

PARLIAMENT OF VICTORIA

**Drugs, Poisons and Controlled Substances
Amendment (Pill Testing Pilot for Drug Harm
Reduction) Bill 2019**

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PARLIAMENT OF VICTORIA

Introduced in the Council by Samantha Ratnam and Fiona Patten

**Drugs, Poisons and Controlled
Substances Amendment (Pill Testing
Pilot for Drug Harm Reduction)
Bill 2019**

A Bill for an Act to amend the **Drugs, Poisons and Controlled Substances Act 1981** to provide for a pilot of pill-testing services for the purposes of drug harm reduction and to make consequential amendments and for other purposes.

The Parliament of Victoria enacts:

1 Purposes

The purposes of this Act are—

- (a) to amend the **Drugs, Poisons and Controlled Substances Act 1981** to provide for a pilot of drug-checking services for the purposes of drug harm reduction; and
- (b) to make consequential amendments.

5

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- 5 (2) If a provision of this Act does not come into operation before 31 October 2020, it comes into operation on that day.

3 Principal Act

In this Act, the **Drugs, Poisons and Controlled Substances Act 1981** is called the Principal Act.

10 4 Definitions

In section 4(1) of the Principal Act—

- (a) for the definition of *director substitute*—
- director*—
- 15 (a) in relation to the licensed medically supervised injecting centre, has the meaning given in section 55B; and
- (b) in relation to drug-checking services, has the meaning given in
- 20 section 55U(1);"
- (b) for the definition of *internal management protocols substitute*—
- internal management protocols* means—
- 25 (a) in Part IIA, the protocols approved under section 55E by the Secretary, as in force from time to time; and
- (b) in Part IIB, protocols that set out
- 30 how a drug-checking licensee, or an applicant for a drug-checking licence, intends to manage the provision of drug-checking services;"
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(c) **insert** the following definitions—

"*amnesty bin* has the meaning given by section 55ZL;

5 ***approved internal management protocols*** means, in relation to a drug-checking licence, the internal management protocols approved under section 55ZC in relation to that licence, as amended or replaced from time to time;

10 ***Chief Health Officer*** has the same meaning as it has in the **Public Health and Wellbeing Act 2008**;

disposal bin has the meaning given by section 55ZK;

15 ***drug-checking employee*** means a person who is—

20 (a) engaged by a drug-checking licensee (whether under a contract of employment, or as a volunteer, or otherwise) to participate in the provision of the licensee's drug-checking services; or

 (b) the director of a drug-checking licensee;

25 ***drug-checking licence*** means—

 (a) a fixed premises drug-checking licence; or

 (b) a mobile drug-checking licence;

30 ***drug-checking licensee*** means a person who holds a drug-checking licence;

drug-checking place has the meaning given in section 4B;

drug-checking service has the meaning given in section 4C;

fixed premises drug-checking employee means a drug-checking employee engaged by the fixed premises drug-checking licensee;

fixed premises drug-checking licence means a licence—

(a) to engage in the activities referred to in section 55V; and

(b) in which the Secretary has specified, under section 55ZH(1), the premises at which drug-checking services are to be provided;

fixed premises drug-checking licensee means the person who holds a fixed premises drug-checking licence;

information about the composition of a substance includes—

(a) information about whether the substance is or contains—

(i) a poison or a controlled substance; or

(ii) a drug of dependence; and

(b) information about the amount, purity or concentration of any poison or controlled substance or drug of dependence that is, or is contained in, the substance;

minimum age for a drug-checking client means—

(a) the prescribed age, being an age that is less than 18 years; or

(b) if no age is prescribed, 18 years;

mobile drug-checking employee means a drug-checking employee engaged by the mobile drug-checking licensee;

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mobile drug-checking facility means a trailer or vehicle suitably fitted out or containing equipment and apparatus for—

10

(a) performing the analysis required in the provision of drug-checking services; and

(b) destroying substances analysed in the provision of drug-checking services;

15

mobile drug-checking licence means a licence—

(a) to engage in the activities referred to in section 55W; and

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(b) in which the Secretary has specified, under section 55ZH(1), the mobile drug-checking facility that is to be used in the provision of drug-checking services;

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mobile drug-checking licensee means the person who holds a mobile drug-checking licence;".

5 New sections 4B and 4C inserted

After section 4A of the Principal Act **insert—**

"4B Meaning of *drug-checking place*

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(1) For the purposes of this Act, the ***drug-checking place*** for a fixed premises drug-checking licence is the premises specified in the licence under section 55ZH(1).

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- (2) For the purposes of this Act, the ***drug-checking place*** for a mobile drug-checking licence—
- (a) is the mobile drug-checking facility specified in the licence under section 55ZH(1); and
 - (b) when the facility is stationary and set up to be operated, includes—
 - (i) each of the facility's ancillary structures within the meaning of subsection (3); and
 - (ii) the areas between each ancillary structure and the facility.
- (3) A structure is an ***ancillary structure*** of a mobile drug-checking facility if the structure—
- (a) is a temporary structure; and
- Examples**
- 1 A marquee.
 - 2 A fabric structure.
- (b) is erected—
- (i) for the purposes of the provision of drug-checking services; and
 - (ii) within a prescribed distance of the facility.

4C Meaning of *drug-checking service*

- 30
- (1) For the purposes of this Act, a ***drug-checking service*** is the service of—
- (a) receiving a substance (in pill form or in any other form) from a person; and
 - (b) analysing the substance or any part of it to derive information about its composition; and
-

- 5 (c) unless the substance was supplied in accordance with section 55ZL or 55ZM, providing information about the composition of the substance to the person who supplied the substance.

Note

Sections 55ZL and 55ZM relate to the provision of substances by a police officer or by the mobile drug-checking licensee.

- 10 (2) Despite subsection (1), none of the following is a *drug-checking service*—

- 15 (a) anything done by an authorised police employee under section 44B;
- (b) anything done under or for the purposes of a poppy cultivation licence;
- (c) examination or testing of anything taken in accordance with Part IVA or Part IVB;
- 20 (d) analysis of a sample of a thing taken—
- (i) in execution of a warrant; or
- (ii) under section 91(2);
- (e) analysis carried out for the purpose of any legal proceedings for an offence against this Act."

25 **6 Secretary may authorize person to carry out functions of authorized officer**

After section 41(5) of the Principal Act **insert**—

- 30 "(6) Without limiting subsection (1), an authority under that subsection may be limited to the exercise and performance of powers, duties, and functions of an authorized officer for the purposes of Part IIB and any regulations made for the purposes of that Part."
-

7 Inspections

After section 42(1)(ad) of the Principal Act
insert—

- 5 "(ae) if a drug-checking licence has been issued,
 enter the drug-checking place to ascertain
 whether Part IIB, the regulations made for
 the purposes of that Part, the drug-checking
 licence and the approved internal
10 management protocols are being complied
 with and exercise any powers under this
 section;"

8 Repeal of Part IIA and related amendments

For section 55R(3)(a) of the Principal Act
substitute—

- 15 "(a) in section 4(1), in the definition of *director*,
 paragraph (a) is **repealed**;
- (ab) in section 4(1), in the definition of *internal
 management protocols*, paragraph (a) is
 repealed;
- 20 (ac) in section 4(1), the definitions of *child*,
 injecting centre drug, *licensed medically
 supervised injecting centre*, *medically
 supervised injecting centre licence*,
 permitted quantity of injecting centre drug,
25 *permitted site*, *staff* and *supervisor* are
 repealed;"

9 New Part IIB inserted

After Part IIA of the Principal Act **insert—**

"Part IIB—Trial of drug-checking services

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Division 1—Preliminary

55S Definitions

(1) In this Part—

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serious offence means an indictable offence involving dishonesty, fraud or cultivation or trafficking in drugs of dependence where the maximum penalty exceeds 3 months of imprisonment.

15

(2) For the purposes of this Part, a person is an *associate* of an applicant for a drug-checking licence if the person—

20

(a) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in right of the person or on behalf of any other person) in the business of the applicant to which the licence relates, and by virtue of that interest or power, is able or will be able to exercise a significant influence over or with respect to the management or operation of the business to which the licence relates; or

25

30

(b) holds or will hold any relevant position, whether in right of the person or on behalf of any other person in the business of the applicant to which the licence relates; or

(c) is a relative of the applicant.

(3) In subsection (2)—

relative means spouse (including de facto spouse), parent, child or sibling (whether of the full or half blood);

5

relevant financial interest, in relation to a business, means—

(a) any share in the capital of the business; or

10

(b) any entitlement to receive any income derived from the business;

relevant position, in relation to a business, means the position of director, manager or other executive position or secretary, however that position is designated;

15

relevant power means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others—

20

(a) to participate in any directorial, managerial or executive decision; or

(b) to elect or appoint any person to any relevant position.

25

55T Object

The object of this Part is to provide for the trial of drug-checking services as part of a scheme that aims—

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(a) to reduce the number of avoidable deaths caused by using substances that are, or that contain, poisons, controlled substances or drugs of dependence; and

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- (b) to provide for users and potential users of those substances to receive information that reduces the harm caused by using those substances; and
 - (c) to facilitate users and potential users of those substances accessing other health and social assistance which includes drug treatment, rehabilitation support, health care, mental health treatment and support and counselling; and
 - (d) to reduce attendance by ambulance services, paramedic services and emergency services and attendances at hospitals due to the use of those substances; and
 - (e) to provide a safe way to dispose of substances that are, or that contain, poisons, controlled substances or drugs of dependence; and
 - (f) to reduce the potential for harm by providing for the following persons to be notified if analysis carried out in the course of a drug-checking service yields a prescribed result—
 - (i) the Chief Health Officer;
 - (ii) the Secretary;
 - (iii) the Chief Commissioner of Police.

55U Meaning of *director*

- 30
- (1) For the purposes of this Act, a person is the ***director*** of a drug-checking licensee if—
 - (a) the person is engaged by the licensee to—

- 5
- (i) oversee the provision of drug-checking services by the licensee; and
- (ii) ensure compliance with the approved internal management protocols; and
- (iii) ensure compliance with the conditions imposed on the drug-checking licence; and
- 10
- (b) no other person is engaged by the licensee to perform that role.
- (2) A reference to the *director* of a drug-checking licensee includes a reference to a person acting in that role—
- 15
- (a) during any illness or other absence of the person engaged for that role; or
- (b) while there is a vacancy in that role.

Division 2—Drug-checking licence

55V What may be done under a fixed premises drug-checking licence?

- 20
- (1) A fixed premises drug-checking licence authorises the licensee, and each of the licensee's drug-checking employees, to do the following things at the drug-checking place—
- 25
- (a) receive a substance (in pill form or in any other form) from a person (the *client*) as described in section 55X;
- 30
- (b) analyse the substance or any part of it to derive information about its composition;

- 5
- (c) after that analysis is complete, provide the client with information about the composition of the substance;
 - (d) destroy the substance as required by section 55ZP.
- 10
- (2) A fixed premises drug-checking licence also authorises the licensee, and each of the licensee's drug-checking employees, to do the following additional things at the drug-checking place—
- (a) receive a substance supplied under section 55ZM by—
 - 15 (i) the mobile drug-checking licensee; or
 - (ii) a mobile drug-checking employee;
 - (b) analyse the substance or any part of it to derive information about its composition;
 - (c) after that analysis is complete—
 - 20 (i) determine whether it is necessary or appropriate to provide information about the composition of the substance to any person; and
 - 25 (ii) if so, provide that information to that person;
 - (d) destroy the substance as required by section 55ZP.
- 30
- (3) A fixed premises drug-checking employee who is permitted by subsection (1) or (2) to do a thing in respect of a substance is also permitted to supply that substance to another fixed premises drug-checking employee at
-

the drug-checking place so that the other employee may do that thing.

(4) An authorisation referred to in this section is subject to—

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(a) this Part; and

(b) the regulations made for the purposes of this Part; and

(c) the conditions of the drug-checking licence.

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55W What may be done under a mobile drug-checking licence?

(1) A mobile drug-checking licence authorises the licensee, and each of the licensee's drug-checking employees, to do the following things at the drug-checking place—

15

(a) receive a substance (in pill form or in any other form) from a person (the *client*) as described in section 55X;

20

(b) analyse the substance or any part of it to derive information about its composition;

(c) after that analysis is complete—

25

(i) provide the client with information about the composition of the substance; and

(ii) decide, under section 55ZM, whether to transfer any part of the substance to the fixed premises drug-checking licensee;

30

(d) destroy the substance as required by section 55ZQ.

- 5 (2) A mobile drug-checking licence also authorises the licensee, and each of the licensee's drug-checking employees, to do the following things if a decision is made under section 55ZM to transfer a substance—
- 10 (a) transport the substance or any part of it to the fixed premises drug-checking licensee's drug-checking place; and
- (b) at that place, supply the transported substance to the fixed premises drug-checking licensee for drug-checking.
- 15 (3) A mobile premises drug-checking licence also authorises the licensee, and each of the licensee's drug-checking employees, to do the following additional things at the drug-checking place—
- 20 (a) receive a substance supplied by a police officer under section 55ZL;
- (b) analyse the substance or any part of it to derive information about its composition;
- 25 (c) after that analysis is complete—
- (i) determine whether it is necessary or appropriate to provide information about the composition of the substance to any person; and
- 30 (ii) if so, provide that information to that person;
- (d) destroy the substance as required by section 55ZQ.
-

- 5 (4) A mobile drug-checking employee who is authorized under subsection (1), (2) or (3) to do a thing in respect of a substance is also authorized to supply that substance to another mobile drug-checking employee so that the other employee may do that thing.
- (5) An authorisation referred to in this section is subject to—
- 10 (a) this Part; and
- (b) the regulations made for the purposes of this Part; and
- (c) the conditions of the drug-checking licence.

15 **55X How clients may supply substances for drug-checking**

- (1) A reference in section 55V(1)(a) or 55W(1)(a) to a drug-checking licensee or a drug-checking employee receiving a substance from a client includes the licensee or employee—
- 20 (a) directing or instructing the client to divide a substance into parts, and receiving only one such part; and
- 25 (b) receiving a substance, dividing it into parts, and supplying part of the substance back to the client.
- (2) A reference in this Part to a substance supplied for drug-checking does not include any part supplied back to the client as described in subsection (1)(b).
- 30

55Y Limit on number of drug-checking licences

- 5
- (1) There must not be more than one fixed premises drug-checking licence in force at the same time.
- (2) There must not be more than one mobile drug-checking licence in force at the same time.
- 10
- (3) A decision to issue or vary a drug-checking licence in contravention of subsection (1) or (2) is invalid.

55Z Application for drug-checking licence

- 15
- (1) A person may apply to the Secretary for a drug-checking licence.
- (2) An application under subsection (1) must—
- (a) be in writing; and
- (b) be accompanied by the prescribed application fee; and
- 20
- (c) set out why the applicant is a fit and proper person to hold a drug-checking licence; and
- (d) specify either—
- 25
- (i) the premises at which the person wants to be licensed to provide drug-checking services; or
- (ii) the mobile drug-checking facility the person wants to be licensed to use to provide drug-checking services; and
- 30
- (e) be accompanied by the internal management protocols that the applicant intends to apply.

55ZA Secretary may require applicant to take further steps

The Secretary may require that an applicant for a drug-checking licence—

- 5 (a) provide further information in relation to the application; or
- (b) facilitate an inspection by the Secretary of the premises or facility in relation to which the licence is sought; or
- 10 (c) submit a recent police record check in respect of the applicant or an associate of the applicant; or
- (d) revise the internal management protocols and provide the revised protocols to the Secretary.
- 15

55ZB Secretary must investigate application

- (1) On receiving an application for a drug-checking licence, the Secretary must cause to be carried out all investigations and inquiries that the Secretary considers necessary to properly determine the application.
- 20
- (2) The Secretary may refer a copy of an application and any supporting documentation to the Chief Commissioner of Police.
- 25
- (3) The Chief Commissioner of Police must inquire into and report to the Secretary on any matters concerning the application that the Secretary requests.
- 30
- (4) The functions of the Secretary under this section are not delegable.

55ZC Internal management protocols

- 5 (1) For the purposes of determining whether to issue a drug-checking licence, the Secretary must consider whether to approve the internal management protocols provided by the applicant.
- 10 (2) The Secretary may approve the internal management protocols if satisfied that they are sufficient to support the issuing of a drug-checking licence.
- 15 (3) In determining whether to approve the internal management protocols, the Secretary must have regard to whether, if the application were granted, the protocols would require—
- (a) that the applicant must have a director; and
 - (b) that the drug-checking services provided by the applicant must be provided as part of operations that also facilitate access or referrals to the following—
 - 25 (i) primary health care services including, but not limited to, mental health services, medical consultation and medical assessment services;
 - (ii) drug and alcohol treatment services;
 - 30 (iii) health education services; and
 - (c) that procedures must be established for circumstances in which any of the applicant's drug-checking employees reasonably suspects that a person

- attending the proposed drug-checking place requires medical attention; and
- 5 (d) that procedures must be established to enable the applicant's drug-checking employees to determine whether a person seeking the provision of a drug-checking service is under the minimum age for a drug-checking client; and
- 10 (e) that procedures must be established to govern how information about the composition of a substance is to be provided to the person who supplied that substance for drug-checking; and
- 15 (f) that the health and safety of the applicant's drug-checking employees, and the persons to whom the applicant wants to be licensed to provide drug-checking services, must be protected, having regard to the design of the proposed drug-checking place; and
- 20 (g) that procedures must be established providing for the disposal of the contents of each disposal bin provided at the proposed drug-checking place; and
- 25 (h) if a mobile drug-checking licence is sought, that procedures must be established to enable the applicant to decide whether to transport a substance in accordance with section 55ZM; and
- 30
- Note**
- 35 Section 55ZM provides that, in certain circumstances, the mobile drug-checking licensee may supply a substance to the fixed
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premises drug-checking licensee for drug-checking.

- 5 (i) that services must be available and procedures must be established to ensure compliance, or the ability to comply, with the requirements of—
- (i) this Part and the regulations made for the purposes of this Part; and
- (ii) the licence conditions; and
- 10 (iii) the management protocols.

(4) A drug-checking licensee may, with the written approval of the Secretary, amend or replace their approved internal management protocols from time to time.

- 15 (5) Approved internal management protocols are subject to—
- (a) this Part; and
- (b) the regulations made for the purposes of this Part; and
- 20 (c) the conditions of the drug-checking licence—

and, in the case of any inconsistency, this Part, the regulations and the conditions prevail.

25 **55ZD Determination of application**

- (1) After considering an application for a drug-checking licence and any investigation under section 55ZB, the Secretary must, in accordance with section 55ZE, determine the application by either—
- 30 (a) issuing a drug-checking licence; or
- (b) refusing to issue a drug-checking licence.

- 5
- (2) In issuing a drug-checking licence, the Secretary may impose on the licence any conditions that the Secretary thinks fit.
 - (3) The Secretary must notify the applicant in writing of the decision under subsection (1).
 - (4) The functions of the Secretary under this section are not delegable.

55ZE When Secretary must, or may, refuse to issue drug-checking licence

- 10
- (1) In order to prevent criminal activity in the provision of drug-checking services, the Secretary must not issue a drug-checking licence unless the Secretary is satisfied that—
 - 15 (a) neither the applicant nor any of the applicant's associates has been found guilty of a serious offence in Victoria or elsewhere on or after the day that is 10 years before the application is made; and
 - 20 (b) the applicant and each of the applicant's associates is a fit and proper person to be concerned in or associated with drug-checking services; and
 - 25 (c) the proposed drug-checking place is suitable in relation to location and proposed security arrangements.
 - (2) For the purposes of subsection (1)(b), the Secretary may consider whether—
 - 30 (a) the applicant and each associate of the applicant is of good repute, having regard to character, honesty and integrity; and

- 5
- (b) in the case of an applicant that is not a natural person, the applicant has a satisfactory ownership, trust or corporate structure; and
- (c) the applicant is of sound and stable financial background; and
- 10 (d) the applicant has any business association with any person or body who or which, in the opinion of the Secretary, is not of good repute, having regard to character, honesty and integrity; and
- 15 (e) each director, partner, trustee, executive officer and secretary and any other person determined by the Secretary to be associated or connected with the ownership, administration or management of the operations or business of the applicant is a suitable person to act in that capacity.
- 20
- (3) Additionally, the Secretary must not issue a drug-checking licence unless the Secretary has approved the internal management protocols provided by the applicant.
- 25 (4) The Secretary may refuse to issue a drug-checking licence for any reason the Secretary thinks fit.

55ZF Period of drug-checking licence

- 30 (1) A drug-checking licence—
- (a) commences on a day specified in the licence; and
- (b) remains in force until a day specified in the licence unless, before that day, it is—
- 35 (i) surrendered by the licensee; or
-

(ii) revoked by the Secretary.

(2) The day specified under subsection (1)(b) must not be more than 2 years after the day specified under subsection (1)(a).

5 (3) If satisfied that extending the period of a drug-checking licence would further the object of this Part, the Secretary may do so by amending the licence to change the day specified under subsection (1)(b) to a day
10 that is not later than 4 years after the day previously specified under that provision.

(4) A drug-checking licensee may surrender a drug-checking licence at any time after consultation with the Secretary.

15 **55ZG Notices regarding drug-checking licence**

(1) On issuing a drug-checking licence, the Secretary must publish in the Government Gazette a notice that states—

- 20 (a) that the licence has been issued; and
(b) the day specified under section 55ZF(1)(a) as the day on which the licence commences; and
25 (c) the day specified under section 55ZF(1)(b) as the day until which the licence remains in force.

(2) On extending the period of a drug-checking licence under section 55ZF(3), the Secretary must publish in the Government Gazette a notice that states—

- 30 (a) that the period of the licence has been extended; and

- (b) the day specified in the licence in accordance with section 55ZF(3) as the new day until which the licence remains in force.
- 5 (3) On suspending a drug-checking licence under section 55ZI, or revoking the licence under section 55ZJ, the Secretary must publish in the Government Gazette a notice that states—
- 10 (a) that the licence is suspended or revoked (as the case requires); and
- (b) the day of the suspension or revocation; and
- (c) if the licence is suspended, either—
- 15 (i) the period of the suspension set out in the notice referred to in section 55ZI(2)(b); or
- (ii) that the licence is suspended until further notice.
- 20 (4) On reinstating a drug-checking licence following a suspension of the licence, the Secretary must publish in the Government Gazette a notice that states—
- (a) that the licence is reinstated; and
- 25 (b) the day of the reinstatement.

55ZH Terms and conditions of drug-checking licence

- (1) A drug-checking licence must specify either—
- 30 (a) the premises at which the drug-checking services are to be provided; or

- (b) the mobile drug-checking facility that is to be used in the provision of the drug-checking services.
- 5 (2) A drug-checking licence is subject to the following conditions—
- 10 (a) the licensee must not provide drug-checking services to a person who is under the minimum age for a drug-checking client;
- 15 (b) the approved internal management protocols must be observed at all times;
- (c) the licensee and the licensee's operations must comply with this Part and the regulations made for the purposes of this Part;
- 20 (d) any other prescribed licence conditions;
- (e) any other conditions imposed by the Secretary under section 55ZD(2) or 55ZI(2)(c).
- 25 (3) A mobile drug-checking licence is subject to a condition that the licensee must not provide a drug-checking service other than—
- (a) at or adjacent to a place where a concert, festival, dance party or similar event is being held; and
- (b) while the event is being held.
- (4) The Secretary may vary a condition imposed under section 55ZD(2) or 55ZI(2)(c) with the agreement of the licensee.
- 30 (5) The Secretary may revoke a condition imposed under section 55ZD(2) or 55ZI(2)(c) with or without the agreement of the licensee.
-

55ZI Disciplinary action for contravening licence condition or approved internal management protocols

- 5 (1) This section applies if the Secretary is satisfied, whether as a result of the review under section 55ZX or otherwise, that—
- (a) a condition imposed on a drug-checking licence has been contravened; or
- 10 (b) a drug-checking licensee's approved internal management protocols have been contravened.
- (2) The Secretary may, as the Secretary considers appropriate, do all or any of the following—
- 15 (a) issue a written warning or reprimand to the drug-checking licensee;
- (b) by written notice to the licensee, suspend the drug-checking licence for a specified period or until further notice;
- 20 (c) by written notice to the licensee, impose a new condition on the drug-checking licence;
- (d) require the licensee's approved internal management protocols to be amended or replaced in accordance with a direction of the Secretary;
- 25 (e) amend the drug-checking licence;
- (f) vary a condition imposed under section 55ZD(2) or paragraph (c).
- 30

Note

The Secretary may also revoke a drug-checking licence in these circumstances—see section 55ZJ.

- (3) The suspension of a drug-checking licence does not alter the day on which the licence ceases to be in force under section 55ZF(1)(b).

5

55ZJ Secretary's power to revoke licence

The Secretary may revoke a drug-checking licence—

10

- (a) if the Secretary is satisfied, whether as a result of the review under section 55ZX or otherwise, that—

15

(i) the licensee is not a fit and proper person to hold the licence; or

(ii) the director or another person concerned in the licensee's operations is not a fit and proper person to be concerned in the provision of drug-checking services; or

20

(iii) a condition imposed on the licence has been contravened; or

(iv) the licensee's approved internal management protocols have been contravened; or

25

(v) for any other reason, it is appropriate to revoke the licence in the circumstances; or

(b) by agreement with the licensee; or

(c) for a prescribed reason.

55ZK Disposal bin at drug-checking place

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- (1) At all times that a drug-checking licensee is providing or offering to provide a drug-checking service at a drug-checking place, the licensee must provide a disposal

bin for use by any person who attends the place.

- 5
- (2) A person who places a substance into a disposal bin at a drug-checking place is not taken to be supplying that substance to any other person.
- (3) A substance placed into a disposal bin is taken not to be in the possession of any person.
- 10 (4) In this section—

disposal bin means a receptacle—

- (a) into which can be placed substances in pill form or in any other form; and
- 15 (b) containing a mechanism or substance for destroying the substances that are placed into it.

55ZL Amnesty bin at event

- 20 (1) A police officer may provide an amnesty bin—
- (a) at or adjacent to a place where the mobile drug-checking facility is stationary and set up to be operated; and
- 25 **Note**
See section 55ZH(3).
- (b) during the event for which the facility is set up; and
- 30 (c) for use by any person who attends the event.

- 5
- (2) A person who places a substance into an amnesty bin provided under subsection (1) is not taken to be supplying that substance to any other person.
- 10
- (3) A police officer may—
- (a) transport any substances placed into an amnesty bin to a mobile drug-checking place; and
 - (b) at that place, supply those substances to the mobile drug-checking licensee.
- 15
- (4) For the purposes of this Act, a police officer transporting or supplying a substance under subsection (3) is, for that purpose, authorized—
- (a) to possess each poison, controlled substance or drug of dependence contained in the substance; and
 - (b) to supply to the mobile drug-checking licensee each poison, controlled substance or drug of dependence contained in the substance.
- 20
- (5) In this section—
- amnesty bin*** means a receptacle—
- (a) into which can be placed substances in pill form or in any other form; and
 - (b) that is represented as a receptacle for relinquishing possession of substances the possession of which is unlawful; and
- 25
- 30

(c) that is not a disposal bin.

Note

A disposal bin destroys the substances that are placed into it—see section 55ZK(4).

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55ZM Transfer of substances from mobile facility to fixed premises

(1) This section applies if—

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(a) at the drug-checking place for the mobile drug-checking licensee, either—

(i) a person supplies a substance for drug-checking; or

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(ii) under section 55ZL, a police officer supplies a substance that was placed into an amnesty bin; and

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(b) the mobile drug-checking licensee decides that, for the purpose specified in subsection (2), it is appropriate that the substance should be analysed by the fixed premises drug-checking licensee.

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(2) The specified purpose is the purpose of reducing the harm caused by the use of substances that are, or that contain, poisons, controlled substances or drugs of dependence.

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(3) The mobile drug-checking licensee may—

(a) transport the substance or any part of it to the drug-checking place of the fixed premises drug-checking licensee; and

(b) at that place, supply the transported substance to the fixed premises drug-checking licensee for drug-checking.

55ZN Drug-checking licensee must share information

A drug-checking licensee must—

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(a) keep records of the prescribed information in relation to the drug-checking services provided by the licensee; and

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(b) provide that information to the Secretary at the prescribed times and in the prescribed manner.

55ZO Drug-checking licensee must notify if analysis yields prescribed result

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(1) A drug-checking licensee must notify the persons specified in subsection (3) as soon as practicable after an analysis carried out in the course of a drug-checking service provided by the licensee yields a prescribed result.

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(2) The regulations may prescribe a result for the purposes of subsection (1) by reference to—

(a) the detection of—

(i) a specified substance; or

(ii) a substance of a specified kind; or

(b) the amount, purity or concentration of a substance detected in the analysis.

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(3) The persons whom a drug-checking licensee must notify under subsection (1) are—

(a) the Chief Health Officer; and

(b) the Secretary; and

(c) the Chief Commissioner of Police.

55ZP Destruction of substances—fixed premises drug-checking licence

- 5 (1) This section applies to a substance supplied—
- (a) either—
- (i) for drug-checking; or
- (ii) by the mobile drug-checking licensee under section 55ZM; and
- 10 (b) to the fixed premises drug-checking licensee or a mobile drug-checking employee; and
- (c) at the drug-checking place.
- 15 (2) The fixed premises drug-checking licensee must destroy the substance in accordance with the regulations as soon as practicable after the licensee has analysed the substance.

55ZQ Destruction of substances—mobile drug-checking licence

- 20 (1) This section applies to a substance supplied—
- (a) either—
- (i) for drug-checking; or
- (ii) by a police officer under section 55ZL; and
- 25 (b) to the mobile drug-checking licensee or a mobile drug-checking employee; and
- (c) at the drug-checking place.
- 30 (2) The mobile drug-checking licensee must destroy the substance in accordance with the regulations as soon as practicable after the licensee has—
- (a) analysed the substance; and

- (b) decided not to transport the substance or any part of it to the fixed premises drug-checking licensee under section 55ZM.
- 5 (3) Subject to subsection (4), if the mobile drug-checking licensee decides to transport the substance or any part of it to the fixed premises drug-checking licensee under section 55ZM, the mobile drug-checking licensee—
- 10 (a) is not required to destroy the substance that is to be transported; and
- (b) must destroy any remainder of the substance as soon as practicable after making the decision.
- 15 (4) If the mobile drug-checking licensee—
- (a) decides to transport a substance to the fixed premises drug-checking licensee under section 55ZM; and
- 20 (b) later decides that the substance is no longer to be transported under section 55ZM—
- the licensee must destroy the substance as soon as practicable after deciding not to transport it.
- 25

Division 3—Miscellaneous

55ZR Exemptions and authorizations for drug-checking clients

- 30 (1) A person (the *client*) who, at a drug-checking place, supplies a drug-checking licensee or drug-checking employee with a substance for drug-checking is exempt from liability for an offence

against this Act or the regulations constituted by—

- 5
- (a) possessing, at the drug-checking place, a poison, controlled substance or drug of dependence that is, or is contained in, the supplied substance (including any of that substance that is returned to the client by the licensee or employee); or
- 10
- (b) supplying to the licensee or employee a poison, controlled substance or drug of dependence that is, or is contained in, the supplied substance.
- 15
- (2) The client is taken, for the purposes of this Act and the regulations, to be authorized by this Act to possess and supply a poison, controlled substance or drug of dependence as described in subsection (1).
- 20
- (3) Nothing in this section exempts the client, or affects any condition or obligation imposed on the client, by or under any court order, tribunal order or by or under any other Act or law, including, but not limited to—
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- (a) any sentencing order under the **Sentencing Act 1991**; or
- (b) any parole condition or bail condition; or
- 30
- (c) any order under the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**; or
- 35
- (d) any supervision order or detention order (including any interim supervision order or interim detention order) under the **Serious Offenders Act 2018**; or
-

(e) any other prescribed law.

55ZS Exemptions and authorizations for drug-checking licensees and employees

- 5 (1) For the purposes of this Act, each drug-checking licensee, and each of the licensee's drug-checking employees, is authorized to do the following things—
- 10 (a) when doing anything authorized by section 55V or 55W in respect of a substance, possess each poison, controlled substance or drug of dependence that is, or is contained in, that substance;
- 15 (b) when supplying a substance as authorized by section 55V or 55W, supply each poison, controlled substance or drug of dependence that is, or is contained in, that substance.
- 20 (2) A person who, under subsection (1), is authorized to possess a poison, controlled substance or drug of dependence when doing a thing authorized by section 55V or 55W, is exempt from liability for an offence against this Act or the regulations constituted by the possession of a poison, controlled substance or drug of dependence while doing that thing.
- 25 (3) A person who, under subsection (1), is authorized to supply a poison, controlled substance or drug of dependence when doing a thing authorized by section 55V or 55W, is exempt from liability for an offence against this Act or the regulations constituted by the supply of a poison, controlled substance or drug of dependence while doing that thing.
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55ZT Exemptions and authorizations relating to possession under section 5

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- (1) Each of the persons specified in subsection (2) is exempt from liability for an offence against this Act or the regulations constituted by the possession of a poison, controlled substance or drug of dependence if the possession—
- 10
- (a) arises by operation of section 5; and
- (b) occurs in the course of a person doing a thing authorized by section 55V, 55W or 55ZL.
- (2) The specified persons are—
- 15
- (a) the drug-checking licensee; and
- (b) each of the licensee's drug-checking employees; and
- (c) each occupier of the land or premises where the possession occurs; and
- 20
- (d) each person who uses, enjoys or controls the land or premises where the possession occurs.
- (3) A person who, under subsection (1), is exempted from liability for an offence constituted by possessing a poison, controlled substance or drug of dependence, is taken, for the purposes of this Act, to be authorized by this Act to possess a poison, controlled substance or drug of dependence as described in that subsection.
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55ZU Police discretions not affected

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Nothing in section 55ZR affects any discretion a police officer may exercise in relation to not charging a person with an offence against this Act or the regulations for

- 5 possession of a poison, controlled substance or drug of dependence when a person is travelling to or from a drug-checking place, or is in the vicinity of a drug-checking place, for the purpose of—
- (a) being provided with a drug-checking service; or
 - (b) placing a substance into—
 - 10 (i) a disposal bin; or
 - (ii) an amnesty bin.

55ZV Exemption from civil liability

- (1) This section applies to the following—
- 15 (a) a drug-checking licence;
 - (b) each of the licensee's drug-checking employees;
 - (c) each occupier, and each person who uses, enjoys or controls, the following premises—
 - 20 (i) the premises specified in the fixed premises drug-checking licence;
 - (ii) the premises on which the mobile drug-checking licence is stationary and set up to be operated;
 - 25 (iii) the premises on which an amnesty bin is provided in accordance with section 55ZL;
 - (d) a trustee or a member of a committee of management or of a board (however described) of—
 - 30 (i) the licensee; or

- (ii) an owner or occupier of premises referred to in subsection (1)(c).
- 5 (2) A person to whom this section applies is not subject to any civil liability for doing or omitting to do a thing—
- (a) in good faith; and
- (b) in carrying out any duty or function provided for by this Part; and
- 10 (c) in the case of an act or omission that is subject to this Part or regulations made for the purposes of this Part, in accordance with this Part or those regulations.
- 15 (3) Without limiting subsection (2), that subsection applies to an act or omission that—
- (a) relates to the supply or possession of a poison, controlled substance or drug of dependence at a drug-checking place; and
- 20 (b) satisfies the requirements set out in subsection (2)(a), (b) and (c).
- 25 (4) Without limiting subsection (2), a drug-checking employee who acts, or fails to act, under this Part or the regulations made for the purposes of this Part in the reasonable belief that the act or omission is in accordance with this Part or those regulations does not commit—
- 30 (a) unprofessional conduct within the meaning and for the purposes of the Health Practitioner Regulation National Law; or
- 35 (b) a breach of professional etiquette or ethics or any other code of conduct.
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- (5) Subsections (2), (3) and (4) do not apply if the thing done or omitted to be done was due to negligence.
- (6) Nothing in this section affects any rights or obligations between a drug-checking employee and the person who engages (whether by employment or otherwise) the person for that role.
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- (7) Nothing in this section affects or limits any Crown immunity that applies to a person who exercises a power or function under this Part.

55ZW Planning permit not required

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Nothing in a planning scheme or a planning amendment under the **Planning and Environment Act 1987** is to be taken to require a planning permit in relation to—

- 20
- (a) the provision of drug-checking services at a drug-checking place; or
- (b) the provision of a disposal bin at a drug-checking place; or
- (c) the provision of an amnesty bin at a place referred to in section 55ZL.

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55ZX Review of this Part and licensing for drug-checking services

- (1) The Minister must arrange for a review to be conducted of—
- 30
- (a) drug-checking services provided by drug-checking licensees; and
- (b) the extent to which the object of this Part has been advanced during the period for which drug-checking licences have been in force; and

- (c) how this Part and any regulations made for the purposes of this Part have operated and whether they require amendment.
- 5 (2) The review—
- (a) must be commenced no later than 12 months after the day on which the first drug-checking licence commences; and
- 10 (b) may be completed before or after the licence ceases to have effect.
- (3) The Minister is authorized to access, collect, use and disclose any data or information required to complete the review subject to—
- 15 (a) in the case of health information within the meaning of the **Health Records Act 2001**, the access, collection, use and disclosure being in accordance with that Act and the Health Privacy Principles; and
- 20 (b) in the case of personal information within the meaning of the **Privacy and Data Protection Act 2014**, the access, collection, use and disclosure being in accordance with that Act and the Information Privacy Principles.
- 25 (4) The Minister must cause a copy of the review to be tabled before each House of the Parliament as soon as practicable after the review is completed.
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55ZY Regulations for this Part

- (1) The Governor in Council may make regulations for or with respect to—
- 35 (a) standards for the provision of drug-checking services;
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- (b) the content and use of internal management protocols;
 - (c) the supply, possession or transport of a poison, controlled substance or drug of dependence for the purposes of drug-checking services;
 - (d) disposal bins;
 - (e) amnesty bins;
 - (f) the destruction of a substance supplied for drug-checking;
 - (g) qualifications or experience of drug-checking employees;
 - (h) functions of drug-checking employees;
 - (i) the minimum age for a drug-checking client;
 - (j) prescribing any other matter or thing required to be prescribed by this Part or necessary to be prescribed to give effect to this Part.
- (2) Regulations made under this section—
- (a) may be of general or limited application; and
 - (b) may differ according to differences in time, place or circumstance; and
 - (c) may confer powers or discretions or impose duties on any person or other entity or on a specified person or other entity or class of persons or other entities; and
 - (d) may provide in a specified case or class of cases for the exemption of persons, other entities or things or a class of persons, other entities or things from
-

any of the provisions of the regulations—

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- (i) whether unconditionally or on specified conditions; and
 - (ii) either wholly or to the extent specified in the regulations.

55ZZ Repeal of this Part and related amendments

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- (1) This Part is **repealed** on the sixth anniversary of its commencement.
 - (2) On the repeal of this Part, each drug-checking licence that is still in force at that time is revoked.
 - (3) On the repeal of this Part—

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 - (a) in section 4(1), the definitions of *amnesty bin*, *approved internal management protocols*, *Chief Health Officer*, *director*, *disposal bin*, *drug-checking employee*,
20 *drug-checking licence*, *drug-checking licensee*, *drug-checking place*, *drug-checking service*, *fixed premises drug-checking employee*, *fixed premises drug-checking licence*, *fixed premises drug-checking licensee*,
25 *internal management protocols*, *mobile drug-checking employee*, *mobile drug-checking facility*, *mobile drug-checking licence* and *mobile drug-checking licensee* are **repealed**;
30
 - (b) sections 4B and 4C are **repealed**;
 - (c) section 41(6) is **repealed**;
 - (d) section 42(1)(ae) is **repealed**;
 - (e) section 118(9) is **repealed**;
-

(f) section 119(ec) is **repealed**;

(g) section 129(1)(eb) is **repealed**;

(h) section 132(ub) is **repealed**."

10 List of licences and permits

5 After section 118(8) of the Principal Act **insert—**
 "(9) This section does not apply to a
 drug-checking licence under Part IIB."

11 Evidentiary

10 After section 119(eb) of the Principal Act
 insert—
 "(ec) a certificate signed by the Secretary that a
 drug-checking licence was in force in respect
 of premises or a facility specified in the
15 certificate at a specified date, or that an
 entity specified in the certificate was or was
 not a drug-checking licensee on a specified
 date, is prima facie evidence of the facts
 stated in the certificate;"

12 Regulations

20 After section 129(1)(ea) of the Principal Act
 insert—
 "(eb) without limiting section 55ZY, any matter or
 thing required to be prescribed for the
 purposes of Part IIB;"

13 General regulations

25 After section 132(ua) of the Principal Act
 insert—
 "(ub) without limiting section 55ZY, any matter or
 thing required to be prescribed for the
30 purposes of Part IIB;"

14 Repeal of this Act

This Act is **repealed** on 31 October 2021.

Note

5 The repeal of this Act does not affect the continuing operation
of the amendments made by it (see section 15(1) of the
Interpretation of Legislation Act 1984).

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.