Regulating Government Intervention and Self-Determination: The Palm Island Alcohol Management Plan

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I INTRODUCTION

A Problem Statement

My individual portfolio explores the balance of government intervention and Indigenous self-determination in dealing with Palm Island’s Alcohol Management Plan (AMP).

B Background

Since 1 July 2008 the carriage and possession of alcohol on Palm Island has been restricted by the laws of Queensland (Liquor Act 1992).

The initial regulation of alcohol in Aboriginal communities in Queensland was considered as a step to reduce high-levels of alcohol fuelled violence and associated social problems. Evidently the approach taken by legislators, in this instance the Queensland Parliament, greatly restricts self-autonomy and self-determination of the Palm Island community.

On 10 March 2014 there were reports that the one licensed premise in the restricted area of Palm Island was to have its licensing regulations relaxed (Hall, 2014). The licensed premise can continue to serve mid-strength beer and is now allowed to serve wine (a maximum of two glasses per patron). The Palm Island Alcohol Management Plan, applying to a community 98% of whom are Indigenous, was found by the High Court in Maloney v The Queen [2013] not to be a contravention of the Commonwealth Racial Discrimination Act 1975 not because it did not discriminate but because it was ‘positive discrimination’—a special measure. The sale and possession of spirits is still entirely banned in the restricted area. These recent developments have stirred debate surrounding how issues of the sale and consumption of alcohol and alcohol related violence should be balanced with issues of self-determination.

Indigenous self-determination is a right recognised by domestic and international law under the UN Declaration on Indigenous Peoples (Article 3). Article 3 states that Indigenous peoples have the right to freely determine their political status and freely pursue their economic, social and cultural development. This legal right cannot be ignored by policy makers and must therefore be an objective of any future policy.
Alcohol abuse is a significant problem on Palm Island. The Queensland Government is currently conducting a review into the effectiveness of Alcohol Management Plans in reducing alcohol abuse and related social and health issues (Queensland Government, 2014). Existing evidence shows that current regulation has had success in reducing alcohol related issues in the community, in particular, assaults, domestic violence and overall health for everyone living in the community (QATSIHS: 2).

There is a clear link and need to balance self-determination and action on dealing with alcohol abuse on Palm Island.

This document will act to unravel the substantive issues with the Palm Island Alcohol Management Plan. I have chosen to present my Individual Portfolio as a series of art works or exhibition. This document therefore acts as a rationale for the exhibition. The explanatory and creative elements of the Exhibition can be found in part IV of this submission. The original creative pieces are attached.
II UNRAVELLING COMPLEXITY

An Australian Public Service Commission report (2007: 5) identifies Indigenous policy making as a complex problem. Archetypical behaviours are especially difficult to identify, as indigenous disadvantage is widespread across all areas of health, education, rates of death and incarceration. For example, Indigenous men are 8 times and women 16 times more likely to die of alcohol related deaths than non-indigenous Australians (QIAHSIS).

The diagram below shows the circular rather than hierarchical interaction of issues concerning the Palm Island Alcohol Management Plan.

Diagram 1: The circular interaction of issues with the AMP

In order to provide greater clarity on the relationship between the archetypical behaviours relating to the AMP I have employed the ‘fixes that fail diagram’ (Newell and Proust, 2014). Here the problem is framed in terms of the successive failures of Australian Government policy in regulating alcohol abuse.
In the ‘fixes that fail’ diagram the variables are highlighted in bold. The difficulty with this formulation is trying to predict where any future action is required. How do you overcome the inherent complexity in the model? The solution or way forward is not obvious from the diagram itself. However, in my individual portfolio I argue that the ‘fix’ needs to be broadened, encompassing an interdisciplinary approach that will reduce the impact of ‘consequences’ and reduce the need for any further government action in regulation.
A Need for an Interdisciplinary Approach

There is a clear role for a legal approach to the regulation and deregulation of access to alcohol in Palm Island. The current scheme overseeing the AMP is set in the laws of Queensland (*Liquor Act 1992 QLD*). Any deregulation and relaxing of rules related to the sale, carriage and consumption of alcohol on Palm Island must have congruence with current laws or legal. Alternatively, legislative amendments will have to be made to the *Liquor Act* in order for the changes to have effect.

A lack of self-determination is not only a legal problem. Self-determination empowers the individual to make their own decisions and take responsibility for their own life. Queensland’s largest network of Indigenous community controlled human service providers (QATSIHS) argues that strict prohibition does not solve problems associated with alcohol abuse. Without effective community treatment and prevention programs, issues will not be adequately addressed. This outlines the need for an interdisciplinary approach. While the law will have to deregulate to balance considerations of self-determination other solutions will need to create the community support to overcome the issue of alcohol abuse—that is, improved education, community services and support.

While the usefulness of an interdisciplinary approach was evident as a meta-theme of *Unravelling Complexity*, another, more inadvertent consequence of the course was appreciating the value of comparing different approaches to different complex problems. With that in mind, I have sought to explore how the Victorian Legal Commissioner dealt with regulation of the legal profession to extrapolate the scope and limits of a ‘narrow legalistic approach’ to regulation (*McGarvie, 2012*).

McGarvie was charged under the *Legal Profession Act (2004)* (*LPA*) Victoria to oversee legal professionals in Victoria and deal with any arising complaints from consumers of the profession. The Commission was over-burdened with complaints that were not being dealt with effectively or in a timely manner. The process was weighed down by bureaucracy but justified by a specific interpretation of the *LPA*. In McGarvie’s (2013) article he argues that there were three keys approaches to overcoming the problems experienced by the Commission. First, the need for a change in culture and process within the organisation (Ibid: 8). Second, improved communication and relationships with external parties (Ibid: 9). Third, dealing with
systemic issues in both prevention of creating future systemic issues and also in overcoming existing problems (Ibid: 11).

The approach taken by McGarvie converges with key themes and more specific topics of the Unravelling Complexity Course. Furthermore, McGarvie’s approach illustrates the interconnectedness of topics from the course, drawing clear links between stakeholder engagement and the importance of communication of complexity as well as balance in navigating the future.

The following section will explore three key issues related to the Alcohol Management Plan, evidence their existence and provide recommendation.

B Approaching Issues with the Palm Island AMP

i) Issue One:

A narrow legalistic approach to regulation and deregulation does not provide the best outcomes.

Evidence:

Noel Pearson argues that the issue of alcohol abuse in Indigenous communities arose out of the ‘rights era’ of Australian Government Policy in the 1970s where ‘mindful neglect’ led to the complete deregulation of alcohol with no coexisting support services. Since then legal regulation and prohibition has led to a significant decrease in consumption and related violence (decrease in hospital admissions and reported assaults). However, this is not a sustainable position and does not provide educational opportunities that see a future where self-determination and similarly good or better statistics are evident.

**Recommendation (1): (Meta theme 1: Interdisciplinary approach)**

An interdisciplinary approach that seeks to educate, build social capital and provide support on alcohol consumption and alcohol-related violence in conjunction with gradual legal deregulation and continued attention to the issue.
ii) Issue Two:

The Palm Island Community, external Indigenous Stakeholders and government are split not only amongst each other but also within themselves. There is little agreement as to the best approach.

Evidence:

There are conflicting statements, some were evident in a Radio national Report 10 March (Hall, 2014) with some community members agreeing with the deregulation of the sale of wine at the licensed premise on the Island and others disagreeing. Noel Pearson, founder of Cape York Institute for Policy and Leadership, agrees with the regulation of the sale of alcohol in indigenous communities. Meanwhile, Palm Island Mayor Alf Lacey, disagrees with such measures stating in the Australian Newspaper that it ‘kills self-determination and economic prosperity in Aboriginal people’. International case studies in Canada and New Zealand show that the success of AMPs relies on the ability to engage the community and seek a grassroots involvement in the initiation and implementation of alcohol restrictions in order to be effective. The key role of community support and involvement in Indigenous policymaking is also acknowledged by the Australian Public Service Commission (2007: 3).

Recommendations: (Course Themes: (a) Stakeholder Engagement (b) Communicating Complexity)

(2) Senge (1990) identified the importance of identifying key stakeholders and engaging to build a shared vision. International case studies indicate that community participation will be critical to the success of regulating alcohol.

(3) This also highlights the need to effectively communicate the problem, to make it accessible but also to create convergence on the issue.
iii) Issue Three

Indigenous policy is difficult and has a history of poor implementation and performance.

Evidence:

This issue is evidenced in the Australian Public Service’s report (2007).

Recommendation (4):

[Course Themes: (c) Navigating the Future (d) Towards a Balance]

A flexible but responsive policy approach that finds a balance between regulation and self-determination in dealing with alcohol abuse in Palm Island.

III CONCLUSION

This paper presents and unravels a complex problem—the Palm Island Alcohol Management Plan. In doing so this paper has explored key themes of the Course, explicit and implicit. I have demonstrated a clear pathway, focusing on an interdisciplinary approach to deregulation, a stronger focus on self-determination and the importance of communicating complexity in order to create a shared vision and convergence amongst key stakeholders. This paper illustrates that while Indigenous policymaking is an inherently difficult area of government, it does not mean that improvements in approach are not available.

While a simple solution is certainly not available, understanding the complexity of the issue should lead to better outcomes and future policy decisions.
The Coat of Arms 1963

Narritjin Maymuru
IV THE EXHIBITION

A Communicating Complexity

The exploration of Palm Island’s Alcohol Management Plan has led me to present my findings and reflections on the course in a series of artworks or a short exhibition. The idea emerged when I was at the *Old Masters: Australia’s Great Bark Artists* at the National Museum of Australia. One piece in particular, *Coat of Arms* 1963 by Narritjin Maymuru (see previous page), stood out as an effective means of communicating a political point and portraying the artist’s point of view. In week seven of the *Unravelling Complexity* course guest lecturer Dr Al Munro spoke of her own project in crocheting as a means of portraying the exponential volume of hyperbolic space. The value of portraying complexity in a tangible form makes it easier for the audience to understand but also evokes emotion and provokes thought.

One of the most useful conclusions that our group came to in looking at rural youth population decline in Palerang was the importance of identifying key stakeholders and working out an approach to ‘create a shared vision’. This approach was extrapolated from Week six ‘Stakeholder Engagement’ where it was discussed broadly but also, and more specifically, from the assigned reading (Peter Senge, 1990). Here, I use the art exhibition as a way of communicating the complexity of my individual portfolio as well as the complexity of the Palm Island Alcohol Management Plan but also as a tool to engage an audience and build convergence on the issue.

The *Old Masters* exhibition as a whole provided an interesting insight into the history of Indigenous art and how it used to be analysed or viewed by the West only in terms of its anthropological and historical value but not for its artistic merit. Jeremy Eccles (2013), an Australian freelance commentator and art critic, muses that:

> With Aboriginal bark paintings there’s the constant dilemma – how important is the aesthetic appeal of the work, and how important the story – and the status of the man telling it?

The questions posed by Eccles, in particular the ‘status of the man telling it’ have been critical in composing my own creative pieces. With very little confidence in my own artistic abilities I have focused not on the aesthetic appeal of my exhibition but
the symbolism, the narrative and the significance of my own story, status, race and history (See below: (i) *White man and red wine on paper*).

Art commentator Jeremy Eccles (2013) describes the ‘dilemma’ of Indigenous art in determining the relative importance of the aesthetic, the story and the status of the artist. In my presentation I have focused on the last two of these elements. Very conscious of the whiteness of my skin, the freely accessible red wine with which I paint and the safe distance created between the problem and myself, here represented by the brush with which I paint.
This work is intended to be a response or contrast to the Coat of Arms, 1963 (see above). Here, unlike in the original work, the indigenous spear symbolising Indigenous law is placed subordinate to the Commonwealth Coat of Arms at the bottom of the painting. This contrasts the original ideal of an interactive Indigenous and Commonwealth law to the image portrayed by the reality of the Alcohol Management Plan in Palm Island where Commonwealth law overrides suggestions of Indigenous self-determination.
iii) **The Non-Descrip Human**

A simplistic portrayal of a non-definable human. Gender, race and age all remain undetermined or unknown. This piece draws attention to the ideal subject of law where people are treated non-discriminatorily but according to their circumstances. While Palm Island is over 98% Indigenous, the High Court in a challenge brought by Palm Island resident Ms Maloney, in *Maloney v The Queen [2013] HCA 2013*, argued that the restriction of alcohol on Palm Island contravened section 10 of the *Racial Discrimination Act 1975* as it singled out and discriminated against Aboriginal people, treating them differently to the rest of the population. The challenge was ultimately unsuccessful, the Court unanimously deciding that the Palm Island AMP constituted a ‘special measure’ and therefore under s 8(1) of the *Racial Discrimination Act 1975* section 10 did not apply and the restriction of alcohol on Palm Island was not contravening the *Racial Discrimination Act 1975* (Cth).
This painting focuses on the tools and materials used for the exhibition. A painting depicting a bottle of red wine and a wine glass represents the artist’s own ease of access to alcohol. Contrasting the artist’s own experience with the people of Palm Island who have just recently received access to wine at the one licensed premise on the Island. Still, however, wine is limited to two glasses per patron and must be consumed on the premises.
v)  **Successive Policy Failures**

Trying to avoid the cliché of ‘a bandaid solution’ this piece represents the failed attempts of government to implement Indigenous policy. It reflects back on Noel Pearson’s comments that a failure to provide support in the era of ‘mindful neglect’ led to further problems. The succession of policy failure began. Here the first bandaid on the page and the last are the same. It cautions that failure to provide support in any future policy implementation will lead to the continuation of the existing pattern. This further highlights the need for an interdisciplinary approach.
V BIBLIOGRAPHY

A Articles/ Books/ Reports


**B Cases**

*Maloney v The Queen* [2013] HCA

**C Legislation**

*Liquor Act* (1992) (QLD)

*Racial Discrimination Act* (1975) (Cth)

**D Other**

Maymuru, Narritjin. *Coat of Arms 1963*. Aboriginal Bark Dot Painting. *The photo presented in this paper is a photo from the National Museum of Australia* Poster


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**NB** A significant amount of the thinking and rationale behind this document is a result of participant observation and involvement in The Australian National University’s *Unravelling Complexity* (2014).

The artistic works, except for Maymuru’s *Coat of Arms 1963*, are the author’s own.