



# Drug and Substance Checking Legislation Act 2021

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Commencement see section 2

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## Part 2

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Drug and Substance Checking Legislation Act 2021.

**2 Commencement**

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

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

**Part 1**

**Amendments to Misuse of Drugs Act 1975**

**3 Amendments to Misuse of Drugs Act 1975**

This Part amends the Misuse of Drugs Act 1975.

**4 Section 2 amended (Interpretation)**

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

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

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

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

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

- (a) a body corporate;
- (b) a corporation sole;
- (c) in the case of a trust that has—
  - (i) only 1 trustee, the trustee acting in their capacity as trustee;
  - (ii) more than 1 trustee, the trustees acting jointly in their capacity as trustees;
- (d) an unincorporated body (including a partnership)

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

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

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

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

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

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

After section 2A, insert:

### 2AA Transitional, savings, and related provisions

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

## 6 Section 6 amended (Dealing with controlled drugs)

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

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

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

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

After section 12(1), insert:

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

**9 Section 14 amended (Licences)**

After section 14(6), insert:

- (7) This section does not apply in relation to licences for drug and substance checking service providers.

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

After section 35D, insert:

*Drug and substance checking*

**35DA Licensing of drug and substance checking service providers**

The Director-General of Health may license drug and substance checking service providers under Schedule 6.

**35DB Functions of service provider**

- (1) The functions of a service provider are to do 1 or more of the following:
- (a) provide accurate and appropriate information and harm reduction advice to help individuals make informed decisions about drug and substance use;
  - (b) test any drug or substance (which may be a controlled drug or psychoactive substance) that an individual presents for checking to ascertain the composition and likely identity of the drug or substance;
  - (c) advise the individual who presented a drug or substance for checking of the outcome of the testing;
  - (d) return a drug or substance to the individual who presented it for checking;
  - (e) dispose of any sample of a drug or substance used in testing;
  - (f) dispose of, or arrange for the disposal of, any drug or substance surrendered by any individual for disposal;
  - (g) arrange for a sample of a drug or substance (including one that has been surrendered for disposal) to be tested by an approved laboratory;
  - (h) train, or arrange for the training of, the service provider's workers to perform the functions specified in paragraphs (a) to (g) (including by using,

for training purposes, drugs or substances that have been surrendered for disposal).

- (2) A service provider must perform the functions referred to in subsection (1) in accordance with the conditions of their licence.

**35DC Possession or supply of controlled drug for purpose of performing functions**

- (1) A service provider's licence entitles them to do 1 or more of the following for the purpose of performing the provider's functions:
- (a) possess a controlled drug for as long as is reasonably necessary to perform the provider's functions;
  - (b) return a controlled drug to the individual who submitted it for checking;
  - (c) send a controlled drug to an approved laboratory for testing.
- (2) Subsection (1) is subject to the conditions of the service provider's licence.
- (3) In this section and section 35DD, **controlled drug** includes a sample of a controlled drug.

**35DD Supplying or surrendering controlled drug to service provider**

An individual may do 1 or both of the following:

- (a) supply a controlled drug to a service provider for the purpose of checking;
- (b) surrender a controlled drug to a service provider for the purpose of disposal.

*Drug and substance checking: general licence conditions*

**35DDA General licence conditions set out in sections 35DDB to 35DDK**

Sections 35DDB to 35DDK set out conditions that apply to every service provider's licence.

**35DDB Service provider must display copy of licence**

A service provider must clearly display a copy of their licence when, and at the site where, the service provider is performing any of the functions specified in section 35DB(1)(a) to (d).

**35DDC Service provider must not perform functions in residential premises**

A service provider must not perform any of their functions in a residential premises (as defined in section 2(1) of the Residential Tenancies Act 1986).

**35DDD Service provider must not charge individuals for drug checking services**

A service provider must not charge any fee to an individual for testing or disposing of a drug or substance for that individual.

**35DDE Service provider must not require or collect, etc, certain information**

- (1) This section applies in relation to an individual who does 1 or both of the following:
  - (a) presents a drug or substance to a service provider for checking;
  - (b) surrenders a drug or substance to a service provider for disposal.
- (2) The service provider must not—
  - (a) require the individual to disclose demographic information (such as their age, sex, ethnicity, or cultural background) as a condition of providing service to the individual; or
  - (b) collect, maintain, use, or disclose any personal information about the individual.
- (3) However, subsection (2)(b) does not prevent a service provider from collecting, maintaining, using, or disclosing personal information about the individual in the course of providing other health services to the individual.
- (4) In this section,—

**collect** has the meaning given by section 7(1) of the Privacy Act 2020

**other health services** means health services as defined in section 2(1) of the Health and Disability Commissioner Act 1994 other than services carried out in the performance of any function specified in section 35DB

**personal information** has the meaning given by section 7(1) of the Privacy Act 2020.

**35DDF Service provider must provide accurate and appropriate harm reduction advice with test results**

- (1) A service provider must ensure that, when an individual who presents a drug or substance for checking is advised of the outcome of the testing, the individual is given accurate and appropriate advice in accordance with this section.
- (2) The advice must be about the following harms and how they may be reduced or avoided:
  - (a) if the test indicates the likely identity of the drug or substance, the harms associated with that drug or substance;
  - (b) if the test does not indicate the likely identity of the drug or substance but the service provider considers that, in the circumstances, they are able to form a view on its likely identity,—
    - (i) the harms associated with that drug or substance; and
    - (ii) the harms associated with taking a drug or substance of an unknown identity;
  - (c) in any other case where the test does not indicate the likely identity of the drug or substance, the harms associated with taking a drug or substance of an unknown identity.

- (3) The service provider does not breach subsection (2) if, despite reasonable efforts being made to give the advice, the individual refuses to receive it.
- (4) *See* clause 6 of Schedule 6 (which relates to what the Director-General of Health must have regard to when deciding whether advice of the kind required by this section is accurate and appropriate).

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

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

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

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

**35DDI Service provider must report data**

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

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

**35DDJ Service provider must keep records**

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



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

### **35DDK Service provider must facilitate monitoring**

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

- (b) must, if requested by the service provider, show the service provider written evidence of the person's authorisation from the Director-General of Health; and
  - (c) must make all reasonable efforts to avoid disrupting the service provider in their performance of any of the functions specified in section 35DB; and
  - (d) must not be present in a part of the site where an individual is presenting a drug or substance for checking or being advised of the results of testing of the drug or substance (unless the individual gives their express permission for the authorised person to be present); and
  - (e) must not make a visual or audio recording of—
    - (i) the site; or
    - (ii) any individual who presents a drug or substance to the service provider for checking or is advised of the results of testing of the drug or substance; or
    - (iii) any individual who surrenders a drug or substance to the service provider for disposal.
- (3) In this section, **authorised person** means a person who, for the purpose of monitoring service providers' compliance with this Act, its regulations, and their licence conditions, is authorised by the Director-General of Health to access sites where service providers perform any of the functions specified in section 35DB.

*Drug and substance checking: offences and other matters*

**35DE Offence relating to breach of conditions of licence**

- (1) A service provider must not breach any conditions of their licence.
- (2) A service provider commits an offence and is liable on conviction to a fine not exceeding \$5,000 if the service provider, without reasonable excuse, contravenes subsection (1).
- (3) However, this section does not apply to a contravention of the condition set out in section 35DDF (service provider must provide accurate and appropriate harm reduction advice with test results).

**35DF Offence to provide checking services, etc, without being licensed**

- (1) A person must not carry out any of the functions specified in section 35DB(1)(b) to (e) without being licensed as a service provider under section 35DA.
- (2) A person commits an offence and is liable on conviction to a fine not exceeding \$20,000 if the person, without reasonable excuse, contravenes subsection (1).

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

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

**35DH Protections from liabilities of service provider**

- (1) A worker of a service provider is not liable for anything they do or fail to do in the course of the performance or intended performance of the service provider's functions, unless it is shown that they acted in bad faith or without reasonable care.
- (2) A worker of a service provider is not liable for any liability of the service provider.

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

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

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

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

After section 37A, insert:

**37B Regulations relating to drug and substance checking service providers**

- (1) Without limiting section 37, the Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:
  - (a) prescribing any particulars, information, documents, or other material that must be included in or with an application for a licence to be a drug and substance checking service provider (a **licence**):
  - (b) prescribing the form of licences:
  - (c) prescribing conditions of licences:
  - (d) providing for the renewal of licences:
  - (e) specifying a drug information body for the purposes of section 35DDI:
  - (f) prescribing the period for which service providers must retain the records required by section 35DDJ.
- (2) Regulations made under subsection (1)(c) may (without limitation) prescribe conditions that specify—
  - (a) how the service provider must comply with any of the conditions imposed by sections 35DDA to 35DDK; or
  - (b) other requirements that relate to any of those conditions.
- (3) Regulations made under subsection (1)(d) may (without limitation)—
  - (a) provide for a licence to continue in effect (despite clause 8 of Schedule 6) if an application to renew the licence is made within a specified period:
  - (b) prescribe any particulars, information, documents, or other material that must be included in or with an application to renew a licence:
  - (c) provide for the Director-General of Health to—
    - (i) require particulars, information, documents, or other material to be included in or with an application to renew a licence:
    - (ii) refuse to process an application if a required particular, piece of information, document, or piece of other material is not included in or with an application:
    - (iii) require further particulars, information, documents, or other material to be provided before deciding whether to renew a licence:
  - (d) prescribe criteria for the renewal of licences:
  - (e) provide for the review of decisions relating to applications for the renewal of licences.
- (4) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

<b>Legislation Act 2019 requirements for secondary legislation made under this section</b>		
<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

## 12 New Schedule 1AA inserted

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

## 13 New Schedule 6 inserted

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

## Part 2

### Amendments to other enactments

#### Subpart 1—Amendments to Acts

##### *Amendments to Psychoactive Substances Act 2013*

## 14 Amendments to Psychoactive Substances Act 2013

Sections 15 to 17 amend the Psychoactive Substances Act 2013.

## 15 Section 8 amended (Interpretation)

In section 8, insert in their appropriate alphabetical order:

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

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

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

After section 70(2), insert:

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

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

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

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

After section 71(2), insert:

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

*Amendment to Medicines Act 1981*

**18 Amendment to Medicines Act 1981**

Section 19 amends the Medicines Act 1981.

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

After section 109(3), insert:

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

Subpart 2—Amendment to secondary legislation

*Amendment to Misuse of Drugs Regulations 1977*

**20 Amendment to Misuse of Drugs Regulations 1977**

Section 21 amends the Misuse of Drugs Regulations 1977.

**21 Regulation 28 amended (Custody of controlled drugs)**

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

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

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

- (4AAA) Subclause (4)(f) is subject to the conditions of the service provider's licence.

**Schedule 1**  
**New Schedule 1AA inserted**

s 12

**Schedule 1AA**  
**Transitional, savings, and related provisions**

s 2AA

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

**1 Interpretation**

In this Part,—

**existing service provider** means a drug and substance checking service provider who—

- (a) was appointed under old section 35DA; and
- (b) still held the appointment immediately before old section 35DA was repealed

**old section 35DA** means section 35DA as it was immediately before its repeal  
**repeal**, in relation to old section 35DA, means its repeal by section 16 of the Drug and Substance Checking Legislation Act 2020.

*Issue of licences under clause 4 of Schedule 6*

**2 When Director-General of Health may issue licences under clause 4 of Schedule 6**

The Director-General of Health may not issue a licence under clause 4 of Schedule 6 until regulations made under section 37B come into force.

*Continuation of current appointments*

**3 Appointments of existing service providers continued**

- (1) An existing service provider must be treated as still holding an appointment under old section 35DA for the period that—
  - (a) starts immediately after the repeal of old section 35DA (regardless of whether that is on or before the commencement of the Drug and Substance Checking Legislation Act 2021); and
  - (b) ends under clause 4 of this schedule.
- (2) For the purposes of subclause (1),—

- (a) this Act and the Psychoactive Substances Act 2013, as they were immediately before their amendment by subpart 2 of Part 1 and subpart 2 of Part 2 of the Drug and Substance Checking Legislation Act 2020, continue to apply in relation to the existing service provider; and
  - (b) the terms and conditions of the existing service provider's appointment are the same as those that applied immediately before that amendment.
- (3) Section 109(3A) of the Medicines Act 1981 applies to the existing service provider as if they held a licence issued under clause 4 of Schedule 6 (and the terms and conditions of their appointment were the conditions of their licence).
- (4) Subclause (1)—
- (a) applies despite any limit imposed on the duration of the appointment by the Director-General of Health before this clause comes into force; but
  - (b) does not limit the Director-General's authority to revoke the appointment after this clause comes into force.

#### **4 When continued appointments end**

- (1) An existing service provider's appointment ends if they do not apply for a licence to be issued under clause 4 of Schedule 6 within 1 month after regulations made under section 37B come into force.
- (2) If an existing service provider applies for a licence before the deadline under subclause (1), their appointment ends when—
- (a) the Director-General of Health issues the existing service provider a licence under clause 4 of Schedule 6; or
  - (b) the Director-General of Health decides not to issue the existing service provider a licence under that clause and their right of review under clause 11 of Schedule 6 is exhausted.



## Schedule 2

### New Schedule 6 inserted

s 13

### Schedule 6

#### Licensing of drug and substance checking service providers

s 35DA

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

- (1) An individual or entity may apply to the Director-General of Health for a licence to be a drug and substance checking service provider.
- (2) An application must—
  - (a) be in a form or manner approved by the Director-General of Health or prescribed by regulations made under this Act; and
  - (b) include or be accompanied by particulars, information, documents, or other material required by the Director-General or prescribed by regulations made under this Act.

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

- (1) The Director-General of Health may refuse to process an application for a licence if the application does not comply with clause 1.
- (2) If the Director-General of Health refuses to process an application, the Director-General must give the applicant written notice of the refusal and the reasons for it.

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

- (1) The Director-General of Health may request an applicant for a licence to supply further particulars, information, documents, or other material before deciding whether to issue the licence.
- (2) An application for a licence lapses if the further particulars, information, documents, or other material requested is not supplied within—
  - (a) 30 days after the date of the request; or
  - (b) any further time that the Director-General of Health may allow by written notice to the applicant.

**4 Decision on licence application**

- (1) The Director-General of Health may issue a licence if satisfied that—
  - (a) the applicant is suitable; and
  - (b) the applicant's proposed service model (including the proposed methods for testing drugs and substances) will enable the applicant to carry out their functions as a service provider to an appropriate standard; and
  - (c) the applicant will ensure that those functions are carried out to an appropriate standard; and
  - (d) the applicant will ensure that all of their workers who perform those functions are appropriately trained; and
  - (e) the applicant will ensure that all controlled drugs or psychoactive substances in the applicant's possession are stored securely; and

- (f) the information and harm reduction advice that the applicant proposes to provide to help individuals make informed decisions about drug and substance use is accurate and appropriate (having regard to the principles set out in clause 6); and
  - (g) the applicant has given proper consideration to their obligations under the Privacy Act 2020 (including how they will comply with the information privacy principles set out in section 22 of that Act).
- (2) The Director-General of Health must not issue a licence without the Minister's approval if any relevant person, or an entity of which any relevant person was a responsible person at the time of the conviction or revocation,—
- (a) has been convicted of an offence against this Act or its regulations; or
  - (b) has had a licence under this Act revoked for failing to comply with a licence condition or a requirement of this Act or its regulations.
- (3) The Minister must not give their approval unless the Minister is satisfied that the applicant is suitable.
- (4) The Director-General of Health must decline an application if the Director-General is not satisfied of any of the matters listed in subclause (1).
- (5) If the Director-General of Health decides to decline an application, the Director-General must give the applicant written notice of the decision and the reasons for it.
- (6) In this clause,—
- relevant person** means,—
- (a) if the applicant is an individual, that individual;
  - (b) if the applicant is an entity, that entity and every responsible person
- suitable**, in relation to an applicant, has the meaning given by clause 5.

## 5 Deciding whether applicant is suitable

- (1) For the purposes of clauses 4 and 9, an applicant is **suitable** if the Director-General of Health or the Minister (as the case may be) is satisfied that—
- (a) the applicant will comply with this Act, its regulations, and the applicant's licence conditions; and
  - (b) there is no other reason why the applicant would not be suitable.
- (2) The Director-General of Health or the Minister must have regard to the following when deciding whether subclause (1)(a) is met:
- (a) whether the applicant (and, if the applicant is an entity, any responsible person) has been convicted of—
    - (i) an offence against this Act, the Psychoactive Substances Act 2013, or the Medicines Act 1981 (or any regulations made under any of those Acts); or

- (ii) a crime involving dishonesty (as defined in section 2(1) of the Crimes Act 1961); and
  - (b) whether there has been a serious or repeated failure by the applicant (and, if the applicant is an entity, any responsible person) to comply with any requirement of this Act or its regulations; and
  - (c) if the applicant or any responsible person has been convicted of an offence of a kind referred to in paragraph (a) or has been responsible for non-compliance of the kind referred to in paragraph (b),—
    - (i) the nature, seriousness, and circumstances of the offending or non-compliance; and
    - (ii) the relevance of the offending or non-compliance to the functions of service providers; and
    - (iii) the time that has elapsed since the offending or non-compliance; and
  - (d) whether there are other grounds for considering that the applicant may fail to comply with any requirement of this Act, its regulations, or the applicant's licence conditions.
- (3) The Director-General of Health or the Minister must have regard to the following when deciding whether subclause (1)(a) and (b) is met:
- (a) any evidence provided by the applicant about their suitability; and
  - (b) any other matter that the Director-General or the Minister considers relevant.

## **6 Deciding whether information and harm reduction advice is accurate and appropriate**

For the purposes of clauses 4 and 9, the Director-General of Health must have regard to the following principles when deciding whether information or harm reduction advice that has been given, or is proposed to be given, is accurate and appropriate:

- (a) the information or advice should be based on the best information available at the time to the service provider:
- (b) the information or advice should not consist solely of advice not to consume a drug or substance:
- (c) the information or advice should not be of a kind that a reasonable person in the position of the individual receiving it would regard as stigmatising or expressing a moral judgement about them or their actions:
- (d) the information or advice should be tailored as far as is reasonably practicable to the individual who is receiving it and their circumstances.

## **7 Director-General of Health may impose, amend, and revoke conditions**

- (1) The Director-General of Health may, by written notice to a service provider,—

- (a) impose conditions on the service provider's licence when issuing it;
  - (b) amend or revoke conditions, or impose new conditions, on the service provider's licence after it has been issued.
- (2) The Director-General of Health may impose, amend, or revoke a condition only if the Director-General considers it is necessary or desirable after having regard to the functions of service providers and the criteria for issuing a licence under clause 4.
- (3) The Director-General of Health may amend or revoke a condition, or impose a new condition, under subclause (1)(b) only if—
- (a) the Director-General has also—
    - (i) given the service provider at least 21 days' written notice of the proposed amendment, revocation, or new condition and the reasons for it; and
    - (ii) had regard to the submissions (if any) made by the service provider about the proposed amendment, revocation, or new condition; or
  - (b) the service provider has requested or agreed to the amendment, revocation, or new condition.
- (4) The Director-General of Health must give a service provider written reasons for imposing a condition under subclause (1)(a) if the service provider asks the Director-General to do so.
- (5) A condition imposed under this clause—
- (a) is in addition to the conditions imposed by sections 35DDA to 35DDK; and
  - (b) may specify—
    - (i) how the service provider must comply with any of those conditions; or
    - (ii) other requirements that relate to any of those conditions.

### *Duration of licences*

#### **8 Duration of licence**

- (1) A service provider's licence remains in force until the close of the third anniversary of the date on which it was issued, unless—
- (a) the Director-General of Health specifies a shorter period for the licence; or
  - (b) the licence is cancelled under clause 9; or
  - (c) the service provider surrenders the licence under clause 10.
- (2) The Director-General of Health must give the service provider written reasons for specifying a shorter licence period under subclause (1)(a).

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

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

**10 Surrender of licence by service provider**

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

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

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

**12 Decision on application for review**

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

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

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

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

*Other matters*

**14 Licence is not transferable**

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

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

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



### **Legislative history**

11 May 2021	Introduction (Bill 34–1)
18 May 2021	First reading and referral to Health Committee
28 October 2021	Reported from Health Committee (Bill 34–2)
9 November 2021	Second reading
16 November 2021	Committee of the whole House
23 November 2021	Third reading
25 November 2021	Royal assent

This Act is administered by the Ministry of Health.