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# Minister for Mental Health Weekly Report

Week commencing 17 February 2025  
prepared on 12 February 2025

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# 1 Mental health work programme weekly update

s 9(2)(f)(iv)

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**Deputy Director-General**

Geoff Short, Deputy Director-General, Clinical, Community and  
Mental Health, s 9(2)(a)

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s 9(2)(f)(iv)

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s 9(2)(f)(iv)


**Deputy Director-General**

Geoff Short, Deputy Director-General, Clinical, Community and Mental Health, s 9(2)(a)

## 2 Other updates

### 2.1 Guidance to drug checking service providers on utensils for the purpose of the Misuse of Drugs Act 1975

The Ministry of Health (the Ministry) administers the Misuse of Drugs Act 1975 (the MoDA), including the licencing and regulatory oversight of drug checking services. Drug checking is a health-based approach to changing drug use behaviour by providing free and confidential testing of substances to individuals and giving information about ways to reduce the risk of harm or accidental overdose. Drug checking services can only be performed by licenced providers, and each licence prescribes the type of services they are allowed to offer.

The Minister of Health is responsible for the MoDA, but this item is also being provided to the Minister for Mental Health given its relationship to substance harm and addiction treatment services.

This item provides you with information ahead of the Ministry providing guidance to licenced drug checking service providers, emphasising that it is illegal to provide utensils under the MoDA. Drug checking providers may seek further clarification from the Ministry or independent legal advice about this guidance.

#### **What drug checking service providers can do under the MoDA**

The Drug and Substance Checking Legislation Act 2021 amended the MoDA to establish the licenced drug checking service provider scheme and the regulations that govern all drug checking service providers. There

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are prescribed exemptions for licenced drug checking providers to receive, test, dispose, and return illicit substances. Licenced drug checking providers must comply with all other aspects of the MoDA that they do not have a specified exemption for.

There is also a requirement under the legislation that drug checking providers give accurate and appropriate harm reduction advice to clients using the service. Drug checking providers use a range of different resources to provide harm reduction advice to best meet the communities they serve.

Drug checking providers have become uncertain about what falls within the scope of harm reduction activities and what they are allowed to provide clients who use their services. This has created concern that providers will inadvertently breach the MoDA without clarification on what is a utensil for the purposes of the MoDA.

The Ministry has regulatory responsibility under the MoDA to monitor drug checking providers to ensure compliance with the legislation. This is done through reporting and auditing activities. As part of these regulatory responsibilities the Ministry issues corrective actions to drug checking providers where reporting or auditing reveals breaches of the MoDA or any licensing conditions. Two drug checking providers have previously been issued corrective actions for unknowingly breaching the MoDA by providing utensils to clients (beyond the provision of needles or syringes as part of their harm reduction advice.) Both drug checking providers immediately ceased providing the items that were considered to be utensils upon the issue being raised.

### **What drug checking service providers cannot do under the MoDA**

Section 13(1)(a) of the MoDA states that 'it is an offence to possess any pipe or other utensil (not being a needle or syringe) for the purpose of the commission of an offence against this Act'. The Ministry has determined that because there is no specific exemption in the MoDA for drug checking providers to provide clients with utensils that directly facilitate ingestion of illicit substances (as an offence against the MoDA), drug checking providers doing so are breaching the MoDA by possessing, and consequently supplying utensils. In this context, utensils are any device, tool, or object that is used or supplied to facilitate the direct consumption of an illicit substance.

The only exemption in the MoDA that allows for a type of utensil to be provided is the exemption for needles and syringes provided by authorised representatives of needle exchange services, who are regulated under the Health (Needles and Syringes) Regulations 1998. This exemption does not apply to drug checking providers unless they also are authorised needle exchange service providers.

### **Guidance about what drug checking service providers can give to people**

The Ministry has determined that for the purposes of complying with the MoDA, drug checking service providers must not supply or offer to their clients any device, tool, or object that directly facilitates the consumption of illicit substances. This determination does not prevent drug checking providers from meeting their obligations under the MoDA to provide harm reduction advice or information, or to receive, test, and return illicit substances to the client.

The licenced drug checking entities will be informed of this position through a letter sent from the Director of Mental Health and Addiction, who has the delegated authority from the Director-General of Health to oversee and make operational decisions for the drug checking licensing scheme.

This guidance will be sent to the drug checking service providers in the week of 17 February 2025.

It is possible that the drug checking service providers may request further clarification of the Ministry's position or seek their own legal advice on the matter.

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**Next steps**

This is for your information only, no further action is needed. Officials will provide updates as needed regarding responses from drug checking service providers to the guidance.

<b>Deputy Director-General</b>	Geoff Short, Deputy Director-General, Clinical, Community and Mental Health, s 9(2)(a)
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**2.2 Upcoming events, publications, and announcements**

<b>Upcoming events, publications, and announcements</b>				
<b>Title</b>	<b>Date</b>	<b>Context</b>	<b>ELT contact</b>	<b>Minister</b>
2022/23 Office of the Director of Mental Health and Addiction Services' Regulatory Report	13/02/2025	The Office of the Director of Mental Health and Addiction Services (ODMHAS) publishes data each year on the use of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (the Mental Health Act). The publication of this material promotes accountability and transparency in line with the Statement of Intent for the Ministry.	Geoff Short, Deputy Director-General, Clinical, Community and Mental Health	Hon Matt Doocey, Minister for Mental Health

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