Paragon Therapeutic Technologies Pty Ltd
PO Box 422
Glen Huntly 3163
Victoria Australia
ACN 126461701 ABN 72 126 461 701
T +613 9578 1420
F +613 9578 1415
M +61 (0) 411 713 444 (H Pose)
M +61 (0) 414 774 017 (C Cuthbertson)
M +61 (0) 409 190 248 (B Evers-Buckland)

9 December 2010

The Coordinator
Re: Comment on Reforms in the Medical Devices Regulatory Framework
Office of Devices Authorisation
PO Box 100
WODEN ACT 2606

Dear Sir/Madam

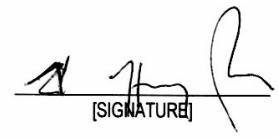
Re: Comment on Reforms in the Medical Devices Regulatory Framework

Paragon Therapeutic Technologies (PTT) welcomes the opportunity to comment on the proposed reforms to the Medical Devices Framework.

The principals of PTT have a collective experience of greater than 80 years in the medical device industry. PTT is a sponsor / manufacturer and also provides consulting services to sponsors and manufacturers in the area of regulatory compliance. We work with over a 100 sponsors and more than 90 overseas and local manufacturers. The issues arising from Consultation document have been discussed with our key clients

Our comments, feed back and suggestions are enclosed on the Consultation document together with comments relating to the HTA and International environment of the medical device community

Yours sincerely



Christine Cuthbertson
Director

Harry Pose
Director

Barry Evers-Buckland
Director

General Comments:

1. COMMENTS ON HTA RECOMMENDATION 8

    a. We accept that the TGA should remain the sole agency responsible for assessing safety, quality and efficacy of therapeutic goods. However the TGA has been a strong proponent at GHTF to enable portability of medical device registration. The TGA should take into consideration work undertaken in those participating jurisdictions particularly the EU and their notified bodies, in their assessments. It should not require a start from scratch approach
    b. We support the opportunity for a manufacturer to choose their own Notified Body which can provide the services it requires.
    c. We are concerned that the third party conformity assessment has not already been initiated for commencement in 2011.
    d. The HTA review required an increase in rigour not an increase in legislation. It is disappointing that TGA has been unable to demonstrate to the HTA Review that the processes they have implemented internally have not "audited" well. Reform at the TGA level is required to ensure that staff are suitably trained and understand the information presented to them.
    e. We recognise that TGA has commenced the process of noting which devices are likely to present at other HTA agencies. However it is unclear as to how the interface between the agencies works.

2. COMMENTS ON CHANGES IN INTRNATIONAL REGULATORY ENVIRONMENTS

    a. The concerns regarding the performance of Notified Bodies have been derived from a 2004 report which looked at Notified Bodies performance in 2003. Since 2004 the European Commission has taken a steps to resolve the identified issues. These include more effective participation on the Notified Body Operations Group (NBOG) and the issuing key guidance documents for use by Notified Bodies and Designating Authorities.

        We consider that the observations from this aged report are not relevant to the current situation. The European Commission has addressed these issues and performances have improved.

    b. An important factor identified in the above report was the poor performance of the Competent Authorities. If we draw anything from this report we would hope that the Australian designating authority will apply the same guidelines that now currently exist in Europe, in this way we can ensure that no mistakes are repeated.

    c. Reference in the consultation document to the European Commission Enterprise And Industry Directorate-General Cosmetics And Medical Devices : Recast Of The Medical Devices Directives Summary Of Responses To The Public Consultation. Reference: ENTR/F/3/D(2008) 39582. (Brussels, 5 December 2008), does not present a significant issue for medical device regulation. It reinforces the importance of oversight of the Notified Bodies which is a responsibility of the Competent Authority of the Member States.

    d. It is unclear why the consultation document would reference the FDA 510(k) process when we do not have the legislative framework to recognise the process.

THE CONSULTATION PAPER

Proposal 1 - Reclassification of Implantable Hip, Knee and Shoulder Joints from Class IIB to Class III

Up-Classification

We agree that total implantable hips, knees and shoulders joints require up-classification to Class III to be consistent with the EU MDD. Items affected will be capable of being assessed at Class III without any issues arising as the documentation from both regulatory areas (EU and Australia) are essentially the same.

Contrary to TGA's assertions, we submit that partial joint replacements are not included in the MDD. Our view is supported by reference to the MHRA Guide *"Guidance On The Commission Directive On The Reclassification Of Total Hip, Knee And Shoulder Joint Replacements*[1]*"*. This document supports our view that partial joint replacements, (i.e. hip hemiarthroplasties), are excluded from the Directive as are ancillary components such as screws, wedges, plates and instruments.

We note the reason provided for up-classifying partial joint replacements relies on the results of the Australian National Joint Replacement Registry Report 2010.

However, it should be noted that other National Joint Registries have not identified a similar trend for partial joint replacements. We consider that the ANJRR report lacks some key parameters of assessment that would enable TGA to justify an up-classification of partial joint replacements.

An up-classification of partial joint replacements would mean manufacturers having European assessment to Class IIb will not have sufficient documentation for an Australian Class III requirement. Should the manufacturer pursue an application in Australia there will be further costs incurred to overcome this additional hurdle. The move to up-classify these devices is inconsistent with the principles of GHTF and the purported goal of harmonising device requirements.

From a health availability perspective both patients and surgeons will be restricted in their choice of partial joint replacements.

We are concerned that there is a group of implants that have remained unaddressed in this reclassification process. Specifically the supply of revision components for older joint systems. The orthopaedic industry has a history of moving to new joint replacement systems quickly and ceasing the supply of older systems. However it has provided surgeons with replacement or revision components for these systems when required. Therefore whilst the full system is unavailable certain parts may be made available.

The purpose of replacing a component is often a better option for the patient. We are concerned that patients could be disadvantaged if the component option is not available.

---

[1] MHRA reference: http://www.google.com.au/url?sa=t&source=web&cd=43&ved=0CGgQFjAMOB4&url=http%3A%2F%2Fwww.mhra.gov.uk%2Fhome%2Fidcplg%3FIdcService%3DGET_FILE%26dDocName%3Dcon2031594%26RevisionSelectionMethod%3DLatest&rct=j&q=eu%20partial%20hip%2C%20knee%20and%20shoulder%20joint%20replacements&ei=CtfhTMryF5GuvgPE1rjsDg&usg=AFQjCNFKvXmEs2-C6489UZGhNw8fgAq6jg&cad=rjt

Suggestions that the Special Access Scheme be used will result in the denial of reimbursement and will disadvantage the patient financially. We consider that an appropriate process which will not disadvantage health access to patients needs to be established for persons requiring these device types.

We are concerned that patients will be put at risk for insertion of new systems because the part replacement option is no longer available.

Transition
It is noted that an existing Class IIb entry will lead to a multiplicity of Class III applications because of the application of UPIs.

PTT welcomes a process whereby an application submitted during the Transition Period will be capable of identifying the ARTG No. to which the new applications are being up classified. Such a process, would in our view, assist the TGA, Sponsor an Manufacturer to be informed of the progress of the transition process.

The TGA has not indicated how long an up-classification application will take. This uncertainty will impact on the ability to continue to market product.

TGA has indicated that if a device application has been made prior to closing of the transition period the device will not be taken off the market. However, it is unclear whether the existing Class IIb inclusion entry will remain until completion of the assessment process and if this ARTG number can be referenced in reimbursement documents without impediment.

Because these are existing included devices on the ARTG our expectations are that TGA would treat these an up-classification application rather than a new application. The requirements to support a decision of compliance to Class III should be restricted to a Level 2 application audit. Refer Appendix 1.

PTT does not see any reason to require any further documentation

Proposal 2 – Third Party Assessment Bodies and Supporting Information

Proposal 2A – Use of third party assessment bodies for Australian manufacturers

PTT supports the use of third party conformity assessment bodies in Australia for Australian manufacturers. We have no objection to their use given our current experience working with experienced notified bodies in Europe.

There are distinct advantages in moving to this mode of operation including access to expertise in the product area which cannot be provided by the current assessor.

The process of designating the notified body and proposed timeframes have not been outlined in this proposal and sadly demonstrates a lack of opportunity for TGA. It is unclear as to who will be responsible for the appointment of third party CAs.

We encourage TGA to move forward on this proposal as it will lead to improved compliance.

Following the implementation of this process Australian Manufacturers will be in a position to determine which Conformity Assessment body they wish to use for their product group.

Proposal 2B – Increasing pre-market scrutiny for implantable medical devices

Proposal 2B(i) – Devices requiring a TGA Conformity Assessment Certificate to be issued

PTT supports the incorporation of measures which apply conformity assessment to Class III devices (under Rules 3.4, 5.2, 5.7 and 5.9) for all **new** products.

Typical examples of these types of Class III/AIMD medical devices include:

Joint replacements reclassified as Class III under Proposal 1; Rule 3.4
Implantable pacemakers and defibrillators; Rule 5.7
Implantable accessories to Class AIMD medical devices, such as pacemaker leads; Rule 5.7
Ventricular assist devices, heart pumps and total artificial hearts; Rule 5.7
Prosthetic heart valves; Rule 3.4
Implantable contraceptive devices, such as IUDs; Rule 5.2
Implantable radionuclide sources, such as radioactive seeds used for brachytherapy; Rule 3.4 and
Breast implants. Rule 5.9

However, Class III products currently on the ARTG have already under gone a Level 2 audit before inclusion. These products should not be subject to a new conformity assessment audit as the relevant data has already been evaluated by the TGA.

Further, if an additional audit was mandated we are unclear as to what extra information the TGA would require.

We point out that at the Level 2 audit, a considerable body of information was made available to the TGA. Requiring further information appears to be superfluous. (Documentation required for a Level 2 audit are noted in Appendix 1).

It is our contention that given the Level 2 audit data already supplied, the TGA should be able to automatically provide a conformity assessment certificate for the existing products and if necessary accept updated risk and clinical evidence reports only.

Transition Period

PTT recommends that the process of applying for a Conformity Assessment for **existing** included devices on the ARTG be kept simple. TGA should take into consideration the body of information already supplied as part of the inclusion process and not add a further regulatory burden on Industry.

The transition period of four years for existing products is acceptable. For new Class III devices the certification will be immediate.

The process of achieving a conformity assessment certification for the existing included Class III devices has not been provided. As these products have already undergone a Level 2 audit we recommend that the only information required is-

1. updated clinical evidence
2. updated risk assessment
3. latest Notified Body report.

Requiring further information will significantly increase TGA's workload and cause delays in the assessment process.

Periodic review

The periodic review of the listed items is noted.

The consultation document did not identify the periodic review or renewal period to be applied to the Conformity Assessment Certificate and how it will be assessed.

Proposal 2B(ii) – Applications to be selected for auditing

PTT notes the intention to apply mandatory Level 2 audits for implantable Class IIb medical devices.

We have concerns that there appears to be a developing restructuring of the risks applied to medical devices which are known as Class IIb into high risk and a lower risk. This undermines the risk assessment application to the classification of the device. This is inconsistent with the agreed GHTF classification rules.

The consultation document has not demonstrated any evidence of increased risk issues for these devices; the rationale for treating them as a more risky device has not been provided. The use of the word "implantable" associated with the device is not an acceptable excuse to ramp up the assessment process.

We are advised by manufacturers that this proposal will significantly increase costs of placing these products on the market. For example more expensive process to apply for product; greater demand to supply controlled documents; higher compliance costs.

Periodic review

Any amendments to the Regulation 5.3 list should be justified by providing the evidence demonstrating the significant changes to the risk profile for the device.

Transition Period

PTT recommends that this change should **only** apply to future **new** inclusions on the ARTG.

Proposal 2C – Recognition of third party assessment bodies

Proposal 2C(i) – Confidence building for EU Notified Bodies

The MRA continues to have value for some companies manufacturing in the EU and supplying medical products in Australia. It is our view that the use of this process will not increase unless Class III devices are included and TGA drops the concept of being the only Certifier for Class III devices.

It is disappointing to see that the TGA has not to date initiated the confidence building exercise that was long promised to both Industry and the EU under the MRA. We can only conclude that this demonstrates TGA's lack of commitment to the MRA process.

This consultation has not provided any information as to what TGA expects from a confidence building exercise or how it should be structured. The objectives and outcomes of the confidence building process should be published.

Our recommendation is that TGA should approach the medical device industry to determine which Notified Bodies should be considered acceptable to continue with or be part of the MRA. The TGA could then approach the Competent Authorities that designated those nominated Notified Bodies for further advice. As a part of the MRA Department of Health and Aging or TGA should also be nominated to be part of the regular EU Notified Bodies Operation Group audit program of Notified Bodies. [2]

The TGA should model the confidence building/accreditation processes on what the Joint Accreditation System of Australia and New Zealand (JAS-ANZ) does to accredit certification companies and EU Competent Authorities does to designate Notify Bodies.

Proposal 2C(ii) – Recognising Australian third party assessment bodies

PTT encourages promotion of third party assessment for Australian manufacturers. The establishment of Australian third Party assessment bodies provides greater choice for Australian manufacturers to select an assessment body with the right experience and expertise in the manufacturer's product range.

This consultation paper does not adequately address the issue of adopting third party assessment bodies and is further delaying any opportunity that manufacturer's may gain through this new system.

The TGA should model their certification/recognition process on the one used in Europe for their respective legislation. In this way there will be a consistent and uniform auditable process for TGA to apply.

The objectives and outcomes of the ongoing certification/recognition process should be publicly available, to demonstrate that TGA is ensuring compliance

We have no hesitation in recommending a system similar to the European Notified Body system, where a single Australian competent authority would be able to designate an Australian third party assessment body to undertake assessments of a manufacturer's quality system to Australian requirements.

If TGA wishes to continue to supply conformity assessment services to Australian manufacturers then they should consider relinquishing their claim for designation

---

[2] Note: the Notified Body Operation Group is an EU Commission body consisting of EU and Competent Authorities. The MRA does not identify how this body and its activities will monitor the obligations of the MRA with the Australian party. Under the Australian/EU MRA the Competent Authority is the Department of Health and Aging.

rights. Failure to do so will result in a conflict of interest with other conformity assessment bodies.

Recommendations

PTT recommends that TGA functions as an accreditation authority to assess, audit, and certify conformity assessment bodies based in Australia.

TGA should not be involved in providing conformity assessment certification services.

Proposal 3 - Amending the way in which a medical device is included in the ARTG and enhancing identification of approved devices

Proposal 3(i) – Amending the way in which a kind of medical device is included in the ARTG

PTT suggests that the move to include additional information about the devices covered by the inclusion, does not enhance the level of safety and efficacy of the ARTG listed products.

The maintenance cost of a Sponsor's inclusions will increase from between 20,000 and $180,000 depending on the number of entries. This is a significant cost to the Sponsor for no return. There should be **no** TGA fees for this maintenance.

PTT recommends that the most practical way the proposed identification process could be achieved is through a free (no fees) notification process to the TGA using its online eBusiness system.

This proposal enables the process to allow notification only and not require any prior validation by the TGA before the information appears in the ARTG.

PTT does not support the proposal to submit variations for additional products after the proposed transition.

If TGA chose to require a variation for every product change then it is our opinion that TGA would not be able to cope with the influx of these applications and maintain satisfactory processing rates for other applications.

Our experience is that some companies introduce "new" updated devices frequently and could average at least one a week. Based on Sponsor sizes this could amount to 200 - 500 variation applications submitted to the TGA each week. As the proposal suggests that these "new" products could not be supplied until the Variation application is processed, unnecessary delays in the supply of similarly approved products are likely.

It is our view that the ARTG could be a significant tool for post market review where TGA could identify all additions to the ARTG entry and undertake a review dependent upon the classification and GMDN code allocated to the Entry of the "new" product. This process is similar to the one applied to Class I devices and can be applied to all device classifications. The Class 1 process appears to be working well and delivering to TGA's expectations.

Proposal 3(ii) – Enhancing the ability to identify devices that have been approved by the TGA for supply in Australia

The rationale for this proposal is to identify that:

1. therapeutic products are approved,
2. products may be recalled at some future date.

There is already a system that requires medical devices to be approved prior to supply. If Proposal 3(i) is accepted then there is no question of what products have been accepted by TGA.

Recalls are enacted by the company/sponsor who already know the applicable ARTG number. Placing the number on the product will not necessarily provide an improved ability to identify and remove those products. All recalls in the device industry are

based on product name and the manufacturers product or ordering code not on the ARTG Number.

Given the vast range of medical technology available, providing an ARTG number with the medical device for such a relatively small market is not be cost beneficial.

The cost to the industry to provide the ARTG number with a medical device would be prohibitive. Industry estimates that a cost of $250 to $500 per product would be incurred to provide artwork for product specific labelling which would need to be supplied by Sponsors.

There are approximately 1.5 million medical devices on the ARTG that will be affected by this proposal. Approximately 95% of these devices are supplied from overseas. The large product volume would make the placing of the ARTG Number on the device costly and impractical. The estimated total cost to the industry could range from $250 million to $750 million per annum if this proposal is implemented

Our case study of one sponsor who also distributes their own product has indicated that they will be required to label each sales unit. This would involve significant logistical costs of stripping pallets of stock to box unit level (that is removal of outer shrink wrap of the pallet and stripping the 4 box distributor sales units), labelling each box and then re-wrapping to distributor sales unit (4 boxes together), repalletising and shrink wrapping and relabelling the pallet.

The time to complete the exercise including requisite quality control measures (checking and applying labels) would result in an additional cost impost of $3 per box. For high moving items in a price sensitive market this will impact severely on the supplier with minimal or no advantage to the end user.

It is noted that not all Sponsors distribute their own product and use one or more distributors throughout the country. Assurance that the labelling is consistent will add cost to the process, which would escalate our case study costs by a factor of three times

For reusable devices the ability to place an ARTG number on the device will cause significant practical problems.

PTT recommends that Proposal 3(i) should be adopted. Its implementation would obviate the need to label every device and will reduce the potential cost to industry. To proceed with this proposal will have negative effects on suppliers, the reimbursement process and end users .

Providing additional, reliable and efficient search facilities within the ARTG database for individual products would preclude the need to provide ARTG numbers with the products.

PTT does not support the proposed change to Regulation 10.2 (amended) and essential principle 13.2 *Information to be provided with medical devices – location* by adding a requirement to include the ARTG Number as it is unnecessary to the identification of the device. If the ARTG database was set up correctly the device would be identifiable.

Proposal 4 – Publication of device product information on the TGA website

This proposal does not take into consideration the process by which medical devices are included onto the ARTG. The current ARTG proposal is to mimic the way medicine IPUs are controlled. IPUs are approved by TGA as part of the evaluation process. A variation to the IPU requires an evaluation by TGA. Therefore the document is a TGA document not a manufacturer document and can then be placed on the ARTG should TGA wish to do so.

However it should be noted TGA does not approve the IFUs or Manuals for a medical device during the review process. The IFU is subject to compliance under section 13 of the Essential Principles and the declaration the manufacturer supplies. Therefore the supply of such a document on the ARTG or elsewhere by TGA will be dependent upon the manufacturer- the supply of the document on the ARTG does not demonstrate an approval by TGA.

The medical device industry has recognised consumer needs by making available the information about the device on their company websites, which is typically aimed directly at the patient level. Other technical information can be obtained from company websites and scientific information for healthcare practitioners who can provided it directly to patients.

PTT does not support the idea of providing more technical/scientific information on the TGA website by copying the IFU or a paraphrased/summarised IFU or any other technical information as it could cause confusion: it may not be current thereby causing more issues in maintaining the ARTG entries and provide no essential value.

There are concerns that the development and maintenance of the extensive quantity of information developed by companies for their products will create unnecessarily high administrative overheads.

It is not clear to what level of medical device classification this proposal is focused on. We recommend that devices should not be required to place IFUs etc on the database at all.

It should be noted that the vast range of medical technology makes it impractical to be able to define the requirements for providing information on medical device products that is not already available on IFUs or product information.

Many medical device products are supplied exclusively to healthcare practitioners and the available information has been developed for those groups. It would serve no useful purpose for it to be more widely disseminated.

Many devices do not need an IFU, a manual or other document as it is obvious what the device is used for. The essential principles allow for the fact that some medical devices may not require instructions or user manuals. For example, cotton wool balls, gauze swabs, cotton tips, stethoscopes, compression bandages, ostomy pouches, exam gloves, dentures removable by the patient, hypodermic needles, scissors, artery forceps, tissue forceps, tissue clamps, excavators, osteotomes and chisels, skin closure devices, light stands do not need explanatory information to be supplied.

For some products the “instructions” are on the pack. e.g. plastic dressing strips,

With the information in the ARTG about medical device products being supplied in Australia as in Proposal 3(i), accessing information about those products then through the Internet would be a far more practical approach.

Appendix 1

Level 2 Audit Documentation Requirements

Level 2: Documentation required
Original or correctly notarised copy of the manufacturer's Australian Declaration of Conformity
Copy of the latest and current conformity assessment evidence for the medical device and/or manufacturer
Information about the device, including copies of the: label *Instructions for Use* advertising material such as brochures, web pages, advertisements
Risk Management Report
Clinical evaluation report
Efficacy & performance data for medical devices that disinfect including sterilisation of other medical devices