

IN CONFIDENCE

Office of the Minister of Health  
Cabinet Legislation Committee

## **Misuse of Drugs (Drug and Substance Checking Service Providers) Regulations 2022**

### **Proposal**

- 1 This paper seeks authorisation for submission to the Executive Council of the Misuse of Drugs (Drug and Substance Checking Service Providers) Regulations 2022.

### **Executive Summary**

- 2 Drug checking advises people on the likely content of illicit drugs, and how harms associated with those drugs can be prevented or reduced. The Misuse of Drugs Act 1975 has been amended to enable a licensing scheme for drug checking service providers.
- 3 Regulations are required to support the licensing scheme. This paper seeks the approval of Cabinet to submit those regulations to the Executive Council.
- 4 Most of these regulations were agreed to by Cabinet in December 2021 [CAB-21-MIN-05025.01]. I recommend that Cabinet also agree to the following regulations:
  - 4.1 a regulation requiring licence holders to inform the Director-General of Health if a licence holder changes their responsible people;
  - 4.2 a regulation prohibiting licence holders from storing illicit drugs or substances on residential premises;
  - 4.3 exemptions from regulations 23, 25, 38, 47, 51 and 52 of the Misuse of Drugs Regulations 1977, which would be inappropriate to apply to drug checking licence holders or their service users.

### **Policy**

#### **Regulations are needed to support licensing of drug checking services**

- 5 Drug checking is a service that identifies the likely contents of illicit drugs and provides advice to people who use those drugs on how the associated harms can be prevented or reduced.

- 6 In November 2021, the Misuse of Drugs Act 1975 (the Act) was amended to enable a licensing scheme for drug checking service providers, and to allow licensed providers to operate with legal certainty.
- 7 Most elements of the licensing scheme are now in the Act. A few elements are too detailed, or too likely to change, to sit appropriately in primary legislation. I consider that they are best given effect in regulations, and that these be called the Misuse of Drugs (Drug and Substance Checking Service Providers) Regulations 2022 (the regulations).
- 8 On 13 December 2021, Cabinet agreed to regulations to support the licensing scheme for drug checking providers [CAB-21-MIN-05025.01]. The agreed regulations are:
- 8.1 requirements for licence applications, such as a description of the service model and the results of criminal record checks;
  - 8.2 a pathway for licence renewals;
  - 8.3 a requirement for all licence holders to assess the accessibility of their services, and take steps to improve accessibility if practical;
  - 8.4 a regulation specifying that the drug information body referred to in the Drug and Substance Checking Legislation Bill is the National Drug Intelligence Bureau;
  - 8.5 timeframes for licensed providers to retain information.

**Additional regulations are needed**

- 9 As part of work to establish the licensing scheme, Ministry of Health officials have identified that the following regulations are also required:
- 9.1 a regulation requiring licence holders to inform the Director-General of Health (the Director-General) if a licence holder changes their responsible people;
  - 9.2 a regulation prohibiting licence holders from storing illicit drugs or substances on residential premises;
  - 9.3 exemptions from regulations in the Misuse of Drugs Regulations 1977 which would be inappropriate or impractical to apply to drug checking licence holders or their service users.
- 10 These additional proposed regulations are explained in more detail below.

*Proposed regulation on changes to responsible people*

- 11 The Act defines a “responsible person” as a director, partner or trustee of a drug checking organisation. If the organisation does not have directors,

partners or trustees, a person acting in the same or similar fashion is a responsible person.

- 12 When deciding whether an applicant is suitable to hold a drug checking licence, the Director-General (or the Minister of Health in some circumstances) must take into account whether any responsible person has been convicted of a relevant offence or has engaged in serious or repeated non-compliance with the Act.
- 13 To ensure the ongoing suitability of licence holders, a regulation is needed to require licence holders to inform the Director-General of any changes to their responsible people.
- 14 The licence holder will provide the name of the responsible person and a copy of their criminal record check. The Director-General or Minister of Health can then determine whether the licence holder is still suitable. If the licence-holder has become unsuitable, the Director-General may suspend or cancel the licence.

*Proposed regulation barring storage of drugs on residential premises*

- 15 The Act enables drug checking licence holders to possess illicit drugs in order to carry out their functions, and requires them to store the drugs securely. It is not safe or appropriate for drugs to be stored on residential premises. Compliance monitoring would be legally difficult, and there would be risk to occupants of the house, especially children. I am particularly mindful of the risk to occupants should the drugs be targeted for burglary.
- 16 I therefore propose a regulation barring licence holders from storing drugs on residential premises. The proposed regulation would be similar to section 35DDC of the Act, which bars licence holders from performing drug checking functions on residential premises.

*Exemptions from the Misuse of Drugs Regulations 1977*

- 17 The Misuse of Drugs Regulations 1977 (the 1977 regulations) set out requirements for persons authorised to possess or supply controlled drugs under the Act. Most of the 1977 regulations were designed to regulate the possession and supply of controlled drugs which are also medicines, for example by pharmacists and hospitals.
- 18 Some of the 1977 regulations apply to anyone holding a licence under the Act, or anyone authorised under the Act to possess controlled drugs. This means that drug checking licence holders are subject to these regulations unless exempted.
- 19 I consider that drug checking licence holders should be exempted from those 1977 regulations which currently apply to them. Some of these regulations overlap with requirements in the Act for drug checking licence holders. Others would be inappropriate and impractical to apply to drug checking licence holders, particularly those which are volunteer organisations.

- 20 A few of the 1977 regulations apply to any person supplying a controlled drug. These regulations would therefore apply to members of the public who supply drugs for checking. This would be highly impractical, and if enforced would deter people from using the service.
- 21 I recommend that regulations exempt drug checking licence holders and their service users from the following regulations in the Misuse of Drugs Regulations 1977:
- 21.1 Regulations 23 and 25 set conditions, such as labelling requirements, for the supply of controlled drugs by any person other than a practitioner. It would be impractical and inappropriate to apply these conditions to people supplying drugs for checking, or to providers returning drugs to the person who supplied them.
  - 21.2 Regulation 38 requires anyone licensed to possess controlled drugs to keep a Controlled Drugs Register. If drug checking licence holders are not exempt from regulation 38, they will be subject to regulations 40, 42 and 43, which set requirements for Controlled Drugs Registers. These requirements overlap with record keeping requirements for drug checking licence holders. They would also be unnecessarily onerous for drug checking providers, especially those which are volunteer organisations.
  - 21.3 Regulation 47 sets out monthly reporting requirements for anyone authorised to supply controlled drugs. This regulation overlaps with reporting requirements in section 35DDI of the Act and are more onerous than is necessary or appropriate for drug checking providers.
  - 21.4 Regulation 51 specifies that communications about the Misuse of Drugs Regulations should be through the local Medical Officer of Health. Drug checking licence holders should instead communicate with the Ministry of Health's drug checking licensing team.
  - 21.5 Regulation 52 sets out penalties for offences under the Misuse of Drugs Regulations. If the above exemptions are made, none of the offence provisions in the Misuse of Drugs Regulations will apply to drug checking licence holders.
- 22 The Drug and Substance Checking Legislation Act 2021 has already exempted drug checking licence holders from storage requirements in regulation 28 of the 1977 regulations. The proposed regulations move this exemption into new regulation 52A, along with the other exemptions covered in this paper.

## Timing

- 23 The regulations will be notified in the *New Zealand Gazette* as soon as possible after officials are informed of the Executive Council's agreement. The regulations will come into force 28 days after they are notified in the *Gazette*.

- 24 Under section 2 of schedule 1AA of the Act, the Director-General may not issue a drug checking licence until the regulations come into force.

## Compliance

- 25 The regulations comply with:
- 25.1 the principles of the Treaty of Waitangi;
  - 25.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
  - 25.3 the principles and guidelines set out in the Privacy Act 2020;
  - 25.4 relevant international standards and obligations;
  - 25.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.
- 26 The regulations will be made under section 37B of the Act, which does not impose any statutory prerequisites.

## Regulations Review Committee

- 27 I am not aware of any grounds for the Regulations Review Committee to draw these regulations to the attention of the House of Representatives under Standing Order 327.

## Certification by Parliamentary Counsel

- 28 The draft regulations have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

## Impact Analysis

- 29 Treasury's Regulatory Impact Analysis team has determined that Misuse of Drugs (Drug and Substance Checking Service Providers) Regulations 2022 proposal is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

## Publicity

- 30 Once the regulations are notified in the *Gazette*, officials will inform current and intending drug checking providers. The Ministry of Health's website will be updated with information about the regulations.

## Proactive release

- 31 In accordance with Cabinet Office circular CO(18)(4), I intend to proactively release this paper, and the previous paper on regulations, within 30 business days of Cabinet agreeing the regulations.

## Consultation

- 32 The following agencies have been consulted on the regulations and this paper: New Zealand Police, the Ministry of Justice; the Department of the Prime Minister and Cabinet; the Treasury; the Ministry for Pacific Peoples; the Ministry for Business, Innovation and Employment (Health and Safety Policy); the National Drug Intelligence Bureau; and the Office of the Privacy Commissioner.

## Recommendations

I recommend that the Cabinet Legislative Committee:

- 1 note that drug checking is a service that identifies the likely contents of illicit drugs and provides advice to people who use those drugs on how the associated harms can be prevented or reduced;
- 2 note that the Misuse of Drugs Act 1975 (the Act) has been amended to enable a licensing scheme for drug checking service providers, and to allow licensed providers to operate with legal certainty;
- 3 note that on 13 December 2021, Cabinet agreed to a set of regulations to support the licensing scheme for drug checking [CAB-21-MIN-0525.01];
- 4 agree to the following additional regulations to support the licensing scheme:
  - 4.1 a regulation requiring licence holders to inform the Director-General of Health (the Director-General) if there are any changes to responsible people;
  - 4.2 a regulation that licence holders may not store illicit drugs or substances on residential premises;
  - 4.3 exemptions from regulations 23, 25, 38, 47, 51 and 52 of the Misuse of Drugs Regulations 1977, which would be inappropriate to apply to drug checking licence holders or their service users;
- 5 note that the Misuse of Drugs (Drug and Substance Checking Service Providers) Regulations 2022 will give effect to the decisions referred to in paragraphs 3 and 4 above;
- 6 authorise the submission to the Executive Council of the Misuse of Drugs (Drug and Substance Checking Service Providers) Regulations 2022;

- 7 note that the Misuse of Drugs (Drug and Substance Checking Service Providers) Regulations 2022 will be notified in the *New Zealand Gazette* as soon as possible after officials have been informed of the Executive Council's approval, and will come into force 28 days after they are notified in the *Gazette*.

Authorised for lodgement

Hon Andrew Little  
Minister of Health

PROACTIVELY RELEASED