

Discussion Paper on recommendations from an independent review of tobacco control legislation in South Australia

April 2019



Submissions

SA Health welcomes views on key recommendations made by Dr Chris Reynolds, public health law expert, arising out of a review of tobacco control legislation in South Australia. We invite all interested parties to make submissions on this discussion paper.

For a summary of key issues under consideration, see the section, 'Issues for consideration: Tell us what you think', at the end of this paper. Feedback or queries on this discussion paper can be provided by email to HealthDASSATobaccoControlUnit@sa.gov.au or by adding a comment to the discussion at YourSAy.sa.gov.au.

Submissions close at 5pm, Friday 3 May 2019.

Contents

1.	Introduction	4
2.	Background information	5
3.	Recommendations from the Reynolds review for public consultation.....	5
4.	Discussion.....	7
4.1	Smoke-free outdoor dining areas.....	7
4.2	Increasing penalty levels for offences under the Act.....	8
4.2.1	Increasing penalties for the sale or supply to children.....	9
4.3	Enhancing the licensing scheme	10
4.3.1	Oversight of where licensees operate.....	10
4.3.2	Introduce a wholesaler licence	12
4.4	Establish smoke-free areas near child care and children’s education centres	12
5.	Issues for consideration: Tell us what you think.....	13
5.1	How to make a submission.....	14
5.2	Protection from commercial and other vested interests of the tobacco industry.....	15
5.3	Confidentiality of submissions	15

1. Introduction

In 2016, SA Health commissioned an independent review of South Australian tobacco control legislation (the *Tobacco Products Regulation Act 1997* (the Act)) and associated Regulations. This review was completed in 2017 by Dr Chris Reynolds, a public health law expert. This review culminated in the [Report of the Administrative Review of the Tobacco Products Regulation Act 1997](#), which made 40 recommendations to enhance the tobacco control laws in South Australia. While most of these were administrative in nature, some had broader policy implications.

Of the 40 recommendations made by Dr Reynolds, 25 were integrated into changes made to the tobacco control laws that were passed by the South Australian Parliament on 15 November 2018 and came into operation on 31 March 2019. These changes were mainly administrative, such as the removal of obsolete clauses and improvements to current definitions. Penalty levels throughout the Act were increased in line with inflation rates over the period since they were introduced (with the exception of the law relating to the sale of tobacco to a minor, which the Parliament increased beyond the inflation rate).

Included in the recent legislative changes is the regulation of electronic cigarettes (e-cigarettes) to reduce the potential harms associated with these products and bring South Australia in line with most other Australian jurisdictions. Dr Reynolds's review was conducted prior to the inclusion of e-cigarettes into South Australian legislation, however given that e-cigarettes are regulated from 31 March 2019, this consultation provides the opportunity to also provide feedback on the recommendations provided by Dr Reynolds as they relate to e-cigarette products.

Recommendations from Dr Reynolds's report that were operational in nature and relevant to particular stakeholders, such as business groups and government agencies, were the subject of targeted stakeholder consultation in late 2018 to help inform future action on these recommendations.

The purpose of this discussion paper is to support public consultation on the recommendations made by Dr Reynolds that have policy implications and may require amendments to South Australian tobacco control legislation in the future. These recommendations mainly relate to four areas:

1. Strengthening smoke-free outdoor dining legislation;
2. Further increasing penalties for breaches of the legislation;
3. Enhancing the licensing scheme; and
4. Establishing smoke-free areas around children's educational facilities and child care centres.

Note that, from 31 March 2019, any future changes to tobacco control legislation would also apply to e-cigarette products under the *Tobacco and E-Cigarette Products Act 1997*.

The broad objective of this consultation process is to obtain community input into how the Government can strengthen South Australia's tobacco control laws in order to further reduce smoking rates and to protect people from exposure to second hand smoke.

2. Background information

Tobacco smoking is still one of the leading preventable causes of illness and death in Australia. The most recent data estimates that there are approximately 1,350 tobacco-attributable deaths each year in South Australia.¹ Over the past decade, daily smoking prevalence in South Australia has declined from 17.4% in 2008 to 14.3% in 2017 among people 15 years and older². Despite this progress, evidence shows that driving further reductions in smoking prevalence requires a continuous effort with a strong focus on smoking cessation mass media campaigns; the creation of more smoke-free places; continual enhancements of cessation support services; and a robust and consistent enforcement presence to ensure that the effectiveness of tobacco control legislation is maintained.³

While there are fewer people who smoke, research indicates that two thirds (66.4%) of the South Australian population are exposed to second hand tobacco smoke (also known as passive smoking) at least once in a two week period⁴. Passive smoking increases the risk of illness and death in non-smokers, from infancy to adulthood⁵.

3. Recommendations from the Reynolds review for public consultation

There are seven recommendations from the Reynolds review of tobacco control legislation that are the subject of this public consultation, as detailed in Table 1.

Table 1: Recommendations from the *Report of the Administrative Review of the Tobacco Products Regulation Act 1997* for public consultation

Report Rec No.	Report Recommendation	Outline
14	<i>S 38A - Sale or supply to children</i> The penalty should be significantly increased, potentially beyond the increase envisaged more generally for offences in this Part.	The review recommended an increase in the penalty for this offence in line with interstate levels to reflect the seriousness of this offence. While the penalty increased from 31 March 2019 from a maximum of \$5,000 to a maximum of \$20,000 for a first offence and \$40,000 for a second and subsequent offence, consideration should be given to whether a further increase should be introduced, reflecting equivalent legislation interstate.

¹Martin K, Bowden J & Miller C. *Key Smoking Statistics for SA – 2017* Adelaide, Australia. South Australian Health and Medical Research Institute (SAHMRI), April 2018.

²Ibid.

³World Health Organization. n.d. Interventions to reduce tobacco consumption. <https://www.who.int/tobacco/research/economics/interventions/en/>

⁴Martin K, Bowden J & Miller C. *Key Smoking Statistics for SA – 2017* Adelaide, Australia. South Australian Health and Medical Research Institute (SAHMRI), April 2018.

⁵Campbell MA, Ford C & Winstanley MH. The health effects of secondhand smoke, 4.0 Background. In Scollo, MM and Winstanley, MH [editors]. *Tobacco in Australia: Facts and issues*. Melbourne: Cancer Council Victoria; 2017.

Report Rec No.	Report Recommendation	Outline
18	<i>Penalties</i> The penalties currently applying to Parts 2 and 3 are significantly lower than their interstate equivalents and should be increased.	While penalty increases in line with the Consumer Price Index (CPI) are included in the recent changes to the law that came into effect on 31 March 2019, the review report recommended further increases in accordance with interstate levels to reflect the seriousness of these offences, including the ban on advertising.
21	<i>General penalties</i> The penalties currently applying to Part 4 are significantly lower than their interstate equivalents and should be increased.	While penalty increases in line with the Consumer Price Index (CPI) are included in the recent changes to the law that came into effect on 31 March 2019, the review recommended further increases in line with interstate levels to reflect the seriousness of these offences.
32	<i>Reg 6 – Smoking ban – outdoor dining areas</i> The regulation should be amended in order to prevent persons taking meals into areas set aside for smoking. Two options are available: Amend reg 6 to broaden the definition of outdoor dining area to include any outdoor area that the occupier has either set aside for the purpose of public dining or knows, or should know, is being used to consume meals. Prevent a person consuming a meal (other than snack food) in an area set aside for smoking. The obligation (and liability for breach) to be on the occupier/manager of the outdoor dining area. Option (a), the broadening of reg 6, fits better into the current framework of the Act and is the preferred option.	Compliance officers in SA Health report that in some cases, patrons and/or staff are routinely taking meals into smoking permitted areas to be consumed. There are reports of some businesses designating all of their outdoor area as being ‘smoking permitted’ as they claim the area is for ‘general use’ and is not specifically used for dining. This means that a patron wishing to eat their meal outdoors may need to do so in a smoking permitted area. This practice is causing frustration and confusion amongst some patrons and erodes the concept of ‘smoke-free dining’. It also impacts unfairly on the occupiers who have worked to comply with the regulations.
38	<i>Ss 6-13 - Licensing</i> The following should be considered: Establish criteria for licensing that would allow greater oversight as to where new sellers might operate. Introduce a wholesaler’s licence.	Currently, there are few limitations on the granting of a retail tobacco licence. The review recommended consultation on the licensing system and considering the need for any new licences, based on factors such as proximity to a school or the numbers of existing sellers in a particular area.

Report Rec No.	Report Recommendation	Outline
39	<i>S 38A - Sale or Supply to Children</i> - There should be power for a court to restrict, suspend or cancel a retailer's licence on being found guilty of the offence. In the case of a second offence, the Act should require that the licence should be suspended for a specified period of time (possibly 12 months). - The court's power in these cases should complement the general power given to the Minister in s11 to cancel or suspend a licence.	There may be some merit in giving courts more powers to suspend licences for retailers found guilty of selling to children more than once.
40	<i>S 50 - Playgrounds, ten metre ban on smoking</i> The boundaries of child care centres, kindergartens and schools could also be brought under s50 in similar terms (ie banning smoking in public areas within ten metres of their boundaries).	Introducing a ten metre smoking ban from those areas where children frequently attend would reduce their exposure to smoking and second hand smoke.

4. Discussion

4.1 Smoke-free outdoor dining areas

An issue considered in the review by Dr Reynolds relates to the outdoor smoke-free dining legislation. This law was introduced on 1 July 2016 and aims to protect the community from exposure to second hand tobacco smoke and increase the comfort and enjoyment of non-smokers using outdoor dining areas by making these areas smoke free. However in his report, Dr Reynolds explained that compliance officers in SA Health have observed that some hospitality patrons are routinely taking their meals into smoking permitted areas to eat. Officers have also received contact from concerned patrons who have booked an outdoor table for their meal to find that the area is not smoke-free, as it has been deemed by the business as being a 'general use' area where smoking is permitted. This is against the intention of the law, which was not designed to allow the creation of de facto areas where dining and smoking occur together.

Compliance officers in SA Health report that they have received a large number of complaints and queries about the smoke-free outdoor dining laws and that a significant portion of these complaints involve frustration or confusion about how the laws are operating.

A recommendation made by Dr Reynolds was that the laws should be changed to prevent smoking and dining occurring in the same area. In his report, Dr Reynolds states that currently it is blurred as to whether an area is a dining area and therefore should be smoke-free or if it is a smoking-permitted area where some patrons may choose to eat their meals. He states that this

‘undermines the extensive publicity directed to this initiative’ and ‘is also unfair for the occupiers who have worked to comply with the regulations’.

Dr Reynolds proposes two options for addressing this issue:

- a) to broaden the definition of outdoor dining area to include any outdoor area that the occupier has either set aside for the purpose of public dining or knows or should know is being used by patrons to consume meals; or
- b) to prevent a person consuming a meal (other than snack food) in an area set aside for smoking. The obligation (and liability for breach) to be on the occupier/manager of the outdoor dining area’.

The difference in these two options is that option a) would make it clear that the occupier or owner of the venue must make an outdoor dining area smoke-free, even if they did not inform patrons it is a dining area. In effect, this would mean that once the occupier knows that the area is being used for dining they should take action to ensure that smoking does not occur in that area. Option b) involves the occupier preventing a person consuming a meal in a smoking-permitted area. While these two options may appear only subtly different, Dr Reynolds concludes that option a) is his preferred option because it is more in line with the way the tobacco laws are currently written – with a focus on creating smoke-free areas. Option b) would in effect be the regulation of a ‘smoking permitted’ area which is inconsistent with the way the rest of the legislation is written. Option b) also tends to focus the law on regulating where a person can eat, rather than ensuring that dining areas are smoke-free.

4.2 Increasing penalty levels for offences under the Act

The ongoing monitoring and enforcement of tobacco control legislation continues to be critical for preventing uptake and aiding quitting⁶.

Four of the recommendations from the Reynolds review relate to the penalties under the Act. Recommendations 14 and 39 relate specifically to the offence of selling tobacco to children, and recommendations 18 and 21 are more general in nature and relate to the various offences within Parts 2 to 4 of the Act.

Currently, South Australian tobacco control legislation has a range of penalty levels based on the seriousness of the offence and whether the offence is committed by an individual (such as a person serving at a retail store) or a business.

Dr Reynolds recommended that the penalties attached to Parts 2, 3 and 4 of the Act should be increased to bring them into line with their interstate equivalents and to reflect the seriousness of these offences and current community standards.

⁶ Dessaix A, Maag A, McKenzie J, Currow DC. Factors influencing reductions in smoking among Australian adolescents. *Public Health Research & Practice*. 2016;26(1):e2611605.

Part 2 of the Act relates to licensing and Part 3 relates to restrictions on supply or promotion, including penalties for selling prohibited products; creating and selling products designed to resemble tobacco products; and prohibiting sponsorship and advertisement. Part 4 of the Act relates to restrictions of smoking in prescribed smoke-free areas.

From 31 March 2019, penalties for breaches under the legislation, including the new laws relating to e-cigarette products, were increased in line with the CPI as part of recent legislative changes. Parliament also passed an amendment to the legislation to increase the penalties for the sale of tobacco to children (section 38A) even further. An opportunity exists to assess whether the penalty levels should be increased beyond the levels introduced on 31 March 2019, and whether there should be a different penalty level for corporations as opposed to individuals.

Dr Reynolds identified several examples where the equivalent interstate penalties were significantly higher than those currently in place in South Australia. One such example was section 52 of the Act, where, in South Australia, smoking in a smoke-free outdoor dining area carries a maximum penalty of \$750 and an expiation fee ('on-the-spot fine') of \$105 for the individual. As points of comparison, if a person smokes in a smoke-free area in Tasmania, the maximum penalty is \$3,250⁷ and in Western Australia, a person who breaches the equivalent penalty⁸ faces a maximum penalty of \$2,000 and an expiation fee of \$300. The average maximum penalty interstate through prosecution is approximately \$1,500, with an expiation fee of approximately \$200.

Another example which Dr Reynolds highlighted is the penalty for smoking in a motor vehicle with a child present. Currently in South Australia the maximum penalty for this offence is \$750, with an expiation fee of \$105.⁹ When compared nationally, South Australia's fines are lower than the national average, with the average maximum fine in other jurisdictions of approximately \$2,500 and an average expiation fee of approximately \$250. The highest maximum penalty for this offence is found in the Australian Capital Territory and is approximately ten times the amount currently imposed in South Australia. Dr Reynolds recommended that this particular penalty be increased to bring it into line with the current community standards surrounding children and passive smoking.

4.2.1 Increasing penalties for the sale or supply to children

A recommendation made by Dr Reynolds is to significantly increase the penalty for selling or supplying a tobacco product to a child (a person under the age of 18 years) – section 38A of the Act, given the seriousness of this offence.

As part of the changes to the Act that came into effect from 31 March 2019, Parliament passed an amendment to the law to increase the penalties for the sale of tobacco to children even further than other penalty increases in the Act. The expiation fee increased from \$315 to \$1,200, and the maximum penalty increased from \$5,000 to \$20,000 for a responsible person who is the proprietor of a business for a first offence and to \$40,000 for a second or subsequent offence.

⁷ S67C. Smoking in smoke-free areas prohibited. *Public Health Act 1997* (Tasmania)

⁸ Government of Western Australia, Department of Health. n.d. Smokefree outdoor eating areas – information for owner/occupiers. https://ww2.health.wa.gov.au/Articles/S_T/Smokefree-outdoor-eating-areas-information-for-owner-occupiers

⁹ s 48 *Tobacco and E-Cigarette Products Regulation Act 1997* (SA)

An opportunity exists to further consider the Reynolds Report in terms of the penalty levels for selling or supplying tobacco products to minors, including whether they should be further increased.

Currently South Australia has a staggered penalty level in the Act depending on whether the offence has been found to occur more than once. Additionally, the penalty levels in the Act are different for individuals who sell or supply to a minor as compared to proprietors (business owners) whose business is found to sell tobacco to a minor. There is potential to add another separate penalty for corporations who own the business where the sale occurs, as is the case in some other states and territories.

Interstate, the maximum penalty (through a Magistrates Court) for selling or supplying tobacco to a minor is on average approximately \$50,000 for corporations, however the penalty ranges up to \$90,000. The average maximum penalty is approximately \$25,000 for individuals.

In terms of expiation fee levels in other jurisdictions, the average for an individual vendor selling to a minor is approximately \$1,000 whereas the expiation notice fee for corporations ranges from approximately \$5,000 to \$9,000.

In addition to penalty increases for this offence, Dr Reynolds also recommended that if a retailer is found guilty of selling tobacco products to children on more than one occasion, then the courts should have the power to suspend or cancel the retailer's licence, possibly for 12 months. The court's power would complement the general power given to the Minister in Section 11 of the Act to cancel or suspend a licence. Dr Reynolds considered that this increased level of oversight would act as a strong deterrent for this serious offence.

4.3 Enhancing the licensing scheme

Dr Reynolds made recommendations to:

- Establish criteria for licensing that would allow greater oversight as to where new sellers might operate;
- Introduce a wholesaler licence.

4.3.1 Oversight of where licensees operate

Dr Reynolds expressed the opinion that 'tobacco is a product whose sale should be closely regulated in the interests of public health as traditionally has been the case with liquor licensing.'¹⁰ Over recent years, community values have resulted in expectations that alcohol should not be made easily available to high-risk groups, as reflected in the South Australian liquor licensing laws. Dr Reynolds identified that the same approach has not yet been taken with regards to accessibility to tobacco products. According to Dr Reynolds, the level of regulatory oversight that currently applies to retailers selling tobacco in South Australia is considerably less than the oversight that can be found for liquor retailing.

Several studies have shown that tobacco retailers tend to be more concentrated in lower socio-economic areas.^{11,12,13,14,15} Furthermore, tobacco retailers are often located in close proximity to

¹⁰Reynolds, C. (January 2017). Report of the Administrative Review of the *Tobacco Products Regulation Act 1997*.

¹¹ Dalglish E, McLaughlin D, Dobson A, and Gartner C. Cigarette availability and price in low and high socioeconomic areas. *Australian and New Zealand Journal of Public Health*, 2013; 37(4):371–6.

schools.^{16,17} Research shows that having a higher density of tobacco retailers within areas of disadvantage can undermine smoking cessation in those areas¹⁸ and the normalisation of tobacco consumption, particularly for children, may be increased by the over representation of tobacco availability within these geographical areas.¹⁹

Currently, there are few limitations on where a tobacco licence is granted. Placing criteria around the number of new tobacco licences by geographic location, such as near schools and in areas of high disadvantage, is likely to reduce health inequities in South Australia. Key health bodies and commentators, including the World Health Organization, recommend limiting the number of tobacco outlets as an approach for reducing smoking rates, particularly youth smoking.^{20,21,22}

A notable overseas example of implementing this type of approach to tobacco control is in San Francisco where the Tobacco Permit Density Reduction Ordinance was introduced in December 2014. Subject to certain limited exceptions, no licences for the sale of tobacco products, including e-cigarettes, are issued to businesses located:

- in a supervisorial district that already has 45 or more establishments that hold tobacco licences;
- within 500 feet of a school;
- within 500 feet of another business that holds a tobacco licence;
- a restaurant, bar or tobacco shop, or any establishment without an existing tobacco licence;
- in a site not previously occupied by a business that held a tobacco licence.

While it will be a number of years before the impact of this policy on smoking prevalence in San Francisco will be clearly shown, the impact on the number of licences in San Francisco is already evident, with decreases in the number of licensees in areas with high rates of poverty and disadvantage²³.

Dr Reynolds also discussed that if such a change occurred it is likely to be a controversial amendment with no other Australian jurisdiction having introduced such a measure to date. Therefore it may be preferable to impose this on new licence applicants only.

¹² Chaiton MO, Mecredy GC, Cohen JE, and Tilson ML. Tobacco retail outlets and vulnerable populations in Ontario, Canada. *International Journal of Environmental Research and Public Health*, 2013; 10(12):7299–309.

¹³ Wood L, Pereira G, Middleton N, and Foster S. Socioeconomic area disparities in tobacco retail outlet density: A Western Australian analysis. *The Medical Journal of Australia*, 2013; 198(9):489–91.

¹⁴ Kite J, Rissel C, Greenaway M, and Williams K. Tobacco outlet density and social disadvantage in New South Wales, Australia. *Tobacco Control*, 2014; 23(2):181–2.

¹⁵ Fakunle D, Morton C, and Peterson N. The importance of income in the link between tobacco outlet density and demographics at the tract level of analysis in New Jersey. *Journal of Ethnicity in Substance Abuse*, 2010; 9(4):249–59.

¹⁶ Greenhalgh, EM. 11.9 Retail promotion and access. Scollo, MM and Winstanley, MH [editors]. *Tobacco in Australia: Facts and issues*. Melbourne: Cancer Council Victoria; 2018. Available from <http://www.tobaccoinaustralia.org.au/chapter-11-advertising/11-9-retail-promotion-and-access>

¹⁷ Henriksen L, Feighery E, Schleicher N, Cowling D, Kline R, et al. Is adolescent smoking related to the density and proximity of tobacco outlets and retail cigarette advertising near schools? *Preventive Medicine*, 2008; 47(2):210–4

¹⁸ Wood L, Pereira G., Middleton N., Foster S. (2013) Socioeconomic area disparities in tobacco retail outlet density: a Western Australian analysis. *Medical Journal of Australia*. 198, 489–491.

¹⁹ Ibid.

²⁰ Chapman S, Freeman B. Regulating the tobacco retail environment: Beyond reducing sales to minors. *Tobacco Control*.2009;18:496–501.

²¹ Institute of Medicine. Ending the tobacco problem: A blueprint for the nation. Washington, DC: Institute of Medicine of the National Academies; 2007.

²² World Health Organization. Framework Convention on Tobacco Control. Geneva: 2005.

²³ San Francisco Department of Public Health, Environmental Health Branch 2016. *Retail Tobacco Permit Density Cap Health Impact Assessment*. <https://www.sfdph.org/dph/files/opp/Tobacco-Density-HIAInfographic.pdf>.

Note that, from 31 March 2019, any future changes to tobacco control legislation would also apply to e-cigarette products under the *Tobacco and E-Cigarette Products Act 1997*.

4.3.2 Introduce a wholesaler licence

There are a small number of tobacco wholesalers, predominantly tobacco companies, who sell tobacco to retailers. Currently, there is no legislative requirement in South Australia for a tobacco wholesaler to be licensed or to provide any sales data. The Australian Capital Territory and Western Australia are the only jurisdictions to have a licensing scheme for tobacco wholesalers. The Northern Territory and Western Australia have a provision in their legislation requiring tobacco wholesale merchants to provide their tobacco sales data to health authorities.

Dr Reynolds noted that in South Australia ‘currently only retail sellers of tobacco are licensed and that it would be possible to introduce a wholesaler licence’.²⁴ He recommended that a wholesaler licence be introduced to bridge the current legislative gap in oversight of the sale of tobacco products.

Dr Reynolds identified that the introduction of a wholesaler licence would provide more oversight of the sale of tobacco products and could allow for illegal trade of cigarettes to be more easily detected. It could also enable a wholesaler licence condition that requires the wholesaler to check that their retailer customers have a current tobacco retail licence.

At the time of the Reynolds review, e-cigarettes were not considered in this recommendation, however with new legislation commencing on 31 March 2019 regulating e-cigarettes, including the requirement that e-cigarette retailers hold a Retail Tobacco and E-cigarettes Merchant’s Licence, it is appropriate to consider the issue of wholesaler licences for both tobacco and e-cigarette products.

Another related measure could be to introduce a requirement for wholesalers to provide sales data to SA Health, as occurs in the Northern Territory and Western Australia to the respective health departments in these jurisdictions. This measure would enable SA Health to closely monitor the impact of tobacco control initiatives, including social marketing campaigns and new legislation.

4.4 Establish smoke-free areas near child care and children’s education centres

Currently, Section 50 of the Act provides for a ban on smoking within ten metres of children’s playground equipment in a public area. From 31 March 2019, this also applies to the use of e-cigarettes within ten metres of these areas. Dr Reynolds suggests that these exclusion zones be extended to other facilities or places where children congregate such as education and child care centres, kindergartens and schools. This would address concerns about children being exposed to second hand smoke near the perimeter of these facilities. It would also contribute to further de-normalising smoking, particularly for children.

On 1 January 2015, Queensland banned smoking within five metres of the perimeter of state and non-state schools. In April 2015, Victoria banned smoking within four metres of an entrance to childcare centres, kindergartens, preschools and primary and secondary schools, in order to protect children and young people from second hand smoke and from the negative influences of people smoking.

²⁴ Page 26 Report of the Administrative Review of the *Tobacco Products Regulation Act 1997*.

Internationally, the Canadian Province of Québec has banned smoking within nine metres of child educational facilities.^{25,26}

Where bans have been introduced near schools, the distance of these exclusion zones varies across jurisdictions (for example, five metres in Queensland and four metres in Victoria). In his report, Dr Reynolds suggested that it may be more effective and simpler to establish a ten metre smoke-free zone near child care centres, kindergartens and schools as this would be consistent with the current distance for the ban on smoking near playground equipment in South Australia. Dr Reynolds suggested that implementing these exclusion zones could reduce the amount of tobacco smoke a young child may be exposed to and that it would be in line with community expectations regarding protecting children from exposure to second hand smoke.

5. Issues for consideration: Tell us what you think

The South Australian Government is committed to progressing reform of current tobacco control legislation and recognises the importance of community consultation on this topic. The Government welcomes your thoughts and opinions on all or some of the following questions related to Dr Reynolds' recommendations. These recommendations also apply to e-cigarette products as they have been included in tobacco control legislation from 31 March 2019.

Smoke-free outdoor dining areas:

- Do you support either of the two options for amendments to the regulations to change the way the smoke-free outdoor dining laws work as intended:
 - a) Amend Reg 6 to broaden the definition of outdoor dining area to include any outdoor area that the occupier has either set aside for the purpose of public dining or knows or should know is being used by patrons to consume meals; or
 - b) Prevent a person consuming a meal (other than snack food) in an area set aside for smoking. The obligation (and liability for breach) to be on the occupier/manager of the outdoor dining area?
- What other comments or feedback do you have about the smoke-free outdoor dining laws, including any positive or negative experiences with the laws since they were introduced in July 2016, and any suggestions on how you think the laws could be improved?

Penalties for breaches under the legislation:

Increasing penalties in the legislation for selling or supplying to children

- Should penalties for selling or supplying to a child be increased, with higher penalties for corporations who breach the law, and why?

²⁵Gouvernement du Québec (2018). Tobacco Control Act. [online] Québec.ca. Available at: <https://www.quebec.ca/en/health/advice-and-prevention/healthy-lifestyle-habits/smoke-free-lifestyle/tobacco-control-act/> [Accessed 20 Nov. 2018].

²⁶Tobacco Control Act 2015, c. 28, s. 1. S 2.

- Should courts have more power to restrict, suspend or cancel a licence if they are found guilty of selling or supplying to children?

Increasing other penalties in the legislation

- Should penalties for Parts 2 to 4 in the legislation be increased, with higher penalties for breaches of the law by corporations, and why?
- Is there any penalty which you feel should be increased more than other penalties?

Enhancing the licensing scheme:

Oversight of where retailers operate

- Do you support placing criteria around the number of licences by geographic location, such as near schools and in areas of high disadvantage, to reduce health inequities in South Australia?

Introducing a Wholesaler Licence

- Do you support the introduction of a wholesaler licence?
- Do you feel there are any other areas where regulatory oversight of sales should be increased?

Establish smoke-free areas near child care and education centres:

- Do you support a ban on smoking within ten metres of children's education and child care centres?
- Do you support implementing a ban on smoking near these facilities with a different exclusion distance?
- Do you think there are any other public areas for children where bans on smoking should be implemented?

Any other comments:

Are there any other areas of the Act that you would like to provide comments on?

Note that, from 31 March 2019, any future changes to tobacco control legislation would also apply to e-cigarette products under the *Tobacco and E-Cigarette Products Act 1997*.

5.1 How to make a submission

Feedback on this public consultation can be submitted by:

- Providing comments to the online discussion at YourSAy.sa.gov.au
- Sending an email to HealthDASSATobaccoControlUnit@sa.gov.au

Submissions close at 5pm, Friday 3 May 2019.

Additionally, any queries about the submission process can also be sent to the above email address.

5.2 Protection from commercial and other vested interests of the tobacco industry

Australia is a party to the global tobacco control treaty, the World Health Organization Framework Convention on Tobacco Control (FCTC). Australia has an obligation under Article 5.3 of the FCTC when 'setting and implementing public health policies with respect to tobacco control...to protect these policies from the commercial and other vested interests of the tobacco industry'. The internationally agreed Guidelines for Implementation of Article 5.3 recommend that parties to the treaty 'should interact with the tobacco industry only when and to the extent strictly necessary to enable them to effectively regulate the tobacco industry and tobacco products'.

In line with these obligations, consultation with the tobacco industry and organisations and individuals that may be working to further the interests of the tobacco industry will be undertaken to the extent required consistent with Article 5.3.

The Guidelines for Implementation of Article 5.3 also include an overarching principle of transparency when governments are dealing with the tobacco industry or those working to further its interests. To help meet this obligation **all respondents are required to disclose whether they have any direct or indirect links to, or conflicts of interest, or receive funding from the tobacco and/or e-cigarette industry.**

5.3 Confidentiality of submissions

Submissions may be quoted or published and available online for the purposes of evaluating the proposal. If you do not wish your submission to be quoted or published, please make this clear in your proposal. However, please note that confidentiality of submission cannot be guaranteed. This is because submissions may be accessed by the public under the *Freedom of Information Act 1991*.

The Submitter may wish to disclose information in anonymous form, for example by removing reference to specific individuals, companies, schools or situations.

Disclaimer

This discussion paper has been prepared for the purposes of informing decision-making for legislative change. Whilst every effort has been made to ensure the accuracy of the information contained in this discussion paper, no responsibility is taken for reliance on any aspect of it and should not be used as a substitute for legal or other professional advice. Any action taken in anticipation of the outcomes of this discussion paper is solely of the persons taking such action.