

**23rd Lionel Murphy Memorial Lecture
Wednesday 2nd December 2009
Parliament House, NSW**

**Preventative Health and the Nanny State: Fairy Godmother or Wicked Witch?
Rob Moodie**

Chair, National Preventative Health Taskforce

Thank you Paul

I would like to start by paying my respects to and acknowledging the Gadigal clan of the Eora Nation and its elders, the traditional owners of the land that we stand and meet on today.

And I would also like to pay my respects to the lecturers that precede me, a somewhat intimidating list I must admit, and to thank the Trustees of the Foundation for inviting me to speak. I would like to honour the memory of Lionel Murphy and to honour the members of his family who are present tonight.

I would also like to acknowledge my fellow National Preventative Health Taskforce members, in particular Professor Mike Daube, whose work I have mercilessly plundered for this presentation, and Shaun Larkin who is present tonight, in addition to the Department of Health and Ageing Secretariat, our technical writing teams, and Nick Moodie.

And I would like to thank and acknowledge the literally thousands of Australians who lodged submissions to the Taskforce, wrote papers for us, or participated in our consultations across Australia.

Just before, I was asked by a colleague what prevention has to do with the Lionel Murphy Foundation. Well, I hope that might be clearer after this talk, but perhaps I could turn the question on its head, and ask what has law to do with prevention? I happen to be convinced that the law is fundamental to good public health which included prevention. We need more public health lawyers such as Jonathan Liberman at the Cancer Council Victoria and Roger Magnusson at the University of Sydney.

We have just had the pleasure of welcoming Professor Larry Gostin from Georgetown University – one of the global leaders in public health law, whose visit reinforced the need for us in public health to understand and use the law more effectively. In fact public health lawyers are so important they should be regularly hugged!

And now to the issue at hand...

Australia faces some major health problems. And some of the biggest ones actually don't have much to do with our health care system.

As the National Preventative Health Taskforce we were asked by Nicola Roxon in 2008 to develop the first ever National Preventative Health Strategy to focus on reducing the huge (and growing) burden of premature death and disease from obesity,

tobacco and the harmful consumption of alcohol - so it is really three national strategies in one.

We have put it together across three multi-year phases until 2020, with ambitious title of *The Healthiest Country by 2020*.¹

So, if we had the chance to help a million Australians stop smoking should we take it?

Similarly, if we had the chance to stabilise obesity at current levels and prevent a half a million Australians from dying prematurely over the next forty years should we take it?

And, if we could prevent over 300,000 hospitalisations for alcohol related problems in the next ten years – should we take it?

These are the opportunities available right now in Australia. By commissioning an independent group to develop the first ever National Preventative Health Strategy, the Rudd Government has perhaps created the best chance in more than a generation to improve Australia's health.

Tonight I would like to outline the magnitude of these health problems, the key aspects of the Strategy, and then I will focus on one form of criticism of the Strategy – the *nanny state* commentary.

I have chosen the latter because it fascinates me and because it brings to light some of the fundamental challenges for us, and for our governments.

The problems

Allow me to give you some idea of the magnitude of these problems²

Obesity

- ✚ Trends predict that because of obesity the life expectancy for Australian children alive today will fall two years by the time they are 20 years old
- ✚ In only 15 years, from 1990 to 2005, the number of overweight and obese Australian adults increased by 2.8 million. Almost a quarter of Australian children are overweight or obese
- ✚ If we don't control obesity, projections indicate that by 2023, type 2 diabetes will become the leading cause of disease burden for males and the second leading cause for females, leading to major rises in annual healthcare costs.

It is unacceptable that we as a nation are leaving this legacy to our children and grandchildren.

Tobacco

¹ See the National Preventative Health Task Force *The Healthiest Country by 2020*. The National Preventative Health Strategy. DOHA 2009 available @ www.preventativehealth.org.au

² These data are all quoted in the National Preventative Health Task Force *The Healthiest Country by 2020*. The National Preventative Health Strategy. DOHA 2009

- ✚ This is still the biggest preventable killer in Australia and despite encouraging declines still remains high in many groups
- ✚ Half of the 2.9 million Australian adults who currently smoke on a daily basis and who continue to smoke for a prolonged period will die early

Alcohol

- ✚ There are enormous health and social costs due to harmful consumption of alcohol – much of it dues to secondary harm – passive drinking – street violence, sexual assaults, road deaths, domestic violence and the resultant diversion of police resources

In total, the overall cost to the healthcare system associated with these three risk factors is in the order of almost \$6 billion per year, while lost productivity is estimated to be almost \$13 billion per year.

The process of the Taskforce

As a Taskforce we listened across Australia during 15 months of national consultations, roundtable discussions, 400 submissions, while working with many other Parliamentary Inquiries and related commissions.

We have analysed past and contemporary public health successes in Australia and three teams were constantly trawling through and compiling the relevant international and national evidence, in three major technical reports that provide the evidence underpinning the Strategy.

This process has also helped develop a large constituency of expectation and support for the Strategy.

What benefits do we get from it?

- ✚ If we implement the tobacco strategy, approximately one million fewer Australians will smoke, and the premature deaths of almost 300,000 Australians now living will be prevented between now and 2020 from just the four main diseases caused by smoking³. We will also see significant decreases in Indigenous smoking.
- ✚ If we reach the targets for alcohol, the proportion of Australians who drink at short-term risky/high-risk levels will drop from 20% to 14%, and the proportion of Australians who drink at long-term risky/high-risk levels will drop from 10% to 7%. The impact on morbidity would approximate to 330,000 fewer hospitalisations at a cost saving of nearly \$2 billion to the national health sector by 2020⁴.

³ Hurley S, Spittal M, Scollo M, Durkin S, Wakefield M. 2009. Predicted impact of proposed tobacco control strategies. Cancer Council of Victoria. Melbourne, Paper commissioned by the National Preventative Health Taskforce.

⁴ Chikritzhs T, The impact of the Prevention Task Force target reductions for risky/high risk drinking on national morbidity and mortality, 2007-2020. 2009, National Drug Research Institute, Curtin University of Technology, paper commissioned by the National Preventative Health Taskforce.

- ✚ If current upward trends in overweight and obesity continue, there will be approximately 1.75 million deaths at ages 20+ years caused by overweight and obesity in Australia from 2011 to 2050. If we just stabilise obesity at current levels, we can prevent the premature death of a half a million people between now and 2050⁵.

If we look at our public health successes of the past such as tobacco control and road trauma – these have required comprehensive, determined, progressive, and sustained action.

There are no quick fixes, no magic bullets, no pills.

Comprehensive action requires:

- ✚ Public education
- ✚ Community, workplace and school programs
- ✚ Responsive, sensible regulation and legislation
- ✚ Pricing and taxation
- ✚ Research, surveillance
- ✚ Primary care
- ✚ Focus on disadvantaged groups

We propose a system of *responsive regulation* for some of the difficult areas such as promotions.

- ✚ In essence, it proposes a staged but potentially escalating approach to change. This allows for ‘soft’ mechanisms – such as voluntary change, self-regulation, co-design, public reporting or positive incentives – to be trialled, and the results measured and assessed, rather than opting immediately for ‘harder’ mechanisms of regulation, enforcement or fiscal sanctions. However, the responsive regulation model also requires an explicit commitment from government to escalate the degree and level of regulation if ‘softer’ approaches do not deliver the desired and agreed processes and outcomes.

This approach respects the fact that, when confronted with good evidence of the negative externalities arising from particular practices, many players in the marketplace want to do the right thing. Responsive regulation allows for voluntary adjustments and the development of creative solutions through government, industry and consumer partnerships, but these actions are clearly seen to occur within a framework *of potential sanctions* should the desired outcomes not be achieved⁶.

⁵ Gray V and Holman C, Deaths and premature loss of life caused by overweight and obesity in Australia in 2011-2050: Benefits from different intervention scenarios. 2009, Report for the National Preventative Health Taskforce. School of Population Health, University of Western Australia: Perth.

⁶ Healy J and Braithwaite J, Designing safer health care through responsive regulation. Medical Journal of Australia, 2006. 184(10 Suppl): p. S56-S59. Available from: http://www.mja.com.au/public/issues/184_10_150506/hea11015_fm.html.

Allow me to outline some of the more important aspects of the Strategy⁷.

Obesity

1. Increasing levels of physical activity and reduce sedentary behaviour through:

- ✚ A new Prime Minister's Active Living Council to lead reforms to change our urban design to maximise activity, adopt and expand TravelSmart, a national cycling strategy, a national pedestrian strategy and expand active recreation and sports at the community level.

2. Changing the food supply to increase the availability and demand for healthier food products, and decrease the availability and demand for unhealthy food products by:

- ✚ Establishing a Healthy Food Compact between governments, industry and non-government organisations – with agreed targets to drive change.
 - To reduce the production and promotion of foods and beverages that are energy dense and nutrient poor, high in sugar, sat fats and salt, trans fats
- ✚ Working with industry, health and consumer groups to introduce food labelling on front of packs and menus to support healthier food choices.
 - Years 1-2 Implement national trial across a sample of products, whilst reviewing international experience
 - Year 3 implement national system

3. Embed physical activity and healthy eating in everyday life in:

- ✚ *Schools by*
 - incorporating Health and Physical Education for all Australian children into the second stage of National Curriculum development
 - monitoring the requirement for at least two hours of physical activity per week for students from kindergarten through to year 10
 - expanding coverage of out-of-school-care programs, such as Active after school, Eat Smart play smart programs

- ✚ *Communities by*
 - funding and carrying out a national series of comprehensive five year obesity prevention intervention trials in 10-12 communities including in disadvantaged and indigenous communities

- ✚ *Australia's workplaces* (which I consider to be the new frontier for prevention) *by*
 - Funding, implementing and promoting comprehensive workplace programs

⁷ These strategies are presented in the National Preventative Health Task Force *The Healthiest Country by 2020*. The National Preventative Health Strategy. DOHA 2009

- Developing a national accord
 - Establishing a voluntary industry scorecard
 - Establishing nationally agreed accreditation standards for providers
 - Establishing a national workplace health leadership program
4. Encourage people to improve their levels of physical activity and healthy eating through a comprehensive, sustained social marketing strategy to increase healthy eating, physical activity and reduce sedentary behaviour, building on the “Measure Up” ‘Go for 2 and 5’ campaign.
- ✚ Maximise reach in disadvantaged communities
5. Reduce exposure of children and others to marketing, advertising, promotion and sponsorship of energy-dense nutrient-poor foods and beverages
- ✚ Phase out television advertising and promotion to children of unhealthy food & beverage products through a staged approach commencing with monitoring of effectiveness of current voluntary codes
 - ✚ Phase out the marketing of energy-dense nutrient-poor (EDNP) food and beverage products on free-to-air and Pay TV before 9pm, within four years
 - ✚ Phase out premium offers, toys, competitions and the use of promotional characters, including celebrities and cartoon characters, used to market EDNP food and beverages to children within four years

This also means that we can *phase in* advertising and promotion of healthy foods and drinks to Australia’s children.

There are also specific recommendations for primary health care, indigenous Australians, low income communities, enhancing early life and building our research and monitoring and evaluation base.

Tobacco

1. Make tobacco products significantly more expensive
 - ✚ Australia has one of the lowest tobacco consumption rates of countries in the OECD (16th out of 18)
 - ✚ Ensure that the average price of a packet of 30 cigarettes is at least \$20 (in 2008 \$ terms) within three years
2. Increase the frequency, reach and intensity of social marketing campaigns. This does require dollars - but just like any good advertising we know what works.
 - ✚ Develop and implement effective and sustained national social marketing campaigns through COAG tobacco initiative
 - ✚ Design messages and place media to ensure reach with young smokers and socially disadvantaged groups
3. End all remaining forms of advertising and promotion of tobacco products
 - ✚ Legislate to eliminate all remaining forms of tobacco promotion, including, as feasible, through new and emerging forms of media

4. Eliminate exposure to second-hand smoke in public places. This includes amending current legislation to:
 - ✚ Ensure smoking is prohibited in any public places where children are likely to be exposed
 - ✚ Ensure children are not exposed to tobacco smoke when travelling in cars
5. Regulate manufacturing and further regulate packaging and supply of tobacco products. This includes improving consumer information related to tobacco products and mandating standard plain packaging of all tobacco products to ensure that design features of the pack in no way reduce the prominence or impact of prescribed government warnings
6. Ensure all smokers in contact with health services are encouraged and supported to quit, especially pregnant women and their partners, and people living with chronic disease

Alcohol

1. Improve the safety of people who drink and those around them by:
 - ✚ Implementing best practice nationally consistent approaches to the policing and enforcement of liquor control laws
 - Taking much more seriously the way we grant, manage and enforce liquor licensing across Australia
2. Increase public awareness and reshape attitudes to promote a safer drinking culture in Australia by:
 - ✚ Developing and implementing a comprehensive and sustained social marketing and public education strategy at levels likely to have significant impact, building on the National Binge Drinking Campaign and state campaigns
3. Regulate alcohol promotions by phasing out alcohol promotions over four years, in a staged approach, from times and placements which have high exposure to young people aged up to 25 years, including:
 - Advertising during live sport broadcasts
 - Advertising during high adolescent/child viewing
 - Sponsorship of sport and cultural events
4. Reform alcohol taxation and pricing arrangements to discourage harmful drinking by:
 - ✚ Commissioning independent modelling under the auspices of Health, Treasury and an industry panel for a rationalised tax and excise regime for alcohol that discourages harmful consumption and promotes safer consumption
 - ✚ Developing the public interest case for minimum (floor) price of alcohol
 - ✚ Directing a proportion of revenue from alcohol taxation towards initiatives that prevent alcohol-related societal harm

What has been the reaction to the Strategy?

We have had very strong support from those we might expect – public health, medical, academic, police, local government, urban planning and health promotion groups.

And criticism from those we expect – this is sometimes called the scream test. You know you've hit the policy target, so to speak, when you hear the screams.

Why?

If you have legislation and regulation for example, for phasing out junk food advertising, for tighter liquor licensing regimes, for phasing out alcohol sponsorship in sport, for better pricing and taxation and finally for public education and social marketing - these can all be controversial.

There is powerful opposition of manufacturers, retailers, advertisers and the media. It can be a very convincing coalition of the unwilling – one that governments may not want to take on.

And one of the more interesting commentaries of course is labelling this as the 'Nanny state' – which highlights the relationship between the authority of the state and the agency of the individual.

And of course it is a wonderful example of the use of the metaphor to lobby, frighten, cajole for one's own views.

There is opposition out there - for example Neil Mitchell from 3AW and the Herald Sun said - *if Kevin Rudd is seduced by the 300 pages of social-engineering strategy that sit on his desk he will become the Super Nanny of Australian history*⁸.

Another:

'get ready to be told you need to exercise more, eat less fat, stop smoking and stop drinking. Nicola's health taskforce has observed that the stuff we've been told to do for 30 years isn't working, and their solution is, ah, to do more of it?'

And another:

*Australian community hasn't been totally regulated away yet. But it's disappearing. Unless governments drop their nanny-first attitude, we'll lose it.*⁹

The nanny state was born in a 1965 Spectator column by leading British Conservative politician, Iain Macleod, a Health Minister who, by the way, smoked furiously and died at 57 of a heart attack.

As Mike Daube points out the phrase caught on, and became a staple for those who want to attack health groups and governments, especially interest groups bereft of real

⁸ Neil Mitchell Herald Sun Sept 2 2009

⁹ Meet the Nanny Spider

arguments along with journalists in search of clichés. It has become a special favourite of tobacco, alcohol and junk food companies and their supporters.

After Macleod coined the phrase, others promoted it, notably the even more conservative polemicist Auberon Waugh. Waugh, who opposed any action on smoking and even wrote a book promoting its virtues, claimed that:

“we live in a nanny state, where nanny, far from being the gentle, indulgent, feckless old thing of Labour dreams, is a ferocious virago of Tory nightmares”.

Waugh, like Macleod, was a heavy smoker, and he too died of heart disease at 61¹⁰.

Another reaction is to label anyone interested in controls on alcohol as “wowsers”. The word wowser was first coined in Australia in the early 1900’s, but I just love this definition attributed to US journalist HL Menchen:

*a drab-souled Philistine haunted by the mockery of others' happiness... he must devote himself zealously to reforming the morals of his neighbours, and, in particular, to throwing obstacles in the way of their enjoyment of what they choose to regard as pleasures.*¹¹

I am often accused of being from the Health Police – we have a couple of sayings:...

Live miserably - so you die healthy

If you do everything we tell you to do, and you don't do all the things we tell you not to do, then even if your life is not longer it will seem longer.

Who is a jogger here?

Great.

You live 3 years longer than non-joggers.

The problem is you spend those three years...jogging!

Janet Hoek, from the University of Otago has written wonderful paper entitled the Wicked Witch of Anti Marketing? Myths, Metaphors and the “Nanny State”¹². She seeks to explore how archetypal images offer insights into political philosophies that, in turn, influence how marketing is regulated.

In a debate earlier this year with the now newly crowned Opposition Leader, Tony Abbot, Mike Daube proposed a number of these arguments in defense of Nanny – the fairy godmother version, of course.

As he points out it is evident that those who use the term rarely if ever actually define it. “Nanny state” is one of those terms that sounds critical, implies that governments

¹⁰ Daube M. Welcome back nanny? Civil liberties versus the public good." Public Debate July 2009

¹¹ Menchen HL

¹² Hoek J The Wicked Witch of Anti Marketing? Myths, Metaphors and the “Nanny State” (in press)

and those seeking action are doing something wrong – but doesn't actually explain why¹³.

The phrase is used and promoted by supporters of the tobacco, alcohol and junk food industries precisely because panning something as being nanny-statism gets them off the hook of actually having to defend their position.

If you are in the tobacco business, there is not a single justifiable argument in favour of the tobacco industry – which is why in the Reputation Institute's 2009 report on Global Industry Reputations it comes last in the league table.

This is how Hamish Maxwell, the then Chairman and CEO of the Philip Morris International company addressed an internal company conference some years ago – at a time when Philip Morris was not only one of the world's leading tobacco companies, but also owned the Miller Brewing and Kraft Food companies.

“MANY OF THE THREATS TO US, P.M. (Philip Morris), ARISE FROM CONCERNS WHICH HAVE LOST TOUCH WITH COMMON SENSE AND REALITY. PEOPLE (AND POLITICIANS) DO NEED CAUSES, AND IN A WORLD WHICH IS GENERALLY MORE PEACEFUL AND AFFLUENT THAN EVER BEFORE, THERE'S A SHORTAGE OF BIG CAUSES. THAT'S WHY WE HEAR SO MUCH ABOUT REALLY RATHER LITTLE CAUSES : SMOKING, DRINKING, DIETARY HAZARDS.....¹⁴”

But although the term is intellectually bankrupt – Nanny is not alone. It is similar to another metaphor that Richard Hinds wrote about in the Sydney Morning Herald/Age last week – the one no-one wants to be branded as – the sobriquet we fear – being “un-Australian”

As Hinds says *“Like those other conversational cop-outs "political correctness" and the "tall poppy syndrome", "un-Australian" [he could have include 'nanny'] is a default setting for those whose sense of entitlement has been threatened.*

Its power lies in its appeal to the worst instincts of the sentimental, the jingoistic and the prejudiced. Yet, unless you advocate a form of citizenship based loosely on English soccer where there are Premier League Australians and others in division two, it has no intellectual basis¹⁵.

Few would argue that there is some onus on the state to protect the health and well-being of its citizens

Daube also pointed out that 1965, the year the nanny state was born, was also the year Australia started sending troops to Vietnam, and playing its role as a global military nanny.

¹³ Daube M ibid

¹⁴ Hamish Maxwell, Chairman and CEO, Philip Morris, Washington DC, Philip Morris Company conference speech, September 8, 1986

¹⁵ Richard Hinds When tactics prove so very un-Australian *The Age* 28/11/09

Remember that his debating opponent was Tony Abbot - a very public opponent of the nanny state in relation to food and alcohol, but yet a very public campaigner against stem cell research, euthanasia, abortion and for income management and the NT intervention – surely all manifestations of the wicked witch at work!

Another aspect is to look at who might the Nanny be – it is assumed that it is always a public nanny – a tax payer funded nanny or a not for profit nanny.

There is no doubt that governments, acting on behalf of their electorates, can influence our behaviour. But are they alone in changing or determining our behaviour?

After all how did we get into the tobacco, or alcohol or overweight mess in the first place? Did we all just suddenly decide to start smoking, binge drink and binge eat? Let's consider the role of the private sector in determining people's behaviour?

Take obesity – do your sums – and it comes out that it is a commercial success but a market failure. Inactivity in the form of inactive transport, inactive screen-based entertainments (did you hear the data today on TV viewing in children's bedrooms) way outsells and is far more promoted than active transport or the bat and ball.

Similarly junk food and drinks have a much bigger promotional budget and sales turnover than healthy food or drinks. Compare the zucchini to a Big Mac.

There is a new phenomenon – the 20-20 phenomenon – and it isn't just lusty hitting of sixes – it's what you are exposed to during the big hitting – a constant diet of KFC, KFC, KFC, Maccas, Solo, VB, Solo, KFC, Maccas, VB and finally a car – over and over again – yes it's ad nauseum!

✚ If you don't believe me watch MadMen –

Or listen to the words of Patrick Le Lay, the Managing Director of Television France Une (TF1),

✚ *He said the role of TF1 was “to help Coca Cola, for example, to sell their product”. This is nothing unusual, but he went on to say “so that an advertisement can be taken in, the brain of TV watcher has to be empty. The purpose of our shows is to make it empty: that is to say to divert it, to relax it to prepare it for the ads. What we sell to Coca Cola, is empty human brain time¹⁶”*

And what if we took some of the legislation and regulation away?

- ✚ Seat belts, speed cameras, booze buses
- ✚ Smoke free legislation, e.g. try smoking in a plane! Or in a restaurant.
- ✚ bans on tobacco advertising
- ✚ Immunisation
- ✚ Fluoridation
- ✚ Antidiscrimination laws
- ✚ Limits of drink at the cricket - Bathurst

¹⁶ Telerama (2004) La Polemique Le Lay. Teleram no. 2852, 9 September 2004 available @ww.telerama.fr

Food regulation

Conclusion

The National Preventative Health Strategy involves all Australians – it is not just for government.









We see a balanced approach that includes personal responsibility and shared responsibility - where individuals and families have the responsibility for their own health.

But equally the three levels of government have the responsibility of creating the environments in which healthy choices become the easiest, the most common and the most preferred.

Industries, public institutions such as schools, NGOs and academia all have positive roles to play.

There is a balance between the libertarians and the utilitarians and social contractors.

The Nuffield Council on Bioethics has come up with a stewardship model which proposes guiding principles for decisions about public health – proposing an intervention ladder¹⁷, where the higher up the ladder at which the policy maker intervenes the stronger the justification has to be. For example, starting at the bottom:

-  do nothing
-  provide information
-  enable choice
-  guide choice through change of the default policy
-  guide choice through incentives
-  guide choice through disincentives
-  restrict choice
-  eliminate choice

We can of course do nothing and literally sit on our hands. But if we want to improve public health, just as if we want to improve our own private health, we have to take some tough decisions, much in the spirit of the profound legacy left by Lionel Murphy.

The nation cannot be bullied by some companies and individuals intent on just maximising shareholder or their own profit – at the expense of the nation’s health.

We need to move further in the direction of ensuring a level playing field – not infringing on reasonable democratic rights, but ensuring that public policy is based on good evidence. And, at the same time, we need to take the community with us, maintain balance and maintain perspective just like a patient of one of my touch rugby

¹⁷ Calman K. Beyond the Nanny State: Stewardship and public health. Public Health 123 (2009) e6-e10

mates, who when asked what was the best thing about being 104, pondered for a good while and said “no peer group pressure”.