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Terms of Reference for the Inquiry:

To inquire into and report on:
The economic and social impact of legislation, policies or Commonwealth guidelines, with particular reference to:

a. the sale and use of tobacco, tobacco products, nicotine products, and e-cigarettes, including any impact on the health, enjoyment and finances of users and non-users;

b. the sale and service of alcohol, including any impact on crime and the health, enjoyment and finances of drinkers and non-drinkers;

c. the sale and use of marijuana and associated products, including any impact on the health, enjoyment and finances of users and non-users;

d. bicycle helmet laws, including any impact on the health, enjoyment and finances of cyclists and non-cyclists;

e. the classification of publications, films and computer games; and

f. any other measures introduced to restrict personal choice 'for the individual's own good'.
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Committee met at 09:04

Evidence was taken via teleconference—

CHAIR (Senator Leyonhjelm): I declare open this meeting of the Senate Economics Reference Committee's inquiry into personal choice and community impacts. The committee has appointed a subcommittee for the purpose of inquiring hearing. The Senate referred this inquire to the committee on 25 June 2015 for report by 13 June 2016. The committee has received and published 230 submissions as of today, which are available on the committee's website.

These are public proceedings, although the committee may determine or agree to a request to have evidence heard in camera. I remind all witnesses that in giving evidence to the committee, they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee. Such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the ground to which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may also be made at any other time.

Finally, I would like to take this opportunity to thank the witnesses who have taken the time to appear before the committee today.

I now welcome Mr Snowdon via videoconference. Before inviting you to make an opening statement, I would like to remind you that the protection of parliamentary privilege in the Australian parliament cannot be guaranteed to jurisdictions outside of Australia. Your evidence should be made, knowing the inability of the Australian Senate to protect you outside of the Australian jurisdiction. This is a public hearing, although the committee may agree to a request to give evidence heard in camera, or it may determine that certain evidence should be heard in camera. I invite you now to make an opening statement.

Mr Snowdon: Thank you very much. There are two things that I hope the inquiry will look at and do. The first is to see how much money the government is giving to special interest groups. The second is to carry out some sort of cost-benefit analysis to see to see if the slew of nanny state legislation, introduced in Australia in recent years, has been worth the time, the money and the effort.

My main interest is with the so-called public health movement, which is the source of the most of the lifestyle regulation that you see. I would just like to make two essential points about them. The first is to say that it has little, if anything, to do with health care or medicine. It betrays itself often as being an arm of the medical establishment. I think it would be true to say that is a political movement and, in my view, the government has no business funding it on that basis. The second point is that the public health lobby demands government intervention in markets which are functioning perfectly well. Therefore, there is no economic reason to be interfering in these markets to begin with. By trying to stop people from doing what they want to do, these interventions inevitably impose unnecessary costs on individuals and therefore on society. Any cost-benefit analysis of this lifestyle regulation agenda would inevitably find more costs and benefits if it was carried out correctly, which is to say, if it counted pleasure and enjoyment as benefits, which they clearly are.

If I could just elaborate on my first point. I think it is only fair to say there are certainly areas of policy where individuals can only pursue their desired health outcomes by acting collectively through government. There are genuine public health issues such as clean water, reducing environmental pollution, road safety laws and vaccinations, where you cannot as an individual achieve the desired goal without the collective acting together. For example, if I want to avoid being involved in a drink-driving accident, it is no use for me to not drink and drive; I need everybody else on the road to drink not to drink and drive too. It is not quite enough if I want to avoid getting TB to be vaccinated for it; I also be need herd immunity from the rest of society. These things are a legitimate public health goals, which should be seen as totally separate from hassling people about whether they are drinking or smoking or eating too much, or what have you.

The difference, which I hope is clear, is that if I do not want to eat at McDonald's I do not need the government to make it more expensive; I just will not eat there. If I do not want to use cigarettes, I do not need the government banning them. I am free to not use that product of my own volition. These are private lifestyle choices. By definition, they are not public. The choice is mine. The risk is mine. The benefits are mine. If I come to harm, that is my problem and not anyone else's. So the public health lobby is, therefore, getting involved with issues which are none of their business and none of the government's business.
It differs from medicine in several other ways, not least of which being that if you want to practice medicine you have to qualify as a doctor. Most people in the public health lobby are not doctors; they are social scientists, humanities graduates or merely concerned citizens. In medicine, you need the patient's consent. The public have never given their consent to being treated en masse by the public health lobby. When it comes to medicine, the patient is ill. What you get in a world with public health is people who are totally healthy being treated without their consent by people who are essentially practising medicine without a licence. I want to make that distinction between medicine and the modern variants of public health very clear.

On the second point about costs and benefits, economists generally tend to believe, with good reason, that government intervention will make things worse unless there is a market failure to correct. There could be market failures in the areas of drinking, vaping and smoking. The main market failures you would be looking out for would be things such as monopolies, anticompetitive practices, consumer irrationality, consumer ignorance and negative externalities. By and large, these do not actually exist in the industries we are talking about. On the contrary, you have highly competitive markets. You have consumers who have very good awareness, generally, of the risks associated with these kind of activities and products. You do not have a totally rational consumer. You never do. But there is no reason to think that people are systematically irrational. There is certainly no reason to think that they are less rational than governments or the public health lobby on these things.

Bearing in mind that these markets are basically functioning correctly, we have to assume that what people are choosing to do is actually what they want to do. If they are obstructed from that, if they have to go from their first choice to their second or third preference, they will be losing out. There is a cost there to the individual, and it is individuals that matters in this because there are no major externalities. It is his or her business alone.

The market is quite deliberately being obstructed. We have seen taxes, advertising bans, restriction of availability and licensing and so on. All that this kind of paternalistic legislation does is ramp up the costs and shrink the benefits. The public health lobby gets around that in a very simple way. They just ignore the benefits. They just say, 'People don't get any benefit from smoking or vaping. People don't get any benefit from drinking to excess.' If you ignore the pleasure and enjoyment people get from these activities, you can always make it look as if the nanny state legislation has a net benefit. But, as I say, you can only do that if you ignore the whole point of why people are doing many things in the first place, which is that they enjoy them. Only a blanket fanatic would cancel out that entire part of the equation.

In closing, there are other costs associated with wowser activity. In addition to making the lives of individuals more miserable, there are costs to businesses from overregulation. Sin taxes tend to clobber the poor. There are costs to society when black markets arise as a result of excessive regulation and bans. And there are costs to health. Even the one thing that is supposed to be improved can also suffer. You see this, for example, when you try to force people to wear bicycle helmets or when you ban e-cigarettes. So there are a whole range of costs. But you do not even need to look at the unintended consequences to see that the costs outweigh the benefits. Even the intended consequence of stopping people from doing what they want to do means that the nanny state agenda would fail any serious cost-benefit analysis.

CHAIR: A lot of the Public Health Association's emphasis is on advertising. Can you outline the economic evidence suggesting that advertising does not increase the size of a given market.

Mr Snowdon: Generally speaking, advertising will only increase a given market if the product is new. When it comes to established products that have been around for years and already have a significant consumer base, advertising just moves sales from one company to another. That is as true of toilet paper as it is of alcohol, for example. You will often hear people in public health saying, 'If advertising didn't work, why would they do it?' But this comes from a fundamental misunderstanding of what is trying to be achieved from advertising.

When a beer company advertises its beer, it is not trying to get people to buy more beer, although that may benefit them. It is certainly not trying to get people to buy more alcohol as a category. It is trying to get people to buy their beer. It is a fact in Britain, for example—and I think it is in Australia too—that beer sales have been falling for many years despite all this advertising. So a more serious question would be: if this advertising is not working because beer sales keep falling year on year, why do these companies keep doing it? If you ask that question, you very quickly come to the correct answer, which is that it does not matter if the market itself is declining. Individual companies are working with their own individual incentives, and they can make money from a declining market so long as they are getting market share.

That is true of every kind of product out there, unless something is brand-new. For example, when iPads first came out, if you were advertising a touchscreen laptop device then simply by letting people know that the product existed you were probably going to help increase the size of the market. When Henry Ford first put out the model
T car, advertising that probably did increase the size of the car market—but advertising a BMW 7 series today would not.

**Senator LEYONHJELM:** Is there empirical evidence for that?

**Mr Snowdon:** Yes. There are a number of natural experiments that economists have been able to look at, including with opticians. Wherever there is a ban on advertising you can see very clearly the before-and-after effects. In fact, the tobacco broadcast ban—the television and radio ban—in America in around 1970 is probably the best case study economists have used to see what actually happens if you do not entirely ban advertising but heavily restrict what is considered to be the most powerful form of advertising. In that instance, tobacco sales went up for quite a few years afterwards. So there are natural experiments where you can see this. It is the same across the board. There is no reason to think that these kinds of vice products are going to be any different to toilet paper and cat food.

**Senator LEYONHJELM:** Can I ask you to discuss the relationship between taxation and demand, especially the common public health claim that demand falls as prices rise.

**Mr Snowdon:** That is simply the law of demand. It is not an iron law. It does not always happen. But, all things being equal, you would assume that when the price goes up consumption will decline. That is pretty much on page 1 of any economics textbook. It is no great secret. So there is a lot of truth in it when campaigners say, 'If you put the prices up, you will have less consumption.'

But there do need to be some caveats to that. These kind of tax rises are much better at reducing the number of products sold than reducing the number of users. So a tax on cigarettes is more effective at reducing people's consumption—they might reduce the number of cigarettes they smoke a day—than making them quit. The other caveat is that it is only going to reduce consumption of the product that is taxed. If there are alternative outlets—in other words, if there is an illicit trade or black market—then they will not be affected by the tax rise. Or, rather, they are positively affected by the tax rise because it increases the gap between the illicit products and the illegal products. So it is not quite as simple as saying everybody will reduce their consumption. If you put a tax on it people will be able to get it from an untaxed source.

**CHAIR:** Could you also explain to the committee the difference between social costs and private costs and how some people conflate the two?

**Mr Snowdon:** There are also a number of costs that get inflated. There is really more to it than even social costs and private costs. Social costs or societal costs include almost anything you can think of. It may be financial; it may be non-financial; it may be a cost to the government; it may be a cost to the individual; or it may be a cost to other people. It depends what you are interested in. In Australia there is a good example of the widest possible societal cost estimates: the $36 billion cost of alcohol. That includes a lot of things that probably the man on the street would not consider to be a cost, and certainly nobody considers them to be a real financial cost that anybody has to pay. For example, they will put a figure on the emotional cost of seeing litter in the street the day after people have been out drinking, the opportunity cost of having to taxi somebody back from a party because they are too drunk to drive or the emotional cost of being upset by somebody who is drunk. If you want to include these costs, that is okay, but you should really offset them against all the emotional benefits that people get from alcohol consumption. But they never do that.

They are the very broad societal costs. Then you have the actual financial costs—in other words, the out-of-pocket expenses. To go back to alcohol again, you have genuine, legitimate negative externalities of alcohol which the government has to pay for, in terms of policing, health care and welfare. I think is right and proper to include those. Again, you need to offset the amount the government gets in in alcohol revenue if you want to see what the true cost-benefit ratio is. I should say that these studies never look at that. They are not cost-benefit studies, they are only cost studies, so they are unbalanced in a way that is guaranteed to make any activity look costly.

They are real costs to the taxpayer. I think they are the important costs, but you can then spread that out to financial costs to the individual. For example, some studies have included the amount of money that drinkers spent on drink as a cost of alcohol. In the simplest, narrowest sense, of course it is a cost of alcohol. It is debatable whether you would call that a cost to society, and it is certainly not an external cost; it is a cost to the individual. There are a lot of costs to the individual which are legitimate costs but probably not of great relevance to policy, because, by definition, they do not affect anybody else.

**CHAIR:** I am going to change the subject again. Public health advocates regard longevity a key goal of life. I suppose longevity is a useful metric, because you cannot enjoy anything if you are dead. Could you consider whether longevity is subject to the law of diminishing returns, and is it an appropriate key goal of life?
Mr Snowdon: I think that would have to depend on the individual. Longevity is a fairly good proxy for health, so you can see why public health organisations use it. As populations get healthier they tend to live longer. They also tend to have a longer healthy life expectancy. What you tend to see happen, although it does differ from country to country, is life expectancy increasing more quickly than healthy life expectancy. So you get this expansion of disability and morbidity late in life which, to go back to cost, is very costly. This is one of the reasons why the belief that if you prevent people from living unhealthy lifestyles it is going to save the government money is untrue. If you did that successfully, it would certainly increase the cost to the government, not only in terms of health care but also in terms of long-term care in nursing homes and pensions. That does seem slightly by-the-by.

We need to distinguish the question of whether longevity should be a personal goal and whether it should be an object of government policy. I think that governments should enable people to pursue any of their goals, including longevity, but you have to very carefully distinguish that from coercing or forcing people to live in a way that they would rather not necessarily live in. One of the blind spots of the public health lobby, perhaps wilfully, is that the idea that somebody might want to live slightly recklessly, or even very recklessly, and sacrifice a few years at the end of their life, is assumed to be inherently irrational and wrong. I do not think longevity is the most important thing. I think quality is at least as important as quantity. I respect that other people may have a different view. That is where freedom comes in—so that people can make these choices and trade-offs of their own volition.

CHAIR: In applying the public health argument about longevity, how does that sit with the notion of suicide not being an offence? You have a choice to end your own life should you wish to. How does the emphasis on longevity sit with that?

Mr Snowdon: You have to bear in mind that it is not explicitly a longevity movement. They do not go out of their way to say, ‘Our aim here is to have everybody living a very long time regardless of what kind of condition they are in, how miserable they may be or how ill they may be.’ Is it implicitly a longevity movement, because the life expectancy figures are probably the single key indicator when they are trying to compete in a league table with other countries. Life expectancy tends to be the simplest and bluntest measure of success. They are not in favour of people killing themselves. Today or yesterday was the World Health Organization's Suicide Prevention Day. Like most of us, we are not in favour of people killing themselves. So that does not really come into it. Banning suicide is not a major part of their agenda.

CHAIR: To what extent does the literature on the social cost of consumer choice maximise health at the expense of all other consumer objectives? What other consumer objectives are subsumed to maximising health?

Mr Snowdon: In the public health view, essentially all of them. There would come a point with all the people within the movement where they would say, ‘That is clearly ridiculous.’ To give you an example, take the idea of having a minimum price on alcohol. There has been a computer model created to see how much health outcomes would be improved, how many lives would be saved and how much people would reduce their alcohol consumption if you brought it in a minimum price at 45 pence, 50 pence, 60 pence and so on. They say that minimum pricing is an evidence-based policy because at 45 or 50 pence a certain number of lives are supposedly saved by this. Clearly, if that model kept going up to 70 pence, as it does, but if it went even further to a pound, one pound fifty, two pounds, five pounds, 10 pounds, there would be greater gains from it. How was it an evidence-based policy at 50 pence but not at 75 pence or five pounds? Because people just know that you cannot charge five pounds for a unit; that is just too much. It is going to make alcohol incredibly unaffordable. So nobody makes that argument. But if you are doing what is supposedly an evidence-based view, when you are only looking at lives saved, you would say the higher the better. There is essentially no upper limit to this.

So there is an element of what you could call common sense involved. For example, we do not insist that people wear seatbelts on the train. There are train crashes, but they are very rare. If people were wearing seat belts probably a life or two would be saved somewhere in the world if everybody had to wear them. We do not do that because it is too expensive and inconvenient for people.

Clearly, there is a point at which implicitly, at least, we understand that there are economic issues that are actually more important than saving lives, and that there are simple issues of convenience and pleasure, which are more important, but this is rarely made explicit. The public health lobby does what it can within the realms of the possible. The art of politics is the realm of the possible and this is why I say the public health lobby is actually a political movement, because it does not do what it can to maximise longevity and health in every area; it does what it can.
CHAIR: Thank you. In your submission, you cited and linked to an academic paper 'The cost of cost studies' by Crampton, Burgess and Taylor. I found the paper very helpful in preparing for today. For the benefit of the committee, could you summarise its key findings, please?

Mr Snowdon: It is an excellent paper by Eric Crampton. Essentially, he looks at the various studies that claim alcohol costs Australia and New Zealand vast sums of money. He makes some of the points that I made earlier, about what is actually a cost. Is it reasonable to include all of these emotional costs? Is it reasonable to exclude all of the benefits and only look at the costs? I think he does a very good job of really exposing some of the more ridiculous parts of these studies. As he says in the paper, the aim of these studies, quite clearly, is just to get as big a number as possible, so that the media are interested in this. It is a political device. At the end of the day, it is there to get headlines. The only important thing about these studies is that they have to arrive at a bigger number than the previous study, and whatever number they have has to be higher than the amount of money that the government gets in from whichever duty it is collecting.

Senator DASTYARI: Thanks for passing to me on that note! Firstly, I do want to thank you, Mr Snowdon, for making yourself available. I know you are in the UK. And I do want to thank you for your submission. I have to say did a bit of research before coming here today, and it was actually quite fascinating. I have read The Spirit Level Delusion. I have not read your book yet, but I will make some time to actually read it.

It strikes me on one level that what you are saying does not seem that extreme, and then on another level, from where you come from, from political thought of where I sit, some if it is. On one level, it sounds like what you are saying is effectively what we all know, which is, at a very simplistic level, there are natural trade-offs between what is the common good and what is the individual good, and you are arguing that we have gone too far in one direction. Is that a fair summation, at a very simplistic level? I do not want to denigrate what is a much more complicated body of work that you have prepared?

Mr Snowdon: At a simplistic level, yes, that is correct. Individuals and, therefore, society are better off if they are allowed to pursue their own preferences, without—especially the church groups—single-issue fanatics deciding what is best for them.

Senator DASTYARI: I just take a bit of umbrage with some of the language in referring to them as 'fanatics', so I want to take you up on that. You make the point that the public health lobby does what it can and pushes on issues that it can push on. I would say that is incredibly reasonable and that is probably what they should be doing. When you talk about alcohol or seatbelts or whatnot, are you actually factoring in the social costs that come with some of these matters? For example, with seatbelts—because we are going to be looking at that in a few weeks—or helmets, more specifically, it is not just the impact on the individual. In the Australian context, as a society we provide public health for that person, and there are other consequences and other costs associated with it. I just worry that sometimes when we have the debate, when we look at the individual, we have to respect and recognise that we do have a society that will step in, and perhaps some preventative action is the most effective type of action in those kinds of spaces. I just put that to you and get your thoughts.

Mr Snowdon: That is probably the most common argument both academics and the man in the street use in favour of lifestyle regulation—that we essentially have a socialised healthcare system and we all pay for policing and clearing up other people's mess—and that is undoubtedly true. I would point out, merely as an aside, that of course people do not have any choice about whether they are in the system or not. But the real point is—you are quite right—that if there are negative externalities associated with something then there should be, at the least, some sort of Pigovian tax to recoup that money. That is why it is important to look at the economic costs of various activities and to balance them out with sin taxes—no problem with that at all. I have no problem with tobacco and alcohol having taxes on them to meet the costs of tobacco related diseases and alcohol related diseases. But you need to get that figure, and only last week I published something in the UK looking at what that figure actually is in terms of alcohol, and it is a third of what alcohol duty is. So if we are really interested in making drinkers pay directly for these services we should be reducing alcohol duty significantly. Nobody is calling for that; instead we will gather a whole load of studies which wrongly include emotional costs, lost productivity and private costs to try and make it look as if drinkers are not paying their way. So I agree with you in principle. It is right to impose taxes on people if they are costing the rest of us money, but the reality is in most Western societies, where taxes are very high—certainly on tobacco and alcohol—that those have been met a long time ago.

Senator DASTYARI: So effectively what you are telling us, Mr Snowdon, is that the role of taxation to pay for the externalities associated with these types of activities is something that you are comfortable with or you understand from your perspective, but you are saying that, when the costs associated with this go beyond that with an attempt to change behaviour that goes beyond the impact or the cost that has been placed on society as a
whole, that is where you take umbrage with it and you feel that that is overstepping the mark or placing, perhaps, an ideological burden on the individual?

Mr Snowdon: Yes, it is just wrong. You are comparing apples and oranges. You cannot take a calculation, an estimate, of the widest societal costs, including internal costs and including even how much drinkers are paying for their drink in the first place, and then say, 'Well, this is even higher than the amount that drinkers are paying in tax; we need to have higher taxes.' That is just wrong, and this happens all the time. The effect of it is to make people who do not drink or do not smoke or are not obese or what have you think that they are being taken for a ride. That is just not true. It is these people who are paying all these sin taxes who are actually subsidising everybody else.

Senator LINDGREN: Mr Snowdon, please excuse my ignorance, because I have only just joined this committee this morning. I have just had a quick browse over your notes here, and you refer to 'sin taxes'. As a person that has lived in a low socioeconomic area for most of her life, I see these sin taxes, as you call them, as lifesaving taxes. Why should the general public, who do not participate in things that make their lives unhealthy, pay for the sins of others? When these people smoke, drink, ride bikes without helmets, drive cars without seatbelts, use a mobile phone to text while they are driving and hurt others, I would think that applying a tax on these things would certainly help the health system and pay for all the extra health things that have to happen when you do get sick. So I do not quite understand where you are coming from in terms of seeing it as an excessive rule. I think it is a fair rule. Are you able to explain to me what you mean by 'sin taxes' a little bit more please?

Mr Snowdon: It would be a fair rule if the amount that the government gets from these taxes were commensurate with the amount that the government is spending as a result of these activities. My point is that they are not. They are much higher than the actual costs are, and most of this money is actually going into the common pot, which means that the general taxpayer is essentially being subsidised by people who are being picked on with discriminatory taxation for the reasons that you give. As with the previous question, I do not disagree with the premise of it. It is just that by any reasonable estimate, the amount of tax being paid on these sinful products is far greater than the actual costs the sins impose on society.

Senator LINDGREN: Something else that you did mention in your paper here, you referred to some brilliant scientific minds out there, who are saying that some of the things that we are paying for through taxes that are saving lives, calling their work 'junk science and advocacy based quackery'. I think they are very strong words. I cannot see what science you have that backs your paper. There are a lot of statements here but no actual facts. Do you have anything that is actually factual to support your arguments?

Mr Snowdon: I do not know which particular claims or studies you are talking about there. I have been writing about this for more than 10 years now and all sorts of claims are made. A lot of them are quack claims and can easily be debunked, so yes.

Senator LINDGREN: I have a submission here. Forgive me if I am wrong, I am assuming it is your paper. It does say 'Christopher Snowdon' here. You said:

I can give examples of junk science and advocacy-based quackery being published in peer-reviewed journals on everything from obesity to plain packaging.

Mr Snowdon: Let us take plain packaging as an example, where you have proven beyond all doubt now you have had a decline in cigarette sales for years and years and then the first year plain packaging comes in, sales go up every quarter for four quarters. It took a large tax rise for it to go down again. That strikes me as being a very interesting phenomenon yet I do not see any interest in it from people who are self-styled tobacco researchers. On the contrary, I see them either ignoring it or simply denying that it happens at all.

Rather than look at what has actually happened with tobacco sales, which has to be the key indicator with this policy, we see all sorts of rather silly behavioural experiments in which they ask people 'do you find cigarettes taste differently than they did before' or 'are you more motivated to quit' when the only thing that actually counts is what is the actual effect on smoker behaviour and what is the actual effect on cigarette consumption.

Essentially what is used being used in retrospect about the plain packaging policy is really just the kind of speculative stuff that was made beforehand. When you have never tried a policy before, there has to be some degree of speculation. You have to use your judgement about whether you think it might work. But when it has been in effect for three years and you have got the evidence of sales, to ignore that in favour of some rather wishy-washy theoretical angle seems to be perverse.

CHAIR: I want to extend a little bit into your thoughts. It has been suggested to us that there is a legitimate public policy in preventing us from doing things which are unwise and the justification might be that the costs
through our socialised health system will be borne by others. Your point is that on alcohol and tobacco those costs are being inflated. Let us suppose something other than alcohol and tobacco, bicycle helmets, for example. The costs of head damage are shared via our socialised health system so therefore the argument goes that we need to be required to wear a helmet in order to avoid that, so we cannot make a choice for ourselves as to whether or not a helmet would be advisable in that instance. If we extend that to the political arena, does it follow that we cannot be trusted to vote for parliament, which might make decisions that impose costs on us all in a similar way to someone wearing a bicycle helmet and smashing their head on the pavement? Is that a legitimate analogy?

Mr Snowdon: I think it is. It echoes something said Thomas Jefferson many years ago, which I will probably now misquote, along the lines of 'If a man cannot be trusted to govern himself, how can we trust men to govern us—unless we found some sort of angels in the form of Kings. It goes to the point, I think, about consumer ignorance and consumer irrationality. If people are going to be systematically irrational and ignorant then there probably is room for the government to at least advise them. This is why I am not against warning labels on products, for example. If there is a real knowledge deficit then, yes, I think it is in everybody's interest if those warnings and that information gets out, and that may well require collective action through government.

But if people are basically rational, basically well informed then it makes sense to allow them to make their own choices. The real point about this is we all know that people are not totally rational, we all know that people have not got perfect information but we should not compare them to a parallel universe in which they do have perfect knowledge and perfect reason. We need to compare them to the legislators who are going to step in and do this for them on their behalf. Can we assume that the legislators are more rational? No, not necessarily. We certainly cannot assume that they have as much access to the information that individuals do. We know for sure that they have no way of knowing what an individual's risk tolerance is, what their priorities are in life, whether they are most interested in longevity, as you say, or whether they might be interested in fun. Really the argument against big government intervention into private lifestyle behaviours is actually that government probably does not know better. It cannot know better because a lot of the time they are value judgements to begin with so they are simply a matter of subjective opinion.

CHAIR: As a final point, I will ask your comments on this: if it is legitimate to warn people to not vote for the Greens because they will introduce policies that will cost us all a lot of money, but they nonetheless vote for the Greens and we accept that that is democracy, does it follow or is there an inconsistently in the argument that we should therefore say to people to where a bicycle helmet because if they fall off and smash their head, it will cost us all money but nonetheless we are going to leave it to them whether they do wear a helmet or not in the same way we allow them to vote for the Greens.' Does it follow?

Mr Snowdon: As far as people should be given advice, yes. I would be very uncomfortable if the government was funding people to tell them not to vote for a certain political party and that is why am very concerned about this political special interest group they call 'the public health lobby' being given incredible amounts of money. I was looking at some of the sums that these groups get in Australia, hundreds of millions of dollars. I think if we are coming to a conclusion, that is, I think, something that really does need to be looked at—why special interest groups are being funded by the taxpayer.

Senator DASTYARI: I think making your bow between voting for a political party and not wearing a bicycle helmet is one of the most artful things I have seen you do in the Senate, Senator Leyonhjelm.

CHAIR: And we have only just started. Thank you, Mr Snowdon. It is very much appreciated. I understand you stayed up late to contribute to your inquiry. We are at very grateful and will let you get to bed.

Mr Snowdon: Thank you very much
DALLA, Ms Danielle, Policy Officer, Public Health Association of Australia

MOORE, Adjunct Professor Michael, Chief Executive Officer, Public Health Association of Australia

[09:49]

CHAIR: Thank you for appearing before the committee today. Do you wish to make an opening statement before we proceed to questions?

Prof. Moore: I would like to make a brief opening statement. You have our submission and I will take that as read. The PHAA emphasises that the healthiest environment is one that combines personal responsibility and good stewardship of government. Underlying all that we do, as a public health association, adhere the principles of equity—equity not equality; I am happy to distinguish between those later.

I would like to illustrate this with an example of the four-year-old Perth boy, Luke Lyson, to illustrate the balance between personal responsibility and government stewardship. Luke's father was taking appropriate responsibility monitoring his son in the swimming pool as he played there in 2009. However, the family had bought an older house and had not realised that the swimming pool did not meet government regulations on skimmer boxes. The boy sat on the skimmer box and was partially disembowelled. He probably would have died had it not been for the quick action of his father, who turned the pump off having realised what had happened.

Many other children would have had the same situation had the problem not been recognised in the mid-1980s by governments, who recognised their good stewardship role and intervened by regulating that manufacturers had to modify their skimmer boxes so they were not like young-people toilets with that huge suction effect. Of course the father had a responsibility and he was exercising that general responsibility. But the government also had a responsibility because it has the ability to monitor the statistics, understand the number of children who had been disembowelled, particularly in the mid-80s, and to take intervention. There are many examples. We could start with the very famous John Snow and talk about clean water and sanitation. Instead of having the personal choice as to whether people went to the Broad Street pump or not, where they were picking up cholera, they would have an intervention, which, in the end, was the United Kingdom's introduction of clean water and sanitation.

I think it is really interesting that the term that I have heard this morning and regularly is 'the nanny state'. I actually prefer to think of it as good government stewardship. It is really interesting that even conservative governments are happy to use it when it suits them. A really good example at the moment is the compulsory origin of food labelling, a very rapid move by government to interfere with industry to force them to put labelling on their food. Interestingly it actually came out of 100 or so people getting very sick. Yet when we have a voluntary health star rating system, government is certainly not keen to make that compulsory despite the fact that we know obesity makes many people much more sick.

It is interesting to hear about the idea that the public health lobby, whatever Christopher Snowdon thinks it is, is only interested in longevity. It is just not true. It is a complete misunderstanding, a very shallow understanding. In fact we are quite specific about using disability-adjusted life years to talk about healthiness. Yes of course longevity is a measure, and Australia is in the top two or three countries in the world in almost every comparison. But we are also in the top two or three countries in the world when we look at DALYs, or healthiness is probably a better way to put it, and I think that is a much more important way to do it.

I would like to illustrate particularly the idea of public health. I brought a video along but I understand it cannot be used today. It takes about a minute a half. And I would like with the permission of the committee to table that video.

CHAIR: Yes that is permitted.

Prof. Moore: I would like to conclude by referring to the assessing cost-effectiveness in prevention study of 2010 by Theo Vos and others. This is a study that actually looked very carefully at which interventions are cost-effective and which are not. Some interventions are much more cost effective than others. That sort of careful thorough analysis is actually the sort of analysis that we want to see rather than making wild claims about the public health lobby having some interest or other. The most cost-effective returns, something like greater than 100,000 disability adjusted life years, are things like: taxation of tobacco, alcohol and unhealthy foods; mandatory limit on salt in just three basic food items—bread, cereal and margarine; improved efficiency of blood pressure and cholesterol-lowering drugs; gastric banding for severe obesity; and an intensive sun smart campaign. They are the ones that they identify out of 150 specific interventions. By and large, that illustrates where we are coming from.

I would like to conclude by saying: in some ways when I hear people talking about the nanny state, I think they have, as I have put in our submission, a misunderstanding, as we would see it, of an earlier understanding of the
notion of freedom in terms of interference. It was interesting to hear Christopher Snowdon talk about Thomas Jefferson, because in analysing freedom, Professor Philip Pettit—his reference is in my submission—went back to the founding fathers in his book, Republicanism: a Theory of Freedom and Government, and he said that even the founding fathers did not see freedom as being not interfered with; they saw freedom in terms of domination. I am sure I will respond to some questions in terms of freedom as domination rather than freedom from interference. The most obvious example, of course, are monopolies that are completely dominant, where we would all accept that governments do have a role to intervene. What we are talking about is not whether there should be personal responsibility; we are talking about a balance between personal responsibility, on the one hand, and, on the other hand, government stewardship in the sense that the Nuffield bioethics centre developed, as I have placed in my paper. I am very happy to take any questions.

CHAIR: I am going to pick up on a couple of points in your opening statement. I would like to get on to Philip Pettit's theory and your submission in a moment. Christopher Snowdon, a previous witness, drew a clear distinction, I thought, between collective acts that he regarded as okay—he gave the examples of vaccination, drink-driving and so forth—and others that he thought were unwarranted. Regarding the skimmer box example that you provided, I would have thought that Christopher Snowdon would have said, 'It's a dangerous product.' The unwary would be unable to identify that it is dangerous without some sort of, at the minimum, pretty strong warning.' I doubt very much whether Mr Snowdon would argue that it were any different from regulating a dangerous pharmaceutical. Do you think it falls into the category of good stewardship rather than the alcohol and tobacco tax type example that Mr Snowdon was talking about?

Prof. Moore: I think it is all good stewardship.

CHAIR: You are not going to draw a distinction?

Prof. Moore: I am not going to make the clean-line distinction that he made. I am sure we will come to things like alcohol, tobacco, e-cigarettes and so on. There was a huge attempt in the mid-eighties to educate people about the danger of those skimmer boxes, which was probably somewhat successful, but nowhere near as successful at protecting people as that intervention. Similarly, of course, there was the intervention with shower screens. We have now got safety glass in shower screens as a requirement, so there are many fewer accidents and, of course, it is much less expensive for emergency departments.

CHAIR: Indeed, we have publicly funded clean water and sanitation as well.

Prof. Moore: We all agree on that; I do not think that is an issue.

CHAIR: I do not think there is a difference; I agree with you. I am not sure I understood your point in relation to country-of-origin labelling of food. You then went on to talk about making people sick and obesity. What is the connection?

Prof. Moore: We know that obesity is causing a huge amount of unhealthiness and death. We are happy to put warning labels on food as to the country it came from, because we had the berry scare and a number of people got quite sick. It is a question of priorities, in terms of the government's stewardship. We have many people getting much more sick over personal choice. In fact the health star rating system, supported by the current government, although not as a compulsory system, helps people understand, at a glance, how healthy food is, and it is a government intervention.

CHAIR: To bring it down to basics, instead of country of origin labelling of food you would rather have a label on a food that says, 'This will make you fat and sick', or words to that effect?

Prof. Moore: The health star rating is much simpler than that. It is just the same as the way you choose a hotel or a film. It is making sure people have reasonable information when they exercise their personal choice. And, by the way, that is exactly the same with country of origin labelling as well. I am quite happy with it. But I just think it is a question of priority; I would do the other first.

CHAIR: This is not about advice; this is about obligation. We will move on, I think.

Senator LINDGREN: I agree that obesity is an issue. There is absolutely no doubt about that: the statistics say that it is becoming a major issue right across Australia. In relation to labelling, I understand where you are going with that. Do you believe that maybe there should be some education around the information that is on the packaging about salt content and so on? Maybe it is an education thing and not necessarily a labelling thing. It probably has nothing to do with this particular committee; this is more in relation to my personal view and something I would like to go into further later on. Would you agree that education about the information—the little table on the back—is probably just as imperative as labelling?
Prof. Moore: Both are important. With almost every public intervention, in the end it is never one thing; it is always a series of things. It is a combination of things like taxation, regulation, information and marketing that are important. So with obesity and government intervention what we really want is people to be able to make a reasonable choice. At the moment—using junk food marketing to children as an example—the industry has a free go and the way it influences individuals’ choices dominates the thinking of individuals. This is that notion of domination. If you wanted people to be able to make a reasonable and sensible choice, you would give them information from both sides. There are two ways of doing that. You can provide a huge amount of taxation in order to match the marketing of junk food with the marketing of good advice around nutrition—around wholefoods, vegetables and so on. Or the government, instead of spending all that money, can regulate around junk food marketing, particularly to children, for example. That is really the difference from where I see Senator Leyonhjelm coming from—he may correct me. It is not so much about interference; it is about domination and trying to get a level playing field to make sure that the ordinary punter has a fair go and a reasonable choice.

CHAIR: That brings me back to your submission, in which the idea of domination is a central theme. Your submission argues that advertising in opposition to government messaging is a form of domination, which is the context of Professor Pettit’s famous article.

Prof. Moore: Indeed.

CHAIR: In your view, how do you counter that domination?

Prof. Moore: As I just said, there are two ways of doing it. Either we spend a huge amount of taxpayers’ money and spend the same amount as nanny industry is spending to equalise it with nanny government—if you want to use that kind of language—or government makes a level playing field in an alternative way which means we do not use all our taxpayers’ money, and that is by ensuring that the regulation restricts the amount of advertising that junk food companies can do, and similarly in other areas such as alcohol.

CHAIR: Why do you consider advertising to be a form of domination?

Prof. Moore: Because the message is coming through very clearly. The only messages that young people get around food at the moment are overwhelmingly about junk food. We know the issues that we have in our society about poorer health and shorter life span associated with obesity. And we do know that junk food is very closely associated with obesity.

CHAIR: Do you have a definition of junk food?

Prof. Moore: Unhealthy food commodities that are high in sugar, fat and salt.

CHAIR: If you stopped all advertising of junk food, under your definition, would people stop consuming it?

Prof. Moore: No, they certainly would not. They would make their personal choice, but their personal choice would now be one that was more informed. When we seek public health interventions for a healthier society, it is never about one action alone. Each of the actions plays a role. That would be one of the actions that would have an impact.

CHAIR: But if their consumption did not cease then how would that produce a more positive health outcome for obesity, for example?

Prof. Moore: When people were making their choice, they would not eat junk food so much. A certain amount of the food itself in small quantities is not poisonous any more than medication at the appropriate level is poisonous. But at the inappropriate level it can have a devastating effect on somebody.

CHAIR: And advertising is responsible for that?

Prof. Moore: Advertising is part of it. I prefer to use the word ‘marketing’ because we know that often marketing goes through things such as social media on top of the way we normally use advertising on television, in newspapers and so on.

CHAIR: Can governments also dominate?

Prof. Moore: Indeed. The balance is something that we have to be careful of. The obvious examples where governments have dominated are where you have a dictatorship. That is a point in getting the balance right. In my opening statement I said that we are talking about the right balance between personal responsibility and government stewardship.

CHAIR: I guess where I am going with this is that, when a government does something, you call it stewardship. When a junk food does marketing, as you describe it, you say that is an unlevel playing field. I am interested in this balance between the government doing something and KFC or somebody like that doing something. What is the distinction? There are plenty who would argue that the government is dominant in areas...
such as education, health, freeways and national parks and that political parties are dominant in the area of political advertising. How does that compare with junk food advertising?

Prof. Moore: That is an interesting, broad comparison. I am interested in seeing a level playing field. I think that level playing field is what gives Australians a fair go.

CHAIR: Is the field level if the government is dominant?

Ms Dalla: I think the question that then also has to be asked is: is the field level if industry is dominant? It is a balance.

CHAIR: Your proposition is that it is not. So I am asking: if industry was prevented from engaging in marketing activities, would the fact that the government was then dominant make the field level?

Prof. Moore: That is the levelling factor. The government is the elected body that we have asked to exercise stewardship on the appropriate intervention. Unlike industry, which is for profit and has that as its motivation, if the government is too dominant then the voters make it very clear that they do not like it and the government is removed.

CHAIR: So, because you can vote the government out, does that make their dominance different from that of a commercial organisation?

Prof. Moore: Of course it does.

CHAIR: Except that when you choose—

Prof. Moore: The domination does not continue if the community feels that it is inappropriate.

CHAIR: But, when an organisation stops its marketing, do consumers then have choice? Are you suggesting consumers do not have choice, similar to a political choice, in the face of marketing by a—

Prof. Moore: Since you are using political choice, if the only messages that were received by the community were that the Liberal Democrats were the party to vote for and nobody heard anything about any of the other parties, then I think we would actually sit back and say, 'Whoa—that has dominated.' The choice that was made under those circumstances would very clearly favour the Liberal Democrats, whereas what we like to see is an attempt to ensure that messages in our system are as even as we can get them.

That having been said, there is a big distinction between the two. On one hand we are talking about government stewardship and on the other hand we are talking about the industry drivers of profit. Their motivation is profit. You only have to read any inaugural speech in the parliament, and I have read a lot of them, to know that the motivation of almost every member of parliament is to improve the community good—or community health, as I would describe it—in whatever way they see it, although they have differences of opinion as to what that is.

CHAIR: I am going to come back to this in a moment but I want to pursue another line of questioning for the moment.

Senator LINDGREN: While we are on that line of questioning, would you mind if I quickly asked one question?

CHAIR: One question, yes.

Senator LINDGREN: Professor, would you concede that it would be very difficult for governments who rely on taxpayers' money to fund campaigns to even meet those of the conglomerate of big companies out there—and I will not name who they are—that produce junk food? It would be very difficult for a government to even match that sort of campaigning. Would you concede that would be the case?

Prof. Moore: In fact we have already attempted it and we were quite successful with regard to tobacco. The taxation of tobacco was originally used in order to fund VicHealth, Healthway in Western Australia, Healthpact in the ACT and so on. Money was specifically quarantined for that purpose and so they would buy out advertising. That is one of the ways that we allowed sporting bodies, for example, to remain funded without needing to rely on tobacco funding. That, amongst other things, is part of the reason we have amongst the lowest proportion of smokers in the world.

We could consider the same thing with regard to alcohol. The fact that we have alcohol marketing associated with motorsport is an extraordinary thing. The fact that we have it associated with surfing is an extraordinary thing. The marketers know very well why they do it and it does dominate the thinking of people, particularly young people.
CHAIR: I am curious about that—it 'dominates the thinking'. What evidence do you have for that? How do you know? You are always referring young people. How do you know that Ms Dalla is influenced by that marketing? What do you base that on?

Prof. Moore: I would take that question on notice and we will provide you with some evidence.

CHAIR: Okay.

Prof. Moore: The difference between me and Christopher Snowdon is he made outrageous statements again and again and has not provided evidence. I am not just giving you an off-the-cuff the comment. That is not how we operate. We operate specifically on evidence of ensuring people are healthy and we are very happy with people taking risks and enjoying their lives. Let me just say that until a couple of years ago I was an ice hockey player. It is not as though it is a low-risk sport.

CHAIR: The thing that I see coming through your submission, though, is apparent endorsement of the comment:

The real slippery slope is this: depriving governments of their sovereign right to use legislation to protect citizens from harm. This is a battle that pitches the power and authority of governments against the power of corporations.

What you are essentially saying is that it is the corporations that are the evildoers in this debate, is it?

Prof. Moore: We are not always talking about all corporations being evildoers. On the contrary—food manufacturers need to manufacture food and we need to eat. Let me use a specific example with regard to that: the Trans-Pacific Partnership Agreement. The Trans-Pacific Partnership Agreement is being negotiated at the moment. We know that, within it, is the investor-state dispute mechanism, which Chief Justice French describes, in my words, as a kangaroo court. He gives a much longer description that is more carefully worded, but the concept is still the same. It allows international companies. For example, do you remember that in the order of 80 per cent of alcohol industry is owned by eight to a dozen companies? It is a very small number of companies. So, should there be an intervention around alcohol agreed by government, tested in our High Court, it can still be challenged in the kangaroo court. This notion of an investor-state dispute mechanism does pitch the power of big corporate conglomerates against our government. There is no question about it.

CHAIR: The point I am querying is: why do you associate this domination influencing consumer choice to corporations if your objective is for people to eat less unhealthy food? You could make your own bread and it could be equally as unhealthy as what you buy in the supermarket. You could refine your own sugar, if you were of a mind, and dig your own salt up for that matter—you would not need a corporation—and you could consume it at a very unhealthy level. Why do you attribute these evils to corporations?

Prof. Moore: You are using the word 'evils'; I am not.

CHAIR: I am just relying on this—

Prof. Moore: I would use the word 'evil' with regard to tobacco, but that is a different story. The issue here is the only message that some are getting is that the best food for you is at a fast food restaurant. A good diet is set out brilliantly in the Australian Guide to Healthy Eating. I wonder how many people actually know about the Australian Guide to Healthy Eating. I wonder how much you know, Senator? The dietary guidelines are very carefully designed and very carefully researched and were developed through the NHMRC. They provide a small reflection on what it is. You would be familiar with the food plate or the food pyramid, and that comes from the Australian Guide to Healthy Eating. That tells us what healthy food is, but hardly anybody knows about it. Why? Because they are always hearing the other message. So, when you make a choice about your food, you have hardly heard about it.

CHAIR: So you are saying that the reason we do not eat more food in accordance with the guidelines—


CHAIR: is because of the advertising?

Prof. Moore: That is one of the factors, of course. These things are—

CHAIR: Could I suggest that there is another reason. I describe my diet as vegetarian. The reason it is vegetarian is that the beer I drink is made out of barley and hops and the steak I eat is from cattle that eat grass who just convert it into muscle protein; therefore, being fully vegetarian. Do you think that ending the advertising of McDonald's—which I never eat—would influence people like me?

Prof. Moore: I do not know what would influence somebody like you, Senator. We look at things on a population basis rather than on an individual basis. There is a difference between us and medical practitioners. As I say when I am giving lectures to, for example, university students, we love the fact that doctors save lives,
nurses save lives and firemen save lives, but public health professionals save lives as well. We just do it 100,000 at a time.

CHAIR: I want to go back to your submission for a little bit. What do you consider to be the substantive content of the human right to health?

Prof. Moore: The most important part of that is an issue around equity and wealth. The work of Sir Michael Marmot—

CHAIR: You said that you were going to describe the difference between equity and—

Prof. Moore: and equality?

CHAIR: And equality, yes. In the context of health—perhaps you could talk about that.

Prof. Moore: I will give you a quick example. Say there are two boys and one of them has a brand-new bike, beautifully set out, and one of them has picked his up from Revolve—it did not quite get to the dump—and has rebuilt it, but the wheels are the same size. Say I have two brand-new tyres. If I was being equal, I would give one tyre to each of them. If I was being equitable, the boy who has the bike that needs new tyres would get them. That is, in a nutshell, the difference, and I think it is one of the issues that we really need to keep in mind when we are talking about public health, because public health is not equitably distributed. As I said, we do know, from the work of Sir Michael Marmot and others—which, by the way, has been supported unanimously by a parliamentary committee of this parliament—that we need to be sure that we find those people or those groups of people, such as Aboriginal and Torres Strait Islanders, refugees and people with disabilities, and ensure that we can provide more assistance so that they have the same access and the same opportunities for the same levels of health outcomes as other Australians.

CHAIR: Although, it sounds very much along the lines of 'from each according to his ability, to each according to his needs'.

Prof. Moore: Those are your words, Senator.

CHAIR: Yes. I am asking for a response.

Prof. Moore: In the end, when the parliamentary committee looked at the social determinants of health and asked the government to adopt an approach on the social determinants of health, it recognised the importance of taking on health issues, taking into account the range of issues that have a particular effect on people who are poorer, on people who have disabilities, on people who have an Indigenous background and so on.

CHAIR: You use the phrase 'the healthiest life' in your submission. Why is this a duty of the government—ensuring it as a duty of the government?

Prof. Moore: What we do know from the work of Sir Michael Marmot, if I can continue on that, is that people who are much wealthier have a healthier life. Yet we would have thought that it is a reasonable thing to expect that any of us should feel that our children have as much of an opportunity as anybody to have a healthier life. That is why there are government interventions for such things as our general healthcare system, as our education system and so forth, to make sure that there is what in Australia we call a fair go.

CHAIR: But the phrase you use is the 'healthiest' life.

Prof. Moore: Yes.

CHAIR: Our education system does not say that we must educate every child to the absolute highest level possible. They choose when they quit. That is not the 'educated-est'. But you use the word 'healthiest'—in other words, you are aiming for the maximum.

Prof. Moore: I have to say—and this is a personal comment rather than one on behalf of the Public Health Association, although I think it would be fine—after 17 years of teaching in both the government and the non-government sector, I wanted to get every single child I taught to their maximum potential—

CHAIR: That is admirable, as a teacher—

Prof. Moore: and that is exactly what I am applying here: the healthiest is the healthiest that we can get for any particular individual.

CHAIR: I am hoping, though, that we are drawing a distinction between government policy and your personal aspirations as a teacher. Government policy that says 'healthiest' is different from one that says 'healthy'. Do you get the distinction?

Prof. Moore: No, I do not, actually. I think that government policy and good stewardship would keep everybody the healthiest that they can be, and I think that government policy would also educate individuals to the best possible—
CHAIR: I guess that is where I am headed.

Prof. Moore: And we measure it in terms of Disability-Adjusted Life Years.

CHAIR: In that case, if it is the government's obligation to aim for the healthiest life, and there is a government policy for that, why don't we make a healthy diet obligatory?

Prof. Moore: Contrary to what Christopher Snowdon was saying, public health does not seek to make things obligatory. We actually do not seek to ban; we seek to regulate, which still allows people choice. And it is even the case with tobacco. It is certainly the case with our policy on e-cigarettes, and it is certainly the case with our policy on a range of other issues. So, the regulation is what drives things. We know that when we ban things such as illicit drugs we create many more problems than we solve and invariably create more health issues. One of the things that government also needs to take into account in doing this—and it is set out beautifully in the document I referred to earlier—'Assessing cost-effectiveness in prevention', by Theo Vos and others—is that we look at a cost-benefit analysis on everything we are doing. And we do that in public health, contrary to what Christopher Snowdon was saying.

CHAIR: I do not think he disagreed with the fact that you do a cost-benefit study; he just disagreed with your methodology, I think—what you include it in.

Prof. Moore: It raises a really important question about his methodology. I wonder whether you are asking him where he gets his funding. And I have a particular reason to ask that. I also wonder if the same question will come out with the Institute of Public Affairs today, because they are constantly asking where we get our funding, which is completely transparent. It seems to me, having listened to a lecture by Professor Lisa Bero a couple of days ago, at the Population Health Congress in Hobart, who identified how industry actually changes the results and biases a whole lot of research, that it is quite important that you understand, in doing your report, where money does come from and how people use that money.

CHAIR: Well yes, that is true. The Institute of Public Affairs is quite open about where it gets its funding from, too. I get my funding from the same place you do: the Australian taxpayers.

Prof. Moore: That is not correct.

CHAIR: Why is it not correct?

Prof. Moore: I get the vast majority of my money from my membership and from my business unit in running conferences.

CHAIR: I see. I stand corrected. Just to continue on this issue of the healthiest life, in your submission you say you regard longevity as the key goal of life. Do you consider that that is the only metric for success in this area? if a government policy is going to help us, on average, to live longer, does that justify it? Or are there other considerations?

Prof. Moore: Not only in my introductory statement but in my submission in my reference to assessing cost-effectiveness in prevention I have quite a number of times drawn your attention to the Disability-Adjusted Life Years scale, which is a measure of healthiness. It is as important—and some would argue more important—than the issue of longevity. However, of course we should be looking at both measures.

CHAIR: In that case, perhaps I have misinterpreted your submission. But I think I am hearing you say that longevity can be traded off against other enjoyments in life.

Prof. Moore: I misunderstand your question, sorry.

CHAIR: Are you suggesting that if longevity is not the only thing then it can be traded off against other aspects of a happy or healthy life?

Prof. Moore: I am sure some people believe that, and I guess that is why we take some risks in action. I occasionally—not that regularly—ride a motorbike, and I am certainly familiar with the statistics around that. So yes, I think we all make trade-offs about our healthiness and our longevity and our actions. In that sense, the notion that you have a healthy life in the way we think of it is not a life without sickness. A healthy life is a life that is lived to the full, and I think it is a misunderstanding of public health professionals to think that our interest is just in preventing sickness. It is much, much broader than that. We actually are in sync with the World Health Organization definition of what we mean by 'healthy'.

CHAIR: Can a healthy, happy life include drinking and smoking?

Prof. Moore: A healthy and happy life can certainly include drinking. As for smoking, yes, I think it can, but we do understand that there is going to be a shorter life span; there is going to be a great deal more unhealthiness
in a range of ways. Smoking also affects people who are around you, who do not have a choice, particularly children.

**CHAIR:** That is right—not inevitably, though.

**Prof. Moore:** It is not a great life when you have lung cancer. And we do know that very close to two-thirds of people who smoke will on average live a life that is 10 years shorter, and people ought to know that.

**CHAIR:** I rather think they might. Irrespective, the question then is: is it a matter of public policy—not a matter of personal choice, but a matter of public policy—to make it impossible for them to smoke, very difficult for them to smoke or very expensive for them to smoke?

**Prof. Moore:** Our policies are to discourage people from smoking, and of course we use a range of methods to do that. Plain packaging of tobacco has been very successful, contrary to the discredited evidence that Christopher Snowdon referred to earlier, as well as restrictive marketing, price and, for example, regulation around where and when you can smoke.

**CHAIR:** Yes, I am aware of your views on those issues.

**Prof. Moore:** Indeed.

**CHAIR:** I guess the question is: if you can have a happy life—perhaps leave out the 'healthy' bit—that includes smoking, to what extent should the government say, if your life requires you to smoke, 'No, you shouldn't smoke any further'?

**Prof. Moore:** I am not aware of any government that has said, 'Do not smoke.' Nor does anybody I am aware of in the public health lobby actually advocate prohibition of tobacco.

**CHAIR:** I quite accept that, but you do advocate a substantial increase in taxes.

**Prof. Moore:** Absolutely.

**CHAIR:** For lower-income people in particular, that would mean the inability to smoke.

**Prof. Moore:** No; it means they are making more difficult choices. But let's not forget that the burden of disease on lower-income people is much higher.

**CHAIR:** Making it more difficult to make a choice is an appropriate public policy?

**Prof. Moore:** Absolutely.

**CHAIR:** There is just another aspect of advertising that I want to ask about. There is quite a lot of empirical evidence that suggests that advertising, as Mr Snowdon indicated, increases market share for a given business rather than increase the size of the market. Do you disagree with that approach?

**Prof. Moore:** Yes, I heard him say that, and I was thinking about it. I would need to have a look at his evidence, but if I took his evidence on face value I would say, 'So, when the junk food companies advertise they increase market share by taking people away from healthy food.' When the alcohol companies advertise, I wonder whether they take people away from drinking other, non-alcoholic, products or whatever. I think we could find fairly significant evidence that marketing does increase the amount of drinking. And let me give a really specific example of that, around marketing and taxation, and that was when the alcopops tax was introduced—more accurately described as the exemption on alcopops being removed, by Nicola Roxon. There was a significant drop in the amount of alcohol—not just alcopops, but the amount of alcohol—consumed by young people.

**CHAIR:** That is right. I agree. I am interested in your thinking about how advertising induces people to do things that they might later regret. I think that is your proposition. Am I right there?

**Prof. Moore:** Not necessarily that they will regret it, but it induces behaviours that are not healthy. On a population basis, do we have more people who are obese because of junk food marketing?

Certainly, because the messages they are getting about healthy food or, as I pointed out, the Guide to Healthy Eating, are not anywhere near in the same proportion as the messages they are getting from the for-profit companies. Their interest is for their shareholders, and I do not disagree with that, but their priority, in the vast majority of cases—I can think of some exceptions—is advertising to increase their market in order to sell their product.

**CHAIR:** In my former life some years ago I used to advertise sheep dip. I wonder whether I ever induced anybody to use sheep dip would not have otherwise used it? What do you think?

**Prof. Moore:** If you are marketing it—

**CHAIR:** I was indeed marketing it.
**Prof. Moore:** I imagine there were people who were probably thinking, 'Damn—that reminds me, I have not done the sheep, I had better do them.' So probably you did sell more of your product. It was probably a mixture of bringing people over to your product—I am not familiar enough with sheep dip products to be able to name them, although I did live and teach in rural areas so I am familiar with sheep dipping—and moving from one product to another. But it is a balance between the two. It is not just one or the other, as Christopher Snowdon tried to portray it.

**CHAIR:** A balance between two—

**Prof. Moore:** Two products. I am sure you were incredibly successful with your extraordinary charm and ability to sell ideas, to get people to use that particular sheep dip as opposed to another one.

**CHAIR:** Brilliantly successful, but I would argue that I took market share rather than increased the size of the market. I guess that is the key issue.

**Prof. Moore:** I would say it is both.

**CHAIR:** So you say I probably got people to dip the sheep who would not have otherwise dipped their sheep?

**Prof. Moore:** Probably. It is just such a long bow.

**Senator DASTYARI:** Isn't the answer perhaps that it is not one size fits all; that different products in different markets have different characteristics? What works in advertising in the alcohol or fast food market is different from other products. In some cases it is about market share but in other cases it is more specifically about enlarging the market. I know we are trying to do this at a theoretical level, but perhaps the one-size-fits-all approach fails to recognise that something like Senator Leyonhjelm's example is very different from fast food.

**Prof. Moore:** We make a distinction in every product about how we would go about it in intervening in the marketing of alcohol or junk food. We make a difference in how we deal with each of the different illicit drugs when we are trying to prepare campaigns around them, as you can see at the moment in the campaigns around ice compared to cannabis.

**Senator LINDGREN:** I am guessing that a happy life would also be a shorter life.

**Prof. Moore:** Not necessarily.

**Senator LINDGREN:** In moderation. We are talking about marketing and advertising. Government advocacy uses taxpayers' money, and rightfully so, because it is an important community thing to do. An example could be the Grim Reaper campaign around the HIV epidemic that was happening throughout the world. If we had not participated in that advertisement or advocated from a government point of view you would think that the HIV would be even more than it was back then. Now there is ice and other epidemics around drug use and so on. I am in total disagreement with the previous witness on helmets for bicycles. Helmets do not necessarily save lives but they do prevent or lessen the amount of head injuries that are in the public health system. Would you agree with that? Could you please give me your point of view around the importance of a government—I am not saying necessarily any of the governments that we have had in the past—participating and regulating those things and the consequences if they did not regulate around those things?

**Prof. Moore:** Let me start by saying that the Grim Reaper on its own would have achieved some benefits but not the sort of outcome that we got instead thanks to the intervention of Neal Blewett and the support he got from the opposition's shadow minister for health at the time, Peter Baume, who made sure that the introduction of needle and syringe programs in Australia did not turn into a political barney. I think if our current parliament worked in that way—with regard to some issues, I am sure it does—then we would see better health outcomes. It was a combination of a series of things, and I think that is the critical issue. Similarly with bicycle helmets, it will not be just one thing; it is a combination of a series of things. We are very, very clear about bicycle helmets around children, because children are higher risk takers and so on, and we know that a child is more vulnerable, because they are growing, and a brain injury can be a lifetime impost on their family and on the community as a whole.

There is a very interesting public health debate around whether forcing people to wear bicycle helmets discourages people from riding their bikes and therefore getting fit. The evidence seems to be leaning very strongly now—and it has been some time coming—towards showing that it actually does not provide that much disincentive. Interestingly enough, as a member of the ACT Legislative Assembly, I voted against the introduction of bicycle helmets on that ground, because I was leaning the other way. I have to say that the evidence is illustrating to me now that the benefit outweighs the cost.

Actually, that is what we are doing the whole time here—making a balanced decision on cost and benefit. That is the advantage of the ACE-Prevention report of Theo Vos and others, but it is also what each of us does. Each of...
us is going to make a slightly different judgement on where that cost-benefit analysis is, even reading all the evidence, because we are all capable of cherry-picking the evidence or having evidence presented to us that has been cherry-picked. We try very hard to make sure that our evidence is not cherry-picked, by ensuring that our 70 or so policies—all of which could fit into this inquiry—have been reviewed every three years by a series of academics, before being reviewed by all our members and then going to an annual general meeting. We had one on Wednesday, where we approved another 20 or so either updated or new policies, and that is the way we wanted to influence decision making.

Senator LINDGREN: This may be just a personal viewpoint, but in terms of some of the things you are trying to sell I think it might be very difficult, when you to talk about 'profit versus public welfare', to make vegetables sexy to the community, as opposed to some of the ads that we see around junk food, which show fun and drinking something that is sugary. I would possibly find it very difficult to promote having an apple. I am not saying it is difficult to promote, but I am saying that it is not sexy, as opposed to some of the junk food that is out there.

Prof. Moore: The beer ads are the ones, of course, which are invariably extraordinarily funny and engaging and so forth. It is really hard to find broccoli ads that are as engaging as the beer ads.

Ms Dalla: I actually studied advertising and marketing at the University of Canberra as my undergrad. One of the most challenging assignments set to us was to create a campaign on advertising for vegetables, and we all, myself included, really struggled.

Senator LINDGREN: And you are a young person!

CHAIR: One of the things I find a bit perplexing, though, is that the finger always points to organisations like McDonald's. If you actually look at their food, I do not see why it qualifies as junk. The stuff I see people shoving in their mouths that is nothing to do with McDonald's is at least as 'junky', and in many cases more 'junky', and there are actually healthy choices, if you want to take them, available at McDonald's.

Prof. Moore: A couple of things on that: first of all, I think the reason many people do choose to pick on McDonald's is because, basically, it is so well known and so big. Therefore it is a little bit more vulnerable, I guess. Secondly, there have been some published works around the introduction of healthier options in McDonald's that found that mothers would bring their kids to McDonald's more regularly because there were healthy options there. The mothers would often choose the healthier options, but the rest of the family would go with a meal that would deliver something in the order of 6,000 or 7,000 kilojoules a day, which is pretty close to your average needs. Certainly, for a light-framed person, it is their average need, as identified by the government of New South Wales in their campaign.

CHAIR: The rule is: do not eat the chips.

Prof. Moore: And probably a lot of sugar in the double-sized, upgraded, 'whoppery' coke and meals.

CHAIR: I would call that a drink rather than food.

Prof. Moore: Yes, I know—but they are sold as a meal.

Senator DASTYARI: This is a very unhelpful conversation for me to be having, because I have just had a four-day juice diet, which, can I say, was because of advertising. I have now done some research and realised it was the least healthy thing I could possibly have done.

Prof. Moore: If I were in your shoes, my daughter would describe me as 'hangry'.

Senator DASTYARI: With this issue of advertising, are you effectively saying that the objective of a lot of this advertising is to skew the scales in favour of public health options that are, perhaps, undesirable? And are you saying that the response to that needs to be one of two things to make sure that it is a level playing field so that people can make a personal choice with the relevant information—one being to have government advertising to counter that; the other being to restrict the ability to advertise? Is that what you mean?

Prof. Moore: In a nutshell, that is what we are saying.

Senator DASTYARI: I have two daughters—a four-year-old and a two-year-old. I want to use this junk food example. There is a restriction at the moment on what food can be advertised to them, in the Australian context, isn't there?

Prof. Moore: There is an industry regulation, and we challenge the extent to which it works. So it is self-regulation.

Senator DASTYARI: So, at this point in time—it is probably an interesting part of where we are heading—the industry has effectively turned around and said, 'Let us self-regulate, rather than you regulate us,' which is
something that governments tend to prefer, for many reasons. That is, perhaps, in response to a view that, if they did not have a self-regulatory model, there would be community pressure for some kind of regulation. But does it work?

Prof. Moore: It works to a certain extent. I have been a member of the Food and Health Dialogue through the previous government. The current government has not removed it, but it has not actually called it at this stage—although I have talked to Senator Nash personally, and her staff, and they are in the process of getting it to meet again. The Food and Health Dialogue has been responsible for removing tons and tons of salt from the Australian diet through a self-regulatory approach. It takes into account certain things. For example, if one part of industry suddenly pulls salt from its bread—that is where we get most of our salt—the taste will change and then others will fill that spot in the market, so there is a balancing. So self-regulation does have a place. There are many of my colleagues—and particularly people working on this from the George Institute—who would argue, 'Yes, but we would achieve much more, much faster by having government regulation on it.'

Senator DASTYARI: What is your view?

Prof. Moore: Once again there is a balance, and it is also what we can achieve. I was heavily involved in the Health Star Rating system, which is a voluntary system. We are very pleased with that. We are very pleased that there are now a thousand products on the supermarket shelves that people, at a glance, can make a comparison between. By the way, as an aside, we see criticism from people trying to compare liquorice with yoghurt. In theory, in such a case yes, the health star rating does not work very well; but who stands in the supermarket and says, 'Am I going to choose the high-fat yoghurt or the liquorice?' The system has actually been evaluated by a number of critics, including the George Institute, who say it works. I think voluntary regulation certainly has a place, but we also—in public health, like in many things in politics—look for the 'least worst' solution.

Senator DASTYARI: I put to you, Professor Moore, what was said by Mr Snowdon earlier. Put aside the advertising debate; that is an interesting one. In terms of the negative impacts of personal choices that people make, I am going to use the two classic ones, which are liquor and tobacco. His proposition was that he understands the theoretical framework and the argument that there are costs associated with these that are placed on society as a whole, and we, as a society, have a right to recoup those costs—for example, there are increased policing and hospital costs and, as a society, it is fair and reasonable that if you are making a personal choice or decision that is going to have an impact on society as a whole, we, as a society, can say that we want to get our money back. But then he seemed to have an issue with it going beyond that to be about trying to push people to make different choices and lifestyle decisions.

I thought he got to the heart of where this inquiry is heading, which is: putting aside where we all broadly agree, at what point should a line be drawn for the state in terms of pushing people towards certain outcomes that we as a majority may believe are the right outcomes. I want to take you to that theoretical point. Let's move aside from where we all agree. I suspect, Professor Moore, your position on this is probably similar to mine and perhaps a little bit different from Senator Leyonhjelm's, but that is ideology for you!

Prof. Moore: In one sense, we basically tinker at the edges. But, fundamentally, I have yet to meet a Treasurer or Treasury that is happy about hypothecating taxes to a particular issue. I am sure you will all find the same thing. I remember, as a health minister in the ACT, trying to persuade the government to use just a small part of taxation around a hypothecated method. It is great to justify to the community. The community loves it, and it is easy, therefore, to justify an increase in tax. But it does not last very long. We can see it with the tobacco taxes. Mind you, there was an additional High Court decision that undermined the approach that states and territories were using. It seems to me that the taxation does not just have to be tied to that. We use a whole series of other taxation. It is like saying that when we do stamp duty on homes that that money is only to be used for making homes fit in within our planning systems within our cities. I think that—

Senator DASTYARI: No. Just to pull you up on that point: my understanding is the decisions and theory behind these taxes are, and have been, to push people towards behaviours that we, as a society, have deemed, through elected representatives or otherwise, to be more favourable social outcomes. I think that perhaps where Senator Leyonhjelm has come from in the past, having read a lot of what he has written in the past, is that he believes that those kinds of actions have—and I am going to paraphrase Senator Leyonhjelm a little here—got to a point where it they have infringed on individual liberty. Others like myself have argued at different points that perhaps it is a role of the state and role of and function of the Public Health Association to be pushing and promoting a change. I want to get your view on the theoretical side of things, putting aside the specifics of the taxation argument.

Prof. Moore: In some ways, where I was agreeing with Christopher Snowdon, is that, when we are looking at economics, we should not just be looking at finances. Economics also measures, as he said, enjoyment and health,
fairness and happiness, and I agree. When we are looking at the genuine economics as opposed to the financial, you have to take into account that full range of issues. Healthiness is one of the things that we know is part of ensuring appropriate freedom in life. It is, of course, also part of our definition of health, and the World Health Organization’s definition of health is also fundamental. It is taking all those things into account. If you are just taxing in order to prevent illness or to treat illness, then that does not meet what we would see as 'healthy'.

CHAIR: We are running out of time, I am afraid, and we have some more witnesses to come to. Professor Moore and Ms Dalla, thank you very much for your attendance. We are very glad that you could make it.

Prof. Moore: If I could say one final thing about e-cigarettes, and perhaps I will have the chance to come back to talk about it in specifics. I hear many people saying that what we need to do is use e-cigarettes as harm prevention. I would say that what we need to do is apply the three pillars that we currently have of drug policy for all drugs, including alcohol and tobacco, across Australia—and that is: demand reduction, supply reduction and harm reduction. When you apply all of those things, then what we should see with e-cigarettes are the same regulations as we have currently with tobacco, except that, because people are talking about them as a harm reduction method, they should go with the other harm reduction methods of nicotine replacement therapy and go through the TGA. That illustrates where we are coming from in terms of regulating, not seeking to ban.

CHAIR: Yes, you had that in your submission. I noted that. Thank you. We do have a separate session coming up in a month or two specifically on smoking, and that will include e-cigarettes as well.

Senator DASTYARI: That is after we have done drinking, marijuana and pornography, right?

Prof. Moore: That's right.

CHAIR: Thank you for very much for your attendance.

Prof. Moore: Thank you very much for the opportunity to appear.
PRYDON, Mr Robert, Principal, Commercial Economics Consulting

[10:57]

CHAIR: Welcome. Thank you for appearing before the committee today. Do you wish to make an opening statement before we proceed to questions?

Mr Prydon: It is our belief that there is excessive regulation of individual behaviour, and that that regulation should be limited to circumstances where there is material adverse externalities. Limiting such interventions to cases with clear net benefits is consistent with having Australia as a dynamic, wealth-creating society supported by empowered individuals taking personal responsibility for their actions. We believe that this requires the development of an effective regulatory review process that addresses the tendency for regulation to be adopted as a sign of being seen to act on emerging social issues. I will leave it at that for the moment.

CHAIR: Thank you. I have read your submission. I emphasise, for my fellow senators, that you have taken an economics approach, which is very useful. Would you outline how, in your view, Australian public health regulation fails to draw a meaningful distinction between internalised costs and externalities.

Mr Prydon: Often the heart of the matter goes to the evidence that we are including, in terms of the internal and external impacts, and perhaps a tendency sometimes for the evidence to be captured by particular interest groups and perhaps a failure to consider what the unintended consequences might be, particularly in terms of the behavioural impacts that might be implied by the regulatory action that might be undertaken. There is the classic behavioural psychology evidence of where you take something that is really a behavioural norm and you turn it into an economic norm by putting a price on it. Can people's behaviour actually change?

Daniel Kahneman, in his famous work on this, did a great little study in Israel, I believe, back in the day, with respect to child-care facilities, where a certain proportion of people would come and pick up their kids late. So they took half of the child-care centres and they imposed a fine of 10 shekels or thereabouts on people who picked up their kids late. Then, after another six weeks, they removed that fine, if you like, or that tax. The outcome of that was that, when they imposed the fine, people tended to leave their children longer and more often and it was—

CHAIR: Because it is cheaper.

Well, they had taken a behavioural norm, which was that you are imposing on the teachers in that they have to be there, and that is behaviourally, culturally unacceptable, and they created an economic norm, where there is suddenly a price. So, if you pay this price, you have the—

Senator DASTYARI: Mr Prydon, from personal experience at my child's child-care centre, it is a dollar a minute for being late. And I can assure you that my two kids do not ever get picked up more than 15 minutes late. Maybe that is from putting a price on it that is very high.

Mr Prydon: Exactly. And I think the other thing about this particular study was that, when they took that fine away, people did not revert to the previous activity. You changed it permanently from something which was behaviourally treated as the right thing to do as part of the underlying cultural behaviour and converted it into something that had become an economic price norm, where they felt that that behaviour was now okay and treated in a different environment. So remaining aware of the unintended consequences, the behavioural impacts that we might have in introducing legislation, is something that is really difficult to capture in a cost-benefit analysis. As an economist, you do not like to say that your study is going to be incomplete. But we do have to, I think, at the back of our minds, realise that there will be elements that we will not capture fully in any form of formal cost-benefit analysis, and I believe that we need to err on the side of caution in terms of regulating. We have to understand that it may have behavioural consequences beyond what we actually intended.

CHAIR: I am particularly interested in this distinction between internalised costs and externalities. The first witness, Mr Snowdon, from the UK, spent some time on it, and you have addressed it too in your submission. Could you perhaps give us what you think is the worst example of it?

Mr Prydon: The clearest example that we all refer to, and we have referred to today—I think I have heard it mentioned a number of times—is, of course, passive smoking and the externalities associated with exposure to tobacco. And it is something that has been in the public domain for such a long time, and I think there is a generally accepted view that we do impose health impacts on the surrounding community when we smoke in public, or in shared areas. That is particularly critical—more difficult to deal with—for children in cars and things like that. I think that is an externality that clearly has an impact that we can legitimately claim should be covered, as well as, obviously, the health impacts that we have also discussed in the committee so far today in terms of the increased health costs associated with lung cancer and other health issues that arise from smoking, which are
externalised onto the health system and not just internalised within the individual who gets sick. But I tend to agree with Mr Snowdon in the sense that, as I understand it, the total payment in taxes from smoking more than covers the health costs associated with this. But there is also a need not just for taxes in that case; I think you can justify controls on where people smoke because of the passive smoking issue as well. So it goes beyond taxes.

**CHAIR:** Okay. Do you have any thoughts on the Mr Snowdon's argument that the public health lobby is ascribing costs to things that are private costs or to things that are not really social costs at all of any description, such as effect of alcohol on productivity and those sorts of things? Some very large numbers are assigned to those matters, and he is arguing that that is not appropriate in economic analysis. What do you think?

**Mr Prydon:** I think, from a public policy perspective, that we have to be aware of, if you like, whether there is a market mechanism to deal with these impacts. With the productivity issue you just discussed with respect to alcohol consumption or something like that, there are market mechanisms within the workplace to deal with those issues. It does not need to be something that we pass through as a responsibility of government to limit in the sense of the taxation of alcohol or whatever else it might be. What I am saying is that we need to clearly identify where the market failure is and what the least cost option is to address that market failure. It may well be that it is simply information and education. It may be, in some circumstances, that it is appropriate to regulate behaviour. But I think that should be your fallback option, and only after you have clearly identified what these externalities are, what the market failures are and what the impacts are.

**CHAIR:** You suggest that over-regulation has become worse in recent years. Could you discuss some case studies, some specific examples, for the committee?

**Mr Prydon:** Sure. Whether it is the tax act or anything else, it is the growth in the total amount of regulation that applies to people, and the movement. I guess that if we were to take a long enough time frame, we would say that 40 or 50 years ago, in terms of legislation or regulation surrounding driving activities, a lot of the driving behaviour would have been assessed in terms of whether it was driving with due care and attention, whether it was safe under the circumstances given the road conditions that you faced at the time. We have moved away from that to very prescriptive regulation which isolates individual behaviours that we then prescribe as being unacceptable. They may be unacceptable in certain circumstances. For example, we have a red light; you have to stop at the red light and let the other traffic go through until the light turns green. If it is three o'clock in the morning and there is no traffic on the major road and it is safe to proceed, why aren't we allowed to proceed at the red light and let the other traffic go through until the light turns green. If it is three o'clock in the morning and there is no traffic on the major road and it is safe to proceed, why aren't we allowed to proceed safely and make it the responsibility of a person to proceed safely? That would enhance traffic flow; it would have economic benefits, you could well argue.

By seeking to prescribe every activity, we also mean that we have the current circumstance: I think we know that tailgating on highways may well be partly attributable to the fact that you might have people in the fast lane who say, 'I am exactly obeying the law—or within five kilometres of the speed limit; I have a right to be here.' You have created that feeling of entitlement associated with saying that the government has mandated that this particular activity is unacceptable or whatever; whereas really we are saying: 'Was the behaviour of the other road users unacceptable in those circumstances? Was it unsafe given the conditions faced?' As we well know, 100 kilometres an hour on a road in the middle of a thunderstorm is not a safe speed to proceed at, notwithstanding what the speed limit might be.

So I think there is a tendency for the growth of regulation to address particular issues that people see at a point in time as being of particular interest to society, especially these days. It comes through social media. It is something that becomes particularly vocally supported, so the action is that bureaucracies of course tend to want to put up solutions to problems.

**CHAIR:** You link this to the behaviour of large bureaucracies. Could you explain that link?

**Mr Carmody:** I would use examples. I do a lot of work in the economic regulatory space. I think what we are seeing is the tendency for well-resourced economic regulatory bodies, in terms of the regulation of monopolies, to become increasingly involved in assessing, with great detail, the activities of the business, the regulated business. The original intention of part IIIA of the Trade Practices Act as it then stood was to encourage the introduction of a negotiate-arbitrate model for the provision of third-party access to infrastructure. We have stepped away from that and we have set the bureaucracy, the regulator, in the middle. Both parties now perceive that it is their role to manage this. The better resourced they are, the more you have people looking for opportunities to refine the responsibilities they have been given. That could well be within health services or transport or whatever it is. The bureaucracy is charged with addressing the issues as they are arising. A lot of the social media, of course, is where we see a lot of this arising. I am sure that ministers ask their departments to recommend changes and the departments are looking to proactively offer solutions.
CHAIR: That brings me to the next question, which is about the process of regulatory impact statements. You are quite critical of the process. What is wrong with it?

Mr Prydon: The fact that we do have some of these regulations that get through. The classic one would be the example used there that your vehicle must be secured, your windows have to be up, your car has to be locked, because we are trying to reduce crime where people steal from cars, et cetera. Is it appropriate to be going down that line or are any impacts of that going to be internalised by the person who owns the vehicle, et cetera. In what way are they causing a problem for broader society? Does it impact on insurance premiums? That can be dealt with, there is a market for that—the government does not need to step into that. There are market mechanisms to address a lot of these issues that we then push across for the government to address.

CHAIR: Good point. How would you improve the regulatory impact statement process?

Mr Prydon: I would actually impose it. Sometimes, perhaps, it is not given enough time. Sometimes, it is not applied vigorously enough. Perhaps I would include an enhanced test, which says there must be a material benefit before you actually adopt this regulatory solution. We really must get back to looking at the 'do-nothing option' as being a feasible option. If we do a cost-benefit analysis where we do not have a no-intervention option as a comparator and we simply have two unattractive option and you end up with one or the other—that is not a true cost-benefit analysis. It does not truly address the impacts it will convey to society, especially those unintended consequences.

CHAIR: The 'do-nothing option' should be inherent in the risk.

Mr Prydon: Yes, and any proper cost-benefit should. The guidelines about things like regularly impact statements include these sorts of things. Clearly, they cannot be being acted on appropriately because otherwise we would not be seeing some of the legislative changes going through that we do see.

CHAIR: Your submission suggests that overregulation has psychological costs separate from economic costs attaching to its failure. Could you expand on that?

Mr Prydon: That gets back to that behavioural activity—the behavioural psychology, if you like—that there has been a lot of work on in recent decades. As we indicated in our submission, I think Australians like to think of themselves as being very independent, dynamic people who have built a new country off the back of a modern leading economy off the back of the appropriate risk-taking behaviour of the individuals and the sweat off their the brow. If you start to transfer this responsibility from the individual to the state, so that we move from these behavioural requirements for the individuals to saying that we create it as a government requirement now, an economic norm or a governance norm, and we take away that responsibility for people to behave appropriately—just like we do on the roads where you create a prescriptive arrangement which then says it is not about due care and attention and appropriately driving to the conditions, it is about a hundred different rules. I think that becomes an overarching thing that can undermine the acceptance or the willingness of individuals to take necessary risks in terms of their lives and in terms of economic decisions. Clearly, I do not think we can separate the economic decisions from health, behavioural consumption, obesity, et cetera—they are all going to be intertwined. It becomes very difficult to say: 'In this area of your life we will control what you do, but we still want you to be risk-takers in this area over here because that is good the economy'.

CHAIR: Good. This is kind of like the infantilising argument: if you treat people like children, they will behave like children.

Mr Prydon: Yes.

CHAIR: If you say to people that if you stick to the speed limit and obey all the other rules, you will be safe. Is that what you are referring to?

Mr Prydon: That is a large component of it, absolutely. Yes. I think that is really the heart of it in many ways—the discussion of how effective advertising is with respect to food. I am not an expert on advertising by any stretch of the imagination, but I do wonder when we step away from this. Kids learn from their parents. A lot of the peer group pressure, the internalisation that happens and the information that flows through as a child grows up comes from their family and their surrounding peer group, and I am not sure of the significance of the impact of advertising on that. Correlation versus causation is a critical issue with the evidence that we use for any of this sort of stuff. We claim that there is a correlation, but is it actually a causation? And yes, there is an increase in advertising and there is an increase in junk food consumption, but just because it correlates does not mean that one causes the other. I think that is something that we have to be very careful of in terms of our identification of what evidence actually supports what argument. In the health care area there are certainly massive examples of inappropriate regulation, if you like, in other countries that has come through on the back of that correlation versus causation failure.
Senator DASTYARI: Mr Prydon, thank you so much for coming here today, and for your presentation. I am not sure if you heard the evidence that was given by the two witnesses earlier.

Mr Prydon: Yes.

Senator DASTYARI: I think there is common ground, and I want to take you beyond the common ground, because we all know about the common ground, and that is not really the interesting part. The interesting part from a public policy perspective is: where do the views diverge? I think there seems to be some common ground that effectively says that when there are negative externalities people should have to pay for them. Let's put aside the ridiculous extreme argument where on one hand people say, 'There is a public health system and so people are obliged to pay' and on the other hand they say that you are not obliged to be in the public health system—but the state makes you be in the public health system, so that is the state's fault. Let's put that aside and understand there are going to be some externalities and people should have to pay for those externalities. If the role of government is to recoup and cover the externalities, you seem to be largely comfortable with that.

Mr Prydon: Absolutely.

Senator DASTYARI: I think this is where we get to the ideological difference—that is, whether or not there is a role for the state to be pushing individuals towards types of behaviour that the state, or society as a whole, feels are more preferable actions for people to be involved with. That is where the line gets crossed between recouping the cost of behaviour and something else which is really about the state presenting a view on how people should live or what is or is not an appropriate act.

Mr Prydon: There are two things: it is a grey area and it is a slippery slope, I would say. I would not rule out nudges at all. I think we need to make a case as to why it is that we need to be nudging people. We have taken smoking up so that the tax exactly equals the measurable externalities or whatever, were that to be—

Senator DASTYARI: But you can never really measure these things. I think that is the—

Mr Prydon: You certainly cannot be 100 per cent sure. One of the classic examples with the smoking thing has always been, 'Well, they do die 10 years younger, which saves us a huge amount of money at the other end.' Being brutal about that, the choice has positives as well as negatives associated with it.

Senator DASTYARI: You have an economist's view of positives.

Mr Prydon: In a narrow financial sense.

Senator DASTYARI: Why don't I take you to some practical examples that we are going to be looking at over the next couple of months. Sydney lockouts: currently the state government in New South Wales has deemed that they have created lockouts in the inner city areas of Sydney for the sole purpose of stopping violent behaviour. Effectively, the evidence that I have seen has been that it has been effective in stopping punching or fighting. The counterargument, which I am sure we have seen in some of the evidence that has been presented to the committee, is, 'Of course it did that, but there are also no bar fights in Tehran, where it is illegal to drink alcohol.' So where do you draw the line?

I wanted to take you to that example. I also want to take you to one other example that we will be looking at: the alcopops taxation. I want to take it away from the theoretical and look at two practical examples—the lockouts in Sydney and the alcopops—and get your take on them.

Mr Prydon: What is the issue that we are trying to address with lockouts? Is it violence from people leaving clubs in a highly inebriated state later in the night? Are there other countries in the world where people leave these venues after having significant alcohol intake—in northern Europe and places? Certainly there are. Is there the same level of violence? Perhaps not; I am not surrendering to that. Why is that so? Are we mandating something that impacts on people's choice to go out late at night, because we are trying to address the violence issue through a heavy-handed approach of the lockout, rather than addressing the behaviour in some different mechanism that could be more effective? Maybe we have a real failure in terms of—

Senator DASTYARI: I want to push you on this. Do you think that is a knee-jerk response to media pressure?

Mr Prydon: Yes; to an extent, I do. I do not believe it has been justified. Absolutely the evidence may be that it has reduced some of the impact. That may even have a net benefit. I am not sure that we have done the analysis to be able to say that, but I think it is heavy-handed and it is not holistic. We should be doing something else to address this issue. This is like a temporary bandaid solution for an underlying problem, where we are not addressing the underlying problem. If the underlying problem is something to do with drugs and alcohol—and it may not be alcohol, it may be other forms of drugs that people are on or a mix of.

Senator DASTYARI: There are many people who argue that it has more to do with ice and speed, than it does with people drinking.
Mr Prydon: Exactly—the behaviour that is inherent in consuming those drugs—in which case, we have taken the bandaid, we have adopted this thing, we are seen to be doing something, but is it a long-term solution? No. As you say, we can go to Tehran and ban alcohol altogether and certainly remove that problem; although, we may still have all the other drug problems, and it becomes prohibition, and then we have a whole new suite of problems associated with prohibition.

Senator DASTYARI: On the lockout issue, there is a counterargument, and it is not one that I am necessarily making, but it is one that I am interested in; effectively, it is: this is 2 am at Kings Cross in Sydney. And to quote Senator Leyonhjelm, and I think he said this on television, 'Kings Cross was the centre of the naughty nation in the past'. This is 2 am at Kings Cross in Sydney; this is not 4 pm out the front of a childcare centre. There is a natural self-selection that, yes, as a society in the city of Sydney—and I think 4½ million people live there now—there are going to be incidents from time to time; violent incidents. Are they more likely to be where groups of young people get together at 2 am in the morning—drunk? Yes. Is that a self-selected group? You also have to do policing and these other things. But an issue that, perhaps, has always existed in red-light districts in any major city is this: if this was at 4 pm at the front of my child's childcare centre or at the front of a school, that is a very different debate to be having.

Mr Prydon: I agree. One of the things that we have identified there, to a certain extent, is: if there is a particular issue in Kings Cross and we want to make it a more secure environment for people who are leaving, we might say that there needs to be some form of tax for venues that are open, which is attributable to provision of greater security in that region between the hours of midnight and six o'clock in the morning. Fine; now we have internalised it. We have found a market mechanism that will address it, that will facilitate the provision of adequate security so that, in most instances, we will not have that issue.

Senator DASTYARI: What you are effectively saying is that, from a policy perspective, we should not inflict on people's personal freedoms, that we should be looking at internalised market mechanisms to address these kinds of issues, rather than a blanket fix or across-the-board kinds of approaches?

Mr Prydon: Wherever feasible; that is right. Where we can identify a feasible option, along those lines, then fine, do that first. Where there is no feasible option, then you are entering into the realm of where it may be appropriate for government to take a stronger stance in terms of regulating the behaviour or the limitations.

Senator DASTYARI: And your take is that we have got that wrong—as a society?

Mr Prydon: I believe that we do, and partly I believe that is because of the reactivity associated with wanting to be seen to be dealing with issues where—especially in the modern media environment, where a lot of it is social media and where it is not well-informed debate about things—there is a feeling that we need to be seen to be doing something.

Senator DASTYARI: Do you think that part of the problem is that the debate has become devoid of ideology? Something that Senator Leyonhjelm has talked about in the past is that we do this things without thinking about it from an ideological perspective; it is more of a kind of practical 'get the outcome first' without actually thinking about what it means. For someone like me, who has been a very strong advocate for regulation on many things, particularly in the area of banking, I think that perhaps sometimes making that justification gets lost in the debate.

Mr Prydon: Absolutely. We fail to step back and say holistically what we are trying to achieve, rather than this thing that is suddenly taking up all our attention. It may be a symptom of something else or something that, if you just left it alone, is going to go away or any number of other things. But having that holistic view—the ideology, if you like: a clear view on what it is that you are trying to achieve, how you want to achieve it and what you do not want to do in terms of the negative impacts.

Senator DASTYARI: Can I very quickly take you to the specifics of the alcopops and get your take on that as a tax.

Mr Prydon: Again, I think we need to step back and say: what were we trying to achieve here? Was there a real issue with youth consumption of mixer drinks? Did this encourage excessive consumption? Really it is no different to the McDonald's example that we were talking about before.

CHAIR: It was to raise money.

Mr Prydon: That is a separate issue.

Senator DASTYARI: I am revealing far too much about myself because my youth—and I am going to pretend it was a long time ago, and it kind of was not—was drinking alcopops at the Cross at 2 am, so I probably have a bit of a vested interest here.
Mr Prydon: Distorting the tax between the different drinks on the basis of targeting a different target audience, I think, is only going to move them into consumption of different products. It does not address the issue. It does not have sufficiently high-level holistic view of what it was that we are trying to achieve. I do not think it is an appropriate mechanism to try and target something in that manner. We have not changed the total pie; we are just moving the slices of the pie around. I think it failed the big-picture tests of what it is we are trying to achieve. Have we addressed the other mechanisms of education and cultural changes and a whole range of things, which are longer term? We may want a bandaid in the short term so long as we realise we have to do something that is fundamental while we are doing the short-term high impact.

Senator DASTYARI: To summarise, you are saying your overall thesis—and you make this claim in your submission—is that, when it comes to developing policy, as a society, we are perhaps asking ourselves the wrong question. The question we should be asking is: what is the problem that wants to be solved? Once we ask that question, we should be looking trying to internalise that externality as much as possible. Where we failed, in your opinion and your evidence, is providing this blanket kind of approaches to what could perhaps be better targeted as specific problems.

Mr Prydon: Yes, I agree broadly with what you are saying—

Senator DASTYARI: No, they are your words. I am trying to put your position. I am not sure I necessarily agree with all of it, but I want to get your views.

Mr Prydon: Broadly agreeing—yes.

CHAIR: You could almost chair an economics committee with that summary!

Mr Prydon: The only thing that I would say there is that it is holistic, and therefore, when you talk about addressing individual issues, I am sort of thinking, 'No, I want to step back from that and say what is the overarching framework that we are talking about.' My overarching framework is the maintenance of a dynamic, open, productive economy that is consistent, which really requires the reliance of people on personal choice and personal responsibility. That becomes my fundamental premise for what will drive a dynamic economy going forward. So when we do stuff, where there is a market mechanism or where things can be internalised and the government choose to act in that space, they may be undermining the very thing that they want to preserve.

CHAIR: Senator Lindgren has decided she has a question for you after all.

Senator LINDGREN: It is just a question, so you are all right. Referring back to the lockouts that we were talking about earlier, studies show that the average person stays out for approximately six hours. I believe that this strategy is a measured strategy. It is a strategy based on the statistics around drunken violence at clubs. I am suggesting that there are probably quite a few police officers and ambulance officers and security personnel who are very pleased with that lockout policy. Yes, there are systemic problems, but at some point you do have to try to fix something. Do you have any other suggestions, other than a lockout? You have stated a lot of things, but you have not given me a lot of—

Mr Prydon: My suggestion would be that in Kings Cross we do have a special licence fee. I know we do not like hypothecation, but it gets hypothecated to the provision of security services. My suggestion would be that a lot of these businesses might say, 'That's great. We would like to be open that extra six hours because we believe it generates extra net revenue.' Kings Cross really is a centre for tourism as well. If we say that people stay out for six hours and we are all trying to squeeze them into the same six-hour block, that—

Senator LINDGREN: They tend to stagger out within that six-hour period, and that is my point. They have a measured approach. Some of them will get plastered earlier in the night and then will stagger home a little bit earlier; others will drink sensibly and use the full six hours, and others will just go hard at the end of the night. I guess this strategy is ensuring that people leave clubs at different times of the night. You know you only have six hours. If you leave at the sixth hour, there are going to be 50 people looking for one cab. That is what I am suggesting. That is probably why there is some sense around the regulation.

Mr Prydon: Senator, are you suggesting that the lockout is not a good idea because everybody is going to be leaving at the same time?

Senator LINDGREN: No, I am suggesting the lockout is a very good idea. As the wife of a police officer, I am suggesting it is a very good idea.

CHAIR: Because they all leave at the same time?

Senator LINDGREN: No, because they stagger their times when they leave because they know it is there for six hours and most of them do not want to stagger out at the sixth hour looking for one or two taxis.
CHAIR: I think that was a statement as much as a question. Mr Prydon, thank you very much for your evidence. It is greatly appreciated.
GREEN, Dr Kesten Charles, Private capacity
RABL, Mr Philip, Private capacity

[11:32]

CHAIR: Welcome. Thank you for appearing before the committee today. I invite both of you to make a brief opening statement, if you wish to do so.

Mr Rabl: I have just a few slightly random comments to make, firstly on rights. If we were to have a conversation starting from the premise that I have rights, it would be a very different conversation than if we started from the premise that we have equal rights. Secondly, on equality—picking the equality point out of that—I acknowledge that some commentators say that the notion of equality is close to meaningless, and they give the example of welfare: either all Australians should be on welfare or no Australian should be on welfare. I can give an example of my own: either all Australians should be senators or no Australian should be a senator. That form of equality may take a numerical equality one or two steps too far. It would be ridiculous to suggest that everybody should be equal in all circumstances.

To me—and I have made this point fairly clearly in the submission, I hope—the importance of the notion of equality is that it opens a window into inequalities in our society. We have moral, social and political obligations to understand the implications of those inequalities and to do something to address those we consider to be unacceptable. For that, I acknowledge Cherminsky, which is reference 2 in my submission. On freedom: the equal right of people to be free, in my view and others, is a natural right. A person with the capacity to make a decision has the right, as the birth right, to make that decision and to act on it, subject to some constraints. I will summarise those back to saying 'you cannot cause harm'. If people are free as a birth right to decide to cause harm then discussions about regulations must focus and understand the circumstances in which it is okay to constraining a person for making one of those decisions they otherwise would have made. On freedom, I acknowledge HLA Hart, whom I have drawn on quite directly.

On fairness, being equally free entails being equally obliged to be fair to others, and that is a common-good argument. So regulations need to get the balance right in managing the trade-offs between freedom and fairness, or sometimes between freedom and freedom and maybe sometimes between fairness and fairness.

Finally, two comments that come a little from left field. What I have in my submission actually goes quite beyond the terms of reference of the committee. On Aboriginal recognition, there is a debate at the moment about putting some clauses in the Constitution beyond the recognition ones that do something substantive, and there is big debate about whether that is a good idea or a bad idea. I want to put on the table that a constitutional guarantee of equality along the lines that I have suggested will resolve that debate. It does not introduce any new rights. It does not introduce Indigenous specific rights. It is not even a bill of rights. What it does do, though, is provide a framework for working towards the elimination of inequalities. In that particular case, it would be Indigenous specific inequalities. Finally, on section 18C of the Racial Discrimination Act—and the debate has died down on that—I am suggesting also that either option 1 or option 2 in my submission would resolve the debate about that act.

I am grateful for this opportunity to put these thoughts before you and I am very intrigued to know how you are going to react to them.

CHAIR: Thank you.

Dr Green: Thank you for this opportunity to testify to the committee. I would like to propose the reasonable doubt test as a way of reining in the proliferation of regulation. I will start with a general statement that regulation harms the general welfare. The general welfare is greatest in 'the simple and obvious system of natural liberty'—from Adam Smith. Adam Smith describes that this prevails. Who can really know better what is best for us than we do ourselves? Attempts to regulate people's choices violate microeconomic principles—derived from experimental evidence, natural experiments and logic. Some of these experiments and some of this work is my own. Cumulative knowledge on the effects of regulation is summarised in the iron law of regulation, which can be worded, 'There is no form of market failure however egregious that is not eventually made worse by the political
interventions intended to fix it.' So this is another very strong statement and some people seem to regard this as being a little extreme. Is it possible that there are exceptions to the iron law of regulation—or, in other words, under what conditions might regulation improve the general welfare?

In my submission in the second paragraph on page 2, I list 10 necessary conditions for a regulation to be successful. I believe they are reasonable conditions. They are conditions that reasonable people would expect a regulation to meet. I will not go through them in detail, but I will look at the first one of those which relates to one of my previous points—that is, for a regulation to be successful it is necessary to know stakeholders’ endowments, relationships and preferences. I think the committee has been hearing quite a bit about preferences and how people's preferences are different. How can a central planner really know these things about everyone, about all the people involved? This is what economist FA Hayek referred to as 'the knowledge problem'.

A belief that the central planning can nevertheless be successful has been referred to as 'the chess pieces fallacy', which comes from a statement, again, by Adam Smith, who talked about clever people who imagine that they can organise a great society to their will, in the way that one would organise the pieces on a chessboard. More succinctly, it is referred to by Hayek, again, as 'the fatal conceit'.

Do regulations meet the conditions? Do we know about any regulations that do meet the 10 conditions for successful regulation? Well, we have done our own research; others have done research on individual regulations and experiments on regulation. I have asked my colleagues and I have asked widely for someone to put up a regulation that has been demonstrably successful relative to the doing nothing option. So far, we have not managed to identify a single regulation that meets a single one of the 10 conditions.

I am going to suggest a possible solution to the proliferation of harmful regulation. The key point is that the onus should be on the sponsors of the regulation to prove beyond reasonable doubt that each regulation has or will increase the general welfare. Given the body of economic theory and knowledge that we have accumulated over the years, the presumption should be on the innocence of the free organisation of society. A possible first step that somewhat goes towards the way of achieving this, in a way that is perhaps less controversial, is to revoke orphaned regulations, regulations that do not have a sponsor who is willing to step up and defend it with evidence, particularly ones that are not being enforced on a consistent basis. I am sure there must be many that meet that criteria.

What does it mean to prove beyond reasonable doubt? For a new regulation, we are talking about predicting. We are talking about forecasting the effect of the regulation relative to doing nothing. So it is necessary to use evidence-based forecasting methods, and I have provided a pattern of mine on that as part of an appendix to my submission. Also, clearly, it is necessary if any regulation should pass this test and be on the books, it is important that there are regular cost-benefit evaluations of existing regulations. Circumstances change, after all. So even for believers in regulation, you would have to recognise that conditions do change. It is not that easy. We talk about regulatory impact statements and so on. I heard the earlier speaker referring to those. It is clearly very easy to get past those, so it is important to use evidence-based methods. I am pointing in the direction of the forecasting work.

We should start, given the presumption that freedom is innocent, by not regulating when there is uncertainty about the situation. When even experts are not really sure about the true nature of what is going on and the problem that might possibly need regulating, and when there are arguments among them, that should in itself be a reason for avoiding regulation. Regulating something that we do not really understand seems a rather absurd thing to do.

It is also important to ignore the opinions of experts and voters on what effects a regulation would have, because we know from decades of research and forecasting that experts making predictions about complex situations—the kinds of situations that we are talking about regulating—are no better than guessing. Of course, you have only got to get any group of experts together and they will have different predictions, so there is a common-sense test that this is so. It is also important to employ unbiased experts, working independently and using validated methods—open methods—that are open to inspection and discussion.

In summary, I would like to say that deregulation presents a great opportunity. With so many regulations restricting people's choices, there has never been a better opportunity to increase the welfare of Australians as is now presented by the policy alternative of thoroughgoing deregulation.

**CHAIR:** Thank you, Dr Green. I am going draw on your submissions and in particular, to start off with, the helmet laws. Mr Rabl, I understand you were involved in the development of the mandatory helmet laws, and they followed the Kempsey bus crash of 1989. Would you be able to describe that process for the benefit of the committee, please?
Mr Rabl: I was involved in a limited way. At the time, I was working in the Department of the Prime Minister and Cabinet, and I had the policy responsibility for areas that just happened to cover health and other matters.

CHAIR: This was the New South Wales government?

Mr Rabl: It was the federal government. At the time, the Hawke government was being pressured by an orthopaedic surgeon from South Australia to create a committee, which he wanted reporting to the Prime Minister, to do something about road trauma. He was tired of, as he said it, 'fixing up the bodies', and he would rather have been put out of work in a sense, I suppose. As a response to this, the government decided to put some money on the table for the states and ask them to do some work in the area of black-spot remediation. In return they were to sign up to 10 things, one of which was the compulsory wearing of bicycle helmets; another was the national 0.05 alcohol limit; another was the 100-kay speed limit. I do not remember what the other ones were.

The issue about wearing bike helmets—I am not saying there was not discussion that led it to be put on the table to be part of those 10 items—came about not in its own right but as part of a much wider package. In fact, it was not in this room but in a committee room round the corner where the state transport ministers met—it is in my submission; I think the date was just before Christmas in 1989—to discuss the 10-point package and decide whether they would sign up to the $120-odd million that was on the table, and they failed to agree on a single item. It is just the way the world is when it comes to Commonwealth-state relations, I am afraid.

One of the people in that room was Bruce Baird, the Minister for Transport in New South Wales. That very night, two buses ran headlong into each other up in northern New South Wales and killed 35 people. The very next time I saw Bruce Baird was on television. There he was, up there at that crash site, and interviewed too was the Queensland Minister for Transport. They were shocked, obviously.

I do not know what happened, because the carriage of this was done largely through the Department of Transport, not through the Prime Minister's department. But fairly quickly after that, all states signed up to the package. It was prompted, obviously, by that bus crash, not necessarily by the cogency of the arguments that were in the package.

CHAIR: Your submission discusses the regulation's potential impacts on freedom, fairness and truth. Of those three, which do you think was given the most attention when this issue was under consideration and which was given the least?

Mr Rabl: I am not sure that I know the answer to that.

CHAIR: You are allowed to speculate.

Mr Rabl: I would hope that fairness would have been very high on the list of those. But, to me, the rock-bottom part which should drive the decision making in these areas is actually freedom. But I say in the submission that if we take the point that people are equally free as a birthright then everything else flows from that. That implies being obliged to be equally fair to each other, as I have said, and truthful. It has to be driven by the truth. Some of the evidence we have been hearing from Dr Green and others is talking about the evidence. Well, the evidence has to be the truth. If we are not being driven by truthful evidence then we are not going to get to a good understanding of the impacts on freedom and fairness.

CHAIR: What you are suggesting is that the Kempsey bus crash induced—I think you are inferring this—an emotional response, which led to acceptance of this regulation which had previously been resisted by the states. Is that right?

Mr Rabl: That is right.

Senator DASTYARI: Mr Rabl—why is that a bad thing?

Mr Rabl: I am not saying that it is a bad thing, no. I am absolutely not saying that.

Senator DASTYARI: I just want to draw a more recent comparison: the situation in Syria, perhaps best visualised through the image of the young boy—unfortunately, I do not remember his name—which resulted in a worldwide response. It was an emotional response that resulted in the taking of more refugees—a real kind of movement. Are they not natural responses? I think they are positive responses, when people react to situations.

Mr Rabl: Yes. It is really sad that sometimes it takes something like a bus crash to get agreement about some things. But whether that is the reason or not, hopefully what underpins the decision is still a rational process of thinking about things. To me, if they do not involve understanding the implications in terms of freedom and fairness then they are not going to get to everything they should get to.

There may well be other things, but the rock-bottom things that matter in a society which is equal is the freedom to make decisions and choices for oneself subject to being fair to everybody else, who have exactly the same rights to freedom.
CHAIR: It sounds to me that while there is nothing wrong with what you are saying, and Senator Dastyari has asked, 'What's wrong with that?' it sounds like what you are talking about is a moral panic. We see many moral panics and they are used notoriously by governments to introduce regulations that, up until that point, they have had some difficulty gaining acceptance for.

Perhaps Dr Green might like to join the discussion at this point, in view of the iron law of regulation that he referred to. How does Mr Rabl's account of the introduction of mandatory helmets conform to that model?

Dr Green: Mandatory helmets. Well, where was the evidence? I would suggest that, as Mr Rabl himself suggests, there was a lack of evidence that there was a net benefit for this. The study clearly had not been done. It was an emotional response. Emotional responses are not a rational way to make policy choices.

To come back to my key point, given the presumption of innocence, of freedom, and the lack of evidence that regulations work, rushing to regulate here is, as always, a mistake. Could not the private sector and private individuals have responded to these—and we are talking about the bus crash—in their own way? The bus companies themselves, the parents of the children, the individual schools were all free to respond to that situation according to local information they had, local conditions, in a way where they were assessing the costs and benefits to individual people involved.

Mr Rabl: I am not saying there was no evidence to support those 10 items in that package. The cabinet submission involved came from the transport portfolio and I am sure that the federal office of road safety, which did it, had evidence. I know there was a lot of discussion in the community about that and other issues, so I am not saying there was no evidence; I am saying that the decision was taken in a different context.

CHAIR: That is why I was drawing your attention to your submission about the potential impacts on freedom, fairness and truth. Given that we would all like freedom, fairness and truth to be top of mind in introducing regulations, to what extent were they abandoned in the context of a moral panic prompted by the Kempsey bus crash?

Mr Rabl: I am going to say something and, again, you might think I am too theoretical. I say this often when I am talking to people about things: purpose is logically prior to action. Just because an action is done, does not mean it was non-rational, let alone irrational. After four decades in the government, I can assure you that we very often used to retrofit purpose into actions, but you can do it. There is no doubt with that that particular decision, whether it was right or wrong, and I am not making any judgement call one way or the other on that—the purpose is there. Like I say, you may have to go back and retrofit the purpose, but the purpose is there, otherwise it would be totally irrational and comments that others have made would be absolutely right.

Dr Green: Can I make a point from one of my papers where there is an example of efforts to increase road safety by regulating particular vehicle characteristics, speeds and so on. The findings from that were that the safety gains, the gains and lives, that were expected from implementing these safety policies were nowhere near as great as expected. They were vanishingly small because drivers adjusted their behaviour for the fact that they had antilock brakes and airbags and took more risks in their driving.

CHAIR: Dr Green, you discussed both market failure and government failure in your submission. While you accept the existence of market failure, you point out that even when markets fail, government failure is often worse, or may exacerbate the market failure. Can you outline why this is the case?

Dr Green: The iron law of regulation suggests it is always the case that the government failure will be greater. The concept of market failure and the various forms of that are just that. They are concepts of failure relative to an ideal towards a perhaps unachievable ideal. It is a whole different question to say there has been a failure in the market and that this has not been perfect to saying that it is possible for a well-intentioned and very clever central planner to step in and actually make that situation better over the long term.

A lot of the evidence I have presented is summarised in my attached paper on mandatory disclaimers, and the opening sections for that are that the government failure is greater than the market failure over the long term, and in all cases where we have looked at that. Why is that? If you go back to the economics of motivations and think about what the motivations of sellers are. Sellers want to make a profit—everyone is after their surplus, both sellers and buyers—and in order to make a profit over the long term, sellers have got to look after their buyers. They have got to look after their buyers' interests. They want their buyers to come back. They want their buyers to tell everyone, 'Isn't this a wonderful product or service.' The last thing they want to do is harm their buyers.

In the case of buyers, buyers are looking for the best deal for them, the thing that gives them the most pleasure. For some people, that might be cigarettes, but there we are—who am I to judge? They are looking to maximise their welfare, and they are looking for the best deals. Of course, people are not naive; they expect sellers to indulge in puffery about their products. That relationship between buyers and sellers is undermined when a
regulator comes along and buyers then think: 'The regulator has looked at this; therefore, it must be safe. It is out there, so it must be acceptable.' So caution goes to the wind. The old economic principle of caveat emptor, buyer beware, goes out the window, ironically, in response to things like compulsory warning labels on goods and services.

**Senator DASTYARI:** To begin with, Dr Green, I think your body of work is incredibly impressive, and I am not going to be doing fair justice to your body of work by summarising and having a debate with you in 10 or 15 minutes, so I put that on the record. Also, it is my opinion that these kinds of debates are not devoid of ideology. As much as we try to talk about a lot of this coming from a fact-based approach, there is certainly an ideological element in different views that stems into this. An overarching view about defining freedom and defining liberty, which are much bigger debates than we are going to have in the next 10 minutes, are perhaps what helps frame a lot of these debates, and where I suspect your views and my views diverge from one another comes from that.

I have fundamental disagreement with your overall conclusion and thesis that efforts to regulate Australia's activities, no matter how well-intentioned, are directly reducing our welfare. I want to take you to task on what the three bits of evidence that we had this morning were, and perhaps where your evidence goes somewhere different to where that evidence went. It seemed to be the views of those earlier today—and again, I am summarising a lot of body of work in a very brief period—that there are externalities caused, they should try to be internalised as much as possible to try to reduce the overall impact of addressing specific issues.

I want to use the example of the lockouts, because I think that is an easy example to use, where there is an incident of violence at the nightclub district of Sydney, and how we want best address that. Is it a policing issue? Is it a behavioural issue amongst young people? Is that a better way of addressing it, or is locking out the entire place the best way of addressing it?

I get the sense from your body of work—and again, I do not want to do it in injustice—that you seem to go a step beyond that and actually question the entire point of regulation itself, and that you have a stronger view than those that were expressed earlier. Is that a fair assessment?

**Dr Green:** Yes, that is a fair summary.

**Senator DASTYARI:** I worry that you are going back to centuries-old economic theory to justify some of that. I would argue that the practical implications of regulation in this country have been incredibly effective. Is that something that you would not agree with?

**Dr Green:** I would not agree with that, no.

**Senator DASTYARI:** Where do you think it has worked? Why don't we start with what we agree on before we move to what we disagree on?

**Dr Green:** As I said in my statement, I am not aware of any situation or regulation where I have seen evidence that the regulation has resulted in increasing the total welfare relative to having done nothing. I am not aware of any evidence that that has ever happened.

**Senator DASTYARI:** Sir, I certainly do not believe you are advocating and I do not want to put words into your mouth but effectively what you are saying is—the only conclusion I could draw is—that you would remove all regulation if none of it has worked. Where do you draw the line? You do not seem to draw a line.

**Dr Green:** I do not draw the line; you are right. As I said, it is the evidence—and economic theory has good reasons for this. We are not talking about laws like, 'Thou shalt not kill,' and so on that have been around forever, where everyone knows it is wrong. We are talking about situations where someone has made some judgement, 'Gosh, if we implement this regulation the situation is going to be better,' in order to achieve some particular outcome. There is no evidence that I am aware of for that, and I have been looking.

**Senator DASTYARI:** Dr Green, I will just to run through a couple of examples with you. I assume you would not support plain packaging, but would you support taxing cigarettes?

**Dr Green:** You are coming back to the externalities-type argument.

**Senator DASTYARI:** I am trying to get a practical example. From a policy-making perspective, what would be the practical implementation of what you are saying in terms of regulation? They are quite revolutionary suggestions.

**CHAIR:** Ultrarevolutionary!

**CHAIR:** Oh come on, Comrade Leyhouhjelm!

**Dr Green:** I am not quite sure how to argue that. I will just answer it in the same way: what is the evidence that regulating the tobacco market increases total welfare relative to not regulating it?
Senator DASTYARI: The evidence would be its impact. There are people out there who are experts on this; I am not. We had one of them earlier today.

Dr Green: Shall I give a couple of examples from my mandated disclaimer paper?

Senator DASTYARI: Yes, please do.

Dr Green: Attempts to regulate the tobacco market by banning the advertising of benefits of tobacco—and when we are talking about 'benefits' and tobacco we are talking about relative health benefits: milder, less nicotine and so on. When being able to advertise those benefits was banned in the US the consumption of nicotine and high-tar cigarettes went up, and when the ban was reversed people tended not to advertise these cigarettes.

Senator DASTYARI: Now all advertising of this is banned.

Dr Green: Yes, that is right. My old grandad took me on his knee when I was four or five—cough, cough, splutter, splutter. He smelt of old rolled tobacco, and he made me promise him never to smoke. He died at 67 from heart failure.

Senator DASTYARI: Which I would argue is not a good outcome.

Dr Green: But then, who am I to make that assessment for other people? I cannot make the assessment as to how much pleasure he got along the way. I do not know the answer to that.

Senator DASTYARI: Dr Green, we disagree on so much. I do not know where to start with that statement.

CHAIR: That is because you are a senator. You know better than other people.

Senator DASTYARI: No, I am not pretending to know better. I am going to surprise you, Senator Leyonhjelm, and let you know that there are actually a lot of things I do not know. I do not purport to have thought about this. I do believe, Dr Green, that you come at this from a very, very different ideological perspective, and I respect that. I think that is probably a lot closer to the ideological perspective that Senator Leyonhjelm comes to a lot of these things from. By the way, I think what is important about this inquiry is that a lot of these debates are not really had. For those people who have a very different view to you towards regulation, I think we should have to justify this stuff publicly from time to time. I do not think that that is a bad social outcome.

I would argue on the cigarette example, though, that the healthcare costs, the social costs and the costs associated with those who are impacted by smoking—especially things like smoking in closed environments, passive smoking and all of these things—have been greatly reduced by heavy regulation of the cigarette market. That is something I think you disagree with. I am using that as a practical example.

Dr Green: Yes, I do, partly for the reason I suggested before. I cannot assess what welfare gains individuals who smoke get out of it. I do not think anyone can, apart from the individual. Also, we are in an uncertain, changing, complex world and the state of knowledge on most things is not very good. My understanding of the current state of knowledge is that the passive smoking argument is not being shown to hold up. But I can—

Senator DASTYARI: I will give you another one: the pool fence agreement.

Dr Green: Can I give another example?

Senator DASTYARI: Yes, do.

Dr Green: Coffee. I give this example in my paper as well. A study came out saying that coffee causes massive increases in pancreatic cancer risk. Of course, warnings went out from health authorities and all the rest of it: 'stay away'. There was another study on birth defects and warnings went out from the health authorities. I do not know whether it got to the point of regulation—I am not sure—but that would have been the next step, other than warnings, wouldn't it? The pancreatic cancer study was actually reversed by the same researchers a few years later when they tried to replicate their own study. Subsequent studies have shown health benefits from drinking coffee. Similar things have happened with wine.

Senator DASTYARI: The point is that sometimes people get it wrong and you make policy and regulation based on wrong information. I would argue that what you are saying there is completely right. You should reverse decisions if they are made on faulty data, and of course from time to time data does and will change. That is a matter of fact. To take it to its logical extreme, Dr Green, is it your view that the entire public health advocacy industry should be defunded from government? It is not the role of government to be funding this?

Dr Green: Of course it should be, yes.

Senator DASTYARI: You say 'of course' like I agree with you. I do not. I could not disagree with you more.
Dr Green: If they have a good case then we are all free, intelligent citizens and we can assess the case, just the same as smokers can assess the case. Please, tell us about the evidence that you have and we as individuals can make that choice, taking account of our own welfare trade-off. If I particularly like cigarettes or I particularly like coffee, I may well be prepared to carry on even though a new study has come out, but that would be my choice.

ACTING CHAIR (Senator Dastyari): Dr Green, this is a really fascinating conversation, so I think we could do this for hours. What about asymmetry of information? One of the arguments that were presented this morning by the Public Health Association was that you have this unfair playing field when it comes to the provision of information. The fast-food, unhealthy food argument says that, since there is a huge market out there trying to push people towards unhealthy food options for commercial reasons, we should be presenting an alternative view and presenting as much as possible the equivalent opposite information, and that the role of regulation, in one form or another, is to do one of two things: to limit the amount of information from the corporate side about fast food or to run awareness campaigns about healthy eating. We should be doing both things to try to combat that. I want to take you to another of the arguments, which is about how you deal with the asymmetry of information.

Dr Green: It is another market failure argument, isn't it? It is a version of market failure. In the introductory section of my paper Evidence on the effects of mandatory disclaimers in advertising, which I have attached, there is a reference to a study done by economist Clifford Winston, who looked at information provisions that were put in on the basis of those arguments, and his evidence that they did not help.

ACTING CHAIR: But in some cases, Dr Green, public awareness campaigns can and do work.

Dr Green: It is one thing having researchers and experts making statements. It is another thing if it is done under the aegis of the government, which lends it an authority which rather intrudes on people's decision making.

ACTING CHAIR: What about campaigns like 'Wear your seatbelts', 'Don't speed' and this and that?

Dr Green: Can we go back to the food ones? I provided all the examples that we could find where there is experimental evidence on the effect of warning labels related to food. The findings are that where meals were advertised as being low calorie or low fat people tended to consume more calories because they thought, 'Gosh, I've been so good—I can now have the dessert.'

Another example was labelling of fats and oils on salad dressings. The salad dressing one is a fascinating case, where the salad dressing manufacturers, being good sellers, wanting to give people what they wanted, knew that at least some people were concerned about fat and oil in their diet, and so they provided a low-fat, low-oil salad dressing and they advertised that. But then the regulator said, 'We know better than this, because we want to impose a mandatory labelling system that itemises all the ingredients and gives the proportion of fats.' The consumption of fatty salad dressing went up as a result of that.

ACTING CHAIR: From your perspective, Dr Green, doesn't that counter the argument? I am not quite following. You have lost me at this point, because the argument I thought you were making was that heavy-handed regulation fails when it is trying to restrict outcomes. But I am not sure why you would be opposed to the idea of providing consumers with more information and allowing them the freedom to use that information how they will. The point I am making is, if the consumer is provided with the information and they choose to make the decision to consume more, there would be some who would argue, I would assume, that that is very reasonable, in that the information is now there and you are not infringing on individual liberty because people can still make the choice. Yes, there may be a small burden on producers to provide that information, but that addresses the asymmetry of information problem.

Dr Green: That was our premise when we started the research on the mandatory disclaimers paper that I have given you, but we could find no evidence that any mandatory labelling had ever improved the outcome. As it happened, a couple of other researchers who I cite subsequently published a book. They were looking at a similar area at the same time and came to the same conclusion looking at a vast body of studies and different regulations on labelling. So, although we were surprised, in retrospect we should not have been, for the kind of reasons that we have outlined: a basic economic understanding of the motivations of sellers and buyers. Yes, sellers are very motivated to provide good information about their product. If a public health researcher gets into the media with a study with a particular finding and consumers become concerned about fats and oils then sellers are the ones who are most motivated to respond to that in a rational way, not imposing it on everyone but offering options for people who are concerned about it.

I go back to the question of knowledge and how much the regulator knows. I have lost track of it, but there is a lovely video clip probably from the sixties where there was a congressional hearing in the US on food. The expert on food at the time was saying, 'Senator, we really do not know enough to make any kind of strong statements about what food is good and what isn't.' The Senator said, 'You experts have got the luxury of saying, "We don't..."'
know," but we senators have got to do something about it.' That was the birth of the food pyramid that is now widely pooh-poohed because it is so strongly based on sugar—carbohydrate. It is now unfashionable on the basis of more recent research.

**ACTING CHAIR:** As much as I want to get into the paleo debate with you right now, I'm very conscious of time! Senator Lindgren.

**Senator LINDGREN:** I believe this question may be for you, Mr Rabl, but please forgive me if I am wrong. Can you please tell me at what point you believe people are born equal in both circumstance and ability? Since we understand that people are not equal, how do we know all will respond with good reason and intent?

**Mr Rabl:** We are clearly not born equal in terms of ability. In fact, I think something that is behind your question is that there are many commentators out there who think the notion of equality can be shown to be fairly meaningless. I pull my thinking back to the context of public policy and in particular to the regulation side of things that is before this committee and say that a starting point other than that people are equal in terms of their dignity, their rights, their freedoms and their obligations would be a very difficult starting point to take. It is because of that equality in those terms—and I do well understand that translating that into something like a constitutional guarantee has got massive difficulties. It does not mean it is wrong; it is just problematic to turn into practice.

I will go back to the very first thing I said. If we are to have a discussion starting from the premise that I have rights, it will be a very different discussion than if we talk about how we have equal rights. Some of the problems I have had with things I have heard in this room earlier morning is that they seem to me to be based much more on the premise that I have rights than that we have equal rights. If you do not go to the equality starting point, I just do not know where you get to understanding how decisions to regulate or not regulate are going to impact on other people—because they do.

**Senator LINDGREN:** Dr Green, I have to agree with a lot of Senator Dastyari's sentiments Do you think it is right to ignore the consequences that others have to deal with, particularly like heart attacks caused by smoking and diabetes caused by sugar? I tend to think a lot of the stuff you have been talking about is quite hypothetical and not necessarily realistic.

**Dr Green:** A lot of the studies I am talking about are based on natural experiments and investigating the effects of actual regulations before and after, so it is not theoretical at all. They are attempts to regulate consumption of things that some people regard as undesirable.

A friend of mine spent a large part of her adult life as a corporate wife—essentially in the background, helping out the kids and her husband. She is now in her 60s and out climbing the highest mountains in the world. I do not know the statistics on this, but I suspect the risk of dying from that is probably higher than the risk of dying from cancer. It seems like a crazy kind of thing to me, but I cannot judge the welfare benefit of that to her, can I? That is really her judgement. The costs of that clearly, in some sense, fall on other people too if she has to be rescued or her body recovered from somewhere remote. If the family is not paying for it, someone will, I suppose.

In the case of health outcomes, it is not an externality in the economic sense, because the government has created the situation by its own actions. Without the government's provision of public health, the health outcome would be completely private. In other words, the smoker or the person having a lot of sugar or whatever would be paying their own health insurance, and they are the ones whose lives are affected.

**Senator LINDGREN:** That brings me back to my point. As I talked about with Mr Rabl before, not everyone is equal. Not everyone has the same type of income. Some are from low-socioeconomic areas and do not necessarily have the ability to pay for private health insurance. For me a lot of what you were saying is going against what the experts are saying. I am going to rebut what you had to say here about their statements. They do not make statements without detailed research and data analysis. If they do sometimes find that the data is not necessarily correct, they learn from new data that comes along and then change policies according to that new data and statistics. When you look at, for example, the rate of injuries if a cyclist falls under a truck with a helmet on, of course they are most likely going to die; however, if they fall and hit their head with a helmet on, they are most likely going to survive that without any serious head injuries. Some regulations actually do save lives, and I do not understand how you believe that would not occur.

**Dr Green:** I am not aware of the evidence that cycle helmets are saving lives relative to—

**Senator LINDGREN:** No, I did not saving lives. Even with a helmet on you can still get hit by a truck and die. What I said was that, if you hit your head—not get hit by a truck—with a helmet on, you will most likely survive without serious head injuries. You would have other injuries for sure, but you would not have a serious
head injury. That is a proven statistic. The emergency doctors will tell you that. Brain surgeons will tell you that. Police and ambulance officers will tell you that.

Dr Green: What I suggest in my proposal is that, if someone is advocating a particular regulation, we should expect to see the proof in terms of evidence based forecasts of all the costs and benefits.

Senator LINDGREN: I think you would have to walk into a brain injury ward at the Princess Alexandra in Brisbane, for example, to know that helmets save lives.

Dr Green: That is one of the potential benefits that you would look at, but also—and I am sure others who are more interested in cycling have raised the point—cycle helmets seem to have put people off cycling. As a result of that, people do not get as much exercise as they might, perhaps. I do not know. There are all kinds of effects that regulation could have. Not having looked at that one in particular, I do not know the answer, but my presumption would be that—

Senator LINDGREN: This is a personal point of view.

Dr Green: Coming back to your point about saving brain injuries, if it is so clear that it is a benefit, then why do we need to regulate it?

Senator LINDGREN: Regulation is good to a point. In fact, it reduces a lot of injuries and it reduces a lot of other things. Without it, we would have hospital systems, certainly, full to the brink with a lot of other injuries. If we did not advise the public about smoking and its consequences, then we would have cancer wards filled with people who are smokers. There are statistics, Dr Green, and I do not think they are arguable.

Dr Green: This is effectively saying that people are stupid, isn't it? They cannot make their own assessment. You are saying that, if we did not tell people they have to wear a cycle helmet if they are cycling, then they would not look at the kind of evidence that you have described and wear their cycle helmet.

ACTING CHAIR: I think that is an unfair assertion. I do not think that was the point the senator was making. I know you did not imply that the senator was implying that people were stupid; you were looking at a theoretical framework. I think the point being made was that there are external social problems that are mitigated through the effective use of regulation. You have a different view to that. I am not sure we are going to resolve that.

Senator LINDGREN: No, absolutely not. It might be time to go to lunch!

ACTING CHAIR: There is a big ideological gulf between where we are and where you are. It has been very interesting to hear your views. Dr Green and Mr Rabl, thank you so much for being with us today. They were certainly very interesting presentations and it was a very interesting session.

Proceedings suspended from 12:32 to 13:16
IRWIN, Mr Patrick, Committee Member, Forensic Engineers Society of Australia

CHAIR: I now welcome Mr Irwin from the Forensic Engineers Society of Australia. Thank you for appearing before the committee today. Would you like to make a brief opening statement?

Mr Irwin: Thank you very much for asking our society to present and congratulations on a long-overdue and very important inquiry. I am a committee member and I am here in lieu of our president, who is John Lambert, who is a road safety expert, and our vice president, who is also unavailable—Mr Lambert being overseas and the vice president being put up with other business commitments. The Forensic Engineers Society of Australia is a CPD and networking organisation for engineers interested in forensic investigation. We have a wide membership of many different engineering disciplines. We have mechanical engineers, chemical engineers, industrial engineers, structural engineers et cetera. This is the reason why we made our submission very general rather than issue based or discipline based.

Our members share curiosity and share the experience of working in the legal industry, seeing what goes wrong and sometimes what is alleged to have gone wrong. Most of our work in the legal industry is in civil law but some is in criminal law. We also have some involvement in academia although we are not an academic organisation as such. Many of us also have some involvement in design or prior involvement in design, which is often a precursor to a forensic career, and many of the same involved in standard codes and regulations on organisations such as Australian standards committees.

We do not come here today with any specific ethical or ideological base other than our professional ethics and the general desire for things to be done for a good reason. To introduce myself briefly, I am a structural engineer by profession. My day-to-day professional activity is forensic investigation mainly for expert witness work in the building industry. I do a great deal outside that. In addition to my work with the Forensic Engineers Society, in which I am involved with putting the CPD program together, I am the national president of the Building Dispute Practitioners Society. I sit on the Building Appeals Board, which is a construction industry tribunal. I am currently sitting on two Victorian Building Authority committees advising on amendments to the building regulations and prospective amendments to the building act.

Given that our approach is a general one, I do not want to say too much about specific issues but there are two that I want to touch on briefly. The prevailing issues that most often come up at committee as dissatisfactions for overregulation tend to relate to road transport, specifically the fines industry—which means the speeding fines industry. This is an almost universally unpopular industry in Victoria where motorists are fined at 30 times the rate of motorists in the United Kingdom. This is, by definition, an industry out of control. It is accountable to no-one. It makes its own rules. It never reviews decisions liberally or policies liberally. It is not subject to any cost-benefit criteria.

Our president, John Lambert, who is a road safety expert, recently did a cost-benefit analysis for raising the speed limit on the Melbourne-to-Geelong road from 100 to 110 kilometres an hour. For those of you who are not familiar with that stretch of road, it is a six-lane freeway which is almost straight for some 70 kilometres. Mr Lambert found the benefits outweighed the costs by 80 times, and yet his submission fell on deaf ears from the authorities. Anywhere else in the world, a freeway such as that would have much higher limits.

I also want a briefly touch on the bicycle helmet laws. Whilst this is not an area that I have been involved in professionally, I have read some of the material and I am familiar with the difficulties of distilling robust cost-benefit analyses from the available data. However, I think that almost no matter how one interprets it, it is very clear that compulsory helmet laws are highly detrimental to mobility, to freedom, to public health and, almost certainly, to safety. I would like to cite the Kernot paper of 2008 as being the most comprehensive in this regard. Speaking as a cyclist, it is not surprising as it sounds. I have been riding a bike daily for almost 50 years. What keeps me safe is my sense of vulnerability. As soon as you remove that it is not surprising that there is a problem.

On average in Victoria you have to ride a bike for approximately 200,000 years to have a 50 per cent chance of being killed. On my calculations, about 70,000 years per 50 per cent chance of getting a serious head injury. Also, it is obvious from the bulky and unshapely profile of cycle helmets that they would increase neck injuries. The research clearly shows this. I personally know a colleague who is spending his life in a wheelchair as a result of a bicycle accident in which he was the only person involved, he was wearing a helmet and he did not strike his head.

By returning to that to our submission, we are engineers and we look for logical responses. On our building authority committees considering building regulations, we are prepared to remove building regulations and we sometimes do—or we liberate them or we revise them if other evidence comes to hand. The system in which regulation is introduced and constantly ratcheted up without appropriate and supporting independent cost-benefit
analyses, is a fatally flawed system. This seems to be the legislative system, particularly in the states and particularly in regard to road transport regulation.

We would like to see regulation of all types at all levels of government to be rational and accountable, to balance consideration and to not be driven by industries, such as traffic fines, attitudes of paternalism or other prejudices. We believe that, once enacted, legislation should be routinely reviewed, just as we review our building regulations. Thank you for your attention. I am happy to answer questions as best I can.

CHAIR: Thank you Mr Irwin. For the benefit of the other members of the committee, I note that the Forensic Engineering Society of Australia provides expert witnesses in legal matters involving insurance disputes, as well as accident reconstructions and safety assessments. The reason I thought they would be a valuable witness is that they have a particular method of calculating, if that is the right word, or assessing risk. They are, in fact, risk engineers. I think it is particularly relevant in the context of the sort of issues that we are dealing here that we understand that there is a methodology that is as close as we can get to science that actually assesses that risk. So Mr Irwin, with that introduction—and, hopefully, I have not overplayed your capabilities—my first question is: tell us how engineers price risk?

Mr Irwin: I have to preface this by saying it is not something that I do in my routine professional activity, but it is something that I have read about and been involved with occasionally. Risk is traditionally priced statistically. If there is a proportional risk of fatality or an injury or a damage to property, we have a percentage proportion, and you have to put a value on that adverse event. For instance, in road transport infrastructure, values are put on human lives and values are put on trauma if justifications for road improvement have to be justified on that basis. It seems to still be done a little for infrastructure, but it does not seem to be done for consideration of liberating rules and regulations.

CHAIR: I am familiar with their process of calculating risk for which there are actuarial tables, but how do engineers price risk—especially severe and rare risks—when there is no actuarial table around?

Mr Irwin: I cannot give you a clear answer to that. I think very often the data is based on estimates. It is rough and may be quite subjective. In cases where the risk assessment is very clearly one way or the other, that might not matter. You do not always need accurate data. I could take that question on notice and get you some better responses, if you wish.

CHAIR: I have some information that I want to ask you about in relation to the concept of ALARP—as low as reasonably practicable. Are you able to talk about that?

Mr Irwin: No. I have had a look, but I have not worked in that field. I can take it on notice.

CHAIR: Okay. In relation to road traffic laws—which is a favourite topic of mine but we are probably not going to consider it in the context of this inquiry—how do you develop cost-benefit analysis? You can use the road traffic example, if you wish. How do engineers develop a cost-benefit analysis in that context?

Mr Irwin: In the context of revising, or potentially revising, laws or regulations?

CHAIR: Yes.

Mr Irwin: It is not done really.

CHAIR: It does not matter what it is used for; a cost-benefit analysis is a good thing to do anytime.

Mr Irwin: In many transport situations, the major benefit is a saving of time due to the mobility. There may be others but that is the usual benefit, so that is valued. For instance, Mr Lambert uses $30 an hour for the value of saving time on a freeway. The costs can come in many forms. They may include additional fuel use and additional vehicle use, which can be valued on a basis of dollars per kilometre. They may include trauma. There are many other potential costs.

CHAIR: There is a logical problem with road traffic laws, so we will use that as an example to help understand your way of viewing things. If you lowered the speed limit to 10 or 20 kilometres an hour, you would probably eliminate all road deaths.

Mr Irwin: Yes. I think that is where we are headed.

CHAIR: Yes, it seems so. How would an engineer, your members, assess the cost-benefit outcome of doing that relative to, say, increasing the speed limit to 110 or 120 such as we see in other countries. How do you value the cost of people dying, getting injured and so forth? How does a cost-benefit analysis deal with those factors?

Mr Irwin: You can deal with the cost of the event of a death by giving it an arbitrary value. I believe the current figure is about $4 million, but I have to add that I do not work in this field routinely. You can deal with the value of other trauma by using insurance figures. You can put figures on those events, but you then need to...
estimate how more likely or less likely those events are and this is often very subjective. What Mr Lambert has
done for some of his work is simply accept the traffic fines industry's figures for the increase in trauma that may
occur if they increase the speed limit, for instance, on the Geelong Road. Those figures, in my view and in Mr
Lambert's view, are highly likely to be incorrect, because the serious accidents that have occurred on that road have
nearly all been freak events. Mr Lambert has done a study of them over about the last 10 years.

They suggest that it is not a situation where you raise the speed limit a little and you get a few extra adverse
events. You may; you may not. But, in that case, the cost-benefit analysis was so heavily weighed in favour of
raising the speed limit that it did not matter that that data was inaccurate and very likely conservative, resulting in
a benefit-to-cost ratio of 80. Perhaps the real figure is 200; I do not know.

CHAIR: The Public Health Association and supporters would attempt to ascribe a value to grief. Somebody
gets killed in an accident; there are mothers and fathers, spouses and so forth who are upset by that, and so that
and various other sources of grief would be assigned a cost. How do you guys deal with that argument?

Mr Irwin: I have not seen it done. However, in principle, everything should be costed if it possibly can. The
grief should be costed and the frustration of having to drive too slowly should be costed. Clearly the grief is a
much more severe event, but it is also very much less common.

CHAIR: So how would you do it?

Mr Irwin: I do not think it has been done. I have not seen it done.

CHAIR: Okay.

Mr Irwin: But you would usually use the dollar, of course, and you would try to put a value on it.

CHAIR: I am just struggling to think how the hard-headed objectivists who comprise your membership would
approach this subject. It seems to me to be something that would be inconsistent with your data based analysis.

Mr Irwin: I do not think it is inconsistent if you have a value for the adverse outcome of death that also
includes the grief and the many other components that surround a death.

CHAIR: Would engineers be comfortable assigning a value to grief?

Mr Irwin: I do not think we would. I think we would certainly look to input from other professions. I have not
seen it done, and I do not even know if it is considered to be rolled into that nominal $4 million or whatever it
may currently be as a nominal value of life.

CHAIR: I have a question here prepared by one of my staff. I am not sure whether I am assuming that you
have read what she has read or this is from your submission, so you can tell me. There is a statement from the UK
government's Health and Safety Executive which says:

ALARP does not represent zero risk. We have to expect the risk arising from a hazard to be realised sometimes, and so for
harm to occur, even though the risk is ALARP. This is an uncomfortable thought for many people, but it is inescapable.
Are you familiar with that? Is that in your submission?

Mr Irwin: No, it is not in my submission, but it sounds familiar.

CHAIR: It continues:

Of course we should strive to make sure that duty-holders reduce and maintain the risks ALARP, and we should never be
complacent but, nevertheless, we have to accept that risk from an activity can never be entirely eliminated unless the activity
is stopped. This relates to the issue of the "tolerability" of a risk …

And:

It also goes some way to explaining why risk assessments feed into contingency planning.

Is that concept something your members confront or deal with as part of their work?

Mr Irwin: Yes.

CHAIR: You are familiar with that, so tell me the difference between ALARP, as low a risk as possible, and
personal choice regulation as it currently exists in Australia—if there is a difference or you do not distinguish.

Mr Irwin: ALARP does not necessarily apply to personal choice regulation; it is simply an approach. It is a
logical engineering approach. You try to engineer out as many risks as possible, as I understand it. I have to add
that I do not practise routinely in this field.

CHAIR: No, I am aware of that. But do you think ALARP is applied to personal choice regulation in
Australia?
Mr Irwin: No, I do not think it is, because I think you would be a lot more restrictive if you were really trying to get risks as low as possible and if you were particularly centred in on these sorts of trauma and health risks and were not concerned about mobility and lifestyle and so on.

CHAIR: In your submission you mentioned that a regulation that is no longer justified should be repealed.

Mr Irwin: Yes.

CHAIR: How would you or your members determine whether a regulation is no longer justified?

Mr Irwin: There are a range of possible criteria for a regulation no longer being justified. It may not pass a cost-benefit analysis. It may be technically redundant. It may have such a low level of compliance that it is not appropriate for it to be regulated.

CHAIR: Are these matters of interest for your members with their expertise in engineering? Do they get involved in these issues?

Mr Irwin: Some would.

CHAIR: Can you give any examples of where engineers have recommended that a regulation is no longer justified?

Mr Irwin: Yes.

CHAIR: You mentioned the speeding issue.

Mr Irwin: I was at a committee meeting on Monday regarding the building regulations. It was the view of the committee that one of the building regulations should be deleted because the level of compliance is so low.

CHAIR: This brings me back to the risk assessment argument. What did you conclude? How did you conclude that any change in the risk situation was sufficient to not to maintain the regulation, notwithstanding poor compliance?

Mr Irwin: Perhaps that was a poor example for me to choose. It was a convenient one for me because I attended that meeting just on Monday. Perhaps it was a poor example, because the adverse outcome of the noncompliance was only administrative. Direct cost risks would be minimal and very difficult to quantify.

CHAIR: Do you have any other examples?

Mr Irwin: Of where we would recommend a regulation be removed?

CHAIR: Yes.

Mr Irwin: It is certainly my view that the mandatory bicycle helmet laws should be removed. But that is not something that I am aware of any of my colleagues recommending professionally or having been asked about, because such regulations are not reviewed. They are certainly not reviewed with an open mind.

CHAIR: Suppose your members were invited to contribute in a professional capacity to that, how would they approach it? I am interested because I think your members at least—and I know it is not your professional area—are involved in trying to calculate risk and put a value on risk in a professional capacity. So let's say somebody said, 'Do that for bicycle helmet laws,' how would they go about it? What factors would they take into account and how would they assign values to them?

Mr Irwin: You would have to start by gathering all the data. There is a great deal of it out there. A lot of it is rather rubbery and a lot of it is getting rather out of date. So you would have to get a robust dataset, which would be difficult.

CHAIR: What would the dataset cover?

Mr Irwin: The dataset would need to cover mobility, quality of life, freedom, health, trauma and costs—such as for the purchase of helmets—amongst other factors. I have not seen a study that has not said that the health benefits of cycling—again, this is not something in which I practice routinely—massively outweigh the trauma risk. You would have to have that in there. As soon as you have that in there, the trauma factor starts to disappear. You have to wait 200,000 years to be killed.

CHAIR: For a bunch of qualified mathematicians, though, you would be comfortable with the value of health benefits or the lack of health benefits because there is data available on that. You would have data on trauma. How would you assign a value to freedom or quality of life?

Mr Irwin: I do not know. It would have to be arbitrary. Again, I do not think that is a field an engineer would decide on. We would look to another's expertise. Very often it is not necessary because the cost-benefit analysis is so grossly skewed, such as in the example of the freeway speed limit.

CHAIR: What do you think is the most dangerous thing that most people do every day?
Mr Irwin: That is a good question. I think the answer to that is what we are doing now—sitting. They say that sitting is the new smoking. None of us get enough exercise.

CHAIR: There are a fair few people in this place who would say, 'That's very interesting. We'd better regulate that.' How would engineers approach the assessment of whether you are right or not?

Mr Irwin: We would not, because that is a health science issue. It is not an engineering issue.

CHAIR: Oh, I am disappointed!

Senator LINDGREN: My question is probably out of sheer ignorance, so excuse me if the question does not make a lot of sense. I am just about ready to build a home. I just read your qualifications. You are very well qualified in the engineering aspects around building and design, so I just want to pick your brains a bit. Are there any examples of where we could deregulate because of the low costs or risks associated that you talked about earlier? Probably when they were first regulated there was not the quality data research as to why they should be regulated. For example, in a cyclone area in North Queensland, if we did not regulate the type of building structures up there we would see the cost analysis be quite high every time a cyclone came by and our insurance premiums would all skyrocket. Can you, as a building design expert, give me an example as to what sort of things at low cost and low risk could be deregulated. Is there something we should not be deregulating because of the cost analysis and there is nothing wrong with leaving the regulation there just in case there is some home handyman or builder who might not be as skilled up on risk assessment as they should be? These laws are not necessarily not relevant.

Mr Irwin: No, not at all.

Senator LINDGREN: As a building expert, what do you say? I would say, 'Leave them there. It is better to have them there than not just in case a home handyman does not do a risk assessment before they build a home.' The laws are there to safeguard everybody, I think. I am interested in your personal opinion. Excuse my ignorance around this stuff.

Mr Irwin: I am happy to talk about building regulations for the rest of the afternoon, if you wish! It is not my view that we have the sort of overregulation problem with the building industry that we have with traffic. Our problem with creeping regulation is that everything gets more complicated. When you revise regulations it is hard to take out as many as you put in. However, there was a major liberalisation of building regulations about 25 years ago when the performance approach came in. It used to be that if you wanted to build a firewall on a boundary it had to be double brick. That was where you had to do. It had to extend 1,200—

Senator LINDGREN: Is that because of scientific research?

Mr Irwin: I will just explain how the base has changed. I am speaking here of Victorian regulation, but it also relates to the national code. The Building Code of Australia came in with the approach, 'No, you can build the wall out of anything you like, as long as you can justify that it is going to perform.' It was performance based. That has been applicable to building regulations for about 25 years. It avoids the situation where people are forced to build unnecessary infrastructure when there is a more intelligent solution.

There is another approach that we have. I sit on the Building Appeals Board in Melbourne. We deal with modifications. A builder can come to us and say, 'I know this regulation requires a certain width of stairway, but in this case its not necessary for all these reasons.' We will grant that appeal if we are satisfied that the application is appropriate. A constraint on that that applies to buildings is that you always have to you consider the scenario that the building will be used by someone else. So somebody saying, 'I don't care if my house looks like Ettamogah Pub,' is not convincing; it is going to be passed on to somebody else. We are still of a view that minimum standards have to be adhered to, but we have those exceptions that can be reasonably justified. It is actually quite a flexible industry, but the problem we have with it is complication. It is complicated regulatorily, and it is complicated in terms of standards. Did that answer any of your questions?

Senator LINDGREN: You did say something interesting then. We talked about bicycle helmets and road laws and rules and stuff like that. It is just interesting that you said that we have these minimum standards because it may be used by somebody else. That statement could apply to many other things, including the roads—cars and bikes sharing. There are regulations to make sure that terrible things do not happen. That concept you just mentioned, or the ideology around that—that other people may use it—is an important point.

Mr Irwin: It is applicable to infrastructure but not applicable to what you eat or what you smoke or what you wear on your head when you are walking or cycling or running.
Senator LINDGREN: With smoking there is secondary smoke for others. That is why maybe you cannot smoke outside a government building, within 10 metres, and all these sorts of things, because other people do use those spaces. So that is a very, very important point.

Mr Irwin: It is not a field for engineers.

CHAIR: The engineers would have trouble with that one, because there is no evidence that you can get secondary smoking problems from 10 metres away. But engineers are not involved in that debate.

Senator LINDGREN: No, but it was just the point that other people share spaces. That is the important point. Whether it be a road or a building or a house, there are regulations around that to safeguard everyone who may use that building either now or in the future. So I think it is a very important point that you are making.

Mr Irwin: I know it is strictly outside my field, but I would just like to say very briefly on the smoking thing that I think the difficulty you have with it in viewing it as a purely behavioural, health or ethical issue is that there is a broad feeling that we need to get rid of tobacco use, to evolve away from tobacco use. I think that clouds a lot of the regulation. You may agree or disagree that we should evolve away from tobacco use, but I think that is the general direction. But I will not say any more on that, because I do not have a specific view and it is not my field.

Senator LINDGREN: I am not talking about tobacco or anything specifically. What is interesting for me is that most spaces are shared by people and that we have to accommodate everyone in that shared space, and that is a very important point for me.

Mr Irwin: And to go back to the first part of your question, about your proposed house—

Senator LINDGREN: It is in council waiting for approval, and I would like to think that when they sign it it is not going to fall down!

Mr Irwin: I would recommend that it is very helpful to understand what the minimum requirements are and what the processes are for ensuring that they are undertaken and whether they are adequate for you, because minimum requirements can be pretty marginal.

Senator LINDGREN: Well, for someone who has no building knowledge, I am relying on experts such as yourself to ensure—

CHAIR: But do not just go for the minimums.

Senator LINDGREN: Absolutely not.

CHAIR: Mr Irwin, you have agreed to take a couple of questions on notice. The secretariat will send them to you. Is a two-week period for those to be returned sufficient for you?

Mr Irwin: If we could have three, that might help. I cannot speak for other members. I do not even know who might be taking the questions at this point. If you could give us a bit more time, we would appreciate that. If you cannot, we will do the best we can.

CHAIR: Okay; we will make it three weeks, if possible. That would be helpful.

Mr Irwin: Also, I do not know whether you are aware of this, but there is a Risk Engineering Society as well.

CHAIR: No, I did not know that. I do not think they put a submission in. Thank you for that. And thank you for coming in today and for your evidence. It is very much appreciated.

Mr Irwin: Thank you for the opportunity. I hope it has assisted.
BERG, Mr Chris, Senior Fellow, Institute of Public Affairs

BREHENY, Mr Simon, Director, Legal Rights Project, Institute of Public Affairs

[13:49]

CHAIR: Welcome. Thank you for appearing before the committee today. Would you like to make a brief opening statement?

Mr Berg: It is the view of the Institute of Public Affairs that paternalism is an unstable and illiberal basis for public policy. What do we mean by 'paternalism'? It is important to be conceptually clear, because many policies have, rightly or wrongly, been lumped under the phrase 'nanny state'. John Kleinig defines paternalism as when 'X acts to diminish Y's freedom, to the end that Y's good may be secured'. That is, an outside person—in this case, the government—prevents you from doing something that you want to do and does so in your own benefit.

Today I am going to make three arguments about paternalism. The first is that paternalism has a long history. The belief that the state should control people for their own good is arguably the oldest political philosophy. But modern paternalism leans heavily on the findings of behavioural economics, which can be summed up simply as 'people often make bad choices'. Under this argument, we are irrational: we underestimate risk, we employ wishful thinking, we discount information that conflicts with our beliefs. Many of these cognitive errors are predictable. Paternalism therefore uses the state to remedy or mollify them. In our view, this argument for paternalism is distinctly one-sided. Policy makers are as susceptible to the cognitive errors that are commonly attributed to consumers. Policy makers deploy heuristics. They also search for evidence to confirm their beliefs, and they are biased towards action in the face of unknown risk. Behavioural economics should make us more sceptical about paternalism than we previously were. Paternalist intervention should be seen as a trade-off between error-ridden consumers and error-ridden policy makers.

My second point concerns ignorance. Values are subjective, and it is a non-trivial task to determine people's best preferences. Not everybody shares the same tolerance of risk. Some people prefer hedonism to health. Policy makers cannot assume that they are acting on behalf of people's best interests when those interests are diverse and even unknowable. In their book *Nudge*, Cass Sunstein and Richard Thaler try to deal with the subjection by asking people what they would prefer in retrospect—that is, by asking people whether their past decisions were correct according to their own values. This way, they can try to divine people's true or unbiased preferences. Unsurprisingly, people regret a lot of their choices. But it is not clear why retrospective preferences are more true than current ones. Why should our future selves have a veto over our current selves? After all, not all regret is rational, and our future selves are subject to cognitive error as well.

The final point I would like to make today is that paternalism is fundamentally undemocratic. Paternalism treats citizens like subordinates. The paternalist's model of irrational individual choice is starkly at odds with the democratic philosophy of individual choice. We all believe as democrats that adult Australians have a moral right to make political decisions. We believe that Australian citizens have the minimum level of rationality and autonomy to choose who to vote for, which is one of the most informationally intensive decisions an individual is asked to make. My argument is that we are exactly as rational in the voting booth as we are in the supermarket; the voter is the same as the consumer. So, what are elected policy makers suggesting when they argue that their elected or appointed bureaucrats can make consumption decisions on behalf of the public? That is, by asking people whether their past decisions were correct according to their own values, they are capable of making consumption decisions at the same level of rationality as the consumer. But that is not the case. Policy makers cannot assume that they are acting on behalf of people's best interests when those interests are diverse and even unknowable. In their book *Nudge*, Cass Sunstein and Richard Thaler try to deal with the subjection by asking people what they would prefer in retrospect—that is, by asking people whether their past decisions were correct according to their own values. This way, they can try to divine people's true or unbiased preferences. Unsurprisingly, people regret a lot of their choices. But it is not clear why retrospective preferences are more true than current ones. Why should our future selves have a veto over our current selves? After all, not all regret is rational, and our future selves are subject to cognitive error as well.

CHAIR: Mr Breheny, do you have a statement?

Mr Breheny: No, that is the only statement we have today.

CHAIR: You touched on this in your opening comments, but perhaps we can expand it a little more: you suggest that many public health policies are paternalistic. At what point does a policy cross the line from a basis in externalities to a basis in paternalism?

Mr Berg: This is an issue that is of great philosophical contention. A lot of philosophers and sociologists talk about the intent of the policy. As you well know, some paternalistic policies are often dressed up or often argued about in the context of externalities. The most common one is health decisions that put an externality cost onto the public health system. In my view, if we were concerned primarily about the externality costs of public health we would not be choosing to regulate the decisions of consumers; we would be choosing to involve consumers more in the cost of their own health care themselves. We would be looking at incentives based on market based health care. For example, we would be talking about price signals in health care in that context. I argue—and I think this
is borne out by a reasonable reading of the debate in this area—that the health arguments for stopping people making their own health decisions are primarily paternalistic ones rather than externality ones, but I agree that we have to mount both arguments and we have to contend with both issues.

**CHAIR:** When is it possible to justify a public health regulation on the basis of externalities?

**Mr Berg:** The question would be: what would the cost-benefit analysis be? Your previous discussion raised many issues with determining an appropriate cost-benefit analysis. But if you were going to regulate society, regardless of whether it is in health or the economy or anything like that, you should be doing so in full awareness of the costs and benefits, including psychic costs and psychic benefits, such as to individual choice or to the philosophical issues I raised about the relationship between citizen and state—our ideas of individual liberty.

**CHAIR:** Is there an absolute here? Or is it a relativity thing? Let's bring in some examples—say, fluoride, vaccination, clean water and sanitation, which have public health benefits, and we have regulations in respect of them, but we also have regulations in respect of other things, such as smoking, alcohol consumption, labelling of food and so forth. What is the distinction there?

**Mr Berg:** There are a few distinctions. Vaccination is an important one, because it is clearly a third-party-harm issue, so we require vaccination in order to protect other people as much as we do to protect the person who is being vaccinated. The idea of clean water is one of the traditional public health measures. In the 19th century we drained swamps, we introduced public sanitation. Those are traditional public health measures, because they have community impacts. The individual does not bear the primary cost of their own choices in that area. I think that is a legitimate area for state action—or it is certainly a legitimate area for public health concerns.

The alternatives on that side—as you mentioned, tobacco, alcohol, fatty food, sugar and so forth—are much more clearly internalities. The people who consume them bear the costs of those choices, primarily, and therefore I would suggest that they would meet the paternalism or nanny state definition.

**CHAIR:** There is a distinction in the literature between stated preferences and revealed preferences. Are there any implications of these for public health policy?

**Mr Berg:** Yes, there are many. 'Stated preferences' refers to what people say they prefer when asked—in surveys, polls and so forth—particularly in the case of public health. 'Revealed preferences' refers to what they actually do. Some would argue that revealed preferences are true preferences and stated preference are not. In the argument I raised with respect to Cass Sunstein and Richard Thaler, they try to bridge the gap between revealed and stated preferences by saying, 'Well, if people regret their decisions, and if we get a true statement of regret about their decisions, then we can say that they have made wrong decisions according to their own values, rather than the values of the paternalist.' I do not think this quite holds true because even stated preferences are as susceptible to the behavioural economics criticism as any reveal preferences. As I said, regret is not necessarily rational. We might be overestimating how much we have drunk or how little we have drunk, we might be underestimating the benefits that we received at the time and so on and so forth. Understanding the true nature of preferences is one of the most complicated areas in economics, which is the area that I am most familiar with, and it is one that I do not think the profession fully grapples with. The idea that someone external to the self could decide what our true preferences are does not have any intellectual credibility whatsoever.

**CHAIR:** What is the knowledge problem? Why does it raise particular problems for public health advocacy?

**Mr Berg:** The knowledge problem was formulated by Friedrich Hayek. It states that policymakers are unable to gather the large quantities of knowledge, and particularly tacit—that is, local knowledge—about the society they are trying to regulate in order to regulate in a more effective way than the status quo or the way the market or society would direct us. The knowledge problem is another way of rephrasing my position about understanding true preferences. There is no way I would be able to gather enough information to divine your true preferences outside of just seeing what you do because I physically cannot get that information. It is not a matter of computing and it is not a matter of needing more survey data; it is that I am unable to understand your personal preferences when it comes to things like consuming alcohol and tobacco and so on.

**CHAIR:** Do you think that knowledge gap, where you cannot divine my preferences at a sufficiently high level, justifies you leaving me alone? Or can you envisage that it is irrelevant and that in a policymaking sense you are entitled to say, 'Okay, I still know that this ought to occur in your interests'?

**Mr Berg:** I think this comes down why we think we are regulating peoples' choices. Do we think we are regulating peoples' choices according to their own value system? Are we trying to divine their true preferences or, alternatively, are we trying to impose a value system on them. It is easy to decide what a value system might be that we could impose on them. For instance, policymakers might decide that individual choice should not be trumped by the values of the policymaker—for example, long-term health and so on and so forth. If the paternalist
CHAIR: That touches on this issue of the illusion of competence, although it is probably a bigger issue. The factors that we see many times are policymakers who think that expertise in one area confers expertise in other areas. Can you describe how that influences policy development and policymaking.

Mr Berg: The illusion of competence is a very well demonstrated psychological bias in people with authority, whether that is political, bureaucratic or intellectual authority. It has been demonstrated very widely that this applies to experts across the board in lots of different fields. My concern is that when you devolve power to experts, whether they are in independent agencies or in positions of power and so forth, we are assuming they have more capability to divine people's preferences than they do. Experts tend to be experts in specific areas. Those specific areas give them personal views about the way the world should be. But the task of a policymaker is a very, very deeply complicated one, particularly in the paternalist era, and I am not convinced that, say, putting a bunch of public health experts, obesity prevention experts, into positions of power is actually giving policy-relevant and value-neutral information. That is the way the expert overconfidence plays out in this.

CHAIR: We often hear Nobel Prize winners, for example, or individuals famous for a particular area or for winning a Nobel Prize in a particular area, like physics or economics or something like that, who then are characterised, or characterise themselves, as experts in solving the Israel-Palestine issue or world peace or whatever. Do you have an explanation for that? I have heard the argument that, if they are very good at that, therefore they must be good at this. But obviously that is not necessarily true. What is your assessment of it?

Mr Berg: Experts, even when they are working in their own area, have a very poor forecasting record, as the sociologist Philip Tetlock has demonstrated about expert overconfidence, even in their own areas of expertise. When you ask anybody to solve a complicated system, whether it is the Israel-Palestine conflict or individual incentives when it comes to health, they are more likely to be wrong than right, regardless of how expert they are in those areas. I have no problem with Nobel Prize winners having views on various things, and I suspect that the public culture and the media select them to opine outside their areas of expertise. But I do not think we should kid ourselves that even the smartest people in the world, even the greatest experts in the world, have the solutions to incredibly complicated systems. I think we need to look beyond that. I think we need to structure our political systems so that they are incentive-compatible to individual choices.

CHAIR: I want to talk about advertising for a moment. Advertising has been raised by previous witnesses today as allowing dominance by, in particular, major corporations, for which the government needs to 'balance the playing field'—that is the term used. Do you think advertising is coercive? What are your thoughts on it in general?

Mr Berg: I do not think speech is coercive, so I do not think advertising is coercive. With the argument to do with advertising, we need to be very clear about who we are talking about protecting from advertising. If we are protecting adults from the effect of advertising, I think that is clearly deeply patronising, if nothing else, and it suggests a model of adult autonomy that is deeply undemocratic, as I spelled out in the opening statement. If we are talking about protecting children from advertising, it gets more complicated again, and in a quite interesting way. Children might be very susceptible to advertising. As a society, we view children as having less autonomy than adults, and I think it is right that we do so. They are less psychologically mature and so forth. But children are also subject to the most paternalist regulation out of anybody, in that their parents are the paternalists. In their lives, their parents have an absolute right under the law and absolute control about what those children do and do not eat—certainly when they are preteens, which is when we talk about them being most vulnerable. If advertising is breaking down the power of paternalists, as in the parental paternalists, I do not think that is a very good story for paternalism in general—the idea that the ultimate paternalist is unable to withstand the force of speech. I think that is a deep criticism of all of our mental capacities, and it is a deeply undemocratic one at that.

CHAIR: For the benefit of the committee, could you define the term 'behavioural economics'? You touched on it.

Mr Berg: Yes. Behavioural economics is a field of economic study in the last couple of decades that has brought psychological elements closer in to models of choice. The committee will be very familiar with the belief that some economists have purportedly had that people are rational actors under all circumstances, they make perfect decisions themselves and they weigh up all the costs and benefits of their actions. Behavioural economics first chips away at that model of rational actors and it also tries to enrich and enliven how we understand people make choices. The lessons they have are that people are affected by all sorts of biases: they are affected by over-
confidence; they are affected by loss-aversion; they have got action bias and then, on the other side, they have status quo bias, and so on and so forth.

My argument in the paternalist sphere—and many paternalists use the findings of behavioural economics to mount the case for state action—is that behavioural economics has some really important lessons for the way governments act as well as the way politicians act, the way bureaucrats act and the way public health activists act. We have to look at behavioural economics on both sides of the legislative barrier.

**CHAIR:** In your submission, you argue that the behavioural economics case for paternalism has been vastly overstated. I know you have got on to that a bit, but why is that precisely?

**Mr Berg:** I think a lot of people have seen these findings as a significant blow against market rationality—and in some way they are. They are a substantial critique of the market rationality that sustained, for instance, the Chicago school of economics that drove much of the 1980s deregulations and so forth. And a lot of people have seen chipping away at rationality as a rebuttal of those principles. In my view, however, behavioural economics gives us a lot of really interesting insights, but it allows us to view government action and individual action in a much richer way—in a way that I think sustains an argument for individual responsibility rather than state responsibility.

You and I have more knowledge, we have more capacity, we have more responsibility and more incentives to look after our own choices—to make the choices in our interests. We might not make those best choices, but there is no reason to believe that others will make better ones for us. They have less information and they are as susceptible to cognitive error as we are, but they have less incentive to make the right decisions.

**CHAIR:** I was interested, also, in your thoughts on the intersection between public health policy and elitism. Some examples might be where the sin taxes have a greater impact on products consumed by the poor, as opposed to those of higher incomes. Could you talk about that?

**Mr Berg:** Paternalism has always had, in my view, an element of class to it. The history of paternalism, particularly in the 19th century, was the idea that the middle class or the upper class needed to look after the lower classes, in their own interests. We have had some really substantial ideological shifts in paternalism that have moved those ideas away from an explicit elitism and an explicit moralism to the medical focus that we have today. I think that still underpinning that view is a principle that there are more educated people, there are experts, there are elites who have the right to override our own choices in our own interests, and they have the capacity because the people who are making the wrong choices tend to be of lower socioeconomic status. Unfortunately this means that, when you do things like raise taxes on alcohol or cigarettes, you are disproportionately harming the most vulnerable people in Australia—the poorest people in Australia.

**Senator LINDGREN:** Mr Berg, if a doctor diagnosed you with cancer tomorrow you would go to an expert and ask for a second opinion, wouldn't you?

**Mr Berg:** Absolutely.

**Senator LINDGREN:** So why wouldn't you think that the government would not consult an expert in terms of policy or legislation?

**Mr Berg:** I have no problem with the government consulting experts. I think that we should be modest about what the information those experts give us teaches us for public policymaking.

**Senator LINDGREN:** Then are you suggesting that we go to nonexperts for policy legislation?

**Mr Berg:** Not in the slightest, but I am suggesting that we weigh up values that those experts might not be expert in. It is very easy for experts to tell us that there is a crisis in some health area but not sufficiently weigh our individual rights to make decisions ourselves and so on and so forth. You could perhaps imagine a single expert or an expert panel that could sufficiently weigh all those individual and complicated factors in but, ultimately, many of these values are defined at the individual level, not at the state level or not at the aggregate level.

**Senator LINDGREN:** You have to understand, though, that governments are not dealing with individuals; they are dealing with millions of people. When you legislate something it is to protect society, not just an individual. I do not understand where your thinking is coming from. Are we to have no legislation and have everyone just think for themselves? Another witness said that everyone is born equal, but that is not the case. You are suggesting that everyone has the cognitive ability to rationalise certain things, but there are certain sections of society that cannot rationalise things and need some legislation, need some help to guide them.
Mr Berg: There are a couple of things in that. I particularly do not like the argument that some people have less cognitive ability than others, and that therefore means they are incapable of making choices, or that they need help to make those choices. The reason I find—

Senator Lindgren: There would be some in society who would have that. There would be disabled people who cannot speak for themselves; there are mentally ill people who need assistance. I am struggling to see your point of view around those people, and I think it is right and just for governments to legislate to make sure that those people are not harmed.

Mr Berg: I have absolutely no problem with help for mentally ill people, for people with disabilities and so on and so forth. My concern is the argument that there are some people out in society who are cognitively unable to make decisions about what they eat, cognitively unable to make decision about what they drink—well, are they cognitively able to make decisions about how they vote? It is a fundamental democratic principle that people have a base level of autonomy in order to make voting decisions; I would argue that we should extend that base level of autonomy to the decisions they make about their own bodies. I have no problem with information provision to help people make better choices, but I have really strong objections to preventing people from making some choices they believe are in their own best interest.

Senator Lindgren: Have you got a power of attorney, Mr Berg—so if something happens to you, you have someone who could make a decision on your behalf?

Mr Berg: I would have to check my will.

Chair: I want to come back to the issue of: if you are deemed competent to vote and to elect our government, you should be deemed competent to make decisions about your personal life. I think it is a fascinating argument and I wonder why we separate the two. Has it not been raised before? Or is there an argument that says they are two separate things?

Mr Berg: I have not seen it well discussed and I have not seen it particularly well responded to. If you raised that argument with future attendees, I would be interested to see how people go. One of the philosophical principles, I think, in economics, particularly, is that you apply the same model of human behaviour across areas of human choice. Sometimes the incentives in various areas of human choice make it easier to make bad decisions. Then we have to talk about how we can better align those incentives. But, in my view, the incentives to make bad decisions are actually far greater in the voting sphere than they are in the personal choice sphere.

Chair: Absolutely. They might elect the Greens.

Mr Berg: I choose not to comment. In the voting sphere, you are very unlikely to wear the cost of the choice you make in the ballot box. When you go to the supermarket, you are very likely to wear the cost personally. It is more likely to be internalised. That is why many economists talk about the idea of expressive voting—that we vote in the ballot box just to associate internal feelings or that we are rationally irrational when go to the ballot box as we are comfortable making decisions that we know are uninformed because we know that our vote, statistically, is going to have very little impact on anything in our personal lives.

Chair: Professor Chapman has developed a proposal based on consumer licensing of smokers. Could you describe that and give us a view on it?

Mr Breheny: Are talking here about the licensing regime which would come into place gradually over time starting at a particular point in time?

Chair: I confess that I have not actually managed to bring myself to read Professor Chapman's proposals in any great depth. I am assuming you know more about it than I do.

Mr Breheny: There are two separate proposals in this area. They are similar, but the implementation is different. One of those has been discussed in Tasmania in recent months. That would involve a complete ban that would come into place for people born after a certain year, which, obviously, would recover more and more of the population as time goes on. The regime that, I think, Simon Chapman has floated—I do not think he has talked about this in great depth as yet, although I expect he will probably expand on these ideas in the next few years—would put in place a licensing regime. I do not think that, at this stage, he has made clear the details. A licensing regime would mean that you would pay for a licence, and the government would determine whether you were an appropriate person to hold such a licence in order to purchase tobacco products.

Chair: The proposal in Tasmania—which is not the one I have heard about—was that you could not buy any tobacco products if you were born after a certain date. Is that the proposal?

Mr Breheny: Yes, exactly. It is a complete ban. So it is a total ban on tobacco products, which is placed, I guess, behind a veil of being a more reasonable proposal by the fact that it comes in gradually over time. I think
the proposal is getting to the problem that policymakers face in this area, which is that you have people who have been smoking for a long period of time; if you put in place a population-wide ban on smoking now, there would be a lot of unhappy current smokers. Of course, a proposal like this ignores—just as a lot of policies in this area ignore—the rise in illicit tobacco which we have seen following the introduction of various policies over a number of years, but most recently plain packaging.

**CHAIR:** It seems to me that this notion of licensing leading to prohibition is always under the surface in the consumer choice advocates—and, no doubt, the opponents, I suppose, of consumer choice; in other words, the public health arguments. And yet Simon Chapman himself argues against prohibition—I have certainly read that. Do you think they are coming from different perspectives, or is it: 'Let's first regulate it, then increase the regulation and, finally, ban it'? Do you think that is a progressive idea? Or—as I think I have read Chapman argue—is it: 'Let's just regulate it very, very severely and discourage it, but if you prohibit it you will encourage the black market and all that kind of thing'? Are they coming from two different perspectives?

**Mr Breheny:** Chris and I might have different views on this, but I think beneath all of these proposals is the idea that the ultimate goal should be complete prohibition—or the ultimate goal should be that no-one ever smokes or that no-one ever drinks. Whether the policies that public health sociologists like Simon Chapman in fact want to put in place, today and tomorrow and over the next 10 years, will get there, I am not sure, but I think that that is the ultimate goal. If that is where they can get to with these policy proposals, I think they would believe that to be a good thing.

**CHAIR:** The Public Health Association this morning gave evidence and said that, no, that was not their intention. Their argument is that the government has stewardship responsibilities, which are essentially to level the playing field, to use their terms. That is a code word for all sorts of things, of course. But their argument was that the field was not level because of the impact of advertising.

**Mr Breheny:** That certainly cannot hold true, of course, in the case of tobacco—one of the most regulated products in Australia.

**CHAIR:** Yes. It also seemed to me, reading the Public Health Association's submission, that advertising by major corporations was probably worse than advertising by anybody else. So I wondered whether there was an element of, I suppose, a fairly widespread perception that big companies are worse than small companies inherent in that sort of statement? Have you examined those arguments in any detail, and have you sought to address them directly?

**Mr Berg:** I think the level playing field argument is a very common one, and particularly they look at advertising. My immediate response is: if you buy that argument—if you find it a compelling argument that advertising by large multinationals creates an unlevel playing field for consumers—then the response is obviously to level it by doing countervailing advertisements by the government.

**CHAIR:** They argue that that is a bad use of public money, which I find ironic.

**Mr Berg:** Really what we are talking about, and what I think we should be talking about, is: do Australians, do citizens, do consumers understand the risks in what they are doing? Do Australians understand the risks that tobacco can cause lung cancer? Do Australians understand it or not? It is one thing to say that the government has failed to stop people from making a choice—that their government has failed to eliminate tobacco use forever. But I think the more policy-relevant question, and the more soft-paternalist question, should surely be, 'Do Australians adequately understand the risks and benefits of using tobacco?' In my view, it is very, very clear, and I think the Australian public has a very, very good idea that smoking has serious health consequences. That information asymmetry does not exist. The problem that the public health activists have is that information asymmetry does not exist but people still choose to smoke anyway. They have to somehow surmount that problem.

**CHAIR:** Much of the arguments that were previously applied to tobacco are now being transferred onto food, with obesity being the end result that they want to avoid. The argument there is that advertising of junk food—and we have trouble defining what that means—is monopolising the space, if you like, influencing choice, and that the government's stewardship obligations involve either reeling that back in, or—and again, I think this was a nod to my small-tax, low-expenditure position—spending the government's money in an equal amount, although the assumption was that I would not like that idea. The issue in that respect is whether the tobacco analogy is appropriate, and whether abolition of advertising of so-called fast food has the effect of reducing obesity, which is now defined as the end result to be avoided, in the same way lung cancer was the end result to be avoided in the case of smoking. Do you think that is a legitimate comparison, and are they heading in the same direction?
Mr Berg: I think the effects of advertising on creating a demand for a product are wildly overstated. Advertising—and I am not a marketing specialist, but I will give you what I understand—is primarily useful to help consumers differentiate between products in the same product category. It might attract you to a certain brand of chips, or it might attract you to chocolates over chips and so forth. I am not at all convinced that advertising creates the demand for fatty, salty or sugary food, which we know are part of a deep human desire. My young children like chocolate. They like chocolate not because they watch lots of advertisements for chocolate—which they certainly do not; they like it because they know it tastes really good. They ask for chocolate all the time, and we have to deal with that as parents. I just do not think the idea that advertising is creating demand for unhealthy products can really hold true.

CHAIR: Senator Dastyari has been called away because his daughter is not well, I gather. I was expecting he would have some questions. I am fairly sure he wanted to talk to you. Under the circumstances, we might ask whether he wants to put his questions on notice. If you could respond within two or three weeks, would that be acceptable?

Mr Berg: I would be very happy to.

CHAIR: In that case, we will finish up. Thank you very much. That concludes today's hearing. Thank you to the witnesses who appeared. Thanks also to Hansard and Broadcasting.

Committee adjourned at 14:34