

# Regulating tobacco retail in New Zealand: what can we learn from overseas?

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## ABSTRACT

Despite New Zealand's reputation as a leader in tobacco control, the retail environment for tobacco is relatively unregulated, particularly when compared to the licensing regimes for alcohol products and psychoactive substances (eg, synthetic cannabis and other 'legal highs'). There are currently no restrictions on who can sell tobacco, nor where it can be sold. The lack of an accurate tobacco retail register presents a challenge for those enforcing retail legislation. This paper summarises tobacco retail licensing schemes implemented in overseas jurisdictions, as these represent precedents on which New Zealand policies could be based. We also review how effective these schemes might be as part of a comprehensive tobacco control strategy. We conclude that a positive licensing scheme could increase compliance with existing smokefree legislation, and enable the introduction of further measures to control the supply of tobacco. Reducing tobacco availability is an important part of the range of interventions needed to achieve a smokefree New Zealand, and we urge the Government to redress the lack of progress in this area.

As the first country in the world to set a goal of becoming a smokefree nation, and an active tobacco control programme that has spanned more than 40 years, New Zealand is often considered at the forefront of tobacco control.<sup>1</sup> Yet despite tobacco being highly addictive and toxic, and apparently easily available to many young people who smoke,<sup>2</sup> the retail environment remains relatively unregulated. There are no restrictions on where tobacco can be sold, on the type of outlets able to sell tobacco, or on the age of those permitted to sell tobacco. Consequently, tobacco is available at as many as 8,000 retail outlets throughout New Zealand,<sup>3</sup> including supermarkets, service stations and dairies, where it is sold alongside everyday products such as milk, bread and petrol and in settings freely accessible to children. Considering the importance of distribution or 'place' as a key marketing principle, the widespread availability of tobacco remains a major form of promotion. The ubiquity of tobacco also presents a challenge for enforcement, since there is no accurate list of New Zealand tobacco outlets. We identified 5,008 retail outlets from District Health Board lists, which represents 1 outlet per

617 adults, or 1 outlet per 129 smokers in New Zealand.<sup>4</sup> Half of New Zealand secondary schools have at least one tobacco outlet with a 500m walk.<sup>4</sup> However, industry data suggest around 8,000 outlets sell tobacco in New Zealand,<sup>3</sup> a far larger estimate.

By contrast, the Psychoactive Substances Act, which came into effect in July 2013, requires retailers to have a licence to sell approved products (ie, party pills, synthetic cannabis and other 'legal highs'), stipulates a minimum vendor age, places restrictions on the types of outlet permitted to sell approved products, restricts sales to premises where children are not allowed, and allows territorial authorities to determine who is granted a licence and thus where products may be sold. Retailers wishing to sell alcohol in New Zealand are required to apply for a licence, a process which involves assessment of applicants' training and suitability to sell alcohol. Local stakeholders (eg, Police, Medical Officers of Health) may make submissions on alcohol licensing applications and thus influence who obtains a licence. Liquor legislation also restricts the hours of sale, prohibits certain types of outlets (eg, dairies, service stations) from selling

alcohol, and children under 18 years of age are not permitted to enter liquor stores unless accompanied by an adult.

Evidence suggests the widespread retail availability of tobacco has serious consequences. It may encourage smoking initiation among youth,<sup>5</sup> some retailers may continue to sell tobacco to minors<sup>6</sup> and it may undermine smokers' quit attempts.<sup>7</sup> Many children who smoke report that they usually obtain tobacco by purchasing from a shop, which suggests that current restrictions on sales to minors are not completely effective.<sup>2</sup> The higher density of retailers in more deprived neighbourhoods<sup>4</sup> is likely to contribute to the higher smoking prevalence amongst those who are socioeconomically disadvantaged and consequently to health inequalities.

Following its inquiry into the tobacco industry, the Māori Affairs Select Committee (MASC) recommended that the government consider reducing the number of retail outlets, investigate giving local authorities the power to control the number and location of tobacco retailers, and consider imposing sales bans on retailers breaching smokefree legislation.<sup>8</sup> In its response to the inquiry, the government agreed to investigate further options to reduce the supply of tobacco.<sup>9</sup> However, in the 5 years since the inquiry, no progress has been made towards these particular recommendations. The National Smokefree Working Group has consistently argued for restrictions on the supply of tobacco, as well as stronger enforcement of existing retail-level legislation.<sup>10</sup> However, in a recent presentation to the MASC on progress towards the smokefree goal, the Ministry of Health indicated that interventions to reduce availability and supply of tobacco were considered 'low priority'.<sup>11</sup> This lack of action does not support the Government's own commitment to "reducing smoking prevalence and *tobacco availability* to minimal levels by 2025."<sup>9</sup>

Despite New Zealand's reputation as a leader in tobacco control,<sup>1</sup> several other countries and jurisdictions have made far greater progress in regulating the tobacco retail environment through retailer registration or licensing schemes. In this paper, we summarise some of the regulatory approaches from these jurisdictions, as

these represent precedents on which New Zealand policies could be based.

## Negative licensing schemes

Negative licensing schemes require retailers to notify government authorities that they are selling tobacco. Retailers neither have to seek permission, nor prove their suitability, to sell tobacco, but they may be removed from the register and have the right to sell tobacco revoked on a temporary or permanent basis. For example, in New South Wales (NSW) all retailers of tobacco are legally required to be registered with the Government Licensing Service.<sup>12</sup> In Scotland<sup>13</sup> and Ireland,<sup>14</sup> mandatory tobacco retailer registration schemes make it illegal to sell tobacco without registration, and authorities can ban or suspend retailers from selling tobacco if they breach legislation.<sup>13,14</sup> In Fiji,<sup>15</sup> New York (NY) State,<sup>16</sup> and several Canadian jurisdictions (eg, Ontario,<sup>17</sup> Nova Scotia,<sup>18</sup> Quebec<sup>19</sup> and British Columbia<sup>20</sup>), tobacco retailers are required to annually register or apply for a permit, and these schemes may entail annual fees. In NY State, violations of smokefree legislation can result in suspensions or revocation of retailers' ability to sell not only tobacco, but also alcohol and lottery tickets.<sup>16</sup>

## Positive licensing schemes

A positive licensing scheme, such as those implemented in five Australian states,<sup>21</sup> requires retailers to apply for a tobacco retail licence. This licence is only granted if conditions are met and a fee is paid. In Australia, annual fees range from \$200 to \$510 AUD, though conditions on obtaining a licence are minimal.<sup>21</sup> Singapore<sup>22</sup> and Finland<sup>23</sup> both have positive tobacco retail licensing with an annual fee set by local authorities, and the Finnish licensing system requires retailers to submit satisfactory operational plans and reports in order to successfully renew the licence each year.<sup>23</sup> Within NY State, local licensing systems operate in conjunction with state-level registration. In NY City, retailers apply biannually for a licence to sell cigarettes, paying a \$110 USD

fee. Similarly, in Dutchess County (NY) a permit is required to sell tobacco. In each of these cases, licences can be revoked for violations of smokefree legislation.<sup>16</sup>

Stronger tobacco licensing schemes have begun to be introduced in some areas. In Santa Clara County (California), for example, tobacco retailers are required to apply for a permit, with no permits granted to any retailer applying to operate within 1,000 feet of a primary or secondary school or within 500 feet of another tobacco retailer. Since permits cannot be transferred if a business is sold, this approach supports a gradual reduction in retailer density. In 2011, a law change in Huntington Park (California) prohibited any tobacco retail licences being issued to retailers in residential zones, within 500 feet of 'youth-populated areas' (ie, schools, childcare centres, playgrounds, libraries, parks and arcades), or within 200 feet of another tobacco retailer. Furthermore, no more than one licence is granted per 1,000 residents.<sup>16</sup>

A particularly innovative approach has been introduced in Hungary, where legislation enacted in 2013 mandated that tobacco could only be sold at a limited number of government-licensed outlets.<sup>24</sup> This measure dramatically reduced the number of tobacco stores from around 42,000 to 7,000. Applicants wishing to sell tobacco were required to submit a business plan and pay a flat fee; successful bids were granted a 20-year concession to sell tobacco. The quota for tobacco licences is linked to the population size: in a municipality with fewer than 2,000 residents the maximum is one; for municipalities with more than 2,000 residents, one licence is issued for every 2,000 residents (Julia Berki, email to author, 3 August 2015).

In addition to these examples, San Francisco officials have recently approved the Tobacco Sales Reduction Act, a law that imposes a limit of 45 tobacco retailing permits for each of the 11 city districts.<sup>25</sup> This state law does not affect existing permit holders, which are expected to decline from the current 1,000 permits to 495 through attrition, over the next 10 to 15 years. The Cook Islands have also recently approved a licensing scheme for tobacco retailers as part of a reform of the national tobacco legislation.<sup>26</sup>

## Evidence of effectiveness of tobacco retailer licensing

Although published evaluations are limited, tobacco retail licensing schemes appear to increase compliance with youth access restrictions and reduce the retail availability of tobacco. An evaluation of the NSW scheme indicates that registered tobacco outlets are less likely than unregistered outlets to breach smokefree legislation.<sup>12</sup> Research on the South Australia (SA)<sup>27</sup> and Santa Clara County<sup>28</sup> schemes suggests that introducing an annual licence fee and application process may be sufficient in and of itself to reduce the number of retailers selling tobacco. In SA, when the cost of a tobacco retail licence fee increased from \$12 to around \$200 AUD, the number of tobacco retail licences decreased by 24% over 2 years, with the largest decline in licences occurring for on-licensed venues (ie venues where alcohol is available for consumption on the premises).<sup>27</sup> The licensing scheme in Finland is also believed to have reduced the number of outlets selling tobacco,<sup>29</sup> though there is no official data to support this conclusion (Reeta Honkanen, email to author, 8 July 2015). A New Zealand modelling study suggests that drastically reducing the number of tobacco outlets in New Zealand could help reduce smoking prevalence over the long term.<sup>30</sup> In that study, the estimated effect on smoking prevalence was modest in size, however the particular analyses undertaken were based on certain assumptions that may have resulted in conservative estimates. The impact of retailer licensing schemes on youth uptake and smoking prevalence has yet to be investigated.

## Discussion

The inconsistency between the ubiquity of tobacco in New Zealand and the Government's commitment to reducing tobacco availability to "minimal levels"<sup>9</sup> is a primary justification for a positive licensing scheme. Such a scheme could include a limit on the number of tobacco retail licences issued and this could be

introduced as an immediate measure, as in Hungary.<sup>24</sup> Alternatively, a limit on the number of licences could be introduced in a similar manner to San Francisco City<sup>25</sup> or Huntington Park,<sup>16</sup> where a large reduction in outlet density will be realised over the long term. Alternatively, or additionally, restrictions on tobacco sales around schools and other youth-populated areas could be adopted, similar to Santa Clara County and Huntington Park.<sup>16</sup> Given that the point-of-sale (POS) tobacco display ban now greatly reduces the exposure of children and young people to tobacco in shops, it could be argued that restricting tobacco availability around schools is less justifiable in New Zealand than in jurisdictions without POS bans. However, the POS display ban does not address the problem of easy access to tobacco around schools.<sup>4</sup> Further, the New Zealand public<sup>31,32</sup> and tobacco retailers themselves<sup>33</sup> tend to be particularly supportive of restricting tobacco sales around schools, hence it may be more likely to gain political traction than other policies, and could still result in significant reductions in tobacco outlet density.<sup>30</sup>

The second justification for introducing a positive licensing scheme stems from evidence that many retailers in New Zealand continue to sell tobacco to children younger than 18 years of age.<sup>6</sup> Around 12% of underage smokers report that they usually obtain their tobacco from retail sources, and this proportion has remained consistent for several years.<sup>2</sup> Licensing is likely to enhance enforcement of bans on retail sales to minors and effective enforcement of these laws can reduce youth smoking.<sup>34</sup> Currently in New Zealand, Smokefree Enforcement Officers, who enforce smokefree legislation, compile lists of tobacco retailers through searching business directories and from local knowledge.<sup>4</sup> This is inefficient and unlikely to be completely accurate. A licensing scheme would efficiently provide Smokefree Enforcement Officers with accurate data on local tobacco retail outlets, and support their enforcement efforts. Furthermore, licensing may enhance enforcement as the risk that their ability to sell tobacco could be suspended or revoked

may deter retailers from selling to minors more than infringement fines alone.<sup>12</sup> Lastly, a licensing scheme could provide a revenue stream to fund enforcement efforts, and if accompanied by an appropriate licence fee, may also reduce retailer numbers and tobacco availability.<sup>27,29</sup>

The New Zealand government could also adopt additional measures as part of a positive licensing model. These measures have not yet, to our knowledge, been introduced by any country or jurisdiction. One measure would be to require those selling tobacco to be aged 18 or over, which would align with the recommendation in Article 16 of the WHO Framework Convention on Tobacco Control.<sup>35</sup> Additionally, tobacco sales could be prohibited at on-licensed premises, such as bars and nightclubs. The link between alcohol use and smoking uptake and relapse is well established.<sup>36</sup> Therefore not allowing tobacco sales at locations where alcohol is consumed might be an important way to reduce the alcohol and smoking link, and reduce smoking initiation and relapse after cessation. Other strategies that would greatly reduce tobacco availability include restricting tobacco sales to specialist outlets where children are not allowed, such as off-licensed liquor stores. This idea is well supported by New Zealand smokers,<sup>32</sup> would result in a large reduction in the number of tobacco outlets,<sup>30</sup> and given that these outlets are already licensed, fewer resources may be needed to implement this change. Pharmacy-only tobacco sales is another option that merits further investigation.<sup>37</sup>

## Conclusion

Evidence that several other countries and jurisdictions have made considerably more progress in regulating tobacco retailing should galvanise action to ensure New Zealand's continuing status as a leader in tobacco control. Reducing tobacco availability is a component of the Government's smokefree 2025 goal and is an important part of the strategy needed to achieve minimal levels of smoking by 2025. We urge the Government to redress the lack of progress in this area.

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