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Legislative statement for the Drug and Substance Checking Legislation Bill (No 2) – second reading

The Drug and Substance Checking Legislation Bill (No 2) (the Bill) amends the Misuse of Drugs Act 1975, the Psychoactive Substances Act 2013 and the Medicines Act 1981 to allow drug and substance checking services to operate with legal certainty.

Drug and substance checking services check the composition of drugs and substances and provide information and harm reduction advice to help individuals make informed decisions about drug and substance use. If, after testing, a drug or substance is discovered not to be as presumed, the individual can make the potentially life-saving decision not to consume it.

The Bill follows on from the Drug and Substance Checking Legislation Act 2020 (the Drug Checking Act). The Drug Checking Act was developed to allow drug checking to take place with legal certainty over the summer of 2020/21, while a permanent system was developed. It includes repeal provisions which will take effect in December 2021, 12 months after the Drug Checking Act's date of commencement.

Before the Drug Checking Act came into force, there were limited exemptions to the prohibitions on possession and supply of controlled drugs in the Misuse of Drugs Act 1975, none of which covered drug and substance checking service providers. Organisations and individuals who conducted drug checking were therefore at risk of being charged with possession or supply if they handled controlled drugs in the course of providing their services. There was also legal uncertainty about whether drug checking services could send controlled drugs to an approved laboratory for further testing.

Similar risks arose under the Psychoactive Substances Act 2013 with the checking of psychoactive substances that were not approved products. Officials have also identified that there are similar risks under the Medicines Act 1981.

Under section 12 of the Misuse of Drugs Act 1975, it is an offence to knowingly allow premises to be used for the commission of any offence against that Act. Before section 12 was amended by the Drug Checking Act, event organisers and other hosts who allowed drug checking services to take place were at risk of prosecution under section 12 because the promotion of drug checking services could have constituted evidence of knowledge that drugs were being consumed or possessed on the premises. The Drug Checking Act amended section 12 to provide that it is not an offence to host a drug checking service. The Bill includes an amendment which will have the same effect.

If a permanent regulatory scheme is not introduced, drug checking will revert to a legal grey area. Drug checking service providers and their hosts would be at risk of prosecution, and it is likely that drug checking services would be provided at fewer events.

In order to enable drug and substance checking services to operate with legal certainty, this Bill enables the Director-General of Health (the Director-General) to issue licenses for drug and substance checking service providers to carry out drug checking functions. These functions include providing information and advice, testing a drug or substance, and arranging for disposal or further testing of a drug or substance.

The Bill sets the conditions that apply to all drug checking licences. These conditions include:

- providing accurate and appropriate harm reduction advice to everyone who receives test results
- not charging individuals to use the service
- securely storing any drugs in the provider's possession
- requirements for reporting and record keeping.

Transitional provisions will ensure that providers appointed under the Drug Checking Act can continue to operate legally while they are awaiting a licence under the new system.

Schedule 6 of the Bill sets out key elements of the licensing scheme. These include the grounds on which the Director-General may issue a licence, and the mechanism for reviewing decisions.

Regulations under the Misuse of Drugs Act will give effect to further details of the regulatory scheme, such as an accessibility requirement.

The Bill creates two offences. It will be an offence for a drug and substance checking service provider to breach, without reasonable excuse, any terms or conditions of their licence. The penalty for this offence is a fine not exceeding \$5,000. It will also be an offence for a person, without reasonable excuse, to operate a drug and substance checking service without being licensed to do so. The penalty for this offence is a fine not exceeding \$20,000.