Who's Your Nanny?

Personal choice, public health stewardship and tired clichés

The #LongRead below was prepared to assist organisations and individuals wishing to make submissions to a WA Legislative Council inquiry into "Personal Choice and Community Safety", with a focus on public health initiatives involving government regulation. **Submissions are due by October 5.**

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Gemma Crawford, Jonathan Hallett, Melissa Ledger, Lauren Nimmo, Hannah Pierce, Julia Stafford, Melissa Stoneham, and Maurice Swanson write:

Many of you will have seen in the news that a new parliamentary select committee has commenced in the WA Legislative Council to conduct an inquiry into "Personal Choice and Community Safety".

The focus is essentially on public health initiatives involving government regulation. Many health organisations will be justifiably focusing their submissions on defending such regulation.

Now, we are not suggesting that government intervention has always been successful. There is a range of ethical issues to consider. We know that there are examples where the government has overstepped. This includes, for example, involuntary income management which been criticised as paternalistic, stigmatising and lacking in evidence (we discuss this, along with opportunities for sex work and drug use law reform later).

Where we have been successful is across the range of issues under consideration in this inquiry. It is clear that in relation to these, regulation *has* been a highly effective tool for promoting and protecting the health of Australians.

The WA Government has a long history of playing a positive and successful role in community stewardship–provision of clean water, sanitation and food safety, seat belt and drink-driving laws, smoke free workplaces and public spaces and oversight of health services.

In light of this, we provide some ideas on making a submission and again address why careful, evidence-informed stewardship is good for the public's health.

Scope of the current inquiry

The committee is chaired by Liberal Democrat Hon. Aaron Stonehouse MLC and includes two Labor members (Hon. Dr Sally Talbot MLC and Hon. Pierre Shuai Yang MLC), one Liberal member (Hon. Dr Steve Thomas MLC) and a Shooters, Fishers and Farmers Party member (Hon. Rick Mazza MLC).

The following are the terms of reference for the inquiry:

> *On 29 August 2018, the Legislative Council ordered that a select committee be established to inquire into and report on the economic and social impact of measures introduced in Western Australia to restrict personal choice 'for the individual's own good', with particular reference to—*

(1) risk-reduction products such as e-cigarettes, e-liquids and heat-not-burn tobacco products, including any impact on the wellbeing, enjoyment and finances of users and non-users;

(2) outdoor recreation such as cycling and aquatic leisure, including any impact on the wellbeing, enjoyment and finances of users and non-users; and

(3) any other measures introduced to restrict personal choice for individuals as a means of preventing harm to themselves.

The parliamentary debate in Hansard at the time the committee was established is interesting reading. It outlines the Chair's philosophical approach as does the media release that highlights some of the other areas that may be under consideration (speed cameras, tasers, pepper spray, smoking in licenced venues). The inquiry follows on the heels of a similar if not identical inquiry established federally in 2015 to which many public health organisations made submissions.

Origins of the "Nanny State"

The "nanny state" first emerged as a term in 1965, in a column by Iain MacLeod. As Churchill's Minister for Health, he famously smoked through a 1954 press conference to publicise the health dangers of smoking (dying at 57 of a heart attack). In the column, he railed at proposed speed limits:

"…I fire salvos in the direction of what I call the Nanny State. Mr. Fraser…has come forward with the perishing nonsense of a plan for a 70 m.p.h. speed limit even on motorways. Doesn't he know that for many cars built today 70-80 m.p.h. is the normal safe cruising speed? Doesn't he realise that his new restriction is as unenforceable as it is undesirable? And why doesn't he follow his own logic and (in order to cut out accidents altogether) go back to where we started with a 5 m.p.h. limit and the man with the red flag?"

The phrase "nanny state" caught on, used regularly to attack health organisations or governments. In their inaugural speech the Chair suggested, *"…our most basic rights and freedoms are being chipped away at on a daily basis through nanny-state regulations and big-government paternalism."*

But the "nanny state" argument studiously ignores the fact that regulation is an important public health intervention. As the PHAA put it, *"regulation, and Australia's long history of public health legislation has ensured we live in one of the healthiest countries in the world."*

The constant push to be free from government interference (especially by certain sectors of industry) further fails to recognise a government's responsibilities to protect the health and safety of the community, and to place the interests of public health ahead of those of vested interests. Gemma Crawford, President of AHPA cites its 2015 submission to the federal inquiry into personal choice and community impacts, which suggested that:

"…even the most conservative and socially acceptable regulations will inevitably be criticised by vested interests, who claim that their personal freedoms (to make profits or engage in harmful behaviour) are being restricted by the "nanny state"."

In his Conversation article *One hundred and fifty ways the nanny state is good for us, Professor Simon Chapman* took aim at critics of "nanny state" regulation as almost always self-interested, arguing that:

"These "nanny state" critics are everywhere and they're superficially persuasive. After all, who wants government to tell them how to live their lives? But scratch the surface and you'll discover nanny state critics are frequently backed by powerful vested interests, like the tobacco industry arguing against plain packaging on cigarettes..."

In fact, the Chair of the current inquiry has admitted that they and their political party accept donations from Philip Morris.

- *Further reading:* Which nanny – the state or industry? Wowsers, teetotallers and the fun police in public health advocacy

Personal freedom and government stewardship

The personal freedom to make decisions is an essential requirement for individual health and wellbeing. In relation to "nanny state" interference, the Chair has suggested, *"I will be there, making the case for personal choice and personal responsibility."* However, there are social, economic, political and environmental forces at play that make personal choices and personal responsibility for health increasingly difficult. Consequently, personal choice is only possible within supportive environments that protect us from adverse social conditions and harmful behaviour.

As John Donne famously wrote*: "No man is an island entire of itself; every man is a piece of the continent, a part of the main…any man's death diminishes me, because I am involved in mankind."* Our individual actions do not occur in a vacuum. Invariably individual actions affect others within society. Hannah Pierce, WA President of the PHAA cites its 2015 submission to the federal inquiry:

> *"In a healthy society there is an appropriate balance between personal responsibility and the responsibility of governments. Just as parents, schools, professionals, and businesses have a duty of care to the individuals for whom they have responsibility, governments also have a duty of care to ensure that each of the citizens within the community have the full opportunity to reach their potential and to ensure they have the healthiest life."*

The Nuffield Council on Bioethics provides further useful insights regarding personal choice and public health stewardship:

> *"...many of the 'choices' that individuals make about their lifestyle are heavily constrained as a result of policies established by central and local government, by various industries as well as by various kinds of inequality...*
>
> *People's choice about what to eat, whether or not they allow their children to walk to school, or the kinds of products that are marketed to them, are often, in reality, limited. This means that the notion of individual choice determining health is too simplistic…*
>
> *…we develop what we call the 'stewardship model' of the role of the state in relation to public health. This model recognises that the state should not coerce people or restrict their freedoms unnecessarily, but also that the state has a responsibility to provide the conditions under which people can lead healthy lives if they wish…*
>
> *…Some may find our ethical framework strays too far away from the freedoms of the individual and toward the value of the community as a whole. But our conclusion is that any state that seriously aims to promote and implement public health policies has to accept a stewardship role.* ***We also note that 'doing nothing' is an active decision by the state that will have an impact on people's ability to lead a healthy life."***

Regulation for the public's health

Maurice Swanson (Executive Director, ACOSH) observes that since the late 1880s, Australian governments have implemented measures to protect and promote public health resulting in millions of longer and healthier lives. The successes and benefits of public health initiatives are well documented across a range of issues: infectious diseases control, food and water safety, and reducing gun violence, road crashes and

harms from alcohol and tobacco use. He comments that, *"some of these measures necessarily require some diminution of personal freedoms".*

Laws, regulations and policies (e.g. around pricing and supply) create safer and healthier places, products and people. In an article for DrinkTank during the 2015 senate inquiry, Paul Klarenaar (AHPA Advocacy Lead) wrote:

> *"There is clear, independent, reliable and credible evidence to justify responsible, careful regulation and legislation that greatly reduces our exposure to harm and improves our health…These regulations might restrict our choice and be inconvenient from time to time, but we accept them as a society because we know they are for the greater good".*

Fiscal and pricing policies that increase the tax on tobacco, alcohol and unhealthy food, changes to the built environment that promote physical activity and prevent injury, and tackling social determinants of health through targeted investments in social welfare programs are more effective than education alone and are cost effective. Each of these measures to some extent diminishes personal freedom as a consequence of appropriate governmental stewardship.

Further info:

- Advocacy and action in public health: lessons from Australia over 20th century.
- What are the best societal investments for improving people's health?
- Return on investment of public health interventions: a systematic review.

Areas requiring public health regulation

We comment here on just a few areas: alcohol and tobacco use, e-cigarettes and pool fencing. There are, of course, many other areas that those seeking to make submissions may like to address (including for example, gambling, seat belts ownership and use of firearms). We also suggest that such an inquiry also provides a unique opportunity to advocate on other areas of law reform that create stigma and undermine health equity (regarding sex work, drug use and income management.

Alcohol

Alcohol is 'no ordinary commodity', and for good reason. While many people enjoy a drink, alcohol is associated with significant risk of harms to the drinker and harms to others. It is also an addictive product, meaning for some people, the decision to consume is not an entirely free choice.

Melissa Ledger (Cancer Prevention and Research Director, CCWA) writes that, *"there is unequivocal evidence that alcohol is a cause of cancer".* It is classified as a group 1 carcinogen, the same classification as tobacco smoke and asbestos. Alcohol is linked to cancers of the breast, mouth, pharynx, larynx, oesophagus, liver, bowel and stomach. Yet public awareness of the link between alcohol and cancer remains low. If drinkers are not fully informed of the risks of alcohol, how can they make informed decisions about their own drinking behaviours?

Alcohol-related harms include harm not only to individuals but also to those other than the drinker via road injury, family violence, assault, fetal alcohol spectrum disorder and the family impact of an individual's alcohol dependence. For these reasons, Melissa suggests, "*it is overly simplistic to suggest that government regulation of alcohol is 'for the individual's own good'."*

In WA, alcohol has always been the subject of some degree of government intervention. Access by children is restricted for their own protection because they are at a greater risk of harm. A minimum purchasing age and secondary supply laws reduces access to children under 18 years; general availability is controlled by a system of liquor licensing. Controls on alcohol advertising reduce young people's exposure, and taxes

imposed at a national level influence price, with potential for setting a minimum price per standard drink to target the cheapest alcohol favoured by the heaviest drinkers.

Government intervention is warranted to reduce negative externalities, such as healthcare costs to taxpayers to treat alcohol-related harms, and loss of productivity in the workplace. Julia Stafford (Executive Officer, MCAAY) argues that the human, social, and financial costs of failing to effectively regulate alcohol are too great to leave to individual responsibility:

> *"Alcohol use costs the WA community $3.1 billion each year in policing costs, hospitalisations, road crashes, and ambulances. In WA last year, an average of 15 ambulances per day were called out for the primary reason of alcohol intoxication (5,324 in total). Many were taken to hospital, contributing to the burden of alcohol on our emergency departments and health services".*

As with all measures that aim to improve public health and community safety, there is a need to strike a balance between respecting personal freedoms and minimising alcohol-related harms. The extent of harms to those around the drinker provide an urgent and compelling case for action by governments to regulate how alcohol is made available, taxed, and promoted.

Governments have important roles and duty of care in preventing these harms. As Julia notes, *"the environment in which individuals operate, the prevailing drinking culture, and the way alcohol is made available, need to support low risk alcohol use"*. This is achieved by ensuring that proposed regulations are evidence-based, reasonable, proportionate to the health/safety risk and acceptable to the community.

See also:

- Alcohol must be recognised as a drug
- Impacts of changes to trading hours of liquor licences on alcohol-related harm: a systematic review 2005–2015
- Effectiveness and cost-effectiveness of policies and programmes to reduce the harm caused by alcohol

Tobacco and e-cigarettes

Smoking prevalence in Australia has halved over the past 25 years, resulting from multiple evidence-based interventions. Tobacco use remains the leading cause of preventable cancer and cardiovascular death and disease in Australia. Each year in Australia, for every person who dies prematurely, 30 more tobacco users will be affected by a disease caused by smoking, causing disability, pain and suffering and considerable cost to Australia's health care system. Reducing tobacco use is therefore a key priority.

Melissa comments that, *"all West Australians, including children, have the right to breathe smokefree air. Scientific evidence is unequivocal about the serious health effects of second-hand smoke."*

There are at least 250 chemicals known to be toxic or carcinogenic in second-hand smoke (SHS). Effects of SHS are associated with higher rates of lung cancer and heart disease in adults, and asthma and lower respiratory tract illness in children.

A major review by the US-Surgeon General concluded that there is no risk free level of exposure to SHS and highlighted that infants and children are particularly vulnerable as their bodies are still developing and are susceptible to the poisons found in tobacco smoke. Given the evidence demonstrating its harmful effects, eliminating exposure to SHS is imperative to protect public health.

Melissa highlights the wealth of research showing the health and social benefits of smoke-free legislation and demonstrating its effectiveness as a powerful public health intervention:

> *"Limiting opportunities for tobacco use in public places including workplaces, restaurants cafes, libraries, public events, sporting and recreation facilities, through the introduction of smoke free*

> *policies and regulations, can be a successful strategy for reducing tobacco consumption, as well as reducing uptake of tobacco use among young people, especially when implemented as part of a comprehensive tobacco control program."*

The history of tobacco control is littered with examples of purported reduced harm products including filters, asbestos filters, reduced carcinogen cigarettes, "low" tar, "lights and milds" and tobacco substitutes. Maurice argues that, *"many of these products have been promoted by false prophets, commercially driven with little evidence, and none of these have been able to demonstrate reduced harm in those who used them."*

Where risks and harms for new tobacco products need to be considered as well as potential benefits, adherence to the evidence is critical – evidence that can only be collected, reviewed and reported through a rigorous framework, which considers overall population health.

If the balance of evidence supported e-cigarettes as an aid to quitting and a net public health benefit, we would expect Australia's statutory health authorities to facilitate their availability. The current public health evidence as reviewed by leading evidence-based agencies (including the NHMRC and the TGA), does not support e-cigarette use in any form. Rather, as summarised in the Cancer Australia position statement, there is increasing evidence of harm, including:

- Growing evidence that e-cigarette use is a precursor to tobacco use in young people.
- Growing evidence of direct health harms, including increased risk of respiratory disease, cardiovascular disease and carcinogenesis.
- Growing evidence to suggest that e-cigarette use in non-smokers is associated with future uptake of tobacco use.
- The absence of conclusive evidence that e-cigarettes are effective as quitting aids for tobacco use.
- The extent to which e-cigarettes reduce harm to the user through exposure to fewer toxic chemicals than conventional tobacco cigarettes has not been determined.

Maurice notes that the precautionary approach to e-cigarettes is strongly supported by leading national and international health and medical organisations, *"We continue to monitor the evidence with interest, while emphasising that individual opinions, personal convictions and industry lobbying are not public health evidence."*

Further reading:

- E-cigarettes, smoking and health: A Literature Review Update.
- E-cigarette use among youth and young adults. A report of the surgeon general.

Pool Fencing

Drowning is the leading cause of preventable death in children under the age of five in Australia. A ten-year review of toddler drowning deaths in WA found that on average four children under five fatally drowned each year and a further 32 were hospitalised following an immersion incident.

Lauren Nimmo (Senior Manager, Health Promotion & Research, RLSSWA) writes:

> *"Losing a child to drowning is devastating to their family and the wider community. The average cost of each fatal drowning in Australia is $4.64 million (value of years of life lost, emergency services, hospitalisation costs and forgone economic productivity)."*

Pool barriers prevent unnecessary drowning deaths in children under five. The majority of children who drown in pools are under the age of three and unable to exercise personal choice to make decisions to keep themselves safe. Pool fencing is not a substitute for adult supervision, but it is a critical secondary

protection mechanism that can reduce the risks to vulnerable young children by limiting their access to the pool area when adult supervision lapses.

Fencing which isolates the pool and prevents direct access from the house (four-sided or isolation fencing) is approximately five times more effective at preventing childhood drowning than perimeter fences which allow direct access from the house. Following the introduction of four-sided pool barrier legislation in WA, the number of fatal toddler drowning deaths recorded in home pools fell from an average of 5.4 per year (1997-2001) to 1.8 per year (2013-2017).

WA has required mandatory regular inspections of pool barriers since the early 1990s. Mandatory inspections significantly reduce the number of pool barriers that do not meet legislative requirements by regularly reminding pool owners of their obligations and providing advice to rectify any faults. This increases the likelihood that the barriers will perform as designed and restrict access to the pool area by young children.

Lauren argues that:

> *"It is not an acceptable proposition that pool owners can make the decision to install pool barriers based on their individual assessment of risk. Over the last 15 years, one-quarter of toddler drownings in pools or spas occurred at the home of a relative or neighbour, not at the child's own home. The right of home pool owners to enjoy a more aesthetically pleasing pool area or yard should not be placed above the value of a child's life."*

Despite having the strictest pool barrier legislation in the country, WA has the highest rate of home pool ownership. It is apparent that pool fencing does not hinder, restrict or impact on the pool users' wellbeing or enjoyment. To the contrary, it ensures that pools are a safe and enjoyable addition to the family home.

Other sources:

- Pool fencing for preventing drowning of children
- National Drowning Report 2018

Opportunities for reforming paternalistic policy for health

The broad nature of the inquiry's terms of reference provide possibilities for advocacy in areas of law reform that do involve paternalistic approaches that undermine health equity such as sex work and drug use, and as noted before, welfare quarantining.

Emeritus Professor Jon Altman (ANU) argued that such quarantining regimes are expensive and ineffective and that these neo-paternalistic polices that seek to entrench control over the lives of Aboriginal and Torres Strait Islander people are incompatible with Indigenous development. As observed by Matthew Campbell (Charles Darwin University):

> *"…it undermines the building of strength that change is predicated upon. Aboriginal people in the town camps are looking to engage with governments in ways that strengthen their knowledge and culture, which in turn produces tangible meaningful change in their lives. They reject the contradictory logic at the heart of compulsory income management in relation to who drives (and should be driving) change in their communities."*

Dr Jonathan Hallett (Senior Research Fellow, CERIPH) provides insights on other areas of reform:

> *"This is an opportunity to build further momentum for law reform in WA to improve the health outcomes of sex workers. We already know that full decriminalisation as implemented in NSW is linked to better coverage of health promotion programs for sex workers than other models of regulation."*

He suggests that while some exploitation and coercion may occur in the sex industry, sensible reforms can decrease risks by reducing stigma and ensuring sex workers can access health, police and legal services. As outlined in recent research on the sex industry in WA, this can be achieved through decriminalisation and increasing support for community and peer organisations working directly with sex workers:

> *"Strategies such as occupational health and safety standards developed in partnership with sex workers, peer-based approaches to provision of health and safety information, and requiring employers to provide condoms and lubricants for workers will lead to better health outcomes for the whole community."*

See also:
- LASH #2: WA Law and Sex worker Health study: Summary report to WA Department of Health.
- LASH #1: The Sex Industry in Western Australia: A Report to the Western Australian Government

Recent tragic events at the Defqon music festival are an all too frequent reminder that current punitive law and order approaches to drug policy in Australia have significant ramifications. Earlier this year the BMJ's Fiona Godlee editorialised that currently illicit drugs should be legalised, regulated and taxed stating it *"is not about whether you think drugs are good or bad. It is an evidence based position entirely in line with the public health approach to violent crime."*

This was just the latest in calls from the international medical and public health community for illicit drug use to be viewed as a health and social concern rather than primarily a criminal one. Public opinion, particularly relating to cannabis, supports a different approach as does the evidence. As A/Professor Nicole Lee (National Drug Research Institute) and Professor Alison Ritter (UNSW) write, "*Decriminalisation of illegal drugs has the support of Australians and does not appear to increase use, but can substantially reduce harms."*

So, why make a submission to a parliamentary committee or inquiry?

Parliamentary Committees are groups of politicians appointed by one or both Houses of Parliament and frequently comprise members of multiple political parties. They are a particularly useful mechanism to provide feedback on legislation or policy issues. For example, public health practitioners can write parliamentary submissions to committees to advocate for particular policy objectives and may be called before a committee to present evidence. This system of public input into legislative proposals is an important element in the parliamentary process and in the democratic life of a citizen. It provides the public with an opportunity to put forward their views on issues and may ultimately result in new laws.

Tips for writing a good submission

When writing your submission, remember that the purpose of written advocacy is to persuade and in order to be persuasive, your document must be useful and tailored for the intended reader.

Dr Mel Stoneham (Director of PHAIWA Director) provides the following useful advocacy tips (you can read more on good advocacy in the PHAIWA Advocacy Toolkit:
- Frame your response around the importance of prevention and the important role that the environment plays in health and wellbeing.
- Identify your three key messages and reinforce the importance of these messages by:
  - Including evidence based arguments.
  - Using personal interest stories or case studies, as they will more likely be recalled.
- When writing your submission, the temptation often is to set out facts in academic language. Consider how you might present the facts in a way that is clearly understood by a broad audience.
- When drafting your response, consider the architecture of writing and try to:

  - Structure the submission like a road map for the reader to follow so that the reader from the outset is able to follow the significance of what he or she is reading.
  - Use the first few paragraphs to set the context and explain where the document is leading.
  - Headings can also be useful.
- Lead with your argument, rather than the argument presented by the Chair and colleagues.
- Identify recommendations, options or calls to action.
- Use simple language and no acronyms.
- Use good grammar.

How can you can make a submission?

The following outlines how to make a submission: Legislative Council Guide to Making Submissions to a Parliamentary Committee

Email:
Submissions can be emailed to: pccs@parliament.wa.gov.au
If you email your submission, you need to affix an electronic signature.

Post:
Select Committee on Personal Choice and Community Safety
Parliament House
4 Harvest Terrace
WEST PERTH WA 6005

Submissions are due on the 5th October.

To help you with your submission, you might like to attend an event being held by PHAA (WA Branch) on influencing policy event the day before submissions are due. The event will cover writing submissions to parliamentary inquiries and presenting at inquiries.

• A shorter version of this article has also been published at Croakey. See: https://croakey.org/ten-ideas-on-careful-stewardship-for-the-publics-health-suggestions-for-making-submissions/