

Chapter Eighteen: Sales of cigarettes to minors: Reports from compliance testing

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SUMMARY

Previous assessments of rates of illegal sales of cigarettes to minors in South Australia demonstrated that children well below the legal age were able to buy cigarettes with relative ease. Two further rounds of compliance tests were undertaken, in conjunction with an information campaign to encourage retailers not to sell cigarettes to minors.

The first round of compliance testing took place in September 1999. This demonstrated that overall, 20 percent of shops in metropolitan Adelaide and 35 percent of shops in regional areas sold cigarettes to children. After the first compliance test, shopkeepers who sold to children were warned by letter that they would be liable for prosecution, while those who didn't sell were sent letters of congratulation. The second round of compliance testing took place in January 2000 and the results are described here. Seventy five percent of the retailers from the first compliance test were revisited and the total number of visits was expanded to include additional outlets in the metropolitan area as well as parts of the Eyre Peninsula in the country sample. The rates of sale (or non-compliance) rose to 35 percent in the metropolitan area and 52 percent in country areas.

This study shows that despite one round of compliance testing, retailer education and warnings in the media, compliance with the Tobacco Products Regulation Act, 1997 (Section 38) decreased in the second test. Recommendations are made for further action.

INTRODUCTION

Almost all adult Australians who smoke started before they turned 18.¹ If a person has not started smoking before they turn 18, it is unlikely that they ever will.² Experimentation during adolescence often leads to dependency, resulting in long-term tobacco use throughout adulthood.^{3,4} If the estimated 276 000 Australian school children who were current smokers in 1996 continue to smoke throughout their life, 138 000 will die prematurely.⁵

The development of a national best practice model for reducing the sale and supply of tobacco to children was nominated as a priority under the National Tobacco Strategy, endorsed by the Ministerial Council on Drug Strategy.⁶

Every three years, the Australian Secondary School Student Alcohol and Drug survey is undertaken among a representative sample of (South) Australian school children. Among other things, the survey measures rates of smoking prevalence as well as sources of cigarettes. (The findings from the survey are discussed in greater detail in Chapters 13 and 14). Rates of smoking among South Australian 16–17 year old school children approximate the proportion of adults who smoke. Of the school children aged 12–17 years who smoked, 34 percent report purchasing their own cigarettes.

Under South Australian law it is illegal to sell or supply tobacco products to anyone below the age of 18.⁷ Penalties for retailers selling tobacco to minors include a fine of up to \$5,000 and possible disqualification from applying for, or holding a tobacco merchant's licence for up to six months. In addition, all retail outlets must display approved signs indicating 18 to be the minimum age for purchasing tobacco products, with a maximum penalty for not displaying the legal signage of \$750. Despite this, studies have shown consistently that compliance with the legislation in South Australia is poor and that children well below the legal age are able to purchase cigarettes with ease.^{8,9}

Recent research strongly suggests that an ongoing program of active enforcement is required to reduce illegal sales to minors. There is also evidence that poorly enforced youth access laws have little impact on the availability of cigarettes to youth, and so would be unlikely to influence consumption.^{10,11} Studies have suggested that enforcement of sales to minors legislative provisions needs to be comprehensive and aggressive, in order to realise high levels of retailer compliance.^{12,13}

Recognition of the long-term harm caused to the health of South Australian children who take up smoking, and the subsequent costs to the health system and the community led to renewed commitment towards eliminating the illegal supply of tobacco to minors. On World No Tobacco Day (31 May) 1999, the South Australian Minister for Human Services announced that rounds of compliance testing of retailers would take place using trained children to enter shops to try and buy cigarettes. The Minister warned that retailers caught repeatedly selling cigarettes to children would be liable for prosecution.

This announcement received considerable media attention. *The Advertiser* newspaper reported sending a 17-year-old girl into a range of retail outlets in metropolitan Adelaide, where she was sold cigarettes in nine out of ten attempts without being asked for identification.¹⁴ A local current affairs program reported sending a 13-year-old boy, with an undercover camera, into a retail outlet allegedly known for selling cigarettes to minors, where he was able to purchase single cigarettes.¹⁵

Prior to the commencement of the 1999 compliance testing a substantial retailer information and awareness raising campaign was implemented. This campaign, *No ID, No Sale*, aimed to inform retailers of their legal obligation not to sell cigarettes to people under the age of 18 and to ask for acceptable photographic identification, namely driver's licence, proof of age card or passport, if in doubt. Education material, including stickers for display at point of sale, was sent to all tobacco licencees in early September with a letter stating that the law would be actively enforced. The Australian Retail Traders Association and the State Retailers Association worked in partnership with government, placing articles in their magazines giving the same information to their members. The first round of compliance testing was scheduled for three weeks after the initial mail out.

In South Australia, the Department of Human Services' Tobacco Control Unit has completed two rounds of compliance checks with minors attempting to purchase cigarettes from tobacco retail outlets. The first round of compliance testing took place in September 1999. A total of 206 venues in Adelaide and regional South Australia were visited by officers from the Department of Human Services and three children aged 14 years and six months, 15 years and 15 years and nine months. In the first compliance test 20 percent of shops in metropolitan Adelaide and 35 percent of shops in regional areas sold cigarettes to the children.¹⁶ Immediately after the first compliance test, shopkeepers who had sold cigarettes to the children were warned by letter from the Department of Human Services that they would be liable for prosecution if they continued to offend. Those that did not sell cigarettes were sent congratulatory letters.

The second round of compliance testing took place in January 2000 during the summer school summer holiday break. This report describes the outcome of that compliance test. More detailed reports of findings are also available.^{16,17}

METHOD

The methodology used in this survey was largely consistent with the methodology of previous compliance surveys undertaken in South Australia. To enhance the comparability of the data, the visits were conducted using identical methodology to the first round of testing. Children well below the legal age for sale attempted to purchase cigarettes from a variety of retailers.

Three adolescents, two boys and a girl, aged between 14 years nine months and 16 years were selected to undertake the visits. Two of the same adolescents participating in the first test volunteered again. Consequently in the second test they were four months older than the first

test. There was a girl of 16 years (girl 1), a boy of 14 $\frac{3}{4}$ years (boy 1) and one additional boy of 15 (boy 2) who volunteered for the activity.

The intention was to select adolescents who looked no older than their chronological age. The children wore clothes appropriate to their ages (jeans, shorts and t-shirts). The girl was instructed not to wear any make-up. Twenty Department of Human Service staff were asked to estimate the age of the oldest adolescent, (the 16 year-old girl) and their responses ranged from 11 to 17 years old. No-one estimated she was over 18. The adolescents were non-smokers.

The sampling frame for retail outlets was constructed from the list of tobacco licence holders provided by Revenue SA. This was augmented by Electronic White Pages to include stores and petrol stations that hold only one licence but have multiple outlets. Retailers were then randomly selected. The regional centres of Pt Pirie, Pt Augusta and the Riverland were revisited and a new region in the Eyre Peninsula was added to the survey. Most of the outlets in the first compliance test were revisited in the second compliance test. The minors were assigned to visit stores in the second sample without a deliberate intention to revisit the stores they had visited in the first round. Although some retailers were revisited by the same minor, many were not.

A Department of Human Services officer drove the minors to each of the venues and waited outside out of sight while the child entered the retail outlets and asked to purchase cigarettes. The child entered the store and approached the counter asking for a packet of cigarettes. The boys asked for a packet of Escort Blue™ and the girl asked for Holiday 20's™. If none of the first choice brands were available they were instructed to ask for Benson & Hedges™ or any other brand they were able to see on the shelves. If the vendor asked the minors their age or asked a question inviting them to agree that they were over 18, the minors were instructed to be absolutely truthful and to state their correct age. If the minor was asked for identification they were instructed to say that they didn't have any. The methodology gave the vendor the best chance to refuse to sell.

After the attempted purchase, the child returned immediately to the car and recorded a number of details about the transaction and the store. These included price, the time of day, the gender and approximate age of the vendor, whether anyone else was present and the presence of signage.

The three types of signage noted were:

- the signage legally required to be displayed under Section 38 of the *Tobacco Products Regulations Act 1997*
- the signage that was distributed by the DHS during the awareness raising campaign in September 1999 (*No ID, No Sale*)
- *18+ It's the Law* signage distributed by the tobacco industry.

RESULTS

In total, 321 retail outlets were visited during the January 2000 round of compliance testing. Of these, 151 outlets were visited for the second time (having already been visited in September) and 166 venues were visited for the first time. Attempts were made to visit all of the 206 stores visited during the first round, however 25 percent of outlets were not visited due to store closure or ceasing to sell cigarettes.

Overall, 208 of the venues were in metropolitan and 113 were in regional locations. A new regional location of the Eyre Peninsula (including Port Lincoln, Port Neill, Tumbly Bay and Coffin Bay) was added to the second survey.

Overall rates of sales for the different regions were 35 percent in the metropolitan area and 52 percent in country areas. Figure 1 compares the overall rates of sale to minors in the second round with the first round of compliance testing.

Figure 1: Rates of sales to minors (non-compliance) by compliance testing round and areas

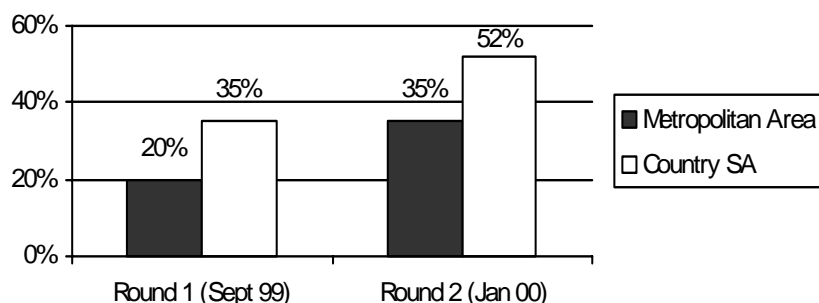


Table 1 overleaf shows the overall rates of sale (non-compliance) in the different regions. This data shows venues which were being visited for the first time and those which had been visited before and received notification of the first visit. Baseline data (from the first round) is also provided for comparison. Differences were observed in total rates of sale between the different country areas, but they were not statistically significant.

However, there were noticeable trends in rates of sales between individual towns in the country. For example, every store visited in Tumbly Bay sold to the minors, whereas the rates of sale were lower in other Eyre Peninsula towns. Similar disparities were observed between different towns within the larger Riverland area.

Rates of sale in the second round of surveying showed a marked increase when compared with data from the first compliance survey. There was an absolute increase of 15 percent in sales in the metropolitan area and an absolute increase of 17 percent in country areas. Rates of sales were higher among retailers being visited for the first time, than retailers who had received a visit

during the previous round. However, the results are also indicative of a decrease in compliance among outlets which had already been visited during the previous round.

Table 1: Rates of sales to minors, by region and visit number, % sales (number of attempts)

	Round 1 (Sept/Oct '99)	Round 2 (January 2000)		
		Revisit	1st Visit	Total
Metropolitan Adelaide	(n=138)	(n=100)	(n=108)	(n=208)
	20%	27%	42%	35%
Country SA (average)	(n=68)	(n=55)	(n=58)	(n=113)
	35%	42%	62%	52%

Looking only at retailers who were visited for a second time, selling (or not selling) during the first round was not a consistent predictor of the outcome during the second round. Of the 22 metropolitan outlets that sold the first time, 8 (36 percent) sold again. Of the 78 that did not sell the first time, 19 (24 percent) sold on the second occasion. Similarly in the country, of those that sold during the first visit (n=18), 44 percent sold again and of those that did not sell the first time (n=37) 41 percent sold the second time.

Consistent with the first round of testing, the estimated age of the vendor was unrelated to whether the minor was sold cigarettes. The mean estimated age of the vendors who sold cigarettes to the minors was 35 years of age (compared with 36 years for those who did not sell). Vendors who were judged to be aged 20 years or under were no more likely to sell than older looking vendors. As was the case in the first round of compliance testing, different minors were sold cigarettes at differing rates.

Tables 2 and 3 show the frequency with which minors were asked for proof of their age, and the extent to which different types of signage were present. Overall, the rates at which the minors were asked for identification were no better than during the initial round of compliance testing, with indications of a dropping off of such questioning in the metropolitan areas.

Table 2: Age/Identification queries (% of minors asked)

	Round 1 (Sept/Oct '99)	Round 2 (January 2000)		
		Revisit	1st Visit	Total
Minor asked for identification				
Metropolitan Adelaide	70%	57%	51%	54%
Country SA	40%	46%	35%	40%
Minor asked their age				
Metropolitan Adelaide	16%	16%	7%	12%
Country SA	25%	16%	14%	15%

Rates of legally required signage and Department of Human Services *No ID, No Sale* signage were approximately equivalent in metropolitan areas between the first and second rounds of testing. Marked improvements were witnessed in the prevalence of both types of signage in country South Australia.

Table 3: Presence of signage (% with signage present*)

	Round 1 (Sept/Oct '99)	Round 2 (January 2000)		
		Revisit	1st Visit	Total
Legally required				
Metropolitan Adelaide	84%	75%	83%	80%
Country SA	49%	91%	77%	84%
DHS No ID, No Sale				
Metropolitan Adelaide	47%	55%	54%	54%
Country SA	39%	69%	59%	64%
Tobacco industry 18+, It's the Law				
Metropolitan Adelaide	56%	44%	38%	41%
Country SA	34%	41%	39%	40%

* Excludes cases where minor was unable to determine that signage was definitely present or absent.

Comments by some retailers indicated that they were well aware that the children in the survey were underage and that they were breaking the law by selling them cigarettes. One retailer gave instructions to Girl 1 to 'put the cigarettes in your bag' and another said, 'Don't tell anyone where you got them from' or 'This is the only time I'll sell without ID'. On another occasion a stranger in the shop volunteered to buy the cigarettes for one of the children after the vendor had refused them. One retailer sold to Boy 1, even after he said he was 14 years old and did not have ID.

Retailers clearly had some idea that compliance testing was happening as there were comments such as 'I can't give them out. Sorry! They've got this blitz thing on' or '... only once as I can get in trouble' or 'It might cost me a lot of money'. As in the first test, some retailers in the second test framed questions in such a manner that it would be easy to make a false positive assertion. Examples here are 'You are eighteen, of course' or 'You're old enough, aren't you?'

As with the first round of testing, retailers selling to minors were sent a warning letter and retailers not selling were sent letters of congratulation. After the second round letters were again sent out, the Tobacco Control Unit received forty phone calls as a consequence. Shopkeepers sounded anxious about the threat of prosecutions. They sought more details from the Tobacco Control Unit staff (exact time of day, sex and approximate age of the vendor) to enable them to determine which of their staff made the sale. Some shopkeepers argued that an unfair burden of responsibility was being placed upon the retailers.

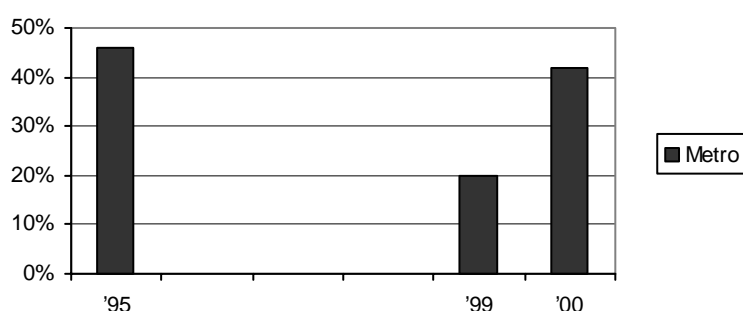
DISCUSSION

The second compliance test was designed to assess whether community information (information pamphlets, resource material, publicity and a personal letter) had made any difference to the rate at which minors were sold cigarettes in South Australia over a four-month period. The data from the second test showed a higher rate of sale to minors than the first test which is the reverse of what might be hoped for after such an intervention.

It might be expected that premises that had received a letter notifying them of the outcome of the first visit should be more alert and might be expected to be more vigilant. Although the rate of compliance was slightly higher among revisited premises than premises being visited for the first time, it was disappointing to note that the upward trend in non-compliance was also evident in this group. Furthermore, the outcome of sale in individual shops during the first compliance test was not a reliable predictor of the outcome of sale during the second compliance test. Many outlets that refused sale on the first occasion were not consistent, as they did not refuse sale on the second occasion.

The second round of compliance testing in South Australia invites the conclusion that either compliance overall has declined, or that any increased compliance after the initial publicity and promotion had not endured over the four months between the two compliance tests. Comparison with the pilot conducted in 1995 (Figure 2) indicates that there was most likely an element of 'blitz' behaviour among retailers and rates of sale were lower at a time when publicity about enforcement of the legislation was high. Publicity alone was insufficient to maintain reduced rates of sale.

Figure 2: Rates of compliance in South Australia over time (1st visit data only)



By contrast, the display of the legally required signage improved throughout the state. The high rate of display of the Department of Human Services signage indicates that retailers are receiving the message. However, retailers are not acting on the information when it comes to sales, ensuring that customers are over 18.

These findings are likely to underestimate true rates of illegal sales to children. The minors in this survey were told to be truthful about their age, even when given an opportunity to conceal it, and several retailers offered them this opportunity. Retailer comments during both rounds of compliance testing reveal evidence of awareness of such tests and amended behaviour as a consequence, mainly due to the fear of fines. There was also evidence that a small number of retailers were well aware that the person to whom they sold was underage, displaying clear disregard for the law.

These results are consistent with other research both internationally and in Australia emphasising that improvements in compliance are usually short-lived if the threat of being caught and penalised is not real.¹⁸ Previous studies in South Australia using repeat-visit and notifying the retailer of the outcome of the first visit have shown similar results, with no increase in compliance observed during the second visit.⁹ A recent Tasmanian compliance testing study showed the non-compliance (sale) rate rose from 52 percent to 66 percent over the course of a year. This was despite an intensive state-wide advertising campaign but no prosecutions.¹⁹

However, experiences in jurisdictions where retailers have been prosecuted for selling cigarettes to minors is different. Western Australian experience shows a 68 percent reduction in tobacco merchants' willingness to sell to 16-year-old children, after an intervention that included prosecutions, education, enforcement, publicity and community involvement.²⁰ In New Zealand a 1992 survey found nearly 50 percent of 14–15-year-olds had purchased cigarettes from a shop and until 1994 only two retailers had been prosecuted for selling cigarettes to minors.²¹ In 1996–1997 the New Zealand Ministry of Health introduced and publicised its Controlled Purchase Operations program, designed to increase enforcement of its sales to minors legislation. Using supervised volunteers aged under 16, they visited 980 sites resulting in 84 sales (8.6 percent). As a consequence, 49 retailers were prosecuted, with 41 convicted. Fines ranged from \$100 to \$750, inclusive of costs. The Ministry of Health's current goal is to survey 10 percent of tobacco product retailers every year with a program of education and enforcement.²²

It is possible to achieve near total compliance by combining retailer education (or information), regular compliance testing and prosecutions. This has been demonstrated in New South Wales (NSW) in 1998/99, where the NSW Health Department declared a strong commitment to monitoring compliance and active enforcement of Section 59 of the *Public Health Act 1991* (NSW).²³

A considerable number of months had passed since the South Australian Minister for Human Services announced there would be prosecutions for retailers who failed to comply with the *Tobacco Products Regulation Act, 1997* and since the campaign was first mentioned publicly in May 1999. At the time of the second survey, there were anecdotal indications from retailers that they no longer believed there would be prosecutions. After the second round of compliance testing, a concerned community member rang the DHS Tobacco Control Unit, after having seen a tobacco retailer sell cigarettes to a boy of approximately 10 years of age. The community member reported that when she confronted the vendor he replied that she could complain to whomever she wished since the result would only lead to a government letter of warning. Furthermore, quite a number of retailers have since asked the Tobacco Control Unit if any prosecutions have taken place yet or when, if ever, they occurred.

Evidence from other states and internationally indicates that punitive action is required if there is to be any impact on reducing the access of children to illegally sold cigarettes in South Australia.

Community support is very high for tobacco control measures designed to protect children and reduce their access to tobacco. South Australian research showed that 96 percent of the community agreed that children should not be able to be sold tobacco products.²⁴ Ninety-four percent (and 90 percent of smokers) agreed that tobacco retailers should be required by the government to check photographic identification if they were in any doubt as to someone's age. In addition, 77 percent thought that shops should be required to pay back the money they made from illegal sales to minors to fund enforcement efforts, and 81 percent said they thought that tobacco companies should be required to pay back extra monies made from illegal sales to children. Seventy-nine percent of respondents in the same study (and 51 percent of smokers) thought that (within five years) the sale of cigarettes should be confined to specialist tobacco shops (like tobacconists).

CONCLUSION AND RECOMMENDATIONS

Strategies to prevent illegal sales of cigarettes to minors need to be comprehensive to effectively limit sale or supply through shops. A national strategy to reduce the sales of cigarettes to minors has since been developed.²⁵ Community acceptance of sales of cigarettes to children is low, and there is a high level of support for measures taken to limit access and penalise retailers and organisations that profit from the sales. Best evidence from other Australian jurisdictions indicates that regular compliance testing with active enforcement, coupled with use of other strategies including unpaid media and retailer information can reduce supply to a minimal level (less than 5 percent non-compliance).

It is recommended that the South Australian Department of Human Services and like organisations continue programs of systematic compliance testing and publicise the general findings, both as a deterrent to retailers and an evaluative tool for other courses of action. It is recommended that emphasis on checking adequate photographic identification is retained, and facilitated in retailer information materials and feedback. Furthermore, it is recommended that legislative options be explored to bring South Australia in line with other states which make checking photographic identification mandatory, and provide no defence for selling to children well below 18.

ACKNOWLEDGEMENTS

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