will be quite good reading, no doubt, and will give you some more information. But many governments have had a look.

The UK government recently had a look, about eight or nine weeks ago. They had a good look at this, including a retail display ban—commonly called RDB—where the brands are put behind steel doors. They have agreed not to progress with the process at the moment. The health minister came out on public record. They are looking for evidence and proof. They are also looking for the consequences, what we are calling the unintended

consequences, of this bill. They have issues around intellectual property rights, compensation and competition, but they also have issues around their international trade agreements, so they are spending time sitting back and having a look at it.

Canada has had a look at it just recently as well and has agreed at this stage not to progress. I do not think anyone has ever said, 'We're never going to do it'; I think they are saying, 'There's no evidence, there's no proof at the moment, so let's do the work and look at the consequences'. I also understand that France and Poland have both made similar moves to stop or halt the process for a short period of time so they can look at the evidence and the consequences that may prevail in their jurisdictions.

We note from the WTO that a raft of countries were involved in some discussions in the last couple of weeks in the WTO. They have done the same thing. I do not think they are rejecting the idea; I think they are saying at this stage there is no evidence, there is no proof, and there are quite serious consequences, depending on the law in those countries. We also understand the EU has done some things as well. A general consensus is that it needs time and thought. It needs what in Australia we always call a regulatory impact statement: a wide-sweeping review of all the impacts across government but also stakeholders so that we can get the evidence and the proof on the table and make really pragmatic and workable law.

CHAIR: Has British American Tobacco conducted its own research into the psychology behind plain packaging and marketing as it is today and, if so, what were the results?

Mr Crow: We have not done any specific research on the psychology of plain packaging per se, such as why people would choose plain packaging over something else. That has been done by other people. We do normal research in the course of our business but nothing specifically on plain packaging. Obviously we will have to, in the future, look at the impacts but at this stage we have not. We are focusing on the dialogue here.

CHAIR: I heard you say it has been done by other people before. Do you know what the results were?

Mr Crow: No. I think there is reference in the preamble to the minister's bill about studies that have been done looking at the choice of plain packaging versus branded packaging and looking at just the mere choice: if you had a choice, where would you go? That kind of work and that kind of research is very limited in its scope. The minister herself has been very open about this, saying that there is no robust proof on this issue. This is an expensive experiment at the expense of the Australian taxpayer at this stage. That is why we are very concerned. Our job today is to try and imbibe in you that we have concerns that should be known by everyone involved in the passage of this bill and that they really understand the consequences of what is going on.

CHAIR: I asked the question of whether you have done any research into the psychology of plain packaging. What about marketing and packaging? You obviously conduct marketing research.

Mr Crow: We do market research on our brands and our packaging across many years going back 40 or 50 years. It is a very standard practice that we do in FMCG markets. Whether you are marketing Coca-Cola or whether you are marketing jeans, you look at the product you are offering the consumer and see how that resonates with the consumer. Some consumers like certain products and other consumers like others. We are trying to work out what is in that. That is what market research does.

CHAIR: How much money would be spent on marketing the packaging?

Mr Crow: We would not disclose the exact money but we would spend more than \$1 million a year on market research, which would be commensurate with any normal big FMCG product.

Mr IRONS: You spoke about the illegal trade and that illegal tobacco maybe would lead to a higher consumption of tobacco by younger people. What sort of investigations have you done in that? Is there anything you think the Australian government should do to change the bill that would enhance the protection against the illegal tobacco trade?

Mr Crow: The illegal trade issue is a very serious consequence of this bill. If I can take you through the basic logic, we have a current illegal trade in this country of 16 per cent or one in five cigarettes. It represents around about \$1.1 billion of lost excise today. In the forward estimates, if you look at it over four years, we could call it 4½ or five billion dollars in lost revenue to the fiscus. It is obviously a very challenging issue. The trade has grown by 150 per cent in the last three years, which is obviously concerning not only for us but also for the government and for consumers. This illegal product comes in from Indonesia, it comes in from China, it comes in from the Middle East and has come from some parts of Eastern Europe in the past. The trade has grown over the last 15 years in Australia. It is not an Australian-only problem. This happens in a lot of countries. We have seen illegal tobacco rates as high as 40 and 50 per cent in certain countries like Canada and Malaysia at the moment. Even in the UK at one stage it was in the high 30s. It is now down at 30 per cent.

Our concern is that plain packaging will make cigarettes easier to counterfeit because obviously everything is in the same kind of packaging so it is a pragmatic thing. It makes it easier to print lots and lots of packets because they all look the same. It makes it easier to hide those counterfeit products in the store when you are selling them, which obviously makes a dramatic increase in illicit trade. Remember, illicit product sells for around 30 to 50 per cent of the regular retail price of the legal product depending on its form. As prices go down, consumer volume goes up. That is obviously concerning.

I cannot compete with the illegal product because I pay tax, I am highly audited and I am governed by thousands of regulations and laws, and rightly so—to be brutally honest. As I said in the preamble, we are not afraid of legislation in our industry; we know that it must be there. The issue becomes really big with that illegal product flowing into the market. I would then have to reduce my prices at some stage to compete because I would be losing market share to that big illicit trade combined with reduced pricing. Reduced pricing, we believe, will allow children to access the product more readily. One of the big statements that comes from this government and many governments is that pricing is one of the best means to stop access for children. Seeing prices go down is not smart—not smart from our point of view, not smart from your point of view and not smart from the point of view of anyone involved. It means having more kids smoke. That is what we mean by unintended consequences. I just do not think the homework was done in the background as the bill was drafted to look at these consequences. The other consequences, as I mentioned, are around things like compensation to the industry—we all obviously defend ourselves—and that process. The issue of having no evidence means that it is a punt; it is an expensive experiment. I am not sure this is an area we should be experimenting on without evidence.

I am not saying you should just stop, park the legislation and can it. We are very realistic. Obviously there will be legislation; we understand that. What we would like this committee to do is take the time, and not a huge amount—not years and years and years. Take the time to do arrears. Get the evidence. Get the consultation across all the departments of government, and include people like us, if we are allowed, retailers, concerned parties, medical associations and anti-tobacco organisations. Get them into a room like this and build evidence-based legislation that is going to reduce smoking. We understand the intent of the act and we are not afraid of that. That is what we would like to happen.

Mr IRONS: One of the things that the retailers have been in contact with me about—and I guess they have been in contact with you, or you have contacted them—is the packaging as well. In a situation where currently the cigarettes are behind barriers and you cannot see them, what is the real consequence of having a plain cigarette packet that no-one can see anyway?

Mr Crow: I understand the question and where it is coming from. The issue we have is one of confusion. Let us just start with the retailer point of view. There are about 300 to 350 different SKUs, or stock-keeping units—they are like brands—in the marketplace. They are all looking the same in this future environment. Yes, they have a name on them, printed in Lucida 14—highly confusing. It is a massive supply chain. We deal with 30-odd thousand to 35,000 retailers. The retailers deal with thousands of customers every day. That ability to navigate through that process is extremely difficult.

For the individual concerned, remember that we are talking about a smoker who has chosen to smoke. They are 18 or over; they are an adult. They have all the information on the health issues of smoking. We know that, because the government advertising campaigns are very good. They talk about how 'everybody knows'. The awareness numbers we hear from government research are that it is 100 per cent awareness. The issue is about the ease of navigation. The only real things left in terms of the consumer choice issue are the blend or style of the tobacco that they smoke and the price, and the brand allows consumers to make a very easy navigation through that process—to say, 'Look, I want that one over there; it's that name and it's that colour,' or whatever it is. 'That's the one I want.' That is also the case for the retailer. So it assists in the process. All the days of advertising are, as you know, long gone. It is illegal for us to market to the consumer directly. It is illegal for the retail trade to market to the consumer directly. They cannot advertise and they cannot promote in their stores. It is illegal by law, and that is very normal. We see that branding being a very normal part of consumer choice in a country which prides itself on choice, and we will defend that choice as much as we can through the process.

As I have said, in some of the comments you have may have read people are attributing to me the statement that we are going to have this huge legal action. We are not even planning anything like that yet. We are looking at legal options that we have, but that is way down the track. Our focus, as I said in a lot of the media I did about a month ago, is that we want dialogue. That is why I say to the chairman: thank you. This is the first two-way dialogue that we have had on this issue since April, when it was launched by the previous Prime Minister and the Minister for Health of Ageing. I applaud you for that. Thank you; it is great to see.

Mr IRONS: Also, with regard to the plain packaging, you have just outlined the difficulties it is going to cause for the retailers. The fact is, I think, that the plain packaging is going to come in, but what changes to the bill can you see—changes that maybe the government could implement in the bill—that would make it easier for retailers to identify and distribute that product when someone comes in and asks for it?

Mr Crow: Pragmatically—and you knew I would say this—I would say that, if you did a proper regulatory impact statement that was evidence based legislation with proof and fundamental engagement, I am not sure you would pass a bill that removes branding and the equity of intellectual property from a legal business in a legal company. Under the Constitution I do not think you can, and I do not think you would if you had evidence. What I do believe is that, given that consultative forum, if the objective is to reduce consumption then you would move towards areas which have been evidence based not only in this country but in others around the world—things like education, which have been proven to work and have been the focus of many studies across the world. They have been proven to work very, very well. We have great examples in this country not only on tobacco but on things like skin cancer and drink driving laws, where they have changed consumer behaviour. We have seen that being effective not only here but elsewhere. There should be more, more and more on that. We need uniformity on pricing; we need to get pricing right and excise regimes right. We understand that the price going up when the excise goes up reduces consumption. We saw that last year very effectively with the increase in excise. There was a 25 per cent increase in the excise and we saw the volumes go down by about 10.2 per cent; there was about a 10.2 per cent reduction in the industry last year in Australia. So there are ways of achieving the objectives that do not infringe on the property rights, do not breach the laws and the international commitments and do not mean that the Australian government would have to compensate people.

On the question of what would happen, I do not think that the bill would progress with plain packaging. If it did, if you conjecture and look forward, I am sure that there are lots of elements of branding and of identification that could be provided in, for example, colour-coding systems that the government could allow that would allow the consumer and the retailer to navigate through the process. But, if I was very straightforward, that would just be another form of intellectual and branding and we would say, 'Why would you remove our branding anyway when it is illegal to remove our branding under the current Constitution?' So we are quite firm on that. As we represent this company and what it stands for, we would defend that constitutional right to have our intellectual property on our brands. That is the tough part of this debate. I know that it is not this committee's debate, but it goes to the health impact on the retailer and the problems that the retailers are facing. And I know that they have made representations.

If you get a chance to call them to this process at some stage, please do so. They have a lot of views. They are very vocal. We deal with 30,000 of them. They are amazing people. They are the cornerstone of every shop that we go to. They would give you, and they give all of us, fairly good feedback. I get it every time I walk into my corner store in Sydney. They are vocal, and not just on tobacco, by the way—they are vocal on everything. They are a rich vein for feedback.

CHAIR: I want to add to that. It is extremely unfortunate that they have not been given that opportunity. The referral of the bill to us should have been thought out more carefully to give these people the opportunity to come and contribute on the legal and economic sides of this matter. That is a point as chair that I would like to make.

Mr Crow: If you do get the chance, that would be good. I do not know how that would work procedurally.

CHAIR: As I said, we cannot control what is referred to us.

Mr Crow: Fair call.

CHAIR: Early in your submission you state that the illicit tobacco trade is 16 per cent of tobacco consumption. What is the source of this figure? Government figures have it a lot lower than that.

Mr Crow: I will try to answer that as quickly as possible. We commissioned a series of reports by Deloitte consulting. Two have been done. You may have seen the recent one, which came out in May-June. There was also one done at the back end of last year. Previous to that, BAT also commissioned reports through PricewaterhouseCoopers. They use very similar and robust methodology. Roy Morgan Research also does a lot of research not only for government but also for industry. These reports looked at the purchase patterns and the volume assessments of the industry. We chose Deloitte because they are very thorough. This report was funded by BAT, Phillip Morris and Imperial Tobacco. Rightly, you might challenge us, saying, 'My god, you paid for it, and therefore you are going to get the answer that you want.' We chose Deloitte, being open and straightforward, because the government's procurement department has sanctioned Deloitte to do independent reporting for the government. Ironically, we held a press conference on the 17th. The same day or the day after, the Deloitte report

into the carbon tax came out, an independent report on carbon. That was huge. This report swamped ours. It obviously cost the Australian government a lot of money. That is why we chose Deloitte.

It is robust research. It is based on thousands of interviews of consumers done in a very thorough way by Roy Morgan Research, who work with Deloitte. The aim was to estimate—and you will never get a real answer—the size. That size has been consistent over the last 18 months. The last report found that around 15.6 per cent of the industry is illicit. We say one in five; one in 5½ cigarettes smoked in this country is illicit.

Those illicit cigarettes come in three forms. Firstly, there is loose tobacco. That is the bulk of it at the moment. About 90 per cent of it is loose tobacco. It is like the bags of tobacco that you buy in your fruit or vegetable shop. You buy half a kilogram or a kilogram. Sometimes, the retail store that you buy it from tubes it up, which means that they take the tobacco and put it into cigarette tubes with filters on the end. It is like a cottage industry. They sell those. Another type is counterfeit, where they copy our brands. We are obviously all aware of that one. The other type is contraband, which is where they take our product and move it across borders without tax. Obviously, there is no tax, no health warnings, no control, no excise, no legal compliance—nothing. And there are additives in there that are not smart to smoke and that we would never be allowed to use under Australian law.

CHAIR: It is not a big deal, but the figures are different from the government figures.

Mr Crow: Yes. The research that came out just recently was done for a very different reason. It did not look at volumetrics in the industry. That is what this Deloitte report specifically does. One of the things that we implore the government to do is to do their own research into the illicit trade, given the size of the fiscals. We are losing \$1.1 billion. If we could control that and halve it, say, there is a lot of money there to pay for a piece of research once you can track it. Customs and excise are doing an amazing job, as is the ATO. They are under huge pressure, because this industry is growing really quickly at the moment—150 per cent in the last three years. They do not have enough resources. One of the recommendations that we put in our submission—and I do not know whether your committee can do it—is for you to recommend or put a file note in that says, 'They do not need billions; they just need some resources to go after this.' This industry is getting out of control, unfortunately, at the moment.

Mr LYONS: Do you anticipate that there would be fewer brands in the market if plain packaging came in?

Mr Crow: That is an interesting question. I do not think so in what I would call the midterm, which is sort of five to 10 years. If anything, there might be more, as we would have lost the ability to represent a brand with a colour or a name for easy navigation. The retail industry would probably try to stock as many choices as they could, and there might be even more. But that would just be a projection. I would not know. There were lots of projections around retail display bans when they came in in Canada and in some parts of Europe. The suggestion was that that would reduce the number of products sold, because they could not be seen. But it has not so far. It has stayed about the same. If I had to give an answer, I would not know. But my gut feel projection is that it would probably stay the same. Some brands would get tired, with people not liking them anymore. But something different would come in.

Mr LYONS: In your submission, you talked about it being around 30 months for turnover and about 18 months for clearing out stock. You talked about 18 months today. Are you saying that it would take you about 30 months to change your plant and equipment and then another 18 months for it to be cleared out of the system? Is that what you are claiming?

Mr Crow: Let me clarify. In our submission, I think that we say 12 and 12. There would be 12 months work to change the product, which would involve changing the product and the processes to get it through. Remember that some of our product comes from Holland, some comes from Singapore, some comes from Malaysia and some is produced in Australia. Our competitors, no doubt, have similar supply chains, although we do not know for sure. Imperial have production in New Zealand as well, I think. This is the conversation that we had with the ACCC when we were making the graphic health warning changes in 2004-05 and when we were doing the reduced fire risk changes to packaging, where every packet changed with that claim, back in 2008-09. The ACCC were very open with us. They were very straightforward. They worked out an 18-month period—which includes the retail flush-through, by the way. So that included 12 months for manufacturing change and probably a six-month minimum retail flush-through. That 18-month period was seen as being pragmatic for the industry. It also seems to be—and my colleague may be able to find a quote from the ACCC—a very normal number used internationally. It is literally to do with the pragmatic issue of changing loads of stuff.

In our submission, we also highlighted the issue of there being specific changes to the specifications. This is one of the problems that we have at the moment. I have two bills in front of me and I have a draft set of regulations that have lots of Xs. I do not know what is in there. And everyone keeps asking us, 'But aren't you

preparing now?' I cannot. I do not know what machine to order. These machines cost millions of dollars to buy. They come from Italian or German manufacturing plants. They take about 24 months to order and tool in the global industry. So if we are asked to change some of the specifications, it becomes a really simple problem: we will be out of stock. BAT will not break the law. We pride ourselves on this. We follow every law diligently all the time—we have to; we are under huge scrutiny. We have a huge governance process to ensure that we do. Next July, if the bill stands, with about 120 days between when the bill is propagated and the regulations come in and by the time we have to cease manufacture on 20 May, I will then have about six weeks to clean the industry out, which is basically impossible. I will be out of stock on 1 July. I would imagine that Philip Morris—and you will have to ask them; please feel to write to them; we know them well and they will respond—would probably be the same. In the submissions from them that we have seen, they have said the same kinds of things. With Imperial, I do not know. We would have to check the data for you.

We would be out of stock. If the industry goes out of stock, the only people who would have stock would be a bunch of guys out of Indonesia and China who currently supply 16 per cent of the market. And they will flood the market with cheap cigarettes. This would not be good. This would not be good for my business. And let us be very honest about vested interests: I represent a commercial concern that wants to make money in this country out of its investment in this country. It is a company that is owned in England. They want to get normal profit growth, as any company would. If we saw that happen, we would not be able to break the law to supply the market, to put it bluntly. We will not. We would refuse. I would not sanction that as a CEO and neither would any governance structure known in this country. That would become a clear, present and real problem for us. We are pragmatists. I am hoping that with the opening of dialogue today I can convince the department of health, who are represented here and will be appearing later on today, to sit down and have a proper conversation with us. We have not had that. I keep asking for that. I wrote to the minister again on Monday or Tuesday asking for half-an-hour before this committee to have a chat. There was no response. That is getting frustrating, because there are practical issues that we need to get on to and we are not getting any response. If you can help on that, I would appreciate it. I would appeal to you to help with that if you can. We would like them to sit down and have a two-day meeting—or a half-a-day meeting—with the industry and the retail sector. If it is going to pass—and your view is that it is going to pass; our view is that it should not—then we want to sit down and have a proper pragmatic conversation, as we have with the ACCC in the past. If you could give us any assistance—and I know that I am probably not allowed to ask for that—that would be good. If that has to be struck, it will be struck.

CHAIR: I have another question. In that last part of your statement, you spoke about BAT being a pragmatic company. Obviously, you have shareholders and you need to make a profit; you need to make money. If we look at the history of the advertising and marketing of tobacco products in Australia from when I was a kid to the present day, it has changed dramatically. It was on our TVs and in our newspapers. We had the Marlboro Man and a whole range of things. What marketing is done currently by tobacco companies or by your tobacco company to sell, market, brand et cetera the product? Your industry, certainly here in Australia, has had diminished sales over the years, because people are giving up tobacco at a growing rate. You made a statement about you needing to make money and that everyone understands you, because you have shareholders and you are a company. There is marketing done. What sort of marketing is currently done? What advertising can you still do? When I say advertising, I am not talking about TV advertising, but I am talking about marketing.

Mr Crow: I understand.

CHAIR: Would you be able to walk the committee through the marketing that you do?

Mr Crow: Good question. I will try to lay out how it works. Very simply, BAT is banned by the Australian government from using any form of direct consumer marketing—as are retailers, by the way. A retailer cannot run an ad in the paper saying, 'Here are cheap smokes.' They are not allowed to by law. They are governed by the same kinds of laws that we are. So there is no advertising in its classical sense. There is no TV, no outdoor, no sponsorship, no Tina Turner flying into the grand final to sing a song.

CHAIR: What about displays?

Mr Crow: All consumer advertising is gone; it is banned. That started in 1976 and has continued all the way up to retail displays getting banned. That is all gone. We will never breach that. We are not allowed to. We would not do it anyway. It would be a stupid thing to do. So that is gone.

The marketing that we do now we do not call marketing any more. Lots of people refer to tobacco marketing. It is called trade marketing. It is very simple: we cannot market to the consumer but we can talk to the trade and deal with the trade. So we sell stuff to the trade and we ensure that the right product is sold at the right price, in the right volume and at the right outlets to ensure that consumers can buy their product every day when they walk in. I cannot tell the trade what to price that product at. I can recommend the price to them under law. But under

the Trade Practices Act, which is now called Australian consumer law, I cannot set a price point for them. So the retailer must make a decision about what they will sell it at. That is called trade marketing. We do that on a regular basis and we have a team of guys who talk to Woolworths, Coles and 30,000 independent retailers.

CHAIR: How are those displays that we see at supermarkets and shops part of this trade marketing?

Mr Crow: Yes. Those displays are just about over. By the end of this year, in very close to all of Australia, the product will be behind steel doors. So there will no displays anymore. In New South Wales, for example, that has moved through. There is no display of tobacco product available—except in tobacconists, I should say.

CHAIR: What were the displays picturing?

Mr Crow: Just product. It was literally just product sitting on a shelf being displayed to the consumer with a price point. That was governed by state based laws.

CHAIR: So it was a display with a picture of the brand?

Mr Crow: No. Just the packet on the shelf. Using imagery that would have been considered advertising in the old days was removed many years ago.

CHAIR: Has there been research by British American Tobacco into the effects of those displays? Have you done any research into that?

Mr Crow: Not into displays behind steel doors, no.

CHAIR: No, as they were previously.

Mr Crow: I do not think that we have done specific research into the effect of a steel display versus plastic versus wood.

CHAIR: What about the actual displays? For example, if you walked into the shop and you saw Marlboro all around. There must have been some sort of marketing that went into that.

Mr Crow: I see where you are going. In the old days, when you were allowed to use advertising imagery—which is what you are talking about—and when that was allowed to be associated with the packaging on the shelf, I am sure that companies not only in this country but also in other countries would have done research into that imagery to find out whether the imagery was reflective of the brand at market. The stuff that you are talking about—signs with Marlboro or Horse or whatever it was around the side of the packaging—was removed many years ago. We were allowed to put only the package on the shelf. Now those packs are on a shelf but they are not to be visible to the consumer. There are some places where it is allowed. I think that if you are a tobacconist in New South Wales there is about a year to go during which you are still allowed to do that. They wanted to allow those industries time to change, so they were given that time by the New South Wales state government. But I think that just about every state government has banned or is in the process of finalising those bans in law. So we are down to product behind a steel door and the retailer turns around and opens the door.

The issue that we are facing today is that when you have illicit trade and you see this trade coming in from China and the product is in the same packaging as required under the bill—it is all drab brown or khaki or olive; whatever the descriptor is—it is all going to look the same and you are not going to be able to find things. That is one of the big concerns that we have. That is why we have raised the issues that we have here. We are very concerned about this. More illicit trade leads to lower pricing which leads to more children smoking. Then there is the waste of government resources in trying to hunt it, find it, shut these groups down and prosecute people. Then there is the compensation that will go to us because of the branding and the intellectual property that will be removed. We will get into trouble with this. That is why we appeal to you to as much as we can as citizens, as members of the company and of the industry to do this properly. And I do not want it to take 15 years; I am not looking for delay; I want you to do it really well; I want you to build effective and workable law that you have widely consulted on and is based on evidence and proof. It is beholden on all of us in this society to do that.

Mr IRONS: You have mentioned compensation a couple of times during your presentation. Has the industry done any background work on what sort of compensation they would try and get because of the loss of sales and intellectual property? You said that you have had no engagement with the department of health at all on this. Can you confirm that?

Mr Crow: We have not.

Mr Connell: In terms of the engagement with the department of health, we have had a number of meetings with the department. I do not know how many meetings that we have, but it is probably around five.

Mr Crow: On traceability, at least.

Mr Connell: Yes, on the upcoming legislation. But we are still at a point when in looking at the regulations we are no clearer as to who we will be operating, what will be expected of us and what the ramifications might be. You can meet with the department and talk about the technical regulations but it is very difficult in the political context to talk about the real unintended consequences or what the fallout might be from the legislation, because that is not really their job. They are following direction from above, I suppose.

Mr Crow: In terms of compensation, we have not calculated a number. We are looking at legal options. We have not started any legal action. We would not do that. That would be something that happened way down the track. We have focused in the last three months since this bill started to get more awareness on dialogue. We have tried to get dialogue going. I have written to and spoken with the minister's office four times personally. I cannot get 15 or 20 minutes. I cannot even get 10 minutes. I spoke to the chief of staff—Angela, I think—and said, 'Just give me 10 minutes, so that I can lay out the issues on one piece of paper and ask them to please consider it.' Not a chance at this stage. We have written to all the members of parliament and we have written to all the senators. We have unfortunately had to go to the public with a campaign. Personally, I think that it is crazy to have to try to get dialogue through the public, but we have made the choice to do that. It is getting the issues out there. I would have preferred not to have gone into advertising. I would have preferred to have been able to sit down in a very pragmatic process—which we do with a lot of governments around the world, by the way—in a one-day session with her team and maybe even with her as well to talk through this, knowing that we are not going to agree on certain elements. Obviously, there are things that the minister wants to progress. That is understandable. On other elements, we would probably agree very easily.

Mr IRONS: So the main issue for you is probably the introduction time for the plain packaging.

Mr Crow: Yes. The introduction time is obviously problematic. The intellectual property is the core, and obviously we will defend ourselves. We are talking to our legal firms to look at what the options are, and no doubt that will get adjudicated at some later stage by a court. Whether that is the High Court or the Federal Court, it will happen, but we will defend ourselves in the process.

The minister has been really good. She is very open on this. Obviously she has a different view and says that pretty openly in the media—and says a few cheeky things about me, and that is normal—but she has been pretty open about the fact that there is no robust proof. That worries me. We are passing a law that has big implications, and there is no proof. Personally, as a citizen—but also as a guy representing a company—I do not think that is a smart way to build effective, workable legislation. Is it really the role of this government to take away those brands, which are legal property? I am not sure that it is.

CHAIR: What would be acceptable evidence for your organisation?

Mr Crow: I was just saying before to your colleague that what we would like to see happen is that you as a committee would literally take your time, do an RIS and get evidence based policy that is actually effective—things like education that have been proven to work. I would not progress the plain packaging, because it is not proven to work, but I would go after education. I would go after looking at excise and pricing and getting modulation on pricing in the marketplace. I would get funding for federal agencies—Customs and the ATO—to nail the border, to stop those containers of illicit tobacco coming into the country. I would look at areas around a forum like this, but an ongoing forum so that you would not get to this crescendo of disagreement. I would do it early and have a proper consultative forum, and I would have uniform point-of-sale laws. That is why we really call for a RIS.

Mr Connell: Perhaps I could add to that. It really is about the regulatory impact assessment that the bill never really had in the first instance. Normally with legislation like this a regulatory impact statement or assessment would have taken place, but the Office of Best Practice Regulation, I think it was, decided that the bill did not require an RIS. The announcement was such that it formed government policy on the spot. There is some sort of technical regulation that once an announcement has been made it is government policy and therefore does not get an RIS.

To speak very briefly to David's earlier point, there was a draft RIS prior to the introduction. There are a number of issues, but I will just talk about one, which is price. The Department of Health and Ageing actually said, in April 2010:

Smokers could face lower costs of purchasing cigarettes—and higher health impacts and costs associated with higher rates of consumption—if plain packaging leads manufacturers to disinvest in branding and compete solely on price, driving tobacco prices down.

That is just one part of a number of things that could fall from this legislation. I do not think the government's intention here is to see tobacco prices fall. I think that would be the opposite of the intention of this bill, but that is

one instance in which we would urge the need for a regulatory impact statement, because those sorts of things are not the intention of the legislation at the outset.

Mr IRONS: Maybe it is time to take the point of view that you could try to protect your intellectual property. Maybe you could go to the minister and do a bit of horse trading: say, 'We'll spend so many millions of dollars in education programs in schools for the right to protect our intellectual property.' You could be a bit proactive and try some negotiation.

Mr Crow: We would concur with that completely. We would love to sit down and have a proper open dialogue. We are not afraid of law. Tobacco companies have got used to legislation. Unfortunately for us, we do it as a job. We are not afraid of it. That is exactly what we want to do: we want to sit down and talk about things. We are not afraid of volumes actually moving down. Governments all over the world are trying to reduce tobacco consumption. It is the right thing for societies to do. We are not stupid about that; it is really normal. Doing things that work, that are evidence based and that have been proven to work—either in this country or in others—seems to be really smart. I agree that we should be able to sit down and say: 'Don't take the brands. No doubt there is going to be some big legal bust-up down the track, which is not healthy for anyone.' On my point, fighting with the government or legally challenging governments is not a clever thing to do. We vote you guys in for a good reason. You do not want to fight and we do not want to have a legal fight, but we will defend it if we have to, because we have laws that protect that. So I agree with you completely. If you could help us on that—I do not know if you can personally or as a committee—please, we would love to get a three-hour block of time to talk openly and pragmatically with the Department of Health and Ageing about these issues across what we have done today.

CHAIR: Currently, even though smoking rates have been reduced in Australia, new people are taking up smoking at some stage, whether a small number or a big number. Has any research been done by your company into why new people take up smoking tobacco?

Mr Crow: No, we cannot. By law we are not allowed to research anyone under the age of 18. I know the health department does.

CHAIR: They could be 20-year-olds.

Mr Crow: Adults. No. We compete in the market for people who have chosen to smoke already. They are over the age of 18 and have to be aware of the risk, which they are in Australia. We know because of the work we have done.

CHAIR: I will change the question a little. Why do you think those people take up smoking?

Mr Crow: There is a raft of reasons for people choosing to smoke. It is such a personal thing. People choose to do it because their friends do it, their mates do it, they like the flavour, they like the sensation, they like what it stands for—there are a million reasons.

CHAIR: Do you think they do it because they like the colour of the packet or the packaging?

Mr Crow: We were talking about this before. I do not think anyone who is a nonsmoker wakes up one day and says, 'I really like the look of that pack; I'm going to start smoking.' It just does not happen. People smoke because they want to smoke. It is like when you buy a soft drink. You do not go: 'The colour of that wavy red thing is really interesting—I'll drink that.' You will think first: 'I'm thirsty; I need a drink. Okay, what are the options available?' Then you will choose.

I think that is one of the big change points in this whole debate. The debates around advertising 30, 20 or 10 years ago have been transported into: what is branding? It is an ability to take a commodity and allow consumers to navigate that commodity, to say one is different from another and one stands for something different from another—be it a different flavour, a different price or in a pack of 25 cigarettes not 20. That is what branding is—it takes a raw commodity and puts a brand on it. You see it in the fruit and veg stores today. Oranges used to be just oranges; now they all have stickers on them because they want you to know that one comes from this country or this part of Australia with this kind of favour. They are trying to help you navigate all those oranges. It is the same kind of process, and I think that has been misconstrued.

To sum up the process, that is why we are asking you guys to get some time—not a lot of time—to do a RIS and get the evidence. Sit down with the evidence, get the proof, talk to a wide stakeholder set and ask the fundamental questions from my preamble: are you aware of those issues; are you aware of the compensation issues; and is it really the role of this parliament and this Australian government to remove intellectual property that is legally owned by these companies—mine and the other companies—on legal brands in a legal industry? Is that really the role of this government? I would contest that it is not the role very openly, very happily and very pragmatically. Thanks very much for your time.

CHAIR: Thank you very much for appearing before the committee today and giving evidence; it is really appreciated. Your evidence will form part of our recommendations. If we wish to ask you any more questions, we may contact you—and vice versa if you feel there is something else we need to know regarding this bill and the impact on health. I know there were a lot of other things you wanted to discuss—the economic aspects, the legal aspects—but, as I said at the opening of this public hearing, this committee cannot control what is referred to us. I think the message should be that those who referred it to us should have thought it through carefully and ensured that other aspects of this bill were covered as well. We will be looking at the impact of this bill on health.

Proceedings suspended from 11:38 to 11:49

QUINANE, Mr Jack, Director, Policy and Programs, Australian National Preventive Health Agency

STUDDERT, Dr Lisa, Acting Chief Executive Officer, Australian National Preventive Health Agency

CHAIR: Thank you for giving evidence. Although the committee does not require you to speak under oath, you should understand that these hearings are formal proceedings of the Commonwealth parliament. Giving false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. I will ask you to make a brief introductory statement and then we will open up for very informal questions and answers.

Dr Studdert: Thank you. The Australian National Preventive Health Agency, or ANPHA, was established on 1 January this year to strengthen Australia's investment and infrastructure in preventive health. The establishment of the agency was a key recommendation of the National Health and Hospitals Reform Commission and the National Preventative Health Taskforce. The establishment of the agency and its funding was agreed with states and territories through the National Partnership Agreement on Preventive Health. ANPHA has been charged by all Australian governments to focus its initial efforts on the risks and burden of disease associated with obesity, harmful alcohol consumption and tobacco use.

Given the agency's focus, we were pleased to have the opportunity to make a submission to your inquiry and to provide to the committee today an overview of the strong body of public health evidence to support this move by the Australian government to legislate for the plain packaging of tobacco products. In our written submission to your inquiry we noted that tobacco use imposes an enormous burden of disease on Australia's health system and on individuals, their families and loved ones. The facts are well known but, to briefly summarise, tobacco use accounts for 15,500 premature deaths each year. It is the single largest cause of preventable mortality and morbidity and since 1950 has killed almost one million of our fellow Australians.

Australia is recognised as a world leader in tobacco control. This is due to a strong public policy record of sustained, effective tobacco control measures introduced steadily and progressively over the past three decades. The two key features of this public health approach have been coordination between all levels of government in Australia in partnership with non-government organisations, researchers and health professionals, and a multifaceted approach that has featured a combination of public health strategies. These strategies include tobacco advertising restrictions; health warning messages on tobacco products; health promotion campaigns to educate Australians on the harmful effects of smoking and passive smoking; bans and legislative restrictions on smoking in workplaces, public venues and in motor vehicles when children are present; price progressive tobacco excise increases and other reforms to pricing mechanisms; and assistance to smokers to quit through a wide range of evidence based programs and pathways.

These measures have been successful, and I am pleased to note that even since we finalised our written submission to you in mid-July yet more information has come to hand to support the success of the measures taken to date. On 27 July the Australian Institute of Health and Welfare released the findings of the 2010 national drug strategy household survey. The good news is that the report found that since 2007 the number of people who reported being a smoker—that is, someone who smoked daily, weekly or less than weekly—dropped from 19.4 per cent to 18.1 per cent, while the number of those that smoke daily has dropped to 15.1 per cent, down from 16.5 per cent in 2007. The number of ex-smokers also decreased from 25.1 per cent to 24.1 per cent over the same period, while the number of those that have never smoked increased from 55.4 per cent in 2007 to 57.8 per cent in 2010. These numbers demonstrate that current smokers are quitting and fewer Australians are taking up smoking.

However, we cannot be swept away by the good news and ignore the bad news. While numbers of smokers are declining, the rate of decline is no greater than it has been for several years now. The fact remains that there are almost three million Australians still using a substance that is harmful to their health at whatever level they consume it. One of the stark outstanding challenges for all of us is that smoking prevalence remains so much higher among Aboriginal and Torres Strait Islander Australians. In 2010 Aboriginal and Torres Strait Islander Australians were twice as likely to smoke, with 37.6 per cent reporting being a smoker compared to 18.1 per cent across the whole Australian population. Smoking rates are higher in remote communities and in communities with low socioeconomic status, and amongst prisoners and people with mental illness—all of which presents a clear case for public health efforts to reduce tobacco use to be strong and to continue relentlessly.

The National Preventative Health Taskforce, commissioned by the Australian government, recognised the progress made in reducing tobacco use in Australia through a comprehensive range of complementary and timely public health measures, and it provided further recommendations designed to sustain and extend the progress of

tobacco control in Australia. The task force recommended the introduction of plain packaging based on evidence that plain packaging reduces the appeal and perceptions of enjoyment and desire amongst smokers, and that plain packaging decreases the ability to promote products to new and current smokers in an environment where branding and packaging provide a continuing opportunity to do so. The World Health Organisation's Framework Convention on Tobacco Control—the world's first and only international public health convention—recognises restrictions on packaging and labelling of tobacco products as a key non-price measure in the public health approach to tobacco control.

The evidence that packaging affects the perceptions and desirability of tobacco products is strong and unequivocal. The design elements, logos, colours and messages that are incorporated within a package are all carefully planned, market tested and monitored to speak to the consumer—that is, a smoker or potential smoker. Packaging is used to convey messages and imagery about the product and thus, by association, the consumer. A study with more than 500 young women in Canada randomly assigned them to review branded or plain packs. The study found that those viewing the so-called female branded packs—that is, packs that are pink, slim and stylishly branded—associated them with glamour, slimness and attractiveness. Those viewing plain packs were less likely to believe that smoking helps control appetite. It should be noted that the belief that smoking helps control appetite is a strong predictor of smoking among young women.

Present-day packaging designs influence the beliefs of consumers about the degrees of harm associated with the product they are smoking. A study of more than 8,000 smokers across four countries, including Australia, found that more than 20 per cent of smokers believe that cigarettes that came in packs of certain colours—such as blue or gold—were less harmful compared to red or black brands. Studies related to plain packaging show that it can be effective in influencing beliefs and behaviours. As long ago as 1995 a survey of over 1,000 Canadian teenagers found that while 87 per cent knew that smoking was harmful, more than 50 per cent would smoke in the next year. These teenagers showed a high level of brand recognition, particularly of those brands that were known to be most widely marketed at and sold to young Canadians. In response to plain packaged cigarettes with graphic health warnings, the teenagers reported that the packs bothered them and that they believed plain packs would leave them to smoking less or not at all.

The majority of these studies of plain packaging have necessarily been conducted under experimental market research type conditions, similar to the practices used by companies to develop branding and packaging in the first place. However, a more recent study published just last month tested plain packaging in a real-life environment over four weeks in Glasgow, Scotland. Young smokers were randomly assigned to use branded or plain packages for two weeks and then to swap and use the alternative for a second period of two weeks while perceptions and smoking behaviours were monitored during this four-week period. Smokers reported that for the period they had their cigarettes in plain packaging they had more negative perceptions about the product, increased avoidance behaviours, such as hiding the packet, and increased smoking cessation behaviour—they smoked less, thought about quitting and avoided others when they were smoking. This study is the latest to add to the strong and growing body of evidence that supports the public health benefit of plain packaging.

In conclusion, ANPHA notes that the branded, creatively designed, colourful and message-laden packaging of tobacco products is an anomaly that allows a dangerous product to be dressed up for appeal and for purposes of attracting consumers and maintaining consumer loyalty. The evidence clearly shows that it is designed to do this and successfully does so. To continue to allow a harmful product to be marketed in this way and promoted to Australian consumers runs counter to all the public health efforts directed at reducing tobacco use and its associated harms. Restrictions on packaging are entirely consistent with the efforts, largely accepted and long in place, to ban all tobacco product promotions and, in effect, this legislation will remove the last remaining means by which products can be promoted. Legislation to require plain packaging for tobacco will be the next significant and effective public health measure in Australia's ongoing efforts to reduce tobacco use.

CHAIR: Mr Quinane, do you have anything further to add?

Mr Quinane: I have nothing further to add at this stage.

CHAIR: We might open it up to questions then. How important are these bills to the preventative health agenda in Australia?

Dr Studdert: As I mentioned, the history of tobacco control in Australia has been a pattern of sustained, continual introduction of new measures, new campaigns and new pricing. So we believe this is a timely and necessary next step to maintain that momentum. The evidence is that the continued and sustained effort over the last 20 to 30 years has been successful, but we still have a way to go and this is logically the next step in that process.

CHAIR: I would like to hear more about the role that the coloured packs and the marketing on the packets plays in terms of consumers' perceptions about the product. We heard earlier from the tobacco company that it plays no role in marketing. What are your views about that particular statement?

Dr Studdert: I think that is clearly not the case. Their own documentation shows that they invest a lot in the packet. They test it rigorously. They monitor how it talks to consumers. I do not think anyone can doubt that. As you pushed the last respondent and as I noted in my statement, it is the last remaining means by which they promote the product. I think it is interesting to think about the fact that a tobacco pack is on display many times a day. Every time a smoker has a smoke the packet is visible. It is not like other packaging where you open a product and throw it away. It is a promotional technique that is on the table at the pub or outside the office—I guess it is not in the pub anymore. We know from the studies and the evidence available that consumers do respond to the messages and imagery that comes from that pack.

CHAIR: I have another question, which I asked the tobacco company. I will ask you as well to get your views on it. The advertising over the years and the marketing has diminished for tobacco products from the days of the Marlboro Man on TV commercials to today. What effect do you think that last bastion of advertising on the packet itself has on people who currently do not smoke? Do you think they are affected at all by that marketing in terms of taking up smoking? Have you looked at any of those studies?

Dr Studdert: We certainly know from the evidence that non-smokers and smokers respond very unfavourably to the plain pack. They look at it and they do not feel any favourable response to it. There is evidence to support that from studies. Whether it affects smokers in taking up smoking I guess is a hard thing to test experimentally. From testing packs, plain and branded, with smokers and non-smokers there is evidence to support the fact that it will have a detrimental effect on their response to smoking.

Mr Quinane: There is a study of adolescent smokers in Norway, which similar to Australia has had tobacco advertising restrictions for the last 30 years. Young smokers perceived the cigarette brand as adding a social dimension to their smoking behaviour and identified it with social status and their peers. That would suggest they could be factors that might influence young people to take up smoking.

CHAIR: I have actually seen some of that study. I have one final question before I hand over to my colleagues. Your submission notes that other countries are watching very closely this plain packaging debate that is taking place here. You also mention that other countries have previously adopted Australian initiatives in this area. Can you give us some examples?

Dr Studdert: I certainly know that the National Tobacco Campaign and campaigns from other jurisdictions have been adopted internationally. Australia's ability to communicate antismoking messages through public education programs is highly regarded internationally. I would have to check the time lines but I think the progress Australia has made on banning smoking in public places and in other venues has been world leading and was followed by many other countries. On the lead taken on other advertising bans in sporting venues, on television and in other media, there has been close correlation amongst many countries but undoubtedly Australia has been at the front on many of those steps.

Mr Quinane: And many of our television campaigns on quitting smoking have been sold to jurisdictions overseas.

Mr LYONS: I was interested in your graph on page 3 of your submission. Has this had an effect on the length of time people live? Is there a correlation, as this graph indicates? Is there a direct relationship?

Dr Studdert: Yes. Life expectancy in Australia has continued to rise. Australians live longer and healthier lives, and there is absolutely no doubt that the decline in smoking over the last 30 years has been a major contributor to that.

Mr LYONS: Are there figures available that show that there is a direct correlation for that?

Dr Studdert: I do not have them handy. I suspect that the group that follows us from the Cancer Council may be able to speak a bit more to that.

Mr LYONS: We know the effect of the graphic health warnings and the pictures of lungs et cetera have had on the rates of smoking—from 35 per cent initially down to about 17 per cent now. Is there any evidence of what sort of effect this plain packaging will have to further reduce smoking rates in Australia?

Dr Studdert: Again, drawing on the studies available, the market research experimental settings and, in more recent times, in real-life settings, we know that smokers respond very negatively to the plain packaging. The tests and studies show that the health warnings are more easily retained and noticed on the plain package setting.

Mr LYONS: So it is a combination of the packaging and—

Dr Studdert: Yes, it is a combination of the packaging and the health warning being more salient and visible and remembered more. That should be expected to continue to enforce the message and work with smokers about the idea that they should be thinking about quitting.

CHAIR: You may not have the answer for me but I will ask the question anyway. Over the years we have seen advertising banned on TV banned and then sponsorship in sport banned. I think cinemas were one of the last to go where you could still see tobacco ads on a cinema screen and then advertising was banned in magazines. So it has been banned gradually, bit by bit, and there have been debates along the way. Are there any similarities that you are aware of in the debates that are taking place today with the plain packaging—things like there is no evidence to show that people will give it up because we are taking it off the screen and there is no evidence to show that not sponsoring a football club or whatever they used to sponsor in those days will prevent people from smoking? Are you seeing similar debates in this debate about plain packaging as we have seen previously over many years or is it a completely different debate?

Dr Studdert: I think it is very similar, but I would have to say that I was not closely involved with the previous debates and discussions. Again, I think the people who follow us will have more experience with that. But I do not think there is anything new and surprising about that argument. It is often the case in public health forums that people will say that there is no evidence. But you use the best available evidence—which we believe is very strong and compelling at this point—and you take the measures that that indicates that you should take to protect the health of the public.

CHAIR: Would you say that all these other measures that Australian governments of all persuasions have adopted over the last 20, 30 or 40 years have assisted in preventing the use of tobacco?

Dr Studdert: Yes; absolutely. There are evaluation studies associated with many of the measures along the way that clearly indicate that and very rigorous experimental studies following each wave of the national tobacco campaign that clearly associate the timing of advertising with calls to quit lines and with declines in smoking rates. The graph that we provided in our submission clearly supports that.

CHAIR: So your view would be that this step will assist?

Dr Studdert: Absolutely, yes.

Mr Quinane: In relation to your question about whether the debate on this change mirror the debate in other changes, when health warnings were introduced on cigarette packs, cigarette companies responded by putting words like 'light', 'mild' and 'low tar' on cigarette packs to imply to consumers that perhaps some cigarettes were less harmful than others. So legislation was put in place across more than 50 countries to ban the use of those words. That is where we have seen the shift to having different coloured packs to continue to imply those false beliefs amongst consumers that some cigarettes are less harmful than others.

CHAIR: There being no further questions, I thank you for appearing as witnesses before the committee today. If there are any further questions that we might have, we may be in touch with you. Also, if there is anything that you wish to relay to us that, for any reason, you were not able to tell us today, please feel free to contact the secretariat.

OLVER, Professor Ian, AM, Chief Executive Officer, Cancer Council Australia

SCOLLO, Ms Michelle, Senior Policy Adviser, Quit Victoria

SWANSON, Mr Maurice Gerard, Chief Executive, Western Australia Division, National Heart Foundation of Australia

[12:20]

CHAIR: Welcome. Although the committee does not require you to speak under oath, you should understand that these hearings are formal proceedings of the Commonwealth parliament. Giving false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. I invite you to make a brief introductory statement and then we will proceed to some questions and answers.

Prof. Olver: I practised as a medical oncologist for 25 years. As part of that, I treated metastatic lung cancer, so I am quite passionate about its prevention. In Australia we have over 9,000 people with lung cancer each year and we have over 7,000 deaths from lung cancer. When the incidence figures and the mortality figures are that close you know we are not very effectively treating the disease. There is no population screening test for lung cancer, so the only way we have of impacting on those figures is prevention. The largest component of prevention is tobacco control. This disease is very difficult to treat and other smoking related cancers, like head and neck cancer and bladder cancer, are also difficult to treat once they become widespread. It has been estimated that the Australian economy is impacted at over \$30 billion in terms of the effect of tobacco.

I would also like to make the point that 50 per cent of long-term users of tobacco die of tobacco related disease, so it is a lethal product. Far from being a free choice of adults, this is an addiction. Often people are addicted when they are younger and then they have difficulty breaking that addiction later on. So this is not about denying people free choice, because it is a product that is designed to addict the people who use it.

Plain packaging is a vital initiative in the prevention cascade that we have heard about that started with preventing other types of advertising. This is the next type of advertising that is the target for prevention. It will have a powerful impact on the ability of the tobacco company to advertise on the packet, particularly as the packet is used multiple times outside stores. There is research on the impact of the packet on the choice of the product. It is used to attract young smokers and to attract new smokers. I think established smokers know their brand but new smokers do not. Although it is not relevant to Australia, I want to show how the tobacco industry in other places takes this to extremes. This tobacco pack is in the shape of a lipstick. It contains 16 thin line cigarettes. It is targeted particularly at young women.

CHAIR: Do we sell them here in Australia?

Prof. Olver: No, we do not. I am just saying that the tobacco industry does use the packet to target particular groups. In Australia, where we have the same size packs, they use the colours on the packs to target groups. What we know about this—and Michelle will go into more detail about this—is that people choose packs that are an expression of their own personality or at least the personality they aspire to show to the public. A sporty pack will attract one group of young smokers and perhaps something in black and gold, if you have a more regal sense, would attract another in terms of how that works.

It also blunts the health warnings—and this is not just theory, either. Again, with a pack from overseas the highly coloured strip at the bottom completely draws your eye away from the health warning. That is what the pack has been designed to do. You can use colour and design to blunt the effect of a graphic health warning. In fact, as you have already heard, when the ability to advertise mild or reduced harm cigarettes was taken away from the companies in Australia they simply used different colour packs to denote reduced harm cigarettes. The research clearly shows that plain packaging does not have the impact on potential smokers that it is a favourable product. If you put it in a plain pack the product is not viewed as exciting, as it is if it is in a coloured pack with various graphic designs. The view that plain packaging will be an important step in prevention was not only something that the country's national Preventative Health Taskforce recommended after their research into it but, as was mentioned, the conference of the parties to the Framework Convention on Tobacco Control from the WHO also recommends this in one of its articles and as well this is the aspirational goal of the 173-odd countries that have signed up to the framework.

I have a couple of other comments on small business and any potential delay of the implementation of this. The effect of delay is that we will not be reducing the smoking rate by this measure and therefore we will not be reducing the death rate from smoking. I do not accept the arguments about disadvantage to retailers, because the tobacco industry will look after them. Again, overseas they have already designed dispensing machines where you do not see the pack. You have a little computer terminal, you hit the packet you want and it pops out the bottom. It is a vending machine, if you like. The tobacco industry is not going to allow its retailers to be disadvantaged by any law that comes in, so they will help them compensate, or the retailers will undoubtedly change products to something that is easier to sell, which would probably be a good thing in itself.

Finally, I have to question the figure of the unbranded tobacco sales at 15 or 16 per cent. The government's own household survey talked about three per cent. That is not the point I would like to make. The point really is that at 15 per cent you would have to have incredibly porous borders, and Australia does not share its borders with anyone, and you would have to have a degree of corruption that we just do not have in Australia to move the amount of tobacco product to have 15 per cent of the product as an unbranded cigarette. So it does not make any sense in terms of the fact that that is the figure for unbranded cigarettes that are available in Australia at the moment.

Mr IRONS: You were not saying unbranded. You were saying branded copies.

Prof. Olver: Branded copies or illicit cigarettes. I use the term 'unbranded' as a catch-all for it, but it is illicit copies.

Mr IRONS: Professor Olver was talking about branded copies, not unbranded.

Mr LYONS: But bulk tobacco as well.

CHAIR: Can we have some order. There will be opportunities for questions when the statements are finished.

Prof. Olver: I will hand over to Mr Swanson.

Mr Swanson: I would like to say what a privilege it is for me to provide testimony to the committee. I have worked on tobacco control in Western Australia and nationally for 30 years. I have worked in tobacco control for the health department, being the director of health promotion services in the health department and having responsibility for the Quit campaigns and, for the last 14 years, for the Heart Foundation leading the tobacco control program. I would like to start by conveying the Heart Foundation's gratitude to the government, the opposition, the Greens and the Independents in this parliament for their support of tobacco control over many years. Bipartisan or tripartisan support for plain packaging is deeply appreciated by public health authorities and says much about the nation's maturity in its approach to public health and its determination to prevent the carnage caused by smoking.

This parliament's views are reflected by those of the general community. We know nearly all Australians support strong action on tobacco control and there is solid support for plain packaging. In our submission we noted that a Newspoll commissioned on behalf of the Heart Foundation and the Cancer Council of Australia shows only 24 per cent of Australians oppose plain packaging, 59 per cent are supportive and the remaining 17 per cent are ambivalent—so strong support from the community for plain packaging.

I was rather amused, I must say, by the testimony from the representatives of the tobacco industry. The committee has good reason to be cautious about the claims made by the tobacco industry. It was not long ago, in fact 14 April 1994, that seven senior tobacco industry executives stood before the United States House Energy and Commerce Committee's Subcommittee on Health and the Environment and swore that nicotine was not addictive. All seven of them raised their hand in Congress and said nicotine was not addictive. On 17 August 2006, US district court Judge Gladys Kessler found US tobacco companies, some of which operate in this country, violated civil racketeering law and defrauded the American people by lying for decades about the health risks of smoking and about their marketing to children. That decision was upheld in the court of appeal and there are no further appeals against that decision.

Further, the reputation of the tobacco industry remains poor. In a recent, 2010, survey conducted for the global Reputation Institute, with interviews of 80,000 people across 32 countries, the tobacco industry was ranked as the world's least reputable industry. It was placed last in a ranking of 25 industry categories. So I make the plea to you, as committee, to run a very fine sieve over anything they say.

Of course tobacco control is important to the Heart Foundation. Cigarette smoking is a major cause of heart attack, of stroke and of blood vessel disease. Smoking kills, as Ian has noted, 15,000 Australians each year. Nearly 40 per cent of all people who die from smoking do so due to heart or blood vessel disease, and around 13 per cent of deaths from cardiovascular disease, there are 46,000 of those each year, are caused by smoking. If you smoke you increase your risk of heart attack by two to six times and of stroke by three times and you also increase

significantly your risk of blood vessel disease. Happily, from a point of view of confidence in conveying health messages to the community, there is a rapid decline in the risk of heart disease once you quit smoking.

I would like to provide to the committee a copy of the most comprehensive and recent summary of how smoking causes cardiovascular disease. It is from the US Surgeon General and was published last year. I will sum up the very—

CHAIR: Just before you do, I need to have someone move that we accept as evidence for this inquiry the report, *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease*, a report of the Surgeon-General, US Department of Health and Human Services. It has been moved by Geoff Lyons and is tabled.

Mr Swanson: In summary, I will read from the Evidence Summary of chapter 6 of the report:

Exposure to tobacco smoke is associated with accelerated atherosclerosis—

That is, the disease process of narrowing the coronary arteries—

and an increased risk of acute myocardial infarction, stroke, peripheral arterial disease, aortic aneurysm and sudden death.

In short, it is not very good for you.

Your support for this legislation will continue, as Ian noted, the bipartisan approach to reducing smoking that began in the mid-seventies in Australia with the prohibitions on radio and television advertising. That first step in controlling the promotion of tobacco had a major impact on reducing the prevalence of smoking in Australia. Plain packaging will remove one of the last forms of tobacco advertising and promotion, but we should not be fooled that there are not any others after the package itself. We have still got quite a bit of advertising on new digital and social media, such as YouTube and Facebook. The tobacco industry is now exploiting that medium for promoting its product. We also still have a high level of smoking in Hollywood movies, which very effectively convey glamour and other positive attributes to smoking.

I will not need to tell you, but I am going to repeat it: tobacco is a unique and lethal product because it causes the premature death of half of all long-term smokers when used as the manufacturer intends. No other product does that. It is a unique product. The tobacco industry and segments of the retail industry have argued that the proposed legislation will not reduce smoking. However, why would the industry spend millions of dollars to defeat this legislation if it were not likely to be effective? I had to have a small chuckle when David Crow was imploring you to invest millions of dollars in education. Why would he be asking for that to occur? The simple answer is: because it is ineffective. On its own, education in schools is ineffective. Whenever you hear the tobacco industry making recommendations for investing in education in schools, you know they are saying that because they know it is ineffective.

The expert submission that you have been provided with draws on 24 peer reviewed studies and many other publications, including documents from the tobacco industry itself, and Michelle will go into the detail of that. We have heard from Ian and previous speakers that removing branding removes the ability of the industry to market positive attributes about smoking and the various brands that they produce. The cigarette pack is still a powerful advertisement. It is a mini outdoor advertisement that promotes smoking continuously. Allowing this type of advertising to continue is inconsistent with all current legislation, federal and state. Those pieces of legislation that have started since the mid-seventies have been designed to limit promotion, yet we have one of the most powerful forms of promotion still in existence. But this legislation will knock it off. The industry is threatening to mount legal challenges. However, independent experts in trade practices and international trade law have advised the government that this legislation is sound, and we have had similar advice as health agencies.

I would just like to conclude by quoting from the tobacco industry itself, in this case from a senior employee of Brown and Williamson, a US tobacco giant:

... if you smoke, a cigarette pack is one of the few things you use regularly that makes a statement about you. A cigarette pack is the only thing you take out of your pocket 20 times a day and lay out for everyone to see. That's a lot different than buying your soap powder in generic packaging.

I think that that statement says it all and puts a lie to some of the testimony that we have heard this morning. I urge your support for this world-leading public health legislation that will do much to further reduce smoking in Australia.

Ms Scollo: I also have been working in tobacco control for quite a number of years. I started as Director of the Victorian Quit campaign in 1988. I have worked for several years after that in economic and policy jobs for the Cancer Council of Victoria, the Heart Foundation and Cancer Council Australia, and at the moment I am back with Quit Victoria part time while I am undertaking a PhD.

At Quit we also are at the pointy end of the carnage caused by tobacco. In recent years we have been very fortunate to have quite a number of smokers approaching the organisation—smokers who, sadly, tragically, are at the end of their lives, having contracted a smoking related disease, and are very anxious to do something about that to make something of that tragedy and have wanted to tell their story in television ads or in brochures and so on. It is really quite a bittersweet experience, I guess: sweet because we know that these sorts of advertisements are incredibly effective in moving smokers and motivating them to try to quit but, of course, terribly bitter when meeting and getting to know quite well these people who are facing this part of their lives, when they should be at their most productive in terms of their career and their contribution to society and at a time of life when their children are most dependent on them and it is all about to end. It is rather a searing experience to be close to that.

While cancer and heart disease are the major causes of death resulting from smoking, they certainly are not the only ones. A lot of things are not picked up in the statistics that you see on the costs of smoking because those are generated based on those diseases that cause deaths. In fact, many problems due to smoking affect people not just in distant older life but right through life. You have the heartbreak for young people who face problems with fertility, miscarriage and sudden infant death. You have conditions such as periodontal disease leading to tooth loss, which might sound trivial in comparison to cancer but actually has an incredibly important effect on quality of life. Smokers have greater likelihood of back pain, their bones fracture more easily and they are more susceptible to infectious diseases, including meningococcal disease, which we know causes very tragic outcomes in children and young people.

Smokers are more likely to suffer autoimmune diseases such as rheumatoid arthritis. Only a couple of weeks ago I met a very young father who is so debilitated by this condition that he is unable to pick up his new baby, which is just one of the uncounted tragedies. Skin disease; dental conditions—the list really goes on and on. In fact, one of my other jobs at Quit is editing a major publication, an online resource manual, on tobacco. We have just been going through the process of updating chapter 3, on health effects. The epidemiologist I have working with me on this, now that we are up to section 26 of this chapter, says maybe we should just do a chapter on what smoking does not affect because, really, with any condition you can think of, smoking is affecting that body function and that set of diseases.

The great thing about working in an organisation such as Cancer Council Victoria is that, over its history, it has not only funded world-leading research on the causes and the treatment of cancer but also been strongly committed to research that is very much at the social and behavioural level. Nigel Gray was visionary in recognising right from the start that we were not going to get very far with this issue by running courses for smokers and doing education programs in schools, as Maurice mentioned. Ian talked about the intractability of treating lung cancer for people who already have the condition. Working at Quit, I used to make it a policy that every person who worked there would spend at least six hours a week on the telephone dealing with smokers, including me—I did that as well. Almost every day you confront the reality. Some people are able to quit quite easily, but other people find it incredibly tough. They have tried it many times and have not succeeded. It is a very strong addiction for some people. Smokers themselves say to you, 'You really have got to stop people from starting.' That is the key to the issue because you do not have a magic bullet 40 years later that will help existing smokers to quit. As politicians, you probably suffer a lot from the same kind of problem that people who work in tobacco control often do, which is that when you go to barbecues and dinner parties you are a little bit reluctant to say what you do because you attract commentary from all the armchair experts in the area of whatever is government policy at the moment. For us, it is people telling us what we should be doing to stop people smoking. You will often hear people say, 'Oh, putting the price up doesn't work,' or, 'These ads don't do anything,' or, 'These health warnings aren't going to stop anyone; what you've got to do is X.' If it were as simple as X, Maurice could have retired long time ago while he still had a full head of dark hair. There just is not that kind of solution. Like many problems I am sure you face every day in public policy, you really have to address this issue from many different angles at many different levels and plug away at it for a long time. There is no one thing that works. You really have to approach all the angles.

In an environment where all the usual forms of advertising have been outlawed in Australia, the packs really have taken on an enormous significance in the companies' promotional strategy. I saw in the results of the National Drug Strategy Household Survey by the Australian Institute of Health and Welfare, released last week, that the ACT has the lowest level of smoking in Australia. No doubt you are very busy, and I do not know how many people you know, now you are the age you are, who still smoke. You might have in your mind that cigarette packs look something like this, as they did 10 or 15 years ago. When you do not see them in your social circles much anymore, that is the kind of mental image of tobacco packs you have. But that really does belong to some decades ago. What is much more common now is very beautifully designed packaging that is designed very much for people in the iPod age. You get these beautiful metallic kinds of packs.

CHAIR: What brand is that?

Ms Scollo: This is Dunhill.

CHAIR: And the gold one? They are all Dunhill?

Ms Scollo: They are all Dunhill. I can pass those round to you to have a look. I heard the representative from BAT talking about the pack as a way of consumers differentiating the brands. Certainly, with some of the major established brands that are smoked by older smokers, such as these Winfield here, the colour helps the smoker to differentiate the brand because the brand name is not visible, but that is not what it is all about. I would like to show you some other examples which I think demonstrate quite clearly that it is more than a matter of just differentiating brands. We have this packet of cigarettes, which is produced by British American Tobacco Australia. Note the small format and the mauve colour—very young, very feminine, very slim, very suggestive of slimness. We have this tiny little pack here. Maurice was around in the days when all Australian states eventually banned the sale of cigarettes in packets of fewer than 20. These cigarettes now are so tiny and slim that they are smaller than those packs that were banned 20 years ago.

This is a brand produced by Imperial Tobacco. You see the Asian chic kind of look. It is implicitly alternative. For many young girls who are very interested in alternative medicine, alternative meditation practices, Buddhism, Eastern philosophy and that kind of thing this pack has an incredibly meditative kind of feel. Then we have the Vogues, which are made in Germany but sold here in Australia, also by BAT. They are tall, they are clean, they are elegant, they are slim, they are feminine and, of course, they are in vogue. Then we have the fun, gold quality and wide elegance of this fantasy, multi-coloured pack.

CHAIR: Are all these products sold here in Australia?

Ms Scollo: I bought these products from my local shop yesterday. They are all sold here in Australia. I invite you in particular to look at this one which is open and to note the coloured cigarettes. These are all brands currently sold in Australia. I showed this to my 17-year-old daughter last night and she said, 'Beautiful'. It is beautiful in your hand and it makes you feel really grown up. You do have to hand it to the people who are designing these—

CHAIR: Cocktails.

Ms Scollo: Yes. They do know what they are doing. These are incredibly well-designed objects from a purely design point of view. It is gorgeous to hold one in your hand. The other menthol here looks very much like a packet of mints. How easy would these be to conceal from your parents in your handbag? They would think it was a packet of mints or something like that. It is very easy.

This is a packet of fruit cigarettes which are now banned in Australia, but the point I want to make about these is that they have colouring on the tips which is very pretty. That is another thing which this legislation is designed to address: the kind of variations in the cigarettes themselves, which would be a very helpful thing. Those party cigarettes are seriously fun.

In case you think that it is only the female targeting that is going on, there are also many packs on the market that are very much aimed at the young male smokers. The simplicity of the Dunhill without any kind of elaboration, the slightly more sophisticated JP Special—

CHAIR: What is JP? What were they called?

Mr Swanson: John Player Special. They used to have the monogram JPS.

Ms Scollo: The variation with Winfield is pretty reminiscent of a Harley-Davidson type of logo. I will pass those around as well.

CHAIR: You can see the blokey—

Ms Scollo: It is very blokey. That is an older one but that is the kind of thing that this kind of legislation would address. I will leave you a sample.

CHAIR: No. Do not leave me a sample!

Ms Scollo: I am loath to spend Cancer Council donor money on these, so I bought them myself. My husband said: 'Make sure you bring them back again. Use them for next time so you do not spend money again.' As you can see—

CHAIR: We are certainly getting the message of what the promotion and the marketing tools are.

Ms Scollo: These packets are seriously cool. These are not just about distinguishing brands. These are very, very attractive. As I was saying before about having to tackle smoking at all sorts of levels, the reason these can be very powerful is that the uptake of smoking is very much about peer pressure. No-one is denying that uptake

happens in a social context, but the importance of these is that you can just imagine the ease with which that kind of social interaction can happen. If you have got one of these in your handbag you do not look stupid; you do look cool. If you accept a cigarette like this from someone it is part of that process of forming your identity and identifying with other people whose values you endorse. It feeds in and amplifies the social process.

I want to move on and give you a few metrics about the research conducted to date. You heard before from the Preventative Health Agency about the detail of some of the studies. To give you an overview of the shape of the field, it has emerged in two stages. Twenty years ago there were preliminary studies in this area and little bit of research and then a bit of an abeyance. In recent years it has really got going again. Seven of the studies have been prepared by research groups and written up in very comprehensive reports to government. Those are not constrained by the word limits of journal publication and you get a richness of details in those sorts of reports. There are a number of conference presentations that have not been written up into papers yet and there are, so far, 17 studies that appear in peer-reviewed journals and numerous more that are in various stages of the review process and publication. In reading all the material in this area that I have been able to find, I have seen references now to 36 different studies described, some second-hand. I would say I have seen 30 that are very well described.

CHAIR: Specifically to plain packaging?

Ms Scollo: Specifically experimental studies into plain packaging.

CHAIR: And what are they saying?

Ms Scollo: The authors' conclusions on all these studies are that packaging is incredibly important in determining people's feelings about cigarette products and that reducing the elements of branding would make cigarettes less attractive, would be less likely to mislead consumers and would make health warnings more prominent. The studies have been published in countries that are all quite comparable with Australia—five in the US, seven in the UK. There are almost 12 studies described in seven different papers from Canada, three from New Zealand and several studies now in Australia. It is a very diverse group of countries but very comparable to our social and culture situation. The investigators who have led the studies have been from marketing and from public health backgrounds, so you have those sorts of perspectives. They are quite senior people and extremely well respected in their fields. There are people who have been senior editors on BMJ journals, people who have advised the US government on various committees, people who advise the World Health Organisation—very experienced people and researchers with very good reputations.

The studies have covered a range of participants. There are five studies that deal with adults, eight that deal with young adults and about 17 of the studies deal with teenagers. Most importantly the studies have been conducted using a very wide range of methodologies. Eight of them, for instance, are based on focus group research, there are nine based on online interviews with study participants and there are four done in shopping malls, which is good because that is a very representative and random interaction with smokers.

There has also been a wide range of other techniques used. This has included questionnaires in classrooms of teenagers, face-to-face interviews, direct questioning, even an experimental auction where people had to say how much they would pay for different kinds of pack variations. There was one small but extremely interesting study that used naturalistic research, where people have been given a diary and have gone out and recorded their feelings about cigarettes in plain packaging over a number of weeks. The range of techniques, settings and groups involved in public health research is a good sign that you can be confident of the robustness of the findings.

In terms of the relevance to the act, 15 of the studies are looking at the noticability and impact of health warnings; nine I have counted so far look at the capacity of the different colours to mislead—

CHAIR: Can I interrupt just a moment. I saw some of these reports on websites et cetera when I did a speech in parliament recently. Is there any way you could give us their websites so we could table them at one of our meetings?

Ms Scollo: Yes.

Prof. Olver: They are actually on the Cancer Council website.

CHAIR: They are on your website, okay. I have seen some of them.

Prof. Olver: They are on Victoria and Cancer Council Australia. They have actually put up those studies to be available.

Ms Scollo: In the document that we have on that website there are now 157 studies and we have links to every one that has a website link.

CHAIR: It would be good to table them for the committee.

Ms Scollo: Yes. I will leave that with you. As Ian mentioned, it is obvious when you look at some of the packs—

CHAIR: Just before we go on, is it the wish of the committee to accept the documents and table these reports and evidence for our inquiry. There being no objection, it is so ordered. Thank you. I am fully aware of the time as well. We would like to get some questions in.

Ms Scollo: Okay. Just very briefly, to reiterate, the various studies that have been conducted do consistently show that the pack brand imagery distracts from health warnings. The studies have found an enhanced ability to recall the health warnings on plain packaging; students saying that the health warnings are more serious when they are on packs that are plain; eye-tracking studies that have found that people look more at the health warning when there isn't the distraction of the branding on the packet; the effects of plain packaging on harmfulness we have talked about and the effects of plain packaging on the appeal of the product; the appeal of the product you could understand in terms of the appeal of those packs—and some of them are very appealing; more broadly, what people then discern or infer about the quality of the product itself—so if something looks silky and soft on the packaging, is that what you think about the taste and so on; and even more broadly still what people then infer about the sort of people that smoke those products and what kind of person you want to be. It is quite a strong body of evidence comparing it to the bodies of research you see in public health.

CHAIR: We might ask you some questions now. It will be very informal, so if there is anything else you need to add, just go for it. First of all, it is interesting to see those packets. As you have said, for many of us in the circles that we are in as ex-smokers—in my own case where I gave up seven years ago—you really do not see much of what goes on. It is the first time I have seen those particular packets. I am actually shocked by them, especially looking at cocktails and a whole range of things. You can see that there absolutely marketed at specific age groups and people.

The other thing, just before I ask my question, you spoke about not seeing many smokers the age that we are at. I would say that that is because people of my age or over are either dead or they have given up. They are two reasons why we do not see it. I am speaking as an ex-smoker. I gave up seven years ago and I would like to thank Quit, who regularly would call me to see how I was going.

Ms Scollo: Our pleasure.

CHAIR: After seven years, I am still tobacco free. Just holding those cigarettes in my hand brought back feelings of contentment and the feeling I would get from knowing I had a full dose for the whole day. I just felt that for the very first time in seven years—that is how powerful and addictive this drug is. That is just a personal thing from me; it is not a question for you guys. I noted that the World Health Organisation recommended plain packaging at one of their conferences. Would any of you know more about that and elaborate on why the World Health Organisation would recommend plain packaging for tobacco products? Does anyone know much about it? It was in one of the submissions.

Prof. Olver: It is section 11 of the Framework Convention on Tobacco Control, which is a section that deals with the promotion of tobacco products and sets out a framework for how to eventually completely control tobacco. As I said, over 170 countries have signed up to it and it provides a blueprint of evidence based strategies that would lead to the elimination of tobacco. They have taken the evidence that you have heard today and put it into their framework as an important way of restricting advertising. They have put it under advertising as a way of decreasing tobacco consumption.

CHAIR: That is completely different to what we heard this morning from the tobacco companies who said that there was not enough of an evidence base for this. Why would they be contradicting? You have the World Health Organisation—

Prof. Olver: I am not going to speak for the tobacco companies, but the point is that if no country has ever done it you can say, 'Well, there is no evidence that has followed it through.' I can tell you that when it starts in Australia, Quit and the Cancer Council will create the evidence for the rest of the world on that score. All the evidence that you would need before you put up legislation—all the group testing of the impact of the plain packages—has been done, published and you now have copies of it. That is what you would need before you put up the legislation to test it in practice. I was at a conference in Cambodia in the middle of June where other countries were talking about where they were up to. There are still billboards in Indonesia; they have a long way to go. The countries do learn from each other. They get together and learn from each other about what is successful and what is not. Everything has been done that could possibly be done before introducing the legislation. The next step would be to do field testing once the legislation is passed.

Mr Swanson: The other point to make is that almost every regulatory change that has been proposed in tobacco control since 1976 has been opposed by the tobacco industry. Why? Because it affects consumption and their bottom line. They have thrown millions of dollars at trying to defeat this because they know what effect it will have not only in this country, which is a relatively small market, but also around the world. There are already governments in other developed countries that have it on their agenda and there will be many that follow. That is why they are ferociously opposing this. They fight every regulatory response, tooth and nail. Why? Because they know it works.

Mr LYONS: In developing this plain packaging, has there been contemplation about using their logos under a certain size?

Mr Swanson: None whatsoever. In producing these packs, the Heart Foundation and Cancer Council Australia copied the hi-res image that is on the health department website. We even included the name of the brand on three surfaces because we were aware that retailers were lobbying the health department to make sure that it was on at least three surfaces to aid them in selecting the appropriate brand when they are selling them. To my way of thinking, there is no logic or evidence behind the argument that these will take any longer to dispense or sell than the branded packs, because the name is on them—it is just in a standardised font.

Mr LYONS: I was thinking more of the evidence that they will contemplate legal action because you are taking away the trademark.

Mr Swanson: No, we have not considered that at all. We have just relied on good common sense, that the federal government would have got the best legal advice possible before they drafted the bill.

Prof. Olver: In fact, many of the international trade agreements do have exceptions to protection of trademark that take into account the public good.

Mr IRONS: After 10 years I did not find any of those packs attractive at all.

CHAIR: You were immune!

Mr IRONS: Once you get to that 10-year—

Ms Scollo: Did I give you the macho ones?

CHAIR: They were not attractive at all, I felt! I found the feeling of holding the packs, knowing that satisfaction you would get when you are addicted and you had the full dose for the whole day—

Ms Scollo: Yes, the shape of it—

Prof. Olver: The power of addiction.

CHAIR: Certainly, they are not marketed for fat old blokes like me! They are marketed to other people, those slim packs.

Mr IRONS: You have collated a lot of public health research on this issue. It is on your website and you have research such as that of Melanie Wakefield which shows that the cumulative effect of plain packaging is quite marginal after taking into account increasing the size of the graphic health warning to 75 per cent and reducing the size of the branding to 25 per cent on the front of the pack. Could you just qualify the impact on the smoking or cessation behaviour of increasing the size of the graphic health warning from 30 per cent to 75 per cent and reducing the size of the brand on the front of the pack from 70 per cent to 25 per cent? And also, what would be the additional impact you get on the smoking behaviour or cessation behaviour after those two measures are taken once you introduce plain packaging?

Prof. Olver: Michelle has actually done the work on this, so—

Mr IRONS: I was just thinking that it was on your website—

Prof. Olver: That is right, but Michelle is Cancer Council Victoria and Quit, so—

Mr IRONS: That is the Melanie Wakefield—

Prof. Olver: That is Melanie Wakefield's part of the organisation.

Ms Scollo: I think the first thing to say is that the assumption underlying the question is falling into the error that the armchair critic at the party makes: one thing is going to prompt somebody to quit smoking.

Mr IRONS: I just wanted to hear on that report, that is all. Is it correct or is it incorrect?

Ms Scollo: None of the reports claim that this one measure will make anyone stop smoking or will stop any one individual. These sorts of measures all work in concert to change attitudes to smoking and to make it less likely that people will diminish the risks. That particular study you are talking about shows that while health warnings are very effective in increasing people's knowledge about the health effects, the plain packaging is much

more crucial than the health warning in affecting appeal of the pack. It looked at the two different aspects, and the plainness of the pack has a more powerful impact on the appeal of the pack.

Prof. Olver: I make the point that we do know that where you put the health warnings is actually important. Putting them on the side of a pack is not as powerful as putting them on the front and back. But the point of the package is that an attempt to blunt the health warnings can be made by the colour of the pack. We have a couple of packs of Marlborough—actually, I have not got them here—where the colour red on the pack has been changed because the health warning was one of the foetal health warnings and it tones out the health warning—the one I showed you from overseas.

If you are going to put health warnings on, you want them to be as effective as possible and plain—

Mr IRONS: Or as large as possible.

Prof. Olver: As large as possible. But if you are going to use the rest of the pack to blunt them then both of the effects are going to be of influence. So it is an incremental thing. You add one to the other, rather than dissect out precisely what each will do.

Mr IRONS: Basically we have a cumulative effect—

Prof. Olver: Exactly.

CHAIR: Earlier, and in your submission, you spoke about the mobile advertising of packets. Could you elaborate a bit more on that, how this mobile advertising, in your view, takes place? I know you have touched on it, but I would like to hear more about that.

Prof. Olver: This was more a counter to the fact that when point-of-sale advertising was restricted the tobacco companies were saying: 'Well, you can't advertise anymore. It doesn't matter what colour the packs are.' But smoking is not a singular activity; it is a social activity done in public. The packs are effectively being used by groups of people who are smoking in public at parties, in laneways behind the workplace and so on. Because it is a reusable thing, it is taken out every time a cigarette is used and becomes visible to all those around. That is the point of having packs that are directed to attract young people at parties—so that a new smoker will be attracted by a particular type of pack.

CHAIR: What other avenues for marketing are you aware of that are open to tobacco companies, apart from the packet?

Prof. Olver: Facebook and YouTube. If you go to YouTube you can find just about any ad you want, plus new ones, plus so-called independent people doing commentaries on a particular cigarette. If you go to Facebook you will find user groups whose only common attribute is that they talk about a specific brand of cigarette. As Maurice said, there is still a lot of product placement in movies. I am talking about gratuitous placement. Winston Churchill was allowed to smoke a cigar, but why does Sigourney Weaver smoke a cigarette in *Avatar*?

CHAIR: There is evidence that in a particular movie Sylvester Stallone, I think it was, flashed a packet of Winston or Marlboro—I forget what it was—and was paid \$50,000 for that.

Mr Swanson: He had a contract.

CHAIR: Yes, a contract, exactly.

Prof. Olver: So there are still some loopholes left and in the social sense this is a particularly strong one for recruiting new young smokers.

CHAIR: With young smokers, over the years we had advertising, sporting sponsorships—a whole range of things. Through your experience, studies, talking to people—obviously, you have a lot of experience in this area—what makes a young person smoke and what role do these packages play?

Ms Scollo: It is interesting. You talk to young primary school kids and find they are the most rabid anti-smokers you could possibly imagine. Then they go to high school and something miraculously happens to some of the older ones. Smoking is a way of asserting your personality. The promotion of tobacco has been so effective over the years because it has tapped into that process of adolescence and rebellion on the one hand and the need for social acceptance on the other. Cigarette smoking fits the bill on both those counts because it is something that your parents do not like you to do and it is something in particular peer groups that your friends do want you to do. It fulfils that need. It is a social health issue. Although physically it is bad for you, from the point of view of a young person who is desperate to be accepted by a particular peer group, if that peer group smokes then that is a very strong influence. This packaging feeds into that because it allows people who smoke to express things about their personality. It is those aspects of personality that are attracting young people into experimenting with smoking. It is a free pass, or a shortcut, to coolness.

Mr Swanson: We have had success in all states of Australia in reducing the number of adolescents who smoke. Although there are some groups, such as young Indigenous people, who have a higher prevalence of smoking, nonetheless we have been successful in driving that prevalence down. The most important reason for that is that young people now see fewer adults smoking, and depending on what SES group you belong to that can be higher or lower. With my kids, who are now in their late teens to early 20s, when they were in late primary school and if we went out to a cafe—it was in the days when you could still smoke outside—if someone lit up a cigarette they would say, 'What is that man doing?'

It is purely a result of the adults that they are exposed to. So the most potent reason for kids taking up smoking is if they see adults smoking. We have been relatively successful but cannot be complacent about the fact that we have driven down the prevalence of smoking among adults. But it is not a screw; it is a spring. We have to keep increasing the pressure on that spring and keep it going down. If we do not, it will spring back up.

Ms Scollo: There have been times in the past 30 years where we have seen smoking rates increase, again where we have seen—

Mr Swanson: We have seen blips in the prevalence.

Ms Scollo: Yes.

Mr IRONS: I notice you see more people smoking on music videos now.

Mr Swanson: There is no legislative control over what is done in music videos.

Mr IRONS: On your comment that education in schools does not work—

Mr Swanson: In isolation it does not work.

Mr IRONS: Yes.

Mr Swanson: As you would know, in Western Australia we have had a comprehensive K-12 curriculum. When we are doing everything and we have the resources to do so, we include drug education in schools which has a component of tobacco and health education. The point I am trying to make is that the only thing that the tobacco industry agrees with us on is price because they know it hurts their bottom line. When they start making recommendations to you or anyone else about investing in strategies to reduce smoking, the only one that they go for is education in schools because they know it does not do anything in isolation.

Mr IRONS: Are there any education programs that do work?

Mr Swanson: There are but they have leverage off the campaigns that we are running in the community and the restrictions. The point that has come up in this committee today is that since the mid-seventies we have had sequential restrictions on smoking in public places. You cannot go to Subiaco oval, as you know now, and smoke inside that arena. That is not a law; that came about through a sponsorship agreement between the WA Football Commission and Healthway. Increasingly, you will see restrictions on smoking in crowded outdoor areas because (a) people hate it but (b) there is a health risk associated when they are cheek and jowl, and they are inhaling other people's smoke. If you are an asthmatic then you have a much higher risk of having an asthma attack. We know that when communities have comprehensive restrictions on smoking, the incidence of heart attacks starts to go down quite significantly and quite quickly.

Mr IRONS: Ian, in your answer about Melanie Wakefield's work, you spoke about the research that shows that the impact of plain packaging is a lot more effective than increasing the size of hoardings and a reduction in the size of logos.

Prof. Olver: I actually said that it is very difficult to dissect out one from the other. I was making the point that the packaging may blunt the efficacy of the health warnings. It is something that you need to add to the health warning to make the health warning more effective rather than look at them as two isolated things that will have separate impacts on smoking.

Mr IRONS: In Melanie Wakefield's research, she does actually quantify the effect.

Prof. Olver: Yes, but you have to look at them together.

Ms Scollo: One of the things I have been working on quite a lot over the last couple of months is the estimates of the use of illicit tobacco. I wondered if you might want to ask me a question about that?

CHAIR: We touched on it earlier and about the government's figure of three per cent. But I am happy for you to elaborate about it.

Mr IRONS: On page 25 of your document, you talk about 15.9 per cent.

Ms Scollo: That is the industry estimate.

CHAIR: The government figures are a lot lower which is something I raised earlier with the tobacco company that was here.

Ms Scollo: Why the dip? What figure do you believe? Why the difference in the figures? I think that you can be very confident that that 15.9 per cent is a major overestimate—

Mr IRONS: By the lawyer?

Ms Scollo: Yes. I think you can be very confident that that is a major overestimate. First of all, Ian talked about the plausibility of that level of corruption in Australia and, secondly, if you walk around the streets where people are smoking, do you see one in seven cigarettes coming out of plastic bags? It just is not plausible.

An independent estimate of the amount of illicit trade in Australia has been produced by Euromonitor, which is not in any way, shape or form a health agency. It is an international market intelligence agency that provides advice to stock brokers. I will leave that with you. It estimates that the penetration of the illicit market in Australia is relatively stable and in fact has gone down over the past couple of years from 3.6 per cent in 2004 to 3.1 per cent in 2009. People have talked about the National Drug Strategy household survey that has five times the number of smokers in its sample as the survey on which the Deloitte report was based and has well over double the response rate of that survey. That survey has been conducted I think seven times now. It has a whole secretariat and support staff whose purpose is to ensure the accuracy and continuity of that survey. We can be very confident that that survey is giving the government very reliable information about the prevalence of the use of illicit tobacco.

That survey found that in 2010 only 0.3 of a per cent of Australians used illicit tobacco on a regular basis—half the time or more—which was not significantly higher than the two per cent reported in 2007 and also was not significantly different to the four per cent reported in 2004. While quite a high percentage of smokers reported that they had tried unbranded tobacco at least once—24 per cent of people say they have tried it at least once—80 per cent of those people say that they no longer use it. So only 4.9 per cent of smokers reported currently using unbranded tobacco in 2010, and that is actually significantly down on the 6.1 per cent figure in 2007.

So the first part of the equation is how many people are using it. Secondly, and more importantly perhaps, is the amount that Deloitte have estimated that they use. In the Deloitte report it says that those using unbranded tobacco purchased an average of 344 grams on an average of 15 occasions in each year. That makes a total of 5,160 grams per year. Given that each cigarette is going to weigh less than a gram—the average weight of tobacco in Australian cigarettes is more like 0.7 of a gram—even allowing that it might be more than that, if you divide that 5,160 grams by the number of cigarettes that people smoke each day and the number of days in the year then you come up with people smoking an average of 17 to 20 cigarettes a day using unbranded tobacco. That means that it is estimated that all—basically 100 per cent—the people in the Deloitte report are smoking illicit tobacco exclusively.

It was stated this morning that the government survey does not give any information about quantity of use, but it does give information about the extent of use. We know from the National Drug Strategy household survey that about 0.5 per cent of smokers only smoke this type of tobacco, less than one per cent smoke mainly this type of tobacco, only 0.2 per cent smoke this tobacco about half the time or more, and only five per cent occasionally smoke this kind of tobacco.

CHAIR: Is that information in this or is that a completely different document?

Ms Scollo: It is in a document where I have analysed that Deloitte report which I will also table.

CHAIR: Would you like to table all of that and then we can take that as evidence?

Ms Scollo: I think that gives an explanation of why that report has come up with so much. What has happened somehow in that analysis is that they have made an estimate of the amount of tobacco smoked based on those people who smoke it all the time and applied it to the entire smoking population. In fact, we know from the much bigger and much more reliable government survey that it is only a very small percentage of people who smoke it regularly or all the time. That is why that figure is so big. There are lots of other problems in the report which I have outlined in this document.

CHAIR: We have the document, so I will ask someone to move that we accept the document as evidence for this inquiry. It is so moved. The document is now evidence for our inquiry.

Ms Scollo: One final point I would highlight from it is that the survey is done only on capital city smokers but the percentages are then applied to the entire population. We have done some analysis on the last drug strategy survey and in fact the rates of use among city dwellers are many times higher than the rates of use in the country. That is another source of overestimation. You were asking about unbranded tobacco versus contraband cigarettes.

In the Deloitte estimates that represents 10 per cent of the total use. It is the minority of use. Actually reliably detecting whether somebody is smoking contraband or counterfeit cigarettes is very difficult because how do they know they are smoking them? There has been a question asked in this year's national drug strategy survey just released which says, 'Have you ever noticed something different about the way your cigarette pack looks or the way that the cigarettes taste?' As we have seen looking at these packs the companies quite often make minor and major changes to the look of the packs. So perhaps people might be perceiving some of that. We have introduced reduced fire risk cigarettes into Australia. They have come into force over this period of time. We know from research just published in the *BMJ Tobacco Control* journal that people do perceive those differences in the performance of the cigarette—50 per cent of them do. That could be another explanation for that figure. They are guesses but do not forget that the percentage use of counterfeit cigarettes and contraband in the Deloitte report is only 10 per cent of that total of the estimated 16.

CHAIR: Thank you for your evidence today. Thank you for the props that you brought along. They were very powerful and sent us a message here so we know exactly what we are dealing with. If we require any further information, we may be in touch with you. If you have anything further that you wish to add please feel free to contact the secretariat.

Proceedings suspended from 13:33 to 13:55

COTTERELL, Mr Simon, Assistant Secretary, Tobacco Control Taskforce, Department of Health and Ageing

REID, Mr Chris, General Counsel, Department of Health and Ageing

SMYTH, Mr Nathan, First Assistant Secretary, Population Health Division, Department of Health and Ageing

CHAIR: I now call the third group of witnesses, from the Department of Health and Ageing. Although the committee does not require you to speak under oath, you should understand that these hearings are formal proceedings of the Commonwealth parliament. Giving false or misleading evidence is a serious matter and may be regarded as a contempt of parliament.

Before I ask you to make your introductory statements, I have a motion regarding committee business that we have to deal with. Because one of our members has to catch a plane fairly early, could a member please move that a subcommittee be established comprising the chair—me—and Mr Lyons for the purpose of today's hearing. It is so moved by Mr Lyons. We will have a subcommittee if one member is to leave.

I will ask you to make a brief opening statement and then we can proceed to questions.

Mr Smyth: The Department of Health and Ageing would like to thank the committee for the opportunity to appear and for the opportunity to make a brief opening statement. The department would like to emphasise to the committee the importance of considering this plain packaging legislation in three important contexts: the COAG targets for reducing smoking prevalence in Australia, Australia's comprehensive approach to tobacco control, and the consultation undertaken in developing and implementing the legislation.

I will deal firstly with the COAG targets for reducing smoking prevalence in Australia. In the 2008 National Healthcare Agreement, the Commonwealth, states and territories have committed to a target of reducing the national adult daily smoking rate to 10 per cent by 2018 and to halving the smoking rate amongst Indigenous Australians by the same date. These targets were established to help reduce the estimated annual \$31.5 billion in costs to the Australian economy and society from smoking and the annual death toll of over 15,000 lives lost to smoking.

According to the National Drug Strategy household survey recently released by the AIHW, the adult daily smoking rate fell from 17.5 per cent in 2007 to 15.9 per cent in 2010. The more commonly used figure, the daily smoking rate for Australians aged 14 years and over, fell from 16.6 per cent in 2007 to 15.1 per cent in 2010. If you do a straight line extrapolation of the rate of decline over the last three years out to 2018 based on the household survey figures, we will only reach an adult daily smoking rate of around 12 or 13 per cent and will therefore fall short of the 2018 target.

The first point is that additional impetus to reducing smoking rates is needed if we are to reach the targets. The department considers the plain packaging legislation to be a critical element of that. The second important piece of context in considering the legislation is the comprehensive range of tobacco control policies and programs that already exist in Australia that have contributed to declining smoking rates and the comprehensive package of additional reforms the government is implementing to help accelerate that decline.

Since the 1970s, successive Commonwealth, state and territory governments have progressively introduced reforms including bans on smoking in workplaces, enclosed public spaces, restaurants and bars; more recently in outdoor public places such as parks and beaches; and in cars, particularly where children may be exposed to tobacco smoke. These have worked not only to reduce the harm from second-hand smoke but also to help denormalise smoking as part of the culture. Public education on the dangers of smoking has progressively been ramped up. Smoking rates began to plateau in the 1990s, but the decline in smoking resumed following the implementation of the first national tobacco social marketing campaign. A new national tobacco campaign, Every Cigarette Brings Cancer Closer, with record levels of investment commenced in 2010 with parallel campaigns targeting high-risk and hard-to-reach audiences and Indigenous Australians being rolled out as well. The government has taken a particularly active approach to supporting Indigenous communities to reduce smoking rates. The \$14.5 million Indigenous Tobacco Control Initiative announced in March 2008 is supporting around 18

innovative projects in Indigenous communities around Australia and the \$100 million that COAG has provided for the closing the gap on tackling smoking measure has seen tackling smoking teams established in 20 regions in 2010-11 with a further 20 this financial year and then the full 57 in 2012-13.

With its 25 per cent excise increase on tobacco products in April 2010, the government has increased price as a barrier to smoking take-up, particularly for young people, and as an incentive to quit. Support for smokers to quit is readily available through quit lines and has been increased recently through extended listings on the Pharmaceutical Benefits Scheme for nicotine replacement therapies and other pharmaceutical aids to smoking cessation.

Bans on advertising and promotion of tobacco products in print, outdoor settings, radio and television have been progressively introduced since the 1970s. These bans helped reduce the uptake of smoking by reducing exposure of the population, especially young people, to pro-smoking measures and images. Governments are moving to close the last exceptions to these laws through the internet advertising legislation that is currently before the parliament, through state and territory bans on retail display of tobacco products and through plain packaging legislation removing the use of the package as a medium for advertising. At the same time, health warnings on tobacco products have been progressively ramped up since the 1970s. They began with text-only warnings, moved to the current graphic health warnings in the 1990s and now, alongside the plain packaging legislation, the intention is to increase the size and salience of the warnings and to update the messages and the graphics.

All the public health evidence from the Preventative Health Taskforce, from the World Health Organisation and from the World Bank is that comprehensive approaches where multiple approaches and reforms are implemented at once are more likely to produce sustained reductions in smoking than single measures alone. Plain packaging is being implemented in this context and in the context of a multipronged comprehensive approach to tobacco control.

The third important piece of context is the consultation that has occurred and continues to occur in the process of developing and implementing the plain packaging measure. The Preventative Health Taskforce conducted extensive public consultations in developing its recommendations, of which plain packaging was one, and exposed its recommendations to public comment. Following a decision by the government to proceed with the recommendation, the department has conducted targeted consultations with the tobacco manufacturers, large and small retailers and speciality tobacconists and cigar importers on the details of implementation, including package design, handling in retail settings and import related issues.

In addition, the government conducted a process of public consultation on an exposure draft of the legislation and on the design of cigarette packaging. There have been changes to the legislation and regulations as a result of those consultations on which we would be pleased to take questions. We have provided the committee secretariat with a table showing the major changes between the consultation draft of the legislation and the bill as introduced into the parliament. In the coming months there will be further consultations on the design of the packaging for non-cigarette tobacco products—that is, cigars, loose tobacco et cetera—and on the proposed enlarged and updated graphic health warnings.

To sum up, the department considers it very important that this legislation is considered in the context of the targets for smoking reduction that have been agreed by all Australian governments through COAG. That will require additional effort and impetus to achieve. The comprehensive, evidence based approach the government is taking to tobacco control is building on the large body of regulation, education and quit support approaches that Australia has pursued over several decades and the extensive process of consultation on the legislation and the regulations. There were a number of substantial claims made by the first witnesses this morning that we do not accept as being valid or accurate. Accordingly, we would certainly appreciate an opportunity during the proceedings to provide a counter-view to those statements that were made earlier.

CHAIR: The committee is happy to hear your views on those claims.

Mr Cotterell: On several occasions, the first witness made statements to the effect that the minister had stated that there was no robust evidence to support plain packaging. We would like to clarify that that is not our understanding of her statements. On one occasion, when asked a question about whether there was evidence that plain packaging worked in practice in real-life markets, she said there was no evidence of that kind, but she is fully apprised of all of the evidence that has been presented by the witnesses today. So we would like to correct that claim.

Secondly, the tobacco industry representative said that they had not had an opportunity to meet with the minister or the department and his colleague corrected him that the industry had in fact met with the department

on five or six occasions. We have records of at least five meetings with the industry. The first was on 26 November 2010, when we met with each of the major manufacturers individually because we were concerned about potential competition issues, to talk about the possible incorporation of anti-counterfeiting measures into the plain-packaging design. The three companies insisted that we have meetings with them collectively, so on 14 January 2011 we met with them collectively for further consultation on the anti-counterfeiting measures. We met with them again on 2 March and 3 March—on 3 March in the context of the Tobacco Industry Forum, which is a forum that the Australian Taxation Office and the Australian Customs and Border Protection Service run to talk about issues around illicit trade in tobacco. We met with them on 2 June this year to discuss the specifications of the packaging, the dimensions, the materials, the colour, the size of the graphic health warnings and the potential nature of the change to those graphic health warnings.

Thirdly, there was statements made to the effect that retailers had not had an opportunity to provide input to the legislation and its implementation. Again, the department has had many meetings with retailers and retailer organisations. In fact, we have agreed to meet and discuss this legislation with any retailer or retail organisation that has approached us. The key organisations that we have met with include the Council of Small Business Organisations of Australia, the Australian Newsagents Federation, Master Grocers Australia, the Service Station Association, the Tobacco Station Group and the National Independent Retailers Association. All of those organisations were invited to provide written submissions and to attend follow-up meetings if they wished for them to occur. I must say that, in relation to all of these meetings, including meetings with the industry, we have faithfully reported the views put to us to the minister for her to consider, so all of this has been input to the government's position and proposed legislation.

Fourthly, some assertions were made about the retail display bans that have been implemented under state and territory legislation that all cigarette packaging needed to be behind steel doors. In fact, as we understand the regulations, there is no specification of the material or the manner in which cigarette packets have to be kept out of sight; the specification is about keeping them out of sight in the retail setting. Finally, some assertions were made about how other governments who were considering plain packaging had decided not to proceed. In particular, an assertion was made that the UK government had decided to suspend all consideration of plain packaging and retail display bans. Our understanding is that the UK government has suspended consideration of retail display bans until it completes its public consultation on the idea of plain packaging, so it has suspended consideration of that but will resume it, as we understand it, at the end of the year. Thank you.

CHAIR: Thank you. There has been some criticism of the evidence base available on plain packaging. Do you guys believe the evidence that you have to be sufficient to proceed with the initiative? I believe I can see my deputy chair ready to spring to his feet.

Mr IRONS: No. I have some questions, but—

CHAIR: Of course. Actually, I might cancel my question, because Steve has to leave. Then we will go back to that.

Mr IRONS: They might not like my questions. On the consultation and engagement that the government has done with the small retailers, you said they have been invited to come into meetings as representative bodies. How many of them have actually come into meetings with you? Is it possible to get that detail?

Mr Cotterell: I read out the representative bodies that we have met with.

Mr IRONS: You have met with all of them?

Mr Cotterell: Yes.

Mr IRONS: Okay. Was that more to advise them or was it more to work with them on the—

Mr Cotterell: No, it was a listening exercise. In addition, it was particularly to talk about design issues and how they would work in a retail setting. We also met with Coles and Woolworths; they are not on the list that I read out, because they are large retailers. I think a previous witness has mentioned that the fact that we are allowing the brand name on the top and the bottom of the packet and also on the front was at the request of retailers. There was a request that the brand name on the front be higher up on the front of the package because of the way it interacts with their current shelving, so the brand name could not necessarily be seen on the front. We tested that with consumers and found that it split the graphic health warning, so it undermined the public health objective of the measure. So we were not able to accept that, but we accepted the top and the bottom. We also tested the legibility of the brand names from a metre, specifically with the intention of seeing how people would see them in a retail store, and the font size that has been specified is clearly visible from a metre according to the consumer research that we did.

Mr IRONS: Going on with that, the Department of Health and Ageing has been the interface with the minister for industry—or has the minister had separate meetings with industry?

Mr Cotterell: I am not aware of any meetings that the minister has had with the tobacco industry, but the department has a standing invitation to the industry to meet with us if they have concerns they wish to raise.

Mr IRONS: No problem. Okay. Have you received any advice as to whether this bill could be considered expropriation under article 6 of the 1993 Australia-Hong Kong investment treaty? You believe you are on solid ground, but can you assure the committee that the Commonwealth government will not be exposed to payments under the investor-state dispute settlement provisions of the 1993 Australia-Hong Kong investment treaty?

Mr Reid: Perhaps I could address that question. We have a bit of a difficulty in talking about the advice which the Commonwealth has received, because that advice is confidential and, were we to disclose to you the substance of that advice, we would be waiving privilege on it. As we are expecting to be in litigation with tobacco companies, waiving legal advice would not seem to be an advisable thing to do. I can say that we are confident that, should proceedings of that kind be taken, we would expect to win those proceedings.

Mr IRONS: So you are saying the legal advice means you are confident you are not exposed.

Mr Reid: I am not saying anything at all about the legal advice.

Mr IRONS: No worries.

Mr Reid: I am expressing a personal opinion.

Mr IRONS: What provisions have you made for any exposure to legal action by the Commonwealth government? Has the government made any provision for legal action that may be taken against the bill?

Mr Reid: There has been some discussion of the costs of that. Some costs are being incurred at the moment which are coming out of the Department of Health and Ageing's budget.

Mr IRONS: There is no budgeted figure for it? There is no special provision?

Mr Reid: No.

CHAIR: I go back to the question that I had about criticism of the evidence base available on plain packaging. Do we believe that we have sufficient evidence to go ahead with the legislation?

Mr Cotterell: We absolutely have sufficient public health evidence to go forward with this legislation. This is as good a set of public health evidence as you get for preventative health measures. There has been a three-year process which started with the Preventative Health Taskforce giving this evidence a going over. The Preventative Health Taskforce looked at the evidence, put out a draft recommendation for public comment that we should proceed with plain packaging, received public comment on that recommendation and stuck with it. The Preventative Health Taskforce comprised Australia's leading public health experts, so the government took that very seriously. It has kept the evidence under review and considers that there is plenty of evidence to support the legislation.

CHAIR: How important is this initiative in order to achieve COAG's goal to reduce smoking and the targets they set, as we heard earlier?

Mr Smyth: As I said in my opening statement, this is an important component of a multipronged suite of interventions that the government is making to reduce the consumption of tobacco across the population. It is a very important component.

Mr Cotterell: The states and territories are playing their part as well. They are introducing the retail display bans and the harm reduction measures about public smoking, and so forth.

Mr LYONS: Without going into your legal advice, has your advice covered both the Constitution—I think they mentioned section 51—and international treaties?

Mr Reid: Again, I am in a quandary. If I tell you what our legal advice does and does not cover I am at risk of waiving privilege on it, which I am not in a position to do. All I can say is that you could expect that the Commonwealth advice taken in relation to legislation of this kind would be very thorough in the things that it looks at.

CHAIR: When this legislation is implemented—if it does get implemented—how long do you think it will be before we see results in people giving up cigarettes, and when will we be able to look at the numbers, facts and figures on the effect of this particular legislation?

Mr Cotterell: As you saw in the submissions you have received and from the evidence given today, it is very difficult to quantify the impact of an individual measure and it is very difficult to see behavioural change in a very short period of time. There are many, many factors affecting individuals' decisions to take up smoking, to

continue smoking and to quit. Through this measure we are trying to influence those decisions, but we also have—as Mr Smyth said in his opening statement—a raft of other measures that we are using to try to convince people that it is not a good idea to take up smoking and that it is a good idea to quit. Through the graphic health warnings, price signals through the excise, the national tobacco campaigns that target activity at special populations and Indigenous populations we are doing almost everything we could possibly be doing to get smoking rates down.

CHAIR: This will be a world first or leading the way for the world in tobacco control. Are there any other examples where Australia has led the way? We have heard this from earlier witnesses; I just want to hear your view of it. Are there other examples where it has assisted in reducing the addiction to tobacco or the participation in smoking tobacco and has also had an effect on other countries around the world in terms of us being leaders in this particular field?

Mr Cotterell: In addition to the ones that have already been mentioned today—the social marketing campaigns, the bans on smoking in enclosed places and public places—the graphic health warnings are the outstanding example. We have shared our graphic health warnings with many countries. We were one of the first countries to go with these graphic health warnings and many countries are following our example. Many of those countries are also having the tobacco industry fight that measure. Norway and Uruguay at the moment are parties to litigation with the tobacco industry over graphic health warnings related issues. Our graphic health warnings have been very successful. The evaluation evidence is available publicly and other countries are lining up to borrow our images and approach.

Mr Smyth: It is fair to say that Australia is considered a world leader in tobacco control and that a lot of other countries do look to follow our lead and look to us for measures we have introduced, the evidence base around those, and have then taken up some of those measures themselves.

Mr LYONS: The use of the graphic pictures has obviously made a significant difference. Can you tell me what the lead time was to clear out the other packs? What time did we give the tobacco producers on a previous occasion when they changed the pack?

Mr Cotterell: I understand that when graphic health warnings were introduced there was a lead time in relation to the date of manufacture but there was no lead time specified for washing the packs through the system. In fact, old packs stayed in the system for quite a long time. One of the representations made to us by retailers was that they would like to have an interim point between legislation being announced and full implementation where they would stop receiving stock of the old stock from the manufacturers. In the legislation that is some six weeks before the retailers have to comply. So the offences for manufacturing non-compliant products start six weeks earlier than the offences for selling non-compliant product in the retail setting. So there is a six-week period. That was in the public consultation document.

As you have heard, the tobacco industry have asked for longer periods. Their statements, as you heard earlier today, vary greatly about how long they need. We have heard very many different figures on the period of time that is needed. Because we have heard so many different figures we are not convinced by those figures. We are not convinced by the statements that new specialised machinery needs to be bought and there are very long lead times for that. We have made the manufacturers very aware of the specifications of this packaging. In the draft legislation it is very clear that the packaging needs to be firm cardboard, it needs to be rectangular, it needs to be a certain shade of colour. The only thing that is missing from the draft regulations that were tabled is the specifications of the particular colour, and that is because we are awaiting some final advice on the use of some copyrighted terms. The other thing is the dimensions of the packs. I mentioned to you that on 2 June we had a meeting with the tobacco companies. At that meeting, we told them that what we were looking at for the dimensions of the pack was the range of sizes of the current packs. There may be some outliers that we would not be willing to accept but the range of sizes of the current packs was the principle that we are working on and we are settling that detail.

Mr LYONS: How many different size packs is there agreement on?

Mr Cotterell: We are looking at all the packs in the market right now. Unless there is a very unusually shaped pack, most of those packs will fall within the dimensions that are specified.

Mr LYONS: So all the packs that we have seen today?

Mr Cotterell: Most of those. I think we saw some pretty unusually shaped packs—some of which are not in our market. Most of those would be compliant in terms of size and dimension.

Mr LYONS: I thought we had—

CHAIR: No, they did not have them all here.

Mr Cotterell: The lipstick shape pack is not currently in our market, as I understand it, so it would not be covered.

Mr Smyth: And we certainly would not agree with their claim that they will not have any product available as of 1 July next year.

Mr LYONS: So you do not agree with their '12 and 12' that they mentioned today?

Mr Cotterell: That is right. We are convinced by it because the arguments have shifted around and the periods have shifted around.

Mr LYONS: I noticed different figures in their submission as well.

CHAIR: There being no further questions, we thank you for appearing before the committee today as witnesses. It is much appreciated. We have heard from the tobacco companies, the Cancer Council, Quit and the Department of Health and Ageing. There were many others who wanted to submit and have their views heard too but, as the health and ageing committee, we can only look at the impacts on health. I suggest that those who referred the bill to us in future do their homework better when they are referring bills to particular committees and then want areas that are outside of particular standing committees to be investigated. That is really important because there is a whole group of people who perhaps had something to contribute on the legal side, the trade side, retail et cetera who were not here today, and I suggest that those people who referred the bill to this committee take a long, hard look at the reasons they are referring bills and ensure that the bills that are being referred are within the correct committees. I think it has been very constructive today to look at the impacts on health of this particular legislation.

On that note, I would like to thank all the witnesses for appearing today, the committee members, the secretariat and the media that has been here. We thank Hansard for their diligent work in recording the proceedings.

Resolved (on motion by **Mr Lyons**):

That this committee authorises publication, including publication on the parliamentary database, of the transcript of the evidence given before it at public hearing this day.

Committee adjourned at 14:28