

Aide-Mémoire

Specialist Vape Retailer Approvals

Date due to MO:	23 May 2024	Action required by:	N/A
Security level:	IN CONFIDENCE	Health Report number:	H2024042044
To:	Hon Casey Costello, Associate Minister of Health		
Consulted:	Health New Zealand: <input type="checkbox"/> Māori Health Authority: <input type="checkbox"/>		

Contact for telephone discussion

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Purpose

1. This aide-mémoire informs you of an issue related to companies who have not been correctly approved as a specialist vape retailer (SVR). This issue originates from a misinterpretation of how businesses operating under a franchise model have applied to be an SVR.

Summary

2. In 2020, during its establishment, the Vaping Regulatory Authority (VRA) determined that companies that operate a franchise model could apply to be an SVR, and any subsidiary companies/franchisees they have an interest in could operate any number of vaping premises (AVPs) under that parent SVR registration.
3. We have now identified that this determination and subsequent advice to stakeholders was incorrect.
4. s 9(2)(h) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
5. The current situation means that there are currently vape stores that are operating without the correct SVR approval and are therefore not registered lawfully. In addition, the full range of compliance and enforcement activities cannot be effectively applied.
6. Appendix One outlines the current state and the desired future state of the approval process.

Impact on retailers

7. This issue only potentially affects businesses who operate as an SVR and who have more than one approved vaping premises (AVP).
8. The number of SVRs potentially impacted by this issue is approximately 117 companies who operate a total of 546 stores. The SVR approximation is based on the number of

SVRs who operate more than one store and therefore may operate each of these stores under different company names.

Addressing the issue

9. The VRA is undertaking the following steps to rectify the situation:
 - All potentially affected companies operating as SVRs (approximately 117) will be contacted during the week of 27 May 2024 to inform them of the situation and seek information regarding their operating model.
 - The VRA will work directly with companies to make the re-application process as efficient as possible.
 - The Director General of Health has agreed to waive fees for those businesses who are required to reapply for a Specialist Vape Retailer. This fee waiver will remain in place for four months from the date of contact, this will allow a discreet period for the solution to be implemented. After this time the Ministry proposes reserving the option to cancel current approvals if the correct businesses have not re-applied for SVR registration or have failed to get in contact.
10. Under the Act, the SVR does not require an assessment and therefore a reapplication does not risk being declined. Under the Act the store is assessed under criteria such as proximity to schools and Marae. The VRA will relink existing assessed stores to the newly created SVR approval.

Risks and mitigation

11. The risks associated with addressing this issue are largely reputational and could attract criticism around the following:
 - *Lost revenue* - The way the VRA has allowed AVPs to be approved has meant that fewer SVRs have been applied for. Companies who should have paid a fee for the SVR (\$1600 plus GST) were not required to do so. However, this revenue was unplanned and unbudgeted and does not impact the operating budget.
 - *Reduced compliance action* - Where the registration is incorrect it can be difficult to determine the responsible legal entity for a particular store. In these cases, some enforcement action has been difficult to progress to prosecution where the legal entity is in dispute, or this fact is unclear, as it can create a possible defence and jeopardise a successful prosecution. By actioning the changes proposed in this memo, we will mitigate this issue.
 - *Trust and confidence* - Stakeholders, including the public and retailers, may publicly express a lack of confidence in the regulator. The concerns raised will likely include that the VRA had incorrectly approved entities to operate as approved vape premises and the time taken to address this situation.

Mitigations

12. The following mitigations for the above risks are in place:
 - The VRA is dealing with the issue decisively to minimise perceived issues
 - The Ministry's media team are well informed with reactive responses prepared including:

- i. A Q&A document in anticipation of media requests
- ii. Website information for the Ministry website

Next steps

13. We will keep you informed of progress.

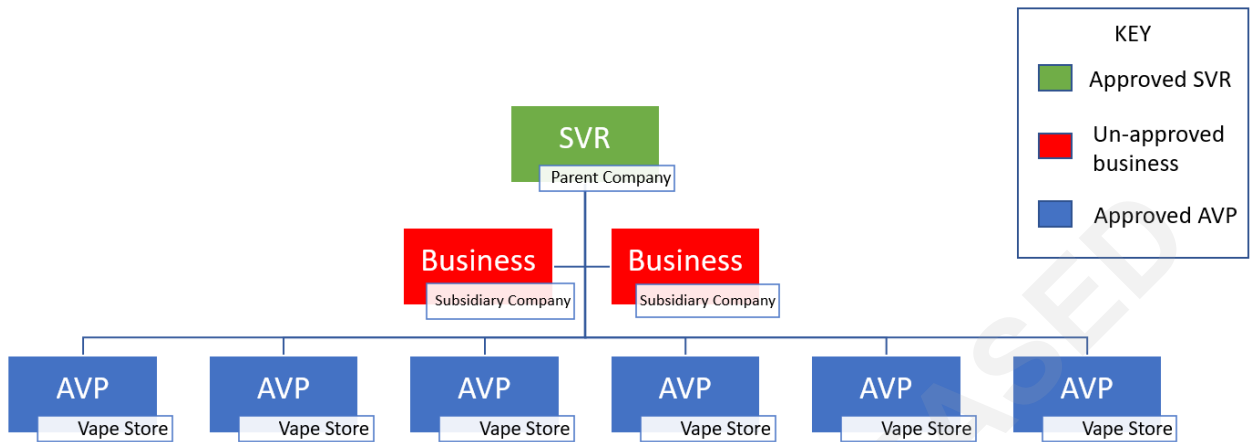


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PROACTIVELY RELEASED

Appendix 1: Structures of business operating models

1.1 Current State: How a business is currently approved:



1.2 Desired State: How a business should be approved

