

Regulatory Impact Statement: Regulation of drug checking services

Coversheet

Purpose	
Decision Sought:	Agreement to amend the Misuse of Drugs Act 1975 and the Psychoactive Substances Act 2013 to enable a permanent system of regulation for drug checking services
Advising Agencies:	Ministry of Health
Proposing Ministers:	Hon Andrew Little, Minister of Health
Date:	March 2021
Problem Definition	
<p>Primary problem: There are health risks and harms arising from the consumption of all illicit drugs. Some of these risks and harms arise from people not knowing the actual composition of their drugs, and/or not knowing how to mitigate other risks and harms.</p> <p>Secondary problem: Drug checking services address the primary problem by testing illicit drugs and providing harm reduction advice. However the legislation which regulates drug checking service providers will repeal in December 2021. If a new regulatory system is not established, it will be more difficult for drug checking providers to operate.</p>	
Executive Summary	
<p>Drug checking services check the composition of illicit drugs and provide harm reduction advice to help individuals make more informed decisions about drug use. Where a substance is not as presumed, the individual can make the potentially life-saving decision not to consume it.</p> <p>Until late 2020, several aspects of drug checking were potentially illegal under the Misuse of Drugs Act 1975 and the Psychoactive Substances Act 2013. For example, drug checkers were potentially committing a possession offence if they handled the drugs.</p> <p>The Drug and Substance Checking Legislation Act 2020 (the Drug Checking Act) amended the Misuse of Drugs Act to enable the Director-General of Health to appoint drug checking service providers and enable appointed providers to operate with legal certainty. However, these amendments will repeal in December 2021.</p> <p>Allowing drug checking to revert to a legal grey area is undesirable, as it will make drug checking less accessible, and would not allow quality control of drug checking. It would also be undesirable to enable drug checking without any regulation, as low-quality services could create risk of harm, for example by providing inaccurate advice or</p>	

creating a false sense of safety.

A licensing system under the Misuse of Drugs Act would allow licensed drug checking service providers to operate with legal certainty. It would also enable quality control and monitoring of providers.

Costs of the licensing system will largely fall on the Ministry of Health, which will run the licensing system. Recovering the full costs from providers through licence fees is not recommended, as drug checking is likely to be provided solely or mostly by non-profit organisations. Licence fees or other cost recovery are likely to deter some providers from seeking a licence.

Equitable access to drug checking is also likely to require government funding for some licensed drug checking services.

Officials have developed this policy in close consultation with the Ministry of Justice and the New Zealand Police, and have engaged with KnowYourStuffNZ, the New Zealand Drug Foundation, Te Puni Kōkiri, WorkSafe, the Treasury, the New Zealand Union of Students' Associations, the New Zealand Promoters' Association, the Entertainment Venues Association of New Zealand, and drug checking organisations in the United States, the United Kingdom, France and Switzerland. Stakeholders have been supportive of enabling drug checking.

The general public has a wide range of views about how best to reduce drug harm, and who should bear the risks of illicit drug use. At one end of the spectrum there is the view that drug use should be discouraged through strict prohibition, and all risks should rest with people using illegal drugs. At the other end there is the view that drug use should be legalised, and that the government should focus solely on harm reduction. This policy sits in the middle, supporting people who use drugs to help them reduce harms, but not decriminalising possession by drug users.

Limitations or Constraints on Analysis

- The new system needs to be in place by the time the Drug Checking Act repeals in early December 2021 which has limited time for identification and analysis of a wide range of options.
- Drug checking addresses one aspect of the primary policy problem: risk and harm arising from lack of information about illicit drugs. Drug checking addresses this information deficit by providing people with information about the likely composition of the drugs they intend to take, and how to reduce risks from drug consumption. It also provides information to Police and health services about drugs in circulation. Addressing drug harm more broadly will require an extensive and multi-faceted work programme which is outside the scope of this project.
- Research in New Zealand and other countries consistently shows that a significant percentage (up to 75% in New Zealand) of people will choose not to take their drugs if they are not as expected. There is also some overseas evidence that drug checking can significantly reduce drug-related hospitalisations.¹ New Zealand does not collect data on levels of harm from

specific drugs, so it is not possible to know how much harm might be prevented.

Responsible Manager(s) (completed by relevant manager)

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Ministry of Health

15/03/2021

Quality Assurance

Reviewing Agency/Agencies:	Ministry of Health Papers and Regulatory Committee (PARC)
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Panel Assessment & Comment:	The Ministry QA panel has reviewed the Impact Statement titled “Regulation of drug checking services”, produced by the Ministry of Health and dated March 2021.
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The panel considers that the Impact Statement meets the quality assurance criteria.

The Impact Statement is clear and concise. The analysis is balanced in its presentation of the information and the major impacts are identified and assessed.

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Measham, ‘Drug safety testing, disposals and dealing in an English field: Exploring the operational and behavioural outcomes of the UK’s first onsite “drug checking” service’, *International Journal of Drug Policy*, 67 (2019), page 106, <https://doi.org/10.1016/j.drugpo.2018.11.001>

Section 1: Outlining the problem

Background Information

Unintended consequences of drug prohibition

The main piece of legislation addressing illicit drugs in New Zealand is the Misuse of Drugs Act 1975. Unclassified psychoactive substances are addressed through the Psychoactive Substances Act 2013. The Misuse of Drugs Act is based on the idea that it is possible to prevent illicit drug consumption (and therefore illicit drug harm) by prohibiting the manufacture, import, sale and possession of illicit drugs, and the diversion of pharmaceutical drugs for illicit use.

In recent years the Misuse of Drugs Act has been amended to provide for other approaches to drug harm reduction. These approaches seek to reduce risk and harm to people who consume drugs despite prohibition. However, the overall approach of the Misuse of Drugs Act is still prohibition.

Despite prohibition, many illicit drugs are still widely available in New Zealand. The 2017/18 New Zealand Health Survey found that 15 percent of New Zealand adults had used cannabis in the previous 12 months. International comparisons are difficult, but this seems to be higher than most other countries. Smaller percentages consume other illicit drugs including MDMA (ecstasy), cocaine and amphetamines.

A prohibition approach means forgoing regulation and control over the manufacture and supply of illicit drugs. This contrasts with the regulatory approach to alcohol. Alcohol manufacturers, importers and dealers are required to ensure that their product does not contain any contaminants and is of a consistent strength, which must be stated on the label. Alcohol still causes a high level of harm, but in New Zealand it is very rare for anyone to consume a dangerous substance which has been added to or mis-sold as alcohol. By comparison, testing of supposed MDMA over the summer of 2020/21 showed that about 40-50% of samples were actually dangerous synthetic cathinones.²

Drug checking as a harm reduction measure

Drug checking is a harm reduction service which tests illicit drugs to determine what the composition is likely to be and provides the person who has the drug with harm reduction advice. Depending on the drug, this advice will include not taking it at all, not taking it in combination with other drugs, or taking a small dose. Clients are also given general harm reduction advice, for example consuming an appropriate amount of water. Testing results generate information about what drugs are in circulation and enable drug checkers and others to inform the public about the presence and risk of particularly dangerous drugs.

Drug harm reduction is based on respecting the autonomy of people who use the service. More informed decisions about whether or not to consume a drug, and how to consume it, can be made by the individual if they are provided with the right information. Drug checking provides information on what a drug is likely to be, and how risks and harms can be reduced

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Data from KnowYourStuffNZ public reporting. The percentage of supposed MDMA which was actually cathinones has varied between locations. KYS will prepare a report on testing numbers and results at the end of the festival season.

or avoided, thus ensuring that decisions are informed by evidence. Drug checking therefore can help reduce the chances of drug harm, but cannot guarantee that it will be avoided, because some people will still make unsafe choices.

Drug checking was first developed in the Netherlands in the early 1990s. Since then it has become available in various countries in Europe and North America, as well as Australia and New Zealand. In many places, it is provided in conjunction with other drug harm measures such as needle exchanges. Clients can also be connected to health and welfare services, including addiction services. The legal status and level of government support for drug checking varies between jurisdictions. In many places, drug checking operates in a legal grey area, whereas in Zurich it is a service provided by the city government.

Drug checking in New Zealand

Drug checking in New Zealand emerged in the early 2010s, in response to avoidable drug-related harm at music festivals. KnowYourStuffNZ (KYS) formed to provide drug checking services at music festivals. KYS is volunteer-run and funded by donations. Since 2019 they have begun operating “static clinics” in major central business districts, allowing the general public to have their drugs checked. KYS work with Drug Information and Alerts New Zealand to gather and disseminate information about particularly dangerous drugs in circulation.

Until late 2020, drug checking in New Zealand operated in a legal grey area. Drug checkers could not handle drugs for testing without being at risk of a possession offence, and the law did not enable them to pass samples on to other laboratories for further testing. Hosts of drug checking services were potentially committing an offence under section 12 of the Misuse of Drugs Act, as the presence of drug testing suggested that they were knowingly allowing the premises to be used for the commission of drug offences. Police have largely been supportive of drug checking, but the potential for arrest and prosecution was still a deterrent for potential hosts, clients and providers.

The Drug and Substance Checking Legislation Act 2020 (the Drug Checking Act) was passed under urgency in December 2020 and amended the Misuse of Drugs Act and the Psychoactive Substances Act. Under the amended Misuse of Drugs Act, the Director-General of Health can appoint drug checking service providers, and it is not an offence to host an appointed drug checking provider, even if drug checking clients are committing drug offences. The Misuse of Drugs Act and the Psychoactive Substances Act were also amended to enable appointed drug checking providers to handle drugs and psychoactive substances for drug checking purposes, and pass samples to an approved laboratory. The Drug Checking Act provisions will repeal in December 2021, as it is intended that a permanent regulatory system will be in place.

KYS has been appointed under the Misuse of Drugs Act, and is allowed to provide services at festivals and other events, and also at static clinics. No other providers have applied for appointment. Since the law change there has been a significant increase in demand for KYS’s services from event organisers and the general public. They are not able to meet this demand, as they have limited resources and there was a very short timeframe between the law change and the start of the festival season.

Over the summer of 2020/21, KYS detected large quantities of dangerous synthetic cathinones, mainly eutylone, being sold as MDMA. Because KYS could operate openly, they found it easier to promptly inform the public about the presence and dangers of synthetic

cathinones. KYS found that 75 percent of people whose drugs were found to be eutylone had decided not to take them.

What is the policy problem or opportunity?

The primary policy problem

Some of the harms relating to illicit drug use arise from people lacking reliable information about the composition of their drugs, and about how to reduce or avoid harms from drug consumption.

Because there is no quality control of illicit drugs, some drugs may be different from what the consumer is expecting. For example it was common over the summer of 2020/21 for synthetic cathinones to be sold as MDMA. Synthetic cathinones can be more risky than MDMA, and so there is significant risk of harm from people consuming synthetic cathinones in the belief that they are MDMA.

People who use illicit drugs may also lack reliable information about how they can reduce or avoid harm from drug consumption. Advice from official sources (for example teachers or doctors) may be focused on discouraging people from consuming drugs, and people who consume drugs may see official advice as unreliable due to prohibitionist bias. They may instead turn to unofficial advice from the internet or from other people who use drugs, and there is significant risk that this advice will be inaccurate and potentially dangerous.

There is also limited information about which drugs are in circulation within New Zealand. This makes it more difficult for Police and health services to anticipate, prevent or respond to drug harm, particularly from novel substances.

The secondary policy problem

If the Drug Checking Act provisions repeal without a new system in place, drug checking will revert to a legal grey area. It will probably continue to operate but will be significantly hindered. Problems arising before the Drug Checking Act came into effect included:

- there was only one provider of drug checking services, as the legal uncertainty reduced demand and was off-putting to potential service providers
- festival organisers and other potential hosts were often reluctant to allow drug checking, as it put them at risk of prosecution under section 12 of the Misuse of Drugs Act
- KYS found it difficult to attract funding due to the uncertain legal position of the service
- drug checkers could not handle the drugs, which tended to make the process slower than necessary and risked damage to expensive and delicate testing equipment. It also made drug checking inaccessible to some people with disabilities, if they lacked the vision or co-ordination needed to place the drugs in the correct place for testing
- if people surrendered their drugs to drug checking providers after being told they were not as expected, they were at risk of a supply offence and the recipients were at risk of a possession offence
- there was no legal provision for drug checkers to pass drug samples on to another laboratory for further testing
- because they could not operate openly, KYS found it difficult to promptly inform the public about the presence of particularly dangerous drugs.

The Drug Checking Act was implemented as temporary legislation to allow drug checking to take place over the summer of 2020/21. The system enabled by the Act is not best practice, as it grants a very high level of discretion to the Director-General and provides no oversight of appointment decisions or provider activity. There are no provisions for appointments to be revoked.

The opportunity

A permanent regulatory system for drug checking would help crucial harm reduction information to be disseminated to people who are at risk of drug harm. People who consume illicit drugs tend to be hard to identify and reach with health messages. Drug checking brings people who consume drugs into contact with people who can provide them with advice, and potentially connect them to broader health services. This advice is usually provided by peers in a non-judgemental way which can have a stronger influence on a person's actions than advice from official sources.

Regulated drug checking would also improve information flows about which illicit drugs are circulating in New Zealand. This information is generally difficult to obtain, particularly with regard to novel substances.

Better information has a range of benefits. At festivals and other events, for example, drug checking can alert paramedics to particularly dangerous drugs, enabling the paramedics to appropriately treat victims of drug harm. Drug checking results may be the first indication that a new psychoactive substance is circulating. A response can then be developed, for example preparing health service responses.

What objectives are you seeking in relation to this policy problem or opportunity?

The key policy objective is to reduce harm relating to illicit drug consumption. Drug checking will help deliver this objective in the ways outlined in the opportunity section above.

Section 2: Option identification and impact analysis

What criteria will be used to evaluate options against the status quo?

The key criterion is the extent to which the option will assist the key policy objective of **reducing harm** relating to illicit drug consumption. Drug checking has the potential to reduce drug harm by preventing unintentional consumption of particularly dangerous drugs, enabling people who use drugs to make more informed decisions about drug use, and by providing Police and health services with information about which drugs are circulating in New Zealand.

There are three additional criteria are as follows:

- a. **Safety and quality:** authorised services need to be able to deliver accurate test results, and appropriate harm reduction messaging.
- b. **Equitable access:** drug checking services should be readily available to those who need them. There should not be financial, cultural, or other barriers to use. The regulatory system must comply with the principles of Te Tiriti o Waitangi.
- c. **Practicality and flexibility:** the system should make efficient use of the time and money of the Crown and regulated parties. It should be sufficiently flexible to allow a range of approaches, particularly kaupapa Māori services. It must be possible to implement in the time available. A practical and flexible system will help ensure that providers are treated equitably.

What scope are you considering options within?

Establishment of a new regulatory agency for drug checking has not been considered. It is expected that the number of licence applications will be low; approximately 1-2 per annum. Creation of a new agency is therefore not necessary or an efficient use of resources.

The following options for the regulator being an entity other than the Ministry of Health have also been discounted:

- An industry body: there are no industry bodies which cover drug harm reduction and drug checking technology
- An NGO: The NGO with the most relevant expertise is the New Zealand Drug Foundation. However the Foundation currently assists KYS with drug checking, so would not be able to act as an impartial assessor
- Another central government agency: The goal of drug checking, and the regulation of drug checking, is to prevent health-related harm. Therefore the Ministry of Health is the most appropriate central government agency
- Territorial authorities: KYS operate across New Zealand, and it is likely that other drug checking service providers will also be multi-regional. This makes a local government regulator inappropriate.

The following option is also out of scope:

Legislation and regulation of some or all recreational drugs

This could be an effective way to address problems arising from lack of quality control of illicit drugs. However, the benefits and risks of this approach cannot be adequately assessed in the time available. The operation of the Psychoactive Substances Act, under which no psychoactive substance has been approved, suggests that it can be challenging to develop an effective regulatory system for recreational drugs. Political consideration of this approach is unlikely, due to the recent public vote against cannabis legalisation and regulation.

Describe and analyse the options

Option One – Counterfactual if no action is taken

The counterfactual if no action is taken is to allow the Drug Checking Act provisions to expire without a replacement. This would return drug checking to a legal grey area. KYS would probably continue to operate as they did prior to the Drug Checking Act, with the difficulties outlined in the ‘secondary policy problem’ section above. Relative to the other options, under this option it is unlikely that new providers would enter the market.

Reducing harm: Some drug harm would still be reduced, as KYS is likely to continue providing harm reduction advice, and testing the likely composition of illicit drugs. However legal uncertainty would make their work more difficult, and deter some potential hosts. Informing the public about particularly dangerous drugs would be more difficult due to the need to protect hosts from potential prosecution. Reduced operations would mean Police and health services would receive less information about illicit drugs circulating in the community.

Safety and quality: There would be no oversight or monitoring of drug checking, including service safety or quality. If a new provider began operating, it would be difficult to assess their service quality or take action if the quality was low.

Equitable access: Access would be reduced, as potential hosts would be more reluctant to host drug checking. This would reduce the scope for drug checking to be expanded to serve more vulnerable groups. Drug checking services would find it more difficult to access funding, as their activity is not strictly legal, and this would likely impact on their ability to address equity issues for their services. Legal problems could impact disproportionately on Māori, who are more likely to be arrested and convicted under the Misuse of Drugs Act, and so may be more concerned that use of drug checking could expose them to arrest or prosecution for drug offences.

Practicality and flexibility: This option has no costs for the Ministry of Health. However, it could be a false economy for the health system and wider society due to the costs of avoidable drug harm. Drug checking service providers would face practical difficulties due to the legal grey area but would not have any compliance costs other than those arising from legal ambiguity.

Option Two – Make the current system permanent

The Drug Checking Act would be amended to remove the repeal provisions. The Director-General of Health could continue to appoint drug checking service providers, who would be able to carry out drug checking with legal certainty. We expect that KYS’ appointment would be extended or renewed. Other providers may also be appointed.

Reducing harm: The potential for regulated drug checking to prevent harm has been demonstrated over the summer of 2020/21, when a high percentage of supposed MDMA was shown to be eutylone or other synthetic cathinones. KYS found that 75% of people who were told their drug was eutylone chose not to consume it, thereby avoiding harms which may have resulted from consuming eutylone. It is likely that KYS's communications about cathinones prevented further harm by encouraging people to be more cautious about their illicit drug use. Compared to the status quo, this option has greater potential for harm reduction, due to drug checking services being able to operate openly, and hosts not risking legal sanctions.

Safety and quality: Before the Director-General makes a decision on whether to appoint a provider, officials would provide advice on the quality and safety of the provider's services. The appointment could be made subject to reporting, monitoring and audit requirements. However, without principles or other guidance in legislation, there is risk that providers would be treated inconsistently without good reason. This risks inequitable treatment of providers. There is also risk that low-quality services would inadvertently be allowed due to inadequate monitoring provisions.

Equitable access: This option would improve access relative to option one. Legality increases the possibility of wider support, funding and publicity, all of which may help the service reach under-served populations and achieve wider equity. There is also potential for appointment to be dependent on efforts to reach under-served populations.

Practicality and flexibility: This option allows a high level of flexibility, as the Director-General would be able to exercise complete discretion as to appointment decisions. However, this creates risk of the decision being made according to criteria which are too narrow, too broad, or inconsistent between providers. There would be no transparency of decision-making. Ensuring consistent decision-making would make this option as resource intensive for the Ministry of Health as option three. The current system does not cost-recover, so does not present a financial barrier to providers with limited resources but does prevent the Ministry from recovering costs.

Option Three – Licensing system

A licensing system would be developed under the Misuse of Drugs Act, with consequential amendments to the Psychoactive Substances Act. This would allow fit-for-purpose drug checking services to be provided with legal certainty. We expect that KYS would be licensed, and that other providers would apply for licences.

Reducing harm: This option has the strongest potential to reduce harm. As with option two, drug checking providers would be able to operate with legal certainty. Because licence criteria and monitoring provisions would be consistent and well-defined under this option, there is less risk than with option two that low quality providers would be allowed to operate, or that high quality providers would be denied a licence. This would reduce the risk of people experiencing harm due to receiving bad advice, or not being able to access the service.

Safety and quality: This option would help ensure that services are safe and high quality, as providers would only be licensed if they could demonstrate their ability to provide appropriate services. The licensing system would have reporting requirements and enable monitoring and audits to ensure quality is maintained.

Equitable access: This option would have similar impact on equitable access as option two, potentially increasing equitable access. Under this option, licensed providers would not be able to charge individual clients for drug checking services. This will help ensure that cost is not a barrier.

Practicality and flexibility: Licensing criteria would be set out in regulations and guidelines, ensuring consistency and transparency. Final decisions would be made by the Director-General of Health, based on advice from an ad-hoc committee of Ministry of Health staff with appropriate expertise. The level of practicality and flexibility would depend on the criteria, which will need to ensure that low quality services are not licensed, and that good quality services are not denied a licence due to inappropriately restrictive criteria. In particular, applications by kaupapa Māori entities will be assessed by committee members with kaupapa Māori expertise. Resource costs for the Ministry and providers would be similar to option two, as there would either be no licence fees, or low fees. The Ministry would develop guidance and criteria during system development, allowing more efficient use of resources during licence assessments.

Option Four – Legalisation without regulation

The legal barriers to drug checking would be removed, but no specific regulatory system would be introduced. Anyone who wanted to provide drug checking services could do so and could pass on costs to clients if they choose. Standard consumer protection law would apply to drug checking services, but there would be no specific standards for drug checking and it would be difficult to take action against low-quality providers.

Reducing harm: Under this option, the quality of harm reduction advice would probably be variable. For example some providers would use best practice testing methods and others might use cheaper and less reliable chemical reagent tests. Reagent tests can fail to detect some dangerous substances, and so there is risk that clients will be told that their drug is safer than it actually is. There is also risk of bad harm reduction advice, which would prevent clients from making informed decisions and safer choices. It is likely that good advice would be given by some providers, but there is potential for high-quality drug checking providers to be driven out of the market due to competition from low-quality providers, or for drug checking in general to suffer reputational damage from low-quality providers.

Safety and quality: There would be no oversight of safety or quality other than under general consumer law. There would be some risk of fraudulent or low-quality for-profit services, and a higher risk of well-meaning but low-quality non-profit services. Low-quality services would create risk of potentially fatal bad advice, in particular people getting a false sense of safety.

Equitable access: This option would do the most to improve access to drug checking, but the access would be to services of variable quality. It is not clear how equity would be affected, but more vulnerable communities could be targeted by low quality providers.

Practicality and flexibility: This is the most practical option for all parties, as it would allow drug checking but not impose compliance costs or requirements. The Ministry would not be required to do anything once the law has been changed. However, this could be a false economy due to the potential costs of drug-related harm arising from low quality drug checking.

Multi-Criteria Analysis

	Option One – Counterfactual	Option Two – Current system	Option Three – Licensing	Option Four – Legalisation without regulation
Harm reduction	0 Some harm reduced, no quality control for advice	+	++	0 More advice provided, but significant risk of bad advice
Safety and quality	0 No oversight or control except through general drug law	+	++	- No oversight or control
Equitable access	0 Access restricted due to legal issues	+	+	++ Access significantly improved, no clear equity impact
Practicality and flexibility	0 Legal barriers but no compliance requirements	+	0	++ No legal barriers or compliance requirements
Overall assessment	Restricts providers with no clear benefit	Similar to option 3 but likely to be inconsistent	Preferred option as it balances access with quality	Benefits outweighed by risk of bad advice

Conclusions

Option three (licensing) is the preferred option as it improves access to drug checking while providing assurance that the services will be of appropriate quality. It therefore has the most potential to reduce drug harm.

Option two is broadly similar to option three, except that the Director-General has a very high level of discretion. This has risks and benefits but is likely to result in providers being treated inconsistently and potentially inequitably. This in turn creates risk of potentially harmful low quality services, and risk of high quality services not being appointed. If it is not possible to develop option three in the time available, option two is the preferred fallback option.

Option four has significant advantages in improving access and removing compliance costs for the Crown and providers, but it is likely to enable low-quality services, which could in turn contribute to drug-related harm.

Summarise the costs and benefits of your preferred option

Affected groups (<i>identify</i>)	Comment: nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (e.g. compliance rates), risks	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts</i>
Additional costs of the preferred option compared to taking no action		
Regulated groups – drug checking service providers	Compliance costs mostly of time – reporting requirements, application etc. No or low licensing fees proposed	Medium non-monetised
Regulator – Ministry of Health	Costs of administering licensing system, investigating complaints and unlicensed providers, and monitoring licensed providers	Estimated \$0.5-1.0 m per annum
Other groups – consumers of illicit drugs, music festival hosts	Providers may pass costs onto hosts, who may pass them onto ticket holders	Approximately \$2 per ticket for events ³
Total monetised costs		\$0.5-1.0m per annum + \$2 per ticket per event
Non-monetised costs		Medium
Additional benefits of the preferred option compared to taking no action		
Regulated groups – drug checking service providers	Legal certainty will make their work easier and should make it easier to raise money	High
Regulator – Ministry of Health	Assurance that good quality services are being delivered	Medium
Other groups	Consumers of illegal drugs will benefit from knowing what they are consuming, being able to avoid dangerous drugs, and generally being able to reduce risk and harm Health system and wider society will benefit from fewer drug related health events Drug checking hosts will benefit from fewer drug related incidents Police will benefit from information derived from drug checking tests	High Unknown but probably medium High Medium

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Estimate from KYS of average amount currently required for cost recovery for their services.

Total monetised benefits		
Non-monetised benefits		Medium-high
Further comments		
<p>The key benefit of drug checking is the reduction of harm from some types of illicit drugs, particularly those which are being sold as something else (for example synthetic cathinones being sold as MDMA). One study in the United Kingdom showed a 95% reduction in drug-related hospitalisations from one festival after drug checking was introduced.</p> <p>New Zealand does not collect data on harm from specific drugs, so it is not possible to meaningfully estimate how much harm could be prevented.</p>		

Section 3: Implementing the preferred option

How will it be implemented?

The licence system will be operated within the Ministry of Health. It is expected that the number of licence applications will be low, so assessment of licence applications can be carried out by an ad hoc committee of Ministry with dedicated analyst and administrative support.

Committee membership will be tailored to the proposed services; for example, an application from a kaupapa Māori provider would be assessed by a committee with kaupapa Māori expertise. There is potential to appoint committee members who are not Ministry of Health staff, for example if necessary expertise cannot be found within the Ministry.

Due to the costs of drug checking technology, drug checking is unlikely to be profitable for providers. Because of this, there will either be no licence fees, or low fees.

The licensing system is still under development. It is expected to have three stages:

1. document review by one person
2. consideration and recommendation by the committee
3. decision by the Director-General of Health.

There is potential for either the first or second stage to include discussion with the applicant, for example to resolve concerns or unanswered questions, or to confirm the applicant's understanding of harm reduction principles. The multi-stage process should eliminate candidates who clearly do not meet the required standards in the first stage.

The Ministry will work with providers appointed under the current system to ensure a smooth transition. It is likely that it will not be possible to grant licences until after the current system expires. To address this problem, there will be a provision in the new Bill to allow the Director-General of Health to extend or renew appointments under the current system.

Monitoring, Evaluation, and Review

Reporting requirements

All licence-holders will be required to report data, such as:

- number of clinics held
- number of clients served
- number of tests carried out
- test results
- clients' stated intentions after receiving test results (eg whether or not they intended to take the tested substance, and if so whether they would change how they took it)
- amount of drugs/substances surrendered, and what was done with them

Most of this data is already collected by KYS. This data will assist evaluation of drug checking services, including their impact on clients' drug consumption choices.

Monitoring provisions

Monitoring drug checking services will need to be carried out by appropriate qualified individuals in a manner that does not deter clients from using the service, or place an undue burden on providers.

Licence holders will be required to allow officials from the Ministry of Health or a delegated agent to attend drug checking clinics, from time to time with prior agreement. Officials must also make every effort to avoid disrupting clinic operations, and abide by any reasonable conditions set by the provider. Work is required on how to ensure access to clinics held at ticketed festivals, for example whether hosts will be required to let officials into the festival.

License holders must make their training materials and similar documents available to the Ministry of Health on request. Review of these documents will be part of the licence application and renewals processes.

There will be a complaints pathway, run by the Ministry of Health, to address reports of inappropriate behaviour by drug checking service providers.

Evaluation and Review

The new system should be reviewed after it has been in full operation for five years, with a focus on utilisation of services, impact on client decisions, and (if possible) impact on drug harm. The review could be carried out by the Ministry of Health or an external agency such as the Office of the Auditor General. We recommend that this not be specified in the legislation, to allow for flexibility.