Tobacco and children – what can we learn from the early legislation in Australia?

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Abstract
The first legislative controls on tobacco in Australia and other countries were prompted by concerns about the harmful effects cigarettes were having on young people. These concerns resulted in a range of laws prohibiting the sale or supply of tobacco to children. They date from the turn of the century and have remained in force, though largely neglected, until the present time. A study of these earliest controls and the social context in which they occurred provides a valuable insight into the way tobacco, and cigarettes in particular, were seen by an earlier generation. There are many parallels and contrasts between their response and tobacco control in the late 20th century. A look into the past provides instructive lessons for future directions in that most pressing of issues in tobacco control – the uptake of smoking by the young.

Introduction
Knowledge about the health risks of smoking and public health responses to these risks are generally seen as “new” issues, dating back to the work of Doll and others in the early 1950s. In Australia, most laws to control tobacco use are relatively new. It was not until 1973 that health warnings were required on cigarette packets. Television and radio advertisements were prohibited in 1976 and it was not until the late 1980s that concerted legislative programmes to restrict tobacco advertising and sponsorship and smoking in public places were imposed by some States and the Commonwealth.

However, there is one important law regulating tobacco use that has a much longer history. In Australia, as in many other countries, the prohibition on the sale of tobacco to children predates the work of Doll and Hill and others by 50 years. This restriction was first imposed in Australia by the New South Wales Government in 1900 and by 1917 all the Australian States had similar provisions in place.

This article examines the history of early legislation prohibiting the sale of tobacco to children and its relevance to current tobacco control policy.

The operation of the offence
The prohibition of sales of tobacco products to children has adopted generally a standard format in all Australian jurisdictions. It is an offence to sell or supply a tobacco product to a “child”. Some States define this as a person under the age of 16 years. Others have increased the minimum age to 18 years. However, a person charged with so supplying can raise the defence of reasonable belief; namely that he or she “had reasonable cause to believe” that the person to whom the tobacco was sold or supplied was over the age of 16 years.

The owners of cigarette vending machines and the occupiers of premises on which they are situated also attract some responsibility for children using these machines. In South Australia, the occupier of premises is advised to site the machine in a place where its use can be monitored, since doing so provides a qualified defence to a prosecution. Other States have restricted the places where vending machines can be situated. Generally, these are said to be places where children are unlikely to go without adult supervision. The tobacco industry also claims to be voluntarily restricting the vending machines under its control to these places.

Persons found guilty of supplying tobacco to children risk penalties that vary from State to State. The highest penalty is in Western Australia ($5000 or $10000 for a second offence). In New South Wales, persons convicted also risk the loss of a licence to sell tobacco.

The sales-to-children provision is an important and necessary aspect of any tobacco control strategy. The current Australian National Tobacco Strategy states “Children’s access to tobacco products is of particular concern”. However, by any measure the provision is spectacularly unsuccessful. (In 1984 it is estimated that 34% of 16-year-old Australian school girls smoked at least one cigarette a week, as did 29% of school boys in the same age group.) Prosecutions are rare, complaints tend not to be made and, if complaints are lodged, they are difficult to follow up. Research from South Australia indicates that the legislation banning sales to minors rarely prevents children who wish to purchase cigarettes from doing so, either over the counter or from vending machines. Similar findings have been reported from the United States (US) and Canada.
Perhaps because legislation is ineffective, the tobacco industry strongly supports increased penalties for sales to children and adopts a public stance that smoking is “adults’ business”. There is no evidence that such a view, even when it is publicly expressed, is likely to be a disincentive to child smokers. It also contrasts strongly with the evidence that the tobacco industry does target young people, as indeed it must if its long-term survival is to be ensured. What the industry’s official position on this issue does do, however, is to provide it with the happy combination of an apparently responsible public face and one that, privately, the industry knows is quite ineffective and arguably even counterproductive. (The message that smoking is for “adults only” is likely to make smoking even more attractive to adolescents.)

The early controls
Where did the laws on tobacco and children come from and what was the social context in which they occurred?

Tobacco was an important feature of early social life in Australia, both as an import and as a crop. Tobacco processing provided opportunities for businessmen such as Hugh Dixon, a strict and dour Scottish Baptist, whose family grew rich through the trade and whose imposing factory was said to be the largest in Sydney.*

Throughout the nineteenth century, the vast bulk of tobacco was consumed as either plug tobacco (which was mostly smoked in pipes or chewed) or cigars. Then as now, cigars were associated with affluence and it was plug tobacco that constituted the greatest part of the market. It was not until 1890s that cigarettes (literally small cigars but with a paper wrapper and a different method of curing) became popular, though by 1913 they still constituted only 20.5% of the Australian tobacco market overall.

While the varieties of tobacco increased throughout the late nineteenth century, so did its popularity. By the 1890s, Australians were smoking over a kilogram of tobacco per head annually. This increased steadily during the twentieth century, reaching 2.5 kg in 1960.

If smoking was increasing in popularity it also had its detractors. As early as 1867, a South Australian Member of Parliament (MP) asked the Government to ban smoking in the open air during summer on account of workers’ pipes setting fire to hay stacks. He concluded that it was time “something…was done to prevent calamities in future as were brought about by the curse of smoking”.

The Government took no action, but in 1882 another attempt was made to restrict the use of tobacco. The Smoking Regulation Bill, introduced by the Hon John Colton, was designed to prohibit smoking among children (defined here as under 18 years). Colton’s Bill received mixed support. The local press ridiculed it while others claimed that its scope should be widened to include total bans on smoking in some public places, in particular outside churches. Colton’s motives for introducing this legislation are an interesting mixture of moral and medical concerns. Prominent was the path to physical and psychological ruin that many believed followed inexorably from tobacco use or, as it was alleged in the debates: “with the body enfeebled and the powers of the mind impaired and the morals destroyed, a proneness to evil associations is engendered, and thus in many cases, the way is prepared for a vicious career”.

The medical evidence presented to justify the Bill illustrates that at that time there was a significant body of health-related claims against tobacco. It was said to destroy the appetite and enfeeble digestion, to produce a fluttering heart, and to “act as an irritant upon the motor parts of the nervous system”. However, in Colton’s view, the harmful effects of tobacco worked selectively. Tobacco, he said: “though a harmless associate for grown man (sic) is a dangerous and seductive acquaintance for boys”.

One opponent of the Bill was Mr Robert Dixon, a parliamentarian, son of Hugh Dixon, and head of the Adelaide side of the family tobacco business. Predictably, he claimed the medical evidence was that “no well-ascertained ill effects have been shown to result from the habitual practice of smoking”. In the event, Colton’s Bill failed to pass.

By the turn of the century, leading opinions, both in Australia and overseas, seemed to be more strongly in favour of controlling the supply of tobacco to children. The New South Wales Parliament passed its Juvenile Smoking Suppression Act in 1900 and in the racy debating style that typified the Colony’s parliament at that time, the various members stated their cases. Basing his argument on the belief that smoking stunted the growth, one member suggested a minimum height requirement be introduced for purchasers of tobacco. The proponent of the Bill was Dr Andrew Ross, a medical practitioner, and the debate emphasised medical effects of tobacco, including heart disease and cancer. Beyond the concern for personal health, there was also the issue of the nation’s health, and it was in this context that the baneful effects of tobacco were most strongly put, particularly by John Norton, an MP and also the colourful proprietor of Truth, a popular nationalist scandal sheet. For Norton, juvenile smoking commenced a downward spiral that led to alcohol and worse, sapping the strength of Australia and leaving it perilously exposed to that other of Norton’s bêtes noires, the Asian hordes. He pictured young children buying and sharing their penny packets of cigarettes and spending their time in smoking “and in filthy conversation and, perhaps filthy practices”.

Similar legislation banning the sale or supply of tobacco to children was passed in other Australian States. The Queensland Juvenile Smoking Suppression Act went further than the others. It prohibited not only sale of tobacco to children (under 16), but the act of smoking by children. Some States had in-
cluded this requirement in their Bills, but these were not supported and did not become law. The Tasmanian Act of 1900 provided for the supply of tobacco to children in cases where a medical practitioner had certified that using tobacco was beneficial to the health of the client.

The 1905 legislation introduced into the Victorian parliament, the Tobacco Sellers Bill, included a clause that allowed for the withdrawal of the right to sell tobacco from a person convicted for the second time of sales to children. The concern expressed in the Bill was directed to cigarettes rather than tobacco generally. The proponent of the Bill in the Upper House, the Hon J M Davies, argued that cigarette smoking was especially damaging to children, and that some cigarettes contained a soaking of opium. (This is most unlikely, as opium was a very highly taxed commodity and would have been too expensive for this purpose.) Another view expressed in the Victorian Upper House was that cigarettes were “very much more harmful than ordinary tobacco, because people inhaled the smoke”. 13

One prominent opponent of the Victorian legislation was Alfred Billson, the member for Ovens, which included the main tobacco growing areas of the State. Billson claimed “extreme astonishment at the whole of the proposal”. He argued that the most effective reform of children’s smoking would be in the home rather than through legislation, and that, in any event, there was no one who could say that “the smoking of one or two cigarettes was injurious to a boy of sixteen”. He warned that this type of legislation was a response to “fads and fancies” and that “By-and-by there would be a law that no man should go about with corns on his feet”. 14

It is significant that most concern was directed towards cigarettes even though these constituted less than 20% of the total tobacco consumption at the time. Cigarettes were cheap when compared to other forms of tobacco (for example, 20 cigarettes cost three pence, while an equivalent weight of tobacco in cigars cost one shilling). Not only did this bring tobacco readily within the reach of children with limited incomes, but the low price also made the quality of the product suspect, as was emphasised in the Queensland debates. Here it was believed that inferior paper wrapping made out of “old rags” in Havana was used and that it burnt “with a terrible stench”. 15 Concern about the adulteration of tobacco in cigarettes was also voiced in the US at about the same time. The Philadelphia Times claimed that cigarettes were being “doctored” with unamed substances in order to give them a “sweet and pleasant flavour”. 16

In 1905, Charles Tucker, a member of the South Australian Parliament, introduced a Bill to prohibit cigarettes altogether. In justifying his proposal, Tucker presented similar arguments to those of Colton and others. He had energetically researched the concerns held by the many US employers who, he claimed, would not hire boys who smoked. Prominent among these was the Ayre’s Sarsaparilla Company, whose patented product contained largely alcohol and was widely advertised as suitable for children. 17 He cited a wide variety of US and local evidence to support his case. 18

Tucker focussed on the health problems of smoking, the deleterious nature of the product, the moral ruin of the smoker, and its broader effects on national fitness. Health was also an issue — evidence was raised suggesting a range of concerns from heart disease, the adverse effects of oxygen deprivation, and the central nervous system effects of nicotine. 19 However, the Bill did not become law. To its critics, Tucker was handing out “grandmotherly advice” which was in the same context as the temperance moves to restrict the sale of alcohol.

Although the assault on the cigarette as a new and, to some, disturbing method of marketing tobacco continued through the postwar period and prominent identities, the failure of Tucker’s prohibition spelt the end of attempts to ban cigarette use in Australia.

Similar restrictions on the sale of tobacco were introduced in other countries at the turn of the century, including Japan, South Africa, Canada and in 47 States and Territories of the US. 19 In 1908, the British Parliament passed comprehensive legislation that prohibited the sale of cigarettes or cigarette papers to children (here defined as persons under 16 years). It empowered constables and park keepers to seize cigarettes or papers found in the possession of children. Vending machines, which existed at this time, were liable to be removed on the order of a court if they were found to be used “extensively by children or young people”. 20

The British Parliament was responding to widespread concern about the declining health and physique of the nation’s young. Adolescent smoking was argued to be one reason for this decline. One Committee enquiring into this question in 1904 recommended the prohibition of tobacco sales to children, the licensing of tobacconists, and restrictions on the outlets where tobacco could be sold in order to “prohibit the sale of tobacco and cigarettes in sweet shops and other shops frequented by children”. 21

**Discussion and conclusions**

Overwhelmingly, these Victorian and Edwardian provisions were about the need to protect children. They were not about the harmful effects of tobacco as such. The legislation was justified by the florid picture of boys enfeebled and morally corrupted by smoking and keeping the company of smokers. In the selective concentration on cigarettes there appears to be more than the simple and apparently logical concern that they were cheaper and more accessible to children than other forms of tobacco. Cigarettes were also a symbol of modernity; they were not only new but also foreign and because of this they were, in the eyes of many people, automatically suspect. Cigarettes were associated with what
were seen by many as the problems of urban youth, joining the other "social plagues" of the turn of the century such as drunkenness, gambling and "impurity."

Gusfield has characterised the US temperance movement as a conservative rural reaction to the urban world of the immigrant and the saloon.  People who singled out cigarettes from other forms of tobacco appeared to be reacting in a somewhat similar fashion to what they saw as the undesirable urban face of change in Australia at this time. However, other important issues are raised by the history of the "sales to children" laws. Firstly, it should be noted that legislation to control health risks due to tobacco is not new. Remedial legislation of quite sophisticated and sometimes sweeping dimensions was proposed 90 years ago. The South Australian proposal to abolish cigarettes in 1905, when they were a new form of tobacco, particularly likely to be used by children, has interesting parallels with the Australian laws abolishing oral tobacco in the 1980s.

Ninety years ago legislators recognised that simply prohibiting the sale of tobacco to children was not sufficient and that legislation must go further to restrict the places where tobacco is sold, while imposing the notion that, as with alcohol, the selling of tobacco is a regulated privilege rather than an unfettered right. This view is now re-surfacing in Australia.

Many features of the early debates on legislation to control tobacco use will be familiar to those who have observed the passage of modern anti-smoking laws. At the turn of the century the power of vested interests was demonstrated both by Robert Dixon and by the member for Ovens. There were the same cries of "grandmotherly legislation" and arguments against the interventionist State that have been made in response to recent tobacco control in Australia. Ninety years ago the effect of smoking on the well-being of the community was described in imperial terms of "national fitness"; nowadays economic measures rather than military standards are applied to quantify the public cost of drug use. Modern health promoters still argue about the role of tobacco as a "gateway drug", and debate the relative importance of physical and social aspects of addiction to smoking. Interestingly, the debates also demonstrate that many people believed smoking caused heart disease and respiratory problems, long before this was proven. More significantly, however, these laws did not achieve their aim of restricting smoking by children. Ninety years of prohibition of sales to children have done little in Australia to dislodge the position of tobacco as the biggest cause of drug death. Current data indicate that the early and mid teen years are the most important ones in the formation of a lifelong addiction to tobacco. 23

Perhaps the most important lesson we draw is that these laws failed because they existed in isolation. In Australia it is only in the past 6 years that the provisions banning tobacco sales to children have been included alongside other health promotion strategies in a national tobacco control programme. As part of this programme, the provisions should be reconsidered with a view to increasing penalties (including loss of licence), encouraging enforcement, prohibiting vending machines, and restricting outlets.

There is another aspect of this history that warrants the attention of persons involved with health promotion and public health policy. This is the moralising overtone of the debates, which marginalised child smokers and linked smoking with bad character and moral weakness. In this regard, there are similarities with the late 19th century legislation in Australia and the US that restricted the sale or use of opium. The opium debates focussed on the Chinese communities in both countries, and the laws can be characterised as moralistic enactments, more about the "problem" of the Chinese than the problem of opium.

Many supporters of the early tobacco laws agreed that children and not adults were harmed by smoking, and healthy children were seen as a necessary insurance policy for national defence. This approach risked displacing the public health argument for restricting the access of cigarettes to children. Campaigns which appear to be effective may stigmatise and marginalise the groups to whom the campaigns are directed. We need to be aware of this danger and take account of it in applying future strategies to reduce access by children to tobacco.

1 Tobacco Products Control Act, 1986 (South Australia), section 11. Tobacco Act 1987 (Victoria), section 12.
10 South Australian Parliamentary Debates, 9 January, 1867; 1448.
11 South Australian Parliamentary Debates, 18 October, 1882; 1304, 1306, 1308.
12 New South Wales Parliamentary Debates 7 August, 1900; 1611, 1613, 1624, 1625, 1633.
13 Victorian Parliamentary Debates, 11 December 1905; 3633, 3634.
14 Victorian Parliamentary Debates, 23 November 1905; 3033, 3034.
15 Queensland Parliamentary Debates 3 August, 1905; 149.
16 South Australian Parliamentary Debates, 20 September, 1905; 304, 306.
19 Cigarettes and Youth: What other Countries are Doing, South Australian Register, 11 October 1905, 6.
20 Children's Act, 1908 Ch 67 s39-41.