

## **Part 16 Drug and substance checking**

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# Policy statement and principles

## What

[The Drug and Substance Checking Legislation Act 2021](#) (D&SCL Act) minimises drug and substance harm by allowing drug and substance checking services to operate legally at festival venues and other locations in New Zealand. The D&SCL Act amends the [Misuse of Drugs Act 1975](#) and the [Psychoactive Substances Act 2013](#).

## Why

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.

## How

Police will:

- aim to minimise drug and substance harm
- ensure drug and substance checking services operate unhindered
- avoid any presence at or near where drug and substance checking services are operating so people are not discouraged from having drugs and/or substances checked, unless responding to an incident
- apply empathy and respect throughout policing festival venues
- apply the discretion policy contained in '[Part 15 - Police discretion with possession/use of controlled drugs and/or possession of utensils offences](#)' of the 'Drugs' chapter
- note there is no offence when a person is:
  - possessing or supplying a controlled drug, or psychoactive substance that is not an approved product, for the purpose of performing service provider functions
  - supplying or surrendering a controlled drug or psychoactive substance to a service provider.

# Summary

## Background

Prior to the [Drug and Substance Checking Legislation Act 2021](#) coming 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 the exemptions covered drug and substance checking service providers to allow them to 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.

Event hosts and organisers, along with 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 or whether they could dispose of drugs received.

Similar risks arose under the [Psychoactive Substances Act 2013](#) with the checking of psychoactive substances that are not approved products.

## Purpose

This part of the 'Drugs' chapter details Police national policies and procedures for drug and substance checking at festival venues and other locations, in particular:

- drug and substance checking service providers
- offence exceptions under the Misuse of Drugs Act and Psychoactive Substances Act two drug and substance checking offences:
  - breaching the conditions of a drug checking licence
  - operating a drug checking service without a licence, or in breach of terms or conditions of a drug checking service licence
- licensing of drug and substance checking service providers
- Police practice relating to drug and substance checking at festival venues and other locations.

## Table of definitions

The following table defines key terms used in the [D&SCL Act](#) that amends the [Misuse of Drugs Act 1975](#) (MODA) and [Psychoactive Substances Act 2013](#). The definitions also apply to these instructions.

Term	Description
<b>Approved laboratory</b>	Means a laboratory for the time being approved under section <a href="#">87</a> of the Psychoactive Substances Act 2013. (s <a href="#">8</a> Psychoactive Substances Act)
<b>Controlled drug</b>	Controlled drug includes a sample of a controlled drug in sections <a href="#">35DC</a> and <a href="#">35DD</a> of the Misuse of Drugs Act 1975. (s <a href="#">35DC</a> (3) MODA)

<p><b>Drug and substance checking service provider</b></p> <p><b>or</b></p> <p><b>service provider</b></p>	<p>Means an individual or entity licensed as a drug and substance checking service provider under <a href="#">clause 4</a> of Schedule 6 as per section <a href="#">35DA</a> of the Misuse of Drugs Act 1975 (as defined in <a href="#">s2(1)</a> MODA)</p>
<p><b>Drug information body</b></p>	<p>Means an agency, an association, or a body that gathers and analyses information about the use or prevalence (or both) of controlled drugs and psychoactive substances in New Zealand. (<a href="#">s2(1)</a> MODA)</p>
<p><b>Drug or substance</b></p>	<p>Drug or substance in relation to a drug and substance checking service provider, includes a sample of a drug or substance. (<a href="#">s2(1)</a> MODA)</p>
<p><b>Entity</b></p>	<ul style="list-style-type: none"> <li>- Entity, in relation to a drug and substance checking service provider, includes:</li> <li>- a body corporate</li> <li>- a corporation sole</li> <li>- in the case of a trust that has: <ul style="list-style-type: none"> <li>- only 1 trustee, the trustee acting in their capacity as trustee</li> <li>- more than 1 trustee, the trustees acting jointly in their capacity as trustees</li> </ul> </li> <li>- an unincorporated body (including a partnership).</li> </ul> <p>(<a href="#">s2(1)</a> MODA)</p>
<p><b>Psychoactive substance</b></p>	<p>Has the same meaning as in section <a href="#">9</a> of the Psychoactive Substances Act 2013.</p>
<p><b>Responsible person</b></p>	<p>Responsible person, in relation to an entity that is, or is applying to be, a drug and substance checking service provider, means:</p> <ul style="list-style-type: none"> <li>- a director, partner, or trustee of the entity; or</li> <li>- if the entity does not have directors, partners, or trustees, a person who acts in relation to the entity in the same or a similar fashion as a director, partner, or trustee would were the entity a company, partnership, or trust.</li> </ul> <p>(<a href="#">s2(1)</a> MODA)</p>

<b>Worker</b>	<p>Worker, in relation to a service provider, means a person who carries out work in any capacity for the service provider, including work as:</p> <ul style="list-style-type: none"><li>- an employee; or</li><li>- a contractor or subcontractor; or</li><li>- a volunteer (being a person who carries out work on a voluntary basis, whether or not the person receives out-of-pocket expenses).</li></ul> <p>(s2(1) MODA)</p>
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## Related information

See these related documents:

- [Part 2 - Offences under the Misuse of Drugs Act](#)
- [Part 13 - Psychoactive substances](#) of the 'Drugs' chapter
- [Part 15 - Police discretion with possession/use of controlled drugs and/or possession of utensils offences](#) of the 'Drugs' chapter
- [Control and command](#) chapter.

# Drug and substance checking service providers

## Licensing of service providers

The Director-General of Health may license drug and substance checking service providers under Schedule [6](#) MODA.

(s [35DA](#))

## Functions of service providers

The functions of a service provider are to do one or more of the following:

- a. provide accurate and appropriate information and harm reduction advice to help individuals make informed decisions[BG1] [VC2] about drug and substance use
- b. test any drug or substance (which may be a controlled drug or psychoactive substance) that an individual presents for checking to ascertain the composition and likely identity of the drug or substance
- c. advise the individual who presented a drug or substance for checking of the outcome of the testing
- d. return a drug or substance to the individual who presented it for checking
- e. dispose of any sample of a drug or substance used in testing
- f. dispose of, or arrange for the disposal of, any drug or substance surrendered by any individual for disposal
- g. arrange for a sample of a drug or substance (including one that has been surrendered for disposal) to be tested by an approved laboratory
- h. train, or arrange for the training of, the service provider's workers to perform the functions specified in the above bullet points (including by using, for training purposes, drugs or substances that have been surrendered for disposal).

A service provider must perform the functions above in accordance with the conditions of their licence.

A service provider must perform the functions outlined in the bullet points above in accordance with the terms and conditions of their licence.

([s35DB](#))

## Offence exceptions under the Misuse of Drugs Act

### Offence exceptions for service provider

A service provider's licence entitles them to do one or more of the following, subject to the terms and conditions of the service provider's licence for the purpose of performing the provider's functions:

- possess a controlled drug for as long as reasonably necessary to perform the provider's functions
- return a controlled drug to the individual who submitted it for checking
- send a controlled drug to an approved laboratory for testing.

In these circumstances, a service provider is exempted from the offence of possession or supply of controlled drugs under the Act. A controlled drug under section 35DC includes a sample of a controlled drug.

(s[35DC](#))

### Offence exceptions for persons supplying/surrendering controlled drug to service provider

An individual may do one or both of the following:

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

In these circumstances, a person is exempted from the offence of supplying or surrendering controlled drugs under the Act. A controlled drug under section [35DD](#) includes a sample of a controlled drug.

(s[35DD](#))

### Offence exception for persons permitting premises or mode of conveyance to be used by a drug and substance checking service provider

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

(s[12](#)(1A))

### Burden of proof

In any proceedings against any person in respect of any offence against the Misuse of Drugs Act or against any regulations made under the Act:

- it is proved that they had in their possession any controlled drug, or
- the person did any act in relation to a controlled drug which would have amounted to that offence if such act were not done pursuant to section 8 or to a licence under the Act or as otherwise permitted



by regulations under the Act.

the burden of proving that they had the controlled drug in their possession, or did an act, under section 8, or to any such licence or as permitted lies with the person.

(s [30](#))

# Offence exceptions under the Psychoactive Substances Act

## Offence exceptions for service provider

### Supplies psychoactive substance that is not approved product

The section [70](#) offence relating to supply of psychoactive substance that is not approved product does not apply to:

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

([s70\(2A\)](#))

### Personal possession of psychoactive substance that is not approved product

The section [71](#) offence relating to personal possession of psychoactive substance that is not approved product does not apply to a drug and substance checking service provider if the service provider has possession of the psychoactive substance in the course of performing the service provider's functions and is subject to the conditions of the service provider's licence.

([s71\(2A\)](#) and (2B))

### Offence exceptions for persons supplying/surrendering psychoactive substance to service provider

It is not an offence for 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.

([s70\(2A\)](#))

# Drug and substance checking offences under the Misuse of Drugs Act

Two new offences under the Misuse of Drugs Act are created by the [Drug and Substance Checking Legislation Act 2021](#).

## Offence relating to breach of terms or conditions of licence

A service provider commits an offence and is liable on conviction to a fine not exceeding \$5,000 if they, without reasonable excuse, contravenes conditions of their licence.

**Note:** The offence does not apply to a contravention of the condition set out in section [35DDF](#) (service provider must provide accurate and appropriate harm reduction advice with test results).

(s[35DE](#))

## Offence to provide checking services, etc., without being licensed

A person commits an offence and is liable on conviction to a fine not exceeding \$20,000 if the person, without reasonable excuse, carries out any of the functions specified in section [35DB](#)(1)(b) to (e) without being licensed as a service provider under section [35DA](#). The function of providing information and harm reduction advice is excluded from this offence provision.

(s[35DF](#))

# Miscellaneous amendments to the Misuse of Drugs Act

## Liability of responsible persons, etc, if service provider is entity

Section [17](#) (Liability of principal for acts of agent, etc) of the Misuse of Drugs Act 1975 does not apply when a service provider that is an entity commits an offence against the Act. The following liability applies:

- Every responsible person and person concerned in the management of the entity despite section [35DH](#) commits the same offence if it is proved:
  - that the act that constituted the offence took place with the authority, permission, or consent of the responsible person or person concerned in the management of the entity; or
  - that the responsible person or person concerned in the management of the entity knew, or could reasonably be expected to have known, that the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.
- A responsible person or person concerned in the management of the entity may be convicted of the offence even if the entity is not convicted of the offence.

(s [35DG](#))

## Protections from liabilities of service provider

A worker of a service provider is not liable for:

- anything they do or fail to do in the course of the performance or intended performance of the service provider's functions, unless it is shown that they acted in bad faith or without reasonable care
- any liability of the service provider.

(s [35DH](#))

## Use of service and test result not admissible in civil or criminal proceedings

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

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

(s [35DI](#))

## Transitional, savings, and related provisions

See the transitional, savings, and related provisions set out in Schedule [1AA](#) and their effect in relation to:

- existing service provider defined
- when Director-General of Health may issue licences under clause 4 of Schedule 6
- continuation of current appointments
- when continued appointments end.

# Licensing of drug and substance checking service providers

## Issuing of licences

Individuals or entities may apply to the Director-General of Health for a licence to be a drug and substance checking service provider.

See schedule [6](#) in the Misuse of Drugs Act 1975 for more information about:

- application for licence
- Director-General of Health may refuse to process application for licence
- Director-General of Health may request further information, etc
- decision on licence application
- deciding whether applicant is suitable
- deciding whether information and harm reduction advice is accurate and appropriate
- Director-General of Health may impose, amend, and revoke conditions
- duration of licence
- Director-General of Health may suspend or cancel licence
- surrender of licence by service provider
- application for review of decision
- decision on application for review
- what service provider may do while decision to suspend or cancel licence is under review
- licence is not transferable
- Director-General of Health must ensure that list of service providers is published.

## Drug and substance checking: general licence conditions

The following general licence conditions are set out in sections [35DDA to 35DDK](#):

- service provider must:
  - display copy of licence
  - not perform functions in residential premises
  - not require or collect, etc, certain information
  - provide accurate and appropriate harm reduction advice with test results
  - store controlled drugs or psychoactive substances securely
  - report loss or removal of controlled drug or psychoactive substance to Police and Director-General of Health
  - report data
  - keep records
  - facilitate monitoring.

# Police practice relating to drug and substance checking at festival venues and other locations

The [Drug and Substance Checking Legislation Act 2021](#) (D&SCL Act) is focused on harm reduction by allowing drug and substance checking services to operate legally at public venues in New Zealand. The Police procedures that follow have this purpose in mind.

## Procedures for policing festival venues with drug and substance checking services

The following table sets out the steps for policing festival venues with drug and substance checking services being provided.

Step	Action
1	<p><b>Note:</b> Policing festival venues require control and command that includes leadership, coordination, effective decision making, and behaving lawfully and ethically with a prevention, victim and harm reduction focus.</p> <p>See '<a href="#">Part 1 - Control and command overview</a>' for further understanding of the importance of coordination occurring when command and control is communicated to all responders at the festival venue(s), and their agencies, by giving appropriate taskings that are completed correctly and in a timely manner.</p>
2	<p>Plan the policing of the festival venue(s) by undertaking thorough risk and <a href="#">community impact assessment</a> including a <a href="#">TENR-Operational threat assessment</a>.</p> <p>The assessments must include liaison with festival venue organisers and the drug and substance checking service provider(s). Know Your Stuff NZ Limited (trading as <a href="#">KnowYourStuffNZ</a>) have been appointed by the Director General of Health and published on the Ministry of Health internet site in the <a href="#">New Zealand Gazette</a> as an approved service provider. See the transitional, savings, and related provisions set out in Schedule <a href="#">1AA</a> for when the continued appointment ends under the licensing regime.</p> <p>See '<a href="#">Part 2 - Planning, control and command</a>' and the general principles in step 3 below for guidance.</p>

3	<p><b>General principles</b></p> <p>Include the following principles for planning and carrying out policing activities at festival venue(s) where drug and substance checking services are being provided:</p> <ul style="list-style-type: none"><li>- obtain information/intelligence (ensure service providers are verified on the Ministry of Health <a href="#">Internet site</a> / <a href="#">New Zealand Gazette</a> and that guidance in this Part 16 is applied)</li><li>- aim to minimise drug and substance harm</li><li>- ensure drug and substance checking services operate unhindered</li><li>- avoid Police presence at or near where drug and substance checking services are operating so people are not discouraged from having drugs and/or substances checked, unless responding to an incident</li><li>- apply empathy and respect throughout the policing of the venue</li><li>- note there is no offence, if the <a href="#">exceptions under the Misuse of Drugs Act</a> and <a href="#">exceptions under the Psychoactive Substances Act</a> apply that relate to:<ul style="list-style-type: none"><li>- possession or supply of a controlled drug or psychoactive substance that is not an approved product for the purpose of performing service provider functions</li><li>- supplying or surrendering a controlled drug or psychoactive substance to service provider</li></ul></li><li>- use discretion when a person is found procuring, possessing, consuming, smoking or otherwise using any <a href="#">controlled drug</a> and/or <a href="#">possessing any pipe or other utensil</a> outside the vicinity of where drug and substance checking services are operating (see ‘<a href="#">Part 15 - Police discretion with possession/use of controlled drugs and/or possession of utensils offences</a>’ for further information including whether a health referral is appropriate).</li></ul>
4	<p>For further guidance, contact:</p> <ul style="list-style-type: none"><li>- Legal Services for legal advice</li><li>- National Criminal Investigations Group (NCIG) at PNHQ for policy and practice advice.</li></ul>

## Procedures for locations other than festival venues with drug and substance checking services

The following table sets out the procedures for locations other than festival venues with drug and substance checking services being provided.

Step	Action
1	<p>Note that approved service providers can be verified on the <a href="#">Ministry of Health Internet site</a> / <a href="#">New Zealand Gazette</a>. Know Your Stuff NZ Limited (trading as <a href="#">KnowYourStuffNZ</a>) have been appointed by the Director General of Health and published on the Ministry of Health internet site appointed in the <a href="#">New Zealand Gazette</a> as an approved service provider. See the transitional, savings, and related provisions set out in Schedule <a href="#">1AA</a> for when the continued appointment ends under the licensing regime.</p>
2	<p><b>General principles</b></p> <p>Apply these principles for locations other than festival venues with drug and substance checking services:</p> <ul style="list-style-type: none"><li>- aim to minimise drug and substance harm</li><li>- ensure drug and substance checking services operate unhindered</li><li>- avoid Police presence at or near where drug and substance checking services are operating so people are not discouraged from having drugs and/or substances checked, unless responding to an incident</li><li>- note there is no offence, if the <a href="#">exceptions under the Misuse of Drugs Act</a> and <a href="#">exceptions under the Psychoactive Substances Act</a> apply that relate to:<ul style="list-style-type: none"><li>- possession or supply of a controlled drug or psychoactive substance that is not an approved product for the purpose of performing service provider functions</li><li>- supplying or surrendering a controlled drug or psychoactive substance to service provider</li></ul></li><li>- apply the discretion policy contained in '<a href="#">Part 15 - Police discretion with possession/use of controlled drugs and/or possession of utensils offences</a>' of the 'Drugs' chapter including whether a health referral is appropriate.</li></ul>
3	<p>For further guidance, contact:</p> <ul style="list-style-type: none"><li>- Legal Services for legal advice</li><li>- National Criminal Investigations Group (NCIG) at PNHQ for policy and practice advice.</li></ul>

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