admin@drugfoundation.org.nz
+64 4 801 6303

4th Floor
265 Wakefield Street

PO Box 3082
Wellington
Aotearoa
New Zealand

AT THE HEART OF THE MATTER, NZ DRUG FOUNDATION.
Te Tūāpapa Tarukino o Aotearoa

New Zealand Drug Foundation submission on the Drug and Substance Checking Legislation Bill

Submitted to the Health Committee on 24 June 2021

The Drug Foundation is a charitable trust. We have been at the forefront of major alcohol and other drug debates for over 30 years, promoting healthy approaches to alcohol and other drugs for all New Zealanders.

Tēnā koe

The Drug Foundation has been working with Know Your Stuff NZ to facilitate drug checking clinics at festivals for the past five years. We very much support the legalisation of the service, and the licensing of service providers.

Drug checking is an essential harm reduction service that allows people to find out what substance they have, and to have a conversation to mitigate any potential harms from that use. Clients often tell us that this conversation is the first they have ever had about their drug use.

Drug checking also allows service providers and government agencies to identify what substances are circulating, and to identify health strategies that can save lives.

The service does not currently reach marginalised and vulnerable populations, such as people who inject drugs or use synthetic cannabinoids. We would therefore like to see existing services greatly expanded, with a range of service providers, and funding available to do that.

We would like to emphasise how important it is that new services be professionally run - lives are at stake. As just one example, we would like to see a list of 'substances of concern' maintained and shared amongst all service providers to ensure everyone can identify dangerous substances that are circulating.

We set out below our suggestions for what the regulations should cover, as well as our specific comments on the Bill.

Our submission is structured as follows:

- **PART ONE.** The case for drug checking: why this Bill is so important.
- **PART TWO.** General comments on the drug checking service we would like to see in New Zealand.
- **PART THREE.** Specific comments on the Bill.

Thank you for considering our submission. We also request the opportunity to make an oral submission.

Sarah Helm

Executive Director

PART ONE – The case for drug checking

Background

We support the legalisation and licensing of drug checking services

1. The Drug Foundation strongly supports this Bill. We congratulate the Government for introducing legislation to clarify the legal status of drug checking - an essential harm reduction service that can, and does, save lives.
2. By legalising drug checking the existing service can be expanded to reach more people. Quality will be maintained and improved by implementing a licensing regime to ensure services are appropriate and up-to-standard, no matter who may choose to deliver the service.

This is an essential harm reduction service

3. The illicit market for psychoactive substances has become increasingly unpredictable in Aotearoa. There are new psychoactive substances entering the illicit market each year, many of which can be harmful, or lethal. Most substances are impossible to distinguish by sight or smell.
4. Because these new psychoactive substances are unregulated, there is no quality control over potency, purity, labelling or recommended dosage. New products come to market with no research about their short- or long-term health effects. A new and harmful substance may only become obvious when a person turns up at the hospital suffering its effects.
5. Drug checking reduces the chance of an illicit substance causing injury or death by providing clients with information to make a more informed decision about their drug use.
6. The service allows a client to check if the substance they have purchased is what they think it is, thus reducing the risk that they might take an unexpected and potentially dangerous substance.
7. Drug tests are accompanied by harm reduction conversations including how the client is planning to consume the substance, advice on dosage, and what other substances should not be consumed alongside. This is often the first proper conversation clients have had about their drug use.
8. Research shows that people take fewer risks because of drug checking, choosing to dispose of harmful substances, or consume less. It can also save lives by identifying what substances are circulating, facilitating harm prevention and medical responses.

Existing services cannot keep up with demand

9. Drug checking began internationally in the 1960s and now takes place in more than twenty countries.

10. KnowYourStuffNZ (KYSNZ) and its dedicated army of volunteers has been the driving force behind getting the service running in New Zealand, testing drugs at festivals since 2015.

11. The NZ Drug Foundation began partnering with KYSNZ in 2016. We have organised and/or attended dozens of drug checking events, testing the drugs of many hundreds of individuals - at festivals, at 'static' clinics in Wellington and Auckland, and at events run by student associations.

12. Tests are carried out on a Fourier-transform infrared spectrometer (FTIR). This brief-case sized device uses a reference library to identify drugs in samples.

13. The service has become increasingly popular over the past few years. Now that the legal status has been clarified, demand from festivals and student events has outstripped the ability of volunteers to keep up. Meanwhile, a number of social service providers are eager to trial drug checking services in different settings.

14. The new legislation gives great potential to expand the service – not just to cover more festivals, but to reach people in other environments.

What 'harm reduction' means for people who use drugs, and why it is important

15. Drug checking is an example of 'harm reduction' in action. Harm reduction refers to policies, programmes and practices that aim to minimise the negative health, social and legal impacts associated with drug use, drug policies and drug laws.[1]

16. The approach encompasses a range of other services and practices including overdose prevention centres (including supervised consumption spaces), needle exchange programmes, opioid substitution therapy, and the provision of information on safer drug use.

17. The central principle of harm reduction is that it focuses on reducing the negative impacts of drug use, rather than on reducing consumption per se.[2] The approach is to reduce risk, rather than to promote abstinence.

[1] Harm Reduction International website: https://www.hri.global/what-is-harm-reduction

[2] International Drug Policy Consortium (2018). Taking Stock: A decade of drug policy.

Abstinence-based messaging, or 'just say no', works for some people, but is largely ineffective at reducing drug use or harm across populations.[3]

18. Harm reduction approaches to drug use are cost-effective[4] and have been recognised as essential for the realisation of the right to health by the UN General Assembly and many international agencies.

The case for drug checking as an essential harm reduction tool

Research shows people take fewer risks as a result of drug checking

19. Drug checking is a valuable service because it results in people taking fewer risks, resulting in less drug harm. People who are told that their drug is not what they think it is very often either decide not to take it, or take less of it. As just a few examples:

    a) 52% of individuals using KYSNZ drug checking services say they will not take a drug where testing showed it was not as presumed.[5]

    b) When festival organisers from three events where KYSNZ was present were interviewed, they noted the festivals had experienced fewer serious drug-related incidents since drug checking was available. Medical personnel at the same events voiced support for the service saying it reduced drug-related harm.[6]

    c) An Australian study at a festival in ACT in 2019 found that all those whose samples contained a dangerous adulterant disposed of the drug in an amnesty bin.[7]

    d) At Checkit!, a drug checking service in Vienna, two-thirds of participants reported they would not use a drug that tested positive for hazardous substances. [8]

    e) An Australian survey of people who use MDMA found that 76% would not injest a pill if the content could not be confirmed.[9] (Barratt et al, 2018).

[3] International Drug Policy Consortium. "Taking Stock: A decade of drug policy", 2018.
[4] Ibid
[5] Hutton, F. (2020). Drug Checking at New Zealand Festivals: Final Report. Institute of Criminology Victoria University of Wellington.
[6] Ibid.
[7] Olsen A., Wong G., McDonald D. (2019). ACT Pill Testing Trial 2019: Program Evaluation. Australian National University: Canberra ACT
[8] Ibid.
[9] Barratt, M.J., Bruno, R., Ezard, N., & Ritter, A. (2018). Pill Testing or Drug Checking in Australia: Acceptability of Service Design Features. Drug and Alcohol Review, 37, 226-236.

Drug checking facilitates conversations that further reduce harm

20. A key strength of drug checking is that the process facilitiates an informed conversation about reducing harm. The dissemination of information around dose and drug interactions is an integral part of the service.

21. KYSNZ volunteers explain to clients at their clinics that drug checking cannot guarantee a susbtance will not cause harm if ingested. They explain that there can be variations in different batches of the same drug, and talk about other areas of risk, such as dosage varying widely, and unwanted interactions the drug may have with other substances.

22. Of clients who had their drugs checked by KYSNZ as part of a study undertaken by Victoria University in 2020, 87% reported their knowledge of harm reduction had improved through using the service.[10]

23. In an Australian study, participants increased their intention to engage in harm reduction behaviours such as not taking all of the substance at one time, increasing the amount of time between consumption of substances, and being aware of overexertion and hydration levels.[11]

24. In the United Kingdom, drug checking services carried out by The Loop include a 'brief intervention' with health professionals that can last 15-45 minutes. Conversations may cover the person's medical history, their prescription medication and their current and historical alcohol and drug use. Referrals to health and mental health services are frequently made as part of the service.[12]

Drug checking can also save lives by facilitating harm prevention and medical responses

25. Drug checking helps reduce risks for individuals - but it can also inform services at festivals and around the country about which drugs are currently circulating. In our experience, medical staff at festivals are always grateful to know which drugs are being consumed so that they can tailor health responses accordingly.

26. Similarly, when a concerning new drug is identified, local and nationwide efforts can be made to minimise wider harm. This approach has recently

[10] Hutton, F. (2020). Drug Checking at New Zealand Festivals: Final Report. Institute of Criminology Victoria University of Wellington.

[11] Olsen A., Wong G., McDonald D. (2019). ACT Pill Testing Trial 2019: Program Evaluation. Australian National University: Canberra ACT.

[12] Measham, F.C. and Turnbull, G. (2021). Intentions, actions and outcomes: A follow up survey on harm reduction practices after using an English festival drug checking service. International Journal of Drug Policy.

been coordinated in New Zealand with the advent of a new early warning system, High Alert, in 2020.

27. High Alert is led by the National Drug Intelligence Bureau with a range of partners, including the Drug Foundation. When a new drug of concern is identified by one of the partners, High Alert pushes out warnings to their networks and the media.

28. Ramping up regular community drug checking clinics - such as those piloted by the Drug Foundation and KYSNZ at our Wellington office and the Auckland Hemp Store – would lead to improved intelligence on what drugs are circulating in different communities.

29. The importance of the relationship between drug checking services and early warning systems was highlighted with the example in Europe of the discovery of a very toxic pill bearing a Superman logo and containing 170 mg of PMMA (para-methoxy methamphetamine).[13]

30. In the Netherlands and Belgium, the discovery of this 'Superman pill' immediately led to mass media warning campaigns. In the United Kingdom, where no drug checking system was in place at the time, the same pills caused the death of four young people.[14]

31. By running warning campaigns, drug checking services can create awareness among drug users about dangerous substances that are circulating, and deter dealers from selling these.[15]

Drug checking can mitigate the risks posed by our volatile illicit drugs market

32. As noted above, the risks associated with an unregulated drug market are substantial, and have increased over the past decade, as new psychoactive substances are produced at pace. Ironically, the key motivation for the illicit market to produce new substances has been the very laws that prohibit drug use around the world, including our own Misuse of Drugs Act 1975. As one substance is scheduled in national laws, the illicit market manufactures another to take its place.

33. The effects of consuming an unknown or adulterated substance can be unpredictable. The risk is increased by the difficulty of establishing an

[13] Brunt, T. (2017). Drug checking as a harm reduction tool for recreational drug users: opportunities and challenges. European Monitoring Centre for Drugs and Drug Addiction.

[14] Hill, A. (2015), 'Fourth death linked to potentially fatal "Superman" MDMA batch', The Guardian (available at https://www.theguardian.com/society/2015/jan/02/fourth-death-linked-superman-ecstasy).

[15] Spruit, I. P. (2001). 'Monitoring synthetic drug markets, trends, and public health', Subst Use Misuse, 36: 23- 47.

appropriate dose for any unregulated substance. This can lead to serious harm.[16]

34. As one example, toxic synthetic cathinones (also known as 'bath salts') have led to mass hospitalisations here, and look likely to be implicated in some deaths, pending coroners' reports. They are known to have killed many people overseas, and we have been lucky here so far in keeping the death rate low.

35. In the 2017/18 summer, the cathinone of most concern was n-ethyl pentylone. Cathinones such as this are sold as MDMA (ecstasy), and often have similar effects in small doses. N-ethyl-pentylone is significantly more potent than MDMA so it is very easy to take too much. It can cause convulsions, paranoia and rapid muscle breakdown.

36. From 2019 until 2021 the cathinone of concern, again masquerading as MDMA, was eutylone. During the 2020/21 festival season, more than half of the 'MDMA' samples tested by KnowYourStuffNZ were dangerous stimulants from the cathinones family, with eutylone the most common.[17] Taking too much can lead to restlessness, anxiety and insomnia.

37. As a further (and more deadly) New Zealand example of the risk of an unregulated drugs market, the consumption of synthetic cannabinoids has led to at least seventy deaths here since 2017. Making drug checking available in a variety of different settings, including homelessness charities, could help to reduce future risk from synthetic cannabinoids.

38. Our experiences with n-ethylone pentylone, eutylone and a range of deadly synthetic cannabinoids show how quickly the entire drugs scene can change. The synthetic cannabinoid crisis hit us in a sudden wave in 2017, leading to multiple deaths within weeks. Similarly, within a few months of eutylone coming into the country, it was the most common cathinone found.

39. Drug checking is a key way to identify new substances as they emerge and to tailor key harm reduction responses for the individual and at the national level.

[16] Barratt, M.J., Bruno, R., Ezard, N., & Ritter, A. (2018). Pill Testing or Drug Checking in Australia: Acceptability of Service Design Features. Drug and Alcohol Review, 37, 226-236.

[17] https://www.highalert.org.nz/articles/lets-talk-about-eutylone

Response to common critiques of drug checking

40. One critique raised publicly around allowing drug checking is that it will encourage people to use drugs by providing a false sense of security that their drugs are safe. Arguments against drug checking also include the fear it will send the 'wrong message', implying that society condones illicit drug use. These fears are not backed up by the research.

41. We have found no evidence to indicate that either drug mortality or drug use increases in countries that have drug checking services compared to countries that do not.[18]

42. While drug checking services cannot 'guarantee' a substance is safe to consume, service providers are careful to explain this to all clients.

43. The alternative to providing this service is not testing at all, which is far more dangerous. People will continue to use drugs regardless of what others may wish them to do - the message of 'just say no' has been proven not to work.[19] We need a practical way to improve safety for those who choose to consume illicit substances.

[18] Hungerbuehler, I., Buecheli, A., & Schaub, M. (2011). Drug Checking: A Prevention Measure for a Heterogeneous Group with High Consumption Frequency and Polydrug Use – Evaluation of Zurich's Drug Checking Services. Harm Reduction Journal, 8(16). And Hutton, F. (2020). Drug Checking at New Zealand Festivals: Final Report. Institute of Criminology Victoria University of Wellington.

[19] International Drug Policy Consortium (2018). Taking Stock: A decade of drug policy.

PART TWO – General comments on the drug checking service we would like to see in New Zealand

Provide drug checking in different locations to reach different populations

44. To date, drug checking services in New Zealand have taken place primarily at festivals. We have also held clinics in Wellington and Auckland. Student associations have run events as part of orientations around the country.

45. Ideally, drug checking will be expanded to include more of the same type of event – all the big festivals and all student orientations for example.

46. However, we would also like to see drug checking easily and affordably accessible to anyone who uses drugs. There are many ways this might be achieved - whether by setting up a mail-in service, or by running clinics in the offices of organisations such as the Needle Exchange Programme, the Drug Foundation, homelessness providers and youth one-stop shops, to name just a few.

47. Note that for more marginalised groups, a drug checking service may be something they would not actively seek out, but might use in an environment where they felt safe. It is particularly important that checking services for these groups are located within services that they already know and trust. Examples could include needle exchanges, and community run spaces.

48. Running clinics at venues where clients have existing rapport and trust is important. For example, a study in Zurich found that drug checking services were able to reach a group of people with high risk from their drug use and make referrals to other support services.[20] In this service, drug testing was combined with a counseling session.

49. Medicinal cannabis patients in New Zealand have also identified that drug checking services could greatly benefit those who are using illicit products produced by 'green fairies'. A recent report by the Environmental Science and Research Institute showed a big variety in quality between different products on the market.[21] Legal drug checking will allow patients to test products for range of cannabinoids, their relative strengths and any unwanted extras, such as moulds and pesticides.

[20] Hungerbuehler, I., Buecheli, A., & Schaub, M. (2011). Drug Checking: A Prevention Measure for a Heterogeneous Group with High Consumption Frequency and Polydrug Use – Evaluation of Zurich's Drug Checking Services. Harm Reduction Journal, 8(16).

[21] Raymond, McCarthy, Baker and Poulsen. (2021) "Medicinal Cannabis – the Green Fairy Phenomenon", Csiro publishing.

Different populations could benefit from drug checking, provided at a range of locations.

50. Drug checking services could expand as funding allows, and as technology develops. As machines become cheaper, more portable and able to test a wider variety of substances, we would expect to see a number of different types of provider offering this service. The list in the table below is not comprehensive but gives a sense of the possibilities.

Examples of populations that could be reached with an extended service	Potential location for services
Recreational users of a range of drugs. These may be purchased from a dealer or online, and used at nightclubs, festivals, parties, with family or friends, or alone.	Health or social service providers (including GPs), marae, Māori health providers, festivals, events, mobile services visiting nightclubs or situated downtown, youth one-stop shops, student associations, Drug Foundation offices, hospitals, paramedics, community centres, pharmacists.
People using drugs in smaller towns or suburbs outside of major centres, including methamphetamine.	Local GPs, health clinics, social workers or social service providers, marae, community centres.
People using drugs in rural locations or other areas that are not served by an existing clinic.	As above, and also mobile services run by social workers, youth workers or AOD counsellors, marae and Māori health providers.
Medicinal cannabis patients who are sourcing products illicitly.	As above, and alternative health clinics.
Vulnerable / homeless users of synthetic cannabinoids or novel benzodiazepines.	As above, and also homeless charities, emergency housing providers, paramedics, emergency wards, community run spaces such as mobile laundries, wraparound support service locations, AOD clinics.
People injecting illicit methadone, heroin, methamphetamine, and other drugs.	As above, and also needle exchanges, and Opioid Substitution Therapy (OST) services.

LGBTQIAP+ and chemsex communities.	As above and also LGBTQIAP+ advocacy groups, targeted health providers and festivals.

Funding will be essential to extend and maintain drug checking services

51. Cost should never be a barrier for people to access drug checking services. We note that the regulatory impact statement accompanying this Bill suggests the service should always be free for the end user. While we support this in principle, in the absence of government funding this could mean some go without the service.
52. KYSNZ is currently volunteer run, and covers expenses by charging a small amount to festivals. Festivals can cover the expense by adding a small amount to ticket prices. However, services running from other locations where there is no entry fee will need an alternative funding model.
53. Funding is needed to purchase equipment, and to provide services (staff time, training, travel etc). The cost will depend on the extent to which delivery can be incorporated into existing services. For example, drug checking may form part of a client consultation at a community alcohol and other drug service or health centre.
54. We strongly recommend the government pro-actively fund drug checking services. This is important for everyone who uses drugs, but particularly for vulnerable groups such as those who inject drugs or use synthetic cannabinoids.
55. We also recommend leaving the door open to include some element of 'user pays' where this is absolutely necessary, so that the service can be provided as widely as possible. We would however like to see preference for licensing given to service providers who intend to offer the service free or at a very low cost.

A high degree of professionalism for all drug checking services is essential to save lives

56. A range of services or individuals may apply for a drug checking licence, with varying levels of knowledge or abilities. It is essential that the regulations be drafted with this in mind.
57. The service must be professional and consistent as far as possible, because lives are quite literally at stake. A balance will need to be struck between the need to expand the service across the country, while continuing to protect clients with high quality services.

58. Regulations will need to:

    a. Establish a centralised body and steering group including members of civil society, to ensure consistent quality standards.
    b. Develop a licensing regime.
    c. Establish training requirements for service providers, their employees and volunteers.
    d. Establish technological requirements for service providers.
    e. Set requirements for reporting, monitoring and data sharing.

59. Our thoughts on each of these are outlined below.

A centralised body should be established to govern training needs, assess licence applications, commission training modules and so on

60. A central body or bodies of some kind will be essential to ensure that drug checking is carried out to a high degree of professionalism, whoever is performing the service.

61. Ideally this will mean empowering a backbone organisation or agency to carry out administrative functions such as issuing licences, keeping databases and lists of 'substances of concern' up to date, collating data and liaising with relevant agencies, such as DIANZ and the Ministry of Health.

62. A steering group would advise the backbone organisation on qualitative matters such as what licensing requirements should be, and what should be in the training modules. This group should include government agencies, members of civil society and subject matter experts.

Assessing licence applications

63. We anticipate that applications will be made by individuals and organisations with very different skills and knowledge in this area. The licencing process should take account of what the service provider specifically hopes to achieve, and what they can demonstrate they are capable of achieving, rather than looking for any specific education, professional training, or technical ability. Alongside this they should be able to demonstrate the commitment and ability to implement harm reduction principles.

64. For example, if an applicant wishes only to test cannabis products for patients who are sourcing illicit cannabis, they would need to demonstrate

they have suitable technology, ability to interpret results and knowledge of harm reduction for that purpose. If they are wishing to test drugs at parties they will need to show they have a library of substances that is regularly updated, and so on.

65. The service provider would have to show they have the required knowledge and abilities in-house, but not necessarily that each individual working there can carry out all the tasks and functions required. For example, one person might specialise in operating the machinery and another might be responsible for harm reduction conversations.

66. We would expect the licensing body to ask questions around the scope of the service, what machinery is being operated, what expertise the provider has in-house, what libraries are loaded onto the machinery, and whether all staff members have completed the basic e-learning modules (see below). The steering group could advise on further criteria that may be relevant in specific cases, if needed.

67. We recommend that a licence be issued for one or two years, at which point a service provider would have to re-apply, or otherwise show that they are continuing to carry out the service to a high standard.

Training for service providers and their employees and volunteers should be co-designed

68. Centralised e-learning modules for all service providers, employees and volunteers should be developed. Ideally this will be co-designed by the steering group.

69. Training is essential for all, to standardise the service - but it will be particularly important for individuals or small organisations who may wish to offer the service but have limited skill or knowledge in this area. They will need to be upskilled quickly and professionally to ensure quality standards. They might not be expected to be able to give the same depth of advice as specialist drug checking services.

70. For example, a nurse in a rural location could offer the service and provide generalised health advice, but might not have specialist understanding of common recreational drugs.

71. Ideally, a central helpline or website could be established, that would help service providers interpret results, or give tailored harm reduction advice, and answer questions as they arise.

72. E-learning modules should cover matters including:

    a) **The legal implications of drug checking**, including operating within licensing requirements, establishing a chain of custody for drug

samples, information gathering, and how to explain the limitations of the service to clients.

b) **Harm reduction** - what it is, what the purpose of drug checking is, and how to ensure the service provides the highest possible standards of harm reduction advice (an explanation of harm reduction is covered on page 4 of this submission).

c) **How to interact with clients**, including the ethical responsibilities of running the service well, and how to deal with complaints.

d) **Drug-specific information**, including what are the basic drug groups, likely interactions of common substances with other drugs, which substances are most dangerous, different methods of ingestion, how pills are composed, where to find more information when needed, and what an inconclusive result means. This information must be updated regularly, but doesn't need to be hugely detailed. Once a service is operating, more detailed substance-specific knowledge can easily be accessed online.

e) **What to do when a dangerous drug is identified**, including who needs to know, and when.

f) **Monitoring, evaluating and reporting requirements**, including keeping records of all samples checked, and keeping up to date with substance libraries, ongoing training requirements and so on.

73. Training in how to use relevant machinery would best be carried out by the company that provides the machines. Due to the range of machines available, it would be too complicated to centralise this training.

74. Service providers should have to guarantee, as part of their licensing application, that all those using any machinery for drug checking have appropriate training in using the machine, interpreting and delivering results.

75. Service providers would have to demonstrate that relevant staff have completed the e-learning, and will be responsible for ensuring all staff complete refresher training modules when required.

Reporting, monitoring and data-sharing

76. A robust monitoring and surveillance framework within drug checking services can save lives, particularly alongside a functioning early warning system. In New Zealand, there is still work to be done to develop and implement a strategy for rapid or 'real time' data sharing between drug checking services, early warning systems, the Ministry of Health, and organisations such as KYSNZ and the Drug Foundation.

77. We need a centralised database to record what drugs are being found, and guidelines for drug checking service providers about what to do when they discover a substance of concern or an unknown substance.

78. The New Zealand system would be dramatically improved by introducing a formalised way of bringing together intelligence from those carrying out drug checking and those gathering intelligence at the national level, such as Police and Customs. Without this coordination, we risk missing new substances that might enter New Zealand.

79. This is particularly important when a dangerous drug begins circulating or when events are held close to each other, such as over the New Year period.

80. A centralised database of test results would be able to:

    a. Send automatic alerts to High Alert and other stakeholders, about specific drugs found, such as fentanyl.

    b. Give prompts around drugs of concern – for example that a sample should be sent to ESR for further testing.

    c. Allow notes to be taken on conversations, to improve quality of service.

    d. Aggregate data to identify trends. Ideally, demographics would also be recorded by service providers, so that we can track who is using what, where, to help to tailor harm reduction initiatives country-wide.

81. Service providers should also be required to keep an up-to-date list of employees and volunteers who have undertaken the e-learning, to regularly monitor their testing results (if a central database is not established) and to share information promptly about any substances of concern that are circulating.

82. At specific locations such as festivals, services should have to share information with festival organisers and medical staff onsite in a timely way, especially if a substance of concern is identified.

Ensure technology is fit for purpose

83. Testing equipment must be fit-for-purpose and be appropriate for the service that the provider is planning to offer. For example, a drug checking service that only planned to test plant material would need a different type of machine than currently used by the Drug Foundation and KYSNZ.

84. Service providers should apply for a licence based on the technology that they own, or are planning to purchase. If they change machines, the licence should be required to be updated accordingly, to ensure the new technology is appropriate to the service being offered.

85. As important as the machinery itself is that substance libraries are standardised, and kept up to date with any new substances of concern. The backbone organisation and steering group should be responsible for keeping an up-to-date list of substances that are circulating, or may soon be circulating.

86. Service providers would be required to ensure they update their libraries at regular intervals, and know which new substances to watch out for. This is crucial - an out-of-date library puts users at risk.

Future harm reduction initiatives would be easier if MoDA had a 'public interest' clause

87. The Drug and Substance Checking Bill was needed because our Misuse of Drugs Act prohibits a person from using their premises to commit an offence against the Act. This meant drug checking fell into a legal grey area.

88. In Canada, harm reduction programmes such as drug checking and supervised injected sites were able to be introduced under their existing law under a 'public interest' clause. Subsection 56(1) of Canada's Controlled Drugs and Substances Act allows the Minister of Health to make an exemption to their drug law if the Minister deems it in the 'public interest'.

89. A 'public interest' clause in MoDA would have enabled the Minister of Health to declare drug checking legal without going through the process of a law change. Inserting such a clause now would mean harm reduction initiatives developed in the future (such as the supervised injecting spaces seen overseas) would be much easier to implement.

90. We encourage MPs to consider whether a public interest clause could be inserted into our Misuse of Drugs Act.

PART THREE – Specific comments on the Bill

Harm reduction should be defined

91. We like the description of a drug checking service provider in clause 35DB as a person who provides information and harm reduction advice to help individuals make informed decisions about drug use.

92. As explained above, an important function of drug checking is the tailored harm reduction information that accompanies the results of the testing itself. This may include, but it not limited to, information such as:

    a) An explanation about what the test results suggest the substance is, and what to expect from taking it (possible side effects, for example). This includes an explanation that the analysis does not mean taking the substance will be 'safe'.

    b) Things the individual can do to limit possible harmful effects from taking the substance, such as 'starting low and going slow' when taking a substance that may have a higher dosage than expected.

    c) Information about potential interaction of the tested substance with other drugs, including alcohol and prescription medications.

    d) The importance of using only in the company of others, and recognising the signs of overdose.

    e) The importance of drinking water, or eating regularly while using some substances.

93. We would like to see a model of drug checking that ensures harm reduction is always an essential component of the service. This should ideally be in the form of a conversation, as a two-way exchange of information allows personalised advice to be given.

94. However, should an anonymous mail-in service be established at some point, harm reduction information may need to take the form of a tailored email explaining what the results mean, or a series of links to relevant pages on a harm reduction website, along with a number to call with any questions.

95. As such, it is important that 'harm reduction' is defined in the interpretation section of the Bill. In our experience, the definition can depend on who is using the phrase.

96. Some groups may wish to set themselves up as a drug checking service in order to push a 'just say no' message. This would not come within the definition of harm reduction because it will undermine faith in the service

and make people less likely to follow advice that may protect them from harm.

97. Others may wish to offer this service purely for financial gain, rather than out of any motivation to reduce harmful drug use. A failure to define harm reduction may mean the resulting service is substandard, causing additional harm.

We need more clarity around the definition of a service provider (clause 4 (interpretation), and clauses 35DA DE, DF, DG and DH)

98. Under clause 4, a drug and substance checking service provider means a person licensed as a provider under section 35DA. Clause 35DA gives the Director General the right to issue licenses for persons to be drug and substance checking service providers.

99. We would like to clarify whether the use of the word 'person' in this context means that individual persons, companies, organisations, agencies and other entities could all be licenced as service providers. It is important that they can.

100. Where an organisation is the service provider, it would make most sense for that entity, rather than a named person, to be responsible for applying for a licence, holding that licence (clause 35DF) and ensuring that the terms of the licence are not breached (clause 35 DE).

101. Similarly, there is a good chance that some individuals may apply to be service providers under their own names. We are aware of at least one who is hoping to do so.

102. It would be helpful if the wording in the interpretation could be clarified to make it clear that a service provider may be an individual person or an entity.

Individuals acting on behalf of a service provider should not be required to be individually licensed (clause 35DF)

103. We would like the Select Committee to confirm that under Clause 35DF, an individual or volunteer employed by a service provider is not required to hold a licence themselves. The section reads:

"A person must not carry out any of the functions specified in section 35DB(1)(b) to (e) without being licensed as a service provider under section 35DA".

104. The wording implies that no individual may test drugs or provide advice without themselves being licensed as a service provider.

105. We do think it is important that all individuals working for a service provider undertake a basic level of training and certification, and we discuss this in Part 3 of our submission. However, we don't think it makes sense for each employee or volunteer to be licensed.

106. The entity they work for, as the licensed service provider, should bear the burden and responsibility of ensuring their employees are fit to carry out the service.

The functions of a service provider should always be to provide information and harm reduction (clause 35DB)

107. Section 35DB sets out the functions of a service provider as including one or more of a long list of functions such as testing drugs, advising of the results, disposing of drugs, and so on.

108. As the clause currently reads, a person whose sole job it is to dispose of samples, or to report back results of tests, could in theory be considered to be a drug checking service provider.

109. We feel strongly that the key function of a service provider should *always* be to provide information and harm reduction advice to help individuals make informed decisions about drug and psychoactive substance use (as set out in subclause (1)(a)). That should be a non-negotiable function because it is the key purpose of drug checking.

110. We propose that clause 35DB should read:

> (1) The functions of a service provider are to provide information and harm reduction advice to help individuals make informed decisions about drug and psychoactive substance use, and to do 1 or more of the following:
>
> (a) test any drug or substance.....etc

111. We are aware of drug checking services overseas that do not provide harm reduction advice as part of their drug checking service. They simply test samples and post results from tests online. Although this provides better protections for individuals using it than no service, we would prefer to see an element of harm reduction included in services here. This may be light-touch, such as an email, or a link to a website giving further information.

112. By purely giving results of tests, but no other further harm reduction advice, we not only risk individuals interpreting their results inaccurately, but we miss a valuable opportunity to reduce harm. Advice should be available for all people using a drug checking service, and tailored to the individual case as much as possible.

113. We therefore strongly suggest that both providing information and providing harm reduction advice be set out as the core functions of drug checking.

114. Under this clause, we also suggest adding a further bullet that:

(h) the functions of a service provider include sharing data on substances tested with other organisations and agencies.

115. As discussed at length above, sharing data with other agencies and services is essential to minimise harm across the population.

Clients of drug checking services may need more protections (clause 35DD)

116. This section allows a person to supply or surrender a controlled drug to a service provider for the purpose of drug checking.

117. This section is presumably intended to give some legal protection to a person while they are on the premises of a drug checking site.

118. Our experience to date with Police is that they have been in favour of drug checking and have been happy to support the service. They have not approached those using the service to question them about their drug use, or search them for drugs. This has been much appreciated by the Drug Foundation.

119. There is however an ongoing potential for this to happen. In a worst-case scenario, an officer may target a particular individual who is using a service, and wait outside to arrest them for drug possession.

120. While this clause gives some legal protection to a client of a drug checking service, it is not particularly clear at what point the protection starts and ends. Are they protected by this clause when they leave home to visit a checking service, or when they arrive on the street where the service is situated - or are they protected only when they enter the venue? Does this clause apply when an individual enters a testing tent at a festival, or when they are queuing up outside?

121. Legislation in New South Wales around safe injecting sites aims to protect clients from police prosecution by reaffirming the discretion police hold not to prosecute a person "who is travelling to or from, or is in the vicinity of, a licensed injecting centre".[22] We already have a general affirmation of police discretion not to prosecute for possession in our law, but adding something more specific along these lines would be sensible.

122. We would urge the Select Committee to investigate ways to ensure the safety from arrest of those using drug checking services, whether through

[22] NSW Drug Misuse and Trafficking Act 1985, section 36N

this Bill or other mechanisms (the Police operational guidelines, for example).

123. This service will only function as intended if people feel safe to use it.

We support protection from liability for employees and volunteers (clause 35DH)

124. We support the protection from liability afforded to individuals working or volunteering for a service provider under Clause 35DH. It makes sense for the entity that sets itself up as a service provider to be responsible for ensuring the quality of the service, rather than the individual working for them.

There must be exceptions to the basic principle that service providers may not collect personal information (clause 35DG)

125. The requirement not to collect personal information from drug checking clients is there to protect them from the law. Because drug use and possession continue to be illegal, it is essential to protect people using these services by ensuring that information that might identify them is not recorded. To date, drug checking has been entirely anonymous, and that has helped people to trust the service.

126. However, we would recommend some tweaks to this section.

Please confirm that keeping information measuring demographics, such as ethnicity, is acceptable

127. Service providers should be entitled to collect information that establishes whether services are operating equitably and are accessible to all, so long as no individuals can be identified from the information collected.

128. Our reading of the Bill is that this would still be allowable under the Privacy Act under the current wording, but we would like this confirmed if possible.

129. Collecting demographics from those who use drug checking services would help improve services and inform authorities about whether drug checking is achieving adequate coverage across the country.

Holding limited information temporarily may facilitate carrying out the service

130. It would be useful to temporarily retain information such as a phone number from a client in some instances. If, for example, a sample had to be sent for further testing it would be useful to be able to follow up to pass on the

results. Similarly, if a client turned up for a clinic that was full, a service provider may wish to call them back later when space was available. That would be illegal under this law.

131. Under this law it would also not be possible to make bookings for a person to come and have their drugs checked. Some services may realistically require bookings to be made, in order to function well.

132. Enabling people to book to receive a checking service would mean that drug checking could be carried out at the time that works for the client, rather than within short 'clinic' windows as currently takes place. It could allow providers such as GP clinics, or community centres to provide a drug checking service that is accessible to all.

133. The legal safety of the client must remain paramount, whilst also ensuring the services offered are as practical and accessible as possible. We would like to see the law crafted to ensure this can happen.

134. Safeguards could be put in place in the law to ensure that any such information was kept only for the purposes it was taken, and that it was not stored in such a way as to identify the person as someone who used drugs. In all cases, providing information such as a phone number would have to remain voluntary on the part of the client.

Social service or health providers who already hold details of their clients may provide drug checking services

135. It is very possible that social service providers, health providers, homelessness charities or others who have an existing relationship with clients might become licensed under the drug checking law.

136. As we mentioned earlier, we would like to see a range of providers licensed to provide this service. As technology improves and testing devices become cheaper, it is likely that more and more people would consider offering drug checking as part of an existing service.

137. We recommend that clause 35DG be re-formulated to deal with this situation. Information already held on a client should be ringfenced from drug checking services offered.

FINAL RECOMMENDATIONS

General comments on drug checking services to inform the regulations

1. Fund drug checking in different locations to reach different populations.
2. Draft supporting regulations with a strong focus on ensuring professional standards for drug checking services.
3. Establish a centralised body or bodies with steering group oversight to govern training needs, assess licence applications, commission training and so on.
4. Design comprehensive training or e-learning modules to ensure a standard level of professionalism across all services.
5. Establish robust monitoring and surveillance frameworks within drug checking services.
6. Ensure technology used by service providers is fit for purpose.
7. Insert a 'public interest' clause into the Misuse of Drugs Act so that future harm reduction initiatives can be implemented without law change.

Proposed changes to the Bill

8. Define harm reduction in the Bill to ensure all services have a consistent approach to what this means.
9. Provide more clarity around the definition of a service provider. Make it clear that a service provider may be either an individual or an entity (clauses 4, 35DA, DE, DF, DG and DH).
10. Confirm that under clause 35DF, an individual or volunteer employed by a service provider is not required to hold a licence themselves.
11. Ensure that the functions of a service provider always include the role of providing harm reduction (clause 35DB).
12. Expand the functions of a service provider to include sharing data on substances tested with other organisations and agencies (clause 35DB).
13. Consider further protecting clients of drug checking from police prosecution for drug possession (clause 35DD).
14. Include some exceptions to the basic principle that service providers may not collect personal information (clause 35DG) so that we can:
    a) Measure demographics such as ethnicity.
    b) Hold limited information temporarily to facilitate carrying out the service.
    c) Ensure social service or health providers who already hold details on their clients do not inadvertently break the law.