

**In Confidence**

Office of the Minister of Health

Cabinet Social Wellbeing Committee

**Regulations to support a licensing scheme for drug checking**

**Proposal**

- 1 This paper seeks agreement to make regulations pursuant to the Misuse of Drugs Act 1975 to support a licensing scheme for drug checking service providers.

**Relation to government priorities**

- 2 This proposal does not relate to a Government priority. The regulations proposed in this paper are necessary to support the Drug and Substance Checking Legislation Act 2021, which received Royal assent on 25 November 2021.

**Executive Summary**

- 3 Consumption of illicit drugs can lead to death, hospitalisation and other harm. Drug checking works to reduce some of these harms by testing illicit drugs to ascertain the likely composition, and providing advice on how risks and harms associated with specific drugs can be reduced.
- 4 The Drug and Substance Checking Legislation Act 2021 amends the Misuse of Drugs Act 1975 to enable a licensing scheme for drug checking service providers. It was originally intended that most elements of the licensing scheme would sit in regulations. On this basis, Cabinet authorised me to issue drafting instructions for regulations in March 2021 [CAB-21-MIN-0083].
- 5 Following recommendations of the Health Select Committee, most elements of the licensing system are now in the Misuse of Drugs Act. I therefore recommend that Cabinet rescind its decision of March 2021 as it related to regulations for the drug checking licensing scheme.
- 6 Regulations are still required for elements of the licensing scheme which are too detailed, or too likely to change, to appropriately sit in primary legislation. This paper seeks your agreement to issue drafting instructions for those regulations.
- 7 I intend that the regulations will come into force in the second quarter of 2022. This will allow potential providers time to prepare for the 2022/23 festival season. The Misuse of Drugs Act now contains transitional provisions which enable drug checking providers to continue operating with legal certainty until they are able to be granted a licence under the new scheme.

## Background

### Drug checking services

- 8 Consumption of illicit drugs can lead to death, hospitalisation and other harm. Some of this harm arises from more dangerous drugs being sold as the purported drug, for example dangerous synthetic cathinones being sold as MDMA. Other harm comes from especially risky behaviour such as combining drugs, consuming too much of a drug, or from avoidable causes such as hyperthermia or car accidents.
- 9 Drug checking services check the composition of illicit drugs and provide harm reduction advice to help individuals make informed decisions about drug use. Once the 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 can be difficult to reach with health messaging.

### The Drug and Substance Checking Legislation Act 2021

- 10 The Drug and Substance Checking Legislation Act 2021 (the Drug Checking Act) amends the Misuse of Drugs Act 1975 to enable a licensing scheme for drug checking service providers.
- 11 When the Bill for the Drug Checking Act (the Bill) was introduced, the only elements of the licensing scheme in the Bill were the power of the Director-General of Health (the Director-General) to issue licences, and the offence provisions. It was intended that the other elements of the scheme, such as licensing mechanisms and requirements for licence holders, would be in regulations made under the Misuse of Drugs Act.

### Previous decisions on drug checking licensing regulations

- 12 On 24 March 2021, Cabinet agreed to create regulations for a licensing scheme for drug checking [CAB-21-MIN-0083]. This agreement was given on the understanding that most elements of the licensing scheme would be in regulations. The agreed regulations were to give effect to:
  - 12.1 pathways for licence applications, renewals, suspensions and revocations;
  - 12.2 an appeals process where a licence has been declined, suspended or revoked;
  - 12.3 a pathway for complaints about service providers;
  - 12.4 standards and guidance for service providers;
  - 12.5 a pathway for the use of new drug checking technologies and methods;
  - 12.6 requirements for all licence-holders on matters including:
    - 12.6.1 accessibility, for example wheelchair accessibility;
    - 12.6.2 that clients are not charged to use the service;

- 12.6.3 reporting;
  - 12.6.4 monitoring and audit;
  - 12.6.5 training, qualifications and experience;
  - 12.6.6 suitability of key individuals;
  - 12.6.7 the setting of conditions in individual licences.
- 13 Cabinet also invited me to issue drafting instructions to create regulations under the Misuse of Drugs Act.
- 14 All references in this paper to prior Cabinet decisions refer to these decisions.

## Analysis

### Most elements of the licensing system are now in primary legislation

- 15 The Health Select Committee amended the Bill to provide for key elements of the licensing scheme. Most elements of the licensing system are now in the Misuse of Drugs Act, as amended by the Drug Checking Act. These elements include:
- 15.1 the basis for decisions on whether to issue a licence, including matters which must be assessed before a decision is made;
  - 15.2 the grounds on which a licence may be suspended or cancelled, and the process for cancellation or suspension;
  - 15.3 an appeals process where a licence has been suspended or cancelled;
  - 15.4 conditions of all licences, including reporting and monitoring requirements, and that individuals are not charged to use the service.
- 16 The above elements overlap substantially with the elements which Cabinet agreed in March 2021 would be included in regulations. I therefore recommend that Cabinet rescind its agreement to those regulations. Appendix 1 lists every element agreed by Cabinet to sit in regulations, and where they are now located.

### Elements to be included in regulations

- 17 Regulations will still be required for some elements of the licensing scheme. These are elements which are too detailed, or too likely to change, to appropriately sit in primary legislation. They are therefore not included in the Act.
- 18 The following elements of the licensing scheme sit most appropriately in regulations:
- 18.1 requirements for a licence application
  - 18.2 the pathway for licence renewals
  - 18.3 specification of a drug information body

- 18.4 details of record keeping requirements
- 18.5 an accessibility requirement for licence holders
- 18.6 a further testing requirement for licence holders.

*Licence application requirements*

- 19 Schedule 6 of the Misuse of Drugs Act (Schedule 6) now provides that the form and manner of licence applications, and any required information or documents, be set by the Director-General or specified in regulations.
- 20 I propose that regulations require licence applicants to provide the name and contact details of the applicant. If the applicant is an entity, applicants should also be required to provide the names and contact details of the contact person for the applicant, and every ‘responsible person’ in the entity. ‘Responsible person’ is defined in the Misuse of Drugs Act as a director, partner or trustee of the applicant entity, or a person acting in the manner of a director, partner or trustee.
- 21 Section 4 of Schedule 6 provides that the Director-General may issue a licence if satisfied as to various matters, such as the suitability of the applicant and their service model. I propose that regulations require applicants to provide information and documents which will enable the Director-General to assess the matters specified in section 4.
- 22 The following table lists the matters that the Director-General is required to consider, and the information and documents which applicants should be required to provide in support of that consideration.

Director-General must be satisfied that the...	Documents or information required to be provided that the...
applicant is suitable.	Information and documents specified in paragraph 26.
applicant’s service model (including testing methods) will enable functions to be carried out to an appropriate standard.	Description of service model, which must include locations or types of locations (for example festivals, commercial premises); testing methods to be used; and how any surrendered drugs will be disposed of.
applicant will ensure that functions are carried out to an appropriate standard.	No specific information or documents required in regulations. See paragraph 23.
appropriate training will be provided to workers carrying out functions.	Examples of training materials.
drugs will be securely stored.	Description of storage arrangements.
harm reduction advice will be accurate and appropriate.	Examples of harm reduction advice in different scenarios. These may be provided as part of training materials.
applicant has given proper consideration to their obligations under the Privacy Act	Outline of risks to privacy of service users, and how these risks will be mitigated.

- 23 I do not propose that any specific information or documents be required to demonstrate that the functions will be carried out to an acceptable standard. The evidence required is likely to vary significantly from provider to provider. In some cases the applicant's competence and capability may be clear from required documents and information such as the service model, training materials and harm reduction advice. Under section 3 of schedule 6, the Director-General may request any additional documents or information if needed to make a decision.
- 24 Before issuing a licence, the Director-General must be satisfied that the applicant is suitable. For the purposes of licensing, an applicant is suitable if the Director-General (or the Minister in some circumstances) is satisfied that they will comply with the Misuse of Drugs Act, its regulations, and their licence conditions, and there is no other reason they would not be suitable.
- 25 The Director-General or Minister must take into account any drug or dishonesty-related convictions of the applicant or any of the applicant's responsible people, and any serious or repeated non-compliance with the Misuse of Drugs Act by the applicant or any responsible person. When considering any conviction or non-compliance, they must take into account the nature, seriousness and relevance of the offending or non-compliance, and the amount of time which has elapsed since it occurred.
- 26 In support of the suitability assessment, I propose that regulations require applicants to provide the following information and documents:
- 26.1 If the applicant is an entity, an outline of any activities other than drug checking carried out by the organisation. This will help determine whether there are any conflicts of interest between drug checking and other activities, or any other reason why the applicant may be unsuitable.
- 26.2 The results of a criminal record check for the applicant if they are a natural person, or every responsible person if the applicant is an entity.
- 26.3 If the applicant or any responsible person has a relevant conviction or record of non-compliance, an explanation of why that person is suitable to hold a licence or be a responsible person in relation to a licence holder.

#### *Licence renewals*

- 27 The Act does not include any provision for licence renewals. In line with the medicinal cannabis regulations, I propose that if a renewal application is made no earlier than 90 days, and no later than 30 days, before the expiry of a licence, the licence should continue in force until a decision is made on the renewal.
- 28 Renewals should not be treated as new applications, as this would be an inefficient use of resources by the Ministry of Health (the Ministry) and the applicant. Decisions on renewal should be based on assessment of any matters which have changed since the original licence was granted, the licence holder's record of compliance, and any other matter the Director-General considers relevant. The Director-General should be empowered to request any documents or information they consider relevant to the decision.

- 29 If the Director-General decides not to renew a licence, I propose that the licence holder have the right to a review of the decision, in the same way as a decision to decline to issue a licence can be reviewed.

*Specification of drug information body*

- 30 Data on illicit drugs, including data from drug checking, is currently collected and analysed by Drug Information and Alerts Aotearoa New Zealand (DIANZ). DIANZ is a function of the National Drug Intelligence Bureau (NDIB), which is a joint agency made up of representatives of the Ministry, New Zealand Police and the New Zealand Customs Service. It is supported by a network of health professionals and non-government organisations which includes drug checking providers.
- 31 Section 35DDI of the Misuse of Drugs Act requires all drug checking licence holders to report data on test results and the number of people provided with results to the Director-General and to a drug information body specified in regulations.
- 32 I propose that regulations specify the NDIB as the drug information body to which licence holders must report data. It is not possible to specify DIANZ as the drug information body, as it is a function of NDIB rather than an entity in its own right.

*Licence conditions*

- 33 The Misuse of Drugs Act now includes several requirements as conditions of all drug checking licences. These include record keeping and reporting requirements, a bar on charging service users, and a requirement to facilitate monitoring.
- 34 I propose that regulations include further requirements as conditions of all licences:
- 34.1 requirements specifying how long records must be kept for
  - 34.2 an accessibility requirement
  - 34.3 a requirement that some substances be sent for further testing.

*Record keeping condition*

- 35 Under section 35DDJ of the Misuse of Drugs Act, all drug checking licence holders must keep records of matters including test results, the number of people provided with results, and any drugs in the possession of the licence holder. The licence holder must retain each record for the period prescribed by regulations.
- 36 I propose the following requirements to be set out in regulations:
- 36.1 For information which must be reported to the Director-General and/or the drug information body, the information must be kept for 12 months after the date on which the information was sent to the Director-General and/or the drug information body.

- 36.2 For information on each kind of drug or substance in the possession of the licence holder, the information must be kept for 12 months after the licence holder ceased to have any of that drug or substance in its possession.
- 36.3 For any other information or records which the licence holder is required under regulations or licence conditions to collect or maintain, for the period specified in the relevant regulation or condition. If no time period is specified, then for 12 months after the information is collected.
- 37 If a provider decides or is required to surrender their licence, they should be required as a licence condition to send to the Director-General of Health any records or information which they have been required to collect or maintain, and which they have not already sent to the Director-General or the drug information body.
- 38 The records or information should be sent at the same time as, or before, the licence is surrendered. This is because the provider will not be bound by licence conditions once they have surrendered their licence. After the licence period ends, it will still be possible to prosecute a former licence holder for a breach of licence conditions during the licence period, including failure to provide records or information when surrendering the licence.

#### Accessibility condition

- 39 Cabinet agreed in March 2021 that requirements for all licence holders should include accessibility requirements, such as wheelchair accessibility. Further clarification is required to ensure that this requirement is workable and reasonable for providers, which are currently funded primarily through donations.
- 40 I propose that licence holders be required to take reasonable steps to assess the accessibility of their services and, where practical, take steps to improve or maintain accessibility. The Ministry intends to provide guidance explaining that practicality will depend on matters including cost, licence holder capability, and the accessibility of the location (such as a festival) where drug checking will be provided.
- 41 This requirement is expected to have a limited impact on the accessibility of drug checking. However, it should ensure that licence holders give some consideration to accessibility and improve accessibility where it is practical to do so. In the long term it may be practical and desirable to strengthen this requirement.

#### Condition requiring licence holders to send substances for further testing

- 42 For reasons of cost and portability, licence holders' testing will generally be less comprehensive than is available in laboratories. Further testing will sometimes be beneficial, for example if a substance has been linked to serious harm or cannot be identified.
- 43 Further testing of drugs collected by drug checking providers is currently co-ordinated by NDIB, through its DIANZ function. NDIB has developed a further testing protocol for organisations, including drug checking providers, who may encounter illicit drugs.

- 44 Currently, drug checking organisations proactively send samples for further testing, and respond to DIANZ requests for specific samples, but are not legally required to send samples for testing. It is desirable to ensure that all licence holders participate in the further testing system.
- 45 Which drugs are wanted for further testing can change quickly and frequently. Other elements of further testing are also likely to change over time. For this reason, it is not advisable that regulations specify any details of further testing requirements. I propose a regulation that specifies, as a condition of all licences, that providers must send drugs for further testing on the request of NDIB.
- 46 Licence holders would not be liable for any costs associated with requested testing. Under the current protocol, testing and transport of samples is funded by NDIB.
- 47 The requirement will need to be conditional on the owner of the drugs agreeing to provide a sample for further testing, if they have not surrendered the drug.

### **Elements which do not require legislative provision**

- 48 Cabinet agreed in March 2021 that regulations would give effect to requirements for all licence holders on matters including training, qualifications and experience, and suitability of key individuals. These matters will now be assessed as part of the licensing process, either as specific elements to be assessed or as part of a general assessment of the provider's ability to carry out its functions.

### ***Methods and technologies for testing***

- 49 Cabinet agreed that regulations would provide a pathway for use of new technologies and other methods for drug testing. The Ministry will publish on its website a list of methods that the Director-General is satisfied are suitable for drug checking, and any conditions of use. This will give providers confidence before they invest in technology that their proposed method will be considered fit for purpose. The list would be based on evidence including use by legal drug checking services in other countries, and expert advice.
- 50 If an applicant wishes to use a method not on the list, they will need to show to the satisfaction of the Director-General that the method is fit for its intended purpose. The Director-General will make that decision based on expert advice.
- 51 My expectation is that licence conditions will include the testing methods to be used, and any conditions of use, such as the operator being appropriately qualified, or the method only being used for specified types of drugs.
- 52 The approach outlined in this section does not require authorising regulations, as the list will not be a legislative instrument.

### ***Standards and guidance for service providers***

- 53 Cabinet agreed that regulations would provide for standards and guidance for service providers. The body of the March Cabinet paper explained that the intent was to set

expectations for licence applicants on matters such as suitability of key people and use of appropriate technology.

- 54 The licensing process set out in Schedule 6 of the Misuse of Drugs Act includes assessment of the suitability of responsible people. I recommend that other standards and expectations should be addressed as part of the licensing process. This will ensure quality control, while allowing flexibility to enable a wide range of good quality service models.
- 55 The Ministry intends to provide guidance to licence applicants and licence holders on all matters which will be considered as part of the licensing process. The provision of guidance does not require a specific regulation, as it is an expected part of the Ministry's role as the licensing authority.

### *Complaints pathway*

- 56 Cabinet agreed that regulations would enable a pathway for complaints about providers. It is important for members of the public to be able to make complaints about drug checking providers. As the licensing authority, the Ministry will receive, investigate and act on complaints.
- 57 I consider that addressing complaints about providers is a core part of the Ministry's regulatory role regardless of legislation. Specifying a complaints pathway or procedures in legislation could reduce the Ministry's flexibility to respond appropriately to complaints.

### **Implementation**

- 58 Drug checking was previously regulated under the Drug and Substance Checking Legislation Act 2020 (the first Drug Checking Act). This was temporary legislation intended to allow drug checking to take place with legal certainty while a permanent scheme is developed. It enabled the Director-General to appoint drug checking service providers by way of notice in the *Gazette*.
- 59 The first Drug Checking Act included repeal provisions which took effect on 7 December 2021. The Drug Checking Act commenced when these repeal provisions took effect.
- 60 The licensing scheme will begin operation when the regulations come into force, which is intended to occur in the second quarter of 2022. Bringing the licensing scheme into operation at this time recognises that demand for drug checking is highest over the summer festival season, from early December until the end of the university orientation season in March. Most providers are likely to struggle to apply for licences during this period.
- 61 There is a transition period between the repeal of the first Drug Checking Act on 7 December 2021 and the licensing scheme coming into force in the second quarter of 2022. Under the transition provisions in the new Drug Checking Act, providers appointed under the first Drug Checking Act will continue to be appointed until the later of:

- 61.1 one month after the regulations come into force, or
- 61.2 a decision is made on their licence application and rights of appeal have been exhausted.

## Financial Implications

- 62 On 29 March 2021, Cabinet noted that the costs of the licensing scheme may be up to \$1 million per annum [CAB-21-MIN-0083], to be reprioritised from within Vote Health baselines. The proposed regulations are not expected to alter these costs in any way.

## Legislative Implications

- 63 This paper seeks agreement to draft regulations pursuant to the Misuse of Drugs Act. The regulations are planned to come into force in the second quarter of 2022.

## Impact Analysis

### Regulatory Impact Statement

- 64 The regulations discussed in this paper will enable policy agreed to by Cabinet in March 2021 [CAB-21-MIN-0083]. A regulatory impact statement was attached to the Cabinet paper which sought that agreement. A further regulatory impact statement is therefore not required.

### Climate Implications of Policy Assessment

- 65 This policy does not have any climate implications.

### Population Implications

- 66 The population implications for the proposed regulations are broadly the same as for the overall policy of regulating drug checking services. These implications were considered by Cabinet in March 2021.
- 67 A key principle behind the design of the licensing scheme is that the scheme should enable a wide variety of approaches, for example at a range of locations including music festivals and in the wider community. For this reason, most requirements are broad rather than prescriptive. This will assist provision of drug checking services to groups experiencing health inequities, such as Māori and rainbow communities and people experiencing homelessness or substance dependence.
- 68 As with other health services, it is important that drug checking is equitably accessible to people with disabilities. As noted above, I propose a regulation requiring providers to consider accessibility and take steps to improve it where practical.

### Human Rights

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

## Consultation

- 70 Close consultation has been carried out with the New Zealand Police.
- 71 This Cabinet paper has been reviewed by the New Zealand Police, Te Puni Kōkiri, the Department of the Prime Minister and Cabinet, Treasury, Ministry of Justice, Ministry for Pacific Peoples, the Office of the Privacy Commissioner, and WorkSafe.
- 72 The Ministry of Health has also engaged on elements of the proposed regulations with current and potential drug checking providers.

## Communications

- 73 The decisions recommended in this paper provide more detail of a policy which I announced in April 2021. No further communications are required at this stage.

## Proactive Release

- 74 I intend to proactively release this paper, subject to any redactions, after final decisions have been made by Cabinet. In accordance with Cabinet Office circular CO(18)4, release will occur within 30 business days of Cabinet approving the drafted regulations.

## Recommendations

The Minister of Health recommends that the Committee:

- 1 note that drug checking services check the composition of illicit drugs and provide harm reduction advice to help individuals make informed decisions about drug use
- 2 note that drug checking will be regulated under the Misuse of Drugs Act 1975, as amended by the Drug and Substance Checking Legislation Act 2021, which enables a permanent licensing scheme for drug checking service providers
- 3 note that it was originally intended that most elements of the licensing scheme would be given effect by regulations under the Misuse of Drugs Act, and that Cabinet agreed in March 2021 [CAB-21-MIN-0083] to regulations on this basis, to give effect to:
  - 3.1 pathways for licence applications, renewals, suspensions and revocations
  - 3.2 an appeals process where a licence has been declined, suspended or revoked
  - 3.3 a pathway for complaints about service providers
  - 3.4 standards and guidance for service providers
  - 3.5 a pathway for the use of new drug checking technologies and methods
  - 3.6 requirements for all licence-holders on matters including:
    - 3.6.1 accessibility, for example wheelchair accessibility

- 3.6.2 that clients are not charged to use the service
- 3.6.3 reporting
- 3.6.4 monitoring and audit
- 3.6.5 training, qualifications and experience
- 3.6.6 suitability of key individuals
- 3.7 the setting of conditions in individual licences
- 4 note that most of the elements listed in recommendation are now included in the Misuse of Drugs Act, as amended by the Drug and Substance Checking Legislation Act 2021
- 5 agree to recommend that Cabinet rescind the decisions on regulations referred to in recommendation 3, as these elements have been given effect in the Misuse of Drugs Act, or will be given effect through recommendation 7 below, the licensing process, or the Ministry's general role as the licensing authority
- 6 note that further Cabinet decisions are now required on the content of regulations for the licensing scheme
- 7 agree that regulations pursuant to the Misuse of Drugs Act will provide for the following elements of the licensing scheme:
  - 7.1 a requirement that all applications for a licence must include:
    - 7.1.1 the name and contact details of the applicant
    - 7.1.2 if the applicant is an entity:
      - 7.1.2.1 the names and contact details of the contact person, and every 'responsible person', defined in the Misuse of Drugs Act as a director, partner or trustee of the applicant entity, or a person acting in the manner of a director, partner or trustee
      - 7.1.2.2 the results of a criminal record check for every responsible person
      - 7.1.2.3 a description of any activities other than drug checking carried out by the entity
    - 7.1.3 if the applicant is a natural person, the results of a criminal record check for that person
    - 7.1.4 if the applicant or any responsible person has a relevant conviction or record of non-compliance, an explanation of why that person is suitable to hold a licence or be a responsible person in relation to a licence holder

- 7.1.5 a description of the proposed service model, including locations or types of locations where services will be provided, testing methods to be used, and how any surrendered drugs will be disposed of
- 7.1.6 examples of documents or recordings to be used to train workers
- 7.1.7 a description of storage arrangements for any drugs or substances to be held by the applicant
- 7.1.8 examples of harm reduction advice, which may be provided as part of the documents or recordings mentioned in recommendation 7.1.6
- 7.1.9 a description of any risks to the personal privacy of service users, and how these risks will be mitigated.
- 7.2 provisions for licence renewals, including the right to request a review of a decision not to renew a licence
- 7.3 a provision specifying that the National Drug Intelligence Bureau is the drug information body for drug checking purposes
- 7.4 conditions for all licences specifying the following time periods for which records must be kept:
  - 7.4.1 for information required to be reported to the Director-General or the drug information body, 12 months after the information was sent
  - 7.4.2 for information on drugs and substances in the possession of the licence holders, 12 months after the licence holder ceased to have any of that drug or substance in its possession
  - 7.4.3 for any other information which the licence holder is required to collect or maintain, for the period specified in the relevant regulation or licence condition, and if no period is specified, then for 12 months after the information is collected
- 7.5 a licence condition that, if a provider surrenders their licence, they must send to the Director-General any records or information required to be collected or maintained, and which have not already been sent to the Director-General or drug information body
- 7.6 a requirement for all licence holders to take reasonable steps to assess the accessibility of their services and, where practical, take steps to improve or maintain accessibility
- 7.7 a requirement for all licence holders to send drugs and substances for further testing on the request of the National Drug Information Bureau
- 8 agree that the Minister of Health can take further decisions on minor and technical matters in line with the policy decisions agreed by Cabinet

- 9 authorise the Ministry of Health to issue drafting instructions to Parliamentary Counsel Office to create regulations pursuant to the Misuse of Drugs Act in the manner agreed in recommendation 7 above.

Authorised for lodgement

Hon Andrew Little

Minister of Health

PROACTIVELY RELEASED

## Appendix 1: March 2021 agreements on elements of licensing scheme

The table below lists the elements which Cabinet agreed in March 2021 [CAB-21-MIN-0083] would be provided for in regulations, and where these now sit or are recommended to sit.

Element	Location
Pathways for licence applications, renewals, suspensions and revocations	Primarily in the Misuse of Drugs Act (the Act), with details of application requirements and renewals in regulations
An appeals process where a licence has been declined, suspended or revoked	In the Act
A pathway for complaints about service providers	Part of the Ministry's role as the licensing authority
Standards and guidance for service providers	Part of the licensing process
A pathway for the use of new drug checking technologies and methods	Part of the Ministry's role as the licensing authority
Accessibility requirements	In regulations
Requirement that clients are not charged for services	In the Act
Reporting requirements	In the Act
Monitoring and audit requirements	In the Act
Training, qualifications and experience requirements	To be assessed as part of licensing process
Requirements for suitability of key individuals	In the Act
Setting conditions for individual licences	In the Act

PROACTIVELY RELEASED

**Appendix 2: Elements of the licensing scheme in the Misuse of Drugs Act, regulations and elsewhere**

<b>Element</b>	<b>Now part of the Misuse of Drugs Act 1975</b>	<b>Proposed to be included in regulations</b>	<b>Proposed to be included in licence conditions, guidance or elsewhere</b>
<b>Director-General may issue licences</b>	Provided for in section 35DA.		
<b>Criteria to be considered for licence</b>	Now in schedule 6, sections 1-3. Application must be in form approved by Director-General and accompanied by any required documents. Must include name and contact details of every director or partner (if applicable). Director-General enabled to refuse to process application if it does not meet criteria.	In addition to matters specified in the Misuse of Drugs Act, I recommend that regulations include further detail as outlined in recommendation 7.	General guidance to assist applicants.
<b>Decision to issue or decline a licence</b>	Now in schedule 6, section 4. The Director-General may issue a licence if satisfied as to factors including suitability of directors and partners; service model being fit for purpose; functions will be carried out to an appropriate standard; suitable training will be provided; and any drugs held by the licence holder will be securely stored.	Applicants required to submit information and documents to support licensing decisions.	Guidance will include Director-General's expectations on each matter, and other information to support licence applicants.
<b>Suitability of key individuals</b>	Now in schedule 6, sections 4 and 5. In assessing suitability of potential licence holders, directors and partners, Director-General must take into account relevant convictions and failures to comply with the Misuse of Drugs Act, other grounds for considering that the person will be non-compliant, and any other matter that the Director-General considers relevant.	Applicants required to submit documents and information to support suitability assessments.	Guidance for applicants.
<b>Training</b>	Now in schedule 6, section 4(1)(d). Before	Applicants required to send	Guidance on training.

Element	Now part of the Misuse of Drugs Act 1975	Proposed to be included in regulations	Proposed to be included in licence conditions, guidance or elsewhere
	granting a licence, Director-General must be satisfied that suitable training will be provided.	examples of training materials.	
<b>Renewals</b>		Renewal process to be included in regulations.	Guidance for licence holders.
<b>Offence to breach terms and conditions of licence</b>	Provided for in section 35DE.		Guidance for licence holders.
<b>Offence to provide drug checking without a licence</b>	Provided for in section 35DF.		Guidance for persons interested in providing drug checking. Communication with persons who may be providing drug checking without a licence.
<b>Suspensions and revocations</b>	Now in schedule 6, section 9. Director-General enabled to suspend or revoke a licence if satisfied that the licence holder has breached the terms or conditions of their licence, provided false information in their licence application, or that any licence holder, partner or director has been convicted of a relevant offence.		Guidance for licence holders, including proactive communication if there are concerns about a licence holder.
<b>Review of decisions</b>	Now in schedule 6, sections 11 to 13. Mechanism for review of decisions to decline, revoke or suspend a licence.	Regulations will provide a right of review for decisions not to renew a licence.	Information on review process to be provided with all notices of decisions to decline, suspend or revoke a licence.
<b>Licence conditions</b>	Now in schedule 6, section 7. Director-General enabled to set any licence conditions they consider appropriate.		Bespoke licence conditions.
<b>Providers may</b>	Now in section 35DDD.		Guidance will explain that providers

Element	Now part of the Misuse of Drugs Act 1975	Proposed to be included in regulations	Proposed to be included in licence conditions, guidance or elsewhere
<b>not charge clients</b>			may charge hosts and accept donations, and advise on specific circumstances.
<b>Licence must be displayed</b>	Now in section 35DDB. Providers must display licence while providing services.		
<b>Locations</b>	Now in section 35DDC. Providers to be barred from providing drug checking services from a residential premises, using the definition in the Residential Tenancies Act 1986 of “any premises used or intended for occupation by any person as a place of residence”.		Guidance for licence applicants.
<b>Storage</b>	Now in section 35DDG. Director-General must be satisfied that drugs will be securely stored in order to issue a licence; providers will be required to securely store any drugs in their possession, and report any loss to Police as soon as possible, and to the Ministry as soon as reasonably practicable.		Licence conditions may specify storage requirements for each licence holder as needed.  Guidance on storage.
<b>Reporting / data sharing</b>	Now in section 35DDI. Providers must share test results and number of people given test results to the Ministry and to drug information body as specified in regulations.	Drug information body to be specified as the National Drug Information Bureau.	Guidance on data sharing and reporting.
<b>Record keeping</b>	Now in section 35DDJ. Licence holders required to keep records of test results, number of people provided with test results, and any drugs received or held.	Regulations to specify how long records and information must be kept for.	Guidance on record keeping.
<b>Monitoring and audit</b>	Now in section 35DDK. Licence holders required to provide Director-General with copies of any document; may redact client		Guidance for licence holders.

Element	Now part of the Misuse of Drugs Act 1975	Proposed to be included in regulations	Proposed to be included in licence conditions, guidance or elsewhere
	<p>information. Licence holders must allow access to clinics and training sessions. Persons authorised to audit licence holders make all reasonable efforts to avoid disruption of the licence holder's activities, must not be present for individual consultation without permission of the client, and may not record inside clinic.</p>		
<b>Licence duration</b>	<p>Now in schedule 6, section 8. Maximum of three years.</p>		<p>If Director-General grants licence term of less than three years, will inform licence holder of reasons.</p>
<b>Licence may not be transferred</b>	<p>Now in schedule 6, section 14.</p>		
<b>Accessibility</b>		<p>Licence holders should be required to take reasonable steps to assess the accessibility of their services and, where practical, take steps to improve or maintain accessibility.</p>	<p>Guidance on accessibility.</p>
<b>Sending substances for further testing</b>		<p>I recommend that Cabinet agree that providers be required to send drugs for further testing on the request of the National Drug Information Bureau (NDIB).</p>	<p>NBID has guidance and protocol for drug checking providers.</p>
<b>Testing methods and technologies</b>	<p>Before issuing a licence, schedule 6, sections 4(1)(b) and (c) require the Director-General to be satisfied that functions (including testing) will be carried out to an appropriate standard (see above).</p>		<p>Licence conditions relating to a method or technology.  List of suitable methods on Ministry website, along with other guidance on methods and technologies.  Pathway for consideration of</p>

Element	Now part of the Misuse of Drugs Act 1975	Proposed to be included in regulations	Proposed to be included in licence conditions, guidance or elsewhere
			methods and technologies not on list.

PROACTIVELY RELEASED