

# Drug Checking Review of Licensing Decisions Policy

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## 1 Introduction

This policy provides guidance to the Manatū Hauora | Ministry of Health (the Ministry) to administer licensing of drug checking providers under the amendments made in December 2021 to the Misuse of Drugs Act 1975 (MoDA).

## 2 Policy overview

### 2.1 Overview

The policy includes the main information, guidance, principles and considerations for reviewing drug checking licensing decisions to ensure this occurs in a consistent, fair and equitable manner.

### 2.2 Scope

This policy applies to:

- internal Ministry staff
- stakeholders applying to have a drug checking licensing decision reviewed.

### 2.3 Definitions

The following definitions apply to this policy unless otherwise stated.

Word or phrase	Definition
Applicant	Refers to a person or entity applying for a drug checking licence.
Director-General of Health	The chief executive of the Ministry is referred to as the Director-General of Health. Where the policy refers to the Director-General, this also includes any authorised delegate of the Director-General of Health.
Non-compliance	Refers to any serious breach of the MoDA, its regulations or licence conditions.
Repeated offence/non-compliance	Refers to any significant (or serious) offence or breach of the MoDA committed more than once, however for less significant (non-serious) offending the definition of 'repeated' is defined as habitual or regular offending.
Responsible person	In relation to an entity that is (or is applying to be) a drug checking

	<p>service provider, responsible person means:</p> <ul style="list-style-type: none"> <li>• a director, partner or trustee of the entity, or</li> <li>• if the entity does not have directors, partners, or trustees, a person who acts in relation to the entity in the same or a similar fashion as a director, partner, or trustee would were the entity a company, partnership, or trust.</li> </ul>
Seriousness of drug offences	<p>This is determined by considering:</p> <ul style="list-style-type: none"> <li>• the usual justice system response to an offence</li> <li>• the likely impact of the offending on other people, and the scale of the likely impact</li> <li>• the extent to which the offending calls into question the character or judgement of the responsible person.</li> </ul>
Seriousness of non-compliance	<p>This is determined by considering:</p> <ul style="list-style-type: none"> <li>• the actual and potential impact of the non-compliance</li> <li>• if the non-compliance was of a technical nature (eg, providing information late or in the wrong format) or misleading (eg, not declaring relevant information)</li> <li>• whether the relevant regulatory team would view the non-compliance as serious.</li> </ul>
Suitable	Refers to whether the applicant meets the requirements to be licensed as a drug checking provider.

## 2.4 Owner

The Director of Mental Health and Addictions

## 2.5 General enquiries

Manager Drug Checking Licensing

Email: [drugcheckingadmin@health.govt.nz](mailto:drugcheckingadmin@health.govt.nz)

## 2.6 Contents

This document contains the following topics.

Topic	Page number
Introduction	4
Legislative interpretation and guidance	4
Principles	4
Application for review of licensing decision	5
Review process	6
Review decision	6
Related reading	7

Relevant legislative clauses: MoDA	7
Relevant legislative clauses: MoDA Regulations	8
Appendix 1: Drug Checking suitability decision support tool	9

## **2.7 Review date**

November 2024

## 1 Introduction

The purpose of the policy is to support Ministry officials in their review of drug checking licensing decisions, ensuring this occurs in a fair, equitable, reliable and consistent way.

The policy is also available to inform stakeholders in an open and transparent manner of the Ministry's processes and considerations that guide the review of licensing decisions.

## 2 Legislative interpretation and guidance

**The Misuse of Drugs Act (1975), Schedule 6, clause 11(1) and (2) and clause 12(1–7)** sets out the provision for an applicant or drug checking entity to apply for a review of a licensing decision. This includes declining to issue a licence or renew a licence, changes to a licensing status (eg, suspension, cancellation) or any changes to licence conditions.

**The Misuse of Drugs (Drug and Substance Checking Service Provider) Regulations 2022, Regulation 10(1)(2) and (3)** sets out the provision for an applicant or drug checking entity to apply for a review of a renewal licensing decision.

**The Drug Checking Review of Licensing Decisions Policy** sets out the Ministry of Health's approach to the review of licensing decisions to ensure the processes to administer any such review align with the provisions in the MoDA and its regulations.

## 3 Principles

The following principles apply and are secondary to requirements of the MoDA and its regulations:

### Lived experience

- Individuals with lived experiences of drug use are often the best people to provide advice about harm reduction and other support to people who are current users.
- The drug checking licensing team acknowledge the value of lived experience, in both leadership and governance roles, as well as for employees who deliver drug checking and drug-harm reduction services.
- Drug convictions or non-compliance under the MoDA does not automatically disqualify an applicant from holding a licence or being a responsible person.

### Commitment to Te Tiriti o Waitangi and Pae Ora

- The principles of Te Tiriti o Waitangi: tino rangatiratanga; equity; active protection; options and partnership provide the framework for how drug checking services will meet our obligations under Te Tiriti o Waitangi in our day-to-day work.

- Meeting our obligations under Te Tiriti o Waitangi is necessary to realise the overall aim of Pae Ora (healthy futures for Māori) under He Korowai Oranga (the Māori Health Strategy).

## **Equity**

- We acknowledge conviction rates reflect inequities experienced by Māori and other groups and, for this reason, we will apply the legislation, regulations and associated principles equitably and in accordance with the principles of Te Tiriti o Waitangi. No meaningful difference exists between a person who has been convicted of an offence and a person who committed the same offence but was not convicted (non-compliance).

## **Suitability**

- Applicant entities are best placed to assess the suitability of their organisation.
- If an applicant entity has appointed someone to a responsible person position, that shows they believe the person to be trustworthy and responsible, and that the person will not put the entity's licence at risk.
- We consider whether the applicant entity as a whole is suitable for licensing and will comply with the MoDA, its regulations and licensing conditions, rather than considering any particular responsible person of an entity.

## **Case-by-case consideration**

- We assess applicants on a case-by-case basis.
- The licensing scheme is flexible, fair and open to a wide range of circumstances to determine suitability.

## **Impartiality**

- We apply principles of impartiality and independence to ensure our processes for assessing suitability are applied fairly, reasonably and consistently.

## **Management of sensitive and confidential information**

- Sensitive information relating to providers and responsible person(s) that is submitted to the Ministry (eg, criminal record check, suitability statements) is held in a secure Ministry database. This is only accessible to authorised officials who are tasked with discharging the Ministry's duty under the MoDA and the Drug Checking Licensing Scheme.
- Personal names and sensitive information of responsible persons are redacted in any Official Information Act enquiry.
- The Ministry will retain sensitive information for as long as required by Public Records and Privacy Act legislation.
- When we archive sensitive information it is stored in a secure Ministry database and only retrievable by authorised Ministry personnel.

## 4 Policy

Application for review of licensing decision An individual or entity may apply to the Director-General of Health to have a licensing decision reviewed.

Under the MoDA schedule 6, clause 11(1) and (2) and clause 12 (1–7), a review of licensing decision may occur where the Ministry has:

- declined to issue a licence to the individual or entity
- imposed, amended or revoked a condition(s) on a licence
- cancelled or suspended a licence
- declined to renew a licence.

The individual or entity must submit their request for a review of their licensing decision to the Director-General of Health no later than 14 days after the date when they received written notice of the licensing decision.

An application form for a review of a licensing decision can be downloaded from the Ministry's drug checking webpage and emailed to [drugcheckingadmin@health.govt.nz](mailto:drugcheckingadmin@health.govt.nz)

## 5 Review process

The Director-General of Health will appoint a Ministry official to conduct a review ("the reviewer") after receiving the review request under the MoDA schedule 6, clause 11.

The appointed reviewer is impartial and independent of any previous drug checking decision made about the provider. They are required to be familiar with the drug checking licensing scheme, including the drug checking legislation, regulations, policies, standard operating procedures (SOPs) and guidance material.

The reviewer may ask the review applicant for more information.

The reviewer considers and critiques all documentation relating to licensing assessment, including any supporting documents the applicant has submitted.

## 6 Review decision

The Director-General of Health must make a decision before the close of the 60th day after the date on which the request for review of the licensing decision was received. However, the Director-General of Health, or their delegate, may extend this 60-day period for as long as is reasonably necessary. For example, an extension may occur when the applicant fails to provide information the reviewer needs in a reasonable timeframe, or if the Director-General requires more time to make a decision.

Once the review is completed, and where the reviewer agrees with the original licensing decision, the Director-General will notify the provider and include the reasons for the decision.

Where a change is recommended to the original licensing decision, the Director-General will inform the provider of the outcome of this change and the reasons. Where a review results in a licence being granted, all licensing documentation will be provided.

## 7 Related reading

Refer to related documents below:

- The Misuse of Drugs Act (1975)
- The Misuse of Drugs (Drug and Substance Checking Service Provider) Regulations 2022
- The Drug Checking Service Provider Licensing Handbook

Drug Checking policies including:

- Suitability and Non-compliance Policy
- Complaints Policy
- Change to Licensing Status Policy
- Maintenance and Monitoring Policy
- Compliance and Enforcement Policy.

## 8 Relevant legislative clauses

### Misuse of Drugs Act 1975 (MoDA) (as at 7 Dec 2021)

#### Drug and substance checking

#### Schedule 6: Licensing of drug and substance checking service providers

##### *Review of decisions*

##### 11 Application for review of decision

- (1) An individual or entity may apply for a review of the Director-General of Health's decision to—
  - (a) decline to issue a licence to the individual or entity under clause 4; or
  - (b) impose, amend, or revoke a condition on the licence of the individual or entity under clause 7; or
  - (c) suspend or cancel the licence of the individual or entity under clause 9.
- (2) The individual or entity must apply to the Director-General of Health before the close of the 14th day after the date on which they receive written notice of the decision.

##### 12 Decision on application for review

- (1) After receiving the application for review under clause 11, the Director-General of Health must appoint a person to conduct the review (the reviewer).
- (2) The reviewer may be an employee of the Ministry of Health but must not have had any previous involvement in the case.
- (3) If, after conducting the review, the reviewer—

- (a) considers the decision well founded, the reviewer must recommend the decision be confirmed:
  - (b) does not consider the decision well founded, the reviewer must recommend the decision be reconsidered.
- (4) After considering the reviewer's recommendation, the Director-General of Health must—
- (a) confirm the decision or make a new decision; and
  - (b) give the applicant written notice of the confirmed or new decision and the reasons for it.
- (5) The notice has effect as soon as it is given to the applicant.
- (6) The Director-General of Health must make a decision under this clause before the close of the 60th day after the date on which the Director-General received the application for review.
- (7) However, the Director-General of Health may extend that period for as long as is reasonably necessary if the applicant fails to provide, within a reasonable time, information reasonably required by the reviewer to carry out the review or by the Director-General to make the decision.

## **Misuse of Drugs (Drug and Substance Checking Service Providers) Regulations 2022**

### **Part 1: Licence applications, renewals, and other matters**

#### *Licence renewals*

##### 10 Review of decision on application to renew licence

- (1) An applicant for a licence renewal may apply for a review of a decision to decline to renew their licence.
- (2) The applicant must apply to the Director-General of Health before the close of the 14th day after the date on which they received written notice of the decision.
- (3) The Director-General of Health must make a decision on the application for review by following the process set out in clause 12 of Schedule 6 of the Act (which applies as if the application for review were made under clause 11 of that schedule).





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## Appendix 1: Drug Checking review of decision process

