

SECOND READING SPEECH

HON IVAN DEAN MLC

PUBLIC HEALTH AMENDMENT (PREVENTION OF SALE OF SMOKING PRODUCTS TO UNDERAGE PERSONS) BILL 2018

MR. PRESIDENT

I MOVE THAT THE BILL NOW BE READ A SECOND TIME

The *Public Health Amendment (Prevention of Sale of Smoking Products to Underage Persons) Bill 2018* is an amendment to major Tasmanian legislation, the Public Health Act 1997.

Its purpose is to raise the minimum legal age to 21 for people to whom tobacco and other smoking products can be sold. This is often referred to as the minimum legal sales age (MLSA).

Today I will share some background on the Public Health Act 1997, tobacco control legislation in Tasmania and the Legislative Council's role, before I go on to provide the purpose of this amendment, and its implications for the future of younger Tasmanians.

The Legislative Council has had a longstanding, significant role in the history of public health reform. When it was introduced to Parliament, the Public Health Bill 1997 was described in its Second Reading speech as *"One of the most important health related bills to be introduced in Tasmania in the 20th Century."*

It was a Legislative Councillor, and a Liberal Health Minister Hon. Peter McKay who developed this momentous legislation.

The Public Health Act 1997 provides the framework for public health in Tasmania, and the preamble states that its purpose is to:

"Protect and promote the health of communities in the State and reduce the incidence of preventable illness".

Most of you are aware of a previous Bill that I brought before this Council in 2014, entitled the *Public Health Amendment (Tobacco-Free Generation) Bill 2014 (TFG Bill)*. The Bill was referred to a Parliamentary Committee which found no legal impediment to its introduction.

The TFG Bill was designed to phase out the sale of tobacco products to any person born after the year 2000. However, The TFG Bill lapsed and I do not intend to proceed with it, instead I call on the Government to have the courage to support the policy they called for during those discussions – Tobacco21.

THE CONSULTATION PROCESS AND SUGGESTED AMENDMENTS

Since I tabled the Tobacco21 Amendment Bill in November last year, I have formally spoken to hundreds of people. Many have made suggestions, and this has helped to inform the Bill in its current form.

First, some people want to insert a penalty for young people caught smoking. I reject this proposal, and the Legislative Council has always rejected that amendment often made by those with tobacco industry influences.

In Tasmania there is a general understanding that it is the selling, promotion and distribution of tobacco products that cause the smoking problem, and therefore smokers themselves should not be punished. If you see tobacco industry documentation on this issue you will note that the industry supports punishing children. These are known as Purchase, Use and Possession or "[PUP Laws](#)". They are not effective, and I have provided information on this to members.

Second, it has been suggested that this Bill prevents underage people from selling cigarettes in shops. This is untrue – this Bill does not affect young people's ability to retail tobacco, just as the sales age amendment from 16-18 years did not affect retail staff's age.

Indeed, one retail organisation spokesman has suggested that it is hard for a young shop assistant to refuse to sell to an older person. Again, I reject this proposal as the majority of retailers already request any person who looks under the age of 25 to show proof of ID and this Bill remains in that age group. I also note that successive Tasmanian legislators have rejected such a proposal, on the basis that it would compromise small family businesses. Some supermarkets do voluntarily restrict tobacco sales to older adult staff only, and I commend them for that decision.

Third, some have suggested that we should make the proposed minimum legal sales age 25 years. There are good scientific grounds for this, as we have heard from [addiction specialist Dr. Adrian Reynolds](#), the human brain does not develop completely until age 25, when people are able to make rational decisions about whether to smoke an addictive and lethal product.

The Institute of Medicine looked at raising the tobacco age to 19, 21 and 25. While each age increase showed a positive effect on youth initiation, age 19 only had a slight impact over 18, and age 25 only had a slight impact over age 21. The biggest reduction in initiation of tobacco products was seen at the age of 21. For that reason, I recommend that we leave the Bill in its current form at age 21, and I will not be able to support an amendment at this time to increase it to 25. I do feel that we should incrementally increase it to 21, and after implementation, study the policy and its effectiveness.

[We know opium, another legal drug](#), was phased out last century in Sri Lanka and Taiwan, using this process of gradually raising the sales age over time.

Fourth, some people have suggested that backpackers or tourists will be adversely affected by Tobacco21. By analysing [Tasmanian Tourism Data](#) for persons under 25 years, we estimate that less than half a per cent of tourists coming to Tasmania will be smokers in the age bracket 18-21 years. Should the Tourism Minister, Government or anybody else wish to move an amendment to exempt overseas tourists and back packers who show a passport as ID to retailers, there should be data to support its necessity. However, I do not support such an amendment. Where else in the world do we see specific legislative change or allowance to cover tourists or itinerant workers – nowhere to my knowledge.

Fifth, there are some technical amendments to do with timing and the phase in process which I will be moving when we get to the committee stage, should that be the case.

The Bill provides for an evaluation process and the Menzies Institute is currently conducting baseline data and will provide ongoing research and evaluation on the implementation of this Bill, should it be adopted. – Another reason why not acting now would be foolish.

Those who are worried by the tobacco industry fearmongering about “unintended consequences” might be reassured by the fact that any legislation can be returned to the Parliament and be repealed if any serious problems are detected.

“Unintended consequences” and “slippery slope” are terminologies employed by the tobacco industry since the 1970s to delay, prevent or circumvent reforms and to create worry and doubt for legislators. An array of these historic tobacco industry arguments against every reform can be found on the Victorian Cancer Council website, [Tobacco in Australia](#).

WHY IS THIS BILL IMPORTANT?

This Bill provides our Council with a unique opportunity to lead our nation in tobacco control, and overcome our high rates of smoking that require urgent legislative attention to prevent future tobacco burden on our state.

The Bill is drawn from research that shows that young people smoke because of peer pressure. It is also widely known through research that people who start smoking, become addicted very quickly, and wish they had never taken it up. Over ten years ago one of our local researchers Associate Professor Dr. Seana Gall published a study which showed that:

“.....any childhood smoking experimentation increases the risk of being a smoker 20 years later.”

The US Surgeon General said in 2017

“Nearly 9 out of 10 smokers started smoking by age 18.”

We know that 95 per cent of smokers start before 21.

Tobacco in Australia, the online Cancer Council webpage, with annotated source documents says:

“Nearly all smokers start before the age of 18 years and one-third of people who have ever tried smoking go on to become daily smokers. Smoking prevalence escalates rapidly during adolescence, and early onset of smoking is associated with a greater likelihood of being an adult smoker and with higher levels of consumption. Young smokers can become addicted to smoking very rapidly, even at low levels of consumption, and at significantly lower nicotine levels than adults.”

None of this is surprising now we know that nicotine exposure actually changes the brain structure of young people.

Most smokers want to quit. If we can prevent the process of starting to smoke, we can go some way to alleviating the suffering in our community. Those of us who have lost loved ones to smoking understand that suffering. I understand it too well.

So - what this Bill sets out to do is increase the barriers to the industry addicting our young people.

Until 1996, Tasmania had no effective tobacco control legislation. Other states had legislation commencing in the 1970s and 1980s. In 1996 tobacco sales age was raised from 16 years to 18 years, virtually overnight, with no phase in period. 16 and 17-year-old young people could smoke one day, but from January 1997 they could not. There was very little enforcement at that time, and few resources.

Prior to 1996 child smoking had been part of the *Police Offences Act 1935* and there had been no prosecutions of anyone selling tobacco to children in 60 years. All that changed when the Director of Public Health took over responsibility for tobacco control measures in 1996/ 97. Tobacco control became part of the *Public Health Act 1997*.

Until 1997 Tasmania had no effective tobacco control legislation. Now it is recognised as having led Australia, and in some cases the world, in such regulation.

Laws to eliminate the advertising and display of tobacco products, including at point of sale, elimination of smoking in indoor public places, workplaces, many outdoor areas, in work vehicles and in cars carrying children are just some of these important reforms. Important world first provisions of the Act prevent the tobacco industry from giving incorrect information about the health effects of tobacco products, and from providing false information about smoking products legislation in any jurisdiction. These are crucial because the tobacco industry has a long history of telling lies.

It is up to us as leaders and decision makers to seize the powers that are given to us to help protect our young people in Tasmania from a predatory industry that attempts to addict them to a deadly substance. If we miss this opportunity, we are allowing the tobacco industry to addict our children and grandchildren through their age-old claims and stalling

tactics for tobacco control. We now know too well, that freedom of addiction at adolescent age vastly outweighs any of these claims.

WHAT ARE THE HEALTH EFFECTS OF SMOKING AND THE COSTS TO TASMANIA?

All of the following diseases I am about to list are proven to be causally related to smoking tobacco, according to the US Surgeon General's latest report.

Tobacco smoking causes the following cancers:

- Oropharynx, Larynx, lung, oesophagus, trachea, bronchus, Leukemia, stomach, pancreas, kidney, ureter, bladder and colorectal.

Tobacco smoking ALSO causes:

- stroke,
- blindness, cataracts, age related macular degeneration,
- congenital defects – maternal smoking: orofacial clefts in offspring,
- Periodontitis,
- aortic aneurism, coronary heart disease,
- pneumonia, atherosclerotic peripheral vascular disease,
- tuberculosis, asthma and other respiratory defects,
- diabetes,
- reproductive effects in women including reduced fertility,
- hip fractures, and
- male sexual dysfunction-erectile dysfunction.

Smoking tobacco appears to increase the risk of breast cancer, with greater the amount smoked and earlier in life that smoking begin, the higher the risk. In those who are long term smokers, the risk is increased 35 per cent to 50 per cent.

I cannot do justice here to the extent of damage that tobacco does, but it is known to affect all organs of the body, and the list of diseases known to be caused by tobacco smoking is still growing.

TOBACCO SMOKING RATES

For some decades Tasmania has had the second highest smoking prevalence in the country, and one suburb, Bridgewater, has the highest smoking rate in Australia of 40 per cent. I would be surprised if we did not have similar smoking rates in other low socio-economic areas in the state. These are the areas that can least afford to smoke and have more serious health problems than other places in Tasmania.

There are over 70,500 smokers in Tasmania, more than 500 die every year, and thousands arrive at hospital emergency departments with various smoking related illnesses.

Our smoking rates are still over 17 per cent. Men smoke more than women, and young men smoke more than older age groups. 22 per cent of 18 to 24-year-old young men in Tasmania are smokers.

Key points from the latest [ASSAD Survey](#) which was publicly released in October 2019:

- *The latest Australian Secondary Students' Alcohol and Drug Survey (2017) surveyed over 2000 Tasmanian school students aged between 12-17 years*
- *Current smoking (in the past week) among older students aged 16-17 has halved since 2011 (from 16 per cent to 8 per cent)*

These are heartening results and support the introduction of T21. If only 8 per cent of those 16-17-year old students currently attending school are smoking, then it is much easier to bring in a tobacco sales age of 21 years, and very few of them will be affected.

It means we can slow the tobacco epidemic in its tracks, without causing any inconvenience to young people.

We can prevent them from starting to smoke.

We can save lives.

We can save the lives of premature babies which might otherwise be born to pregnant smoking mothers under the age of 20 years.

Significantly, once the age for sales has reached 21 years there will be no students remaining in schools who can legally buy cigarettes. This will have a dramatic effect on the social availability of cigarettes in schools and slash peer supply, which is the main method of transfer of cigarettes to younger people and counted for 60 per cent of access in the latest ASSAD survey.

A student in year 12 sees a student at the same school in year 10 as a peer.

A 21 year-old tradie or university student sees the school student in year 10 as a child.

A wider purchasing gap between school student ages and young adults will prevent adolescents accessing tobacco from their older school-aged peers and put further distance between social circles of those aged 21 and kids in their teens. Therefore, reducing uptake as simply fewer young people will have an opportunity to access these products.

I also expect the policy will renew sentiments of harm associated with smoking, particularly among pockets of our State, like Bridgewater, where other educative measures have not been as effective in reducing smoking rates.

We can save literally thousands of Tasmanian adults over time from a lifetime of disease and illness.

We know this because we know T21 works – it has worked in the USA and it will work here.

HEALTH ORGANISATIONS

All leading Tasmanian health organisations support the T21 proposal.

This includes the Tasmanian branches of the Australian Medical Association, Cancer Council, the Heart Foundation, the Australian Dental Association, the Alcohol Tobacco and Other Drugs Council, the Lung Foundation, Quit Tasmania, Smoke-Free Tasmania and the Menzies Institute for Medical Research.

The majority of leading national bodies have also written to the Premier in support of this policy. This includes Cancer Council Australia, the Australian Lung Foundation, the Australian Council on Smoking and Health (ACOSH), and the Australian Medical Association.

It has been made very clear to myself, and our Government that all eyes are on Tasmania to lead on this policy, which has the potential to be the forerunner of tobacco control across Australia.

PUBLIC OPINION AND POLLS

Every single reputable poll on the T21 has shown overwhelming support. Some of these are very scientific, and others are media polls of viewers, listeners or readers.

- The LAFM Poll 3 June 2019 – 70 per cent support T21
- ABC Poll 6 February 2019 – 79 per cent support T21
- ECI Poll (Galaxy) October 2018 – 73 per cent support T21

Since the Tobacco21 campaign was aired across Tasmania, a further post-campaign evaluation has been done with the polls showing an increased 78 per cent support for T21 across Tasmania.

The highest support at 84 per cent is in the electorate of Clark, so I hope the Members for Nelson and Hobart are aware of this high level of support from their constituents.

MINDEROO AND ANDREW FORREST AO

Last year I met with representatives of the Minderoo Foundation, the charity organisation set up by Australian Philanthropists Mr. Andrew Forrest AO and Mrs. Nicola Forrest AO.

Since World No Tobacco Day on May 31 2019, Minderoo has supported a comprehensive campaign in Tasmania to support the proposal for an age 21 limit on cigarette sales and will also be supporting this with various states and territories.

The Minderoo Foundation have also made it clear to the Government that they are willing to financially assist the Department of Health with retail education and training to support ‘phasing in’ compliance costs.

It is wonderful to have philanthropists in Australia prepared to put their influence behind such an important measure, which will reduce the uptake of smoking around Australia.

This Bill is about protecting children and young people ... it is about sending a clear message out there to adolescents not to smoke.

THE ROLE OF THE LEGISLATIVE COUNCIL

The Legislative Council has played an important role in amending, strengthening and improving tobacco control legislation brought into this place by successive governments. Indeed, I would assert that the Legislative Council has acted to ensure that the will of the Tasmanian people has prevailed, when some governments have introduced relatively weak legislation.

An example: It was the Legislative Council in 2007 that persuaded the Government to eliminate the display of tobacco products at point of sale by 2011, when it was clear that some elements of the government had caved in to the tobacco lobby groups and only wanted to reduce the size of displays.

MLSA LEGISLATION IN THE USA

To date 18 States and 500 jurisdictions, at both state and local county levels, in the USA have raised the age to 21 at which tobacco products can be sold to young people. This has proved to be a success.

Modelling by the National Academies Science in the US predict a significant reduction in smoking initiation among teenagers 15 – 17 years.

The report also said “However, changes in the prevalence of tobacco use may not necessarily be linear with increases in the MLA or equal for all segments of underage individuals. Consider, for example, the declarative effect of raising the MLA. Changing the MLA has an indirect effect of helping to change norms about the acceptability of tobacco use, but this effect may take time to build. In addition, norms about the acceptability of tobacco use are also likely to vary by age, with a more stringent perceived unacceptability the farther away one is in age from the MLA. For example, if the MLA increases to 21, the social unacceptability of smoking is greater for a 16-year-old than it is for a 20-year-old.”

Data from Needham in Massachusetts, the first jurisdiction to adopt age 21, showed a 47 per cent reduction in high school smoking five years after its introduction.

The Chair of the Committee, Richard J. Bonnie, Harrison Foundation Professor of Medicine and Law and director of the Institute of Law, Psychiatry, and Public Policy at the University of Virginia in Charlottesville, which looked at this issue said:

“While the development of some cognitive abilities is achieved by age 16, the parts of the brain most responsible for decision making, impulse control, and peer susceptibility and conformity continue to develop until about age 25.”

“A balance needs to be struck between the personal interests of young adults in being allowed to make their own choices and society’s legitimate concerns about protecting the public health and discouraging young people from making decisions they may later regret, due to their vulnerability to nicotine addiction and immaturity of judgment.”

So..... We know that raising the age to 21 will reduce smoking uptake, but I am not standing here telling you this is all we need to do to solve Tasmania’s smoking and health problems. [David Levy found in 2017](#) that tobacco excise decreases smoking prevalence by 18 per cent. Tax on tobacco is heralded as the most effective way of reducing smoking rates. However, Levy also found that raising the MLSA decreases smoking prevalence by 12 per cent, which means that this Bill will certainly play a part in reducing smoking rates.

Effective tobacco control measures are always a combination of many initiatives, and work as a collective package.

Other measures such as mass media campaigns, smoke-free areas, bans on advertising and promotion and quit campaigns are also essential and must be maintained and extended to continue to reduce smoking rates in Tasmania.

Bans on smoking around schools and hospitals were raised two years ago by myself and other members of the Legislative Council, and the government promised that it would act. We have not seen any action to date and I call on the new Minister to follow this through because seeing people smoking close to hospitals and schools, sends a poor message – in fact a shocking message.

Raising the age to 21 will have a positive impact on reducing smoking and it is the next step in the right direction for Tasmania. Any reduction will save many lives over time and will eventually reduce the pressure on hospitals.

Those who have studied the effect of minimum legal sales age (MLSA) legislation in the United States are forthright and optimistic about the effects of raising the age. Let me be the first to acknowledge that the United States is not Australia.

Firstly, the legal purchasing age for alcohol is 21 years across the USA.

I hasten to assure you, and anyone who might suggest it, that I have no intention of moving to raise the age to 21 to access alcohol in Tasmania.

[Research has found](#) that the overall proportion of dependent users is considerably lower for alcohol than for tobacco; an estimated 2–9 per cent of adult alcohol users are alcohol dependent whereas for tobacco this figure is closer to 90 per cent.

Secondly, the USA is a long way behind Australia in banning advertising of tobacco products, raising taxes and legislating for plain packaging.

However, we have seen new research that came out in July 2019 which evaluated the T21 across the United States.

The study by Friedman and Wu found that:

“Current smoking rates fell from 16.5 per cent in 2011 to 8.9 per cent in 2016 among 18 to 20 year-olds in these data.”

They concluded that :

Local tobacco-21 policies yield a substantive reduction in smoking among 18 to 20-year-olds living in metropolitan and micropolitan statistical areas. This finding provides empirical support for efforts to raise the tobacco purchasing age to 21 as a means to reduce young adult smoking.”

ADULT BRAIN DEVELOPMENT NOT UNTIL AGE 25 YEARS

Some of those who argue against the MLSA say that you can vote, buy alcohol, join the armed forces, get married and drive a car at 18 years, although Newstart and some other benefits are only available for people over aged 22 years. So why not smoking?

We now know from a 2015 article by [Robert Smith](#) et al that smoking and nicotine alter the brain of adolescents:

*“.....the adolescent brain reacting to nicotine is a somewhat different brain than the adult brain. The conclusion is that the adolescent brain is a ‘different’ brain, specifically with respect to nicotine effects...
.... adolescent nicotine has lasting effects on brain and behavior by modifying the pattern of activity thus ‘sculpting’ an altered pattern of connectivity. The notion of persistently altered connectivity after adolescent nicotine, implied by our anatomical data, is supported by behavioral and electrophysiological studies, and studies of persistently altered neurochemistry.”*

Voting or driving a car does not chemically alter the brain’s structure and do irreversible damage. Tobacco smoking is highly addictive and harmful. We know that two in three smokers will die from a tobacco related disease.

If two in three of our military or two in three Tasmanian drivers were dying from entering the armed forces or getting behind the wheel of a vehicle, we as legislators would review those minimum age provisions as well.

A decision about using the most addictive and lethal substance should be delayed much longer than all those other social decisions.

A product that serves no productive function in society, but costs lives, money and happiness.

In Tasmania few children obtain cigarettes from retailers because we not only have well educated and compliant retailers, but we have a very effective enforcement system with 98 per cent compliance. Having excellent enforcement mechanisms is a prerequisite for effective implementation of any age-based tobacco control law.

T21 will be effective in Tasmania because we already have a leading model of enforcement in place.

If we raise the minimum legal sales age (MLSA) to 21 years we can expect that the average age of starting smoking will be around 18-19 years, as the trend in our country has been young people experimenting at the age two years prior to the legal sales age.

You will notice when you read the Bill that there are no penalties for young people who smoke. This is consistent with the USA approach and with our work for the last six years on the Tobacco Free Generation Bill. Any attempt by tobacco industry to promote these penalties should continue to be strenuously opposed. The legislation is intended to prevent sales and supply of tobacco products, not to punish smokers.

RETAILERS

Some retailer organisations funded by or affiliated with the tobacco industry have made extreme claims that, for example, young people will get on a plane and fly to Melbourne to obtain cigarettes.

There are several reasons why this is absurd.

We know from the United States experience there was no evidence of travel by young people to obtain cigarettes. The smoking rates went down in young people in Needham, a suburb of Boston, despite the fact that they could virtually walk less than four kilometres in any direction to a jurisdiction which sold tobacco to those aged under 21 years. Christ Bostic from ASH USA said in a letter to one of my advisors:

“A study published in 2016 found that for the seven years after T21 was enacted the prevalence rate among high school youth dropped from 15% to 12% in 15 neighboring jurisdictions, while in Needham it dropped from 13% to 7%.¹ It is well

known that the primary avenue for underage youth to obtain tobacco is through older friends and siblings. Clearly, if 18-20-year-olds had continued to supply tobacco by purchasing in other jurisdictions Needham's relative sharp reduction would not have occurred."

Further, Dr. Rob Crane Founder of the US based Preventing Addiction Foundation, has said in a letter to the Premier, Will Hodgman on 3 September 2019

"Age 21 access is a novel concept for Australia and may raise eyebrows about personal freedom and the concept of adulthood. First, addiction is the diametric opposite of freedom. What we now know of human neural development is that the adolescent brain is uniquely susceptible to addictive risk. If that vulnerable period can be safeguarded, nicotine addiction can largely be avoided. 95% of smokers addict before age 21.

Second, older adolescents who currently buy legally tend to be the main suppliers and initiators to younger teens. This is the true black market. Moving to age 21 dramatically reduces that supply.

We have had no sign that Tobacco 21 has resulted in cross border sales between cities or states. That this might occur across an ocean border seems far-fetched."

Other spokespersons for retailers and the tobacco industry have argued in the Advocate on June 24th that T21 will

".....cut a chunk out of their business, negatively affecting jobs, for no tangible health gain."

Given that there will continue to be 670 licensed tobacco retailers and fewer than 800 smokers turning 18 years in Tasmania each year, they will only have around one potential lost customer each, or over the three year period, perhaps three customers could be lost. However, after turning 21 some of these people could return as tobacco customers. Clearly such a small loss of custom could not possibly affect a small business.

A study which examined the impact of raising tobacco sales to 21 years by Winickoff et al in the USA confirmed that *"Of note, no tobacco retailers have gone out of business in Needham since implementation."*

It is disappointing that another retail organisation, supported by British American Tobacco, has chosen to oppose this Bill. They have even made statements that a retailer in Triabunna will sack 14 junior staff if the Bill goes through. By analysing current smoking rates for persons aged 18-21 years, I estimate that there are fewer than two customers per licensed small retail outlet purchasing tobacco products are under the age of 21 years. We have seen these ridiculous claims in the past, of job losses, at the time we eliminated the visual impact of tobacco products, and when we banned smoking in pubs.

This sort of hysterical overreach is promoted by the tobacco industry, and it frightens small retailers.

This brings me to another nonsensical claim from these tobacco industry front organisations. The idea that there would be a black market. How could there be a black market when there are 70,500 plus smokers and 670 retailers in Tasmania? Tobacco will remain readily available. There has to be a prohibition for a “black” market to occur. This bill does not prohibit or ban smoking, it only raises the sale age of tobacco to a point high enough, to get the supply of cigarettes out of our schools.

TOBACCO INDUSTRY BLACK MARKET AND SMUGGLING

The notion of a black market, sounds to me like we are being threatened by [the tobacco industry](#).

There are many research papers documenting the involvement of the tobacco industry in smuggling around the world. Most famously, In Canada where the industry was fined over \$1.5 billion. They have engaged in smuggling activities across Asia and Europe. I am happy to provide that information to members.

It is a common method used by the tobacco industry to penetrate new markets by smuggling, then getting people addicted to the product, so they can later on sell the product legally.

[J Colin et al](#), another research team says;

“Smuggling in Asia has also been used as a means of exerting political leverage to secure market opening. In Thailand, for example, exploitation of contraband was presented as part of a broader strategy to undermine Thailand’s ban on imports.”

However, Australia is lucky. The Tasmanian Government and the Federal Government have many resources to combat smuggling. On a federal level, these resources are also under review to tighten up importation control of nicotine-based substances for the purposes of vaping. Border Force alone has over 10,000 armed officers, so it is not a reason to avert tobacco control reforms, or to be scared of big tobacco.

We as legislators should support raising the minimum sales age to send a clear message that we will not be intimidated by the tobacco industry and their stalling tactics.

LEGAL OBJECTIONS

It has been argued that all legislation which imposes a penalty is “criminal”. Therefore, under this definition, all of us are criminals if we have ever had a speeding ticket or parking ticket.

However, the *Public Health Act 1997* is not the *Criminal Code 1924*. It operates under the Director of Public health and the preamble to the Act states it is:

“An Act to protect and promote the health of communities in the State and reduce the incidence of preventable illness.”

T21 falls squarely into the purpose of the Act.

The *Public Health Act 1997* is the most powerful piece of legislation in Tasmania and under Section 5, it overrides all other Tasmanian legislation to the extent of any inconsistency.

The tobacco industry has been convicted of racketeering in the US, and on appeal the judges ruled that:

“The major cigarette manufacturers are racketeers who carried out a decades-long conspiracy to deceive the American public and target children with their deadly and addictive products.”

Tobacco industry lawyers actually contribute to the harm associated with the product and have been described by leading US lawyers Sara Guardino and Dick Daynard in a 2007 research paper as “*vectors of disease*”.

“.....the defendants (the major US tobacco companies) engaged in a “fifty-year history of deceiving smokers, potential smokers, and the American public about the hazards of smoking and second hand smoke, and the addictiveness of nicotine,” Judge Kessler made special mention of tobacco attorney misconduct. She noted: “At every stage, lawyers played an absolutely central role in ... the implementation of [the tobacco industry’s] fraudulent schemes.”

They quote Judge Kessler who proclaimed: *“What a sad and disquieting chapter in the history of an honourable and often courageous profession.”*

In Australia too we have witnessed document destruction by lawyers in the “*Rolah McCabe* case against British American Tobacco. [The McCabe Centre for law and cancer in Melbourne](#) says on its website:

“Rolah’s case garnered international attention by exposing BAT’s systematic destruction of thousands of documents under its ‘Document Retention Policy’. Since the hearing took place, evidence has emerged that the purpose of BAT’s document retention policy was to keep incriminating documents out of court.”

Also in Australia the tobacco industry has been found by the [Australian Competition and Consumer Commission](#) to have breached the law through misleading and deceptive conduct in relation to their promotion of so-called “light” cigarettes. I suspect that history may repeat itself as we see the tobacco industry using similar tactics to market e-cigarettes.

In summary, any legal opposition to any proposed tobacco legislation must be sort through an expert in public health law willing to declare independence from the tobacco and vaping industry.

CIVIL LIBERTARIAN OBJECTIONS TO T21

Other objections concern the idea that there is somehow an inalienable “right” to choose to smoke at the age of 18 years.

I stress that this is not based on state or constitutional law but based on values and beliefs. This is derived from the opinion of one lawyer, not legal advice. There is a difference.

In 2016 [Mr. Francey said](#) in a document provided to the Legislative Council;

“Dr Gogarty may be regarded as someone who has moved beyond merely providing dispassionate, independent and objective advice to someone who is an advocate for his extreme libertarian views.”

I emphasise that if we as legislators wish to be led by evidence in this debate, which has resulted in an exuberant amount of time and energy to get us to this point, let us not then be spellbound and distracted by arguments about beliefs and values.

Distinguished Professor of Law and Professor of Public Policy and Urban Affairs at Northeastern University School of Law, [Wendy Parmet said in 2016](#),

Critically there is no fundamental right to exercise all of one's choices without any, even indirect, legal hurdles. If that were the case, cigarette taxes, which also make it harder for some people to exercise their choice to smoke by raising the cost of cigarettes would also violate individuals' fundamental rights.

Indeed, all public health laws would violate someone's fundamental right, as all impose some roadblocks on individual choice. (A law requiring a prescription to obtain a narcotic makes it harder for the patient in pain to get the drug without seeing a physician; laws requiring restaurants and bars to have liquor licenses likewise make it harder for people to have unrestrained access to alcohol).

In debating the wisdom of any particular public health law, it is important not to confuse the question of whether the benefits conferred by the law outweigh the inconveniences and hurdles it imposes, with the question of whether it violates recognized fundamental rights, such as the right to bodily integrity or free speech.”

And further Prof Parmet says,

“Dr. Gogarty's fundamental right argument depends upon an implicit acceptance of the idea that individual choices as to whether or not to smoke are individually-determined. We know, however, that this isn't the case. Many people, especially teens and young adults, decide to smoke precisely because others within their peer group smoke. Once we understand that smoking, like other risky behaviors, is at least in part determined on a population level, it

becomes clear that laws that impede a population's access to a dangerous product alter Individuals' preferences."

If we look at the evidence from Dr. Reynolds about the inability of young people to make valid risky decisions about an addictive substance, and also the evidence from Lindblom, and Van der Eijk and Porter, it demonstrates that human rights laws require protecting people from harm.

Van der Eijk and Porter argue that;

"Most smokers start before adulthood, at a time when the capacity for rationalised, long-term decision-making is not yet fully developed. Many adolescents are lured into cigarette smoking as a rite of passage into adulthood, usually through their peers, unable to fully conceive of the addictive grip of nicotine, and the health impacts they will later experience.

Under The United Nations Convention on the Rights of the Child. 1990. Article 6: 'Governments should ensure that children survive and develop healthily'. Thus, it is reasonable to suggest that governments have a duty to protect children from initiating active smoking, and from developing nicotine addiction.'

Furthermore, under the United Nations. International Covenant on Economic, Social and Cultural Rights. 1976. Article 12:

Adults are also entitled to: 'the enjoyment of the highest attainable standard of physical and mental health', including the 'prevention, treatment and control of epidemic, endemic, occupational and other diseases'.

...Tobacco-related illnesses and deaths have adverse socioeconomic consequences for families, communities, healthcare systems and public resources, while SHS [Second hand-smoke] can affect children and non-smokers. Smoking affects others, both directly and indirectly. In such cases, human rights instruments permit balancing, as the exercise of rights and freedoms can be subject to limitations to secure: 'the just requirements of morality, public order and the general welfare in a democratic society'.

In addition, given the addictive properties of tobacco, it can be suggested that smoking is incompatible with the notion of 'liberty', as the addict is not entirely free to choose whether to continue smoking or not.

In practice, governments do restrict liberty to protect citizens from the effects of harmful and addictive psycho-active drugs, such as opium, heroin and cocaine; none of which have caused anywhere near as many deaths as tobacco. A tobacco phase-out would thus be consistent with the way in which other hazardous, addictive substances are regulated."

ON RETAILERS WHO STOP SELLING

I have personally spoken to many small retailers who say their margins on tobacco sales are quite low, and they would like to stop selling. Quit Tasmania has been running a pilot project in North West Tasmania to encourage retailers to surrender their tobacco license. Results of this project should be known soon, but at least 8 retailers have stopped selling in that region.

This anecdotal evidence is supported by the DHS research which said that:

“The vast majority of historical retailers found that ceasing tobacco sales had no impact on profitability. ... and “ A number of retailers said their decision had improved business cash flow and provided a chance to invest in other goods.”

Reduction in the numbers of retail outlets for tobacco certainly does [reduce smoking rates](#). So if some retailers do decide to give up selling tobacco that will be a very good thing for public health, hospitals and our economy.

An [excellent study](#) from local research by Dr. Melody that giving up selling tobacco has no effect on the economy of Tasmanian businesses.

There will still be 70,500 smokers in this state buying cigarettes after this Bill becomes law. Existing smokers in the 18-21 age groups are unaffected. In Tasmania the market for tobacco is still huge. I wish it wasn't.

It's heartbreaking that tobacco retail outlets are concentrated in low socio-economic areas. Bridgewater/Gagebrook has the highest smoking rate of 40 per cent in Australia. Try and buy cigarettes in Sandy Bay or Battery Point and you will find few retailers.

HOTELS

There has been some concern expressed by hoteliers, many of whom are also partnered with the tobacco industry, that they will have to enforce the legislation around preventing 18 to 21-year old customers from smoking in designated smoking areas. Hoteliers will not have to do anything of the sort.

In 2001 Hon. Cathy Edwards MLC in this Chamber expressed concern, about the underwriting by the tobacco industry of lobbying by the AHA – now the Tasmanian Hotels Association. She was:

“.....disturbed by the fact that the tobacco industry had paid the AHA to produce a very expensive information package and CD for parliamentarians, “....and some research by UMR Research was underwritten by Philip Morris”.

(Hansard Thursday 29 March 2001)

Hoteliers do not have to prevent young people from smoking or remove them from the premises, under this legislation. However, hotel operators must not sell cigarettes to children or underage persons as defined. There is a big difference.

I am advised that there are only 29 bars, pubs and clubs holding a tobacco license – plus the two casinos and bottle shops.

Furthermore, I am advised that there are only a couple of legal licensed vending machines operating in Tasmania. A representative from the Tasmanian Hotels Association complained to Legislative Council that enforcement of vending machine operations would be a problem, however, this is clearly an exaggeration if there are such few legal machines left in the State.

To ease compliance issues, we must ensure that hotel staff are given education and training about selling to underage persons, in the same way as retail staff. I am assured that this training can be done by the Department, and hopefully involving retail and hospitality associations.

RESEARCH APPENDIX:

Any research or data or letter that I have referenced today can be provided to you at request.

Research continues into the harmful effects of smoking. Some of you may have read the article in the Mercury - 4 July 2019 with the heading 'Another Nail in Smokers' Coffins'.

The article refers to a world first time study by Professor Emily Banks and others from the Australian National University (ANU) National Centre for Epidemiology and Population Health and their findings into the risks associated with smoking as few as five cigarettes a day.

This study is said to be the most in-depth study in the world tracking smokers and non-smokers over seven years.

It found smokers are five times more likely to develop peripheral cardiovascular diseases which can cause gangrene and require limb amputations. Professor Banks went on to say "*smoking causes terrible harm across the board*", and that smoking caused 11,400 coronary related hospital admissions a year – or 31 per day.

The National Heart Foundation chief John Kelly said this new evidence was disturbing and went on to say:

"It demonstrates that our battle to eliminate the devastation tobacco brings to people's lives is far from over"... "We urge the Government to maintain tobacco control as a high priority and look forward to seeing it feature strongly in the new prevention strategy recently announced by the Minister for Health"

In another [2018 study](#), undertaken by Deloitte for Homes Stretch Campaign NSW found that young people who stay in care until the age of 21 experienced a drop in the rate of smoking from 56.8 per cent to 24.9 per cent.

This is important for two reasons. It shows that extra support for vulnerable young people age 18 to 21 is warranted and will help reduce smoking rates.

Secondly because the Tasmanian Liberal Government has recognised the importance of supporting young people age 18 to 21 and recognised that they are at risk. The government has put \$1 million into the budget each year from 2018 to 2020 to support extended foster care for those aged 18 to 20 years.

We are just reaching the tail end of a big flu epidemic, which is impacted on all our hospitals in Tasmania. A [2018 report](#) found that:

“A history of smoking may increase the risk of hospitalization in smokers and ex-smokers. Preventing smoking could reduce hospitalizations due to influenza. Smokers and ex-smokers should be informed of the risk of hospitalization due to influenza infection and encouraged to stop smoking. Smokers should be considered an at-risk group to be aggressively targeted for routine influenza vaccination.”

I was impressed by the Editorial in the Launceston Examiner on 22 June 2019 which said:

“Smoking cycle must be broken – Tasmania has the chance to make a generational change by becoming the first state in Australia to ban the sale of cigarettes to people aged under 21 years. Controversial, perhaps. Worth it, yes if it helps break the deadly cycle.”

The Advocate Editorial on 25 June 2019 stated:

“The long-serving chief executive of the Tasmanian Small Business Council made some comments this week that were as contradictory as they were at odds with the interests of our community.

Mr Mallett says a proposal to increase the legal smoking age to 21 would be “a kick in the guts to small business and cost jobs in regional Tasmania.”

Yet in the next breath he says such a move wouldn't do “anything to actually reduce smoking rates.”

TOBACCO CAMPAIGN:

This year a TV campaign aired across Tasmania in June and July, carrying the story of lung cancer sufferer Jason Trewin. The ads were filmed in May 2019, and by mid-June 2019 Jason had died. Lung cancer is still the biggest cancer killer of Tasmanian men and women, heavily due to tobacco use.

It is a horrible disease and my own father's suffering from lung cancer is what drives me to want to eliminate this repulsive, addictive drug from the shores of Tasmania to protect our future generation from its devastation.

Jason Trewin knew he had only weeks to live and urged us to support this legislation, and to protect young Tasmanians. We mourn his loss. He was a very courageous man.

A video produced by Minderoo which was made especially for the Legislative Council and is now available on websites and Facebook pages has some significant messages from very thoughtful young people in Tasmania about smoking;

- The effects on low income families having to put groceries back on the shelf at the supermarket so they can buy cigarettes;
- A Professor who explains that the smoking rates in Bridgewater are reminiscent of the 1970s;
- A smoker who wishes he had never started and said that cigarettes should be banned.

[Dr. Themba Bulle in North-West Tasmania](#) has also called for a ban on tobacco products. Whilst we do not want to ban tobacco, nevertheless we understand the depth of the frustration of the young Tasmanian father in the video who wants his kids to grow up healthy, and Dr. Bulle who wants his patients to be free of preventable diseases.

We are constantly reminded in the media of the pressure on our hospitals around Tasmania. Therefore, I believe it is crucial that we make a start on raising the age at which tobacco is sold, with a view to having some effect sooner rather than later, on reducing smoking uptake and reducing the burden of disease and chronic illness in this state.

COSTS:

Chronic Obstructive Pulmonary Disease (COPD), a smoking related disease, costs \$5,000 for every patient admitted to a Tasmanian public hospital and they each stay for an average of five days. We know that around 1,438 COPD patients are admitted every year.

So the cost to Tasmanian hospitals for just this one smoking related disease – not even counting all the multitude of cancers, cardiovascular disease, strokes and premature births caused by smoking - is about \$7.1 million each year.

In addition, the cost of treating lung cancer another smoking related disease in Tasmania is \$8.5 million. Over \$15 million a year are the costs for just two smoking related preventable diseases.

I will repeat that - \$15 million for just two smoking related entirely preventable diseases – every year.

I am sure we can all think of other ways \$15 million could be usefully spent in Tasmania - every year.

CONCLUSION:

The beds at our hospitals are repeatedly blocked, people are unable to leave, and ambulances are ramped. There are too many smokers in our hospitals, and they cost us a lot of money.

Tasmania receives no revenue from tobacco taxes and has not done so since 1997. The Commonwealth receives over \$12 billion, and yet only spends about 0.2 per cent on smoking prevention.

Tobacco is the single most lethal consumer product in history.
Smoking costs lives and money.

We cannot afford to allow yet another generation to become addicted to this terrible addictive lethal drug.

As I have made very clear, we must keep the pressure on governments at federal and state levels to maintain their commitment to existing programs to reduce smoking. We have a responsibility to reduce the burden of illness and chronic disease in Tasmania, and this prevention of sales policy is the next step.

Its 2019 and we already know that the Government's 2020 smoking rate target of 10 per cent will not be met, and the current trajectory for their 2025 target of 5 per cent is not promising.

We cannot stand idly by, when in fact there is something we can do.

We can pass this Bill and save Tasmanian lives.

We can send a message to the other place [*House of Assembly*] that we are firmly of the view that this needs to be done.

We can demonstrate in a practical way that we are determined and resolute about the health of Tasmanians.

I commend the Bill to the House.