

# The rise and rise of specialist vape stores: will proposed changes protect rangatahi?

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In 2020, the Government introduced the *Smoke-free Environments and Regulated Products (Vaping) Amendment Act 2020* (the *Vaping Act*),<sup>1</sup> which differentiated between generic retailers and specialist vape retailers (SVRs), and aimed to address rising youth vaping. The *Act* allows generic stores to sell vaping products featuring tobacco, menthol or mint flavours while the latter, operating as R18 stores, may sell a full flavour range.

Retailers wishing to operate as SVRs have to gain approval from the Vaping Regulatory Authority (VRA, based within the Ministry of Health). Approval criteria include operating from “a fixed, permanent structure” and providing evidence that vaping product sales from the proposed premises represent at least 70% of total store revenue (60% in some special circumstances).<sup>1</sup> SVRs may also sell vaping products online, but online-only businesses may not operate as SVRs that sell directly to the public.

Regulations implementing the *Vaping Act* came into effect on 11 August 2021, and from that date until 11 November 2021 retailers who already sold vaping products and wished to trade as SVRs had to gain VRA approval. By 11 November 2021, the VRA had approved 671 applications (568 retail stores [85% of approvals] and 103 websites). Figure 1 outlines the rapid growth in SVRs during this period. Growth in SVR approvals slowed post 11 November 2021; nonetheless, between 12 November 2021 and 20 March 2023, the VRA approved a further 534 applications (501 retail stores [94% of approvals] and 33 websites).

Analysis of applications before and after 11 November 2021 indicates a change in applicant type during these two periods. Up until 11 November 2021, 53% of the 671 approved applications related to a single store; between 12 November 2021 and March 2023, 92% of the 534 approved applications were for a single store.

**Figure 1:** Vaping approvals August 2021 to March 2023.



This change may indicate the rising number of small retailers, typically dairy owners, who have subdivided their premises to include a specialist vape store.<sup>2</sup> The evolution of these “stores-within-a-store” means specialist vape stores are now located adjacent to schools and playgrounds,<sup>2</sup> a development unlikely to support the legislation’s aim of minimising harm to young people and children. Figure 2 contains an example of an SVR located within an existing retail outlet.

**Figure 2:** Specialist vaping retailer—a store-within-a-store. Source: Rowse, B. Personal photo.



Since the *Vaping Act* came into effect, vaping among young people has continued to rise.<sup>3</sup> The Government subsequently passed the *Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act*,<sup>4</sup> and, in January 2023, proposed regulations that would include some restrictions on vaping outlet locations.<sup>5</sup> Measures announced in June 2023 reflect that consultation process and will not allow new specialist vape stores to begin operating within 300 metres of schools or marae;<sup>6</sup> however, the revised regulations will apply neither to existing outlets nor to generic retailers.

The new regulations attempt to address community concerns regarding SVRs’ proximity to schools, but fail to address other calls to action.

For example, the proposed proximity restrictions do not govern general vape retailers “as there is currently no existing regulation-making power to do so”.<sup>5</sup> Nor will the new regulations apply retrospectively to address proximity problems that have caused community concern.<sup>7</sup> Finally, the June 2023 measures do not address rising outlet density, particularly the number of vaping product retailers in downtown areas, and fail to recognise that outlet concentration will increase young people’s exposure to vaping products and facilitate vaping uptake.<sup>8,9</sup>

### How effective will proposed proximity limits be?

A study mapping SVR locations in June 2022 found that, of the 645 SVRs operating nationally, 613 were within 1 kilometre of a school (i.e., only 32 were more than 1 kilometre from a school);<sup>10</sup> since that study concluded, SVR numbers have nearly doubled.<sup>11</sup> Regulating vaping products as though they were normal consumer products has allowed stores to proliferate, despite concerns some outlets may not meet the regulatory criteria.<sup>12</sup> By way of context, there are currently four times the number of SVRs than there are McDonald’s and KFC stores (~1,200 cf. 267),<sup>13,14</sup> and SVR outlets now exceed community pharmacies, which number fewer than 1,000.<sup>15</sup>

Overall, while the proposed proximity measures announced afford young people some belated protection, the omission of outlet density measures, lack of retrospective authority and failure to cap overall store numbers leave troubling gaps.<sup>8</sup>

### What further actions are required?

Proposed regulations must end the “store-within-a-store” practice, which does not align with the *Vaping Act*’s intention. Unless policies stipulate that no existing or future SVRs may operate within a given radius of schools, and also apply these boundaries to generic retailers, young people’s exposure to vaping products will continue. Density limits are also required to address community concerns and end the proliferation of SVRs and generic retailers within CBD and suburban areas.<sup>7,12,16,17</sup>

Policies should also anticipate the need to support vaping cessation by creating a sinking lid mechanism that could reduce vaping retailer

numbers in due course. Precedents exist in other fields, such as gambling, where a smoking ban applies to venues that either close or transfer ownership.<sup>18</sup> Furthermore, policies should explicitly include communities in SVR approval processes, a move that would help address the current disconnection between those making decisions and those affected.

As long as vape stores operate, measures should limit young people's exposure to vaping products; specifically, retail displays in generic outlets should be disallowed and no store should feature vaping

product displays that may be seen from outside that store. We offer detailed suggestions that address all elements of the marketing mix elsewhere.<sup>8</sup>

Aotearoa New Zealand has treated vaping products as though these are normal consumer products, when in fact they are anything but. That approach has failed rangatahi, particularly rangatahi Māori. The new regulations will not go far enough to safeguard young people and fall short of the detailed, comprehensive protection they deserve.

**COMPETING INTERESTS**

The authors have no competing interests to declare.

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