Australian Government
Department of Health
Therapeutic Goods Administration

Provisional determination

A step-by-step guide for prescription medicines

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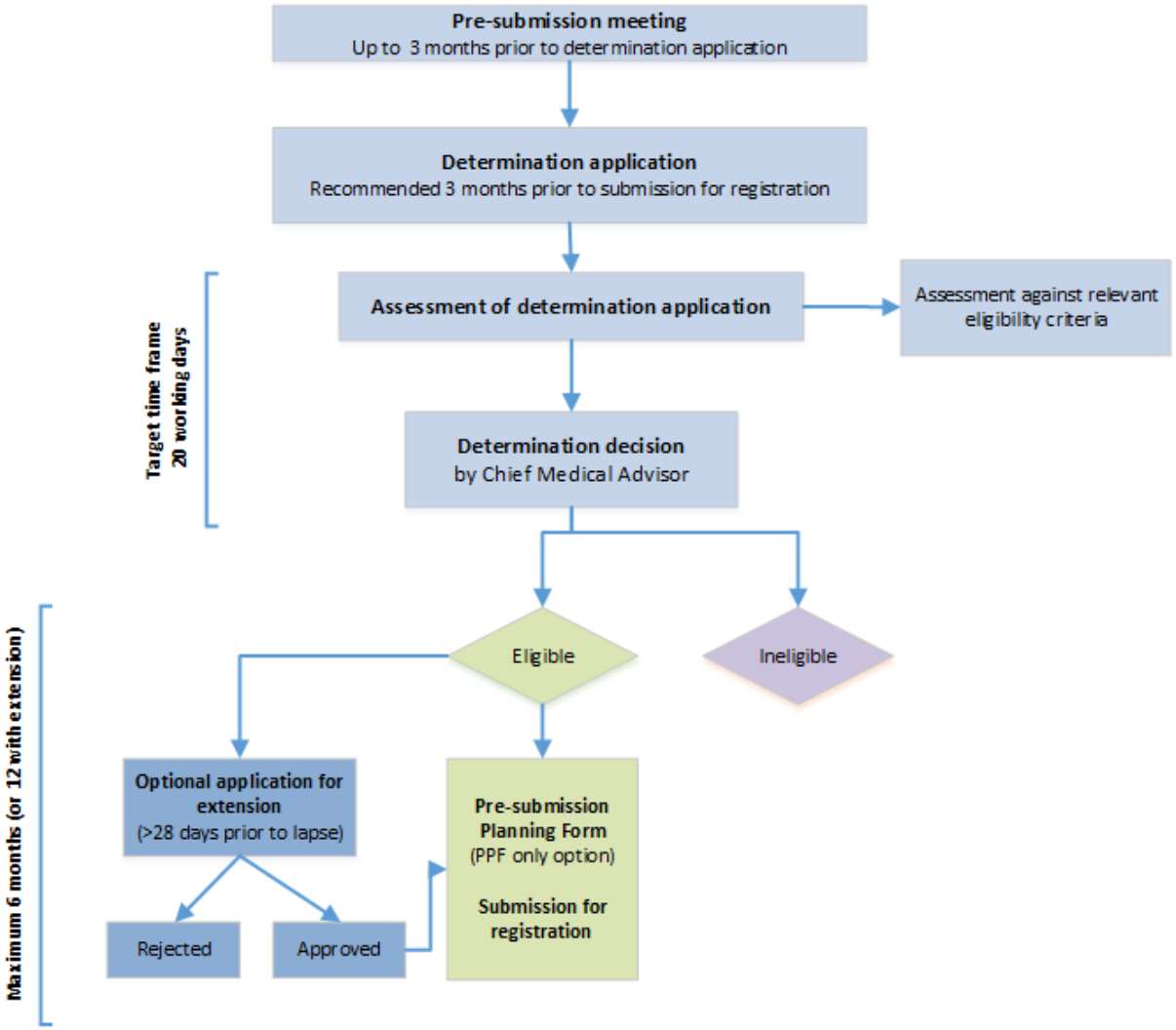
TGA Health Safety Regulation

Contents

Provisional determination process diagram



This guidance is for sponsors intending to use the Provisional approval pathway for prescription medicines. This pathway allows a time-limited provisional registration on the Australian Register of Therapeutic Goods (ARTG).

This guidance assists sponsors with the process of applying for a provisional determination, which is the first step of the provisional approval pathway.

Provisional determination

Purpose of determination

As a sponsor, you must submit an application for determination and have this application approved before you can lodge a submission for provisional registration. Determination is a formal process that allows us to make a decision regarding whether the medicine is eligible for registration via the Provisional approval pathway.

The determination application is the formal application made using a specified form requesting assessment against the relevant eligibility criteria and a decision from TGA (section 22C(2) of the *Therapeutic Goods Act 1989* (the Act)).

Granting of a provisional determination is a prerequisite of the Provisional approval pathway but does not guarantee acceptance of the submission for registration or successful provisional registration on the ARTG.

Benefits of determination

Determination ensures that access to the Provisional approval pathway is only available to medicines that meet the eligibility criteria. Determination provides a consistent and transparent process for making this assessment.

The Provisional approval pathway allows for provisional registration of medicines on the basis of preliminary clinical data. However, we require comprehensive non-clinical data on safety, quality and compliance with Good Manufacturing Practice. These requirements are the same as in the standard registration process for prescription medicines.

If a provisional determination is in place, your application will be processed through the provisional registration pathway (section 23AA of the Act).

You cannot seek and we will not accept a submission for provisional registration unless the provisional determination is in place at the time when you lodge the section 23 submission for registration. This means that you cannot lodge a determination application in parallel to or after Pre-submission Planning Form (PPF).

For more information, see guidance on the Provisional registration process.

Eligibility requirements

Specific eligibility criteria for the Provisional approval pathway are set out in regulations 10K and 10L of the *Therapeutic Goods Regulations 1990* (the Regulations). See our guidance on Provisional determination eligibility criteria for details of the eligibility criteria and associated definitions.

Implementation arrangements

Implementation arrangements will be in place during the months leading up to the expected provisional approval pathway implementation date until around 18 months following implementation.

Determination process for Provisional approval

The Provisional determination process diagram provides an overview of the determination process.

Step 1: Pre-submission meetings

Pre-submission meetings

You are strongly encouraged to arrange a pre-submission meeting with TGA to discuss a planned provisional determination application and subsequent submission for provisional registration. These meetings should occur six months prior to the date you plan to submit your registration application (and therefore should occur up to three months prior to lodging your determination application). See our guidance on Pre-submission meetings with TGA for more information about these meetings.

Pre-submission meetings can be a useful opportunity for you to obtain advice from us about the intent of the eligibility criteria for Provisional approval. However, we cannot provide binding advice on whether your application will meet the criteria at a pre-submission meeting.

Provide details of any pre-submission discussions in the PPF and the dossier (Module 1.7.1) as per the usual process.

Step 2: Verifying your access to TGA Business Services (TBS)

If you already have a client ID number and password to access TGA Business services (TBS) as a Submitter, go to Step 3.

Obtaining access to TBS

Determination applications are created and lodged by people with submitter access through the TGA Business Services portal.

You will need the following in order to access the portal and create and submit applications:

- a TGA Client ID number
- password access to our TGA Business services portal
- Submitter access to the TBS portal

If you do not have a Client ID number or access to our business services:

- go to TGA Business services: getting started with TGA and submit the online organisation details form.

Step 3: Submitting your determination application

We recommend that you submit your application for determination three months prior to the date you plan to lodge your submission for registration.

Before you begin your determination application, please check whether you have previously attended a pre-submission meeting with the TGA (see Step 1).

To be eligible, your determination application must (subsection 22C(2) of the Act):

- contain sufficient information, as required by the form, for TGA to make a decision
- be submitted using the approved form (the designation/determination application e-form) and
- be accompanied by the determination application fee

Ensuring that active ingredient(s) have an approved name

When recording the active ingredient(s):

- Check each active ingredient has one of the following approved terms:
  - Australian Approved Name (AAN)
  - Australian Approved Biological Name (ABN)
- Use the approved ingredient names in the application for provisional determination.

If the active ingredient(s) is not on the approved list, you can submit a proposal for a new ingredient name to the TGA before, or in parallel to, your application for provisional determination.

- Make an application for an approved name using the relevant form:
  - AAN
  - ABN
- Use the proposed name (AAN/ABN) in the application form for provisional determination, including the word 'proposed' in brackets after the name.

Note: Applications for provisional determination cannot be finalised until an approved name has been allocated to the active ingredient(s).

Using the determination application e-form

You can access the designation/determination application e-form through your TBS account. See the designation/determination application e-form guidance for further information on filling out the form.

See Provisional determination eligibility criteria for guidance on meeting the eligibility criteria and the requirements for supporting documentation to attach to your determination application.

For any attachments, use the format outlined in Part A and Part B of the General dossier requirements for prescription medicines.

Payment of the determination fee

A fee applies to provisional determination applications. See fees and payments on the TGA website for the determination fee amount (and Clause 3, Schedule 9 of the Regulations).

When you submit your determination application through the TBS portal, an invoice for the determination fee will automatically be sent to you (the Submitter) and the Billing contact (if an email address has been previously provided) within 90 minutes. The invoice will also be available to people with Finance access on the TBS portal.

You must pay the balance of the determination fee in full via one of the TGA's payment options before we can accept your determination application for assessment as a 'valid application' (see section 22C(2)(b) of the Act).

We do not refund fees for determination applications that are withdrawn before the decision is made or are assessed as ineligible for determination.

Applying for both orphan drug designation and provisional determination

To be eligible for a waiver or refund of the provisional determination fee, at the time of submitting your provisional determination application you must already hold a valid orphan drug determination **or** apply for orphan drug designation at the same time as applying for provisional determination.

If you intend applying for both orphan drug designation and provisional determination for the same medicine and indication, this may be completed in parallel or sequentially. However, you are strongly encouraged to submit your application for orphan drug designation **before** lodging your provisional determination application.

The proposed therapeutic indication for provisional determination must be identical to, or a subset of, the Orphan indication.

Please note that, where applications are lodged simultaneously for provisional determination and orphan drug designation, we will make each decision separately against the relevant eligibility criteria.

If you apply for both provisional determination and orphan drug designation simultaneously, you will be required to pay the determination fee (a single fee is payable for provisional determination only, given that there is no fee for orphan drug designation).

If we consider your application to be eligible for orphan drug designation, the provisional determination fee will be refunded, under regulation 43AE of the Regulations (provided that the orphan drug designated indication or a subset of the orphan drug designated indication is the indication that is eligible for provisional determination).

If you are applying for provisional determination of a medicine that already has a valid orphan drug designation and the orphan indication is the same as, or is broader than, the provisional indication that you are applying for, your provisional determination fee will be waived (regulation 45 (12)(a) of the Regulations).

We do not refund the provisional determination fee if you obtain orphan drug designation after the provisional determination as part of a separate application.

Applying for both priority and provisional determination

You may not apply for priority determination of a medicine for which you are seeking provisional determination. This is because the eligibility criteria for the Priority review pathway require a complete dossier, while the Provisional approval pathway is available to sponsors with preliminary clinical data. However, TGA will endeavour to complete the review of a medicine in the Provisional approval pathway as quickly as possible.

Step 4: TGA assessment of the determination application

Our target timeframe for assessment and decision making on your determination application is 20 working days.

The timeframe for assessment begins on the day that you pay the determination fee. Where the determination application is for both provisional determination and orphan drug designation, the timeframe begins on the day of designation/determination application receipt. We will begin assessment on the following working day for applications received outside of business hours.

After you have submitted your determination application using the e-form, we will check the information provided and confirm whether it is sufficient for us to assess the application.

We will check that your application:

- determination fee invoice has been issued (and the fee is paid, if applicable)
- form has been completed in full, including declarations
- has separately addressed each criterion of the relevant determination/s that have been requested with clear, robust and scientific justifications
- contains justifications that are up to date
- includes supporting data and references
- has a plan for rolling data registration submissions where this is deemed to be required

We will not formally notify you of the results of this checking process; however, you may receive requests for further information.

If you have any questions during the determination application assessment period, please contact AET.Application.Entry.Team@health.gov.au.

How we will assess your determination application

We will review applications for determination against the eligibility criteria set out in regulations 10K and 10L of the Regulations.

The focus of the assessment will be to determine whether your application and supporting documentation establishes that the eligibility criteria are met.

We may seek independent expert advice on aspects of the assessment if required.

A recommendation from the relevant Clinical Evaluation Unit will be referred to TGA's Chief Medical Advisor, who is the delegated decision-maker for determination applications.

Requests to the sponsor for further information

We may request additional information or clarification from you during the course of our assessment. These requests will include a timeframe for response which is determined on a case-by-case basis, and details of TGA contacts for your response. The usual timeframe for your response will be approximately five working days.

You are responsible for providing evidence in support of your application.

The determination assessment and decision-making target timeframe of 20 working days applies only to TGA time spent. Any time taken for you to respond to requests will extend the overall assessment and decision-making target timeframe. If no response is received in the specified time period, we will make a decision based on the available information.

Withdrawing your determination application

You may withdraw your determination application at any time before we issue a decision.

To withdraw the application, email AET.Application.Entry.Team@health.gov.au.

Include in your email:

- a statement that you wish to withdraw a determination application
- the determination application number
- the active ingredient
- the sponsor's name
- the proposed indication for determination

We will not publish on our website details of applications for determination that are withdrawn before the decision is made or are assessed as ineligible for determination.

Withdrawn applications are not eligible for a refund of the provisional determination fee.

Step 5: Notifying sponsors of the determination decision

If we assess that your application meets the eligibility criteria for determination, the determination will be made.

After we have made a decision, we will advise you via email of the outcome as soon as practicable (subsection 22D(4) of the Act).

Your decision letter will include:

- the name of the applicant (sponsor)
- the name of the medicine
- each active ingredient of the medicine
- the provisional indication

If the delegate decides to refuse to make the provisional determination, in addition to the items above, your decision letter will also include:

- reasons for the decision
- details of your appeal rights

How to appeal the determination decision

The provisional determination decision is appealable under Section 60 of the Act.

Appeals regarding determination decisions may be lodged by the **applicant only** and must be lodged within 90 days of the determination decision being issued.

Further information on how to seek internal review by TGA or external review by the Administrative Appeals Tribunal is available on our website.

Publication of determination outcomes

If your determination application is approved, we will publish details of the eligible determination decision on our website.

Publication will include:

- the name of the medicine
- the sponsor's name
- the relevant therapeutic area
- determination decision date and date on which it ceases to be in force ('lapse date')

Determination decisions will be published as soon as you have been notified.

We will not publish details of determination applications that are assessed as ineligible or those that are withdrawn before we make a decision.

Period during which the determination is in force

Your provisional determination comes into force on the day on which we notify you of our decision and remains in force for an initial period of **six months** (see section 22E of the Act), unless:

- it is revoked by the TGA (see 'when the determination ceases to be in force' below), or
- you make an application under section 23 of the Act for the provisional registration of the medicine, or
- you apply to extend the determination (see 'applying for an extension of provisional determination' below) and the extension is granted.

If you submit an application under section 23 for provisional registration of the medicine before the end of the initial period (or extension to that period) the determination remains in force until:

- you decide to withdraw the provisional registration application; or
- the provisional registration application lapses in accordance with subsection 24(2) of the Act; or
- you inform us in writing that you wish to treat the provisional registration application as having been refused (under 24E(2)); or
- your provisional registration application is finally determined i.e. a decision is made and any applications for review or appeals have been finally determined or otherwise disposed of.

Revocation of provisional determination

TGA reserves the right to revoke the determination prior to the end of the six month period that it is in force under section 22F of the Act. This may occur if TGA is satisfied that the medicine no longer meets the eligibility criteria. However, we will not routinely review determination decisions during their validity.

If we decide to revoke your determination, we will advise you of the decision and the reasons for the decision in writing as soon as practicable.

Decisions regarding revocation of determinations are appealable under section 60 of the Act by the **applicant only**.

You may also request in writing that the determination be revoked prior to the date that the determination ceases to be in force. This may be required because if a provisional determination is in place, this automatically means that a subsequent submission for registration must be for provisional registration. If you request revocation, this will be automatically granted by the TGA.

Applying for extension of provisional determination

If you are unable to lodge your submission for registration within the initial six month period of validity, you may apply to TGA in writing for one extension of your provisional determination only. Approved extensions will be granted for a further six months, as set out in Section 22E(6) of the Act.

Applications for extension of provisional determination must be lodged in the approved form using the designation/determination extension application eForm on TGA Business Services at least 28 calendar days before the date the determination ceases to be in force. Applications made less than 28 days before this date will not be accepted for assessment (see subsection 22E(4)(b) of the Act).

In the application form and supporting documents, you must:

- explain why you are seeking an extension and provide justification of why the extension will allow you to lodge a registration application within the extension period, AND
- for each provisional eligibility criterion (refer regulations 10K and 10L), either:
  - advise that the information available to support your justification has not changed since the original determination application, OR
  - outline any new or changed information and provide an updated current justification that the eligibility criterion is still met for each relevant criterion, AND
- provide an update on any other aspects of your determination application that have changed since the original determination application

Fee for provisional determination extension applications

Similar to applications for determination, a fee applies to provisional determination extension applications. See fees and payments on the TGA website for the provisional determination extension fee amount (and Clause 3, Schedule 9 of the Regulations).

When you submit your extension application through TGA Business Services, an invoice for the determination extension fee will automatically be sent to you (the Submitter) and the Billing contact (if an email address has been previously provided) within 90 minutes. The invoice will also be available to people with Finance access on the TBS portal.

The provisional determination extension fee is waived where a valid orphan drug designation is in force (subregulation 45 (12)(b). If the fee is waived, you will not receive an invoice.

The balance of the determination extension fee must be paid in full via one of the TGA's payment options before we commence assessment of your determination extension application (see section 22E(4)(c) of the Act).

We do not refund fees for determination extension applications that are withdrawn before the decision is made or are not approved.

Assessment of the extension application

As for the original determination application, we may request additional information or clarification from you throughout our assessment.

As outlined in section 22E(6) of the Act, we will make a decision regarding whether your provisional determination should be extended based on:

- whether we are still satisfied that the eligibility criteria are met, and
- whether granting an extension would be likely to result in you lodging a submission for registration within the extension period

Notification of outcomes – Application for extension

We will aim to assess your application for determination extension and provide you with a decision within 20 working days. You will be notified of the outcome of your application for extension via email as soon as possible after the decision has been made by TGA.

Approved extension letters will include details of the extended provisional determination period.

If your application for extension is not approved, you will be provided with a statement of reasons for the decision.

Decisions regarding an approval or refusal to extend a provisional determination are appealable under Section 60 of the Act by the **applicant only**.

Only one extension will be granted per provisional determination.

Re-lodgement of determination

If you wish to use the provisional approval pathway and your determination is no longer in force, you must submit a new determination application and pay another fee (if applicable).

We will re-assess the new determination application against the eligibility criteria, as some aspects such as 'comparison against existing therapeutic goods' may have changed since the original determination decision was made.

You are required to provide the reference number/s for previous determination applications in your new application for determination.

If you require further assistance regarding the determination process

If you have read the guidance and still need our assistance, contact AET.Application.Entry.Team@health.gov.au.

Submitting your application for registration

You will have six months from the date we notify you of our decision to grant a provisional determination (or the date of determination extension) to submit an application for provisional registration of the medicine under section 23 of the Act.

The section 23 application is considered to be made at the time the application is received by TGA, in the approved form or manner and accompanied by specified information (the dossier). If you make an application for registration of a medicine, and a valid provisional determination is held for the sponsor, the medicine, and the indication mentioned in the application, it will be taken to be an application for provisional registration of that medicine (section 23AA of the Act).

We encourage you to provide the dossier on the date you specified in the determination application form. Applications for provisional registration must be provided in eCTD format and must use the PPF-only pre-submission process.

Notify us as soon as possible at AET.Application.Entry.Team@health.gov.au if it comes to your attention that the date of your submission for registration is likely to vary from the date specified on your determination application form.

See Pre-submission Planning Form (PPF) and Provisional registration process for further guidance.

Version history

Version	Description of change	Author	Effective date
V1.0	Original publication	Prescription Medicines Authorisation Branch	March 2018
V1.1	Updates · Editorial corrections	Prescription Medicines Authorisation Branch	August 2018
V1.2	Correction on page 13 (Notification of outcomes – Application for extension)	Prescription Medicines Authorisation Branch	October 2018

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