

Drug Checking Complaints Policy

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 on the Ministry's Drug Checking Licensing Team's approach to managing complaints.

2.2 Scope

This policy applies to:

- internal Ministry staff
- the general public seeking to raise a complaint about a drug checking service provider

2.3 Definitions

The following definitions apply to this policy unless otherwise stated.

Word or phrase	Definition
Audit (routine)	A systematic, independent, objective and documented evaluation or review of the provision of the services to determine the level of compliance of drug checking licensed providers to the MoDA, its regulations and their specific licensing conditions.
Authorised person	Refers to a person who, for the purpose of monitoring service providers' compliance with the MoDA, its regulations, and their licence conditions, is authorised by the Director-General of Health to access sites where service providers perform any of the functions specified in section 35DB. May be used synonymously with 'auditor' throughout this document.
Complaint	Refers to a statement that something is unsatisfactory or unacceptable or an issue of concern is being raised.

Complainant	Refers to the person or entity making a statement against another person or entity that something is unsatisfactory or unacceptable or an issue of concern.
Corrective action	Refers to an action that is documented to resolve a shortfall (finding/non-conformity) identified during an audit, investigation or other maintenance and monitoring activity, where a timeframe for resolution and a risk rating is applied to each action.
Critical/high risk	Refers to a significant risk that requires immediate mitigation, including notifying the risk and its mitigation strategy in writing to the Ministry's drug checking licensing manager. <i>NB: Refer to the DCLS risk matrix for more information.</i>
Director-General of Health	The Ministry's chief executive 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.
Investigation	Is a broad term referring to any act of investigation and, in the context of drug checking, the process of inquiring into or following up on an issue identified. It may range from a simple request for more information from a provider or other person (eg, complainant), or a meeting, through to an on-site investigation (eg, issues-based audit or Ministry inspection) by an authorised person. The investigation includes a review of information received/obtained to substantiate (or not) a complaint or issue.
Issues-based audit	Refers to an audit that occurs outside of the routine audit schedule because of an issue identified (either through a complaint or any other notification of an issue of concern). It may occur at short notice or unannounced and is sometimes synonymous with the term Ministry inspection and unannounced audit.
Ministry inspection	An inspection is an act of examining something, often closely and in depth. A Ministry inspection in the context of drug checking is an investigation into an issue or concern, a complaint or potential breach of the MoDA, its regulations or licence conditions. It is to determine if an issue is substantiated or not, and is usually reserved for a serious concern or potential serious non-compliance/ breach. It may occur at short notice or unannounced and is sometimes synonymous with the term issues-based or unannounced audit.
Monitoring activities	Monitoring activities are defined as: <ul style="list-style-type: none"> • management and investigation of complaints • routine audits • surveillance activities (eg, annual provider self-declaration)

	<ul style="list-style-type: none"> • progress monitoring reporting for provider corrective action (CAR management).
Non-compliance	Means any serious breach of the MoDA, its regulations or licence conditions.
Non-conformance	Means any shortfall or gap identified through any monitoring or other activity and may be assessed as negligible, low or moderate risk.
Progress monitoring reporting (CAM)	Where there are any corrective actions after an audit or other maintenance or monitoring activity, a corrective action progress monitoring (CAM) report is provided to the Ministry to give evidence of the progress in resolving the shortfall, in accordance with specified timeframes and risk ratings.
Repeated offence/non-compliance	Means 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	<p>In relation to an entity that is (or is applying to be), a drug checking service provider, responsible person means:</p> <ul style="list-style-type: none"> • a director, partner or trustee of the entity, or • 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.
Risk management	<p>Refers to the process of identifying, risk, assessing its seriousness and mitigation to manage it. In the context of drug checking, a risk-based approach is taken when assessing issues, complaints, audits and investigations and where a licensing status decision is required (eg, licence suspension, cancellation or amendments to licensing conditions).</p> <p><i>NB: Refer to the DCLS risk matrix and risk decision support tool.</i></p>
Risk ratings	<p>All findings (shortfalls) and/or non-conformities or non-compliance identified are rated by a risk analysis as determined by the drug checking licensing scheme (DCLS) risk matrix.</p> <p><i>NB: Refer to the DCLS risk matrix.</i></p>
Seriousness of drug offences	<p>Is determined by considering:</p> <ul style="list-style-type: none"> • the usual justice system response to an offence • the likely impact of the offending on other people, and the scale of the likely impact <p>the extent to which the offending calls into question the character or judgement of the offender.</p>

Seriousness of non-compliance	<p>Is determined by considering:</p> <ul style="list-style-type: none"> • the actual and potential impact of the non-compliance • 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) • whether the relevant regulatory team would view the non-compliance as serious.
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2.4 Owner

The Director of Mental Health and Addictions

2.5 General enquiries

Manager Drug Checking Licensing

Email: drugcheckingadmin@health.govt.nz

2.6 Contents

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2.7 Review date

November 2024

Drug Checking Complaints Policy

1 Introduction

The purpose of this policy is to support Ministry drug checking licensing scheme officials to manage and investigate any complaints 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 drug checking complaints process.

2 Legislative interpretation and guidance

The Drug Checking Complaints Policy: There are no specific complaints references in the MoDA or its regulations, however as the licensing authority for drug checking, the Drug Checking Complaints Policy sets out how the Ministry will investigate and manage complaints about drug checking.

3 Principles

The following principles apply to the management and investigation of complaints received by the Drug Checking Licensing Scheme:

3.1 Lived experience

The drug checking licensing team acknowledge the value of lived experience, in both leadership and governance roles, as well as employees who deliver drug checking and services to reduce drug harm.

3.2 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, will apply the legislation, regulations, and associated principles equitably and in accordance with the principles of Te Tiriti o Waitangi. There is no meaningful difference between a person who has been convicted of an offence, and a person who committed the same offence but was not convicted (non-compliance).

3.3 Case-by-case consideration

- We manage and investigate any complaints or concerns on a case-by-case basis, in a fair and reasonable manner.

3.4 Impartiality

- We apply principles of impartiality and independence are applied fairly, reasonably and consistently.

3.5 Management of sensitive and confidential information

- Sensitive information relating to providers and responsible persons that is submitted to the Ministry is held in a secure Ministry database and only accessible to authorised officials 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.
- Sensitive information will be held for as long as required by Public Records and Privacy Act legislation.
- When sensitive information is archived it is stored in a secure Ministry database and is only retrievable by authorised Ministry personnel.

4 Policy

4.1 General information

The Ministry recognises the importance of ensuring that complaints made by the general public and drug checking providers (where relevant) are investigated.

As the licensing authority, the Ministry will receive, investigate and act on complaints as a core component of our regulatory role. The outcomes from investigations into service provider complaints inform licensing decisions and are part of our performance monitoring function.

The Health and Disability Services (Safety) Act 2001 applies to drug checking providers and complaints may also be made or referred to the Health and Disability Commission (HDC). When the HDC receives a complaint, it will assess the complaint and may choose to investigate it if it involves harm or potential harm to a service user. Refer to the HDC's Code of Rights (the Code) for more information on complaints.

Service providers must cooperate fully with any inquiry in the event of a complaint about their drug checking service.

5 Submission of complaints

The general public and drug checking service users need to be able to easily and anonymously (if desired) make complaints and provide feedback about drug checking providers.

We can receive complaints in any format, including by mail, email or by phone (call 0800 855 066). You can download a complaint form from our drug checking webpage (<https://www.health.govt.nz/our-work/regulation-health-and-disability-system/drug-checking>) and, once filled out, email it to drugcheckingadmin@health.govt.nz

If you prefer, your complaint can be anonymous. Any verbal complaints received by our drug checking team will be documented on the complaints form.

6 Complaint investigation

The purpose of investigating a complaint is to establish the facts. We gather information about the complaint in an unbiased and impartial manner, considering all information in a balanced way.

We may need more information from the complainant to clarify issues raised in the complaint before we decide whether to investigate. If a complaint is not deemed relevant to drug checking services, we may decide not to investigate it.

Where a complaint is investigated, we will let the service provider know about the complaint made, the scope of the investigation and who will be conducting it.

We apply natural justice principles to the complaint investigation process to ensure it is fair and that decision-making is unbiased and reasonable. This includes: making sure we give a provider enough notice of the complaint before they (or whoever the complaint is about) need to respond; giving the provider an opportunity to be 'heard' fairly; and that there is no bias and decisions are based on evidence.

We will keep the complainant informed of progress of the complaint investigation.

6.1 Suspension of licence whilst investigation is undertaken

If there is a potential serious breach of the legislation, regulations or licensing conditions, the provider's licence may be suspended until the investigation is completed.

If this happens, we will write to the licence holder to let them know of the suspension and reasons why.

6.2 Investigation timeframes

Where the drug checking licensing team decides to investigate a complaint, the usual timeframes are:

- within 5 working days of receiving the complaint, we will send an acknowledgment email to the complainant (unless no email address is available for them)
- within 10 working days of receiving the complaint, we will let the complainant know if we have decided to investigate the complaint

- every 30 working days after that, we will let the complainant know about the investigation's progress (unless the complaint was anonymous).

7 Complaint investigation outcome

The facts ascertained during a complaint investigation inform the complaint outcome. A risk analysis is completed to work out whether any action is required, including any decision on licensing.

We will communicate all outcomes of relevant complaints investigated to the complainant (unless anonymous) and the provider. This includes whether the result of the investigation has substantiated the complaint or not and whether any licensing decisions will be actioned as a result.

Any changes to licensing or conditions, will take immediate effect once received by the provider in writing.

8 Compliance and progress monitoring

Dates for reporting to the Ministry on progress monitoring are set as a result of the complaint investigation. These dates will be set out in the letter to the provider about the outcome of the complaint investigation.

Providers can report progress by emailing drugcheckingadmin@health.govt.nz

9 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 Complaints Form (Published on the Ministry's drug checking webpage)
- Drug Checking Policies including:
 - Suitability and Non-compliance Policy
 - Review of Licensing Decisions Policy
 - Change to Licensing Status Policy
 - Maintenance and Monitoring Policy

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DCLS Review of licensing decisions policy	Author: Jessica Smith (née Maret), Drug Checking Licensing Advisor Approved: John Crawshaw, Director Mental Health & Addictions	Issue date: Nov 2022 Review date: Nov 2024	No. 01: V: 01 Page 9 of 10
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Appendix 1: Complaints process flowchart

