



Submission on proposed changes to tobacco and e-cigarette legislation in South Australia

May 2023



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Introduction

Thank you for the opportunity to provide feedback on the proposed Tobacco and E-Cigarette Products (Smoking Bans) Amendment Regulations 2023 (the Regulations).

As South Australia's Commissioner for Children and Young People, my mandate is to promote and advocate for the rights and interests of all children and young people in the State. It is also my role to ensure that South Australia meets its obligations in relation to the United Nations Convention on the Rights of the Child (UNCRC). Particularly relevant to this submission are a child's right to the highest attainable standard of health (Article 24) and a child's right to express their views on all matters that affect them (Article 12).

Amid growing concern about vaping among teenagers in South Australia, the views and experiences of young people themselves are largely missing from media reports and adult conversations about vaping. In June 2022, I launched a survey for young people to share their thoughts about vaping in the hope that their insights could inform effective responses to vaping in schools and the broader community.

A total of 950 young people aged 13 to 19 years old participated in the survey, which culminated in the release of my [Vaping Survey: Key Findings](#) report. Overall, young people were concerned about:

- How easy it is to access vapes.
- Uncertainty regarding the existence or nature of laws related to vaping.
- A lack of information about vaping, including the ingredients of vapes, potential health impacts, and how vaping compares to smoking cigarettes.
- Punitive and exclusionary responses to young people vaping in the community and schools.

Young people also identified a range of ways in which responses to vaping could better support young people. In particular, they want adults to:

- Focus on the adults selling vapes to children rather than punishing and blaming children and young people for purchasing or using them.
- Understand why young people vape, including the ease of access to vapes and the links with stress and mental health concerns.
- Educate young people not only about the health risks but also about relevant laws, navigating social pressures, and where to get support.
- Listen to and respect young people's views and provide practical support, particularly for those who are worried about addiction.

Summary of recommendations

It is clear that existing laws are not effectively restricting children and young people's access to vaping products. As such, I welcome the intent of the proposed changes, particularly insofar as they seek to restrict the sale and supply of e-cigarettes to children

and young people. The reforms also appear to align with the recently launched *South Australian Tobacco Control Strategy 2023-2027*.

It is important that the legislation and any regulations treat children as children, recognising their stage of development, their special position under Australian and international law and embedding key principles of the UNCRC. This is key to ensuring the proposed reforms achieve their intended purpose and ultimately reduce rather than exacerbate inequity.

To this end, I am concerned that the Regulations make no distinction between responses to children compared to adults, particularly in relation to financial penalties. This may result in children not only being penalised for something that requires a health response, but also being required to pay the same amount as adults, despite the fact children often have no income, limited financial support or significantly lower income than an adult.

There is an opportunity for the Regulations to better reflect the diverse needs, experiences and priorities for different groups. For example, the experiences of children and young people under 18 who are vaping (many of whom may have never smoked traditional cigarettes) are different from the experiences of adults who may use vapes as a smoking cessation tool, thereby requiring a distinct response.

It is critical that legislation responds to vaping among children and young people as a public health issue rather than a criminal issue. This means prioritising measures that seek to prevent and delay uptake among young people; increasing access to information and support services for young people; and being informed by the views and experiences of young people themselves in accordance with Article 12 of the UNCRC.

Drawing on my direct engagement with children and young people, I make the following recommendations:

- 1. Reduce or remove penalties for children under 18 years old in recognition of children's rights and need for special protection compared to adults.**
- 2. Ensure greater access to information and support that is tailored to young people.**

If you would like to discuss anything further, please do not hesitate to contact my office.

Yours sincerely



Helen Connolly

Commissioner for Children and Young People
Adelaide, South Australia

1. Reduce or remove penalties for children under 18 years old in recognition of children’s rights and need for special protection compared to adults.

It is recommended that penalties are reduced significantly, if not removed altogether, for children under 18 years old. Doing so will recognise children’s position under Australian and international law and need for additional protection and assistance due to their vulnerability and stage of development.

Laws in other Australian jurisdictions may be useful examples for South Australia to follow insofar as they recognise children’s decreased capacity to pay fines compared to adults. For example, public transport fines for children in Victoria are lower than those issued for adults.ⁱ

It may be argued that children and young people will be less likely than adults to have penalties enforced under this legislation, or to be issued a penalty in the first place. However, without explicit protection in the legislation, the exercise of this discretion is not guaranteed.

Children and young people tend to be disproportionately impacted by laws ‘regulating public behaviour’.ⁱⁱ Fines are particularly punitive for those who are already vulnerable and are considered an ineffective way of dealing with children. Excessive and disproportionate financial penalties not only entrench equity, but they cause significant stress and anxiety, which is compounded by a lack of understanding about legislation and fines. There is a risk that criminalisation and punitive responses reinforce stigma and can be a barrier to accessing and receiving appropriate support.ⁱⁱⁱ

“they automatically see it as a bad habit, although for some people it may be a coping mechanism. so they ban it and punish the kids who do it.”

– 14 year old, female

“just punishing if they’re caught, it won’t do anything but make everyone hide it better or want it even more.”

– 17 year old, male, Regional SA

“stop getting mad at kids for vaping and start targeting the people who sell vapes to kids.”

– 16 year old, female, Metropolitan SA

The following principles specific to children should be embedded in the Regulations:

- Ensure children’s best interests are the paramount consideration;
- Consider children’s different stages of development and children’s views; and
- Promote education, diversion and rehabilitation before punitive measures.

In particular, it is recommended that authorities be required to:

- Take into account whether a child is under 18;
- Issue a warning instead of a financial penalty; and
- Explain the relevant laws to child or young person, consistent with Article 40(2)(b)(ii) of the UNCRC. For example, section 36C of Victoria's *Tobacco Act 1987* requires inspectors to make sure people understand the smoking bans and the 'nature of the offence or suspected offence'.^{iv}

These principles should be reinforced by guidelines, policies and training for staff responsible for issuing and enforcing penalties. Accountability mechanisms should be introduced to ensure that guidelines are being followed in practice, and there should be avenues for redress for children where guidelines have been breached.

Given how easy it is to obtain vapes, many young people expressed a view that adults and the industry who control (and benefit from) the sales of vapes should take more responsibility for protecting children and young people from vaping-related harm. Their suggestions to restrict supply included to 'stop importing them', 'stop selling them' and ensure 'harsher consequences for shops selling them' to under-age customers, as well as increased 'monitoring of online sales'.

"Accessing vapes are way too easy, all we have to do is go to a cheap servo often in cities and there we can buy a vape without because asked for identification of age. Also commonly now other young people will start selling vapes, they will buy them in bulk and sell them to people and offer to drop them at there house for an extra charge... there really needs to be restrictions put in place to make them not so easy to access and then the addiction would be forced to stop. I know many people, me included would be extremely angry at first especially when there in the first few days without nicotine but if adults want students to stop I truly believe it's the only way."

– 16 year old, female, Metropolitan SA

I welcome the proposed changes to restrict sales and supply in South Australia, and I note that the federal government is considering a range of reforms following consultations led by the Therapeutic Goods Administration. This includes measures to restrict the marketing and supply of e-cigarettes to children and young people. It is critical that these responses avoid punishing children and young people while also ensuring education, information and support is available, particularly for those who may be addicted or at risk of becoming addicted to vaping.

To this end, the legislation and any regulations should protect children and young people in relation to the sale or supply of tobacco and e-cigarette products to children. Children under 18 years old selling vapes to another child should not be liable to the same penalty

as adults selling to children. Yet under Section 38A of the Act, a ‘responsible person’ refers to ‘the person who sells or supplies the product’, and thus would appear to include a teenager selling to another teenager.

The penalties in the context of the proposed expansion of smoke-free areas (for the purposes of section 52 of the Act) are of particular concern, given that the expanded areas are places where children and young people are likely to be (for example, around schools, shopping centres, and sporting grounds). Although the penalties under this section of the Act are not proposed to increase, they remain significant, particularly for children and young people.

I note that the expansion of smoke-free areas appears to be well-intentioned.^v The Tobacco Control Strategy 2023–27 highlights the importance of smoke-free areas to reduce children and young people’s exposure to second-hand smoke, de-normalise smoking and potentially help to ‘reduce uptake among young people’.^{vi}

The Regulations should be amended in order to recognise that children should be protected from punitive responses for vaping in these areas. This is a key part of responding to vaping as a public health issue rather than as a ‘criminal’ issue, and is particularly important in light of the lack of information, education and support currently available to young people in relation to vaping.

2. Ensure greater access to information and support that is tailored to young people.

In the absence of education, information and support, many young people are feeling misunderstood, judged, shamed, blamed and punished for vaping. It is critical that any legislative change is supported by broader education and public health campaigns that ensure greater access to information and support that is tailored for young people and available to families and across communities.

“I wish adults understood that young people aren’t educated enough on vaping. They don’t know or understand any facts in the harm of vaping and what it could do. I wish there was support and alternatives to support young people like myself in ‘not vaping’, to stop the damages and harm.”

– 17 year old, female, Regional SA

“Its not really talked about enough. I feel like there is a large percentage of people who don’t understand how bad it can be for your health and think that it’s safe. Outside educating people about that I don’t see what more can be done thats within their control.”

– 17 year old, Regional SA

Young people who participated in my Vaping Survey noted a lack of information about vaping across the community generally, let alone information tailored to young people. The best way to ensure that a public health campaign reaches and resonates with young people is to include and engage them throughout its development.

I welcome the commitments and actions undertaken by the South Australian government over recent months, including the action plan to address vaping in schools, and the availability of updated information on SA Health and other websites.

South Australia's Tobacco Control Strategy recognises that information about support services is a key part of a comprehensive public health response, highlighting the need to 'enhance connections between social marketing campaigns and cessation support options'.^{vii} The Australian Alcohol and other Drug Council highlighted in a recent submission to the Therapeutic Goods Administration that there are 'few treatment options providing support specific to vaping'.^{viii}

"They should just be a bit less disciplinary and more open. Except of handing out suspensions if the kids caught with a vape maybe ask why they vape."

– 17 year old, male, Metropolitan SA

"stop treating kids with vaping addiction like they're awful people because you would help an adult with one but not a child."

– 15 year old, female, Metropolitan SA

"for those who are addicted it feels close to impossible to go without vaping for the school day and if they are that concerned about the health benefits then i personally think that suspending the student to stay at home for a few days is not going to prevent anything in the long run. it may sound dramatic but honestly if there were programs to help students with giving up vaping i know i would have at least attended it, because the majority of people i talk to don't want to be vaping but do not know how to stop."

– 16 year old, female, Remote SA

It is important for services to be tailored to young people, recognising how their experiences may differ to adults, and addressing the diverse experiences, perceptions that influence why young people vape, including as a way to relieve stress, to cope with mental health issues, to substitute meals or to fit in. Young people described the range of support resources and services they wanted to see in relation to vaping, including programs 'like the ones to quit smoking' and a helpline to 'ensure 24/7 support'.

Education and public health campaigns should destigmatise dependence, avoid sensationalising harm, and minimise shame and stress that can be a barrier to accessing and receiving support. Parents, carers and adults who work with young people also need

to be equipped with information about relevant laws and pathways to support in order to provide appropriate support to young people.

There is scope for this legislation to set the foundations for a regulatory framework that has a preventative and restorative rather than reactive and punitive focus, and that is responsive to emerging evidence in a complex and rapidly changing policy and research landscape. Further, it is critical that young people are aware of information about changes to laws, given that responses to my survey indicated that many young people are unaware or unsure of existing laws related to vaping.

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- ⁱ *Transport (Compliance and Miscellaneous) (Infringements) Regulations 2019* (Victoria), Regulation 8 Lower penalties for children. <https://content.legislation.vic.gov.au/sites/default/files/2022-02/19-118sra003%20authorised.pdf>.
- ⁱⁱ Quilter, Julia and Russell Hogg. 'The Hidden Punitiveness of Fines.' *International Journal for Crime, Justice and Social Democracy* 7, no. 3 (2018): 9-40. <https://www.crimejusticejournal.com/article/view/914>.
Youthlaw. Position Paper: A Fairer Fines System for Children: Key Issues & Recommendations. (July 2013), p. 3. <https://web.archive.org/web/20180319070703/http://youthlaw.asn.au/wp-content/uploads/2013/08/Youthlaw-position-paper-final-July-2013.pdf>.
- ⁱⁱⁱ Australian Alcohol and other Drugs Council. Submission to the Therapeutic Goods Administration: Proposed reforms to the regulation of nicotine vaping products. (January 2023). <https://aadc.org.au/wp-content/uploads/2023/01/AADC-Submission-to-TGA-NVP-consultation.pdf>.
- ^{iv} *Tobacco Act 1987* (Victoria), Section 36C. <https://content.legislation.vic.gov.au/sites/default/files/2022-09/87-81aa097%20authorised.pdf>.
- ^v World Health Organisation. *Report on the Global Tobacco Epidemic: Addressing new and emerging products*. (Geneva: World Health Organisation, 2021). <https://apps.who.int/iris/rest/bitstreams/1359088/retrieve>.
- ^{vi} Government of South Australia. *South Australian Tobacco Control Strategy 2023-2027*. (February 2023), 12. <https://www.sahealth.sa.gov.au/wps/wcm/connect/db98dc53-b74c-47e3-b0c4-74e8fadb81b2/FINAL+South+Australian+Tobacco+Control+Strategy+2023-2027+Web+722023.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE-db98dc53-b74c-47e3-b0c4-74e8fadb81b2-otPSrH>.
- ^{vii} South Australian Tobacco Control Strategy, 9.
- ^{viii} Australian Alcohol and other Drugs Council. Submission to the Therapeutic Goods Administration, 5.