

In Confidence

Office of the Minister of Health

Cabinet Social Wellbeing Committee

Regulation of drug checking services

Proposal

- 1 This paper seeks agreement to amend the Misuse of Drugs Act 1975 and the Psychoactive Substances Act 2013 to enable a permanent system of regulation for drug checking service providers.

Relation to government priorities

- 2 This proposal does not relate to a Government priority.

Executive Summary

- 3 Drug checking services check the composition of illicit drugs and provide harm reduction advice to help individuals make informed decisions about drug use. Where a drug is not as presumed, the individual can make the potentially life-saving decision not to consume it.
- 4 Drug checking is currently regulated under amendments made by the Drug and Substance Checking Legislation Act 2020 (the Drug Checking Act) to the Misuse of Drugs Act and the Psychoactive Substances Act. These amendments allow appointed drug checking service providers to operate with legal certainty.
- 5 The Drug Checking Act was always intended to be temporary legislation to allow time for a permanent licensing system to be developed. The Drug Checking Act includes mechanisms which will repeal the amendments to the Misuse of Drugs Act and the Psychoactive Substances Act in December 2021.
- 6 If a permanent system is not in place when the Drug Checking Act repeal provisions take effect, drug checking will revert to a legal grey area. This would impede service provision and make it more difficult to prevent harm from dangerous substances such as synthetic cathinones (sometimes known as “bath salts”). Regulation is required to enable good quality services and to prevent low-quality service providers from operating.
- 7 A licensing system under the Misuse of Drugs Act would allow licensed providers to operate with legal certainty, ensure safety and quality of the service, and assist flexible and equitable service provision.
- 8 A licensing system to allow drug checking will require an amendment to the Misuse of Drugs Act and the Psychoactive Substances Act and require regulations to be made under the Misuse of Drugs Act. Transitional arrangements to extend the current drug checking provisions will also be necessary to ensure there is no gap between the current provisions, and the proposed permanent provisions.

Background

Drug checking services

- 10 Drug harm reduction is a health and social justice kaupapa which recognises that some people consume legal and illegal drugs, and that some of the harms arising from drug use can be prevented.
- 11 Drug checking services are one example of harm reduction. They check the composition of illicit drugs and provide harm reduction advice to help individuals make informed decisions about drug use. Where a drug is not as presumed, the individual can make the potentially life-saving decision not to consume it.
- 12 Once the substance's likely composition is determined, clients are told about the risks and harms associated with that drug and how to reduce or avoid them. Drug checking creates opportunities to connect with people who are often difficult to reach with health messaging.
- 13 In New Zealand and overseas, research consistently shows that most people will discard their drugs if they find out that they are not as expected, especially if the drugs are shown to be particularly dangerous.
- 14 Even where the drug is as expected, Victoria University of Wellington research commissioned by the Ministry of Health shows that people will often reduce their risks by taking less of the drug, or by not combining it with other drugs.¹ Risk-reduction activity can prevent a lot of harm: one festival in England saw one drug-related hospitalisation in its first year of drug checking, compared to 19 drug-related hospitalisations the year before.²
- 15 The only organisation in New Zealand currently providing drug checking services is KnowYourStuffNZ (KYS). KYS is a volunteer run organisation founded in the early 2010s by music festival organisers and medics who wanted to reduce drug-related harm at their events. Since 2019, KYS have also provided drug checking to the general public at "static clinics" in major central business districts.
- 16 Until December 2020, drug checking operated in a legal grey area. Drug checkers were potentially committing an offence if they handled drugs during testing, or if they took possession of drugs for disposal or further testing. Festival organisers and other hosts were potentially committing an offence under section 12 of the Misuse of Drugs Act, as the presence of drug checking suggested that they were knowingly allowing drug offences to take place on their premises.

¹ Hutton (2020), 'Drug Checking at New Zealand Festivals: Final Report', available at https://openaccess.wgtn.ac.nz/articles/report/Drug_Checking_at_New_Zealand_Festivals_Final_Report_/13936346

² Measham (2019), 'Drug safety testing, disposals and dealing in an English field: Exploring the operational and behavioural outcomes of the UK's first onsite "drug checking" service', *International Journal of Drug Policy*, 67, page 106, <https://doi.org/10.1016/j.drugpo.2018.11.001>

The Drug and Substance Checking Legislation Act 2020

- 17 Recreational drugs are largely controlled by either the Misuse of Drugs Act or the Psychoactive Substances Act. These Acts were amended by the Drug and Substance Checking Legislation Act (the Drug Checking Act), which came into force on 8 December 2020.
- 18 The Drug Checking Act amended the Misuse of Drugs Act and the Psychoactive Substances Act to enable the Director-General of Health to appoint drug checking service providers. Appointed providers can provide drug checking services with legal certainty, and the services can be hosted without risk of prosecution under the Misuse of Drugs Act.
- 19 The Drug Checking Act is a short-term measure to enable drug checking to take place with legal certainty over the summer of 2020/21. It provides that the amendments to the Misuse of Drugs Act and the Psychoactive Substances Act will be repealed on 8 December 2021, 12 months after the Drug Checking Act came into force.
- 20 KYS are so far the only service provider to be appointed under the Drug Checking Act. No other providers have applied for appointment. Over time we expect more providers to enter the market, especially if a permanent regulatory system is introduced.
- 21 Since the law change, demand for drug checking has increased beyond KYS's ability to meet it. They estimate that resource requirements to meet the increased demand from events have roughly quadrupled. There is also high demand for testing outside of festivals, with some static clinics reaching capacity within 15 minutes of opening.
- 22 KYS's testing since mid-December 2020 has revealed large quantities of synthetic cathinones being mis-sold as MDMA. Synthetic cathinones (also known as 'bath salts') are a large category of synthetic drugs, including eutylone, N-ethylpentylone, and mephedrone. Some of these substances have been linked to deaths overseas and hospitalisations in New Zealand. In the days leading up to New Year's Eve 2020, nearly 40 percent of supposed MDMA tested by KYS was found to be eutylone.
- 23 The law change has enabled KYS to operate more openly, and this has made it easier for them to quickly inform people about the presence and dangers of synthetic cathinones. KYS report that 75 percent of people whose drugs were tested and found to be eutylone had decided not to consume them. Enabling informed choices about drug consumption is likely to have prevented significant harm from synthetic cathinones, potentially including hospitalisation and death.

Analysis

- 24 The amendments made by the Drug Checking Act will automatically repeal in December 2021. If a permanent system is not in place by this time, drug checking will revert to a legal grey area. It will be harder to provide drug checking services, which in turn will make it harder to detect and raise awareness of particularly dangerous illicit drugs such as eutylone. If new drug checking providers begin operating, it will not be possible to assess their quality or act if they are providing harmful advice.

Policy objectives

- 25 The objective of this policy is to reduce risk and harm from illicit drugs, particularly from drugs which are not as purported. These harms include hospitalisation and death, as well as less severe mental and physical health harms.
- 26 The following criteria have been used to determine the best permanent approach to enabling drug checking services:
- 26.1 **Safety and quality:** authorised services need to be demonstrably fit for purpose, including delivering accurate test results and appropriate harm reduction messaging.
- 26.2 **Equitable access:** drug checking services should be readily available to those who need them. There should not be financial, cultural, geographical or other barriers to access. The regulatory system must comply with the principles of Te Tiriti o Waitangi.
- 26.3 **Practicality and flexibility:** the regulatory system should ensure that policy objectives are achieved without imposing unnecessary compliance costs on the Crown or regulated parties. It should be sufficiently flexible to allow a range of approaches, in particular best practice kaupapa Māori services.
- 27 I consider that the best permanent approach for enabling drug checking services is a licensing system under the Misuse of Drugs Act. This will enable service providers to carry out drug checking with legal certainty, ensure that providers meet safety and quality standards, assist equitable access, and provide flexibility and practicality for all parties.
- 28 Permanent regulation of drug checking is an important and necessary step to achieving the objective and criteria set out above. s 9(2)(i)(iv)

Regulation by the Director-General of Health is the most practical approach

- 29 The main purpose of enabling drug checking is to reduce health risks and harms of illicit drug use. It is part of this government's policy of treating illicit drug use as a health matter. The Ministry of Health is therefore the most appropriate entity to administer regulation of drug checking, and the Director-General of Health the most appropriate person to approve or decline licensing applications. Approvals could instead be granted by the Minister of Health, but this approach may risk introducing a political element into the process.

The current regulatory approach is not best practice

- 30 Under the amendments made by the Drug Checking Act, drug checking service providers can be appointed by the Director-General of Health. Due to the temporary nature of those amendments, they do not set out any standards for providers, or state the grounds on which the Director-General may approve or decline an application for appointment. There is no provision for oversight or for revocation of appointments,

except as specified in a notice of appointment. These matters need to be addressed as part of a permanent regime.

Licensing under the Misuse of Drugs Act will balance practicality and quality control

- 31 Section 37 of the Misuse of Drugs Act enables the Governor-General to make regulations for a wide range of purposes, including issuing licences for possession and supply of controlled drugs. This has enabled regulations for licences relating to industrial hemp, medicinal cannabis, and possession of controlled drugs for research purposes. Licences are usually granted by the Director-General of Health and delegated to an entity such as Medicines Control or the Medicinal Cannabis Agency.
- 32 Implementing licensing through regulations will allow parliamentary oversight, while enabling the system to be promptly updated in response to changes in best practice. It will also allow prompt changes should any problems emerge with the system as enacted.

Licensed service providers will be enabled to operate with legal certainty

- 33 Under the proposed system, licensed providers would be authorised to:
- 33.1 test controlled drugs and unapproved psychoactive substances, and advise the person who provided the drug or substance on the outcome of testing
 - 33.2 return a drug or substance to the person who provided it for testing
 - 33.3 destroy any drugs or substances surrendered to them
 - 33.4 arrange for a drug or substance to be tested by an approved laboratory.
- 34 Licensed providers will be required to give drug harm reduction advice to clients, with the advice tailored to the drug or substance in question and the general circumstances of the client. Provision of advice will not be a licensed activity, as this would capture a far larger group than drug checking providers.
- 35 Clients of licensed drug checking services will be legally able to supply controlled drugs to the service for testing purpose. Hosts of licensed services will not be committing an offence, even if service clients may be committing drug offences.
- 36 Officials will work with the Ministry of Justice and the Parliamentary Counsel Office to determine the structure and content of the relevant offence provisions to capture providers that operate in breach or without a licence. It is likely that they will be of a similar nature to the provisions in the Drug Checking Service Act 2020, strict liability offences with the exception of without reasonable excuse, with a penalty level of a fine of \$5,000.
- 37 The provisions in this section are proposed to be the same as those amendments made by the Drug Checking Act. Assessment of the operation of those amendments indicates that they are working well and do not require modification.

Key elements of licensing system

- 38 The elements below will be provided for in regulations under the Misuse of Drugs Act.

Low or no licensing fees for providers

- 39 Drug checking is likely to be provided mostly by volunteer organisations and NGOs, and fees may be unaffordable for some providers, especially if the fees are substantial. Fees could also deter good quality services from seeking licences.

No service fees for individual clients

- 40 Licensed providers will be barred from charging service users for their services. Allowing a fee-for-service model would create inequitable service provision and make the service inaccessible to those who need it most.
- 41 Providers would still be able to charge hosts, such as music festivals, for their services. Until more providers are operating, this has potential to exacerbate inequities, as the income from festivals may incentivise providers to prioritise festivals above clinics for the general public. This in turn would make drug checking less accessible for people who cannot afford a festival ticket. However, allowing for providers to charge hosts reflects that hosts receive a benefit from drug checking.

Ad hoc licensing committee within the Ministry of Health

- 42 After an initial document review, licence applications would be examined by an ad hoc committee of Ministry of Health staff. The committee would then provide advice to the Director-General of Health, who will make the final decision.
- 43 An ad hoc committee is preferred to a permanent standing committee, as it will ensure that licence applications are examined by people, including experts in mental health and addiction services, who best understand the applicant's approach. For example, applicants from kaupapa Māori organisations would be examined by a committee with strong understanding of Māori health paradigms. This will help ensure that licences are not declined due to inappropriately restrictive assumptions about 'what good looks like'.
- 44 The number of licence applicants is expected to be low, so assembling committees as needed would be more practical than a permanent committee which may not meet for long periods. The committee would be composed of existing Ministry staff, identified ahead of time and assembled as needed for specific licence applications.

Provider standards and guidance

- 45 Standards and guidance will be developed, for example to ensure that harm reduction communication is clear and fits with best practice, and services are accessible to wheelchair users.
- 46 Standards will be sufficiently flexible to allow for a range of approaches, while ensuring that services are of appropriate quality. For example, it is important that key people in a provider organisation are suitable to carry out the work. Vetting processes

will need to ensure the safety and credibility of the services, without excluding people whose past experiences with illicit drugs enables them to communicate harm reduction advice effectively to people who currently use drugs.

- 47 Standards will also cover testing technologies and their use. Where a particular technology is known to be reliable and accurate for drug testing purposes, the provider will be required to show that their staff and volunteers know how to use the technology, trouble-shoot problems, and communicate results accurately. Where a provider proposes to use a new technology, the committee will also ensure that it is suitable for drug testing. In these cases, the committee will include members with a strong understanding of the technology in question.

Public register

- 48 Licensed providers will be listed on the Ministry of Health website. A similar register operates under the current regulatory system for drug checking, and under many other regulatory systems for health-related services.

Pathways for licence applications, renewals, and reviews

- 49 The system will include all standard elements of a licensing system, including pathways for licence applications and renewals, a complaints pathway, monitoring and audit provisions, enforcement mechanisms, and an appeals process where a licence has been declined or revoked.

Te Tiriti o Waitangi analysis

- 50 Officials have met with the Ministry of Health's Māori Monitoring Group, a rūpū of representatives from iwi, Māori health providers, and others representing Māori in the broader health system. The Māori Monitoring Group strongly supports enabling drug checking. Officials will continue to engage with this group throughout the policy development and implementation process.
- 51 Enabling drug checking services will help empower Māori organisations to provide or host drug checking if they choose to do so. Ensuring that services are available as needed is likely to require government funding.
- 52 The proposed regulatory system should not impose significant constraints on Māori organisations who wish to provide or support drug harm reduction services. In order to address the Tiriti principles of options and equity, the regulatory system will be designed to enable best practice kaupapa Māori services, as defined by Māori.
- 53 Implications for Māori who consume illicit drugs are addressed in the Population Implications section below.

Implementation

- 54 The licensing system will not require a complex implementation process. Apart from legislative change, the key implementation tasks will be:

54.1 Designing pathways for licence applications and renewals

- 54.2 Assembling a list of people suitable to serve on ad hoc licence committees
 - 54.3 Designing a pathway for complaints about service providers
 - 54.4 Developing provider standards
 - 54.5 Developing systems and processes for monitoring and audit of providers.
- 55 There is likely to be a gap between the expiry of the current system and the earliest point at which licences can be granted. To address this, there will be transitional provisions in the new Act allowing appointed drug checking services to continue.

Financial Implications

- 56 There will be costs for the establishment and operation of the licensing system. These have been estimated at \$0.5 to \$1.0 million per annum and can be reprioritised within Vote Health baselines for the 2021/22 financial year. This would cover implementation and operational costs of reviewing licence applications, and ongoing monitoring and auditing of compliance costs.
- 57 It is not possible to know how many organisations will apply for licences, but officials estimate that numbers will be low. Monitoring costs are likely to vary depending on the nature and location of the licence-holder's operations, and the extent of any concerns about their work. Overall renewal costs will depend on the timeframe between renewal. This will be determined during development of the regulations.
- 58 As noted above, I do not recommend that applicants be charged any significant fees for licensing. Most organisations likely to be providing drug checking are non-profit organisations, and any fees would exacerbate existing funding problems, especially for Māori organisations. As noted, current demand for drug checking significantly outstrips supply. ^{s 9(2)(f)(iv)}

59 ^{s 9(2)(f)(iv)}

Legislative Implications

- 60 Regulating drug checking will require a Bill to amend the Misuse of Drugs Act and the Psychoactive Substances Act. Because the Bill will relate to controlled drugs and unapproved psychoactive substances, it will use the term "drug and substance checking". For brevity, this paper has used the term "drug checking".
- 61 Most elements of the regulatory system will be enabled through regulations under the Misuse of Drugs Act. This paper seeks agreement to issuing drafting instructions for the Bill and the regulations.
- 62 ^{s 9(2)(h)}

Impact Analysis

Regulatory Impact Statement

- 63 A Regulatory Impact Statement has been prepared and is attached to this Cabinet paper.
- 64 The Ministry Quality Assurance panel has reviewed the Impact Statement titled “Regulation of drug checking services”, produced by the Ministry of Health and dated March 2021. The panel considers that the Impact Statement meets the quality assurance criteria. The Impact Statement is clear and concise. The analysis is balanced in its presentation of the information and the major impacts are identified and assessed.

Climate Implications of Policy Assessment

- 65 This policy does not have any climate implications.

Population Implications

Māori

- 66 Māori are disproportionately likely to suffer from drug harm, including physical and mental health impacts, and justice system sanctions. Acting to reduce that harm would respond to the Tiriti principles of active protection and equity.
- 67 Enabling drug checking is likely to reduce some drug harm to Māori, especially when drug checking is available outside of ticketed events. There is potential for drug checking services tailored to respond to some of the most harmful drugs, such as methamphetamine.

Pacific peoples

- 68 Research conducted for the Ministry for Pacific Peoples indicates that drug-related harm is becoming more common amongst Pacific communities, particularly in relation to methamphetamine.
- 69 Enabling drug checking is likely to reduce some drug harm to Pacific peoples, especially when drug checking is available outside of ticketed events, and services are developed by and for Pacific communities.

Rainbow communities

- 70 Research in New Zealand and overseas shows that rainbow communities (gay, lesbian, and transgender people and other sexual and gender minority groups) have higher rates of illicit drug use than the general population and are therefore likely to have higher rates of drug-related harm.³

³ Research summarised in Adams, Dickinson, and Asiasiga, (2012) ‘Mental health promotion and prevention services to gay, lesbian, bisexual, transgender and intersex populations in New Zealand: Needs assessment report’, pages 18-20, available at <https://www.mentalhealth.org.nz/assets/ResourceFinder/mental-health-promotion-and-prevention-services-to-gay-lesbian-bisexual-transgender.pdf>

- 71 Enabling and improving access to drug checking and other harm reduction services is likely to reduce some drug harm inequities experienced by rainbow communities, especially if services are provided at rainbow events and venues. As with the general population, it is likely that more privileged community members will benefit more.

People with disabilities and/or health conditions

- 72 New Zealand Health Survey Data indicates that disabled New Zealanders have higher rates of illicit drug use than other New Zealanders, and therefore are likely to have higher rates of drug-related harm. This inequity will be increased if drug harm reduction services are not equitably accessible to disabled people. Services should be fully accessible, for example by requiring clinics to be wheelchair accessible and for written material to be in accessible formats.
- 73 Some illicit drugs carry higher risks for people with particular physical and mental health conditions, for example through interactions with prescription medications. Tailored harm reduction messaging can reduce risks for people who may be particularly vulnerable to drug harm.
- 74 Enabling service providers to handle drugs has made drug checking more accessible to some disabled people. Before the law change, service users had to place the drugs on a small part of the testing machinery, which was difficult or impossible for some people with vision or muscle control impairments.

Human Rights

- 75 This proposal complies with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

- 76 Close consultation has been carried out with the Ministry of Justice and New Zealand Police. They support the recommendations in this paper. The Ministry of Justice notes that this change further complicates the Misuse of Drugs Act, and that this is at odds with recommendations from the 2011 Law Commission on the Misuse of Drugs Act.
- 77 This Cabinet paper has been reviewed by the Treasury, Te Puni Kōkiri, WorkSafe New Zealand, the Ministry for Pacific Peoples, and the Ministry of Business, Innovation and Employment. The Regulatory Impact Statement has been reviewed by Treasury.
- 78 The Ministry of Health has also engaged on this policy with the following non-government stakeholders: KnowYourStuffNZ, the New Zealand Drug Foundation, the New Zealand Union of Students' Associations, the New Zealand Promoters' Association, and the Entertainment Venues Association of New Zealand.
- 79 Ministry of Health officials have held discussions with drug checking service providers in the United Kingdom, the United States, France and Switzerland.

Communications

- 80 I intend to communicate the decisions arising from this paper by way of a press release.

Proactive Release

- 81 I intend to proactively release this paper, subject to any redactions, after decisions have been made by Cabinet.

Recommendations

- 82 I recommend that the Committee:

- 1 **note** that drug checking is an effective harm reduction tool and can save lives
- 2 **note** that the Drug and Substance Checking Legislation Act 2020 will repeal in early December 2021, and that if a new system is not in place by this time, drug checking services will revert to a legal grey area
- 3 **note** that a licensing system for drug checking service providers will enable licensed providers to operate with legal certainty, ensure safety and quality, and assist flexible and equitable service provision, ^{s 9(2)(f)(iv)} [REDACTED]
- 4 **note** the costs of the licensing system may be up to \$1 million per annum, and this funding can be reprioritised within existing Vote Health baselines if the necessary legislative changes are made
- 5 **agree** to amend the Misuse of Drugs Act 1975 to:
 - 5.1 enable a system for drug checking service providers to be licensed by the Director-General of Health
 - 5.2 list the functions of a drug and substance checking service provider, including testing of drugs and substances, and disposal of surrendered drugs and substances
 - 5.3 require licensed providers to provide tailored drug harm reduction advice as part of their service
 - 5.4 allow licensed providers to possess and supply controlled drugs for drug checking purposes
 - 5.5 allow persons to supply controlled drugs to licensed providers for testing or disposal purposes
 - 5.6 provide that it is not an offence under section 12 of the Misuse of Drugs Act to permit a premises to be used by a licensed provider
 - 5.7 create offence provisions to capture the conduct of providers that operate in breach of licence conditions, or provide drug checking services without a

licence, with the provisions to have relevant defences and/or a 'reasonable excuse' exemption

- 5.8 create a penalty for the offences in recommendation 5.7, which will consist of a fine not greater than \$5,000
- 5.9 create a regulation making power for drug checking service licensing, if required.
- 6 **agree** to amend the Psychoactive Substances Act 2013 to enable licensed providers to operate with legal certainty
- 7 **agree** to any consequential changes to the Misuse of Drugs Act and the Psychoactive Substances Act required to give effect to this policy
- 8 **agree** to create regulations to give effect to elements of the regulatory system, specifically:
 - 8.1 pathways for licence applications, renewals, suspensions and revocations
 - 8.2 an appeals process where a licence has been declined, suspended or revoked
 - 8.3 a pathway for complaints about service providers
 - 8.4 standards and guidance for service providers
 - 8.5 a pathway for the use of new drug checking technologies and methods
 - 8.6 requirements for all licence-holders on matters including:
 - 8.6.1 accessibility, for example wheelchair accessibility
 - 8.6.2 that clients are not charged to use the service
 - 8.6.3 reporting
 - 8.6.4 monitoring and audit
 - 8.6.5 training, qualifications and experience
 - 8.6.6 suitability of key individuals
 - 8.7 the setting of conditions in individual licences.
- 9 **authorise** the Minister of Health to issue drafting instructions to Parliamentary Counsel Office to amend the Misuse of Drugs Act and the Psychoactive Substances Act in the manner agreed in recommendations 5,6, and 7 above
- 10 **authorise** the Minister of Health to issue drafting instructions to Parliamentary Counsel Office to create regulations under the Misuse of Drugs Act in the manner agreed in recommendation 8 above

11

s 9(2)(h)

Authorised for lodgement

Hon Andrew Little

Minister of Health

Proactively released

Appendix: Comparing the Drug Checking Act with the proposed Bill

This table shows the key differences and similarities between the Drug and Substance Checking Legislation Act 2020 (the Drug Checking Act) and the new Bill proposed in this paper.

Drug Checking Act	Proposed Bill
Enables Director-General of Health to <i>appoint</i> drug checking service providers	Will enable Director-General of Health to <i>grant licences</i> to drug checking service providers
Appointment at discretion of Director-General; no standards for providers or specified criteria to approve or decline appointment	Appointment will be made by the Director-General on advice of a committee of Ministry of Health staff in accordance with clearly defined standards and criteria
No monitoring or review provisions for appointments	Will include monitoring requirements for licenced providers, and review provisions
No mechanism for revoking appointment	Will include mechanism for revoking a licence, including appeal process
Appointed providers can possess controlled drugs and unapproved psychoactive substances for drug checking purposes, return them to the person who provided them, destroy them, or send them to a laboratory for further testing	Will be the same as in the Drug Checking Act, but in relation to licensed (rather than appointed) providers
Individuals can supply a controlled drug or unapproved psychoactive substance to an approved provider for checking or surrender	Will be the same as in the Drug Checking Act, but in relation to licensed (rather than appointed) providers
It is not an offence against section 12 of the Misuse of Drugs Act to host an approved provider	Will be the same as in the Drug Checking Act, but in relation to licensed (rather than appointed) providers
It is an offence to conduct drug checking without an appointment, or to breach appointment conditions	Will be the same as in the Drug Checking Act, but in relation to licences rather than appointments



Cabinet Social Wellbeing Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Regulation of Drug Checking Services

Portfolio **Health**

On 24 March 2021, the Cabinet Social Wellbeing Committee:

- 1 **noted** that drug checking is an effective harm reduction tool and can save lives;
- 2 **noted** that in November 2020, Cabinet approved introduction of the Drug and Substance Checking Legislation Bill, noted that the Bill was time limited to 12 months, and invited the Minister of Health (the Minister) to report back in 2021 with long term proposals for drug checking services [CAB-20-MIN-0495];
- 3 **noted** that the Drug and Substance Checking Legislation Act 2020 will repeal in early December 2021, and that if a new system is not in place by this time, drug checking services will revert to a legal grey area;
- 4 **noted** that a licensing system for drug checking service providers will enable licensed providers to operate with legal certainty, ensure safety and quality, and assist flexible and equitable service provision, ^{s 9(2)(f)(iv)} [REDACTED]
- 5 **noted** that the costs of the licensing system may be up to \$1 million per annum, and this funding can be reprioritised within existing Vote Health baselines if the necessary legislative changes are made;
- 6 **agreed** to amend the Misuse of Drugs Act 1975 to:
 - 6.1 enable a system for drug checking service providers to be licensed by the Director-General of Health;
 - 6.2 list the functions of a drug and substance checking service provider, including testing of drugs and substances, and disposal of surrendered drugs and substances;
 - 6.3 require licensed providers to provide tailored drug harm reduction advice as part of their service;
 - 6.4 allow licensed providers to possess and supply controlled drugs for drug checking purposes;
 - 6.5 allow persons to supply controlled drugs to licensed providers for testing or disposal purposes;

- 6.6 provide that it is not an offence under section 12 of the Misuse of Drugs Act 1975 to permit a premises to be used by a licensed provider;
- 6.7 create offence provisions to capture the conduct of providers that operate in breach of licence conditions, or provide drug checking services without a licence, with the provisions to have relevant defences and/or a 'reasonable excuse' exemption;
- 6.8 create a penalty for the offences in paragraph 6.7 above, which will consist of a fine not greater than \$5,000;
- 6.9 create a regulation making power for drug checking service licensing, if required;
- 7 **agreed** to amend the Psychoactive Substances Act 2013 to enable licensed providers to operate with legal certainty;
- 8 **authorised** the Minister of Health to approve any consequential changes to the Misuse of Drugs Act 1975 and the Psychoactive Substances Act 2013 required to give effect to the above policy;
- 9 **agreed** to create regulations to give effect to elements of the regulatory system, specifically:
 - 9.1 pathways for licence applications, renewals, suspensions and revocations;
 - 9.2 an appeals process where a licence has been declined, suspended or revoked;
 - 9.3 a pathway for complaints about service providers;
 - 9.4 standards and guidance for service providers;
 - 9.5 a pathway for the use of new drug checking technologies and methods;
 - 9.6 requirements for all licence-holders on matters including:
 - 9.6.1 accessibility, for example wheelchair accessibility;
 - 9.6.2 that clients are not charged to use the service ;
 - 9.6.3 reporting;
 - 9.6.4 monitoring and audit;
 - 9.6.5 training, qualifications and experience;
 - 9.6.6 suitability of key individuals;
 - 9.7 the setting of conditions in individual licences;
- 10 **invited** the Minister of Health to issue drafting instructions to Parliamentary Counsel Office to:
 - 10.1 amend the Misuse of Drugs Act 1975 and the Psychoactive Substances Act 2013 to reflect the decisions in paragraphs 6, 7 and 8 above;
 - 10.2 create regulations under the Misuse of Drugs Act 2013 to reflect the decision in paragraph 9 above;

Rachel Clarke
Committee Secretary

Present:

Rt Hon Jacinda Ardern
Hon Kelvin Davis
Hon Dr Megan Woods
Hon Carmel Sepuloni (Chair)
Hon Andrew Little
Hon Kris Faafoi
Hon Peeni Henare
Hon Willie Jackson
Hon Dr Ayesha Verrall
Hon Aupito William Sio
Hon Priyanca Radhakrishnan
Hon Marama Davidson

Officials present from:

Office of the Prime Minister
Office of the SWC Chair
Officials Committee for SWC

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