

House of Representatives

Supplementary Order Paper

Tuesday, 1 November 2016

**Drug and Alcohol Testing of Community-based Offenders, Bailees,
and Other Persons Legislation Bill**

*Proposed amendments for the consideration of the Committee of the
whole House*

Key:

- **this is inserted text**
- **~~this is deleted text~~**

Note: This Supplementary Order Paper shows amendments to the Bill that are being proposed by the Minister for the purposes of consideration in Committee of the whole House. This document does—

- NOT have official status in terms of unamended text
- NOT have the status of an as-reported version of the Bill.

Explanatory note

This Supplementary Order Paper sets out amendments to the Drug and Alcohol Testing of Community-based Offenders, Bailees, and Other Persons Legislation Bill.

The amendments—

- enable commencement to occur at an earlier appointed date than the day after the expiry of a 6-month period commencing on the date of Royal assent:
- enable an authorised person to require or direct a community-based offender, bailee, or other specified person to contact a specified automated system and to report for testing if required by a response notice given to the person by the automated system:
- enable a notice requiring or directing a community-based offender, bailee, or other specified person to submit to continuous monitoring to include a requirement to comply with instructions that are specified in the notice and reasonably necessary for the effective administration of the continuous monitoring:
- enable an authorised person to select, in any manner (including randomly), a community-based offender, bailee, or other specified person to undergo testing, to submit to continuous monitoring, or to contact an authorised system:
- require an authorised person to determine, at the time that the authorised person requires or directs the person to contact the automated system, which of the prescribed testing procedures is to be used if the person is selected by the automated system:
- enable a notice requiring or directing a community-based offender, bailee, or other specified person to undergo drug and alcohol testing to be given to that person by an authorised person by telephone or other means of electronic communication, then as soon as practicable recording it in writing (if it is not already in writing) and giving a copy to that person:
- require a response notice given by an automated system or a notice given by telephone or other means of electronic communication by an authorised person to specify the name and location of a testing facility to which the person is required to report to undergo testing, and the time or times when the person is required to report:
- make it an offence to refuse or fail, without reasonable excuse, to—
 - (a) comply with instructions that are specified in a notice requiring the person to submit to continuous monitoring and that are necessary for the effective administration of the continuous monitoring:
 - (b) contact a specified automated system as required by an authorised person:
 - (c) report to the testing facility whose name and location are specified in a response notice given by an automated system or a notice given by telephone or other electronic communication by an authorised person, at the time or times specified, to undergo testing:

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- (d) undergo a testing procedure when required to do so by a response notice given by an automated system:
- make other minor and technical drafting changes.

The amendments are to new provisions to be inserted into the Bail Act 2000, Parole Act 2002, Sentencing Act 2002, and Public Safety (Public Protection Orders) Act 2014. This Supplementary Order Paper replaces Supplementary Order Paper No 161 and incorporates the amendments set out in that Supplementary Order Paper in relation to the Returning Offenders (Management and Information) Act 2015.

The Honourable Judith Collins, in Committee, to propose the amendments shown in the following document.

Hon Peseta Sam Lotu-Iiga

Drug and Alcohol Testing of Community-based Offenders and Bailees Legislation Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Drug and Alcohol Testing of Community-based Offenders, Bailees, and Other Persons Legislation Act **2014**.

2 Commencement

- (1) This Act comes into force on the earlier of the following: ~~day immediately after the expiry of the period of 6 months that commences on the date on which this Act receives the Royal assent.~~

(a) a date appointed by the Governor-General by Order in Council:

(b) the day immediately after the expiry of the 6-month period.

- (2) The **6-month period** is the period of 6 months that commences on the date on which this Act receives the Royal assent.

Part 1

Amendments to Bail Act 2000

3 Principal Act

This **Part** amends the Bail Act 2000 (the **principal Act**).

Definitions and correction of cross-reference

4 Section 3 amended (Interpretation)

In section 3, insert in their appropriate alphabetical order:

bodily sample, for a person, means—

- (a) a sample of the person's blood, breath, hair, or urine; or
(b) any other sample of a similar kind from the person

controlled drug has the same meaning as in section 2(1) of the Misuse of Drugs Act 1975

drug or alcohol condition means a condition of bail—

- (a) that is imposed under section 30(4) (alone or with any of sections 21B(2) and (3), 40(4), 53(4), and 54(4)); and
(b) that prohibits a defendant from doing 1 or more of the following:
(i) using (as defined in this section) a controlled drug;
(ia) using a psychoactive substance;
(ii) consuming alcohol

drug or alcohol monitoring device means a device, connected to a person's body, that is able to detect the presence in the person's body of 1 or more of the following:

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- (a) a controlled drug used by the person:
- (ab) a psychoactive substance used by the person:
- (b) alcohol consumed by the person

medical laboratory technologist means a health practitioner who is, or is deemed to be, registered with the Medical Sciences Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medical laboratory science

medical officer means—

- (aa) a person acting in a hospital who, in the normal course of the person's duties, takes blood specimens; or
- (a) a nurse; or
- (b) a medical laboratory technologist

medical practitioner means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine

nurse means a health practitioner who is, or is deemed to be, registered with the Nursing Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of nursing whose scope of practice permits the performance of general nursing functions

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

testing of a person for a controlled drug, a psychoactive substance, or alcohol includes, without limitation, the person's permitting the collection for analysis of a bodily sample

using, in relation to a controlled drug and a person, excludes the person using the controlled drug as a prescription medication in accordance with section 8(2)(c) or (d) of the Misuse of Drugs Act 1975

4A New section 3A inserted (Transitional, savings, and related provisions)

After section 3, insert:

3A Transitional, savings, and related provisions

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

5 Section 13 amended (Exercise of discretion when considering bail pending sentencing)

In section 13(4A)(a), replace “section 30(3A)” with “section 30(3)”.

Conditions of bail

6 Section 30 amended (Conditions of bail)

After section 30(4), insert:

- (4A) However, a Registrar must not impose a drug or alcohol condition under subsection (4) unless the defendant consents to the condition being imposed.

7 New section 30AA inserted (Imposition, and effect, of drug or alcohol condition)

After section 30, insert:

30AA Imposition, and effect, of drug or alcohol condition

- (1) This section applies if a judicial officer or Registrar imposes a drug or alcohol condition on a defendant under section 30(4) (alone or with any of sections 40(4), 53(4), and 54(4)).
- (2) The judicial officer or Registrar cannot direct, indicate, or require that the defendant undergo or submit to drug or alcohol testing or continuous monitoring, but the condition requires the defendant to comply with all requirements arising from an authorised person giving the defendant notice under **section 30T(1)**.
- (3) The judicial officer or Registrar must advise the defendant that the defendant must do ~~either or both~~ any 1 or more of the following things if required to do so by notice given to the defendant by an authorised person under **section 30T(1)**:
 - (a) undergo testing for a controlled drug, a psychoactive substance, or alcohol:
 - (b) submit to continuous monitoring of the defendant's compliance with the drug or alcohol condition through a drug or alcohol monitoring device connected to the defendant's body;
 - (c) contact an automated system, and undergo testing for a controlled drug, a psychoactive substance, or alcohol if required by a response notice given by the automated system.
- (4) To avoid doubt, this section does not apply to a defendant who has been granted Police bail with a drug or alcohol condition.

8 New sections 30T to 30W and cross-heading inserted

After section 30S, insert:

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Testing and monitoring of defendants on bail with drug or alcohol conditions

30T Defendant on bail (other than Police bail) with drug or alcohol condition may be required to undergo testing or submit to continuous monitoring

- (1) An authorised person may, by notice given orally or in writing to a defendant who is on bail (other than Police bail) with a drug or alcohol condition, require the defendant to do either or both any 1 or more of the following:
- (a) undergo testing for a controlled drug, a psychoactive substance, or alcohol using a testing procedure prescribed in rules made under **section 73AA(1)(a)**;
 - (b) submit, during a reasonable period specified in the notice, to continuous monitoring of the defendant's compliance with the drug or alcohol condition through a drug or alcohol monitoring device of a type prescribed in rules made under **section 73AA(1)(d)**;
 - (c) contact, in 1 or more specified reasonably practicable ways, during 1 or more specified periods on specified days, a specified automated system and, if required by a response notice given by the automated system, undergo testing for a controlled drug, a psychoactive substance, or alcohol, using a specified testing procedure prescribed in rules made under **section 73AA(1)(a)**.
- (2) ~~In exercising his or her discretion under **subsection (1)**, an authorised person—~~
- (a) ~~must comply with any rules made under **section 73AA(1)**; and~~
 - (b) ~~may determine—~~
 - (i) ~~whether to require the defendant to undergo a prescribed testing procedure or to submit to continuous monitoring; and~~
 - (ii) ~~which of the prescribed testing procedures, if any, the defendant is required to undergo.~~
- (2) An authorised person exercising that person's discretion under **subsection (1)**—
- (a) must comply with any rules made under **section 73AA(1)**; and
 - (b) may—
 - (i) select a defendant to do what is specified in **subsection (1)(a), (b), or (c)** in any manner (including randomly); and
 - (ii) make a determination in respect of the defendant with or without evidence that the defendant has breached the condition; and
 - (c) must, if requiring the defendant to do what is specified in **subsection (1)(a) or (c)**, determine the prescribed testing procedure to be used for the testing required under **subsection (1)(a)**, or required if the defend-

ant is selected to undergo testing by an automated system that the defendant is required to contact under **subsection (1)(c)**.

- (3) A determination under **subsection (2)(b)(i)** may be made in respect of—
- (a) a defendant who is on bail with a drug or alcohol condition; or
 - (b) a defendant who is on bail with a drug or alcohol condition and who the authorised person has cause to suspect has breached the condition.
- (3) A notice given to a defendant under **subsection (1)(b)** may include a requirement that the defendant comply with instructions specified in the notice that are reasonably necessary for the effective administration of the continuous monitoring (for example, an instruction to charge the monitoring device regularly or protect it from events, such as submersion in water, that may damage it or interfere with its functioning).
- (3A) An automated system specified in a notice given under **subsection (1)(c)** must include an automated selection method that determines, in any manner consistent with rules made under **section 73AA(1)(b)** (including randomly), whether a defendant is required to undergo testing.
- (4) Only a medical practitioner or medical officer may collect a blood sample from a defendant under this section.
- (5) If a notice under **subsection (1)** is given orally, the authorised person who gives the notice must record it in writing, and give a copy to the defendant, as soon as is reasonably practicable.
- (6) In this section and in **sections 30U30TA to 30W**, authorised person means a person who is—
- (a) a constable; or
 - (b) an employee of the Department of Corrections authorised by the chief executive of that department to require defendants to undergo testing, or submit to continuous monitoring, under this section.

30TA How notice of requirement to undergo testing or to submit to continuous monitoring may be given

- (1) An authorised person may give a defendant a notice under **section 30T(1)** in any of the following ways:
- (a) by giving the notice personally and in writing to the defendant;
 - (b) by giving the notice personally and orally to the defendant, then, unless the notice requires the defendant only to undergo breath screening, as soon as practicable recording it in writing and giving a copy to the defendant;
 - (c) if the notice is given under **section 30T(1)(a)**, by giving the notice by telephone or other means of electronic communication (as defined in section 5 of the Electronic Transactions Act 2002) to the defendant, then

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as soon as practicable recording it in writing (if it is not already in writing) and giving a copy to the defendant.

- (2) An automated system must, in response to a defendant contacting it as required by a notice given under **section 30T(1)(c) and subsection (1)**, give the defendant a spoken or written response notice specifying whether the defendant is required to undergo testing.
- (3) A notice given by an authorised person under **subsection (1)(c)**, or a response notice that is given by an automated system under **subsection (2)** and that requires a defendant to undergo testing, must specify the name and location of a testing facility to which the defendant is required to report to undergo testing, and the time or times when the defendant is required to report, under **section 30U**.

30U Where prescribed testing procedure may be carried out

- (1) An authorised person may require a defendant to undergo testing at the place where the defendant is given notice under **section 30T(1)** personally by the authorised person.
- (2) **Subsection (1)** applies even if the place where the defendant is given notice personally by the authorised person is—
 - (a) a public place (as defined in section 2(1) of the Summary Offences Act 1981); or
 - (b) a place that is wholly or partly outside a dwelling house, or any other building, at the defendant’s residential address.
- (3) However, a defendant cannot be required to undergo a prescribed testing procedure in a place specified in **subsection (2)(a) or (b)** if the testing procedure involves the collection of blood or urine.
- (4) ~~An authorised person may, if **subsection (3)** applies, or if it is not reasonably practicable to require the defendant to undergo testing at the place where the defendant is given notice, require the defendant to accompany the authorised person to any other place where it is likely that it will be reasonably practicable for the defendant to undergo testing.~~
- (4) A defendant given notice personally (in writing or orally) by the authorised person may be required by the authorised person, if **subsection (3)** applies or if it is not reasonably practicable to require the defendant to undergo testing at the place where the defendant is given notice, to accompany the authorised person to any other place where it is likely that it will be reasonably practicable for the defendant to undergo testing.
- (5) A defendant given a notice under **section 30TA(1)(c) or (2)** that requires the defendant to undergo testing is required to report to the testing facility whose name and location are specified in the notice, at the time or times specified, to undergo testing.

30V Breach of drug or alcohol condition

- (1) A defendant on bail with a drug or alcohol condition breaches the condition if the defendant—
- (a) uses a controlled drug or a psychoactive substance, or consumes alcohol, in contravention of the condition; or
 - (b) refuses or fails, without reasonable excuse,—
 - (i) to undergo a testing procedure when required to do so under **sections 30T(1)(a)** and **30U**; or
 - (ii) to submit to continuous monitoring when required to do so under **section 30T(1)(b)**; or
 - (iia) to comply with instructions specified in a notice given under **section 30T(1)(b)** that are reasonably necessary for the effective administration of the continuous monitoring; or
 - (iii) to accompany an authorised person, when required to do so under **section 30U(4)**, to a place where it is likely that it will be reasonably practicable for the defendant to undergo testing; or
 - (iiaa) to contact a specified automated system when required to do so under **section 30T(1)(c)**; or
 - (iiib) to report, at any time or times when required to do so under **section 30U(5)**, to a specified testing facility to undergo testing; or
 - (iiic) to undergo a testing procedure when required to do so under **sections 30T(1)(c)** and **30U**; or
 - (iv) to allow 1 or more persons specified in **subsection (2)** to enter the defendant's residential address for all or any of the following purposes:
 - (A) attaching a drug or alcohol monitoring device to, or removing the device from, the defendant;
 - (B) servicing or inspecting the device;
 - (C) installing, removing, servicing, or inspecting any equipment necessary for the operation of the device; or
 - (c) does anything with the intention of diluting or contaminating a bodily sample required under **section 30T(1)(a) or (c)** for the purposes of a prescribed testing procedure; or
 - (d) tampers with a drug or alcohol monitoring device required under **section 30T(1)(b)** or does anything with the intention of interfering with the functioning of that device.
- (2) The persons referred to in **subsection (1)(b)(iv)** are—
- (a) an authorised person who has produced evidence of that person's identity to the defendant; and

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- (b) a person accompanying a person described in **paragraph (a)**; and
- (c) a person who—
 - (i) has produced evidence of that person’s identity to the defendant; and
 - (ii) is authorised in writing by an authorised person to enter the defendant’s residential address for all or any of the following purposes:
 - (A) attaching a drug or alcohol monitoring device to, or removing the device from, the defendant;
 - (B) servicing or inspecting the device;
 - (C) installing, removing, servicing, or inspecting any equipment necessary for the operation of the device; and
 - (iii) has produced that written authority to the defendant.
- (3) **Subsection (1)(b) to (d)** does not apply to a defendant who has been granted Police bail with a drug or alcohol condition.

30W Information obtained from drug and alcohol testing or monitoring

- (1) Information obtained from a prescribed testing procedure or a drug or alcohol monitoring device required under **section 30T(1)**—
 - (a) may be used for all or any of the following purposes:
 - (i) verifying compliance by the defendant with a drug or alcohol condition;
 - (ii) detecting non-compliance by the defendant with a drug or alcohol condition, and providing evidence of that non-compliance;
 - (iii) verifying that the defendant has not tampered or otherwise interfered with a drug or alcohol monitoring device;
 - (iv) any purpose for which the defendant has requested, or consented to, the information being used; and
 - (b) must not, except at the request or with the consent of the defendant, be used as evidence that the defendant committed an offence or for any other purpose not listed in **paragraph (a)**.
- (2) A judicial officer or court may, in the absence of evidence that is available to the judicial officer or court and that is to the contrary effect, presume that any information that an authorised person has certified in writing was obtained from a prescribed testing procedure or a drug or alcohol monitoring device—
 - (a) is accurate; and
 - (b) was obtained in the manner required by **sections 30T and to 30U**.

Rules

10 Section 73 amended (Rules)

Replace the heading to section 73 with “**Rules relating to practice and procedure of courts**”.

11 New sections 73AA to 73AAC inserted

After section 73, insert:

73AA Rules about drug and alcohol testing and monitoring

- (1) The Commissioner may, by notice in the *Gazette*, make rules for all or any of the following purposes:
- (a) prescribing, for the purposes of **section 30T(1)(a) and (c)**, 1 or more types of testing procedure that defendants on bail with a drug or alcohol condition may be required to undergo:
 - (b) specifying how often each of the prescribed testing procedures may be carried out:
 - (c) prohibiting authorised persons from requiring a defendant to undergo certain testing procedures if other less intrusive testing procedures are available and are sufficient in the circumstances:
 - (d) prescribing, for the purposes of **section 30T(1)(b)**, 1 or more types of drug or alcohol monitoring device that may be connected to a defendant on bail with a drug or alcohol condition:
 - (e) specifying restrictions as to how often, and for how long, ~~continuous monitoring may be carried out:—~~
 - (i) continuous monitoring may be carried out:
 - (ii) a defendant may be required to contact an automated system:
 - (f) prescribing, for any 1 or more of the following, minimum levels that must be present in a bodily sample collected from a defendant in order for the sample to be used as evidence that the defendant has breached a drug or alcohol condition:
 - (i) controlled drugs:
 - (ii) psychoactive substances:
 - (iii) alcohol.
- (2) In this section and in **sections 73AAB** and **73AAC**, **Commissioner** means the Commissioner of Police.

73AAB Further provisions concerning rules about drug and alcohol testing and monitoring

- (1) Rules made under **section 73AA(1)(a)** may, without limitation, prescribe testing procedures that do all or any of the following:

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- (a) include, as part of the procedure, either or both of the following:
 - (i) breath screening;
 - (ii) the collection and analysis of a bodily sample:
 - (b) require a defendant to be supervised by a person of the same sex as the defendant during the collection of a bodily sample required for testing;
 - (c) provide for a defendant to elect, if the defendant meets in advance all actual and reasonable costs, to have part of a bodily sample (or 1 bodily sample from a set of samples collected at the same time) independently tested in a manner prescribed in the rules.
- (2) The Commissioner may make rules under **section 73AA(1)** only if satisfied that the rules—
- (a) prescribe testing procedures that are no more intrusive than is reasonably necessary to ensure compliance with a drug or alcohol condition; and
 - (b) allow for defendants to be tested no more often than is reasonably necessary to ensure compliance with a drug or alcohol condition; and
 - (c) ensure that defendants liable to testing and monitoring are afforded as much privacy and dignity as is reasonably practicable.
- (3) **Subsection (1)(b)** overrides **subsection (2)(c)**.

73AAC Availability of rules about drug and alcohol testing and monitoring, and status under Legislation Act 2012

- (1) The Commissioner must ensure that any rules made under **section 73AA** are, while in force, made available—
- (a) on an Internet site that is maintained by or on behalf of the New Zealand Police and that is, so far as practicable, publicly available free of charge; and
 - (b) for public inspection free of charge; and
 - (c) for purchase at a reasonable price.
- (2) Rules made under **section 73AA** are disallowable instruments, but not legislative instruments, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

11A New Schedule 1AA inserted

Before Schedule 1, insert the **Schedule 1AA** set out in **Schedule 1** of this Act.

Part 2 Amendments to Parole Act 2002

12 Principal Act

This **Part** amends the Parole Act 2002 (the **principal Act**).

Definitions

13 Section 4 amended (Interpretation)

In section 4(1), insert in their appropriate alphabetical order:

bodily sample, for a person, means—

- (a) a sample of the person's blood, breath, hair, or urine; or
- (b) any other sample of a similar kind from the person

controlled drug has the same meaning as in section 2(1) of the Misuse of Drugs Act 1975

drug or alcohol condition means a special condition of parole, a special condition on release under section 17 at the release date of a long-term sentence, or a condition of an extended supervision order—

- (a) that is imposed under section **15(3)(ba)**, 18(2)(b), or 107K(1); and
- (b) that prohibits an offender from doing 1 or more of the following:
 - (i) using (as defined in this section) a controlled drug:
 - (ia) using a psychoactive substance:
 - (ii) consuming alcohol

drug or alcohol monitoring device means a device, connected to a person's body, that is able to detect the presence in the person's body of 1 or more of the following:

- (a) a controlled drug used by the person:
- (ab) a psychoactive substance used by the person:
- (b) alcohol consumed by the person

medical laboratory technologist means a health practitioner who is, or is deemed to be, registered with the Medical Sciences Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medical laboratory science

medical officer means—

- (aa) a person acting in a hospital who, in the normal course of the person's duties, takes blood specimens; or
- (a) a nurse; or
- (b) a medical laboratory technologist

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medical practitioner means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine

nurse means a health practitioner who is, or is deemed to be, registered with the Nursing Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of nursing whose scope of practice permits the performance of general nursing functions

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

testing of a person for a controlled drug, a psychoactive substance, or alcohol includes, without limitation, the person's permitting the collection for analysis of a bodily sample

using, in relation to a controlled drug and a person, excludes the person using the controlled drug as a prescription medication in accordance with section 8(2)(c) or (d) of the Misuse of Drugs Act 1975

13A New section 4A inserted (Transitional, savings, and related provisions)

After section 4, insert:

4A Transitional, savings, and related provisions

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

Conditions on parole or release

14 Section 15 amended (Special conditions)

After section 15(3)(b), insert:

(ba) conditions prohibiting the offender from doing 1 or more of the following:

- (i) using (as defined in section 4(1)) a controlled drug:
- (ii) using a psychoactive substance:
- (iii) consuming alcohol:

15 New sections 16A to 16D and cross-heading inserted

After section 16, insert:

Drug or alcohol conditions

16A Imposition, and effect, of drug or alcohol condition

- (1) This section applies if the Board imposes a drug or alcohol condition on an offender under section **15(3)(ba)**, 18(2)(b), or 107K(1).
- (2) The Board cannot direct, indicate, or require that the offender undergo or submit to drug or alcohol testing or continuous monitoring, but the condition requires the offender to comply with all requirements arising from an authorised person giving the ~~defendant~~ offender notice under **section 16B(2)**.
- (3) The Board must advise the offender that the offender must do ~~either or both~~ any 1 or more of the following things if required to do so by notice given by an authorised person under **section 16B(2)**:
 - (a) undergo testing for a controlled drug, a psychoactive substance, or alcohol:
 - (b) submit to continuous monitoring of the offender's compliance with the drug or alcohol condition through a drug or alcohol monitoring device connected to the offender's body;
 - (c) contact an automated system, and undergo testing for a controlled drug, a psychoactive substance, or alcohol if required by a response notice given by the automated system.

16B Offender with drug or alcohol condition may be required to undergo testing or submit to continuous monitoring

- (1) This section applies to an offender who—
 - (a) is on parole with a drug or alcohol condition; or
 - (b) has been released under section 17, at the release date of a long-term sentence, with a drug or alcohol condition; or
 - (c) is subject to an extended supervision order with a drug or alcohol condition.
- (2) An authorised person may, by notice given ~~orally or in writing~~ to an offender to whom this section applies, require the offender to do ~~either or both~~ any 1 or more of the following:
 - (a) undergo testing for a controlled drug, a psychoactive substance, or alcohol using a testing procedure prescribed in rules made under **section 74A(a)**:
 - (b) submit, during a reasonable period specified in the notice, to continuous monitoring of the offender's compliance with the drug or alcohol condition through a drug or alcohol monitoring device of a type prescribed in rules made under **section 74A(d)**;
 - (c) contact, in 1 or more specified reasonably practicable ways, during 1 or more specified periods on specified days, a specified automated system

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- and, if required by a response notice given by the automated system, undergo testing for a controlled drug, a psychoactive substance, or alcohol, using a specified testing procedure prescribed in rules made under **section 74A(a)**.
- (3) ~~In exercising his or her discretion under **subsection (2)**, an authorised person—~~
- ~~(a) must comply with any rules made under **section 74A**; and~~
 - ~~(b) may determine—~~
 - ~~(i) whether to require the offender to undergo a prescribed testing procedure or to submit to continuous monitoring; and~~
 - ~~(ii) which of the prescribed testing procedures, if any, the offender is required to undergo.—~~
- (3) An authorised person exercising that person’s discretion under **subsection (2)**—
- (a) must comply with any rules made under **section 74A**; and
 - (b) may—
 - (i) select an offender to do what is specified in **subsection (2)(a), (b), or (c)** in any manner (including randomly); and
 - (ii) make a determination in respect of the offender with or without evidence that the offender has breached the condition; and
 - (c) must, if requiring the offender to do what is specified in **subsection (2)(a) or (c)**, determine the prescribed testing procedure to be used for the testing required under **subsection (2)(a)**, or required if the offender is selected to undergo testing by an automated system that the offender is required to contact under **subsection (2)(c)**.
- (4) ~~A determination under **subsection (3)(b)(i)** may be made in respect of—~~
- ~~(a) an offender to whom this section applies; or~~
 - ~~(b) an offender to whom this section applies who the authorised person has cause to suspect has breached the condition.~~
- (4) A notice given to an offender under **subsection (2)(b)** may include a requirement that the offender comply with instructions specified in the notice that are reasonably necessary for the effective administration of the continuous monitoring (for example, an instruction to charge the monitoring device regularly or protect it from events, such as submersion in water, that may damage it or interfere with its functioning).
- (4A) An automated system specified in a notice under **subsection (2)(c)** must include an automated selection method that determines, in any manner consistent with rules made under **section 74A(b)** (including randomly), whether the offender is required to undergo testing.

- (5) Only a medical practitioner or medical officer may collect a blood sample from an offender under this section.
- (6) If a notice under **subsection (2)** is given orally, the authorised person who gives the notice must record it in writing, and give a copy to the offender, as soon as is reasonably practicable.
- (7) In this section and in ~~sections 16C and 16D~~ **sections 16BA to 16D and 71A**, authorised person means a person who is—
 - (a) a constable; or
 - (b) an employee of the Department of Corrections authorised by the chief executive of that department to require offenders to undergo testing, or submit to continuous monitoring, under this section.

16BA How notice of requirement to undergo testing or to submit to continuous monitoring may be given

- (1) An authorised person may give an offender a notice under **section 16B(2)** in any of the following ways:
 - (a) by giving the notice personally and in writing to the offender:
 - (b) by giving the notice personally and orally to the offender, then, unless the notice requires the offender only to undergo breath screening, as soon as practicable recording it in writing and giving a copy to the offender:
 - (c) if the notice is given under **section 16B(2)(a)**, by giving the notice to the offender by telephone or other means of electronic communication (as defined in section 5 of the Electronic Transactions Act 2002), then as soon as practicable recording it in writing (if it is not already in writing) and giving a copy to the offender.
- (2) An automated system must, in response to an offender contacting it as required by a notice given under **section 16B(2)(c)** and **subsection (1)**, give the offender a spoken or written response notice specifying whether the offender is required to undergo testing.
- (3) A notice given by an authorised person under **subsection (1)(c)**, or a response notice that is given by an automated system under **subsection (2)** and that requires an offender to undergo testing, must specify the name and location of a testing facility to which the offender is required to report to undergo testing, and the time or times when the offender is required to report, under **section 16C**.

16C Where prescribed testing procedure may be carried out

- (1) An authorised person may require an offender to whom **section 16B** applies to undergo testing at the place where the offender is given notice under **section 16B(2)** personally by the authorised person.

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- (2) **Subsection (1)** applies even if the place where the offender is given notice personally by the authorised person is—
- (a) a public place (as defined in section 2(1) of the Summary Offences Act 1981); or
 - (b) a place that is wholly or partly outside a dwelling house, or any other building, at the ~~defendant's~~ offender's residential address.
- (3) However, an offender cannot be required to undergo a prescribed testing procedure in a place specified in **subsection (2)(a)** or **(b)** if the testing procedure involves the collection of blood or urine.
- (4) ~~An authorised person may, if **subsection (3)** applies, or if it is not reasonably practicable to require the offender to undergo testing at the place where the offender is given notice, require the offender to accompany the authorised person to any other place where it is likely that it will be reasonably practicable for the offender to undergo testing.~~
- (4) An offender given notice personally (in writing or orally) by the authorised person may be required by the authorised person, if **subsection (3)** applies or if it is not reasonably practicable to require the offender to undergo testing at the place where the offender is given notice, to accompany the authorised person to any other place where it is likely that it will be reasonably practicable for the offender to undergo testing.
- (5) An offender given a notice under **section 16BA(1)(c)** or **(2)** that requires the offender to undergo testing is required to report to the testing facility whose name and location are specified in the notice, at the time or times specified, to undergo testing.

16D Information obtained from drug and alcohol testing or monitoring

- (1) Information obtained from a prescribed testing procedure or a drug or alcohol monitoring device required under **section 16B(2)**—
- (a) may be used for all or any of the following purposes:
 - (i) verifying compliance by the offender with a drug or alcohol condition;
 - (ii) detecting non-compliance by the offender with a drug or alcohol condition, and providing evidence of that non-compliance;
 - (iii) verifying that the offender has not tampered or otherwise interfered with a drug or alcohol monitoring device;
 - (iv) any purpose for which the offender has requested to use the information or consented to its use; and
 - (b) must not, except at the request or with the consent of the offender, be used—
 - (i) as evidence that the offender committed an offence, other than an offence against section 71, **71A**, 107T, or **107TA**; or

- (ii) for any other purpose not listed in **paragraph (a)**.
- (2) The Board or a court may, in the absence of evidence that is available to the Board or court and that is to the contrary effect, presume that any information that an authorised person has certified in writing was obtained from a prescribed testing procedure or a drug or alcohol monitoring device—
 - (a) is accurate; and
 - (b) was obtained in the manner required by **sections 16B to 16C and 16C**.

Offences: parole or release

16 New section 71A inserted (Offences related to drug or alcohol conditions)

After section 71, insert:

71A Offences related to drug or alcohol conditions

- (1) An offender on parole, or released under section 17 at the release date of a long-term sentence, with a drug or alcohol condition commits an offence if the offender—
 - (a) refuses or fails, without reasonable excuse,—
 - (i) to undergo a testing procedure when required to do so under **sections 16B(2)(a) and 16C**; or
 - (ii) to submit to continuous monitoring when required to do so under **section 16B(2)(b)**; or
 - (ia) to comply with instructions specified in a notice given under **section 16B(2)(b)** that are reasonably necessary for the effective administration of the continuous monitoring; or
 - (iii) to accompany an authorised person, when required to do so under **section 16C(4)**, to a place where it is likely that it will be reasonably practicable for the offender to undergo testing; or
 - (iv) to contact a specified automated system when required to do so under **section 16B(2)(c)**; or
 - (v) to report, at any time or times when required to do so under **section 16C(5)**, to a specified testing facility to undergo testing; or
 - (vi) to undergo a testing procedure when required to do so under **sections 16B(2)(c) and 16C**; or
 - (b) does anything with the intention of diluting or contaminating a bodily sample required under **section 16B(2)(a) or (c)** for the purposes of a prescribed testing procedure; or
 - (c) tampers with a drug or alcohol monitoring device required under **section 16B(2)(b)** or does anything with the intention of interfering with the functioning of that device.

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- (2) An offender who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$2,000.

17 New section 72A inserted (Offence to refuse authorised person entry for certain purposes related to continuous monitoring)

After section 72, insert:

72A Offence to refuse authorised person entry for certain purposes related to continuous monitoring

- (1) This section applies to an offender who is—
- (a) on parole, or released under section 17 at the release date of a long term sentence, or subject to an extended supervision order, with a drug or alcohol condition; and
 - (b) required, under **section 16B(2)(b)**, to submit to continuous monitoring of the offender's compliance with the condition.
- (2) The offender commits an offence if the offender refuses or fails, without reasonable excuse, to allow an authorised person to enter the offender's residential address for all or any of the following purposes:
- (a) attaching a drug or alcohol monitoring device to, or removing the device from, the offender;
 - (b) servicing or inspecting the device;
 - (c) installing, removing, servicing, or inspecting any equipment necessary for the operation of the device.
- (3) An offender who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$5,000.
- (4) In **subsection (2)**, **authorised person** means any of the following:
- (a) an authorised person (as defined in **section 16B(7)**) who has produced evidence of that person's identity to the offender;
 - (b) a person accompanying a person described in **paragraph (a)**;
 - (c) a person who—
 - (i) has produced evidence of that person's identity to the offender; and
 - (ii) is authorised in writing by an authorised person (as defined in **section 16B(7)**) to enter the offender's residential address for all or any of the following purposes:
 - (AA) attaching a drug or alcohol monitoring device to, or removing the device from, the offender;
 - (A) servicing or inspecting the device;

- (B) installing, removing, servicing, or inspecting any equipment necessary for the operation of the device; and
- (iii) has produced that written authority to the offender.

Rules

18 New sections 74A to 74C and cross-heading inserted

After section 74, insert:

Rules

74A Rules about drug and alcohol testing and monitoring

The chief executive may, by notice in the *Gazette*, make rules for all or any of the following purposes:

- (a) prescribing, for the purposes of **section 16B(2)(a) and (c)**, 1 or more types of testing procedure that an offender to whom **section 16B** applies may be required to undergo:
- (b) specifying how often each of the prescribed testing procedures may be carried out:
- (c) prohibiting authorised persons from requiring an offender to undergo certain testing procedures if other less intrusive testing procedures are available and are sufficient in the circumstances:
- (d) prescribing, for the purposes of **section 16B(2)(b)**, 1 or more types of drug or alcohol monitoring device that may be connected to an offender to whom **section 16B** applies:
- (e) specifying restrictions as to how often, and for how long, ~~continuous monitoring may be carried out:—~~
 - (i) continuous monitoring may be carried out:
 - (ii) an offender may be required to contact an automated system:
- (f) prescribing, for any 1 or more of the following, minimum levels that must be present in a bodily sample collected from an offender in order for the sample to be used as evidence that the offender has breached a drug or alcohol condition:
 - (i) controlled drugs:
 - (ii) psychoactive substances:
 - (iii) alcohol.

74B Further provisions concerning rules about drug and alcohol testing and monitoring

- (1) Rules made under **section 74A(a)** may, without limitation, prescribe testing procedures that do all or any of the following:

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- (a) include, as part of the procedure, either or both of the following:
 - (i) breath screening;
 - (ii) the collection and analysis of breath, blood, hair, urine, or any other bodily sample;
 - (b) require an offender to be supervised by a person of the same sex as the offender during the collection of a bodily sample required for testing;
 - (c) provide for an offender to elect, if the offender meets in advance all actual and reasonable costs, to have part of a bodily sample (or 1 bodily sample from a set of samples collected at the same time) independently tested in a manner prescribed in the rules.
- (2) The chief executive may make rules under **section 74A** only if satisfied that the rules—
- (a) prescribe testing procedures that are no more intrusive than is reasonably necessary to ensure compliance with a drug or alcohol condition; and
 - (b) allow for offenders to be tested no more often than is reasonably necessary to ensure compliance with a drug or alcohol condition; and
 - (c) ensure that offenders liable to testing and monitoring are afforded as much privacy and dignity as is reasonably practicable.
- (3) **Subsection (1)(b)** overrides **subsection (2)(c)**.

74C Availability of rules about drug and alcohol testing and monitoring, and status under Legislation Act 2012

- (1) The chief executive must ensure that any rules made under **section 74A** are, while in force, made available—
- (a) on an Internet site that is maintained by or on behalf of the Department of Corrections and that is, so far as practicable, publicly available free of charge; and
 - (b) for public inspection free of charge; and
 - (c) for purchase at a reasonable price.
- (2) Rules made under **section 74A** are disallowable instruments, but not legislative instruments, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Offences: extended supervision orders

19 New section 107TA inserted (Offences related to drug or alcohol conditions)

After section 107T, insert:

107TA Offences related to drug or alcohol conditions

- (1) An offender who is subject to an extended supervision order with a drug or alcohol condition commits an offence if the offender—
- (a) refuses or fails, without reasonable excuse,—
 - (i) to undergo a testing procedure when required to do so under **sections 16B(2)(a) and 16C**; or
 - (ii) to submit to continuous monitoring when required to do so under **section 16B(2)(b)**; or
 - (iiia) to comply with instructions specified in a notice given under **section 16B(2)(b)** that are reasonably necessary for the effective administration of the continuous monitoring; or
 - (iii) to accompany an authorised person, when required to do so under **section 16C(4)**, to a place where it is likely that it will be reasonably practicable for the offender to undergo testing; or
 - (iv) to contact a specified automated system when required to do so under **section 16B(2)(c)**; or
 - (v) to report, at any time or times when required to do so under **section 16C(5)**, to a specified testing facility to undergo testing; or
 - (vi) to undergo a testing procedure when required to do so under **sections 16B(2)(c) and 16C**; or
 - (b) does anything with the intention of diluting or contaminating a bodily sample required under **section 16B(2)(a) or (c)** for the purposes of a prescribed testing procedure; or
 - (c) tampers with a drug or alcohol monitoring device required under **section 16B(2)(b)** or does anything with the intention of interfering with the functioning of that device.
- (2) An offender who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 2 years.

19A New Schedule 1 inserted

Before the Schedule, insert as Schedule 1 the **Schedule 1** set out in **Schedule 2** of this Act.

Part 3
Amendments to Sentencing Act 2002

20 Principal Act

This **Part** amends the Sentencing Act 2002 (the **principal Act**).

Interpretation

21 Section 4 amended (Interpretation)

In section 4(1), insert in their appropriate alphabetical order:

bodily sample, for a person, means—

- (a) a sample of the person’s blood, breath, hair, or urine; or
- (b) any other sample of a similar kind from the person

controlled drug has the same meaning as in section 2(1) of the Misuse of Drugs Act 1975

drug or alcohol condition means a condition of a sentence of supervision, intensive supervision, or home detention, or a post-detention or post-imprisonment condition,—

- (a) that is imposed under section **52(2)(bb)**, **54I(3)(ba)**, **80D(4)(ca)**, **80N(1) and(2)(b)**, or 93(1) or (2)(b); and
- (b) that prohibits an offender from doing 1 or more of the following:
 - (i) using (as defined in this section) a controlled drug:
 - (ia) using a psychoactive substance:
 - (ii) consuming alcohol

drug or alcohol monitoring device means a device, connected to a person’s body, that is able to detect the presence in the person’s body of 1 or more of the following:

- (a) a controlled drug used by the person:
- (ab) a psychoactive substance used by the person:
- (b) alcohol consumed by the person

medical laboratory technologist means a health practitioner who is, or is deemed to be, registered with the Medical Sciences Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medical laboratory science

medical officer means—

- (a) a person acting in a hospital who, in the normal course of the person’s duties, takes blood specimens; or
- (b) a nurse; or
- (c) a medical laboratory technologist

medical practitioner means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine

nurse means a health practitioner who is, or is deemed to be, registered with the Nursing Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of nursing whose scope of practice permits the performance of general nursing functions

post-imprisonment condition means a special condition that is imposed under section 93(1) or (2)(b) on an offender sentenced to a short term of imprisonment

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

testing of a person for a controlled drug, a psychoactive substance, or alcohol includes, without limitation, the person's permitting the collection for analysis of a bodily sample

using, in relation to a controlled drug and a person, excludes the person using the controlled drug as a prescription medication in accordance with section 8(2)(c) or (d) of the Misuse of Drugs Act 1975

21A New section 4A inserted (Transitional, savings, and related provisions)

After section 4, insert:

4A Transitional, savings, and related provisions

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

Supervision

22 Section 52 amended (Other special conditions)

(1) After section 52(2)(ba), insert:

(bb) conditions prohibiting the offender from doing 1 or more of the following:

- (i) using (as defined in section 4(1)) a controlled drug:
- (ii) using a psychoactive substance:
- (iii) consuming alcohol:

(2) After section 52(3A), insert:

(3B) However, subsection (3A) does not prevent the court from imposing a drug or alcohol condition, which would mean that the offender may be required, under **section 80ZO(2)(b)**, to submit to continuous monitoring.

Intensive supervision

23 Section 54I amended (Other special conditions)

(1) After section 54I(3)(b), insert:

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- (ba) conditions prohibiting the offender from doing 1 or more of the following:
- (i) using (as defined in section 4(1)) a controlled drug:
 - (ii) using a psychoactive substance:
 - (iii) consuming alcohol:
- (2) After section 54I(4), insert:
- (4A) However, subsection (4)(c) does not prevent the court from imposing a drug or alcohol condition, which would mean that the offender may be required, under **section 80ZO(2)(b)**, to submit to continuous monitoring.

Offence: supervision

24 New section 70AA inserted (Offences related to sentences of supervision with drug or alcohol conditions)

After section 70, insert:

70AA Offences related to sentences of supervision with drug or alcohol conditions

An offender who is subject to a sentence of supervision with a drug or alcohol condition commits an offence, and is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$1,000, if the offender—

- (a) refuses or fails, without reasonable excuse,—
 - (i) to undergo a testing procedure when required to do so under **sections 80ZO(2)(a)** and **80ZP**; or
 - (ii) to submit to continuous monitoring when required to do so under **section 80ZO(2)(b)**; or
 - (ia) to comply with instructions specified in a notice given under **section 80ZO(2)(b)** that are reasonably necessary for the effective administration of the continuous monitoring; or
 - (iii) to accompany an authorised person, when required to do so under **section 80ZP(4)**, to a place where it is likely that it will be reasonably practicable for the offender to undergo testing; or
 - (iv) to contact a specified automated system when required to do so under **section 80ZO(2)(c)**; or
 - (v) to report, at any time or times when required to do so under **section 80ZP(5)**, to a specified testing facility to undergo testing; or
 - (vi) to undergo a testing procedure when required to do so under **sections 80ZO(2)(c)** and **80ZP**; or

- (b) does anything with the intention of diluting or contaminating a bodily sample required under **section 80ZO(2)(a) or (c)** for the purposes of a prescribed testing procedure; or
- (c) tampers with a drug or alcohol monitoring device required under **section 80ZO(2)(b)** or does anything with the intention of interfering with the functioning of that device.

Offence: intensive supervision

25 New section 70B inserted (Offences related to sentences of intensive supervision with drug or alcohol conditions)

After section 70A, insert:

70B Offences related to sentences of intensive supervision with drug or alcohol conditions

An offender who is subject to a sentence of intensive supervision with a drug or alcohol condition commits an offence, and is liable on conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$1,500, if the offender—

- (a) refuses or fails, without reasonable excuse,—
 - (i) to undergo a testing procedure when required to do so under **sections 80ZO(2)(a) and 80ZP**; or
 - (ii) to submit to continuous monitoring when required to do so under **section 80ZO(2)(b)**; or
 - (ia) to comply with instructions specified in a notice given under **section 80ZO(2)(b)** that are reasonably necessary for the effective administration of the continuous monitoring; or
 - (iii) to accompany an authorised person, when required to do so under **section 80ZP(4)**, to a place where it is likely that it will be reasonably practicable for the offender to undergo testing; or
 - (iv) to contact a specified automated system when required to do so under **section 80ZO(2)(c)**; or
 - (v) to report, at any time or times when required to do so under **section 80ZP(5)**, to a specified testing facility to undergo testing; or
 - (vi) to undergo a testing procedure when required to do so under **sections 80ZO(2)(c) and 80ZP**; or
- (b) does anything with the intention of diluting or contaminating a bodily sample required under **section 80ZO(2)(a) or (c)** for the purposes of a prescribed testing procedure; or

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- (c) tampers with a drug or alcohol monitoring device required under **section 80ZO(2)(b)** or does anything with the intention of interfering with the functioning of that device.

Home detention

26 Section 80D amended (Special conditions of sentence of home detention)

After section 80D(4)(c), insert:

- (ca) conditions prohibiting the offender from doing 1 or more of the following:
 - (i) using (as defined in section 4(1)) a controlled drug:
 - (ii) using a psychoactive substance:
 - (iii) consuming alcohol:

27 Section 80P amended (Special post-detention conditions)

(1) After section 80P(2)(b), insert:

- (ba) conditions prohibiting the offender from doing 1 or more of the following:
 - (i) using (as defined in section 4(1)) a controlled drug:
 - (ii) using a psychoactive substance:
 - (iii) consuming alcohol:

(2) After section 80P(4), insert:

- (4A) However, subsection (4) does not prevent the court from imposing a drug or alcohol condition, which would mean that the offender may be required, under **section 80ZO(2)(b)**, to submit to continuous monitoring.

Offences: home detention

28 New section 80SA inserted (Offences related to sentences of home detention with drug or alcohol conditions)

After section 80S, insert:

80SA Offences related to sentences of home detention with drug or alcohol conditions

An offender who is subject to a sentence of home detention with a drug or alcohol condition commits an offence, and is liable on conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$2,000, if the offender—

- (a) refuses or fails, without reasonable excuse,—
 - (i) to undergo a testing procedure when required to do so under **sections 80ZO(2)(a)** and **80ZP**; or

- (ii) to submit to continuous monitoring when required to do so under **section 80ZO(2)(b)**; or
- (ia) to comply with instructions specified in a notice given under **section 80ZO(2)(b)** that are reasonably necessary for the effective administration of the continuous monitoring; or
- (iii) to accompany an authorised person, when required to do so under **section 80ZP(4)**, to a place where it is likely that it will be reasonably practicable for the offender to undergo testing; or
- (iv) to contact a specified automated system when required to do so under **section 80ZO(2)(c)**; or
- (v) to report, at any time or times when required to do so under **section 80ZP(5)**, to a specified testing facility to undergo testing; or
- (vi) to undergo a testing procedure when required to do so under **sections 80ZO(2)(c)** and **80ZP**; or
- (b) does anything with the intention of diluting or contaminating a bodily sample required under **section 80ZO(2)(a) or (c)** for the purposes of a prescribed testing procedure; or
- (c) tampers with a drug or alcohol monitoring device required under **section 80ZO(2)(b)** or does anything with the intention of interfering with the functioning of that device.

29 New section 80UA inserted (Offences related to post-detention conditions that are drug or alcohol conditions)

After section 80U, insert:

80UA Offences related to post-detention conditions that are drug or alcohol conditions

An offender who is subject to a post-detention condition that is a drug or alcohol condition commits an offence, and is liable on conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$1,500, if the offender—

- (a) refuses or fails, without reasonable excuse,—
 - (i) to undergo a testing procedure when required to do so under **sections 80ZO(2)(a)** and **80ZP**; or
 - (ii) to submit to continuous monitoring when required to do so under **section 80ZO(2)(b)**; or
 - (ia) to comply with instructions specified in a notice given under **section 80ZO(2)(b)** that are reasonably necessary for the effective administration of the continuous monitoring; or

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- (iii) to accompany an authorised person, when required to do so under **section 80ZP(4)**, to a place where it is likely that it will be reasonably practicable for the offender to undergo testing; or
- (iv) to contact a specified automated system when required to do so under **section 80ZO(2)(c)**; or
- (v) to report, at any time or times when required to do so under **section 80ZP(5)**, to a specified testing facility to undergo testing; or
- (vi) to undergo a testing procedure when required to do so under **sections 80ZO(2)(c) and 80ZP**; or
- (b) does anything with the intention of diluting or contaminating a bodily sample required under **section 80ZO(2)(a) or (c)** for the purposes of a prescribed testing procedure; or
- (c) tampers with a drug or alcohol monitoring device required under **section 80ZO(2)(b)** or does anything with the intention of interfering with the functioning of that device.

Conditions, offences, and rules related to community-based offenders

30 New subpart 2C of Part 2 inserted

After section 80ZM, insert:

Subpart 2C—Drug or alcohol conditions

80ZN Imposition, and effect, of drug or alcohol condition

- (1) This section applies if a court imposes a drug or alcohol condition on an offender under section **52(2)(bb)**, **54I(3)(ba)**, **80D(4)(ca)**, 80N(1) and (2)(b), or 93(1) or (2)(b).
- (2) The court cannot direct, indicate, or require that the offender undergo or submit to drug or alcohol testing or continuous monitoring, but the condition requires the offender to comply with all requirements arising from an authorised person giving the offender notice under **section 80ZO(2)**.
- (3) The court must advise the offender that the offender must do ~~either or both~~ any 1 or more of the following things if required to do so by notice given by an authorised person under **section 80ZO(2)**:
 - (a) undergo testing for a controlled drug, a psychoactive substance, or alcohol;
 - (b) submit to continuous monitoring of the offender's compliance with the drug or alcohol condition through a drug or alcohol monitoring device connected to the offender's body;
 - (c) contact an automated system, and undergo testing for a controlled drug, a psychoactive substance, or alcohol if required by a response notice given by the automated system.

80ZO Offender with drug or alcohol condition may be required to undergo testing or submit to continuous monitoring

- (1) This section applies to an offender who is—
- (a) subject to a sentence of supervision, intensive supervision, or home detention with a drug or alcohol condition; or
 - (b) subject to a post-detention condition or a post-imprisonment condition that is a drug or alcohol condition.
- (2) An authorised person may, by notice given ~~orally or in writing~~ to an offender to whom this section applies, require the offender to do ~~either or both~~ any 1 or more of the following:
- (a) undergo testing for a controlled drug, a psychoactive substance, or alcohol using a testing procedure prescribed in rules made under **section 80ZS(1)(a)**;
 - (b) submit, during a reasonable period specified in the notice, to continuous monitoring of the offender's compliance with the drug or alcohol condition through a drug or alcohol monitoring device of a type prescribed in rules made under **section 80ZS(1)(d)**;
 - (c) contact, in 1 or more specified reasonably practicable ways, during 1 or more specified periods on specified days, a specified automated system and, if required by a response notice given by the automated system, undergo testing for a controlled drug, a psychoactive substance, or alcohol, using a specified testing procedure prescribed in rules made under section 80ZS(1)(a).
- (3) ~~In exercising his or her discretion under subsection (2), an authorised person—~~
- (a) ~~must comply with any rules made under section 80ZS; and~~
 - (b) ~~may determine—~~
 - (i) ~~whether to require the offender to undergo a prescribed testing procedure or to submit to continuous monitoring; and~~
 - (ii) ~~which of the prescribed testing procedures, if any, the offender is required to undergo.~~
- (3) An authorised person exercising that person's discretion under subsection (2)—
- (a) must comply with any rules made under section 80ZS; and
 - (b) may—
 - (i) select an offender to do what is specified in subsection (2)(a), (b), or (c) in any manner (including randomly); and
 - (ii) make a determination in respect of the offender with or without evidence that the offender has breached the condition; and

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- (c) must, if requiring the offender to do what is specified in **subsection (2)(a) or (c)**, determine the prescribed testing procedure to be used for the testing required under **subsection (2)(a)**, or required if the offender is selected to undergo testing by an automated system that the offender is required to contact under **subsection (2)(c)**.
- ~~(4) A determination under **subsection (3)(b)(i)** may be made in respect of—~~
- ~~(a) an offender to whom this section applies; or~~
- ~~(b) an offender to whom this section applies who the authorised person has cause to suspect has breached the condition.~~
- (4) A notice given to an offender under **subsection (2)(b)** may include a requirement that the offender comply with instructions specified in the notice that are reasonably necessary for the effective administration of the continuous monitoring (for example, an instruction to charge the monitoring device regularly or protect it from events, such as submersion in water, that may damage it or interfere with its functioning).
- (4A) An automated system specified in a notice given under **subsection (2)(c)** must include an automated selection method that determines, in any manner consistent with rules made under **section 80ZS(1)(b)** (including randomly), whether the offender is required to undergo testing.
- (5) Only a medical practitioner or medical officer may collect a blood sample from an offender under this section.
- ~~(6) If a notice under **subsection (2)** is given orally, the authorised person who gives the notice must record it in writing, and give a copy to the offender, as soon as is reasonably practicable.~~
- (7) In this section and in **sections 70AA, 70B, 80SA, 80UA, 80ZOA to 80ZQ, and 96A-80ZP and 80ZQ**, **authorised person** means a person who is—
- (a) a constable; or
- (b) an employee of the Department of Corrections authorised by the chief executive of that department to require offenders to undergo testing or monitoring.

80ZOA How notice of requirement to undergo testing or to submit to continuous monitoring may be given

- (1) An authorised person may give an offender a notice under **section 80ZO(2)** in any of the following ways:
- (a) by giving the notice personally and in writing to the offender:
- (b) by giving the notice personally and orally to the offender, then, unless the notice requires the offender only to undergo breath screening, as soon as practicable recording it in writing and giving a copy to the offender:

- (c) if the notice is given under **section 80ZO(2)(a)**, by giving the notice to the offender by telephone or other means of electronic communication (as defined in section 5 of the Electronic Transactions Act 2002), then as soon as practicable recording it in writing (if it is not already in writing) and giving a copy to the offender.
- (2) An automated system must, in response to an offender contacting it as required by a notice given under **section 80ZO(2)(c) and subsection (1)**, give the offender a spoken or written response notice specifying whether the offender is required to undergo testing.
- (3) A notice given by an authorised person under **subsection (1)(c)** or a response notice that is given under **subsection (2)** and that requires an offender to undergo testing must specify the name and location of a testing facility to which the offender is required to report to undergo testing, and the time or times when the offender is required to report, under **section 80ZP**.

80ZP Where prescribed testing procedure may be carried out

- (1) An authorised person may require an offender to whom **section 80ZO** applies to undergo testing at the place where the offender is given notice under **section 80ZO(2)** personally by the authorised person.
- (2) **Subsection (1)** applies even if the place where the offender is given notice personally by the authorised person is—
 - (a) a public place (as defined in section 2(1) of the Summary Offences Act 1981); or
 - (b) a place that is wholly or partly outside a dwelling house, or any other building, at the offender’s residential address.
- (3) However, an offender cannot be required to undergo a prescribed testing procedure in a place specified in **subsection (2)(a)** or **(b)** if the testing procedure involves the collection of blood or urine.
- ~~(4) An authorised person may, if **subsection (3)** applies, or if it is not reasonably practicable to require the offender to undergo testing at the place where the offender has been given notice, require the offender to accompany the authorised person to any other place where it is likely that it will be reasonably practicable for the offender to undergo testing.~~
- (4) An offender given notice personally (in writing or orally) by the authorised person may be required by the authorised person, if **subsection (3)** applies or if it is not reasonably practicable to require the offender to undergo testing at the place where the offender is given notice, to accompany the authorised person to any other place where it is likely that it will be reasonably practicable for the offender to undergo testing.
- (5) An offender given a notice under **section 80ZOA(1)(c) or (2)** that requires the offender to undergo testing is required to report to the testing facility whose

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name and location are specified in the notice, at the time or times specified, to undergo testing.

80ZQ Information obtained from drug and alcohol testing or monitoring

- (1) Information obtained from a prescribed testing procedure or a drug or alcohol monitoring device required under **section 80ZO(2)**—
 - (a) may be used for all or any of the following purposes:
 - (i) verifying compliance by the offender with a drug or alcohol condition;
 - (ii) detecting non-compliance by an offender with a drug or alcohol condition, and providing evidence of that non-compliance;
 - (iii) verifying that the offender has not tampered or otherwise interfered with a drug or alcohol monitoring device;
 - (iv) any purpose for which the offender has requested to use the information or consented to its use; and
 - (b) must not, except at the request or with the consent of the offender, be used—
 - (i) as evidence that the offender committed an offence, other than an offence against any of sections 70 to **70B**, 80S, **80SA**, 80U, **80UA**, 96, and **96A**; or
 - (ii) for any other purpose not listed in **paragraph (a)**.
- (2) A court may, in the absence of evidence that is available to the court and that is to the contrary effect, presume that any information that an authorised person has certified in writing was obtained from a prescribed testing procedure or a drug or alcohol monitoring device—
 - (a) is accurate; and
 - (b) was obtained in the manner required by **sections 80ZO** and **to 80ZP**.

80ZR Offence to refuse authorised person entry to offender's residential address

- (1) This section applies to an offender who is—
 - (a) subject to a sentence of supervision, intensive supervision, or home detention with a drug or alcohol condition, or subject to a post-detention condition or post-imprisonment condition that is a drug or alcohol condition; and
 - (b) required, under **section 80ZO(2)(b)**, to submit to continuous monitoring of the offender's compliance with the condition.
- (2) The offender commits an offence if the offender refuses or fails, without reasonable excuse, to allow an authorised person to enter the offender's residential address for all or any of the following purposes:

- (a) attaching a drug or alcohol monitoring device to, or removing the device from, the offender;
 - (b) servicing or inspecting the device;
 - (c) installing, removing, servicing, or inspecting any equipment necessary for the operation of the device.
- (3) An offender who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$5,000.
- (4) In **subsection (2)**, **authorised person** means any of the following:
- (a) an authorised person (as defined in **section 80ZO(7)**) who has produced evidence of that person's identity to the offender;
 - (b) a person accompanying a person described in **paragraph (a)**;
 - (c) a person who—
 - (i) has produced evidence of that person's identity to the offender; and
 - (ii) is authorised in writing by an authorised person (as defined in **section 80ZO(7)**) to enter the offender's residential address for all or any of the following purposes:
 - (AA) attaching a drug or alcohol monitoring device to, or removing the device from, the offender;
 - (A) servicing or inspecting the device;
 - (B) installing, removing, servicing, or inspecting any equipment necessary for the operation of the device; and
 - (iii) has produced that written authority to the offender.

80ZS Rules about drug and alcohol testing and monitoring

- (1) The chief executive may, by notice in the *Gazette*, make rules for all or any of the following purposes:
- (a) prescribing, for the purposes of **section 80ZO(2)(a) and (c)**, 1 or more types of testing procedure that an offender to whom **section 80ZO** applies may be required to undergo;
 - (b) specifying how often each of the prescribed testing procedures may be carried out;
 - (c) prohibiting authorised persons from requiring an offender to undergo certain testing procedures if other less intrusive testing procedures are available and are sufficient in the circumstances;
 - (d) prescribing, for the purposes of **section 80ZO(2)(b)**, 1 or more types of drug or alcohol monitoring device that may be connected to an offender to whom **section 80ZO** applies;

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- (e) specifying restrictions as to how often, and for how long, ~~continuous monitoring may be carried out:—~~
 - (i) continuous monitoring may be carried out:
 - (ii) an offender may be required to contact an automated system:
- (f) prescribing, for any 1 or more of the following, minimum levels that must be present in a bodily sample collected from an offender in order for the sample to be used as evidence that the offender has breached a drug or alcohol condition:
 - (i) controlled drugs:
 - (ii) psychoactive substances:
 - (iii) alcohol.
- (2) In this section and in **sections 80ZT** and **80ZU**, **chief executive** means the chief executive of the Department of Corrections.

80ZT Further provisions concerning rules about drug and alcohol testing and monitoring

- (1) Rules made under **section 80ZS(1)(a)** may, without limitation, prescribe testing procedures that do all or any of the following:
 - (a) include, as part of the procedure, either or both of the following:
 - (i) breath screening:
 - (ii) the collection and analysis of a bodily sample:
 - (b) require an offender to be supervised by a person of the same sex as the offender during the collection of a bodily sample required for testing:
 - (c) provide for an offender to elect, if the offender meets in advance all actual and reasonable costs, to have part of a bodily sample (or 1 bodily sample from a set of samples collected at the same time) independently tested in a manner prescribed in the rules.
- (2) The chief executive may make rules under **section 80ZS(1)** only if satisfied that the rules—
 - (a) prescribe testing procedures that are no more intrusive than is reasonably necessary to ensure compliance with a drug or alcohol condition; and
 - (b) allow for offenders to be tested no more often than is reasonably necessary to ensure compliance with a drug or alcohol condition; and
 - (c) ensure that offenders liable to testing and monitoring are afforded as much privacy and dignity as is reasonably practicable.
- (3) **Subsection (1)(b)** overrides **subsection (2)(c)**.

80ZU Availability of rules about drug and alcohol testing and monitoring, and status under Legislation Act 2012

- (1) The chief executive must ensure that any rules made under **section 80ZS** are, while in force, made available—
- (a) on an Internet site that is maintained by or on behalf of the Department of Corrections and that is, so far as practicable, publicly available free of charge; and
 - (b) for public inspection free of charge; and
 - (c) for purchase at a reasonable price.
- (2) Rules made under **section 80ZS** are disallowable instruments, but not legislative instruments, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Offence: post-imprisonment conditions

30A Section 93 amended (Imposition of conditions on release of offender sentenced to imprisonment for short term)

After section 93(2B), insert:

- (2C) Subsection (2B) does not prevent the court from imposing a drug or alcohol condition, which would mean that the offender may be required, under **section 80ZO(2)(b)**, to submit to continuous monitoring.

31 New section 96A inserted (Offences related to post-imprisonment conditions that are drug or alcohol conditions)

After section 96, insert:

96A Offences related to post-imprisonment conditions that are drug or alcohol conditions

An offender who is subject to a post-imprisonment condition that is a drug or alcohol condition commits an offence, and is liable on conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$2,000, if the offender—

- (a) refuses or fails, without reasonable excuse,—
 - (i) to undergo a testing procedure when required to do so under **sections 80ZO(2)(a)** and **80ZP**; or
 - (ii) to submit to continuous monitoring when required to do so under **section 80ZO(2)(b)**; or
 - (ia) to comply with instructions specified in a notice given under **section 80ZO(2)(b)** that are reasonably necessary for the effective administration of the continuous monitoring; or

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- (iii) to accompany an authorised person, when required to do so under **section 80ZP(4)**, to a place where it is likely that it will be reasonably practicable for the offender to undergo testing; or
- (iv) to contact a specified automated system when required to do so under **section 80ZO(2)(c)**; or
- (v) to report, at any time or times when required to do so under **section 80ZP(5)**, to a specified testing facility to undergo testing; or
- (vi) to undergo a testing procedure when required to do so under **sections 80ZO(2)(c) and 80ZP**; or
- (b) does anything with the intention of diluting or contaminating a bodily sample required under **section 80ZO(2)(a) or (c)** for the purposes of a prescribed testing procedure; or
- (c) tampers with a drug or alcohol monitoring device required under **section 80ZO(2)(b)** or does anything with the intention of interfering with the functioning of that device.

31A ~~New Schedule 1AA inserted~~

~~Before Schedule 1, insert the **Schedule 1AA** set out in **Schedule 3** of this Act.~~

31A Consequential amendments and transitional provisions if this Part in force before Sentencing (Electronic Monitoring of Offenders) Amendment Act 2016

- (1) This section applies if this **Part** comes into force before the Sentencing (Electronic Monitoring of Offenders) Amendment Act 2016 comes into force.
- (2) Sections 4 and 10 and the Schedule of the Sentencing (Electronic Monitoring of Offenders) Amendment Act 2016 are repealed.
- (3) On the day that the Sentencing (Electronic Monitoring of Offenders) Amendment Act 2016 comes into force, the following are repealed:
 - (a) **section 54I(4A)** of the principal Act (as inserted by **section 23(2)** of this **Part**); and
 - (b) **section 93(2C)** of the principal Act (as inserted by **section 30A** of this **Part**).
- (4) Insert the **Schedule 1AA** set out in **Part 1 of Schedule 3** of this Act as the first schedule to appear after the last section of the principal Act.

31B Consequential amendments and transitional provisions if Sentencing (Electronic Monitoring of Offenders) Amendment Act 2016 in force before this Part

- (1) This section applies if the Sentencing (Electronic Monitoring of Offenders) Amendment Act 2016 comes into force before this **Part** comes into force.

- (2) **Sections 21A, 23(2), 30A, and 31A** of this **Part** are repealed.
- (3) Amend **Schedule 1AA** of the principal Act as indicated in **Part 2 of Schedule 3** of this Act.

Part 4

Amendments to Public Safety (Public Protection Orders) Act 2014

32 Principal Act

This **Part** amends the Public Safety (Public Protection Orders) Act 2014 (the **principal Act**).

33 Section 3 amended (Interpretation)

- (1) In section 3, insert in their appropriate alphabetical order:

controlled drug has the same meaning as in section 2(1) of the Misuse of Drugs Act 1975

medical practitioner means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine

precursor substance has the same meaning as in section 2(1) of the Misuse of Drugs Act 1975

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

- (2) In section 3, definition of **prohibited item**, replace paragraphs (c) and (d) with:

(c) any controlled drugs and precursor substances, except for medicines prescribed for the resident under the Medicines Act 1981:

(d) any psychoactive substance:

34 New section 92A inserted (Interpretation)

In Part 1, after the subpart 7 heading, insert:

92A Interpretation

In this subpart, unless the context otherwise requires,—

bodily sample means—

- (a) a sample of a person's blood, breath, hair, or urine; or
- (b) any other sample of a similar kind from the person

drug or alcohol monitoring device means a device, connected to a person's body, that is able to detect the presence in the person's body of 1 or more of the following:

- (a) a controlled drug used by the person:

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- (b) a psychoactive substance used by the person:
- (c) alcohol consumed by the person

drug or alcohol requirement means a requirement imposed under section 94 on a person under a protective supervision order that prohibits the person from doing 1 or more of the following:

- (a) using a controlled drug (other than a medicine prescribed for the person under the Medicines Act 1981):
- (b) using a psychoactive substance:
- (c) consuming alcohol

medical laboratory technologist means a health practitioner who is, or is deemed to be, registered with the Medical Sciences Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medical laboratory science

medical officer means—

- (a) a person acting in a hospital who, in the normal course of the person's duties, takes blood specimens; or
- (b) a nurse; or
- (c) a medical laboratory technologist

nurse means a health practitioner who is, or is deemed to be, registered with the Nursing Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of nursing whose scope of practice permits the performance of general nursing functions

testing of a person for a controlled drug, a psychoactive substance, or alcohol includes, without limitation, the person's permitting the collection for analysis of a bodily sample

35 New sections 95A to 95D and cross-headings inserted

After section 95, insert:

Drug or alcohol requirements

95A Imposition, and effect, of drug or alcohol requirement

- (1) This section applies if a court imposes a drug or alcohol requirement on a person subject to a protective supervision order.
- (2) The court cannot direct, indicate, or require that the person subject to the order undergo or submit to drug or alcohol testing or continuous monitoring, but the requirement means that the person must comply with all directions arising from an authorised person giving the person notice under **section 95B(2)**.

- (3) The court must advise the person that the person must do ~~either or both~~ any 1 or more of the following things if directed to do so by notice given by an authorised person under **section 95B(2)**:
- (a) undergo testing for a controlled drug, a psychoactive substance, or alcohol;
 - (b) submit to continuous monitoring of the person's compliance with the drug or alcohol requirement through a drug or alcohol monitoring device connected to the person's body;
 - (c) contact an automated system, and undergo testing for a controlled drug, a psychoactive substance, or alcohol if required by a response notice given by the automated system.

95B Person with drug or alcohol requirement may be directed to undergo testing or submit to continuous monitoring

- (1) This section applies to a person who is subject to a protective supervision order with a drug or alcohol requirement.
- (2) An authorised person may, by notice given ~~orally or in writing~~ to a person to whom this section applies, direct the person to do ~~either or both~~ any 1 or more of the following:
- (a) undergo testing for a controlled drug, a psychoactive substance, or alcohol using a testing procedure prescribed in rules made under **section 103C(a)**;
 - (b) submit, during a reasonable period specified in the notice, to continuous monitoring of the person's compliance with the drug or alcohol requirement through a drug or alcohol monitoring device of a type prescribed in rules made under **section 103C(d)**;
 - (c) contact, in 1 or more specified reasonably practicable ways, during 1 or more specified periods on specified days, a specified automated system and, if required by a response notice given by the automated system, undergo testing for a controlled drug, a psychoactive substance, or alcohol, using a specified testing procedure prescribed in rules made under **section 103C(a)**.
- (3) ~~In exercising his or her discretion under **subsection (2)**, an authorised person —~~
- (a) ~~must comply with any rules made under **section 103C**; and~~
 - (b) ~~may determine —~~
 - (i) ~~whether to direct the person to undergo a prescribed testing procedure or to submit to continuous monitoring; and~~
 - (ii) ~~which of the prescribed testing procedures, if any, the person is directed to undergo.~~

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- (3) An authorised person exercising that person's discretion under **subsection (2)**—
- (a) must comply with any rules made under **section 103C**; and
 - (b) may—
 - (i) select a person to do what is specified in **subsection (2)(a), (b), or (c)** in any manner (including randomly); and
 - (ii) make a determination in respect of the person with or without evidence that the person has breached the condition; and
 - (c) must, if directing the person to do what is specified in **subsection (2)(a) or (c)**, determine the prescribed testing procedure to be used for the testing the person is directed to do under **subsection (2)(a)**, or required if the person is selected to undergo testing by an automated system that the person is directed to contact under **subsection (2)(c)**.
- (4) ~~A determination under **subsection (3)(b)(i)** may be made in respect of—~~
- (a) ~~a person to whom this section applies; or~~
 - (b) ~~a person to whom this section applies who the authorised person has cause to suspect has breached the requirement.~~
- (4) A notice given to a person under **subsection (2)(b)** may include a direction that the person comply with instructions specified in the notice that are reasonably necessary for the effective administration of the continuous monitoring (for example, an instruction to charge the monitoring device regularly or protect it from events, such as submersion in water, that may damage it or interfere with its functioning).
- (4A) An automated system specified in a notice given under **subsection (2)(c)** must include an automated selection method that determines, in any manner consistent with rules made under **section 103C(b)** (including randomly), whether the person is required to undergo testing.
- (5) Only a medical practitioner or medical officer may collect a blood sample from a person under this section.
- (6) ~~If a notice under **subsection (2)** is given orally, the authorised person who gives the notice must record it in writing, and give a copy to the person to whom this section applies, as soon as is reasonably practicable.~~
- (7) In this section and in **sections 95C, 95D, 95BA to 95D and 103A**, **authorised person** means a person who is—
- (a) a constable; or
 - (b) an employee of the department authorised by the chief executive to direct persons to whom this section applies to undergo testing or monitoring.

95BA How notice of direction to undergo testing or to submit to continuous monitoring may be given

- (1) An authorised person may give a person to whom **section 95B** applies a notice under **section 95B(2)** in any of the following ways:
 - (a) by giving the notice personally and in writing to the person:
 - (b) by giving the notice personally and orally to the person, then, unless the notice directs the person only to undergo breath screening, as soon as practicable recording it in writing and giving a copy to the person:
 - (c) if the notice is given under **section 95B(2)(a)**, by giving the notice to the person by telephone or other means of electronic communication (as defined in section 5 of the Electronic Transactions Act 2002), then as soon as practicable recording it in writing (if it is not already in writing) and giving a copy to the person.
- (2) An automated system must, in response to a person contacting it as directed by a notice given under **section 95B(2)(c)** and **subsection (1)**, give the person a spoken or written response notice specifying whether the person is required to undergo testing.
- (3) A notice given by an authorised person under **subsection (1)(c)**, or a response notice that is given by an automated system under **subsection (2)** and that requires a person to undergo testing, must specify the name and location of a testing facility to which the person is required to report to undergo testing, and the time or times when the person is required to report, under **section 95C**.

95C Where prescribed testing procedure may be carried out

- (1) An authorised person may require a person to whom **section 95B** applies to undergo testing at the place where the person is given notice under **section 95B(2)** personally by the authorised person.
- (2) **Subsection (1)** applies even if the place where the person is given notice personally by the authorised person is—
 - (a) a public place (as defined in section 2(1) of the Summary Offences Act 1981); or
 - (b) a place that is wholly or partly outside a dwelling house, or any other building, at the person’s residential address.
- (3) However, a person cannot be required to undergo a prescribed testing procedure in a place specified in **subsection (2)(a)** or **(b)** if the testing procedure involves the collection of blood or urine.
- (4) ~~An authorised person may, if **subsection (3)** applies, or if it is not reasonably practicable to require the person to undergo testing at the place where the person has been given notice, require the person to accompany the authorised per-~~

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~~son to any other place where it is likely that it will be reasonably practicable for the person to undergo testing.~~

- (4) A person given notice personally (in writing or orally) by the authorised person may be required by the authorised person, if **subsection (3)** applies or if it is not reasonably practicable to require the person to undergo testing at the place where the person is given notice, to accompany the authorised person to any other place where it is likely that it will be reasonably practicable for the person to undergo testing.
- (5) A person given a notice under **section 95BA(1)(c) or (2)** that requires the person to undergo testing is required to report to the testing facility whose name and location are specified in the notice, at the time or times specified, to undergo testing.

95D Information obtained from drug and alcohol testing or monitoring

- (1) Information obtained following a direction under **section 95B(2)** (from a prescribed testing procedure or a drug or alcohol monitoring device) about a person subject to a protected supervision order with a drug or alcohol requirement—
- (a) may be used for all or any of the following purposes:
- (i) verifying compliance by the person with the drug or alcohol requirement;
 - (ii) detecting non-compliance by the person with the drug or alcohol requirement, and providing evidence of that non-compliance;
 - (iii) verifying that the person has not tampered or otherwise interfered with a drug or alcohol monitoring device;
 - (iv) any purpose for which the person has requested to use the information or consented to its use; and
- (b) must not, except at the request or with the consent of the person, be used—
- (i) as evidence that the person committed an offence, other than an offence against section 103, **103A**, or **103B**; or
 - (ii) for any other purpose not listed in **paragraph (a)**.
- (2) A court may, in the absence of evidence that is available to the court and that is to the contrary effect, presume that any information that an authorised person has certified in writing was obtained from a prescribed testing procedure or a drug or alcohol monitoring device—
- (a) is accurate; and
 - (b) was obtained in the manner required by **sections 95B and to 95C**.

Variation of requirements

36 New cross-heading above section 99 inserted

After section 98, insert:

Review of order

37 New cross-heading above section 103 inserted

After section 102, insert:

Offences

38 New sections 103A to 103E and cross-heading inserted

After section 103, insert:

103A Offences related to drug or alcohol requirements

- (1) A person who is subject to a protective supervision order with a drug or alcohol requirement commits an offence if the person—
- (a) refuses or fails, without reasonable excuse,—
 - (i) to undergo a testing procedure when directed to do so under **section 95B(2)(a) and 95C**; or
 - (ii) to submit to continuous monitoring when directed to do so under **section 95B(2)(b)**; or
 - (iii) to accompany an authorised person, when required to do so under **section 95C(4)**, to a place where it is likely that it will be reasonably practicable for the person subject to the order to undergo testing; or
 - (iv) to contact a specified automated system when directed to do so under **section 95B(2)(c)**; or
 - (v) to report, at any time or times when required to do so under **section 95C(5)**, to a specified testing facility to undergo testing; or
 - (vi) to undergo a testing procedure when required to do so under **sections 95B(2)(c) and 95C**; or
 - (b) does anything with the intention of diluting or contaminating a bodily sample required under **section 95B(2)(a) or (c)** for the purposes of a prescribed testing procedure; or
 - (c) tampers with a drug or alcohol monitoring device required under **section 95B(2)(b)** or does anything with the intention of interfering with the functioning of that device.
- (2) A person who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 2 years.

103B Offence to refuse authorised person entry to residential address

- (1) This section applies to a person who is—

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- (a) subject to a protective supervision order with a drug or alcohol requirement; and
 - (b) directed, under **section 95B(2)(b)**, to submit to continuous monitoring of the person's compliance with the requirement.
- (2) A person to whom this section applies commits an offence if the person refuses or fails, without reasonable excuse, to allow an authorised person to enter the person's residential address for all or any of the following purposes:
- (a) attaching a drug or alcohol monitoring device to, or removing the device from, the person:
 - (b) servicing or inspecting the device:
 - (c) installing, removing, servicing, or inspecting any equipment necessary for the operation of the device.
- (3) A person who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$5,000.
- (4) In **subsection (2)**, **authorised person** means any of the following:
- (a) an authorised person (as defined in **section 95B(7)**) who has produced evidence of that person's identity to the person to whom this section applies:
 - (b) a person accompanying a person described in **paragraph (a)**:
 - (c) a person who—
 - (i) has produced evidence of that person's identity to the person to whom this section applies; and
 - (ii) is authorised in writing by an authorised person (as defined in **section 95B(7)**) to enter the residential address of the person to whom this section applies for all or any of the following purposes:
 - (A) attaching a drug or alcohol monitoring device to, or removing the device from, the person:
 - (B) servicing or inspecting the device:
 - (C) installing, removing, servicing, or inspecting any equipment necessary for the operation of the device; and
 - (iii) has produced that written authority to the person to whom this section applies.

Rules

103C Rules about testing and monitoring of persons with drug or alcohol requirements

The chief executive may, by notice in the *Gazette*, make rules for all or any of the following purposes:

- (a) prescribing, for the purposes of **section 95B(2)(a) and (c)**, 1 or more types of testing procedure that a person to whom **section 95B** applies may be directed to undergo:
- (b) specifying how often each of the prescribed testing procedures may be carried out:
- (c) prohibiting authorised persons from directing a person to whom **section 95B** applies to undergo certain testing procedures if other less intrusive testing procedures are available and are sufficient in the circumstances:
- (d) prescribing, for the purposes of **section 95B(2)(b)**, 1 or more types of drug or alcohol monitoring device that may be connected to a person to whom **section 95B** applies:
- (e) specifying restrictions as to how often, and for how long, ~~continuous monitoring may be carried out:—~~
 - (i) continuous monitoring may be carried out:
 - (ii) a person may be required to contact an automated system:
- (f) prescribing, for any 1 or more of the following, minimum levels that must be present in a bodily sample collected from a person in order for the sample to be used as evidence that the person has breached a drug or alcohol requirement:
 - (i) controlled drugs:
 - (ii) psychoactive substances:
 - (iii) alcohol.

103D Further provisions concerning rules made under section 103C

- (1) Rules made under **section 103C(a)** may, without limitation, prescribe testing procedures that do all or any of the following:
 - (a) include, as part of the procedure, either or both of the following:
 - (i) breath screening:
 - (ii) the collection and analysis of a bodily sample:
 - (b) require a person to be supervised by another person of the same sex during the collection of a bodily sample required for testing:
 - (c) provide for a person to elect, if the person meets in advance all actual and reasonable costs, to have part of a bodily sample (or 1 bodily sample from a set of samples collected at the same time) independently tested in a manner prescribed in the rules.
- (2) The chief executive may make rules under **section 103C** only if satisfied that the rules—
 - (a) prescribe testing procedures that are no more intrusive than is reasonably necessary to ensure compliance with a drug or alcohol requirement; and

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- (b) allow for persons with drug or alcohol requirements to be tested no more often than is reasonably necessary to ensure compliance with the requirement; and
 - (c) ensure that persons liable to testing and monitoring are afforded as much privacy and dignity as is reasonably practicable.
- (3) **Subsection (1)(b)** overrides **subsection (2)(c)**.
- 103E Availability of rules made under section 103C and status under Legislation Act 2012**
- (1) The chief executive must ensure that any rules made under **section 103C** are, while in force, made available—
 - (a) on an Internet site that is maintained by or on behalf of the department and that is, so far as practicable, publicly available free of charge; and
 - (b) for public inspection free of charge; and
 - (c) for purchase at a reasonable price.
 - (2) Rules made under **section 103C** are disallowable instruments, but not legislative instruments, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

**Part 5
Amendments to Returning Offenders (Management and
Information) Act 2015**

39 Principal Act

This **Part** amends the Returning Offenders (Management and Information) Act 2015 (the **principal Act**).

40 Section 4 amended (Interpretation)

In section 4(1), insert in its appropriate alphabetical order:

drug or alcohol condition means a special condition under **section 15(3)(ba)** of the Parole Act (as that provision is applied with all necessary modifications by sections 26(4), 27, and 34 of this Act)

41 Section 26 amended (Returning prisoner must comply with special conditions imposed by court)

After section 26(5)(b), insert:

(c) a drug or alcohol condition, **sections 16A to 16D, 71A, 72A, and 74A to 74C**, and any rules made under **section 74A**, of the Parole Act apply with all necessary modifications.

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42 Schedule 1 amended

In Schedule 1, after Part 1, insert the **Part 2** set out in **Schedule 4** of this Act.

Schedule 1
New Schedule 1AA of Bail Act 2000 inserted

s 11A

Schedule 1AA
Transitional, savings, and related provisions

s 3A

Part 1
**Provisions relating to Part 1 of Drug and Alcohol Testing of
 Community-based Offenders, Bailees, and Other Persons Legislation
 Act 2014**

*Transitional and savings provisions relating to amendments made to this Act
 by **Part 1 of the Drug and Alcohol Testing of Community-based
 Offenders, Bailees, and Other Persons Legislation Act 2014***

1 Interpretation

In this schedule,—

commencement date means the date on which **Part 1 of the Drug and Alcohol Testing of Community-based Offenders, Bailees, and Other Persons Legislation Act 2014** comes into force

pre-commencement drug or alcohol condition means a condition—

- (a) that is imposed before the commencement date under section 30(4) (alone or with any of sections 40(4), 53(4), and 54(4)); and
- (b) that prohibits a defendant from doing 1 or more of the following:
 - (i) using (as defined in section 3) a controlled drug;
 - (ii) using a psychoactive substance;
 - (iii) consuming alcohol.

2 Testing and monitoring of defendants on bail with pre-commencement drug or alcohol conditions

- (1) This clause applies if a defendant is on bail with a pre-commencement drug or alcohol condition.
- (2) On and from the commencement date, **sections 30T to 30W, 73AA, and 73AAB**, and any rules made under **section 73AA**, apply in respect of the defendant—

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Schedule 1

- (a) as if the pre-commencement drug or alcohol condition were a drug or alcohol condition imposed by a judicial officer or Registrar on or after the commencement date; and
- (b) as if the judicial officer or Registrar had complied with **section 30AA(3)** in respect of the condition.

Schedule 2
New Schedule 1 of ~~Parole Act 2002~~ inserted

s 19A

Schedule 1
Transitional, savings, and related provisions

s 4A

*Transitional and savings provisions relating to amendments made to this Act
 by **Part 2 of the Drug and Alcohol Testing of Community-based
 Offenders, Bailees, and Other Persons Legislation Act 2014***

Part 1
**Provisions relating to Part 2 of the Drug and Alcohol Testing of
 Community-based Offenders, Bailees, and Other Persons
 Legislation Act 2014**

1 Interpretation

In this schedule,—

commencement date means the date on which **Part 2 of the Drug and Alcohol Testing of Community-based Offenders, Bailees, and Other Persons Legislation Act 2014** comes into force

pre-commencement drug or alcohol condition means a condition—

- (a) that is imposed before the commencement date under section 15, 18(2)(b), or 107K(1); and
- (b) that prohibits an offender from doing 1 or more of the following:
 - (i) using (as defined in section 4(1)) a controlled drug;
 - (ii) using a psychoactive substance;
 - (iii) consuming alcohol.

2 Testing and monitoring of offender on parole, or released under section 17, with pre-commencement drug or alcohol condition

- (1) This clause applies if an offender—
 - (a) is on parole with a pre-commencement drug or alcohol condition; or
 - (b) has been released under section 17, at the release date of a long-term sentence, with a pre-commencement drug or alcohol condition.
- (2) On and from the commencement date, **sections 16B to 16D, 71A, 72A, 74A, and 74B**, and any rules made under **section 74A**, apply in respect of the offender—

- (a) as if the pre-commencement drug or alcohol condition were a drug or alcohol condition imposed by the Board on or after the commencement date; and
- (b) as if the Board had complied with **section 16A(3)** in respect of the condition.

3 Testing and monitoring of offender subject to extended supervision order with pre-commencement drug or alcohol condition

- (1) This clause applies if an offender is subject to an extended supervision order with a pre-commencement drug or alcohol condition.
- (2) On and from the commencement date, **sections 16B to 16D, 72A, 74A, 74B, and 107TA**, and any rules made under **section 74A**, apply in respect of the offender—
 - (a) as if the pre-commencement drug or alcohol condition were a drug or alcohol condition imposed by the Board on or after the commencement date; and
 - (b) as if the Board had complied with **section 16A(3)** in respect of the condition.

Schedule 3
New Schedule 1AA of Sentencing Act 2002
Consequential amendments and transitional provisions

ss 31A, 31B

Part 1
New Schedule 1AA inserted

Schedule 1AA
Transitional, savings, and related provisions

s 4A

Part 1
Provisions relating to Sentencing (Electronic Monitoring of Offenders) Amendment Act 2016

1AA Interpretation

In this Part, **commencement date** means the date on which the Sentencing (Electronic Monitoring of Offenders) Amendment Act 2016 comes into force.

1AB Varying special conditions for sentence of intensive supervision imposed before commencement date

- (1) This clause applies to a sentence of intensive supervision imposed before the commencement date.
- (2) An electronic monitoring condition may be imposed in the circumstances specified in **subclause (3)** even though such a condition—
 - (a) was not available as a special condition before the commencement date; and
 - (b) could not have been imposed on the offender at the time when the offender was convicted of the offence for which the sentence of intensive supervision was imposed.
- (3) The circumstances are as follows:
 - (a) if the court imposes additional special conditions under section 54K(3)(a):
 - (b) if the court cancels a sentence and substitutes a sentence of intensive supervision (that could have been imposed on the offender at the time when the offender was convicted of the offence for which the sentence was imposed).

1AC Varying release conditions for sentence of imprisonment of not more than 24 months imposed before commencement date

- (1) This clause applies to a sentence of imprisonment of not more than 24 months imposed before the commencement date.
- (2) An electronic monitoring condition may be imposed in the circumstances specified in **subclause (3)** even though such a condition—
 - (a) was not available before the commencement date; and
 - (b) could not have been imposed on the offender at the time when the offender was convicted of the offence for which the sentence of imprisonment of not more than 24 months was imposed.
- (3) The circumstances are as follows:
 - (a) if the court imposes an additional release condition under section 94(3)(a):
 - (b) if the court discharges a release condition and substitutes another release condition under section 94(3)(b).

Part 2

**Provisions relating to Part 3 of Drug and Alcohol Testing of
Community-based Offenders, Bailees, and Other Persons
Legislation Act 2014**

*Transitional and savings provisions relating to amendments made to this Act
by **Part 3 of the Drug and Alcohol Testing of Community-based
Offenders, Bailees, and Other Persons Legislation Act 2014***

1 Interpretation

In this schedule ~~Part~~,—

commencement date means the date on which **Part 3 of the Drug and Alcohol Testing of Community-based Offenders, Bailees, and Other Persons Legislation Act 2014** comes into force

pre-commencement drug or alcohol condition means a condition of a sentence of supervision, intensive supervision, or home detention, or a post-detention or post-imprisonment condition,—

- (a) that is imposed before the commencement date under section 52(2)(c), 54I(3)(e), 80D(4)(e), 80N(1) and(2)(b), or 93(1) or (2)(b); and
- (b) that prohibits an offender from doing 1 or more of the following:
 - (i) using (as defined in section 4(1)) a controlled drug;
 - (ii) using a psychoactive substance;
 - (iii) consuming alcohol.

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Schedule 3

- 2 Testing and monitoring of offender subject to sentence of supervision with pre-commencement drug or alcohol condition**
- (1) This clause applies if an offender is subject to a sentence of supervision with a pre-commencement drug or alcohol condition.
 - (2) On and from the commencement date, **sections 70AA and 80ZO to 80ZT**, and any rules made under **section 80ZS**, apply in respect of the offender—
 - (a) as if the pre-commencement drug or alcohol condition were a drug or alcohol condition imposed by a court on or after the commencement date; and
 - (b) as if the court had complied with **section 80ZN(3)** in respect of the condition.
- 3 Testing and monitoring of offender subject to sentence of intensive supervision with pre-commencement drug or alcohol condition**
- (1) This clause applies if an offender is subject to a sentence of intensive supervision with a pre-commencement drug or alcohol condition.
 - (2) On and from the commencement date, **sections 70B and 80ZO to 80ZT**, and any rules made under **section 80ZS**, apply in respect of the offender—
 - (a) as if the pre-commencement drug or alcohol condition were a drug or alcohol condition imposed by a court on or after the commencement date; and
 - (b) as if the court had complied with **section 80ZN(3)** in respect of the condition.
- 4 Testing and monitoring of offender subject to sentence of home detention with pre-commencement drug or alcohol condition**
- (1) This clause applies if an offender is subject to a sentence of home detention with a pre-commencement drug or alcohol condition.
 - (2) On and from the commencement date, **sections 80SA and 80ZO to 80ZT**, and any rules made under **section 80ZS**, apply in respect of the offender—
 - (a) as if the pre-commencement drug or alcohol condition were a drug or alcohol condition imposed by a court on or after the commencement date; and
 - (b) as if the court had complied with **section 80ZN(3)** in respect of the condition.
- 5 Testing and monitoring of offender subject to post-detention condition that is a pre-commencement drug or alcohol condition**
- (1) This clause applies if an offender is subject to a post-detention condition that is a pre-commencement drug or alcohol condition.

- (2) On and from the commencement date, **sections 80UA and 80ZO to 80ZT**, and any rules made under **section 80ZS**, apply in respect of the offender—
- (a) as if the pre-commencement drug or alcohol condition were a drug or alcohol condition imposed by a court on or after the commencement date; and
 - (b) as if the court had complied with **section 80ZN(3)** in respect of the condition.
- 6 Testing and monitoring of offender subject to post-imprisonment condition that is a pre-commencement drug or alcohol condition**
- (1) This clause applies if an offender is subject to a post-imprisonment condition that is a pre-commencement drug or alcohol condition.
- (2) On and from the commencement date, **sections 80ZO to 80ZT and 96A**, and any rules made under **section 80ZS**, apply in respect of the offender—
- (a) as if the pre-commencement drug or alcohol condition were a drug or alcohol condition imposed by a court on or after the commencement date; and
 - (b) as if the court had complied with **section 80ZN(3)** in respect of the condition.

Part 2

Consequential amendments

Insert as Part 2 of **Schedule 1AA** the **Part 2** set out in **Part 1** of this schedule.

Schedule 4
New Part 2 inserted into Schedule 1

s 42

Part 2
**Provisions relating to Part 5 of the Drug and Alcohol Testing of
 Community-based Offenders, Bailees, and Other Persons
 Legislation Act 2014**

2 Interpretation

In this Part,—

commencement date means the date on which **Part 5 of the Drug and Alcohol Testing of Community-based Offenders, Bailees, and Other Persons Legislation Act 2014** comes into force

pre-commencement drug or alcohol condition means a condition—

- (a) that is imposed before the commencement date under section 26(1), 27(1), or 33(1); and
- (b) that prohibits a returning offender from doing 1 or more of the following:
 - (i) using (as defined in section 4(1) of the Parole Act) a controlled drug;
 - (ii) using a psychoactive substance;
 - (iii) consuming alcohol.

3 Testing and monitoring of returning offender subject to pre-commencement drug or alcohol condition

- (1) This clause applies if a returning offender is subject to a pre-commencement drug or alcohol condition.
- (2) On and from the commencement date, **sections 16B to 16D, 71A, 72A, 74A, and 74B**, and any rules made under **section 74A**, of the Parole Act apply in respect of the returning offender—
 - (a) as if the pre-commencement drug or alcohol condition were a drug or alcohol condition imposed by a court on or after the commencement date; and
 - (b) as if the court had complied with **section 16A(3)** of the Parole Act in respect of the condition.