

## NEW SOUTH WALES

### DRAFT NON-GOVERNMENT BILL

To be introduced by: Ms Cate Faehrmann, MLC

## Pill Testing Bill 2019

### Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

### Overview of Bill

The object of this Bill is to provide for pill testing services for the purposes of drug harm reduction in accordance with a licensing scheme to be administered by the Secretary of the Ministry of Health (the *Secretary*). The proposed Act provides for pill testing in respect of prohibited drugs, poisons, restricted substances, drugs of addiction and any other substances that would cause harm if ingested.

The Bill also provides that the possession and provision of prohibited drugs, poisons, restricted substances or drugs of addiction in accordance with a licence under the proposed Act will not constitute an offence under the *Drug Misuse and Trafficking Act 1985* or the *Poisons and Therapeutic Goods Act 1966*.

### Outline of provisions

#### Part 1 Preliminary

Part 1 (**clauses 1–8**) contains provisions relating to the name and commencement of the proposed Act and its interpretation.

#### Part 2 Pill testing licences

Part 2 (**clauses 9–25**) contains provisions for the licensing scheme authorising a person to conduct pill testing in respect of prohibited drugs, poisons, restricted substances, drugs of addiction and any other substances that would cause harm if ingested. The provisions enable a person to apply for a mobile pill testing licence or a fixed premises pill testing licence.

An application for a pill testing licence must be accompanied by a prescribed fee and the internal management protocols that the applicant intends to apply. The Secretary of the Ministry of Health will have the power to investigate an application and must be satisfied that the applicant and each associate of the applicant is a suitable person to be concerned in (or associated with) pill testing. A licence must not be granted if the applicant or an associate of the applicant has been found guilty of a drug related offence. The Secretary may also refuse to grant a licence on certain other grounds.

If a licence is issued, it continues to be in force for 2 years, and will continue to be in force for another 3 years after 2 years from the commencement of the proposed Act. Conditions may be imposed by the Secretary on a licence, in addition to any conditions imposed by the proposed Act or by the regulations.

Substances that are provided for pill testing may be transferred from a mobile pill testing place to a fixed premises pill testing place, and amnesty bins at these pill testing places will enable the substances to be transferred securely and destroyed after the pill testing service has been provided.

Prescribed results from any pill testing services provided must be notified to the Chief Health Officer, the Secretary and the Commissioner of Police and published on the website of the Ministry of Health if the Secretary is satisfied that it is in the public interest to do so.

### **Part 3 Relationship with other laws**

Part 3 (clauses 26–28) contains provisions outlining how the proposed Act relates to the *Drug Misuse and Trafficking Act 1985*, the *Poisons and Therapeutic Goods Act 1966* and the *Environmental Planning and Assessment Act 1979*. The licensing scheme will operate essentially as an exemption from the *Drug Misuse and Trafficking Act 1985* and the *Poisons and Therapeutic Goods Act 1966* as those Acts would otherwise prohibit the possession and supply of prohibited drugs, poisons, restricted substances and drugs of addiction.

### **Part 4 Miscellaneous**

Part 4 (clauses 29–32) contains miscellaneous provisions that are mainly of an administrative nature (including the general regulation-making power and providing for a review of the proposed Act in 2 years).

**NEW SOUTH WALES**

**DRAFT NON-GOVERNMENT BILL**

**To be introduced by: Ms Cate Faehrmann, MLC**

## **Pill Testing Bill 2019**

### **Contents**

---

	Page
<b>Part 1 Preliminary</b>	
1 Name of Act	2
2 Commencement	2
3 Objects of Act	2
4 Definitions	2
5 Meaning of “associate”	3
6 Meaning of “director”	4
7 Meaning of “pill testing service”	4
8 Meaning of “pill testing place”	4
<b>Part 2 Pill testing licences</b>	
9 Fixed premises pill testing licence	6
10 Mobile pill testing licence	7
11 Application for pill testing licence	7
12 Investigation of application	8
13 Internal management protocols	8
14 Determination of application	9
15 Refusal to issue a pill testing licence	10
16 Duration of pill testing licence	11
17 Notice regarding pill testing licence	11
18 Terms and conditions of pill testing licence	11

---

	Page	
19	Disciplinary action for contravening licence conditions or approved internal management protocols	12
20	Revocation of pill testing licence	12
21	Amnesty bin at pill testing place	13
22	Transfer of substances from mobile facility to fixed premises	13
23	Notifications if analysis yields prescribed result	13
24	Destruction of substances following pill testing—fixed premises pill testing licence	14
25	Destruction of substances following pill testing—mobile pill testing licence	14
<b>Part 3</b>	<b>Relationship with other laws</b>	
26	Relationship with Drug Misuse and Trafficking Act 1985 and Poisons and Therapeutic Goods Act 1966	15
27	Exemption from civil liability	15
28	Application of Environmental Planning and Assessment Act 1979	15
<b>Part 4</b>	<b>Miscellaneous</b>	
29	Act to bind Crown	16
30	Delegation	16
31	Regulations	16
32	Review of Act	16

---

draft

---

**NEW SOUTH WALES**

**DRAFT NON-GOVERNMENT BILL**

**To be introduced by: Ms Cate Faehrmann, MLC**

## **Pill Testing Bill 2019**

No           , 2019

---

**A Bill for**

An Act to provide for pill testing services for the purposes of drug harm reduction.

---

The Legislature of New South Wales enacts—

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Pill Testing Act 2019*.

### 2 Commencement

This Act commences 28 days after the date of assent to this Act.

### 3 Objects of Act

The objects of this Act are as follows—

- (a) to reduce the number of avoidable deaths caused by using substances that are, or that contain, prohibited drugs, poisons, restricted substances, drugs of addiction or any other substance that would cause harm if ingested,
- (b) to provide for users and potential users of those substances to receive information about the composition of those substances for the purpose of reducing the potential harm caused by using those substances,
- (c) to provide for users and potential users of those substances to receive drug counselling services that reduce the potential harm caused by using those substances.

### 4 Definitions

- (1) In this Act—

***amnesty bin***—see section 21.

***approved internal management protocols***, in relation to a pill testing licence, means the internal management protocols approved under section 13 in relation to that licence, as amended or replaced from time to time.

***associate***—see section 5.

***Chief Health Officer*** has the same meaning as in the *Public Health Act 2010*.

***child*** means a person who is under the age of 18 years.

***Department*** means the Ministry of Health.

***director***—see section 6.

***drug of addiction, poison*** and ***restricted substance*** have the same meanings as in the *Poisons and Therapeutic Goods Act 1966*.

***fixed premises pill testing employee*** means a pill testing employee engaged by the fixed premises pill testing licensee.

***fixed premises pill testing licence*** means a licence—

- (a) to engage in the activities referred to in section 9, and
- (b) in which the Secretary has specified, under section 18(1)(a), the premises at which pill testing services are to be provided.

***fixed premises pill testing licensee*** means the person who holds a fixed premises pill testing licence.

***internal management protocols*** means protocols that set out how a pill testing licence, or an applicant for a pill testing licence, intends to manage the provision of pill testing services.

***mobile pill testing employee*** means a pill testing employee engaged by the mobile pill testing licensee.

***mobile pill testing facility*** means a trailer or vehicle containing equipment for—

- (a) performing the analysis required in the provision of pill testing services, and
- (b) destroying substances analysed in the provision of pill testing services.

**mobile pill testing licence** means a licence—

- (a) to engage in the activities referred to in section 10, and
- (b) in which the Secretary has specified, under section 18(1)(b), the mobile pill testing facility that is to be used in the provision of pill testing services.

**mobile pill testing licensee** means the person who holds a mobile pill testing licence.

**pill testing employee** means a person who is—

- (a) engaged by a pill testing licensee (whether under a contract of employment, or as a volunteer, or otherwise) to participate in the provision of the licensee's pill testing services, or
- (b) the director of a pill testing service.

**pill testing licence** means—

- (a) a fixed premises pill testing licence, or
- (b) a mobile pill testing licence.

**pill testing licensee** means a person who holds a pill testing licence.

**pill testing place**—see section 8.

**pill testing service**—see section 7.

**prohibited drug** has the same meaning as in the *Drug Misuse and Trafficking Act 1985*.

**Secretary** means the Secretary of the Department.

**serious offence**—see section 15.

**Note.** The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation of this Act.

- (2) Words and expressions used in this Act (but not defined in this section) have the same meanings as in the *Drug Misuse and Trafficking Act 1985* and the *Poisons and Therapeutic Goods Act 1966*.
- (3) Notes and examples included in this Act do not form part of this Act.

## 5 Meaning of “associate”

- (1) For the purposes of this Act, a person is an **associate** of an applicant for, or the holder of, a pill testing licence if the person—
  - (a) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in the person's own right or on behalf of any other person) in the business of the applicant, and by virtue of that interest or power, is able or will be able (in the opinion of the Secretary) to exercise a significant influence over or with respect to the management or operation of the business, or
  - (b) holds or will hold any relevant position, whether in the person's own right or on behalf of any other person, in the business of the licence applicant or holder.
- (2) In this section—

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

  - (a) any share in the capital of the business, or
  - (b) any entitlement to receive any income derived from the business, or to receive any other financial benefit or financial advantage from the carrying on of the business, whether the entitlement arises at law or in equity or otherwise.

**relevant position**, in relation to a business, means—

- (a) the position of director, manager or secretary, or
  - (b) any other position, however designated, if it is an executive position.
- relevant power** means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others—
- (a) to participate in any directorial, managerial or executive decision, or
  - (b) to elect or appoint any person to any relevant position.

#### 6 Meaning of “director”

- (1) For the purposes of this Act, a person is the **director** of a pill testing service if—
  - (a) the person is engaged by the pill testing licensee to—
    - (i) oversee the provision of pill testing services by the licensee, and
    - (ii) ensure compliance with the approved internal management protocols, and
    - (iii) ensure compliance with the conditions imposed on the pill testing licence, and
  - (b) no other person is engaged by the licensee to perform that role.
- (2) A reference to the **director** of a pill testing service includes a reference to a person acting in that role—
  - (a) during any illness or other absence of the person engaged for that role, or
  - (b) while there is a vacancy in that role.

#### 7 Meaning of “pill testing service”

For the purposes of this Act, a **pill testing service** is the service of—

- (a) receiving a substance (in pill form or in any other form) from a member of the public who voluntarily provides the substance for pill testing, and
- (b) analysing the substance or any part of it to determine its composition, including determining whether it is or contains—
  - (i) a prohibited drug, or
  - (ii) a poison, or
  - (iii) a restricted substance, or
  - (iv) a drug of addiction, or
  - (v) any other substance that would cause harm if ingested, and
- (c) unless the substance was provided in accordance with section 22, providing information about the composition of the substance to the person who provided it, and
- (d) providing drug counselling services in respect of any health risks associated with the composition of the substance provided for pill testing.

#### 8 Meaning of “pill testing place”

- (1) For the purposes of this Act, the **pill testing place** for a fixed premises pill testing licence is the premises specified under section 18(1)(a).
- (2) For the purposes of this Act, the **pill testing place** for a mobile pill testing licence—
  - (a) is the mobile pill testing facility specified in the licence under section 18(1)(b), 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 pill testing facility if the structure is—
  - (a) a temporary structure, and  
**Examples.** A marquee or fabric structure.
  - (b) erected—
    - (i) for the purposes of the provision of pill testing services, and
    - (ii) within a distance of the facility prescribed by the regulations.

## Part 2 Pill testing licences

### 9 Fixed premises pill testing licence

- (1) The Secretary may, on application by a person, grant a fixed premises pill testing licence authorising the person to—
  - (a) receive a substance (in pill form or in any other form) from a person (the *service user*), and
  - (b) determine, or agree with the service user, how much of that substance is to be retained for analysis, and
  - (c) retain that amount (the *retained substance*) and return the remainder to the service user, and
  - (d) analyse the retained substance or any part of it to determine its composition, including determining whether it is or contains—
    - (i) a prohibited drug, or
    - (ii) a poison, or
    - (iii) a restricted substance, or
    - (iv) a drug of addiction, or
    - (v) any other substance that would cause harm if ingested, and
  - (e) after that analysis is complete, provide the service user with information about the composition of the retained substance, and
  - (f) destroy the retained substance as required by section 24.
- (2) Additionally, a fixed premises pill testing licence authorises the licensee, and each of the licensee's pill testing employees, to do the following at the pill testing place after that analysis is complete—
  - (a) receive a substance provided under section 22 by—
    - (i) the mobile pill testing licensee, or
    - (ii) a mobile pill testing employee,
  - (b) analyse the substance or any part of it to determine its composition, including determining whether it is or contains—
    - (i) a prohibited drug, or
    - (ii) a poison, or
    - (iii) a restricted substance, or
    - (iv) a drug of addiction, or
    - (v) any other substance that would cause harm if ingested,
  - (c) after that analysis is complete—
    - (i) determine whether it is necessary or appropriate to provide information about the composition of the retained substance to any person, and
    - (ii) if so, provide that information to that person,
  - (d) destroy the substance as required by section 25.
- (3) A fixed premises pill testing employee who is authorised by subsection (1) or (2) to do a thing in respect of a substance is also authorised to provide that substance to another fixed premises pill testing employee at the pill testing place so that the other employee may do that thing.
- (4) An authorisation referred to in this section is subject to—
  - (a) this Act, and
  - (b) any regulations made for the purposes of this Act, and

- (c) any conditions of the relevant pill testing licence.

#### **10 Mobile pill testing licence**

- (1) The Secretary may, on application by a person, grant a mobile pill testing licence authorising the person to—
  - (a) receive a substance (in pill form or in any other form) from a person (the *service user*), and
  - (b) determine, or agree with the service user, how much of that substance is to be retained for analysis, and
  - (c) retain that amount (the *retained substance*) and return the remainder to the service user, and
  - (d) analyse the retained substance or any part of it to determine its composition, including determining whether it is or contains—
    - (i) a prohibited drug, or
    - (ii) a poison, or
    - (iii) a restricted substance, or
    - (iv) a drug of addiction, or
    - (v) any other substance that would cause harm if ingested, and
  - (e) after that analysis is complete—
    - (i) provide the service user with information about the composition of the retained substance, and
    - (ii) decide, under section 22, whether to transfer any part of the retained substance to the fixed premises pill testing licensee, and
  - (f) destroy the provided and retained substances as required by section 25.
- (2) Additionally, a mobile pill testing licence authorises the licensee, and each of the licensee's pill testing employees, to do the following if a decision is made under section 22 to transfer a substance—
  - (a) transfer the substance or any part of it to the fixed premises pill testing licensee's pill testing place, and
  - (b) at that place, provide the transferred substance to the fixed premises pill testing licensee for pill testing.
- (3) A mobile pill testing employee who is authorised under subsection (1) or (2) to do a thing in respect of a substance is also authorised to provide that substance to another mobile pill testing employee at the pill testing place so that the other employee may do that thing.
- (4) An authorisation referred to in this section is subject to—
  - (a) this Act, and
  - (b) any regulations made for the purposes of this Act, and
  - (c) any conditions of the relevant pill testing licence.

#### **11 Application for pill testing licence**

- (1) An application under this Part—
  - (a) must be in writing, and
  - (b) must be accompanied by an application fee prescribed by the regulations, and
  - (c) must specify why the applicant is a fit and proper person to hold a pill testing licence, and

- (d) specify either—
  - (i) the premises at which the person wants to be licensed to provide pill testing services, or
  - (ii) the mobile pill testing facility the person wants to be licensed to use to provide pill testing services, and
- (e) must be accompanied by the internal management protocols that the applicant intends to apply.

## **12 Investigation of application**

- (1) The Secretary may require that an applicant for a pill testing licence—
  - (a) provide further information in relation to the application, and
  - (b) facilitate an inspection by the Secretary of the premises or facility in relation to which the licence is sought, and
  - (c) submit a criminal record check in relation to the applicant and any person who, in the opinion of the Secretary, is an associate of the applicant, and
  - (d) revise any internal management protocols provided to the Secretary and provide the revised protocols to the Secretary.
- (2) If a requirement made under this section is not complied with, the Secretary may refuse to determine the application concerned.
- (3) Any costs incurred by the Secretary in conducting a criminal record check under this section are to be paid by the applicant for the licence concerned.
- (4) On receiving an application for a licence, the Secretary must carry out any investigations and inquiries that the Secretary considers necessary to determine the application.
- (5) The Secretary may refer a copy of an application and any supporting documentation to the Commissioner of Police.
- (6) The Commissioner of Police must inquire into and report to the Secretary on any matters concerning the application that the Secretary requests.

## **13 Internal management protocols**

- (1) For the purposes of determining whether to issue a pill testing licence, the Secretary must consider whether to approve the internal management protocols provided by the applicant.
- (2) The Secretary may approve the internal management protocols if satisfied that they are sufficient to support the issuing of a pill testing licence.
- (3) In determining whether to approve the internal management protocols, the Secretary must have regard to whether the protocol requires—
  - (a) that the applicant has a director, and
  - (b) that the director has a role of general oversight of the operations of the pill testing place and responsibility for ensuring the adequacy of the procedures used in the pill testing place. This paragraph does not prevent the director from being personally involved in activities in the pill testing place, and
  - (c) that the pill testing services provided by the applicant are a part of operations that also provide drug counselling services in respect of any health risks associated with the composition of the substance provided for pill testing, and
  - (d) that any of the applicant's pill testing employees directly providing drug counselling services are persons with satisfactory qualifications, experience or expertise in drug and alcohol treatment and rehabilitation, and

- (e) that procedures are established for circumstances in which any of the applicant's pill testing employees reasonably suspects that a person attending the proposed pill testing place requires medical attention, and
  - (f) that procedures are established to enable the applicant's pill testing employees to determine whether a person seeking the provision of a pill testing service is a child, and
  - (g) that procedures are established to govern how information about the composition of a substance is to be provided to the person who provided that substance for pill testing, and
  - (h) that the health and safety of the applicant's pill testing employees, and the persons whom the applicant wants to be licensed to provide pill testing services, are protected, having regard to the design of the proposed pill testing place, and
  - (i) that procedures are established providing for the disposal of the contents of each amnesty bin provided at the proposed pill testing place, and
  - (j) if a mobile pill testing licence is sought, that procedures are established to enable the applicant to determine when to transfer a substance in accordance with section 22, and  
**Note.** Section 22 provides that, in certain circumstances, the mobile pill testing licensee may provide a substance to the fixed premises pill testing licensee for pill testing.
  - (k) that services are available and procedures are established to ensure compliance, or the ability to comply, with the requirements of—
    - (i) this Act and the regulations made under this Act, and
    - (ii) the licence conditions of the proposed pill testing place, and
    - (iii) any other provisions of the applicant's proposed internal management protocols.
- (4) A pill testing licensee may, with written approval of the Secretary, amend or replace their approved internal management protocols from time to time.
- (5) Approved internal management protocols are subject to—
- (a) this Act, and
  - (b) any regulations made for the purposes of this Act, and
  - (c) any conditions of the pill testing licence,
- and, in the case of any inconsistency, this Act, the regulations and the conditions prevail.

#### 14 Determination of application

- (1) The Secretary is to determine an application for a licence by—
  - (a) issuing a licence to the applicant, or
  - (b) refusing to issue a licence to the applicant.
- (2) In issuing a pill testing licence, the Secretary may impose on the licence any conditions that the Secretary thinks fit.
- (3) The Secretary is to give the applicant written notice of the determination of the application. However, the Secretary is not required to give any reasons for the decision.
- (4) The Secretary's decision in relation to a licence application is final and is not subject to review.

**15 Refusal to issue a pill testing licence**

- (1) The Secretary must not issue a pill testing licence unless the Secretary is satisfied that—
  - (a) neither the applicant, nor any associate of the applicant, has been convicted of a serious offence, and
  - (b) the applicant, and any associate of the applicant, is a fit and proper person to be concerned in or associated with pill testing services under a licence, or
  - (c) the proposed pill testing place is suitable in relation to location and proposed security arrangements.
- (2) In assessing whether a person is a *fit and proper person* to hold a pill testing licence, the Secretary is to consider whether—
  - (a) the applicant and any associate of the applicant is of good repute, having regard to character, honesty and integrity, and
  - (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
  - (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
  - (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.
- (3) The Secretary must not issue a pill testing licence unless the Secretary has approved the internal management protocols provided by the applicant.
- (4) The Secretary may refuse to issue a pill testing licence for any reason the Secretary thinks fit.
- (5) In this section, a *serious offence* means—
  - (a) an offence involving theft, dishonesty, fraud or violence that would, if committed in New South Wales, be an indictable offence, or
  - (b) an indictable offence against—
    - (i) the *Drug Misuse and Trafficking Act 1985* or regulations under that Act or a corresponding law of another jurisdiction, or
    - (ii) the *Narcotic Drugs Act 1967* of the Commonwealth or regulations under that Act, or
    - (iii) the *Poisons and Therapeutic Goods Act 1966* or regulations under that Act or a corresponding law of another jurisdiction, or
    - (iv) the *Therapeutic Goods Act 1989* of the Commonwealth or regulations under that Act, or
    - (v) any other law specified in the regulations, or
  - (c) an offence that would, if committed in New South Wales, be punishable under a law of New South Wales by imprisonment for life or for a term of 5 years or more or by a fine of \$500,000 or more, or
  - (d) an offence committed under a law of the Commonwealth that is punishable by imprisonment for life or for a term of 5 years or more or by a fine of \$500,000 or more.

**16 Duration of pill testing licence**

- (1) A pill testing licence remains in force for a period of 2 years from the date on which it was granted unless—
  - (a) it is sooner revoked or surrendered under this Act, or
  - (b) the period is extended under subsection (3).
- (2) A pill testing licensee may surrender a pill testing licence at any time after consultation with the Secretary.
- (3) After the period of 2 years from the commencement of this Act, the period during which a pill testing licence remains in force is extended to a period of 5 years from the date on which the licence was granted.

**17 Notice regarding pill testing licence**

- (1) On issuing a pill testing licence, the Secretary must publish a notice in the Gazette and on the website of the Department that states the following—
  - (a) that the licence has been issued,
  - (b) the date on which the licence commences,
  - (c) the date until which the licence remains in force.
- (2) On extending the period of a pill testing licence under section 16(3), the Secretary must publish a notice in the Gazette and on the website of the Department that states the following—
  - (a) that the period of the licence has been extended,
  - (b) the new date until which the licence remains in force.
- (3) On suspending a pill testing licence under section 19(2)(b), or revoking a licence under section 20, the Secretary must publish a notice in the Gazette and on the website of the Department that states—
  - (a) that the licence is suspended or revoked (as the case requires), and
  - (b) the date of the suspension or revocation, and
  - (c) if the licence is suspended, either—
    - (i) the period of the suspension set out in the notice referred to in section 19(2)(b), or
    - (ii) that the licence is suspended until further notice.
- (4) On reinstating a pill testing licence following a suspension of the licence, the Secretary must publish in the Gazette and on the website of the Department a notice that states—
  - (a) that the licence is reinstated, and
  - (b) the date of the reinstatement.

**18 Terms and conditions of pill testing licence**

- (1) A pill testing licence must specify either—
  - (a) the premises at which the pill testing services are to be provided, or
  - (b) the mobile pill testing facility that is to be used in the provision of the pill testing services.
- (2) A pill testing licence is subject to the following conditions—
  - (a) the licensee must not provide pill testing services to a child,
  - (b) the approved internal management protocols must be observed at all times,

- (c) the licensee and the licensee's operations must comply with this Act and the regulations made for the purposes of this Act,
  - (d) any conditions that are imposed by this Act or by the regulations,
  - (e) any other conditions imposed by the Secretary under section 14(2) or 19(2)(c).
- (3) A mobile pill testing licence is subject to a condition that the licensee must not provide a pill testing 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 14(2) or 19(2)(c) with the agreement of the licensee.
- (5) The Secretary may revoke a condition imposed under section 14(2) or 19(2)(c) with or without the agreement of the licensee.

**19 Disciplinary action for contravening licence conditions or approved internal management protocols**

- (1) This section applies if the Secretary is satisfied, whether as a result of the review under section 32 or otherwise, that—
- (a) a condition imposed on a pill testing licence has been contravened, or
  - (b) a pill testing 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—
- (a) issue a written warning or reprimand to the pill testing licensee,
  - (b) by written notice to the licensee, suspend the pill testing licence for a specified period or until further notice,
  - (c) by written notice to the licensee, impose a new condition on the pill testing licence,
  - (d) require the licensee's approved internal management protocols to be amended or replaced in accordance with a direction of the Secretary,
  - (e) amend the pill testing licence,
  - (f) vary a condition imposed under section 14(2) or 19(2)(c).
- (3) The suspension of a pill testing licence does not alter the date on which the licence ceases to be in force under section 16.

**20 Revocation of pill testing licence**

The Secretary may revoke a pill testing licence—

- (a) if the Secretary is satisfied, whether as a result of the review under section 32 or otherwise, that—
  - (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 pill testing services, or
  - (iii) a condition imposed on the licence has been contravened, or
  - (iv) the licensee's approved internal management protocols have been contravened, or



- (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 reason prescribed by the regulations.

### **21 Amnesty bin at pill testing place**

- (1) At all times that a pill testing licensee is providing or offering to provide a pill testing service at a pill testing place, the licensee must provide an amnesty bin for use by any person who attends the place.
- (2) A person who places a substance into an amnesty bin at a pill testing place is not taken to be providing that substance to any other person.
- (3) A substance placed into an amnesty bin is taken not to be in the possession of any person.
- (4) In this section—  
*amnesty bin* means a secure receptacle—
  - (a) into which can be placed substances in pill form or in any other form, and
  - (b) containing a mechanism or substance which enables the substances that are placed into it to be destroyed under section 24 or 25.

### **22 Transfer of substances from mobile facility to fixed premises**

- (1) This section applies if—
  - (a) a person provides a substance for pill testing to a mobile pill testing licensee at the pill testing place, and
  - (b) the mobile pill testing licensee decides that, for the purpose specified in subsection (2), it is appropriate that the substance should be analysed by the fixed premises pill testing licensee.
- (2) The specified purpose is the purpose of reducing the harm caused by the use of substances that are, or that contain, prohibited drugs, poisons, restricted substances, drugs of addiction or any other substance that would cause harm if ingested.
- (3) The mobile pill testing licensee may—
  - (a) transfer the substance or any part of it to the fixed premises pill testing licensee's pill testing place, and
  - (b) at that place, provide the transferred substance to the fixed premises pill testing licensee for pill testing.

### **23 Notifications if analysis yields prescribed result**

- (1) A pill testing licensee must notify the following persons within 24 hours after an analysis, carried out in the course of a pill testing service provided by the licensee, yields a result of a kind prescribed by the regulations—
  - (a) the Chief Health Officer,
  - (b) the Secretary,
  - (c) the Commissioner of Police.
- (2) A pill testing licensee must—
  - (a) keep records of any results of a kind prescribed by the regulations in relation to the pill testing services provided by the licensee, and
  - (b) provide those results to the persons in subsection (1) at the times prescribed by the regulations and in the manner prescribed by the regulations.

- (3) For the purposes of this section, the regulations may prescribe a result by reference to—
  - (a) the detection of—
    - (i) a specified substance, or
    - (ii) a substance of a specified kind, or
  - (b) the amount or purity of a substance detected in the analysis.
- (4) The Secretary must publish, on the website of the Department, a notice that provides information about any result prescribed by the regulations in relation to pill testing services if the Secretary is satisfied that it is in the public interest to do so.

**24 Destruction of substances following pill testing—fixed premises pill testing licence**

- (1) This section—
  - (a) applies to a substance provided for pill testing to a fixed premises pill testing licensee or a fixed pill testing employee at a pill testing place, and
  - (b) does not apply to the part of that substance (if any) that is returned as described in section 9(1)(c).
- (2) The fixed premises pill testing licensee must destroy the substance in accordance with the regulations as soon as practicable after the licensee has analysed the substance.

**25 Destruction of substances following pill testing—mobile pill testing licence**

- (1) This section—
  - (a) applies to a substance provided for pill testing to a mobile pill testing licensee or a mobile pill testing employee at a pill testing place, and
  - (b) does not apply to the part of that substance (if any) that is returned as described in section 10(1)(c).
- (2) The mobile pill testing 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 transfer the substance or any part of it to the fixed premises pill testing licensee under section 22.
- (3) Subject to subsection (4), if the mobile pill testing licensee decides to transfer the substance or any part of it to the fixed premises pill testing licensee under section 22, the mobile pill testing licensee—
  - (a) is not required to destroy the substance that is to be transferred, and
  - (b) must destroy any remainder of the substance as soon as practicable after making the decision.
- (4) If the mobile pill testing licensee—
  - (a) decides to transfer a substance to the fixed premises pill testing licensee under section 22, and
  - (b) later decides that the substance is no longer to be transferred under section 22, the licensee must destroy the substance as soon as practicable after deciding not to transfer it.

## Part 3 Relationship with other laws

### 26 Relationship with Drug Misuse and Trafficking Act 1985 and Poisons and Therapeutic Goods Act 1966

- (1) Nothing in the *Drug Misuse and Trafficking Act 1985* or the *Poisons and Therapeutic Goods Act 1966* affects any provision of or made under this Act or the regulations or makes anything done in accordance with the provision unlawful.
- (2) Without limiting subsection (1), a person who, at a pill testing place, provides a pill testing employee with a substance for pill testing is exempt from liability for an offence against the *Drug Misuse and Trafficking Act 1985* or the *Poisons and Therapeutic Goods Act 1966* constituted by—
  - (a) possession of a prohibited drug, poison, restricted substance or drug of addiction when the person is travelling to or from a pill testing place, or is in the vicinity of a pill testing place, for the purpose of being provided with a pill testing service or placing those substances into an amnesty bin, or
  - (b) supplying to the pill testing employee a prohibited drug, poison, restricted substance or drug of addiction when the person is travelling to or from a pill testing place, or is in the vicinity of a pill testing place, for the purpose of being provided with a pill testing service or placing those substances into an amnesty bin.
- (3) This section does not limit the discretion of a police officer not to charge a person with an offence under the *Drug Misuse and Trafficking Act 1985* or the *Poisons and Therapeutic Goods Act 1966* in respect of the possession of a prohibited drug, poison, restricted substance or drug of addiction while the person is travelling to or from a pill testing place, or is in the vicinity of, a pill testing place for the purpose of—
  - (a) being provided with a pill testing service, or
  - (b) placing a prohibited drug, poison, restricted substance or drug of addiction into an amnesty bin.

### 27 Exemption from civil liability

- (1) Anything done or omitted to be done in connection with the conduct of a pill testing service under the authority of a pill testing licence does not subject—
  - (a) the person by whom that thing was done or omitted, or
  - (b) any other person (including a pill testing licensee, the State and any Minister of the Crown in right of the State),to any action, liability, claim or demand if the thing was done or omitted to be done in good faith for the purpose of executing this Act, and was not done or omitted to be done in a reckless or grossly negligent manner.
- (2) This section does not affect any rights or obligations as between an employee of a pill testing licensee and his or her employer.

### 28 Application of Environmental Planning and Assessment Act 1979

The *Environmental Planning and Assessment Act 1979* does not require development consent in relation to the provision of pill testing services or the provision of an amnesty bin at a pill testing place.

## **Part 4 Miscellaneous**

### **29 Act to bind Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

### **30 Delegation**

The Secretary may delegate the exercise of any function or power of the Secretary under this Act (other than this power of delegation) to any Public Service employee.

### **31 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to any of the following—
  - (a) standards for the provision of pill testing services,
  - (b) the content and use of internal management protocols,
  - (c) the provision, possession or transfer of a prohibited drug, poison, restricted substance, drug of addiction or any other substance that would cause harm if ingested for the purposes of pill testing services,
  - (d) amnesty bins,
  - (e) the destruction of a substance provided for pill testing,
  - (f) qualifications or experience of pill testing employees,
  - (g) functions of pill testing employees.
- (3) The regulations may create offences punishable by 10 penalty units.
- (4) The regulations may also contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (5) A provision of a savings or transitional nature may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (6) To the extent to which a provision of a savings or transitional nature takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as—
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### **32 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of this Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 2 years from the commencement of this Act.

- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 2 years.