



# Drug and Substance Checking Legislation Act 2020

Public Act      2020 No 63  
Date of assent      7 December 2020  
Commencement      see section 2

## Contents

	Page
1      Title	2
2      Commencement	2
3      Repeal of this Act	3

### Part 1

#### Amendments to Misuse of Drugs Act 1975

4      Amendments to Misuse of Drugs Act 1975	3
Subpart 1—Temporary provisions	
5      Section 2 amended (Interpretation)	3
6      Section 6 amended (Dealing with controlled drugs)	3
7      Section 7 amended (Possession and use of controlled drugs)	3
8      Section 12 amended (Use of premises or vehicle, etc)	3
9      Section 30 amended (Burden of proof)	3
10     New sections 35DA to 35DI and cross-heading inserted	3

#### *Drug and substance checking*

35DA	Drug and substance checking service providers	4
35DB	Functions of service provider	4
35DC	Possession or supply of controlled drug for purpose of performing functions	5
35DD	Supplying or surrendering controlled drug to service provider	5
35DE	Offence relating to breach of terms or conditions of appointment	5

	35DF	Offence to provide checking services, etc, without being appointed under section 35DA	5
	35DG	Service providers not to collect, etc, personal information	5
	35DH	Protections from liabilities of service provider	6
	35DI	Test result not admissible in criminal proceedings	6
		Subpart 2—Repeal of temporary provisions	
11		Section 2 amended (Interpretation)	6
12		Section 6 amended (Dealing with controlled drugs)	6
13		Section 7 amended (Possession and use of controlled drugs)	6
14		Section 12 amended (Use of premises or vehicle, etc)	6
15		Section 30 amended (Burden of proof)	6
16		Sections 35DA to 35DI and cross-heading above section 35DA repealed	6

## Part 2

### Amendments to Psychoactive Substances Act 2013

17		Amendments to Psychoactive Substances Act 2013	6
		Subpart 1—Temporary provisions	
18		Section 8 amended (Interpretation)	7
19		Section 70 amended (Offences relating to psychoactive substance that is not approved product)	7
20		Section 71 amended (Offence relating to personal possession of psychoactive substance that is not approved product)	7
		Subpart 2—Repeal of temporary provisions	
21		Section 8 amended (Interpretation)	7
22		Section 70 amended (Offences relating to psychoactive substance that is not approved product)	7
23		Section 71 amended (Offence relating to personal possession of psychoactive substance that is not approved product)	8

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

#### 1 Title

This Act is the Drug and Substance Checking Legislation Act 2020.

#### 2 Commencement

- (1) The following provisions come into force on the day after the date on which this Act receives the Royal assent:
  - (a) subpart 1 of Part 1:
  - (b) subpart 1 of Part 2.
- (2) The following provisions come into force 12 months after the date on which this Act receives the Royal assent:

- (a) subpart 2 of Part 1:
- (b) subpart 2 of Part 2.

### 3 **Repeal of this Act**

This Act is repealed on the day after the date on which the provisions specified in section 2(2) come into force.

## **Part 1**

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

### 4 **Amendments to Misuse of Drugs Act 1975**

This Part amends the Misuse of Drugs Act 1975.

#### Subpart 1—Temporary provisions

### 5 **Section 2 amended (Interpretation)**

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

**drug and substance checking service provider** or **service provider** means a person appointed as a drug and substance checking service provider under section 35DA

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

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

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

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

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

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

After section 12(1), insert:

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

### 9 **Section 30 amended (Burden of proof)**

In section 30, replace “section 8” with “section 8, 35DC, or 35DD” in each place.

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

After section 35D, insert:

*Drug and substance checking***35DA Drug and substance checking service providers**

- (1) The Director-General of Health may, by notice in the *Gazette*,—
  - (a) appoint drug and substance checking service providers to perform the functions specified in section 35DB; and
  - (b) specify reasonable terms and conditions that an appointment is subject to.
- (2) The Ministry of Health must publish on its Internet site a list of service providers appointed under subsection (1) and the terms and conditions to which a service provider's appointment is subject.
- (3) A notice given by the Director-General in the *Gazette* for the purpose of subsection (1)—
  - (a) is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012; and
  - (b) must be presented to the House of Representatives under section 41 of that Act; and
  - (c) is a regulation for the purposes of the Interpretation Act 1999.

**35DB Functions of service provider**

- (1) The functions of a service provider are to—
  - (a) provide information and harm reduction advice to help individuals make informed decisions about drug and psychoactive substance use;
  - (b) test any drug or substance (which may be a controlled drug or psychoactive substance) that an individual presents for checking to ascertain the composition and likely identity of the drug or substance;
  - (c) advise the individual who presented a drug or substance for checking of the outcome of the testing;
  - (d) return a drug or substance to the individual who presented it for checking;
  - (e) dispose of any sample of a controlled drug or substance used in testing;
  - (f) dispose of, or arrange for the disposal of, any drug or substance surrendered by any individual for disposal;
  - (g) arrange for a sample of a drug or substance to be tested by an approved laboratory.
- (2) A service provider must perform the functions referred to in subsection (1)(e) and (f) in accordance with the terms and conditions of their appointment.
- (3) In this section and sections 35DG and 35DI, **drug or substance** includes a sample of a drug or substance.

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

- (1) A service provider may, for the purpose of performing the provider's functions,—
  - (a) possess a controlled drug;
  - (b) return a controlled drug to the individual who submitted it for checking;
  - (c) send a controlled drug to an approved laboratory for testing.
- (2) Subsection (1) is subject to the service provider's terms and conditions of appointment.
- (3) In this section and section 35DD, **controlled drug** includes a sample of a controlled drug.

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

An individual may—

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

**35DE Offence relating to breach of terms or conditions of appointment**

- (1) A person appointed as a service provider must not breach any terms or conditions of their appointment.
- (2) A person commits an offence and is liable on conviction to a fine not exceeding \$5,000 if the person, without reasonable excuse, contravenes subsection (1).

**35DF Offence to provide checking services, etc, without being appointed under section 35DA**

- (1) A person must not carry out any of the functions specified in section 35DB(1)(b) to (e) without being appointed as a service provider under section 35DA.
- (2) A person commits an offence and is liable on conviction to a fine not exceeding \$5,000 if the person, without reasonable excuse, contravenes subsection (1).

**35DG Service providers not to collect, etc, personal information**

A service provider must not collect, maintain, use, or disclose any personal information relating to an individual from whom the service provider receives any drug or substance for checking or disposal.

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

- (1) An employee or a volunteer of a service provider is not liable for anything they do or fail to do in the course of the performance or intended performance of the service provider's functions, unless it is shown that they acted in bad faith or without reasonable care.
- (2) An employee or a volunteer of a service provider is not liable for any liability of the service provider.
- (3) In this section, **volunteer** means a person who is acting on a voluntary basis (whether or not the person receives out-of-pocket expenses).

**35DI Test result not admissible in criminal proceedings**

The result of a test carried out by a service provider in relation to any drug or substance is not admissible as evidence in any criminal proceedings against the individual from whom the drug or substance was received.

**Subpart 2—Repeal of temporary provisions****11 Section 2 amended (Interpretation)**

In section 2(1), repeal the definitions of **drug and substance checking service provider** or **service provider** and **psychoactive substance**.

**12 Section 6 amended (Dealing with controlled drugs)**

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

**13 Section 7 amended (Possession and use of controlled drugs)**

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

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

Repeal section 12(1A).

**15 Section 30 amended (Burden of proof)**

In section 30, replace “section 8, 35DC, or 35DD” with “section 8” in each place.

**16 Sections 35DA to 35DI and cross-heading above section 35DA repealed**

Repeal sections 35DA to 35DI and the cross-heading above section 35DA.

**Part 2****Amendments to Psychoactive Substances Act 2013****17 Amendments to Psychoactive Substances Act 2013**

This Part amends the Psychoactive Substances Act 2013.

### Subpart 1—Temporary provisions

#### 18 Section 8 amended (Interpretation)

In section 8, insert in their appropriate alphabetical order:

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

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

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

After section 70(2), insert:

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

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

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

After section 71(2), insert:

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

(2B) Subsection (2A) is subject to the service provider's terms and conditions of appointment.

### Subpart 2—Repeal of temporary provisions

#### 21 Section 8 amended (Interpretation)

In section 8, repeal the definitions of **approved laboratory** and **drug and substance checking service provider**.

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

Repeal section 70(2A).

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

Repeal section 71(2A) and (2B).

**Legislative history**

1 December 2020

Introduction (Bill 4–1), first reading, second reading, committee of the whole House, third reading

7 December 2020

Royal assent

This Act is administered by the Ministry of Health.