

Chapter 1

Introduction

Referral and conduct of the inquiry

1.1 On 25 June 2015, the Senate referred an inquiry into personal choice and community impacts to the Senate Economics References Committee (committee) for inquiry and report by 13 June 2016.¹

1.2 The committee's terms of reference require it to 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'.

1.3 In accordance with usual process, the committee advertised the inquiry on its website and wrote to relevant persons and organisations inviting submissions to the inquiry.

1.4 To date, the committee has received 485 public submissions and two confidential submissions. The public submissions are listed at Appendix 1.

1.5 The committee has held seven public hearings. At its first public hearing, on 11 September 2015 in Canberra, the committee heard evidence on personal choice and the theoretically underpinnings of the terms of reference. At its second public hearing, on 3 November 2015, in Parramatta, the committee heard evidence on proposed restrictions on the activities of fans of the Western Sydney Wanderers Football Club. At its third public hearing, on 16 November 2015, in Melbourne, the committee heard evidence on mandatory bicycle helmet laws, and at its fourth public hearing, on 20 November 2015, in Sydney, the committee heard evidence relating to the sale and service of alcohol, with particular reference to NSW's 'lockout' laws. A fifth public hearing in Sydney on 9 March 2016 focused on the sale and use of tobacco, nicotine and e-cigarettes. The committee's sixth public hearing considered the sale and use of

1 *Journals of the Senate*, No. 102, 25 June 2015, p. 2832.

marijuana on 11 March 2016 in Sydney. At its seventh public hearing on 22 April 2016, in Canberra, the committee heard evidence regarding the classification of publications, films and computer games.

1.6 This report focuses on the evidence in relation to the first public hearing. The witnesses who appeared at the first public hearing are listed at Appendix 2.

1.7 The committee thanks all those who have participated in the inquiry so far.

Scope of the inquiry

1.8 The committee recognises that support for or opposition to state intervention in matters of personal choice, or 'paternalism', tends to focus on particular issues and is not a position derived from first principles. The committee appreciates that the role of the state in individuals' daily lives and their decisions is a complex one, as evidenced by the nuanced views of submitters and witnesses.

1.9 The committee heard conflicting views that state intervention is excessive in some areas, appropriate in others, and lacking in still others. Given the spectrum of views, and need to focus on specific matters rather than principled support or opposition to the role of the state, the committee's intention is to examine policy areas that have the potential to restrict personal choice and have elicited strong views from submitters to the inquiry. These policy concerns are primarily reflected in the inquiry's terms of reference.

1.10 The committee's view is that governance for the good of the public as a whole is not only necessary, but a key responsibility of government. The question to be considered is where the line should be drawn when it comes to state intervention in areas governed by personal choices.

1.11 The committee is also of the view that the role of the state with regard to children and young people can easily be differentiated from that of the state with regard to adults. The committee acknowledges legislation that protects children from harm, and from engaging in unsafe behaviour, should not be conflated with arguments regarding state intervention in adult decision making. Protection of children is more appropriately considered in relation to the role of the state with respect to parents.

1.12 The committee heard that there was generally agreement regarding state intervention in certain areas of policy.² Mr Christopher Snowden, Director of Lifestyle Economics, Institute of Economic Affairs in London, told the committee:

There are genuine public health issues such as clean water, reducing environmental pollution, road safety laws and vaccinations, where you

2 Professor Michael Moore, Chief Executive Officer, Public Health Association Australia, *Committee Hansard*, 11 September 2015, p. 8.

cannot as an individual achieve the desired goal without the collective acting together.³

1.13 It was also noted by submitters and witnesses that personal responsibility was paramount to any discussion of state intervention and personal choice. Professor Michael Moore, Chief Executive Officer of the Public Health Association Australia (PHAA), said that 'there should be a balance between personal responsibility and good government stewardship'.⁴

1.14 Areas such as sanitation, vaccination, product safety and water quality are examples of these policy areas where it was recognised that the government has a responsibility to regulate. Therefore, the inquiry does not focus on these areas, which are regulated for the public benefit and which affect the safety and wellbeing of all. The committee is of the view that it is the responsibility of government to regulate these policy areas and that justifications for government intervention in these areas are more persuasive and less paternalistic.

1.15 This report focuses on the conceptual aspects of the debate surrounding paternalism.

Arguments for state intervention in personal choice matters

1.16 At the core of the debate concerning appropriate limits on personal choice is the question of state intervention, which is often referred to as 'paternalism'.

1.17 The concept of paternalism, as applied to public policy, is the subject of considerable debate but is generally taken to mean:

...the notion that those in positions of power have, just as in the relationship between parents and children, the right and the obligation to overrule the preferences of those deemed incapable of knowing their true interests.⁵

1.18 Mr Bill New, a public policy researcher, identified three essential conditions that, in his view, must be met in order for an action to be classed as paternalistic:

- there is interference in the self-regarding decision-making autonomy of one person by another person or by the state;
- the interference is made in order to further the paternalised person's interests or welfare; and
- the interference is made without the past, present or immediately forthcoming consent of the individual concerned.⁶

3 Mr Christopher Snowdon, Institute of Economics Affairs, *Committee Hansard*, 11 September 2015, p. 1. See also Mr Chris Berg, Institute of Public Affairs, *Committee Hansard*, 11 September 2015, p. 43.

4 Professor Michael Moore, *Lateline*, 11 September 2015, <http://www.abc.net.au/lateline/content/2015/s4311191.htm> (accessed 16 September 2015).

5 M. Thomas and L. Buckmaster, 'Paternalism in social policy—when is it justifiable?', *Research Paper No. 8*, 2010–11, 15 December 2010, p. 2.

6 B. New, 'Paternalism and public policy', *Economics and Philosophy*, 15, 1999, p. 65.

1.19 In media commentary on this inquiry, what political philosophers and legal theorists refer to as 'paternalism' has been widely referred to as 'nanny statism'.⁷

1.20 The term 'nanny state' has a contested history, as evidenced in submissions. The PHAA, for example, asserted the following:

It is notable that "Nanny State" is a term that was coined in 1965 by a British columnist writing in *The Spectator*...The whole concept of the "Nanny State" was to point to 'interference' by governments. It was a term usually used in a pejorative way to discourage governments from introducing legislation or regulation that might undermine the power or actions of industry or individuals. It is invariably presented as an interference with the choices of ordinary people. It is rarely if ever used to criticise action by governments to protect the community in areas such as policing and law enforcement, or to opposed public health measures ranging from safe food and water to quarantine.⁸

1.21 The Institute of Public Affairs pointed out that this is historically in error:

Opposition to government paternalism wasn't always a conservative or libertarian thing. Indeed, the use of the word 'nanny' to describe state interference in individual choices originally came from the left.

In a 1960 article in the *New Statesman*, the magazine set up by members of the Fabian Society, nanny was deployed to attack the British Board of Film Censors. 'Novels and the Press get along, not too calamitously, without this Nanny; why shouldn't films?' asked a *New Statesman* columnist William Whitebait. Nanny 'exercises a crippling drag on the growth of a serious and healthy British cinema'.

Eight years earlier, the American journalist Dorothy Thompson...was using nanny to describe British imperialism in the Middle East.

Western empires, Thompson wrote in her syndicated column, have 'filled the role of headmaster, or Nanny-governess'. The West does not treat the inhabitants of its colonies as equals. She continued:

It is an amusing notion that comes to me that, with the retreat of empire, Britons are turning Britain itself into a Nanny-state, perhaps out of a long habit in persuading or coercing natives to do what is good for them.⁹

7 See for example: James Glenday, 'Drugs, pornography and bicycle helmets under Senate microscope as David Leyonhjelm's "nanny state" inquiry begins', *ABC News Online*, 11 September 2016, <http://www.abc.net.au/news/2015-09-11/senate-nanny-state-inquiry-begins/6766740> (accessed 3 May 2016); and Jared Owens, 'War declared on nanny state', *The Australian*, 26 June 2015, p. 4.

8 Public Health Association of Australia, *Submission 172*, p. 8.

9 Institute of Public Affairs, *Submission 160*, p. 34.

1.22 It is partially true that 'Nanny Statism' and 'Paternalism' are not perfectly congruent in meaning. However, there is a significant overlap, particularly when one turns to the concept of 'hard paternalism'.

1.23 Submissions from public health and other organisations put forward arguments in support of state intervention that centred around:

- protection: the state has a responsibility to provide 'stewardship';
- promotion: promoting a healthy and safe population benefits the economy;
- correction: state intervention corrects the market failure of industry dominance; and
- superior knowledge: the argument that those responsible for interventions are better qualified to make certain choices than those subject to intervention.

1.24 The Australian Health Promotion Association (AHPA) submitted that, while personal choice decision making is important, decisions rarely impact on one person alone:

The personal freedom to make decisions is an essential requirement for individual health and wellbeing. However personal freedom is only possible within supportive environments that protect us from adverse social conditions and harmful behaviour such as violence and addiction.

Our individual actions do not occur in a vacuum. Invariably individual actions impact on others within society. Individuals do not always have all of the required resources at their disposal to weigh up all of the relevant costs, risks and benefits of decisions in order to make informed decisions.¹⁰

1.25 The Australian Medical Association (AMA) similarly noted the potential flow-on effects of personal choices:

Unfortunately, people rarely factor in the consequences of their behaviour (on themselves and on others) and all too often it is family members and Governments who are left to provide support and care for poor individual decision making. More tragically, sometimes innocent victims have to bear the consequences of poor decision making.¹¹

Stewardship

1.26 PHAA submitted that stewardship was a responsibility of government:

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.¹²

10 Australian Health Promotion Association, *Submission 91*, p. 3.

11 Australian Medical Association, *Submission 112*, p. 2.

12 Public Health Association Australia, *Submission 172*, p. 6. See also Australian Health Promotion Association, *Submission 91*, p. 3.

1.27 According to the World Health Organisation, 'stewardship' refers to the 'careful and responsible management of the well-being of the population' and, in the most general terms as 'the very essence of good government'.¹³

1.28 A more focused definition was offered by the UK's Nuffield Council of Bioethics (NCB), which stated:

...the concept of 'stewardship' is intended to convey that liberal states have a duty to look after important needs of people individually and collectively. It emphasises the obligation of states to provide conditions that allow people to be healthy and, in particular, to take measures to reduce health inequalities.¹⁴

1.29 The NCB argued that, when it comes to 'stewardship', the 'overall aim should be to achieve the desired health outcomes while minimising restrictions on people's freedom'.¹⁵

1.30 As cited by the PHAA, 'The Nuffield stewardship model suggests a balance between 'acceptable public health goals' and 'limitations on coercion and intrusiveness'. Its list of acceptable public health goals include:

- a) reducing the risks of ill health that result from other people's actions, such as drink-driving and smoking in public places;
- b) reducing causes of ill health relating to environmental conditions, for instance provision of clean drinking water and setting housing standards;
- c) protecting and promoting the health of children and other vulnerable people;
- d) helping people to overcome addictions that are harmful to health or helping them to avoid unhealthy behaviours;
- e) ensuring that it is easy for people to lead a healthy life, for example by providing convenient and safe opportunities for exercise;
- f) ensuring that people have appropriate access to medical services; and,
- g) reducing unfair health inequalities.¹⁶

1.31 At the same time, the Nuffield model says that public health programmes should:

- a) not attempt to coerce adults to lead healthy lives;

13 P Travis, D Egger, P Davies, A Mechbal, 'Towards better stewardship: Concepts and critical issues', *World Health Organisation*, 2002, p. 1, <http://www.who.int/healthinfo/paper48.pdf> (accessed 16 December 2015).

14 *Public Health: Ethical Issues*, 2007, p. xvi.

15 NCB cited in Public Health Association of Australia, *Submission 172*.

16 *Submission 172*, p. 6.

- b) minimise the use of measures that are implemented without consulting people (either individually or using democratic procedures); and
- c) minimise measures that are very intrusive or conflict with important aspects of personal life, such as privacy.¹⁷

Correcting domination by industry/corporations through state intervention

1.32 Some submissions were concerned with the role of the public sector in protecting individuals from industry domination, for example through advertising. The committee notes this area of concern but determined that the matter of industry domination is outside the scope of the inquiry.

Economic benefits of state intervention

1.33 The PHAA argued that certain products can generate flow-on costs to the economy through loss of workforce productivity or expenditure on policing and the health system. They supported the imposition of taxes in these circumstances:

Particular products, such as alcohol or tobacco, result in externalities, which relate to the costs incurred by others beyond those considered and incurred by individuals in a transaction. Applying taxes is an efficient and effective way to correct these externalities.¹⁸

1.34 Similarly, the AMA submitted that there are economic costs attaching to alcohol and drug misuse which have an impact outside those industries. They put forward the view that, while these industries contribute to the economy, the flow-on costs should be considered:

While business and commercial interests are important considerations, the full extent of harms caused by such products is not borne by that industry or producer, more often the burden is carried by others (by the health care system, law enforcement etc).¹⁹

1.35 The AHPA put the view that health promotion, which helps people avoid illness, could be of economic benefit, as healthy and active individuals contribute to workforce productivity and lessen the strain on the healthcare system.²⁰

1.36 Nonetheless, it is important that health promotion be accurately costed. Dr Kesten Green argued in his submission that the failure to properly calculate economic benefits as well as costs in public health literature has led to a situation where it has become difficult to establish 'whether regulation can, and in practice does, improve outcomes relative to outcomes in the absence of regulation'.²¹

1.37 In policy areas where regulations have been properly costed, Dr Green went on to note that they have often proven more expensive to implement than the problem

17 Public Health Association of Australia, *Submission 172*, p. 6.

18 Public Health Association of Australia, *Submission 172*, p. 11.

19 Australian Medical Association, *Submission 112*, p. 2.

20 Australian Health Promotion Association, *Submission 91*, p. 3.

21 Dr Kesten Green, *Submission 237*, p. 2.

they were meant to solve. In one notorious instance, regulations on labelling that were intended to encourage people to reduce their calorie consumption had the opposite effect.²²

High-stakes or irreversible decisions

1.38 The committee received evidence that decisions that involve 'high stakes', where the outcome is largely irreversible, may be instances in which state intervention is warranted. Political theorist Professor Robert Goodin put forward the view that paternalism can only be justified for 'big decisions' in a person's life, particularly big decisions that cannot be reversed.²³

1.39 For example, the decision to take certain types of drugs or for a student to drop out of school would be considered a 'big decision', and if that big decision cannot be reversed because the drug is addictive or the student cannot re-enrol, then state intervention through paternalistic public policy may be justified.²⁴

1.40 Further, if a big decision could result in the individual's death, there would, similarly, be a case for paternalism, as there would be no opportunity for reversal of the decision or the opportunity to learn from the mistake.²⁵ In these cases, it may be that the state is acting to protect an individual from the outcome of a high-stakes or irreversible decision.²⁶

1.41 The Australian Drug Foundation also argued that the state has a responsibility to legislate to protect citizens from taking action or participating in behaviour that places themselves and others at risk of preventable harm, particularly when the risk of harm is 'elevated or when the individual may not fully comprehend the risk entailed'.²⁷

1.42 The Australian Psychological Society referred to the role of the state in promoting 'positive freedom', to compensate those who lack adequate resources to fully develop knowledge, skills or abilities. The point was also made in evidence that an overt focus on personal choice or the conceptualisation of public issues as individual problems risks holding disadvantaged groups responsible for situations that have 'demonstrable structural and social causes beyond their control, which could further marginalise already vulnerable people'.²⁸

22 Omri Ben-Shahar & Carl E Schneider, *More than you wanted to know: The failure of mandated disclosure*, Princeton University Press, 2014, cited in Dr Kesten Green, *Submission 237*, p. 2.

23 B. Goodin, 'In defence of the Nanny State', in A Etzioni, ed., *Rights and the Common Good: communitarian perspectives*, St Martin's Press, New York, 1995, p. 124.

24 B. Goodin, 'In defence of the Nanny State', in A Etzioni, ed., *Rights and the Common Good: communitarian perspectives*, St Martin's Press, New York, 1995, p. 124.

25 B. Goodin, 'In defence of the Nanny State', in A Etzioni, ed., *Rights and the Common Good: communitarian perspectives*, St Martin's Press, New York, 1995, p. 125.

26 The roles of protection and stewardship will be discussed below.

27 Australian Drug Foundation, *Submission 291*, p. 4.

28 Australian Psychological Society, *Submission 270*, pp 2-4.

Short term preferences in decision making detract from long term interests

1.43 Professor Goodin argued that it is necessary to question an individual's preferences when he or she makes a decision, and whether they relate to his/her present or future interests. Other researchers have also considered whether a person's present interest in an activity is weighted more heavily than his/her future interest when that person comes to make a decision.²⁹ Economists refer to this phenomenon as 'discounting'.

1.44 Professor Julian Le Grand suggested that people may make poor decisions if their short term interests outweigh their long term interests:

Failures in major long-term decision-making may result from another problem: that of myopia. Individuals may make wrong decisions about self-exclusion, because they are too short-sighted to take proper account of the future. Myopia is a common phenomenon. Individuals' time horizons are limited. They do not always consider the long-term; they plan only on the basis of current events, or on their predictions of the very immediate future. In a word, they are myopic.³⁰

1.45 Professor Goodin gave the example of smoking, noting that it may be an individual's first order preference to smoke for whatever reason (enjoyment, or fashion, for example), but their second-order preference will be to stay alive and healthy.³¹

1.46 In this scenario, the fact that smoking is unhealthy is known to the smoker, but knowledge and acceptance of this is overridden by their desire, and the choice, to continue smoking. Professor Goodin argues, however, that:

Say what they may at 16, however, we cannot help supposing that they will think differently when the pigeons eventually come home to roost...Insofar as people's preferences are not settled—insofar as they choose one option now, yet at some later time wish that they had chosen another—we have another ground for permissible paternalism.³²

1.47 The policymaker, therefore, has two choices to consider in relation to the same individual: present and future, noting that the individual in the future cannot reverse the decisions taken by their 'past' self.

1.48 Significantly, Professor Goodin's position rests on the contention that paternalism in some areas of public policy is justifiable on the basis of a person's 'deeper' or second-order preferences, such as their health and general well-being.

29 J. Le Grand, *Individual choice and social exclusion*, CASE paper 75, Centre for Analysis of Social Exclusion, London School of Economics, London, 2003, pp 7-8.

30 J. Le Grand, *Individual choice and social exclusion*, CASE paper 75, Centre for Analysis of Social Exclusion, London School of Economics, London, 2003, p. 8.

31 B. Goodin, 'In defence of the Nanny State', in A Etzioni, ed., *Rights and the Common Good: communitarian perspectives*, St Martin's Press, New York, 1995, p. 126.

32 B. Goodin, 'In defence of the Nanny State', in A Etzioni, ed., *Rights and the Common Good: communitarian perspectives*, St Martin's Press, New York, 1995, p. 126.

Almost by definition, these interests are only disclosed over the longer term: the consequences of smoking, for instance, can take a number of decades to develop.

1.49 From Professor Goodin's perspective, paternalistic policies that seek to improve a person's quality of life, especially over the longer term, are not only morally justifiable, but politically effective. Smokers who have been saved from lung cancer are better off, since their deeper interest in their own health has been realised, while society does not face the burden of dealing with high rates of smoking-related illnesses. His position comes close to equating freedom with a person's deeper and longer-term interests – consistent with Professor Berlin's discussion on 'positive liberty', some of which might be unknown to persons at earlier stages of their lives.

1.50 In opposition to Professor Goodin's equation of freedom with the realisation of deeper interests, Professor Isaiah Berlin argued that paternalistic arguments in favour of securing a person's deeper preferences, often by restricting their liberty in the present, commit a cardinal error: they assume that liberty is the equivalent of other social goods, such as health, happiness or general well-being. While Professor Berlin does not question the intrinsic importance of these social goods – since health, for example, is valuable in itself – he is highly resistant to the contention that good health is the same thing as freedom. In Berlin's judgement:

...everything is what it is: liberty is liberty, not equality or fairness or justice or culture, or human happiness or a quiet conscience.³³

1.51 For Professor Berlin, the argument that paternalism can be justified by realising a person's deeper interests confuses the notion that good health is desirable with the contention that promoting health is the equivalent of freedom. Professor Berlin suggests that there is no contradiction in assuming that a person can be healthier – possibly as a result of paternalistic public policies – while also being less free. Whether a paternalistic policy is justifiable is therefore always dependent on the underlying circumstances: there is no necessary connection between freedom and other valuable social goods.

Hard and soft paternalism

1.52 Arguments for and against paternalism are nuanced, with submitters and witnesses drawing a distinction between variants on paternalism, particularly 'soft' and 'hard' paternalism. The Institute of Public Affairs (IPA) submitted that:

...soft paternalism refers to policy interventions that attempt to inform consumers about their choices while leaving those choice sets unchanged. These can include things like labelling requirements or information campaigns about harmful activity.

Hard paternalism actively constrains choices, by regulating the circumstance in which a choice may be made, the availability of those

33 I. Berlin, 'Two Concepts of Liberty', in H. Hardy, ed., *Liberty: Incorporating Four Essays on Liberty*, Oxford University Press, Oxford, p. 5.

choices, and the legality of the choices. For instance, smoking bans and bicycle helmet requirements are examples of hard paternalism.³⁴

1.53 Similarly, Mr New further set out the distinction between soft and hard paternalism being contingent on the individual:

The distinction is based on the degree to which the individual concerned is considered to be acting voluntarily. If someone is mentally handicapped or mentally ill, under the influence of drugs, or subject to extreme forms of coercion, then those who support the harm principle will often submit that interfering in the self-regarding actions of these 'non-voluntary' individuals is justified on the basis that the decision is not really their own. The harm is exogenous to the individual. Hard or strong paternalism, on the other hand, relies on justifying an intervention even though the individual is in full control of their mental faculties, has good information relating to the decision to be made, and is not being unduly pressured or coerced in any way.³⁵

1.54 Support or opposition for paternalism in public policy, then, appears to be along more narrow lines with individuals and organisations submitting that they supported some, but not other, forms of state intervention. For example, state intervention was supported on drink driving, but not in relation to general access to alcohol.

1.55 IPA submitted that '[t]he degree to which a paternalist intervention is objectionable depends on the degree to which it restrains freedom'.³⁶

1.56 Disagreement around paternalism has tended to focus around hard paternalism, or the intervention of the state in spite of the provision of information relating to a decision.

Intrusive paternalism or state intervention

1.57 A number of submitters to the inquiry argued that successive governments had overextended their reach and that individual rights had been restricted.³⁷ These submitters emphasised the right of the individual to freedom of choice.

1.58 In his submission to the committee, Professor Philip Pettit argued that laws enacted in a democracy 'provided a. as required by a constitutional rule of law, they are the same for all' and 'b. as required by democracy, they are selected under accepted processes and criteria', don't 'themselves subject us to a public, alien will' and 'may be required in order to provide effectively for people's being able to enjoy the conditions necessary for a free, autonomous life'.³⁸

34 Institute of Public Affairs, *Submission 160*, p. 3.

35 B. New, 'Paternalism and public policy', *Economics and Philosophy*, 15, 1999, p. 16, footnote, 3.

36 Institute of Public Affairs, *Submission 160*, p. 3.

37 Mr Justin Jefferson, *Submission 3*, p. 1.

38 Dr Philip Pettit, *Submission 281*.

1.59 The IPA submitted their view that:

...individuals should be free to live their lives according to their values and their preferences. The only activities that can be legitimately constrained are those which have a direct, material impact on the rights of others.

This is the perspective which we apply to paternalist public policy, also known colloquially as 'Nanny State' public policy. These policies consist of regulatory and taxation interventions aimed at restricting or influencing individual choices that affect primarily those individuals themselves.³⁹

1.60 Mr Snowden argued that 'a movement that seeks to regulate a person's lifestyle for their own good is unethical. It is also damaging to individuals and therefore to society'. He makes the related point that using high prices to generate a form of positive liberty in the sense Professor Berlin discusses – 'helping people to follow their true preferences' – has the effect of taking a 'disproportionate share of income from the poor'.⁴⁰

1.61 Commercial Economics Consulting submitted that people require the ability to make their own decisions about their behaviour in order to feel empowered and engaged with society. They suggested that there are consequences to over-regulation:

Over-regulation creates the very real risk that we will create a society which relies on government as the source of solution for every problem, whereas, realistically, the way to deal with societies problems is through the engagement of the citizenry in a communal effort to resolve issues in the optimal manner possible. Doing so clearly requires the citizenry to be empowered and for the citizenry to realise that it is the responsibility of each individual, working together, to resolve issues. That is, to ensure that personal responsibility is the cornerstone of decision making.⁴¹

1.62 Some submitters put forward the view that if an individual is entrusted with the responsibility of voting in an election, that same individual should be trusted with other decisions regarding their lifestyle.⁴²

1.63 The IPA elaborated on this point thus:

Paternalism violates one of the core ethical constructs at the heart of our liberal democracy: the claim that we are each capable of exercising rational and self-regarding decision making, and have the right to make such decisions at the ballot box. If we believe that claim holds true for voting, why do we not believe it holds true for market choice?

39 Institute of Public Affairs, *Submission 160*, p. 1.

40 Mr Christopher Snowden, Institute of Economics Affairs, *Committee Hansard*, 11 September 2015, p. 1.

41 Commercial Economics Consulting, *Submission 75*, p. 1.

42 See for example: Mr Andrei Chalnev, *Submission 19*, p. 1; Institute of Public Affairs, *Submission 160*, p. 9; Mr Peter Robinson, *Submission 220*, p. 1.

It is important that policymakers understand the full significance of their assertion that individuals are unable to make decisions on their own behalf, and that they require the assistance of higher authorities.⁴³

1.64 Mr Abe Salt suggested that the application of government intervention was inconsistent, with some products banned while others taxed, an unfortunate example of policy inconsistency and discretion, criticised with considerable force by Professor Pettit in his scholarship on the exercise of arbitrary power. Mr Salt offered an example of tobacco products: cigarettes are taxed while e-cigarettes are banned.⁴⁴

1.65 The committee received hundreds of submissions arguing for and against state intervention in various matters of personal choice. This inquiry will explore the issues raised in a number of areas where it is argued that individual freedom to make decisions is being undermined by paternalistic state overreach.

Senator Chris Ketter

Committee Chair

43 Institute of Public Affairs, *Submission* 160, p. 4.

44 Mr Abe Salt, *Submission* 83, p. 1.

