

Additional comments

Senator David Leyonhjelm – Liberal Democratic Party

1.1 I am in broad agreement with the committee's interim report. I have only minor observations to add. I also have one piece of evidence from *Hansard*—to which the committee refers in passing—that should be exposed to a wider audience.

1.2 I will group these items under three headings – 'advertising', 'evidence', and 'the greater good'.

Advertising

1.3 As discussed in the first interim report—which focussed on theory—the question of whether advertising has the effects that various parties claim for and against it fell outside the inquiry's terms of reference.

1.4 However, it was raised again at the hearing and in submissions on this issue. Some of the claims by public health bodies with respect to advertising were quite controversial, including claims that people are so easily persuaded by advertising they lose their ability to exercise preferences:

We need to be free from being addicted to tobacco and alcohol. Our children need to be free from being harassed by alcohol and tobacco advertising and promotions. We need to be able to walk down the street free from the fear of being mowed down by a drunk driver or a speeding driver. We need to be free from restrictions caused by being obese, or from chronic disease.¹

1.5 This was contradicted by Christopher Snowden of the UK's IEA, who pointed out that '[t]here is a huge amount of economic evidence showing that advertising does not increase the size of a given market and is only useful in increasing market share for a given company'.²

1.6 The Institute of Public Affairs also pointed out that the evidence base suggesting advertising influences subsequent behaviour is weak.³

1.7 Similarly, attempts to correlate media consumption with later behaviour in other fields—playing violent video games and subsequently committing crimes of violence, for example—have never been borne out by research.⁴

1 Mr Paul Klarenaar, Australian Health Promotion Association, *Committee Hansard*, 20 November 2015 p. 39.

2 *Submission 186*, p. 1.

3 *Submission 160*, p. 26.

4 See: Paul Adachi and Teena Willoughby, 'The Effect of Video Game Competition and Violence on Aggressive Behavior: Which Characteristic Has the Greatest Influence?' *Psychology of Violence*, vol. 1, no. 4, October 2011, pp 259 –274.

Evidence

1.8 On page 22 of the committee's interim report, evidence about the behaviour of the NSW Office of Liquor, Gaming and Racing and its licencing police given by Mr Tyson Koh of Keep Sydney Open is noted and footnoted. That evidence is disturbing. Given Mr Koh's long involvement in the music industry and extensive knowledge of Sydney's nightlife, I have included here it in its entirety:

CHAIR: There are a couple of other points in your submission, Mr Koh, that I want you to expand upon, if you will. The very bottom one intrigues me: Reports of unprofessional conduct and intimidation from licensing police. What are you referring to there?

Mr Koh: I have spoken to a lot of venues that have dealt with licensing police in Surry Hills and Newtown. What I have been finding is quite a common tale, where a lot of licensing police will turn up and issue fines to the order of several thousand dollars for really small infractions which have no ramifications whatsoever on safety. A lot of venues end up paranoid and trying to keep the licensing police happy, rather than trying to run their venues the best they can in the most orderly and safe fashion. There have been a lot of reports of threats and blackmail from certain licensing police, particularly in the Surry Hills area. The venues are viewed in an adversarial frame, rather than realising that these venues are providing a necessary function in our community by keeping people happy and giving them a place to socialise. Instead they are treated automatically as criminals.

There has been a lot of anecdotal evidence about licensing police and also some conduct that, when I first heard about it, sounded a bit shady. That is why I mentioned in the opening statement that we need to recognise that these venues are not the enemy. They are here to provide a valuable function for society and we need to recognise that. The other thing which I have also noticed from talking to people is that venues which do not offer any gambling—that is, pokies or a TAB outlet—tend to be treated more harshly by licensing police.

It is the view of certain licensees it is because they do not bring in as much revenue for the state government, so they get targeted.

CHAIR: Have you encouraged any of these people you have been talking to to make formal complaints about their treatment?

Mr Koh: I have, actually. In the Darlinghurst area, particularly along Oxford Street, a few venues are starting to get together to form their own dialogue so they can compare the way that they have been treated. What I have been hearing is basically that they have been intimidated to the point where they say that, if they do make a complaint, the police will do stuff like issue a \$6,000 fine or raise their risk rating. That is what I am referring to when I say there has been a little bit of blackmail. Basically there is a bit of a culture of fear that has been imposed by the licensing police. A lot of venues are so paranoid about getting these fines and getting in trouble with the law that they are too scared to confer with each other. That is something which they are just starting to do now. In one case, there was video evidence of licensing police issuing a fine which was completely unjustified. They captured the licensing police high-fiving each other as

they were writing out the fine, and the venue ended up complaining about it. I am not sure who they complained to, but what they said was, 'Okay, we'll write off this fine, but we don't want you complaining about this any further.' That is some of the stuff that I have been hearing about from venues.⁵

The greater good

1.9 During the course of the hearing—as well as in submissions—I became increasingly troubled by appeals for the enactment of legislation on the basis of 'the greater good' from representatives of public health organisations.⁶

1.10 I think it is fair to say this approach represents utilitarianism of the crudest sort.

1.11 Utilitarianism—sometimes mistakenly called consequentialism, of which it is a component—is a serious and important part of the Western liberal political tradition.

1.12 However, it has long been recognised—including by consequentialists—that legislation focussing on good outcomes for the majority at the expense of the minority is morally troubling. It becomes possible, for example, to justify subjecting 10 per cent of the population to misery if positive gains to the 90 per cent remaining are greater than the misery inflicted on the 10 per cent.

1.13 By this logic, Sydney's lockouts would be justified simply because there are more members of the 2011 Residents' Association than there are people—musicians and hospitality workers—who have lost their jobs as a consequence of the lockouts. This is not an approach to the development of public policy that has any place in a liberal democracy.

1.14 Historically, some truly repellent behaviours—including slavery and genocide—have been justified on the basis of 'the greatest good for the greatest number'. It has a long and dishonourable history and needs to be interrogated robustly whenever is assayed.

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5 *Committee Hansard*, 20 November 2015, pp 18-19.

6 See, for example: *Committee Hansard*, 20 November 2015, p. 39.