

Drug and Substance Checking Legislation Bill (No 2)

Government Bill

As reported from the Health Committee

Commentary

Recommendation

The Health Committee has examined the Drug and Substance Checking Legislation Bill (No 2) and recommends by majority that it be passed. We recommend all amendments unanimously.

About the bill as introduced

The Drug and Substance Checking Legislation Bill (No 2) is an omnibus bill that aims to minimise harm from controlled drugs and psychoactive substances. It would do so by allowing services that check the composition of drugs and substances to operate legally in New Zealand. It would amend the Misuse of Drugs Act 1975, the Psychoactive Substances Act 2013, and the Medicines Act 1981 to allow drug and substance checking services to operate with legal certainty.

The bill is similar to the Drug and Substance Checking Legislation Act 2020, which received Royal assent on 7 December 2020 and which will be repealed automatically after 12 months. That Act was developed to allow drug checking to occur with legal certainty over the summer of 2020/21, while a permanent system was developed. It amended the Misuse of Drugs Act and the Psychoactive Substances Act to enable the Director-General of Health to appoint providers of drug and substance checking services.

The bill would establish a licensing system for providers of drug and substance checking services. It would enable the Director-General to issue licences for providers to perform certain functions.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We wish to bring the House's attention to an issue relat-

ing to clause 10, proposed new sections 35DE and 35DF, which we discuss in more detail later in this commentary. These sections relate to the offence provisions.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor, technical or consequential amendments.

Using premises or vehicles for drug offences

Under section 12(1) of the Misuse of Drugs Act, it is an offence to knowingly permit any premises or vehicle to be used for the purpose of a drug offence. Clause 8 of the bill would amend section 12 to specify that it would not be an offence for a person to permit premises to be used by a licensed provider to undertake drug checking.

We note that the amendment to section 12 in the bill as introduced refers only to “premises”, whereas the Act also refers to a range of vehicles. We understand that some providers may wish to operate mobile services, such as from a truck or other vehicle. We consider that this would help improve access to drug checking, particularly in rural areas. Therefore, we recommend amending clause 8 to include vehicles.

Functions of a service provider

Clause 10 would insert new sections 35DA to 35DI into the Misuse of Drugs Act. New section 35DB specifies the functions of a drug and substance checking service provider.

Advice about harm reduction

New section 35DB(1)(a) provides that a function of a drug checking provider would be to provide information and harm reduction advice. This would help individuals make informed decisions about drug and psychoactive substance use.

We consider that advice about harm reduction should be mandatory and recommend inserting this as a general licence condition as new section 35DDF. Our proposed amendment would require a licensed provider to ensure that advice is given to service users about the harms associated with the relevant drug (where it can be identified) and how those harms could be reduced or avoided. The requirement would only apply to people who were given test results, so that the advice could be tailored to the specific drug.

We note that inaccurate or inappropriate advice could create a significant risk by giving a false sense of security to users of the services, or by undermining the credibility of drug checking services. We therefore recommend amending proposed section 35DB(1)(a) to specify that the information and harm reduction advice should be accurate and appropriate.

We believe that the accuracy and appropriateness of advice should be considered case by case. To aid this consideration, we recommend including principles to help determine whether information and harm reduction advice were accurate and appropriate. The advice should be based on the best information available to the provider and be

tailored to the individual and their circumstances. It would need to be appropriate for a person who had an illicit drug and could still intend to consume it. Therefore, the advice should not consist solely of not to consume the drug. The advice should also not stigmatise or express a moral judgement about the person or their actions. We think this would make it less likely that people would avoid seeking advice for fear of being judged or stigmatised.

The Director-General would need to apply the principles when deciding whether to issue a licence or determining whether the provider had breached the requirement relating to harm reduction advice. Accordingly, we recommend inserting clause 6 into new Schedule 2.

We note that licensed providers could choose to partner with organisations that had existing relationships with clients of drug checking services. We recommend that the bill be amended in a way that does not prevent partner organisations from providing test results and harm reduction advice to service users. The unlicensed organisation would not need a licence. To ensure accountability, the licensed provider would still be responsible for the quality of the advice provided.

Possessing drugs for training purposes

Under proposed section 35DB, as introduced, providers would not be allowed to possess illicit drugs for training purposes. To ensure that providers could adequately train volunteers and staff in testing, we recommend adding training to the list of functions in section 35DB.

Surrendering drugs to service providers

Proposed section 35DB(f) specifies that a function of a service provider would be to dispose of, or arrange for the disposal of, any drug or substance surrendered by an individual for disposal. Proposed section 35DD(b) would enable an individual to surrender a controlled drug to a service provider for the purpose of disposal. We consider that the two sections could imply that providers could only dispose of drugs or substances if they had been surrendered for the purpose of disposal. Also, surrendered drugs or substances could not be used to carry out functions other than disposal.

We believe that this could be confusing for providers and might deter them from sending surrendered drugs for further testing or using them for training purposes. Therefore, we recommend amending section 35DB to make it clear that service providers could send samples of surrendered drugs or substances for testing. Providers could also use the drugs or substances for training purposes.

Possessing or supplying a controlled drug to perform certain functions

Clause 10, inserting section 35DC, would enable a licensed provider to possess a drug, return a controlled drug to a person who submitted it for testing, and send a drug to an approved laboratory for testing. These activities would need to be for the purpose of performing the provider's functions in proposed new section 35DB.

We recommend amending proposed section 35DC(1)(a) to make it clear that providers could only possess drugs for as long as was reasonably necessary to perform their functions. This would ensure that providers did not retain drugs for longer than needed, while also giving them time to return from events in remote areas.

Offence provisions

Proposed new sections 35DE and 35DF contain the offence provisions for the legislation. New section 35DE would prohibit a person licensed as a service provider from breaching any terms or conditions of their licence. New section 35DF would prohibit a person from carrying out any of the functions specified in section 35DB(1)(b) to (e) without being licensed as a service provider under section 35DA.¹ As introduced, both offences have the same penalty—a fine of up to \$5,000 if the person did not have a reasonable excuse.

We sought advice about whether the offences were equally serious and whether it was appropriate for both offences to carry the same penalty. We were advised that setting both penalties at the same level could act as a disincentive for a provider to seek a licence. This is because a provider who breached their licence could be fined the same amount as a person who provided drug checking services without one.

We understand that unlicensed drug checking could include a range of activities, some of which could cause serious harm. For example, a person or group providing low-quality, inaccurate, or fake drug testing to a lot of people could create a serious risk of harm if clients had a false sense of security about the contents of the drug. To deter this type of behaviour, we recommend amending section 35DF(2) by increasing the penalty for providing drug checking services without a licence. The new penalty would be a fine not exceeding \$20,000. We note that the proposed amount is lower than fines in other legislation for operating without a licence. However, we understand that drug checking is generally not a profitable activity. We therefore consider that a fine of \$20,000 would be a significant deterrent for non-profit organisations and small-scale commercial operations.

Liability of responsible persons

Section 17 of the Misuse of Drugs Act deals with the liability of directors and senior managers of a body corporate that commits an offence under the Act. However, the section does not expressly deal with the other kinds of entities that may become service providers. We recommend inserting section 35DG to clarify when the people responsible for a service provider may be liable for an offence committed by the entity.

¹ Section 35DB(1)(b) to (e) relates to certain functions of a service provider. They are: testing, providing test results, returning a drug to the person who provided it, and disposing of samples used in testing.

Collection and use of personal information

As introduced, section 35DG specifies that drug checking providers would not be able to collect, maintain, use, or disclose any personal information relating to an individual who has provided drugs for checking or proposal.

The terms “collect” and “personal information” would have the meanings given in the interpretation of the Privacy Act 2020. We note that section 35DG would enable the collection of anonymous demographic information, such as age, gender, and ethnicity. This is because the Privacy Act limits the definition of “personal information” to identifiable personal information, such as names, birth dates, and contact information.

We understand that the intent of section 35DG is to protect users of drug checking services from prosecution and other adverse effects if their use of the service became known. It also recognises that some people would not use the services if their personal information was collected.

Some submitters suggested that licence holders be allowed to collect personal information for a range of purposes. The purposes included taking bookings, providing follow-up test results, responding to medical emergency and complaints, and participating in coronial inquiries. Several submitters expressed concern that the implications of section 35DG were unclear for drug checking providers that also provide other health services, given that most health services collect patient information.

We note that the bill, as introduced, could create significant difficulties for any health service provider that wanted to provide drug checking services and health services together.

We recommend deleting section 35DG and inserting section 35DDE as a general licence condition. Under our proposed amendment, a service provider could not require the collection of personal information or anonymous demographic information as a condition of service. A service provider would also be prevented from collecting personal information in other ways, except as permitted by our proposed section 35DDE(3). Our proposed section 35DDE(3) makes it clear that service providers would still be able to collect personal information in the course of providing other health services.

Admissibility of test results in criminal proceedings

New section 35DI provides that the results of tests carried out by service providers would not be admissible as evidence in criminal proceedings against the individual who provided the drug. We understand that this provision is intended to reassure people using drug checking services that their test result could not be used as evidence against them.

We believe that the fact that a person used a drug checking service should also be inadmissible as evidence. We recommend amending the bill accordingly.

As introduced, new section 35DI would still enable evidence of drug checking to be used in some circumstances. Examples include civil cases, such as in Family Court and Employment Court proceedings. We recommend amending the bill to cover these

situations. We consider that our proposed amendments to section 35DI could give potential service users more confidence that they would not face legal consequences for using drug checking services. Our hope is that more people would access advice about harm reduction and make informed decisions about drug consumption.

Appointments of existing drug checking providers

New Schedule 1AA sets out the transitional provisions for drug checking providers appointed under the Drug and Substance Checking Act.

Clause 4(1) of the Schedule specifies that an existing service provider's appointment would end if they did not apply for a licence within 1 month of the regulations coming into force. If they do apply for a licence, clause 4(2) provides that an appointment would end when they were granted a licence, or when the Director-General decided not to issue the existing service provider a licence and their rights of appeal or review were exhausted. We recommend amending clause 4(2)(b) to make it clear that the "rights of appeal or review" would be the rights provided under clause 11 of Schedule 6 of the Misuse of Drugs Act.

Shifting elements of the licensing system from regulations to the bill

Clause 35DA would allow the Director-General of Health to issue licences for people to be providers of drug and substance checking services. This would be according to regulations made under the Misuse of Drugs Act. Appointments made under that Act will be continued until the regulations under this bill come into force. In the event of a gap between the Act's repeal provisions taking effect and the licensing system starting up, the transitional provisions will ensure that appointed providers can continue to operate legally.

We recommend adding clause 4(4) to clarify that appointments would be continued despite any expiry date they may have. This is because there is no mechanism to renew an appointment which expires after the Drug and Substance Checking Act is repealed.

We note that, under the bill as introduced, most elements of the licensing system would be set out in regulations made under the Act. Several submitters were concerned that this approach lacks transparency regarding how the licensing system would work. We agree with this view. We sought advice as to whether any details could be moved from regulations to the bill to clarify how the licensing system would operate.

We were advised that many elements of the licensing system could be appropriately included in either the bill or regulations. We therefore recommend inserting clause 12A so that elements detailed in our next section would be inserted as new Schedule 6 of the Misuse of Drugs Act. We consider that they should be included in the bill for one or more of the following reasons:

- They would be needed to fulfil the intent of the bill.

- They would provide certainty for licence applicants and licence holders about a key element of the licensing system.
- They would be a requirement that should be applied to all licence holders.
- They would be unlikely to need to be altered in response to developments in technology, best practice, or other reasons.
- They would not include detail that would be more appropriate in regulations.

We consider that the regulation-making power included in the bill as introduced would be too broad if more elements of the licensing system are included in the bill. Therefore, we recommend that section 37B be included to more specifically set out how regulations may supplement the licensing provisions in the bill.

Criteria to be considered for a licence

We consider that the bill should be clearer about the criteria that an applicant would need to meet to be considered for a licence.

Clause 1 of new Schedule 6 would be similar to provisions in the Psychoactive Substances Act. A licence application would need to be in a form approved by the Director-General or prescribed by regulations and include any information or documents that the Director-General or regulations required.

We propose including as clause 2 a provision that the Director-General would not have to process an application if it did not meet the criteria. We believe that this would reduce resources being allocated to incomplete applications.

Deciding whether to issue or decline a licence

To help provide certainty for applicants, clause 4(1) of Schedule 6 would specify the matters that the Director-General would need to be satisfied about before issuing a licence. They relate to the suitability of applicants, the proposed service model, and whether the functions would be carried out to an appropriate standard by people who were appropriately trained. The matters also relate to the secure storage of drugs, information and harm reduction advice, and obligations under the Privacy Act. The Director-General would need to decline the application if they were unsatisfied about any of the specified matters. They would also need to tell the applicant about the decision and the reasons for it.

Suitability of applicants

Our proposed clause 4(1)(a) in Schedule 6 would require the Director-General to be satisfied that the applicant was suitable before issuing a licence. We also propose including clause 5(1) to specify that an applicant would be suitable if the Director-General (or the Minister in some circumstances) was satisfied that the applicant would comply with the Act, its regulations, and the applicant's licence conditions, and that there was no other reason why the applicant was unsuitable. Assessments of suitability must take into account several matters, replicating requirements in the Psychoactive Substances Act. They relate to whether the applicant or (if the applicant is an entity) any responsible person has been convicted of an offence under certain

drug-related legislation or a crime involving dishonesty in the Crimes Act 1961. They also include whether an applicant or responsible person has failed to comply with any requirement of the Misuse of Drugs Act or any of its regulations. A “responsible person” is defined in clause 4 as a director, partner, or trustee of an entity, or someone acting in that capacity.

Section 14(4) of the Misuse of Drugs Act provides that approval from the Minister of Health is required to grant a licence to any person with a conviction under the Act. Ministerial approval is also required if a person has had a licence revoked for failing to comply with its conditions. We note that applicants that are organisations would generally not be convicted under the Act. Our proposed clause 5(2) in Schedule 6 would avoid inconsistency by requiring Ministerial approval when an organisation’s director or partner had a conviction under the Act or had had a licence revoked for non-compliance.

We do not believe that convictions should be an automatic barrier to obtaining a licence or acting as a director or partner of an organisation that holds a licence. We understand that people who have used drugs in the past could be seen as a credible source of information about the risk and harms of drug use. We see it as important that the suitability of each person with a conviction or a revoked licence should be considered on an individual basis.

We proposed clause 5(2)(c), setting out the factors that the Minister and the Director-General would need to take into account when considering the suitability of a person with a conviction or a revoked licence. They relate to the nature, seriousness, circumstances, and relevance of the offending or non-compliance, and the time that has elapsed since.

Provisions for licences

Our recommended new Schedule 6 of the Misuse of Drugs Act would also specify the following:

- Under clause 7, the Director-General could set any licence conditions that they considered appropriate. The Director-General could also amend or revoke existing conditions.
- Under clause 8, the maximum term for a licence would be set at three years, with the Director-General able to set a shorter duration where appropriate. We consider that this would provide appropriate oversight without unnecessarily burdening licence holders.
- Clause 9 would enable the Director-General to suspend or revoke licences in certain situations. The situations are when the licence holder has breached the conditions of their licence or provided false information in their licence application. A licence could also be suspended or revoked if the licence-holder was no longer suitable under the terms of clause 5.
- Clause 14 would specify that licences could not be transferred from the original licence holder to another person or entity.

Review of decisions

We propose including clauses 11 to 13 in Schedule 6 so there would be reviews of decisions to decline to issue a licence or to suspend or revoke a licence. These provisions would be similar to the approach used in the medicinal cannabis regulations. Clause 12 would limit the appeal process to an internal review by the ministry; the reviewer would be a person not involved with the original decision. Clause 13 would specify the actions that a service provider could perform while the decision was being reviewed.

Requirements of licence holders

We recommend amending clause 10 of Part 1 of the bill, to insert new sections 35DDA to 35DDK into the Misuse of Drugs Act, rather than leaving them to be set by regulations. Our proposed new sections would require the following conditions of all licence holders:

- Providers would need to display their licence where services were provided (new section 35DDB).
- Services could not be provided from residential premises. This is because we consider that it would make the monitoring and inspection functions proposed in new section 35DDK more legally complex (new section 35DDC).
- To avoid creating barriers to use, providers could not charge clients for drug checking services (new section 35DDD).
- Providers could not require the collection of personal information or anonymous demographic information as a condition of service (new section 35DDE, which is discussed in more detail in our section about the collection and use of personal information).
- Providers would need to provide accurate and appropriate harm reduction advice with test results (new section 35DDF, which is discussed in more detail in our section about harm reduction advice).
- Given that surrendered drugs would be particularly likely to be drugs with a high potential for harm, providers would need to securely store all drugs that they possess. The specific requirements for storage would vary for providers depending on where they performed drug checking and whether they held drugs for training purposes (new section 35DDG).
- Providers would need to report the loss or removal of any drug to the Police immediately and to the Director-General as soon as reasonably practicable (new section 35DDH).
- Providers would need to report certain data to the Director-General and a drug information body specified in regulations. This data could be used to help identify when particularly dangerous drugs emerge, and assess the demand and availability of drug checking services (new section 35DDI).

- Providers would need to keep records of the number of tests undertaken and people given test results, the test results, and the drugs in their possession (new section 35DDJ).
- For monitoring and review purposes, licence holders would need to provide information to the Director-General on request. They would also need to allow access to people authorised by the Director-General for monitoring purposes (new section 35DDK).

Exemption from storage requirements under the Misuse of Drugs Regulations

Regulation 28 of the Misuse of Drugs Regulations 1977 sets out detailed storage requirements for people who possess controlled drugs under the Act. The requirements include that the drugs are kept in a metal or concrete cupboard that is securely fixed to a building, ship, aircraft, or vehicle.

We note that some drug checking providers, including medical professionals, could be subject to regulation 28. We consider that having to comply with the regulation could create significant practical problems for them, particularly those providing services at festivals. We recommend inserting clause 20 to provide that licensed drug checking providers would not be subject to regulation 28 of the Misuse of Drugs Regulations. Under our proposed new section 35DDG, providers would be required to securely store all drugs in their possession.

Funding for drug checking services

We requested advice about whether any work has been undertaken to quantify the level of funding that would be needed to provide drug checking services on a meaningful scale. We were advised that the Ministry of Health has been working on options for funding. It has been working with providers, including those who might provide services in the future.

New Zealand National Party differing view

National members remain concerned about the signal this sends on the acceptability of the use of drugs and other prohibited substances. We believe the state should not condone in any way the use of these substances, either implicitly or explicitly.

The evidence presented thus far does not support the harm reduction aim of this bill, and so the National members are not convinced any significant harm reduction would occur. On this basis, we oppose this bill.

Appendix

Committee process

The Drug and Substance Checking Legislation Bill (No 2) was referred to the committee on 18 May 2021.

The closing date for submissions on the bill was 24 June 2021. We received and considered 56 submissions from interested groups and individuals. We heard oral evidence from 11 submitters at hearings in Wellington and by videoconference.

We received advice on the bill from the Ministry of Health and the New Zealand Police. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

Dr Liz Craig (Chairperson)

Chris Bishop

Dr Elizabeth Kerekere

Dr Anae Neru Leavasa

Dr Tracey McLellan

Debbie Ngarewa-Packer

Sarah Pallett

Dr Gaurav Sharma

Penny Simmonds

Tangi Utikere

Brooke van Velden

Simon Watts

Chlöe Swarbrick also took part in the consideration of this item of business.

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Andrew Little

Drug and Substance Checking Legislation Bill (No 2)

Government Bill

Contents

		Page
1	Title	3
2	Commencement	4
Part 1		
Amendments to Misuse of Drugs Act 1975		
3	Amendments to Misuse of Drugs Act 1975	4
4	Section 2 amended (Interpretation)	4
5	New section 2AA inserted (Transitional, savings, and related provisions)	5
	2AA Transitional, savings, and related provisions	5
6	Section 6 amended (Dealing with controlled drugs)	5
7	Section 7 amended (Possession and use of controlled drugs)	5
8	Section 12 amended (Use of premises or vehicle, etc)	5
9	Section 14 amended (Licences)	5
10	New sections 35DA to 35DI and cross-heading <u>cross-headings</u> inserted	6
<i>Drug and substance checking</i>		
	35DA Licensing of drug and substance checking service providers	6
	35DB Functions of service provider	6
	35DC Possession or supply of controlled drug for purpose of performing functions	7
	35DD Supplying or surrendering controlled drug to service provider	7

Drug and Substance Checking Legislation Bill (No 2)

	<i>Drug and substance checking: general licence conditions</i>	
35DDA	General licence conditions set out in sections 35DDB to 35DDK	7
35DDB	<u>Service provider must display copy of licence</u>	7
35DDC	<u>Service provider must not perform functions in residential premises</u>	7
35DDD	<u>Service provider must not charge individuals for drug checking services</u>	7
35DDE	<u>Service provider must not require or collect, etc, certain information</u>	7
35DDF	<u>Service provider must provide accurate and appropriate harm reduction advice with test results</u>	8
35DDG	<u>Service provider must store controlled drugs or psychoactive substances securely</u>	9
35DDH	<u>Service provider must report loss or removal of controlled drug or psychoactive substance</u>	9
35DDI	<u>Service provider must report data</u>	9
35DDJ	<u>Service provider must keep records</u>	9
35DDK	<u>Service provider must facilitate monitoring</u>	10
	<i>Drug and substance checking: offences and other matters</i>	
35DE	Offence relating to breach of terms or conditions of licence	11
35DF	Offence to provide checking services, etc, without being licensed	11
35DG	<u>Liability of responsible persons, etc, if service provider is entity</u>	12
35DG	Service providers not to collect, etc, personal information	12
35DH	Protections from liabilities of service provider	12
35DI	Test result not admissible in criminal proceedings	12
35DI	<u>Use of service and test result not admissible in civil or criminal proceedings</u>	13
11	Section 37 amended (Regulations)	13
11	<u>New section 37B inserted (Regulations relating to drug and substance checking service providers)</u>	13
	<u>37B Regulations relating to drug and substance checking service providers</u>	13
12	New Schedule 1AA inserted	14
12A	<u>New Schedule 6 inserted</u>	14

Part 2**Amendments to other enactments****Subpart 1—Amendments to Acts***Amendments to Psychoactive Substances Act 2013*

<u>13</u>	<u>Amendments to Psychoactive Substances Act 2013</u>	<u>14</u>
<u>14</u>	<u>Section 8 amended (Interpretation)</u>	<u>14</u>
<u>15</u>	<u>Section 70 amended (Offences relating to psychoactive substance that is not approved product)</u>	<u>15</u>
<u>16</u>	<u>Section 71 amended (Offence relating to personal possession of psychoactive substance that is not approved product)</u>	<u>15</u>

Amendment to Medicines Act 1981

<u>17</u>	<u>Amendment to Medicines Act 1981</u>	<u>15</u>
<u>18</u>	<u>Section 109 amended (Relationship with Misuse of Drugs Act 1975)</u>	<u>15</u>

Subpart 2—Amendment to secondary legislation*Amendment to Misuse of Drugs Regulations 1977*

<u>19</u>	<u>Amendment to Misuse of Drugs Regulations 1977</u>	<u>16</u>
<u>20</u>	<u>Regulation 28 amended (Custody of controlled drugs)</u>	<u>16</u>

Part 2**Amendments to Psychoactive Substances Act 2013**

<u>13</u>	<u>Amendments to Psychoactive Substances Act 2013</u>	<u>16</u>
<u>14</u>	<u>Section 8 amended (Interpretation)</u>	<u>16</u>
<u>15</u>	<u>Section 70 amended (Offences relating to psychoactive substance that is not approved product)</u>	<u>16</u>
<u>16</u>	<u>Section 71 amended (Offence relating to personal possession of psychoactive substance that is not approved product)</u>	<u>17</u>

Part 3**Amendment to Medicines Act 1981**

<u>17</u>	<u>Amendment to Medicines Act 1981</u>	<u>17</u>
<u>18</u>	<u>Section 109 amended (Relationship with Misuse of Drugs Act 1975)</u>	<u>17</u>

Schedule 1**New Schedule 1AA inserted**18**Schedule 2****New Schedule 6 inserted**20

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Drug and Substance Checking Legislation Act **(No 2) 2021**.

2 Commencement

This Act comes into force on the later of the following:

- (a) the day after the date on which this Act receives the Royal assent:
- (b) immediately after subpart 2 of Part 1 and subpart 2 of Part 2 of the Drug and Substance Checking Legislation Act 2020 come into force.

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Part 1

Amendments to Misuse of Drugs Act 1975

3 Amendments to Misuse of Drugs Act 1975

This Part amends the Misuse of Drugs Act 1975.

4 Section 2 amended (Interpretation)

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In section 2(1), insert in their appropriate alphabetical order:

drug and substance checking service provider or **service provider** means a ~~person~~ an individual or entity licensed as a drug and substance checking service provider under **section 35DA clause 4 of Schedule 6**

drug information body means an agency, an association, or a body that gathers and analyses information about the use or prevalence (or both) of controlled drugs and psychoactive substances in New Zealand

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drug or substance, in relation to a drug and substance checking service provider, includes a sample of a drug or substance

entity, in relation to a drug and substance checking service provider, includes—

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(a) a body corporate:

(b) a corporation sole:

(c) in the case of a trust that has—

(i) only 1 trustee, the trustee acting in their capacity as trustee:

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(ii) more than 1 trustee, the trustees acting jointly in their capacity as trustees:

(d) an unincorporated body (including a partnership)

psychoactive substance has the same meaning as in section 9 of the Psychoactive Substances Act 2013

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responsible person, in relation to an entity that is, or is applying to be, a drug and substance checking service provider, means—

(a) a director, partner, or trustee of the entity; or

(b) if the entity does not have directors, partners, or trustees, a person who acts in relation to the entity in the same or a similar fashion as a director, partner, or trustee would were the entity a company, partnership, or trust

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worker, in relation to a service provider, means a person who carries out work in any capacity for the service provider, including work as—

- (a) an employee; or
- (b) a contractor or subcontractor; or
- (c) a volunteer (being a person who carries out work on a voluntary basis, whether or not the person receives out-of-pocket expenses)

5 New section 2AA inserted (Transitional, savings, and related provisions)

After section 2A, insert:

2AA Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

6 Section 6 amended (Dealing with controlled drugs)

In section 6(1), replace “section 8” with “section 8 or **35DD**”.

7 Section 7 amended (Possession and use of controlled drugs)

In section 7(1), replace “section 8” with “section 8 or **35DD**”.

8 Section 12 amended (Use of premises or vehicle, etc)

After section 12(1), insert:

- (1A) It is not an offence against subsection (1) for a person to permit any premises or mode of conveyance to be used by a drug and substance checking service provider for the purpose of performing the functions specified in **section 35DB** knowing that the service provider will be providing services to individuals who may be committing offences against this Act.

9 Section 14 amended (Licences)

After section 14(6), insert:

- (7) ~~The following do not apply in relation to licences for drug and substance checking service providers:~~
- (a) ~~the provision in subsection (1) for licences to be issued by such persons as may be prescribed by regulations (licences for service providers are issued by the Director-General of Health under **section 35DA**):~~
 - (b) ~~the offence provision in subsection (6) (an offence for breaching terms or conditions of a service provider’s licence is set out in **section 35DE**):~~
- (7) This section does not apply in relation to licences for drug and substance checking service providers.

10 New sections 35DA to 35DI and ~~cross-heading~~ cross-headings inserted

After section 35D, insert:

Drug and substance checking

35DA Licensing of drug and substance checking service providers

- (1) ~~The Director-General of Health may, in accordance with regulations made under this Act, issue licences for persons to be drug and substance checking service providers.~~ 5
- (2) ~~The Ministry of Health must publish on its Internet site a list of the service providers that are licensed under **subsection (1)**.~~
- The Director-General of Health may licence drug and substance checking service providers under **Schedule 6**. 10

35DB Functions of service provider

- (1) The functions of a service provider are to do 1 or more of the following:
- (a) provide accurate and appropriate information and harm reduction advice to help individuals make informed decisions about drug and ~~psycho-~~ active substance use: 15
- (b) test any drug or substance (which may be a controlled drug or psycho-active substance) that an individual presents for checking to ascertain the composition and likely identity of the drug or substance:
- (c) advise the individual who presented a drug or substance for checking of the outcome of the testing: 20
- (d) return a drug or substance to the individual who presented it for checking:
- (e) dispose of any sample of a ~~controlled~~ drug or substance used in testing:
- (f) dispose of, or arrange for the disposal of, any drug or substance surrendered by any individual for disposal: 25
- (g) arrange for a sample of a drug or substance (including one that has been surrendered for disposal) to be tested by an approved laboratory: 30
- (h) train, or arrange for the training of, the service provider's workers to perform the functions specified in **paragraphs (a) to (g)** (including by using, for training purposes, drugs or substances that have been surrendered for disposal).
- (2) A service provider must perform the functions referred to in **subsection (1)** in accordance with the ~~terms and~~ conditions of their licence.
- (3) ~~In this section and **sections 35DG and 35DI**, drug or substance includes a sample of a drug or substance.~~ 35

35DC Possession or supply of controlled drug for purpose of performing functions	
(1) A service provider's licence entitles them to do 1 or more of the following for the purpose of performing the provider's functions:	
(a) <u>possess a controlled drug for as long as is reasonably necessary to perform the provider's functions:</u>	5
(b) return a controlled drug to the individual who submitted it for checking:	
(c) send a controlled drug to an approved laboratory for testing.	
(2) Subsection (1) is subject to the terms and conditions of the service provider's licence.	10
(3) In this section and section 35DD , controlled drug includes a sample of a controlled drug.	
35DD Supplying or surrendering controlled drug to service provider	
An individual may do 1 or both of the following:	
(a) supply a controlled drug to a service provider for the purpose of checking:	15
(b) surrender a controlled drug to a service provider for the purpose of disposal.	
<i><u>Drug and substance checking: general licence conditions</u></i>	
35DDA <u>General licence conditions set out in sections 35DDB to 35DDK</u>	20
<u>Sections 35DDB to 35DDK set out conditions that apply to every service provider's licence.</u>	
35DDB <u>Service provider must display copy of licence</u>	
<u>A service provider must clearly display a copy of their licence when, and at the site where, the service provider is performing any of the functions specified in section 35DB(1)(a) to (d).</u>	25
35DDC <u>Service provider must not perform functions in residential premises</u>	
<u>A service provider must not perform any of their functions in a residential premises (as defined in section 2(1) of the Residential Tenancies Act 1986).</u>	
35DDD <u>Service provider must not charge individuals for drug checking services</u>	30
<u>A service provider must not charge any fee to an individual for testing or disposing of a drug or substance for that individual.</u>	
35DDE <u>Service provider must not require or collect, etc, certain information</u>	
(1) <u>This section applies in relation to an individual who does 1 or both of the following:</u>	35

- (a) presents a drug or substance to a service provider for checking;
 (b) surrenders a drug or substance to a service provider for disposal.
- (2) The service provider must not—
- (a) require the individual to disclose demographic information (such as their age, sex, ethnicity, or cultural background) as a condition of providing service to the individual; or 5
 (b) collect, maintain, use, or disclose any personal information about the individual.
- (3) However, **subsection (2)(b)** does not prevent a service provider from collecting, maintaining, using, or disclosing personal information about the individual in the course of providing other health services to the individual. 10
- (4) In this section,—
- collect** has the meaning given by section 7(1) of the Privacy Act 2020
other health services means health services as defined in section 2(1) of the Health and Disability Commissioner Act 2004 other than services carried out in the performance of any function specified in **section 35DB** 15
personal information has the meaning given by section 7(1) of the Privacy Act 2020.
- 35DDF Service provider must provide accurate and appropriate harm reduction advice with test results** 20
- (1) A service provider must ensure that, when an individual who presents a drug or substance for checking is advised of the outcome of the testing, the individual is given accurate and appropriate advice in accordance with this section.
- (2) The advice must be about the following harms and how they may be reduced or avoided: 25
- (a) if the test indicates the likely identity of the drug or substance, the harms associated with that drug or substance;
 (b) if the test does not indicate the likely identity of the drug or substance but the service provider considers that, in the circumstances, they are able to form a view on its likely identity,— 30
- (i) the harms associated with that drug or substance; and
 (ii) the harms associated with taking a drug or substance of an unknown identity;
- (c) in any other case where the test does not indicate the likely identity of the drug or substance, the harms associated with taking a drug or substance of an unknown identity. 35
- (3) The service provider does not breach **subsection (2)** if, despite reasonable efforts being made to give the advice, the individual refuses to receive it.

- (4) See **clause 6 of Schedule 6** (which relates to what the Director-General of Health must have regard to when deciding whether advice of the kind required by this section is accurate and appropriate).

35DDG Service provider must store controlled drugs or psychoactive substances securely 5

A service provider must securely store all controlled drugs or psychoactive substances in their possession.

35DDH Service provider must report loss or removal of controlled drug or psychoactive substance

- (1) This section applies if a controlled drug or psychoactive substance in a service provider's possession is lost or removed from their possession without the service provider's authority. 10
- (2) After the service provider becomes aware of the loss or removal, they must report the loss or removal—
- (a) immediately to a member of the Police; and 15
 - (b) as soon as is reasonably practicable to the Director-General of Health (but, in any case, before the end of the following month).

35DDI Service provider must report data

A service provider must report all test results that they provide to individuals, and the number of individuals advised of test results, to— 20

- (a) the Director-General of Health; and
- (b) a drug information body specified in regulations made under this Act.

35DDJ Service provider must keep records

- (1) A service provider must keep a record of—
- (a) the number of tests carried out by the service provider; and 25
 - (b) the number of individuals advised of test results by the service provider; and
 - (c) for each drug or substance that the service provider tests and returns to the individual who submitted it for checking,—
 - (i) the purported identity (if known) of the drug or substance; and 30
 - (ii) the test result; and
 - (d) for each drug or substance that the service provider has in their possession for the purpose of disposal or arranging testing by an approved laboratory, the information specified in **subsection (2)**; and
 - (e) for each drug or substance that the service provider has in their possession for the purpose of training, the information specified in **subsection (3)**. 35

- (2) The information required by **subsection (1)(d)** is—
- (a) the purported identity (if known) of the drug or substance; and
 - (b) if the drug or substance has been tested by the service provider, the test result; and
 - (c) the weight of the drug or substance; and 5
 - (d) whichever of the following applies:
 - (i) if the drug or substance is disposed of by the service provider, how and when it was disposed of;
 - (ii) if the drug or substance is provided to another person for disposal, when, how, and to whom it was provided; 10
 - (iii) if the drug or substance is provided to an approved laboratory for testing, when, how, and to which laboratory it was provided.
- (3) The information required by **subsection (1)(e)** is—
- (a) the identity of the drug or substance as indicated by testing performed by the service provider or an approved laboratory; and 15
 - (b) the weight of the drug or substance; and
 - (c) if the drug or substance is destroyed while being used for training, how and when that occurred.
- (4) The service provider must retain each record for the period prescribed by regulations made under this Act. 20
- (5) In this section, **purported identity** means the identity under which the drug or substance is sold or supplied to the individual who presents it to the service provider (as reported to the service provider by that individual).

35DDK Service provider must facilitate monitoring

- (1) A service provider must,— 25
- (a) if requested in writing by the Director-General of Health, provide the Director-General with any information that the Director-General reasonably requires to monitor the service provider's compliance with this Act, its regulations, or their licence conditions; and
 - (b) allow an authorised person to access any site where the service provider is performing any of the functions specified in **section 35DB**. 30
- (2) An authorised person who accesses a site under **subsection (1)(b)**—
- (a) must do so only for the purpose of monitoring the service provider's compliance with this Act, its regulations, or their licence conditions; and
 - (b) must, if requested by the service provider, show the service provider written evidence of the person's authorisation from the Director-General of Health; and 35

- (c) must make all reasonable efforts to avoid disrupting the service provider in their performance of any of the functions specified in **section 35DB**; and
- (d) must not be present in a part of the site where an individual is presenting a drug or substance for checking or being advised of the results of testing of the drug or substance (unless the individual gives their express permission for the authorised person to be present); and 5
- (e) must not make a visual or audio recording of—
- (i) the site; or
- (ii) any individual who presents a drug or substance to the service provider for checking or is advised of the results of testing of the drug or substance; or 10
- (iii) any individual who surrenders a drug or substance to the service provider for disposal.
- (3) In this section, **authorised person** means a person who, for the purpose of monitoring service providers' compliance with this Act, its regulations, and their licence conditions, is authorised by the Director-General of Health to access sites where service providers perform any of the functions specified in **section 35DB**. 15
- Drug and substance checking: offences and other matters* 20
- 35DE Offence relating to breach of terms or conditions of licence**
- (1) ~~A person licensed as a service provider must not breach any terms or conditions of their licence.~~
- (2) ~~A person service provider~~ commits an offence and is liable on conviction to a fine not exceeding \$5,000 if the ~~person service provider~~, without reasonable excuse, contravenes **subsection (1)**. 25
- (3) However, this section does not apply to a contravention of the condition set out in **section 35DDF** (service provider must provide accurate and appropriate harm reduction advice with test results).
- 35DF Offence to provide checking services, etc, without being licensed** 30
- (1) A person must not carry out any of the functions specified in **section 35DB(1)(b) to (e)** without being licensed as a service provider under **section 35DA**.
- (2) A person commits an offence and is liable on conviction to a fine not exceeding ~~\$5,000~~ \$20,000 if the person, without reasonable excuse, contravenes **subsection (1)**. 35

35DG Liability of responsible persons, etc, if service provider is entity

- (1) This section applies (instead of section 17) if a service provider that is an entity commits an offence against this Act.
- (2) Every responsible person and person concerned in the management of the entity commits the same offence if it is proved— 5
- (a) that the act that constituted the offence took place with the authority, permission, or consent of the responsible person or person concerned in the management of the entity; or
- (b) that the responsible person or person concerned in the management of the entity knew, or could reasonably be expected to have known, that the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it. 10
- (3) A responsible person or person concerned in the management of the entity may be convicted of the offence even if the entity is not convicted of the offence.
- (4) This section applies to a person concerned in the management of an entity despite **section 35DH**. 15

35DG Service providers not to collect, etc, personal information

- (1) ~~A service provider must not collect, maintain, use, or disclose any personal information relating to an individual from whom the service provider receives any drug or substance for checking or disposal.~~ 20
- (2) ~~In this section, **collect** and **personal information** have the meanings given to those terms by section 7(1) of the Privacy Act 2020.~~

35DH Protections from liabilities of service provider

- (1) ~~An employee or a volunteer~~ A worker of a service provider is not liable for anything they do or fail to do in the course of the performance or intended performance of the service provider's functions, unless it is shown that they acted in bad faith or without reasonable care. 25
- (2) ~~An employee or a volunteer~~ A worker of a service provider is not liable for any liability of the service provider.
- (3) ~~In this section, **volunteer** means a person who is acting on a voluntary basis (whether or not the person receives out-of-pocket expenses).~~ 30

35DI Test result not admissible in criminal proceedings

~~The result of a test carried out by a service provider in relation to any drug or substance is not admissible as evidence in any criminal proceedings against the individual from whom the drug or substance was received.~~ 35

35DI Use of service and test result not admissible in civil or criminal proceedings

The following is not admissible as evidence in civil or criminal proceedings against an individual who presents a drug or substance for checking by a service provider:

- (a) evidence that the individual presented a drug or substance to the service provider or in any other way used services of the service provider that relate to the functions specified in **section 35DB**;
- (b) the result of a test carried out by the service provider in relation to the drug or substance.

11 Section 37 amended (Regulations)

After section 37(1)(a), insert:

- (aa) ~~providing for the issue of licences for persons to be drug and substance checking service providers:~~

11 New section 37B inserted (Regulations relating to drug and substance checking service providers)

After section 37A, insert:

37B Regulations relating to drug and substance checking service providers

- (1) Without limiting section 37, the Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:
 - (a) prescribing any particulars, information, documents, or other material that must be included in or with an application for a licence to be a drug and substance checking service provider (a **licence**);
 - (b) prescribing the form of licences;
 - (c) prescribing conditions of licences;
 - (d) providing for the renewal of licences;
 - (e) specifying a drug information body for the purposes of **section 35DDI**;
 - (f) prescribing the period for which service providers must retain the records required by **section 35DDJ**.
- (2) Regulations made under **subsection (1)(c)** may (without limitation) prescribe conditions that specify—
 - (a) how the service provider must comply with any of the conditions imposed by **sections 35DDA to 35DDK**; or
 - (b) other requirements that relate to any of those conditions.
- (3) Regulations made under **subsection (1)(d)** may (without limitation)—

- (a) provide for a licence to continue in effect (despite **clause 8 of Schedule 6**) if an application to renew the licence is made within a specified period:
- (b) prescribe any particulars, information, documents, or other material that must be included in or with an application to renew a licence: 5
- (c) provide for the Director-General of Health to—
- (i) require particulars, information, documents, or other material to be included in or with an application to renew a licence:
- (ii) refuse to process an application if a required particular, piece of information, document, or piece of other material is not included in or with an application: 10
- (iii) require further particulars, information, documents, or other material to be provided before deciding whether to renew a licence:
- (d) prescribe criteria for the renewal of licences: 15
- (e) provide for the review of decisions relating to applications for the renewal of licences.
- (4) Regulations made under this section are secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).

12 New Schedule 1AA inserted 20

Insert the **Schedule 1AA** set out in the **Schedule 1** of this Act as the first schedule to appear after the last section of the Misuse of Drugs Act 1975.

12A New Schedule 6 inserted

After Schedule 5, insert the **Schedule 6** set out in **Schedule 2** of this Act.

Part 2 25

Amendments to other enactments

Subpart 1—Amendments to Acts

Amendments to Psychoactive Substances Act 2013

13 Amendments to Psychoactive Substances Act 2013

Sections 14 to 16 amend the Psychoactive Substances Act 2013. 30

14 Section 8 amended (Interpretation)

In section 8, insert in their appropriate alphabetical order:

approved laboratory means a laboratory for the time being approved under section 87

drug and substance checking service provider has the same meaning as in section 2(1) of the Misuse of Drugs Act 1975

15 Section 70 amended (Offences relating to psychoactive substance that is not approved product)

After section 70(2), insert:

5

(2A) Subsection (1) also does not apply to—

(a) a person who gives a psychoactive substance that is not an approved product to a drug and substance checking service provider for the purpose of checking or for disposal:

(b) a drug and substance checking service provider who returns a psychoactive substance that is not an approved product to the person who submitted it for checking:

10

(c) a drug and substance checking service provider who supplies a psychoactive substance that is not an approved product to an approved laboratory for testing.

15

16 Section 71 amended (Offence relating to personal possession of psychoactive substance that is not approved product)

After section 71(2), insert:

(2A) Subsection (1) also does not apply to a drug and substance checking service provider if the service provider has possession of the psychoactive substance in the course of performing the service provider's functions.

20

(2B) **Subsection (2A)** is subject to the conditions of the service provider's licence.

Amendment to Medicines Act 1981

17 Amendment to Medicines Act 1981

Section 18 amends the Medicines Act 1981.

25

18 Section 109 amended (Relationship with Misuse of Drugs Act 1975)

After section 109(3), insert:

(3A) A drug and substance checking service provider under the Misuse of Drugs Act 1975 does not commit an offence against this Act or its regulations if the service provider breaches this Act or the regulations in the course of performing the service provider's functions.

30

(3B) **Subsection (3A)** is subject to the conditions of the service provider's licence.

Subpart 2—Amendment to secondary legislation*Amendment to Misuse of Drugs Regulations 1977***19** **Amendment to Misuse of Drugs Regulations 1977****Section 20** amends the Misuse of Drugs Regulations 1977.**20** **Regulation 28 amended (Custody of controlled drugs)** 5

(1) After regulation 28(4)(e), insert:

(f) a controlled drug that is in the possession of a drug and substance checking service provider if the service provider has possession of the controlled drug in the course of performing the service provider's functions.

(2) After regulation 28(4), insert: 10

(4AAA) **Subclause (4)(f)** is subject to the conditions of the service provider's licence.**Part 2****~~Amendments to Psychoactive Substances Act 2013~~****13** **Amendments to Psychoactive Substances Act 2013** 15

This Part amends the Psychoactive Substances Act 2013.

14 **Section 8 amended (Interpretation)**

In section 8, insert in their appropriate alphabetical order:

~~**approved laboratory** means a laboratory for the time being approved under section 87~~ 20~~**drug and substance checking service provider** has the same meaning as in section 2(1) of the Misuse of Drugs Act 1975~~**15** **Section 70 amended (Offences relating to psychoactive substance that is not approved product)**

After section 70(2), insert: 25

(2A) Subsection (1) also does not apply to—

(a) a person who gives a psychoactive substance that is not an approved product to a drug and substance checking service provider for the purpose of checking or for disposal:

(b) a drug and substance checking service provider who returns a psychoactive substance that is not an approved product to the person who submitted it for checking: 30

- (e) a drug and substance checking service provider who supplies a psychoactive substance that is not an approved product to an approved laboratory for testing.

16 Section 71 amended (Offence relating to personal possession of psychoactive substance that is not approved product) 5

After section 71(2), insert:

- (2A) Subsection (1) also does not apply to a drug and substance checking service provider if the provider has possession of the psychoactive substance in the course of performing the provider's functions.

- (2B) **Subsection (2A)** is subject to the terms and conditions of the licence issued to the service provider under **section 35DA** of the Misuse of Drugs Act 1975. 10

Part 3

Amendment to Medicines Act 1981

17 Amendment to Medicines Act 1981 15
This Part amends the Medicines Act 1981.

18 Section 109 amended (Relationship with Misuse of Drugs Act 1975)

After section 109(3), insert:

- (3A) A person does not commit an offence against this Act (or any regulations under this Act) if they— 20
- (a) are a drug and substance checking service provider under the Misuse of Drugs Act 1975; and
 - (b) are acting in accordance with their functions, and the terms and conditions of their licence, as a service provider under that Act.

Schedule 1
New Schedule 1AA inserted

s-13 12

Schedule 1AA
Transitional, savings, and related provisions

5

s 2AA

Part 1
Provisions relating to Drug and Substance Checking Legislation Act 2021

- 1 Interpretation** 10
- In this Part,—
- existing service provider** means ~~a person who a drug and substance checking service provider who—~~
- (a) ~~was appointed as a drug and substance service provider was appointed under old section 35DA; and~~ 15
- (b) still held the appointment immediately before old section 35DA was repealed
- ~~**new section 35DA**~~ means ~~section 35DA~~ as inserted by the Drug and Substance Checking Legislation Act **2021**
- old section 35DA** means section 35DA as it was immediately before its repeal 20
- repeal**, in relation to old section 35DA, means its repeal by section 16 of the Drug and Substance Checking Legislation Act 2020.
- Issue of licences under ~~new~~ **section 35DA clause 4 of Schedule 6***
- 2 When Director-General of Health may issue licences under ~~new~~ **section 35DA clause 4 of Schedule 6**** 25
- The Director-General of Health may not issue a licence under ~~new~~ ~~**section 35DA clause 4 of Schedule 6**~~ until regulations made under ~~section 37(1)(aa)~~ **section 37B** come into force.
- Continuation of current appointments*
- 3 Appointments of existing service providers continued** 30
- (1) An existing service provider must be treated as still holding an appointment under old section 35DA for the period that—

- (a) starts immediately after the repeal of old section 35DA (regardless of whether that is on or before the commencement of the Drug and Substance Checking Legislation Act **2021**); and
- (b) ends under **clause 4 of this schedule**.
- (2) For the purposes of **subclause (1)**,— 5
- (a) this Act and the Psychoactive Substances Act 2013, as they were immediately before their amendment by subpart 2 of Part 1 and subpart 2 of Part 2 of the Drug and Substance Checking Legislation Act 2020, continue to apply in relation to the existing service provider; and
- (b) the terms and conditions of the existing service provider’s appointment are the same as those that applied immediately before that amendment. 10
- (3) **Section 109(3A)** of the Medicines Act 1981 applies to the existing service provider as if they held a licence issued under ~~new section 35DA clause 4 of Schedule 6~~ (and the terms and conditions of their appointment were the terms and conditions of their licence). 15
- (4) **Subclause (1)**—
- (a) applies despite any limit imposed on the duration of the appointment by the Director-General of Health before this clause comes into force; but
- (b) does not limit the Director-General’s authority to revoke the appointment after this clause comes into force. 20
- 4 When continued appointments end**
- (1) An existing service provider’s appointment ends if they do not apply for a licence to be issued under ~~new section 35DA clause 4 of Schedule 6~~ within 1 month after regulations made under ~~section 37(1)(aa) section 37B~~ come into force. 25
- (2) If an existing service provider applies for a licence before the deadline under **subclause (1)**, their appointment ends when—
- (a) the Director-General of Health issues the existing service provider a licence under ~~new section 35DA clause 4 of Schedule 6~~; or
- (b) the Director-General of Health decides not to issue the existing service provider a licence under ~~new section 35DA~~ that clause and ~~their rights of appeal or review are exhausted~~ their right of review under clause 11 of Schedule 6 is exhausted. 30

Schedule 2
New Schedule 6 inserted

s 12A

Schedule 6
Licensing of drug and substance checking service providers

5

s 35DA

Contents

		<u>Page</u>
	<i>Issuing of licences</i>	
<u>1</u>	<u>Application for licence</u>	<u>21</u>
<u>2</u>	<u>Director-General of Health may refuse to process application for licence</u>	<u>21</u>
<u>3</u>	<u>Director-General of Health may request further information, etc</u>	<u>21</u>
<u>4</u>	<u>Decision on licence application</u>	<u>21</u>
<u>5</u>	<u>Deciding whether applicant is suitable</u>	<u>22</u>
<u>6</u>	<u>Deciding whether information and harm reduction advice is accurate and appropriate</u>	<u>23</u>
<u>7</u>	<u>Director-General of Health may impose, amend, and revoke conditions</u>	<u>23</u>
	<i>Duration of licences</i>	
<u>8</u>	<u>Duration of licence</u>	<u>24</u>
	<i>Suspension, cancellation, or surrender of licences</i>	
<u>9</u>	<u>Director-General of Health may suspend or cancel licence</u>	<u>25</u>
<u>10</u>	<u>Surrender of licence by service provider</u>	<u>25</u>
	<i>Review of decisions</i>	
<u>11</u>	<u>Application for review of decision</u>	<u>26</u>
<u>12</u>	<u>Decision on application for review</u>	<u>26</u>
<u>13</u>	<u>What service provider may do while decision to suspend or cancel licence is under review</u>	<u>26</u>
	<i>Other matters</i>	
<u>14</u>	<u>Licence is not transferable</u>	<u>27</u>
<u>15</u>	<u>Director-General of Health must ensure that list of service providers is published</u>	<u>27</u>

*Issuing of licences***1 Application for licence**

(1) An individual or entity may apply to the Director-General of Health for a licence to be a drug and substance checking service provider.

(2) An application must—

(a) be in a form or manner approved by the Director-General of Health or prescribed by regulations made under this Act; and

(b) include or be accompanied by particulars, information, documents, or other material required by the Director-General or prescribed by regulations made under this Act.

2 Director-General of Health may refuse to process application for licence

(1) The Director-General of Health may refuse to process an application for a licence if the application does not comply with **clause 1**.

(2) If the Director-General of Health refuses to process an application, the Director-General must give the applicant written notice of the refusal and the reasons for it.

3 Director-General of Health may request further information, etc

(1) The Director-General of Health may request an applicant for a licence to supply further particulars, information, documents, or other material before deciding whether to issue the licence.

(2) An application for a licence lapses if the further particulars, information, documents, or other material requested is not supplied within—

(a) 30 days after the date of the request; or

(b) any further time that the Director-General of Health may allow by written notice to the applicant.

4 Decision on licence application

(1) The Director-General of Health may issue a licence if satisfied that—

(a) the applicant is suitable; and

(b) the applicant's proposed service model (including the proposed methods for testing drugs and substances) will enable the applicant to carry out their functions as a service provider to an appropriate standard; and

(c) the applicant will ensure that those functions are carried out to an appropriate standard; and

(d) the applicant will ensure that all of their workers who perform those functions are appropriately trained; and

(e) the applicant will ensure that all controlled drugs or psychoactive substances in the applicant's possession are stored securely; and

- (f) the information and harm reduction advice that the applicant proposes to provide to help individuals make informed decisions about drug and substance use is accurate and appropriate (having regard to the principles set out in **clause 6**); and
- (g) the applicant has given proper consideration to their obligations under the Privacy Act 2020 (including how they will comply with the information privacy principles set out in section 22 of that Act). 5
- (2) The Director-General of Health must not issue a licence without the Minister's approval if any relevant person, or an entity of which any relevant person was a responsible person at the time of the conviction or revocation,— 10
- (a) has been convicted of an offence against this Act or its regulations; or
- (b) has had a licence under this Act revoked for failing to comply with a licence condition or a requirement of this Act or its regulations.
- (3) The Minister must not give their approval unless the Minister is satisfied that the applicant is suitable. 15
- (4) The Director-General of Health must decline an application if the Director-General is not satisfied of any of the matters listed in **subclause (1)**.
- (5) If the Director-General of Health decides to decline an application, the Director-General must give the applicant written notice of the decision and the reasons for it. 20
- (6) In this clause,—
- relevant person** means,—
- (a) if the applicant is an individual, that individual;
- (b) if the applicant is an entity, that entity and every responsible person **suitable**, in relation to an applicant, has the meaning given by **clause 5**. 25
- 5 Deciding whether applicant is suitable**
- (1) For the purposes of **clauses 4 and 9**, an applicant is **suitable** if the Director-General of Health or the Minister (as the case may be) is satisfied that—
- (a) the applicant will comply with this Act, its regulations, and the applicant's licence conditions; and 30
- (b) there is no other reason why the applicant would not be suitable.
- (2) The Director-General of Health or the Minister must have regard to the following when deciding whether **subclause (1)(a)** is met:
- (a) whether the applicant (and, if the applicant is an entity, any responsible person) has been convicted of— 35
- (i) an offence against this Act, the Psychoactive Substances Act 2013, or the Medicines Act 1981 (or any regulations made under any of those Acts); or

- (ii) a crime involving dishonesty (as defined in section 2(1) of the Crimes Act 1961); and
- (b) whether there has been a serious or repeated failure by the applicant (and, if the applicant is an entity, any responsible person) to comply with any requirement of this Act or its regulations; and 5
- (c) if the applicant or any responsible person has been convicted of an offence of a kind referred to in **paragraph (a)** or has been responsible for non-compliance of the kind referred to in **paragraph (b)**,—
- (i) the nature, seriousness, and circumstances of the offending or non-compliance; and 10
- (ii) the relevance of the offending or non-compliance to the functions of service providers; and
- (iii) the time that has elapsed since the offending or non-compliance; and
- (d) whether there are other grounds for considering that the applicant may fail to comply with any requirement of this Act, its regulations, or the applicant's licence conditions. 15
- (3) The Director-General of Health or the Minister must have regard to the following when deciding whether **subclause (1)(a) and (b)** is met:
- (a) any evidence provided by the applicant about their suitability; and 20
- (b) any other matter that the Director-General or the Minister considers relevant.
- 6 Deciding whether information and harm reduction advice is accurate and appropriate**
- For the purposes of **clauses 4 and 9**, the Director-General of Health must have regard to the following principles when deciding whether information or harm reduction advice that has been given, or is proposed to be given, is accurate and appropriate: 25
- (a) the information or advice should be based on the best information available at the time to the service provider: 30
- (b) the information or advice should not consist solely of advice not to consume a drug or substance:
- (c) the information or advice should not be of a kind that a reasonable person in the position of the individual receiving it would regard as stigmatising or expressing a moral judgement about them or their actions: 35
- (d) the information or advice should be tailored as far as is reasonably practicable to the individual who is receiving it and their circumstances.
- 7 Director-General of Health may impose, amend, and revoke conditions**
- (1) The Director-General of Health may, by written notice to a service provider,—

- (a) impose conditions on the service provider’s licence when issuing it;
 (b) amend or revoke conditions, or impose new conditions, on the service provider’s licence after it has been issued.
- (2) The Director-General of Health may impose, amend, or revoke a condition only if the Director-General considers it is necessary or desirable after having regard to the functions of service providers and the criteria for issuing a licence under **clause 4**. 5
- (3) The Director-General of Health may amend or revoke a condition, or impose a new condition, under **subclause (1)(b)** only if—
- (a) the Director-General has also— 10
- (i) given the service provider at least 21 days’ written notice of the proposed amendment, revocation, or new condition and the reasons for it; and
 (ii) had regard to the submissions (if any) made by the service provider about the proposed amendment, revocation, or new condition; or 15
- (b) the service provider has requested or agreed to the amendment, revocation, or new condition.
- (4) The Director-General of Health must give a service provider written reasons for imposing a condition under **subclause (1)(a)** if the service provider asks the Director-General to do so. 20
- (5) A condition imposed under this clause—
- (a) is in addition to the conditions imposed by **sections 35DDA to 35DDK**; and
 (b) may specify— 25
- (i) how the service provider must comply with any of those conditions; or
 (ii) other requirements that relate to any of those conditions.
- Duration of licences*
- 8** **Duration of licence** 30
- (1) A service provider’s licence remains in force until the close of the third anniversary of the date on which it was issued, unless—
- (a) the Director-General of Health specifies a shorter period for the licence; or
 (b) the licence is cancelled under **clause 9**; or 35
 (c) the service provider surrenders the licence under **clause 10**.
- (2) The Director-General of Health must give the service provider written reasons for specifying a shorter licence period under **subclause (1)(a)**.

*Suspension, cancellation, or surrender of licences***9 Director-General of Health may suspend or cancel licence**

- (1) The Director-General of Health may suspend or cancel a service provider's licence if, at any time after the licence has been issued, the Director-General is satisfied of 1 or more of the following: 5
- (a) that the information provided in or with the service provider's licence application was materially false or misleading:
- (b) that the service provider has breached 1 or more conditions of their licence:
- (c) that the service provider is no longer suitable (as defined in **clause 5**, which applies as if the service provider were an applicant). 10
- (2) The Director-General of Health must have regard to the principles set out in **clause 6** when deciding whether a service provider has breached the condition set out in **section 35DDF** (service provider must provide accurate and appropriate harm reduction advice with test results). 15
- (3) The Director-General of Health may suspend a service provider's licence, for a period of time that is reasonable in the circumstances, to enable the Director-General to consider whether to cancel the licence.
- (4) The Director-General of Health may cancel a service provider's licence only after— 20
- (a) giving the service provider a reasonable opportunity to be heard; and
- (b) considering any evidence provided by the service provider; and
- (c) considering submissions made by the service provider.
- (5) If the Director-General of Health decides to suspend or cancel a service provider's licence, the Director-General must give the service provider written notice of the decision and the reasons for it. 25

10 Surrender of licence by service provider

- (1) A service provider must surrender their licence by giving written notice to the Director-General of Health if the service provider no longer performs any of the functions of a service provider. 30
- (2) The service provider must give the notice within 30 days after ceasing to perform the functions of a service provider.
- (3) A service provider may surrender their licence by giving written notice to the Director-General of Health at any other time.

*Review of decisions***11 Application for review of decision**

- (1) An individual or entity may apply for a review of the Director-General of Health's decision to—
- (a) decline to issue a licence to the individual or entity under **clause 4**; or 5
 - (b) impose, amend, or revoke a condition on the licence of the individual or entity under **clause 7**; or
 - (c) suspend or cancel the licence of the individual or entity under **clause 9**.
- (2) The individual or entity must apply to the Director-General of Health before the close of the 14th day after the day on which they receive written notice of the decision. 10

12 Decision on application for review

- (1) After receiving the application for review under **clause 11**, the Director-General of Health must appoint a person to conduct the review (the **reviewer**).
- (2) The reviewer may be an employee of the Ministry of Health but must not have had any previous involvement in the case. 15
- (3) If, after conducting the review, the reviewer—
- (a) considers the decision well founded, the reviewer must recommend that the decision be confirmed;
 - (b) does not consider the decision well founded, the reviewer must recommend that the decision be reconsidered. 20
- (4) After considering the reviewer's recommendation, the Director-General of Health must—
- (a) confirm the decision or make a new decision; and
 - (b) give the applicant written notice of the confirmed or new decision and the reasons for it. 25
- (5) The notice has effect as soon as it is given to the applicant.
- (6) The Director-General of Health must make a decision under this clause before the close of the 60th day after the day on which the Director-General receives the application for review. 30
- (7) However, the Director-General of Health may extend that period for as long as is reasonably necessary if the applicant fails to provide, within a reasonable time, information reasonably required by the reviewer to carry out the review or by the Director-General to make the decision.

13 What service provider may do while decision to suspend or cancel licence is under review 35

- (1) This clause applies to the period that—

- (a) starts when a service provider whose licence has been suspended or cancelled under **clause 9** applies for a review of the decision to suspend or cancel the licence in accordance with **clause 11**; and
- (b) ends when the Director-General of Health gives written notice of the Director-General's confirmed or new decision under **clause 12(4)(b)**. 5
- (2) Despite the suspension or cancellation of the service provider's licence, the service provider may perform—
- (a) the functions of a service provider that are specified in **section 35DB(1)(e) to (g)** (which relate to disposing of, or arranging for the testing of, drugs or substances); and 10
- (b) any other function of a service provider with the Director-General of Health's approval.
- (3) The Director-General of Health may, by written notice to the service provider, impose additional conditions on the service provider's licence that the Director-General considers necessary or desirable after having regard to the reasons for the original decision to suspend or cancel the licence. 15
- (4) The Director-General of Health must give a service provider written reasons for imposing an additional condition if the service provider asks the Director-General to do so.
- (5) An additional condition ceases to have effect when the Director-General of Health gives written notice of the confirmed or new decision. 20

Other matters

14 Licence is not transferable

A licence issued to a service provider is not transferable to another individual or entity. 25

15 Director-General of Health must ensure that list of service providers is published

The Director-General of Health must ensure that an up-to-date list of service providers is published on an Internet site that is maintained by or on behalf of the Ministry of Health. 30

Legislative history

11 May 2021
18 May 2021

Introduction (Bill 34–1)
First reading and referral to Health Committee