

In Confidence

Office of the Minister of Health

Chair, Cabinet Legislation Committee

Drug and Substance Checking Legislation Bill (No 2): Approval for Introduction

Proposal

- 1 This paper seeks approval for introduction of the Drug and Substance Checking Legislation Bill (No 2) (the Bill), to enable a licensing system for drug checking services, and to allow licensed drug checking service providers to operate with legal certainty.

Policy

- 2 Drug checking services check the composition of illicit drugs and provide harm reduction advice to help individuals make more 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.
- 3 Since December 2020 drug checking has been regulated under amendments made by the Drug and Substance Checking Legislation Act 2020 (the Drug Checking Act) to the Misuse of Drugs Act 1975 and the Psychoactive Substances Act 2013. These amendments allow appointed drug checking service providers to operate with legal certainty.
- 4 The Drug Checking Act was always intended to be temporary legislation to remove the legal grey area and keep young people safe during the summer festival season whilst a permanent licensing system is 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.
- 5 If no permanent system is introduced, 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, which have been linked to deaths overseas and hospitalisations in New Zealand. Regulation is required to enable good quality services and to prevent low-quality service providers from operating.
- 6 On 24 March 2021, the Cabinet Social Wellbeing Committee [SWC-21-MIN-0028] agreed to:
 - 6.1 amend the Misuse of Drugs Act to enable a system for drug checking service providers to be licensed by the Director-General of Health;

- 6.2 amend the Misuse of Drugs Act to allow licensed providers to operate with legal certainty, and to provide that it is not an offence to host a licensed provider;
 - 6.3 amend the Psychoactive Substances Act to enable licensed providers to operate with legal certainty;
 - 6.4 create regulations to give effect to elements of the regulatory system, including pathways for licence applications, requirements for licence-holders, and the setting of conditions in individual licences.
- 7 The Bill will enable licensed providers to possess controlled drugs and unapproved psychoactive substances and to supply drugs and substances to persons for drug checking purposes. It will also enable service users to supply drugs and substances to licensed providers for checking or disposal purposes.
 - 8 It will still be an offence for service users to possess a controlled drug or unapproved psychoactive substance. Police have advised that they will continue to apply discretion at events where drug checking is conducted, recognising that drug checking is part of a health-based approach to drug harm.
 - 9 The key differences between this Bill and the Drug Checking Act are that:
 - 9.1 the Bill provides for a licensing system via regulations under the Misuse of Drugs Act, rather than appointment by the Director-General. Licensing will allow stronger quality assurance of services, and clear pathways for approving, declining and revoking licences
 - 9.2 the Bill does not include repeal provisions, as it is intended to enable a permanent regulatory system.
 - 10 Officials have identified that an amendment to the Medicines Act 1981 is required to enable legal checking of prescription or pharmacy-only medicines. It is not common for these medicines to be presented for drug checking. However a pill or substance presented for checking may prove to be a prescription or pharmacy-only medicine. If the medicine is not a controlled drug under the Misuse of Drugs Act, the provider may be liable for an offence under the Medicines Act. An amendment is therefore required to enable the legal checking of medicines which are regulated under the Medicines Act.
 - 11 The Bill's transitional provisions will ensure that providers who have been appointed under the current Act can continue to operate with legal certainty while they are awaiting a licence under this Bill.
 - 12 As with most policy involving illicit drugs, the Bill is likely to be contentious. Opponents of the Bill may argue that drug checking sends an inaccurate or inappropriate message that it is possible to consume illicit drugs safely.

- 13 In New Zealand and overseas, research consistently shows that most people will choose not to consume their drugs if they find out that they are not as expected, especially if the drugs are shown to be particularly dangerous.

Victoria University of Wellington research commissioned by the Ministry of Health shows that many people using drug checking services reported safer drug use even when their drugs were as expected. For example, they reported that they took advice to consume less of the drug, or not consuming it in combination with other drugs.¹ Harm 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 There is no evidence that drug checking encourages illicit drug use in any way.

- 14 The licensing system is intended to provide assurance that drug checking services are fit for purpose. This includes assurance that drug harm reduction advice accurately conveys the risks and harms associated with illicit drug consumption, tailored to the audience and substances in question.

Impact analysis

- 15 A regulatory impact assessment was prepared in accordance with requirements, and was submitted at the time that Cabinet approval for the above policy was sought [SWC-21-MIN-0028].

Compliance

- 16 The Bill complies with:
- 16.1 the principles of te Tiriti o Waitangi;
 - 16.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 16.3 the principles and guidelines set out in the Privacy Act 2020;
 - 16.4 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.
- 17 New Zealand is party to the three United Nations drugs control conventions. The Conventions oblige member states to limit the availability of drugs exclusively for medical and scientific purposes and to criminalise certain activities relating to the production and supply of illicit drugs. The Conventions do not directly address drug checking. Some states parties, for example the Netherlands, have longstanding drug checking services.

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>

18 A disclosure statement has been prepared and is attached to this paper.

Consultation

19 Close consultation on the policy behind the Bill has been carried out with the Ministry of Justice and New Zealand Police.

20 The Bill and its disclosure statement, and this paper, have been reviewed by the New Zealand Police, the Ministry of Justice, the Department of Prime Minister and Cabinet, Worksafe, the Treasury, Te Puni Kōkiri, the Ministry for Pacific Peoples, the Privacy Commissioner, and the Ministry of Business, Innovation and Employment. The Ministry for Pacific Peoples has noted that drug checking is likely to benefit young Pacific people by enabling them to make better informed decisions regarding drug use.

21 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, the New Zealand Events Association and the Entertainment Venues Association of New Zealand.

Binding on the Crown

22 This Bill amends the Misuse of Drugs Act, the Psychoactive Substances Act and the Medicines Act, which are binding on the Crown.

Creating new agencies or amending law relating to existing agencies.

23 This Bill will not create a new agency, or amend the existing coverage of the Ombudsmen Act 1975, the Official Information Act 1982, or the Local Government Official Information and Meetings Act 1987.

Allocation of decision making powers

24 The Bill allocates the power to the Director-General of Health to issue licences to drug checking service providers.

Associated regulations

25 On 24 March 2021, the Cabinet Social Wellbeing Committee agreed [SWC-21-MIN-0028] to create regulations to give effect to elements of the regulatory system, specifically:

25.1 pathways for licence applications, renewals, suspensions and revocations;

25.2 an appeals process where a licence has been declined, suspended or revoked;

25.3 a pathway for complaints about service providers;

25.4 standards and guidance for service providers;

- 25.5 a pathway for the use of new drug checking technologies and methods;
- 25.6 requirements for all licence-holders on matters including:
- 25.6.1 accessibility, for example wheelchair accessibility;
 - 25.6.2 that clients are not charged to use the service;
 - 25.6.3 reporting;
 - 25.6.4 monitoring and audit;
 - 25.6.5 training, qualifications and experience;
 - 25.6.6 suitability of key individuals;
- 25.7 the setting of conditions in individual licences.
- 26 Licensed providers will also be required to have secure storage for drugs which will be sent to a laboratory for further testing, destroyed, or handed to Police.
- 27 The regulations will be made under the Misuse of Drugs Act.

Other instruments

- 28 This Bill does not include any provision empowering the making of other instruments that are deemed to be legislative instruments or disallowable instruments.

Definition of Minister/department

- 29 This Bill does not contain a definition of Minister, department (or equivalent government agency), or chief executive of a department (or equivalent position).

Commencement of legislation

- 30 The Bill will be enacted by 7 December 2021. It will come into force on either the day after it receives Royal assent, or immediately after the repeal provisions of the Drug Checking Act 2020 come into effect, whichever is later.

Parliamentary stages

- 31 I intend the Bill to be introduced on 11 May 2021 and passed in late November 2021.
- 32 I propose to refer the Bill to the Health select committee.

Proactive Release

- 33 I intend to proactively release this paper in accordance with Cabinet circular CO(18)4.

Recommendations

34 The Minister of Health recommends that the Committee:

1

s 9(2)(h)

2 **note** that the Bill will enable a licensing system for drug checking service providers, and allow licensed providers to operate with legal certainty;

3 **agree** to amend the Medicines Act 1981 to allow checking of prescription medicines

4 **approve** the Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;

5 **note** that it is intended that the Bill will be introduced on 11 May 2021;

6 **agree** that the Government propose that the Bill be:

6.1 referred to the Health select committee for consideration;

6.2 enacted by 7 December 2021.

Authorised for lodgement

Hon Andrew Little
Minister of Health



Cabinet Legislation 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.

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Portfolio Health

On 6 May 2021, the Cabinet Legislation Committee:

1 **noted** that in March 2021, SWC agreed to amend the Misuse of Drugs Act 1975 and the Psychoactive Substances Act 2013 to enable a licensing system for drug checking services, and to allow licensed drug checking service providers to operate with legal certainty [SWC-21-MIN-0028].

2 s 9(2)(h)

3 **noted** that the Drug and Substance Checking Legislation Bill (No 2) will enable a licensing system for drug checking service providers, and allow licensed providers to operate with legal certainty;

4 **agreed** to amend the Medicines Act 1981 to allow checking of prescription medicines;

5 **approved** for introduction the Drug and Substance Checking Legislation Bill (No 2) [PCO 23443/7.0], subject to the final approval of the government caucus and sufficient support in the House of Representatives;

6 **noted** that it is intended that the Bill will be introduced on 11 May 2021;

7 **agreed** that the government propose that the Bill be:

6.1 referred to the Health Committee for consideration;

6.2 enacted by 7 December 2021.

Rebecca Davies
Committee Secretary

Hard-copy distribution: (see over)

Present:

Hon Chris Hipkins (Chair)
Hon Andrew Little
Hon Kris Faafoi
Hon Michael Wood (Deputy Chair)
Hon Dr David Clark
Keiran McAnulty, MP (Senior Government Whip)

Officials present from:

Office of the Prime Minister
Officials Committee for LEG

Hard-copy distribution:

Minister of Health

Proactively released