**VAPING**

**The Hon. S.L. GAME (15:16):** I seek leave to make a brief explanation prior to addressing a question to the Attorney-General, representing the Minister for Health and Wellbeing, on vaping.

*Leave granted.*

**The Hon. S.L. GAME:** Data from the South Australian Health and Medical Research Institute in 2020 shows that 13.5 per cent of South Australians still smoke—that is over 200,000 South Australians. Data obtained from the Australian Bureau of Statistics shows that the proportion of Aboriginal and Torres Strait Islander adults who smoke daily in South Australia is sitting at 40.4 per cent. Regulated nicotine vaping products have been proven to be effective quitting aids but access for adult smokers is severely restricted here. This is different from the black market vapes of unknown constitution which are readily available.

We are witnessing stagnating smoking rates despite strict tobacco control laws and the highest cigarette prices in the world. Smoking is a primary cause of health and financial inequalities in South Australia, with those from low socio-economic backgrounds smoking at higher rates and more heavily.

Young people are accessing unregulated black market vaping products at an alarming rate but, at the same time, adult smokers are unable to easily access these regulated vaping products to help them quit smoking. We are the only Western country that uses a prescription-based model for nicotine vaping. New Zealand, for example, legalised regulated nicotine vaping as a consumer product to help smokers quit and has enjoyed record declines in smoking rates while effectively restricting access by young people. My questions to the minister are:

1. Why are these products, which can help smokers live longer and healthier lives, being restricted from the adult smokers who need them most?

2. Why is the health department not encouraging smokers to switch to vaping which is a far less harmful alternative to smoking and is a more effective quitting aid than nicotine replacement therapies?

**The Hon. K.J. MAHER (Minister for Aboriginal Affairs, Attorney-General, Minister for Industrial Relations and Public Sector) (15:18):** I thank the honourable member for her question.She mentioned that smoking rates in Aboriginal communities are significantly higher than in non-Aboriginal communities, and is one small but significant factor in some of the disparity we see inhealth outcomes between Aboriginal and non-Aboriginal people.

In relation to her questions on vaping and the regime that applies in South Australia, I will refer that to my colleague in another place, the health minister, who I am sure will be able to provide an answer that talks about the science and the evidence of the regime. As the honourable member pointed out, it is a reasonably consistent regime around Australia, from what I understand. In my experience, the health department often looks at the best available scientific evidence about health outcomes in forming the policy that is put forward, but I will refer those to my colleague in another place and bring back a reply.

**CONTROLLED SUBSTANCES (NICOTINE) AMENDMENT BILL**

*Introduction and First Reading*

**The Hon. S.L. GAME (16:07)**: Obtained leave and introduced a bill for an act to amend the Controlled Substances Act 1984. Read a first time.

*Second Reading*

**The Hon. S.L. GAME (16:08):** I move:

*That this bill be now read a second time.*

As unregulated youth vaping skyrockets, and access to the most successful nicotine replacement therapy remains severely restricted, it is clear that our state and federal governments' approach to vaping is not only flawed but costing lives. Concerns have been raised with me that the revenue from the tobacco tax is behind Australia's standalone nonsensical policy. Those suffering from the government's current approach are predominantly young people and those with socio-economic hardship.

Our youth are afflicted not only by the thriving black market of vape products, with unknown chemical make-up and misleading nicotine labelling, they are losing loved ones to smoking-related deaths. The government continues to make it much harder to buy regulated, safe vape products and cigarettes. It is criminal. Statistics show that families from areas of socio-economic hardship are more likely to have heavy smoking habits. Over a year a pack-a-day smoker can spend $15,000. The equivalent vaping habit costs closer to only $1,000. These families are encouraged to smoke deadly cigarettes due to easy access, instead of the much safer alternative of vapes.

Current vaping policy is wrong and negligent. Let me be clear: the vaping products I refer to as a smoking cessation tool only contain safe low doses of nicotine, solvents and flavouring. They are promoted throughout the Western world as successful smoking cessation tools. They are not the black market products of unknown ingredients which are widely accessible.

South Australia needs urgent reform to our controlled substances regulations for nicotine vaping. This is a public health matter, and it is time to put science before ideology. We are the only Western country with a prescription-only base model for nicotine vaping. I want regulated nicotine vapes to be able to be legally sold from licensed retail premises for adults, especially those wishing to quit smoking.

I want strict age identification required and loss of licence for those who sell to minors, as is consistent with smoking and alcohol regulations. The way to reduce the illicit market is to replace it with a legal regulated market. I want adults looking to quit smoking to have access to safer regulated vaping products when they go to a licensed retail outlet, and I want South Australians to stop losing loved ones to smoking-related deaths.

These are the reasons I have introduced a Controlled Substances (Nicotine) Amendment Bill 2022. I want to express my gratitude to two of Australia's leading experts on smoking cessation and tobacco harm reduction. Their guidance on this important public health issue continues to show industry leadership. I thank Dr Colin Mendelsohn, a clinician, academic and founding chairman of the Australian Tobacco Harm Reduction Association, and Dr Alex Wodak AM, current board director of the association and Emeritus Consultant Alcohol and Drug Service at St Vincent's Hospital.

After 12 months of Australia's failed prescription-based nicotine model, the results are in. Young Australians are vaping more than ever, with Quitline reporting for the first time that 13 year olds are becoming hooked on imported, unregulated nicotine vapes. At most, 12 per cent of vapers buy their devices legally, according to a recent Roy Morgan survey, and a mere 13 South Australian GPs are listed on the TGA's website as authorised prescribers. The black market is thriving, diverting up to $200 million in lost tax revenue from government coffers.

As members will observe, the Controlled Substances (Nicotine) Amendment Bill 2022 is succinct and straightforward. Its purpose is to exempt the sale of nicotine from the Controlled Substances Act 1984, which will allow for regulated levels of nicotine in vapes, regulated additives and ingredients in vapes, and regulated control of sales such as age restrictions and importing standards.

Growing scientific evidence from overseas continues to mount the case that vaping is a far safer alternative to deadly cigarette smoking. We know smoking prematurely kills one-half to two-thirds of continuing users. In Australia, restrictive and onerous regulations on nicotine vapes have resulted in a thriving black market. Imported unregulated devices are able to be purchased cash only from a corner shop or secured online and over social media with relative ease. By contrast, deadly, yet legal, cigarettes are available from virtually every service station, supermarket and corner shop in the country.

In order to access a nicotine vape in Australia, one must obtain a prescription from a general practitioner, with South Australia having just 13 authorised prescribers listed on the TGA website. Due to the current controlled substances regulations, these GPs are prohibited from advertising their willingness to prescribe nicotine vapes, yet another restrictive, high barrier for those smokers wishing to quit.

As stated, we are the only country in the Western world that requires prescriptions to possess, use or import nicotine e-liquids. Under the current regime that was enacted just over 12 months ago, nationally only 200 out of the 31,000 Australian GPs are publicly listed as nicotine prescribers, less than 1 per cent of all doctors. This is utterly ineffective. Without a prescription, possessing or importing nicotine liquid is a criminal offence punishable by fines of up to $222,000 and even jail terms. A 2022 survey states that only 12 per cent of vapers have obtained a prescription and only 2 per cent of vape purchases were from a pharmacy, which is the federal government's preferred method.

There is no quality control on the black market. Under the current prohibitionist model, nicotine vape consumers remain unaware of what is in their product and unprotected should anything go wrong. There are no incentives for manufacturers to comply with Australian standards and many of these devices are poor quality, imported from China and being sold under the counter for cash, including to children. Criminal organisations are becoming involved. It is easier for consumers to continue to buy deadly cigarettes than it is to navigate our state and federal governments' ridiculous process to obtain regulated vapes.

Modelling published as recently as October shows that relaxing these harsh restrictions could save the lives of 70,000 to 104,000 Australians by 2080. These figures were obtained from modelling based on the United States' more accessible nicotine vaping laws, and uses a mix of Australian and US data.

Another significant independent report, commissioned by the United Kingdom's Office for Health Improvement and Disparities, was released in late September 2022. It is the most comprehensive review to date on the topic. Researchers drew on more than 400 published studies from across the globe, including many that investigated signs of harm or levels of toxic substances in the body after smoking and vaping.

Overall the review confirms what previous studies have also shown: vaping is estimated to be at least 95 per cent less harmful than smoking over the short and medium term. Key findings of the report were:

* using vaping products leads to a substantial reduction in toxicants compared to smoking;
* vaping leads to lower exposure to many of the chemicals that cause cancer;
* vaping reduces exposure to the toxicants that cause lung damage and is likely to slow down the development of respiratory diseases;
* cardiovascular disease risk is expected to be much less than for smoking;
* blood pressure is lower in people who vape than people who smoke;
* switching from smoking to vaping is likely to be beneficial for oral and dental health; and
* the risk and severity of nicotine dependency for vaping is lower than for cigarette smoking.

Again I ask: why are we roadblocking such an important public health measure?

Independent experts have made positive comments about the research review. Dr Sarah Jackson said:

*The evidence is clear. If you're a smoker you can substantially reduce the risks to your health by switching completely to e-cigarettes and continuing to use them for as long as you need to avoid a relapse to smoking.*

Professor Peter Hajek said,

*'Smokers should be emphatically advised that switching to vaping removes almost all the risks of smoking.'*

Professor Shahab said:

*Nicotine vaping is far less harmful than smoking tobacco. Encouraging smokers who are unable to stop smoking to switch to these reduced-harm products will benefit population health.*

Compare this to a review funded by the Australian Department of Health, that sought to examine the 'contemporary evidence on the health outcomes of nicotine and non-nicotine e-cigarette use', and integrate this with 'systematic reviews on smoking uptake and cessation'. I am grateful to Doctors Mendelsohn and Wodak for their critique of this review, and share their well-considered and thoroughly-evidenced concerns. In their critical analysis of the review, Doctors Mendelsohn, Wodak and colleagues conclude that the review failed to achieve its aims for the following reasons:

* it did not compare the relative risk of the harms of vaping to conventional cigarettes;
* it did not consider the net public health impact of vaping;
* it ignored evidence that vaping is effective in smoking cessation; and
* it confused causation and correlation in interpreting the association between youth vaping and cigarette smoking.

What is currently forgotten in this debate is the sad reality that 21,000 Australians are dying every single year from smoking-related conditions. Despite what some vaping opponents say, there is a growing evidence base that points to vaping being the most successful smoking cessation aid.

The Australian government has a modest goal of reducing daily adult smoking to less than 10 per cent of the population by 2025 and less than 5 per cent by 2030, but the October 2022 modelling study suggests that this is fanciful. Indeed, under current vaping regulations the national smoking rate will only reach 7.5 per cent for males in 2080 and 5 per cent for females in 2064. Modelling of relaxed vaping laws, however, predicts that we will reach 5 per cent of Australian men in 2042 and 5 per cent of women in 2036. Imagine the positive impact on our health system with this reduction.

In New Zealand, which passed the Smoke-Free Environments and Regulated Products (Vaping) Amendment Act 2020, the government promoted that it was, 'putting New Zealand on track to saving thousands of lives and having a smoke-free generation sooner rather than later.' Their Ministry of Health actively encourages smokers to switch to vaping if other methods fail. In just 12 months following the bipartisan passing of this legislation, the adult smoking rate in New Zealand fell by an unprecedented 25 per cent.

In the United Kingdom vaping is a formal part of the Tobacco Control Plan and is supported by the Department of Health, the National Institute for Health and Care Excellence, the Royal College of Physicians, the Royal Society of Health and almost all public health, medical and health associations and charities. Currently 8.3 per cent of the English adult population vape, and smoking rates have been declining faster than in Australia as smokers switch to the safer alternative.

We are doing smokers who want to quit a huge disservice. Our regulatory model penalises them and prioritises big tobacco. Along with being a healthier alternative, vaping is much cheaper than smoking. We have the highest cigarette prices in the world, where a pack-a-day smoker who smokes 20 cigarettes a day of the leading brands spends $14,600 a year. Compare this with vaping, which averages around $1,150 per year.

We know that the greatest impacts of high tobacco prices and associated taxes are felt by lower socioeconomic people, for whom a larger portion of their income is lost to smoking. These are also the same groups of people who have the highest smoking rates and smoke more heavily. The same can be said for Aboriginal and Torres Strait Islander South Australians, where smoking rates have remained stubbornly high, sitting at 40.4 per cent as of 2018-19.

Vaping taxes must be kept to a minimum to ensure there is sound financial incentive for those wishing to shift to a lower risk product. Taxation on cigarettes ought to be higher than on vapes so that it is proportionate to the level of risk. In the United Kingdom, for example, the Royal College of Physicians recommends a tax on vaping of 5 per cent of that of tobacco taxes.

To be clear, neither myself nor vaping advocates are suggesting that vaping is completely safe and risk free. It is not recommended for non-smokers, and of course engaging in neither smoking nor vaping is the healthiest option. But the reality is that we are dealing with this compared with smoking deadly cigarettes that contain over 7,000 toxic chemicals. Vaping is the healthier alternative.The lifetime cancer risk from vaping has been estimated to be less than 0.5 per cent of that of smoking.

Vape users should not face high barriers, penalties and restrictions to obtain a product that is healthier, cheaper and has been shown empirically to be successful at smoking cessation. I am urging my colleagues here to re-evaluate their perception of nicotine vapes and to support this public health measure that will save the lives and livelihoods of South Australians. I commend this bill to the chamber.

**TOBACCO AND E-CIGARETTE PRODUCTS (TOBACCO PRODUCT PROHIBITIONS)**

**AMENDMENT BILL**

*Introduction and First Reading*

**The Hon. C. BONAROS (16:44):** Obtained leave and introduced a bill for an act to amend

the Tobacco and E-Cigarette Products Act 1997. Read a first time.

*Second Reading*

**The Hon. C. BONAROS (16:45):** I move:

*That this bill be now read a second time.*

I am pleased to introduce yet another piece of tobacco legislation, this time the Tobacco and E-Cigarette Products (Tobacco Product Prohibitions) Amendment Bill 2022, and will explain the reasons for this bill shortly. Members may recall that I have previously introduced a bill into this place to address the severely inadequate penalties for the importing and packing of tobacco products in South Australia. That was introduced into parliament in May of this year.

Following its introduction, I undertook discussions with government and its agencies that were tasked with dealing with these issues, and was advised that the legislation that I was initially seeking to amend still exists on the statute books but is not actually used, it is not operational. As such, I received further advice about a different approach to tackle this issue in order to ensure again consistency with commonwealth laws, which we did previously, but importantly also to ensure the enforceability of penalties and a better approach to tackle this issue through provisions of the bill we are now dealing with, which focus on packaging and supply, as opposed to importing and packing.

The bill was motivated by the explosion of the illicit tobacco market here in South Australia, much like the previous bill. We have seen, since the introduction of the last bill, further evidence that the market continues to boom, with the early June release of the KPMG full-year report, entitled Illicit Tobacco in Australia. Australians consumed 2,242 tonnes of illicit tobacco in 2021, representing an estimated excise value of $3.4 billion not going into government coffers; 19.3 per cent of the total consumption of tobacco was illicit tobacco. Unbranded tobacco, as I have previously said, commonly referred to as chop-chop, made up 68.6 per cent of consumption.

Members should be well versed in the term 'chop-chop' by now, which is finely cut loose-leaf tobacco. So, 29 per cent was contraband legitimately manufactured by the owner of the trademark but smuggled into Australia to avoid excise duty; 2.5 per cent was counterfeit, that is, illegally manufactured cigarettes. The Advertiser recently reported on the exploding local market after obtaining footage of 14 stores across Adelaide caught in the act of selling illicit tobacco. Those stores were scattered across the city, from Blair Athol to Pennington, Ascot Park, Elizabeth South and Mile End. It is estimated that each of these stores is selling over $900,000 of chop-chop per year.

This new bill is modelled on the health provisions contained in legislation that exists now in New South Wales and Western Australia, aimed at tackling this issue. It seeks to amend the Tobacco and E-Cigarette Products Act 1997 to restrict the packing, sale and supply of tobacco products that are not marked with labelling and health warning requirements, bearing in mind the need also for consistency with commonwealth laws.

An expiation fee of $1,250 and a maximum penalty of $50,000 would apply for the sale of tobacco products that do not comply with packing requirements under the commonwealth Tobacco Plain Packaging Act 2011. Those penalties would also apply to the packing and sale of tobacco without a compliant health warning. A maximum $50,000 penalty would apply to a person who sells or supplies tobacco products and knows, or ought reasonably to know, it is a prohibited good under the commonwealth Customs Act 1901 or an excisable good under the commonwealth Excise Act on which excise has not been paid.

I will make some comments in relation to some further tweaking of the bill which may occur as a result of discussions in recent days that I have had, again, with government agencies about some of the issues that have been encountered in terms of enforcement here in this state. I do anticipate that there may be further changes following further input from SAPOL in South Australia— if, of course, the government is inclined to support the bill in the lower house—in terms of ensuring that it covers all the issues that we expect it to cover, because at this stage it is intended to apply to possession by retailers, not just those who are caught red-handed in the act of selling.

I think that has been one of the stumbling blocks and the hurdles that we have faced to date. It is one thing to walk into a store and see somebody walking out of a store with a packet of these cigarettes and being able to establish a case that that person bought them from that store, but if you have not seen that transaction occur then it is very difficult for any authorised officer, or indeed police, to have grounds to go into that store on the basis that they reasonably suspect that they may have possession of these cigarettes for sale, or chop-chop. If police require further tools to capture that activity, that is something that we will certainly work towards in terms of enhancing and tweaking the bill further, and obviously that can be done via amendments.

While legal tobacco consumption in Australia is decreasing, illicit tobacco consumption is absolutely booming. I note also the fast increasing rate at which vaping tools are increasing in this jurisdiction, which our colleague the Hon. Sarah Game referred to in her second reading on a bill that was introduced earlier today. There is no question that this is an issue, and I agree wholeheartedly that this comes down to the cost of these products, but in this instance we are dealing with products the health ramifications of which are unknown, because a lot of these cigarettes are made in unhygienic settings.

They are not made by the actual manufacturers of the cigarettes; they are effectively copies. I think I have referred to this previously. You have your Chanel handbag and then you have your Chanel rip-off handbag. You have your Benson & Hedges cigarettes and then you have your rip-off Benson & Hedges cigarettes, or your Davidoffs or whatever they are. I am naming too many cigarettes, but these are rip-off cigarettes; they are not actually made by the manufacturers themselves.

I understand that China continues to be the most prevalent country of origin. I think I mentioned previously that I went about purchasing some of these products to see how easy it was to obtain them, and many of them are made also in Turkey; I know that that is one of the places that has been highlighted as of particular concern regarding the hygiene and standards around which these cigarettes are made. It is really anyone's guess what the chemical make-up of these products are.

There is also the issue of compliance with our laws when it comes to packaging itself. They may be legitimate cigarettes which would otherwise be available for sale in Australia if they complied with our packaging laws, but as those laws stand they are illegal because they do not meet those requirements.

The Australian tobacco market is one of the world's most regulated, I think for very good reason. It is also one of the most expensive; in fact, I think it is the most expensive in the Asia-Pacific region. If you consider that a packet of legal cigarettes can cost anything up to $50 or $60 these days, I think, it is easy to see why the demand for these cheaper, often inferior and illicit products is so high.

It is a lower risk option for organised criminal activity. Why face a lengthy prison term for pushing illegal drugs when you can make big profits—$900,000 a year is a significant profit for one store—by taking part in the chop-chop trade? There have been reports made on the criminal activity involved in this space. It is a huge money-maker: over $3 billion a year in lost excise. It is a no-brainer: low risk in terms of penalties, low risk in terms of being caught selling these products, but huge, huge profits to be made in the criminal activity or organised crime space.

Despite the downward trend in smoking rates in Australia, at the end of the day some people will choose to smoke, and what we know is that for those people a regulated product is the lesser of two evils. We all know the risks associated with smoking; we have gone to extraordinary lengths in this country to educate our communities about the risks of smoking. We can only imagine how much greater they are with these unregulated products, when you simply do not know what you are ingesting.

Law enforcement must be equipped with the most effective tools to stamp out that illicit tobacco trade and, as I mentioned, a lot of work has gone into this so far in terms of ensuring that we land on a bill that actually suits what our enforcement agencies and authorised officers say is needed for them to have some real teeth, some real bite, in terms of enforcing these sorts of penalties. Our intention is to strengthen their capacity to fight against the exploitation of existing regulatory gaps.

Of course, it should be noted that this is not just a South Australian problem: it is a national problem, and one that requires a national approach. The federal government also has a lot of skin in the game and has a significant role to play in enforcement due to its responsibility in terms of collecting revenue. However, once those illicit tobacco products slip through our borders, or are locally grown, states have to equally take up the fight. As I said, local police do require adequate powers to disrupt the growing retail environment here in South Australia.

For the record—and I think this is important in terms of appreciating why these laws are necessary—I refer to a report for the Department for Health which indicates that during the first five years of tobacco plain packaging, in all Australia there were no prosecutions or civil penalties for breaches of those charges. It is worth noting that the data collected does not take into account any of the complaints received from the public, because they do not automatically lead to any sort of investigation. According to health department records, since 2012 there has been one conviction in all of Australia:

* in 2012-13, 59 investigations, eight warning letters, three infringement notices;
* in 2013-14, 59 investigations, 19 warning letters;
* in 2014-15, 226 investigations, no warning letters, no infringement notices, no convictions;
* in 2015-16, 210 investigations, 60 warning letters, one infringement notice;
* in 2016-17, 402 investigations, 101 warning letters, no infringement notices or convictions;
* in 2017-18, 239 investigations, 86 warning letters, five infringement notices;
* in 2018-19, 135 investigations, 63 warning letters issued, no infringement notices issued;
* in 2019-20, 80 investigations, 16 warning letters, two infringement notices issued: and
* in the final year that I refer to, 2020-21, there were 313 investigations, 53 warning letters issued and one conviction.

So that is all we have seen in all that time, and in the meantime we are losing $3.4 billion worth of excise which could be going towards our health system, our roads, our schools and all our public infrastructure. Of course, we are also increasing the risks associated with these products.

Illegal organised crime in this area is absolutely booming; it is a booming trade. If I were to choose between selling illicit drugs and illegal tobacco, I know which one I would choose because, based on what I have just identified and articulated to the chamber, the penalties are a pittance and enforcement just simply does not exist, so it is absolutely easy to get away with selling these products.

It is my sincere hope that members will consider this bill with an open mind, particularly when it comes to the issue of those products that do not actually meet Australian standards in terms of their chemical make-up. I understand that it is one thing to have a packet of cigarettes that does not meet our packaging laws but it is quite another to be ingesting a product, the chemical make-up of which we simply do not know because of the conditions in which it is made.

It baffles me that any government anywhere in Australia would not be keen to get their hands on $3.4 billion of money that could otherwise be going into their coffers and making their life a lot easier in terms of the services that they provide. With those words, I commend the bill to the chamber and look forward to its progression. For the benefit of members, I flag that, following those discussions specifically with SAPOL, there may be some further tweaking to the bill to ensure that we do capture the issue of possession, for the reasons I have already outlined, and ensure that our law enforcers are able to do their job appropriately.