Australian Government
Department of Health and Ageing
Therapeutic Goods Administration

Changes to premarket assessment requirements for medical devices

Proposal paper

Version 1.0, January 2013

TGA Health Safety Regulation

About the Therapeutic Goods Administration (TGA)

- The Therapeutic Goods Administration (TGA) is part of the Australian Government Department of Health and Ageing, and is responsible for regulating medicines and medical devices.
- The TGA administers the *Therapeutic Goods Act 1989* (the Act), applying a risk management approach designed to ensure therapeutic goods supplied in Australia meet acceptable standards of quality, safety and efficacy (performance), when necessary.
- The work of the TGA is based on applying scientific and clinical expertise to decision-making, to ensure that the benefits to consumers outweigh any risks associated with the use of medicines and medical devices.
- The TGA relies on the public, healthcare professionals and industry to report problems with medicines or medical devices. The TGA investigates reports received by it to determine any necessary regulatory action.
- To report a problem with a medicine or medical device, please see the information on the TGA website <www.tga.gov.au>.

Confidentiality
All submissions received will be placed on the TGA's Internet site, unless marked confidential. Any confidential material contained within your submission should be provided under a separate cover and clearly marked "IN CONFIDENCE". Reasons for a claim to confidentiality must be included in the space provided on the TGA submission coversheet. For submission made by individuals, all personal details, other than your name, will be removed from your submission before it is published on the TGA's Internet site. In addition, a list of parties making submissions will be published. If you do not wish to be identified with your submission you must specifically request this in the space provided on the submission coversheet.

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Introduction

The TGA is charged with maintaining a national regulatory system relating to the quality, safety, efficacy (performance for medical devices) and timely availability of therapeutic goods. The TGA must undertake on-going review of the healthcare and regulatory environment in order to adapt its regulation and risk-based processes to ensure it addresses emerging issues.

Timely access to medical devices offers significant health benefits to the public which need to be weighed against the risk of the device in case it fails to perform as intended. Therefore, it is important that the current risk-based approach to regulation be strengthened in areas of higher risk whilst avoiding duplication of regulatory effort and unnecessary delays to access.

What is proposed?

The proposals put forward in this paper focus on the two key elements of the premarket assessment process - conformity assessment and approval for marketing through inclusion on the Australian Register of Therapeutic Goods (ARTG).

Currently, in Australia, medical devices (except the lowest risk devices - Class 1 or Class 1 In Vitro Diagnostics (IVDs)) need to be issued with a conformity assessment certificate before an application for inclusion on the ARTG can be submitted to the TGA. Inclusion on the ARTG allows medical devices to be legally supplied in or exported from Australia.

This paper details the following proposals:

- Proposal A:Increased scrutiny of conformity assessment as part of mandatory application audits prior to ARTG inclusion;
- Proposal B:Publication of medical device regulatory decisions; and
- Proposal C:Abolition of requirement for TGA conformity assessment for Australian manufacturers of lower Class medical devices.

The case for reform

A number of reports and inquiries have emphasised the need to increase the rigour of the TGA's premarket assessment process for higher risk medical devices, in particular implantable medical devices. The issues were also addressed in the December 2009 report of the *Review of Health Technology Assessment (HTA) in Australia*. A summary of the recommendations from these reviews is included at **Attachment A**.

One of the concerns driving the recommendations of all these reviews is to ensure, prior to medical devices being approved for supply in Australia, that the benefits outweigh the risks for medical devices, with transparent decision making based on evidence. There is particular concern about higher risk devices, particularly those which are implanted into patients. If such medical devices fail, there are immediate risks to patients and there are significant risks in explanting these medical devices.

Recent events, such as the failure of the ASR hip joint replacement and the issues with the manufacture of Poly Implant Prosthese (PIP) breast implants, which led to two Senate Inquiries in 2011, have highlighted these difficulties. The proposed regulatory changes are intended to ensure that implanted medical devices and those which are surgically invasive and intended for long term use receive a greater degree of scrutiny by the TGA than is currently the case prior to market approval.

No device is 100 percent safe, or immune from failure, irrespective of the level of premarket scrutiny. Medical devices are also inherently different from medicines, as is difficult to collect the same level of clinical trial data at the premarket stage as for medicines. While these proposals increase the TGA premarket scrutiny for these devices to attempt to minimise the risk of future failure, in this context, strengthening postmarket surveillance will also continue to be critically important in effectively regulating medical devices.

In late 2010, TGA consulted with stakeholders on the following reform proposals:

- Proposal 2A: cease requiring Australian manufacturers to seek TGA conformity assessment (largely equates to Proposal C in this paper);
- Proposal 2B: requiring TGA conformity assessment for all high risk devices (superseded by Proposal A in this paper); and
- Proposal 2C: allowing conformity assessment by third party assessment bodies (superseded by proposals A and C in this paper).

Feedback at the time was that there were differences in the levels of support for these proposals by consumer groups, healthcare professionals and industry. Progression of the outcomes of this consultation was subsumed into the TGA Blueprint for Reform which was released in December 2011 but this was further overtaken by the two Senate inquiries into medical device regulation which were conducted in the 2011-12 period.

This paper addresses the recurring themes in these reports and inquiries: Australia must increase its level of premarket assessment for higher risk medical devices, especially those which are implanted or inserted into the body for a significant period of time.

Scope of this paper

This paper will inform the development of more detailed change to the regulatory framework, including a Regulation Impact Statement (RIS), for consideration and consultation in the first half of 2013.

This paper outlines the proposed regulatory reforms for premarket assessment of higher risk medical devices, particularly surgically invasive medical devices intended for long term use and implantable medical devices. IVD medical devices have only been considered to the extent that they are a subset of medical devices.

TGA will also continue to reform its business processes to streamline the medical devices regulatory framework and refine its risk based approach to administering regulation. This will continue in the lead up to the commencement of the Australia New Zealand Therapeutic Products Agency (ANZTPA) in 2016.

Background

Regulatory framework

The TGA's current regulatory framework is based on the model recommended by the Global Harmonisation Taskforce (GHTF) and became fully operational in Australia in October 2007. The intent of the GHTF was to achieve international alignment of regulatory requirements for medical devices to ensure, amongst other things that devices available to the public are of acceptable quality, safety and perform as intended.

Attachment B provides a brief overview of current approval processes for medical devices in Australia. More detailed information is available in the Australian regulatory guidelines for medical devices (ARGMD), available at <www.tga.gov.au/industry/devices-argmd.htm>.

Proposed medical device and IVD reforms in Europe

The recent high profile events relating to medical devices that led to the two Senate Inquiries in Australia also had international ramifications, particularly in Europe.

On 26 September 2012 the European Commission announced a package of proposed reforms to provide more stringent regulation of medical devices within the European Union (EU). The key elements are enhanced supervision of independent (premarket) assessment bodies by European national authorities, greater postmarket vigilance, more member state market surveillance and conduct of unannounced notified body audits and increased product testing. This is particularly relevant to Australia given that, for most medical devices manufactured outside Australia, TGA may accept CE Mark certification from European notified bodies as evidence of conformity assessment as part of the premarket approval process. See **Attachment C** for a summary of those proposed changes.

Joint agency with New Zealand

In June 2011 the Australian and New Zealand Governments announced their agreement to proceed with a joint scheme for regulation of therapeutic goods, including medical devices. The new joint agency, the Australian New Zealand Therapeutic Products Agency (ANZTPA), is expected to be operational by 2016. New Zealand government, healthcare, consumer and industry groups will particularly be invited to participate in this consultation on the proposed reforms to ensure alignment with future joint regulatory arrangements.

General consultation on the regulatory system to apply in Australia and New Zealand will also be undertaken in the development of the ANZTPA. However it is expected that changes resulting from the proposals in this paper would flow through to the ANZTPA regulatory environment.

The proposals

This paper has been produced in response to the recommendation in the TGA Blueprint for further consultation on medical device regulation and progresses proposals 2A, B and C and as a preliminary step towards Proposal 4 arising from the HTA Review. It takes into account the feedback from earlier consultations, findings from the Senate Inquiries, and the shift that has occurred in the international context of medical device regulation since the 2010 consultation. As a result, while some of the proposals outlined in this paper appear familiar, other aspects differ from the previous proposals.

Proposal A: Increased scrutiny of conformity assessment as part of mandatory application audits prior to ARTG inclusion

This proposal would expand the current mandatory audit program undertaken by the TGA, both in terms of the medical devices targeted for audit and the level of assessment undertaken in the audit process prior to inclusion of the medical devices in the ARTG. The elements of this proposal are:

a. ***Targeting of mandatory audits:*** the current list of medical devices requiring a mandatory application audit under Regulation 5.3 would be amended to better reflect what devices represent a high risk based on current experience, primarily in broadening the devices targeted to include implantable medical devices as well as surgically invasive devices intended for long term use;

b. ***Assessment of evidence of conformity:*** using existing powers, the TGA would require additional evidence for some audits, reviewing conformity assessment documentation produced as part of the assessment and subsequent certification of a manufacturer to produce medical devices by a European notified body; and

c. ***Audit fee:*** subject to results of the RIS and possible Cost Recovery Impact Statement (CRIS), it is anticipated that the Regulations would require amendment to specify a new level of application audit fee to reflect the greater depth of analysis undertaken for higher risk devices.

Current situation

Australia generally accepts conformity assessment certificates from notified bodies located in the EU to support an application for ARTG inclusion of most medical devices. However, there are certain circumstances where, unless the TGA undertakes the conformity assessment, the TGA must select certain devices for mandatory audit. These are outlined in Regulation 5.3, which currently requires the TGA to undertake an application audit of the following (non-IVD) devices prior to their inclusion on the ARTG:

- barrier contraceptives (other than condoms) (>Class IIb);
- implantable contraceptive devices (Class III);
- medical devices that are specifically intended by the manufacturer to be used for disinfecting another medical device (Class IIb);

- Active Implantable Medical Devices (AIMD);
- implantable intra-ocular lenses (> Class IIb);
- intra-ocular visco-elastic fluids (≥ Class IIb); and/or
- Class III medical devices not supported by conformity assessment issued by the TGA or issued under the EU MRA.

The TGA has discretion to select applications for inclusion in the ARTG for audit where the medical devices are not included in the list. The applicant is charged an audit fee for each mandatory audit conducted. However, no fee is charged in relation to applications selected for a non-mandatory audit.

Currently there are two levels of mandatory audit fee. Which fee is applied reflects the level of analysis to be undertaken. These audit levels are not defined in regulation (except in relation to the fees payable) and the type of information that may be required for these audits is only outlined in guidance documents, and in practice may vary for each audit. This arrangement provides the regulated industry with some certainty of costs and regulatory data requirements. While the selection of an application for audit is mandatory for devices listed under Regulation 5.3, the level of audit fee applied is discretionary. The audit fees applying for 2011-12[1] are:

- **Level 1: $3,360**
  - This level of audit generally reviews the sponsor's conformity assessment certification, such as to ensure currency of certification and the competency of the notified body to assess the kind of device. Other checks may review information about the device, such as labels, instructions for use or advertising material such as brochures, web pages and advertisements.
- **Level 2: $6,170**
  - This level of audit generally reviews those items considered in the Level 1 audit, plus information generated by the manufacturer to support the application, such as risk management and clinical evaluation reports to provide greater assurance that the risks posed by the device are outweighed by the benefits.

How would the proposal work?

Targeting of mandatory audits: The list of medical devices specified under Regulation 5.3 would be broadened to include all surgically invasive devices intended for long term use and implantable medical devices. This is intended to capture all medical devices classified as Class IIb or Class III by Classification Rule 3.4 (Therapeutic Goods (Medical Devices) Regulations 2002, Schedule 2, Part 3). Those medical devices classified as Class IIa under Classification Rule 3.4 would not be captured by mandatory audit arrangements. These are not considered high risk devices and some are not currently required to undergo a mandatory audit.

New devices which would be captured for mandatory application audit include those Class IIb devices that are implantable or long-term surgically invasive devices such as spinal implants, ankle joints, finger joints, peripheral vascular stents, gastric bands, or maxillofacial implants.

[1] Therapeutic Goods (Medical Devices) Regulations 2002, Schedule 5, Part 1, Items 1.13 and 1.14 detail existing application audit fees.

However, where the TGA has conducted the conformity assessment, the application will not be required to be selected for audit (as is currently the case).

Conformity assessment certification from European notified bodies would continue to be accepted for devices not on this list. As is already the case, these may be subject to a discretionary audit, for which no fee is payable.

While certain applications for IVD devices are also specified under regulation 5.3, it is proposed that IVDs will continue to be selected for audit and processed under the current practice.

Amendments to the EU MRA that will become effective on 1 January 2013 will now preclude the TGA from accepting certificates from European notified bodies issued under the MRA until confidence building has occurred. It is proposed that where a European notified body has issued a conformity assessment certificate under the MRA and undertaken the required confidence building, the TGA would select the application for a Level 1 audit. This currently does not occur where conformity assessment certification is issued under the MRA.

Assessment of evidence of conformity: A new level of scrutiny at application audit would also be introduced in the form of a "Level 3 audit". Using existing powers to request information, the TGA would review the evidence underlying the conformity assessment conducted by a European notified body at greater depth.

In addition to reviewing those items considered in the Level 2 audit, the new Level 3 audit would also examine assessment reports from the notified body which undertook the conformity assessment, and may also call in raw data which was used by the notified body to develop their reports. This may include examination of quality management system (QMS) audit reports, reports about the design of the device (design and type exam reports), and component assessment reports included in the design dossier documents. Currently this depth of analysis would not generally be undertaken as part of a Level 2 application audit.

The level of application audit would continue to be at the discretion of the TGA (as is currently the case for level 1 and level 2 audits). The level of audit would be generally relate to the classification and risk associated with the medical device and the following list provides an indication of audit level likely to apply for different types of medical devices. However in setting an audit level the TGA may also take into account other issues, such as potential concerns about particular notified bodies, emerging postmarket issues with particular types of devices, new and novel technologies, and so on.

The TGA may, at its discretion, determine what level of application audit will apply in relation to devices mandated for audit under Regulation 5.3. It should also be noted that TGA will only ask for the information and documentation it needs to conduct the assessment and to assure that the medical device meets relevant regulatory requirements. The **indicative** audit levels are:

- **Level 1:**
  - a medical device that is specifically intended by the manufacturer to be used for disinfecting another medical device; and/or
  - implantable intra-ocular lenses and intra-ocular visco-elastic fluids;
  - barrier contraceptives (other than condoms).

- **Level 2:**
  - a Class III medical device that is not implantable and not surgically invasive for long-term use(other than implantable intra-ocular lenses and intra-ocular visco-elastic fluids) and/or
  - a Class IIb medical device that is implantable or surgically invasive for long-term use (other than implantable intra-ocular lenses and intra-ocular visco-elastic fluids).
- **Level 3:**
  - a Class AIMD medical device;
  - a Class III medical device that is implantable or surgically invasive for long-term use.

This would result in an increase in the assessment of many devices which under current arrangements are subject to a Level 2 audit. These would include:

- implantable contraceptives;
- AIMD devices for example as pacemakers and pacemaker leads, implantable defibrillators, total artificial hearts and other implantable heart assist devices and implantable insulin pumps; and
- Class III implantable for example as breast implants, hip, knee and shoulder joint implants, prosthetic heart valves and coronary stents or Class III long-term invasive devices such as a hydrocephalus shunt.

It is also anticipated that under this proposal there would be a reduction in the level of assessment for device disinfectants. Currently these would generally undergo a Level 2 audit, and under proposed changes this would generally be subject to the Level 1 audit. This is consistent with the rationale for these devices requiring a mandatory audit to ensure the products are appropriately classified in Australia given the current classification system for these devices is different in the EU, which is generally able to be verified with a Level 1 audit.

There would be no change in assessment to the following:

- implantable intra-ocular lenses and intra-ocular visco-elastic fluids as they would continue to undergo a Level 1 audit; and
- non-implantable or non-long-term invasive Class III devices as they would continue to undergo a Level 2 audit.

Audit fee: A new level of application audit fee (Level 3) would also be introduced in legislation, to allow the TGA to undertake this additional analysis of conformation assessment undertaken by EU notified bodies. As outlined above, the level of audit (and associated fee) which applies for any application is at the TGA's discretion based on the nature of the device and the level of risk associated with the device.

It is anticipated that the Level 3 audit fee would be in the range of $12,000-$15,000, reflecting the current cost of an abridged conformity assessment[2]. The process and expertise required to undertake the Level 3 audit would be similar to an abridged

[2] Guidance material on processes for requesting an abridged assessment Reduction of assessment fees for medical devices

conformity assessment. The actual fee would be subject to further consultation in line with the Regulation Impact Statement (RIS) and Cost Recovery Impact Statement (CRIS) processes.

Public health and safety benefits of this proposal

This proposal delivers against recommendation 8(c) of the HTA Review, and addresses a number of Senate medical devices inquiry recommendations.[3] The benefits of this proposal over the current system are that there would be:

- a greater range of medical devices which are implantable or surgically invasive for long-term use would be reviewed by the TGA prior to market approval and greater assurance in the quality, safety and performance of medical devices;
- an increased level of premarket assessment for medical devices which are implantable or surgically invasive for long-term use without requiring the TGA to undertake a full conformity assessment as previously proposed in December 2010; and
- an increase in community confidence about the level of assessment that is undertaken by the TGA for these medical devices prior to their use by or implantation in patients.

- Are the medical devices outlined above appropriate targets for greater premarket scrutiny?
- Have any other medical devices which should be included been missed?
- What are the risks and benefits of this proposal?
- Which elements of the proposal could be removed without reducing the premarket regulatory rigour of higher risk medical devices?

Proposal B: Publication of TGA regulatory decisions

In order to improve the transparency and accountability in the TGA's decision making processes, it is proposed to publish information on the regulatory decisions the TGA makes on medical devices. This is particularly focused on providing information about the degree to which a medical device has been assessed prior to inclusion in the ARTG (for example whether the medical device has been audited, and the evidence considered in that audit which in practice may vary significantly between applications, or the extent to which TGA conformity assessments have been abridged).

This proposal could also include decisions on medical devices for which applications were not approved, for which there is currently no public visibility. As a subset of medical

[3] Including:
- Recommendation 2 - to implement HTA Review recommendation 8(c) regarding the need for increased rigour of assessment of higher-risk medical devices;
- Recommendation 3 - that the level of assessment of Class III medical device be increased;
- Recommendation 4 - in terms of a more judicious approach to premarket assessment of higher-risk medical devices for the ultimate benefit of patients, and
- Recommendation 5 - in terms of weighing the advantages of streamlined international regulatory frameworks and patient safety.

devices, decisions on IVDs will also be included. This is a key recommendation of the TGA Blueprint and is represented in Transparency Review Recommendation 12:

> *The TGA explore mechanisms for providing explanations on its various regulatory processes, and adopt publication principles on the outcomes of application assessments using as an exemplar the Australian Public Assessment Reports (AusPAR).*[4]

Current situation

Currently the TGA publishes limited information about medical devices included on the ARTG. The information can be viewed through the publicly accessible version of the ARTG, published on the E-business TGA website. Available information is limited to:

- label name of the inclusion;
- identity and address of the sponsor;
- identity and address of the manufacturer;
- standard conditions applied to the entry;
- the product identified by GMDN code;
- effective date of the inclusion;
- intended purpose of the device; and
- unique device identifier (for Class III and AIMD's only).

Currently no information is published by the TGA on:

- ***Conformity assessment:*** the approval or rejections of an application for conformity assessment;
- ***Approval for inclusion on the ARTG:*** the basis for the decision to include a medical device on the ARTG, such as whether the medical device was subject to application audits and if so what information was considered, and the specific EU notified body conformity assessment body certificate used to support the application; or
- ***Rejection for inclusion on the ARTG:*** for medical devices for which applications for inclusion on the ARTG are rejected, there is no public record that the application was made, its rejection or the rationale for the rejection.

How would the proposal work?

The TGA decision on the conformity assessment and/or application for inclusion on the ARTG would be published. Published information would need to ensure that:

- the ***basis of the decision is transparent***, including the basis for any negative decision;
- **evidence considered in reaching the decision is outlined**, noting that this may be minimal in some instances, for example where no application audit is undertaken, or quite extensive in other situations, such as where a full conformity assessment has been undertaken by the TGA. The evidence would need to be specific when the

[4] Review to improve the transparency of the Therapeutic Goods Administration – Final Report (June 2011), Recommendation 12

decision has relied on conformity assessment undertaken by the TGA or a European notified body, and where supplementary investigation of conformity assessment as outlined under Proposal A has been undertaken; and

- **no confidential information is released** into the public domain where this information has been revealed to the TGA, for example intellectual property relating to the medical device and commercial arrangements between manufacturer and Australian sponsor.

This information would only be made available in relation to decisions made after a certain date and consultation would occur about the information to be included and the mechanism by which is it published. Consideration could also be given to whether all types or classes of medical devices should be included, with the scheme potentially:

- excluding medical devices automatically included in the ARTG;
- either:
  - limited to only higher risk classification devices such as Class IV, AIMD and implantable medical devices; OR
  - including all devices from high to low risk classification devices; OR
  - including all higher risk medical devices, and 'more interesting' lower risk devices, where the technology is new or innovative;
- limited to applications for inclusion on the ARTG only, given this is the decision which enables a medical device to be supplied in Australia (with conformity assessment decisions excluded from publication); or
- limited to successful applications for inclusion on the ARTG only, with no publication of rejected applications.

This proposal would be in the interests of improving transparency and accountability of TGA decision making processes and anticipates parts of the Product Information project under the TGA Blueprint (medical devices Proposal 4 under the December 2010 consultation). In progressing this proposal the TGA intends to initially publish general information about medical device decision making. This initial information is intended to be in the form of an abstract and/or checklist and published on the TGA website in the first instance. The Product Information project may also consider publication of additional product information. The publication of information on the regulatory decision making process is being considered in this paper, given the relevance of transparency of regulatory decision making in conjunction with Proposal A.

Benefits of proposal

This proposal would improve transparency and accountability of the TGA's decision making processes. This would include making the extent to which medical devices have (or have not) been assessed prior to inclusion in the ARTG clear, and provide a public indication where applications for medical devices have been rejected.

As outlined above, this proposal also progresses Transparency Review Recommendation 12 (on providing explanations of regulatory processes and adopting publication principles on the outcomes of application assessments), which was agreed to in principle in the TGA Blueprint, subject to further consultation with stakeholders.

- What are the risks and benefits of this proposal?
- What limits might be applied to publication of decisions, including which medical devices to which it might apply, or the way in which implementation might be phased in?

Proposal C: Abolition of requirement for TGA conformity assessment for Australian manufacturers of lower risk medical device

Under this proposal Australian manufacturers would no longer be required to seek TGA conformity assessment for lower risk medical devices (covering Class I, Is, Im, IIa and IIb non-implantable). This would also apply for Australian manufacturers of IVDs (covering Class 1, 2 and 3 IVDs). It is anticipated that this proposal would only be implemented in conjunction with Proposal A, as the rationale for relaxing the requirements under this proposal, is to move towards alignment of requirements for all medical devices. In the absence of Proposal A being implemented, no progress is being made towards such alignment.

Current situation

Sub regulation 4.1(1) of the Therapeutic Goods (Medical Devices) Regulations 2002 requires a TGA conformity assessment certificate to be issued to Australian manufacturers before they can be included on the ARTG. Sponsors of products of overseas manufacturers can generally have their products included on the ARTG on the basis of acceptable certification from a European notified body for the manufacturer and are not required to undergo TGA conformity assessment.

This requirement is intended to ensure TGA has direct control over the quality, safety and performance of medical devices manufactured in Australia.

The proposal to remove this requirement for Australian manufacturers to have TGA conformity assessment was included in the 2010 medical device reforms consultation. Respondents to the previous consultation on this option were largely supportive. However, a small number of respondents expressed concern about reducing an existing requirement in the context of other reforms to increase the rigour of premarket assessment.

The first Senate medical devices inquiry recommended that the TGA consult widely on changes to allow third party conformity assessment (which this proposal effectively does for lower class medical devices produced by Australian manufacturers), and weigh carefully the considerations of advantages of streamlined international arrangements with patient safety.

The proposal outlined differs from that in relation to which the 2010 consultation occurred in that the current proposal is limited to lower risk medical devices at this time. The EU is refining its regulation of medical devices, including governance of notified bodies. In addition, confidence building for notified bodies under the MRA needs to be undertaken prior to allowing certification issued under the MRA to be accepted for Class III and AIMD medical devices. Internationally there are also moves to strengthen and streamline international regulatory requirements for medical devices under the auspices

of the International Medical Device Regulators' Forum (IMDRF), the body replacing and continuing the work of the GHTF.

Extending the removal of the requirement for Australian manufacturers to seek TGA conformity assessment for all medical devices (rather than only those lower risk medical devices) will be considered as these changes to strengthen regulatory arrangements and processes have progressed. A decision on this needs to occur prior to the implementation of ANZTPA), so it would be clear whether such a requirement would apply to New Zealand medical device manufacturers.

How would this proposal work?

Under this proposal, Australian manufacturers continue to be required to have TGA conformity assessment for all Class III, AIMD and Class 4 IVD medical devices, as well as all implantable medical devices and/or surgically invasive devices intended for long term use.

Australian manufacturers would no longer be required to have TGA conformity assessment certification for any other medical device. In these cases, applicants could choose to rely on conformity assessment certification issued by European notified bodies to support applications for the inclusion of their products on the ARTG. All manufacturers would continue to have the option of seeking TGA conformity assessment.

Australian manufacturers utilising a European notified body for their certification may still be subject to an application audit. This discretion, under the same existing provisions for overseas manufacturers, can be used by the TGA when it is determined that the application needs more detailed assessment prior to inclusion onto the ARTG.

Benefits of proposal

This proposal focuses limited regulatory resources on higher risk devices, and reduces regulatory burden on lower risk devices. The progressive implementation, with future consideration of further changes, allows continued direct TGA oversight of higher risk devices manufactured in Australia while the rigour of assessment for overseas manufacturers is increased and changes in international arrangements are bedded down.

- What are the risks and benefits of this proposal?
- Do you agree with our proposed position? If not explain why?
- Do you have any views on how this concept could be improved?

Summary

Together this package of proposals would:

- refine a risk-based approach to regulation;
- ensure that the TGA undertakes a more comprehensive review of higher risk medical devices, in particular implantable and surgically invasive medical devices intended for long term use;
- increase transparency and accountability of the TGA's decision making; and
- allow Australian manufacturers of lower risk medical devices to have the option of European Conformity assessment for supply of their devices in Australia.

How the package of reforms fits together

These three proposals have been developed as a package of reforms, and are designed to be implemented together. Each proposal complements and reinforces the other two. In particular, Proposal C (relaxing the TGA conformity assessment requirement for lower risk Australian manufactured medical devices) is dependent on Proposal A (introducing a new level 3 audit).

A diagram outlining how Proposals A and C would function against the existing regulatory framework is included at **Attachment D**. Points at which there is an option to publish regulatory decisions as outlined at Proposal B are also marked.

Changes to regulatory compliance requirements

Overall this package of reforms significantly increases the level of scrutiny for higher risk medical devices, with a focus on implantable and surgically invasive medical devices intended for long term use.

The regulation of medical devices is about balancing the need for timely access to medical devices to gain significant health benefits to the public against the risk of medical devices not performing to the level intended. It will not always be possible to identify and mitigate all risk through premarket assessment, and postmarket surveillance will continue to be of the utmost importance in maximising the ongoing safety and effectiveness of medical devices available in Australia.

The focus of this reform package on implantable and surgically invasive medical devices intended for long term use is appropriate given the particular difficulties in dealing with issues with such devices should these become apparent through postmarket surveillance.

How the package fits into broader reforms

Opportunities for further improvement may also arise from the various other reforms currently underway for medical devices, both in Australia and internationally. These improvements are likely to result in future changes to premarket regulation.

For example, recommendations of reviews have proposed that the Government investigate the feasibility of establishing registries for high risk implantable medical devices.[5] Potential improvements in the governance of the European notified body system may allow greater confidence on conformity assessment certification from notified bodies, and allow resources focused on Level 3 audits to be redeployed as the risks in that area are mitigated. This would include allowing Australian manufacturers of high risk and implantable medical devices to use European notified bodies and a review of options for domestic third party conformity assessment raised in the December 2010 medical device consultations.

Development through IMDRF of the Medical Device Single Audit Program which would allow for a single report arising from the inspection of a manufacturer's premises conducted by only one conformity assessment body to be accepted internationally may also provide future efficiencies which would shift risks and allow different choices on the deployment of resources.

The TGA will also continue to improve its existing regulatory processes, including by ensuring that all relevant information is available to the TGA for the purpose of postmarket monitoring and compliance. Improvements such as streamlining business processes, targeting effort to risk and clarifying expectations of industry through improved guidance materials could contribute significantly to improving efficiency and increasing transparency. As noted in Proposal B, such reforms would be a necessary precondition for publication of information about regulatory decisions.

- How might the reforms be packaged together most effectively?
- How do these proposals fit into the broader reform environment?
- What changes are the highest priorities, and what reforms might be better delayed? Why?

[5] Recommendation 15 of the HTA Review recommended registers for high risk implantable medical devices and/or procedures to be established, and this was reinforced by Recommendation 7 of the Senate's Medical Devices Inquiry. In its response to the Senate's Medical Devices Inquiry the Government agreed to this in principle.

Making submissions

Content of submissions

Submissions may address any, or all, of the proposed changes to premarket assessment of implantable medical devices or other identified issues.

Throughout this document there are a number of boxes like this one. These include questions which you may wish to use as prompts in preparing your submission.

In addition, submissions might include:

- suggested improvements or alternatives to proposed changes;
- whether or not you support the specific proposals or combinations of proposals. If you do not support the proposals you may make suggestions for an alternative acceptable to you; and
- an assessment of how the proposed change will impact on you. That is, what do you see as the likely benefits or costs to you (these may be financial or non-financial). If possible, please attempt to quantify these costs and benefits. Any proposals which proceed will be the subject of further consultation to inform a Regulation Impact Statement (RIS), and any initial comments you can make will assist in developing that RIS process.

How to respond

All submissions should be accompanied by a TGA submission cover sheet. Submissions must include full personal or organizational contact details (including address, telephone number and email).

Electronic submissions are preferred and should be emailed to devicereforms@tga.gov.au. Please include **'Changes to premarket assessment of implantable medical devices**' in the subject line of the email.

Alternatively, hard copy submissions may be mailed to:

Policy and Projects Section
Office of Devices Authorisation
Therapeutic Goods Administration
PO Box 100
WODEN ACT 2606

What will happen

Submissions will be reviewed by the TGA and feedback on submissions will be provided through the TGA's Internet site.

This paper will inform the development of more detailed changes to the regulatory framework, including a RIS, for consideration and consultation in the first half of 2013.

Confidentiality

All submissions will be placed on the TGA website unless marked confidential. Any confidential material contained within your submission should be provided under a separate cover and clearly marked 'IN CONFIDENCE'. Reasons for a claim to confidentiality must be included in the space provided on the TGA submission coversheet.

For submissions made by individuals, all personal details other than your name will be removed from your submission before it is published on the TGA's website.

In addition, a list of parties making submissions will be published. If you do not wish to be identified with your submission you must specifically request this in the space provided on the submission coversheet.

Enquiries

Questions relating to submissions should be directed to the consultation project officer, Cecilia Pattison-Levi by email to devicereforms@tga.gov.au or by telephone to 02 6232 8057.

Attachments

A: Previous reports and consultations

B: Current approval process for medical devices

C: Proposed changes to medical device regulation in Europe

D: Proposed Supply Pathway for Devices (other than IVDs) in Australia

Attachment A: Previous reports and consultations

Over the past few years there have been a number of reviews and inquiries relevant to premarket assessment of medical devices. These include:

- *Review of Health Technology Assessment in Australia report* (the HTA Review);
- TGA consultations on medical device reforms (2010 and previous);
- *TGA reforms: A blueprint for the TGA's future* (the TGA Blueprint);
- Senate Community Affairs Reference Committee inquiry report on *The regulatory standards for the approval of medical devices in Australia* (Medical Devices Inquiry), and the Government response to this report (tabled 13 September 2012); and
- Senate Community Affairs Reference Committee inquiry report on *The role of the Therapeutic Goods Administration regarding medical devices, particularly Poly Implant Prosthese (PIP) breast implants* (PIP Inquiry).

HTA Review

The HTA Review report in 2009 recommended that the TGA, in the context of international harmonisation:

> 8(c) increase the rigour of regulatory assessment of higher risk medical devices by 2011, to ensure an appropriate level of evidential review is undertaken to ensure safety, quality and efficacy of these devices prior to entry on the ARTG and to provide a sound evidence basis for Commonwealth HTA processes.

Further information on the HTA Review, including a copy of the report, is available at the Department of Health and Ageing website at www.health.gov.au/internet/main/publishing.nsf/Content/hta-review.

TGA consultation

A discussion paper on options to increase regulatory assessment of higher risk medical devices was released in October 2010, with consultations undertaken in November and December 2010, and included options to:

- cease requiring Australian manufacturers to seek TGA conformity assessment (Proposal 2A);
- requiring TGA conformity assessment for all high risk devices (Proposal 2B); and
- allowing conformity assessment by third party assessment bodies (Proposal 2C).

The response to this consultation was not entirely supportive of the proposals as outlined.

The 2010 consultation built upon earlier discussion papers released by the TGA in late 2008 and early 2009 in respect of the reclassification of joint replacement implants and the use of third party conformity assessment bodies for medical devices manufactured in Australia.

Further information on previous TGA consultations, including the consultation paper and submissions received in response, is available at the TGA website at www.tga.gov.au/newsroom/consult-devices-reforms-101130.htm.

TGA Blueprint

On 23 September 2011 the TGA announced that, based on previous consultations, a number of reform proposals on medical devices would proceed to consultation with key stakeholders:

- Proposal 1: Reclassification of joint replacement implants;
  - To be implemented from 1 July 2012 with a two year transition period;
- Proposal 2: Amendments to regulatory provisions relating to third party assessment bodies and implantable medical devices;
  - Subject to further consultation on amended versions of Proposals 2A, 2B and 2C;
- Proposal 3 (i): Amend the way in which a kind of medical device is included in the ARTG (product name);
  - Options to be explored in consultation with stakeholders;
- Proposal 4: Publication of device product information on the TGA website (product information)
  - Options to be explored in consultation with stakeholders.

The TGA Blueprint also included in-principle agreement with consultation to be undertaken with stakeholders to further develop options in relation to Recommendation 12 of the Transparency Review:[6]

- The TGA explore mechanisms for providing explanations on its various regulatory processes, and the TGA adopt publication principles on the outcomes of application assessments using as an exemplar the Australian Public Assessment Reports (AusPAR).

In December 2011 these activities were incorporated into *TGA reforms: A blueprint for the TGA's future*. This document draws together a broad range of reform activity from across the TGA operations, and is available at www.tga.gov.au/about/tga-reforms-blueprint.htm, together with the related implementation plan which was released in July 2012, which is available at www.tga.gov.au/about/tga-reforms-blueprint-implementation.htm.

Senate medical devices inquiry

On 16 June 2011 the Senate Community Affairs References Committee commenced an inquiry into the regulatory standards for the approval of medical devices in Australia. The committee tabled its report on 22 November 2011, and included a number of recommendations relevant to and supportive of greater regulatory rigour in the premarket assessment of higher risk medical devices. As outlined below, in its 13 September 2012 response to this report the Government largely agreed to these recommendations.

[6] *Review to improve the transparency of the Therapeutic Goods Administration - Final Report* (June 2011)

Recommendation 2

The committee recommends that the Department of Health and Ageing fully implement Recommendation 8c of the Health Technology Assessment Review regarding the need for increased rigour of regulatory assessment of higher-risk medical devices.

Government response: Agreed.

Recommendation 3

The committee recommends that the level of assessment of Class III medical devices be increased.

Government response: Agreed to consult further with affected stakeholders.

Recommendation 4

The committee recommends that the Therapeutic Goods Administration investigate whether allowing an increasing number of medical devices onto the Australian market actually improves clinical outcomes; and whether a more judicious approach could improve premarket assessment and postmarket surveillance of higher risk medical devices, for the ultimate benefit of patients.

Government response: Agreed with the intent, to improve the quality of medical devices available in the Australian market place by continuing to refine requirements for premarket assessment and postmarket surveillance.

Recommendation 5

The committee recommends that the Therapeutic Goods Administration continue to consult widely with stakeholders, including consumer health organisations, on the amended proposals related to third party conformity assessment; and weigh carefully considerations of the advantages of streamlined international regulatory frameworks and patient safety.

Government response: Agreed.

Recommendation 7

The committee recommends that the Department of Health and Ageing implements Recommendations 13, 14, and 15 of the Health Technology Assessment Review in a timely manner. These recommendations address the need for improved postmarket surveillance by increasing the rate of reporting of adverse events, including by health service providers and consumers; facilitating the expansion and use of postmarket surveillance data to inform safety, effectiveness and reimbursement decisions; and establishing further clinical registers for high risk implantable devices and procedures.

Government response: Agreed in principle.

Further information on the Inquiry, including transcripts of public hearings, submissions made to the committee, the Committee's report and the Government's response, are available at the Medical Devices Inquiry website at www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=clac_ctte/medical_devices/index.htm.

Senate PIP inquiry

On 8 February 2012 the Senate Community Affairs References Committee also commenced an inquiry into role of the Government and the TGA regarding the approval and monitoring of medical devices listed on the ARTG, including issues around Poly Implant Prothese (PIP) breast implants. While recommendations of this inquiry focused more on the administration of the existing regulatory framework and postmarket monitoring of medical devices, a number of recommendations were proposed for action:

Recommendation 9

> The committee recommends that, in light of the PIP breast implant recall, the Department of Health and Ageing establish an opt-out Breast Implant Registry as a priority. The design of such a registry should be based on the National Joint Replacement Registry.

Recommendation 11

> The committee recommends that the Department of Health and Ageing implement recommendations 13, 14 and 15 of the HTA Review recommendations as soon as possible. The committee notes this recommendation was also made in its 2011 report on regulation of medical devices (recommendation 7).

The Government has not yet responded to the PIP report.

Further information on the Inquiry, including transcripts of public hearings, submissions made to the committee and the Committee's report are available at the PIP Inquiry website at:
www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=clac_ctte/implants_2012/index.htm.

Attachment B: Current approval process for medical devices

The following section provides a high level overview of the current approval process for medical devices.

For medical devices to be lawfully supplied within Australia the manufacturer must obtain appropriate conformity assessment for the medical device, and the sponsor must have the medical device included on the Australia Register of Therapeutic Goods (ARTG).

Australia's regulatory framework is a principles based system. For a medical device to be supplied in Australia, it must demonstrate that the relevant Essential Principles have been met. There are six general Essential Principles that apply to all devices, and a further nine Essential Principles about design and construction that apply to devices on a case-by-case basis.

- **General principles:**
  - Use of medical devices not to compromise health and safety;
  - Design and construction of medical devices to conform to safety principles;
  - Medical devices to be suitable for intended purpose;
  - Long-term safety;
  - Medical devices not to be adversely affected by transport or storage; and
  - Benefits of medical devices to outweigh any side effects.
- **Principles about design and construction:**
  - Chemical, physical and biological properties;
  - Infection and microbial contamination;
  - Construction and environmental properties;
  - Medical devices with a measuring function;
  - Protection against radiation;
  - Medical devices connected to or equipped with an energy source;
  - Information to be provided with medical devices;
  - Clinical evidence; and
  - Principles applying to IVD medical devices only.

This principles based regulatory framework provides flexibility for manufacturers and caters for technological advances and changes in the development of new medical devices by not dictating how a manufacturer must prove that they have met the Essential Principles.

While all devices must comply with the Essential Principles, how onerous both the conformity assessment and ARTG application processes are for a given medical device depends primarily on the degree of risk associated with the device:

Level of Risk	Medical Device Classification	IVD Classification
Low	Class I	Class 1 IVD no public health risk or low personal risk
Low-medium	Class I - supplied sterile Class I - incorporating a measuring function Class IIa	Class 2 IVD low public health risk or moderate personal risk
Medium-high	Class IIb	Class 3 IVD moderate public health risk or high personal risk
High risk	Class III Active Implantable Medical Devices (AIMD)	Class 4 IVD high public health risk

Conformity assessment

A manufacturer must be able to demonstrate that both the device and the manufacturing processes used to make the device conform to regulatory requirements. Conformity assessment is the systematic and ongoing examination of evidence and procedures to ensure that a medical device complies with the Essential Principles. The classification of a medical device determines the conformity assessment procedures a manufacturer can choose to ensure that the device is adequately assessed. Higher classification devices must undergo more stringent conformity assessment procedures than lower classification devices.

Conformity assessment of manufacturers may be conducted in Australia by the TGA, or it may utilise an assessment conducted by a European notified body. Direct conformity assessment by the TGA occurs for approximately 3% of products supplied in Australia. For the remainder of products almost 50% are low risk Class I products which are self certified by industry, while the balance utilise an assessment conducted by the European notified body.

Application for inclusion on the Australian Register for Therapeutic Goods

The ARTG is a register of therapeutic goods accepted for importation into, supply for use in, or exportation from Australia. Medical devices cannot generally be imported, supplied in, or exported from Australia unless they are included in the ARTG. Only an Australian sponsor can apply to include a medical device in the ARTG.

Applications by sponsors for inclusion on the ARTG are also reviewed differently based on their classification risk. The conformity assessment of Class I products is done by self assessment by the manufacturer where they do not involve a measuring function or require sterilisation. These products can then be included in the ARTG by the sponsor without review.

For higher risk classification devices certain products require a mandatory application audit to be applied (which is subject to a fee). Other applications may also be subject to an audit if the TGA identified a requirement to examine the application more closely. In these cases a fee is not applicable but the application will not be approved for inclusion on the ARTG until the information required by the TGA is provided and assessed as appropriately supporting the application.

There are two levels of audit. A level 1 audit may examine documentary evidence of the conformity assessment, and information about the device, including copies of the label, instructions for use and advertising material. A level 2 audit, in addition to the documentation which may be examined for a level 1 audit, may also examine risk management and clinical evaluation reports, and efficacy and performance data for medical devices that disinfect including sterilisation of other medical devices.

Mutual Recognition Agreement (MRA) with the European Union

Australia has a Mutual Recognition Agreements (MRA) with the European Union in relation to conformity assessment. The underlying principle of this MRA is that both the European Union and Australia recognise and accept the technical competence of each other's conformity assessment bodies to certify products for compliance with the regulatory requirements of the other party, largely eliminating the need for duplicative testing or re-certification when the goods are traded.

The Council of the European Union and the Australian Parliament have recently completed all the domestic procedures that are necessary to bring into force a number of amendments to the European Union-Australia MRA on conformity assessment. This Amended MRA was implemented on 1 January 2013.

The majority of the amendments to the MRA are administrative in nature and seek to simplify the management of the MRA. However, the amendments also include some operational changes and will exclude a number of high risk medical devices from the MRA. The majority of these devices will only be excluded until confidence building activities are carried out by both parties. These changes include, but are not limited to the following:

- A range of high risk medical devices (including all Class III devices) will no longer be able to be assessed under the MRA, until confidence building activities have been undertaken by Australia and the European Union;
- Radioactive medical devices of lower risk classes will be included in the MRA;
- The range of excluded barrier contraceptives will be expanded such that condoms will be excluded from the agreement, until confidence building activities have been undertaken by Australia and the European Union; and
- The amendments clarify and expand the scope of medical devices containing medicines or materials of biological origin that will be excluded from the MRA.

In order to ensure that device manufacturers and certification bodies have time to incorporate these MRA changes into their organisational plans, preliminary transition arrangements have been agreed to by the European Union and Australia.

Further information on the changes and transitional arrangements is available on the TGA website. www.tga.gov.au/about/international-eu-mra-amendments.htm

Attachment C: Proposed changes to medical device regulation in Europe

On 26 September 2012, the European Union (EU) Commission adopted a package on innovation in health consisting of:

- the Communication on safe, effective and innovative medical devices and in vitro diagnostic medical devices for the benefit of patients, consumers and healthcare professionals;
- the Proposal for a Regulation of the European Parliament and of the Council on medical devices, and amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009; and
- the Proposal for a Regulation of the European Parliament and of the Council on in-vitro diagnostic medical devices.

The EU is proposing updated regulations on medical devices to ensure these products are safe, and can be freely and fairly traded throughout the EU.

Issues

- Existing EU rules - dating back to the 1990s – have not kept pace with the enormous technological and scientific progress in the past 20 years.
- EU countries interpret and implement the current rules in different ways.
- It is not always possible to trace medical devices back to their supplier.
- New rules on traceability are needed.
- Patients, healthcare professionals and other interested parties do not have access to essential information on how medical devices have been assessed, and what clinical evidence there is to show they are safe and effective.
- The need for greater transparency has been highlighted by recent events relating to silicone breast implants and some metal-on-metal hip replacements.

Anticipated benefits

Manufacturers: clearer rules, easier trading between EU countries and a level playing field, with penalties for those who don't play by the rules. The new rules support patient-oriented innovation and take particular account of the specific needs of the many small and medium sized manufacturers in this sector.

Healthcare professionals: better information on the benefits for patients, residual risks and the overall risk/benefit ratio will help them make the best use of medical equipment.

Patients and consumers: all medical devices will have to undergo thorough, independent assessment of safety and performance before they can be sold on the European market.

Controls will not block or unduly delay access to innovative, cost-effective devices for all European patients and consumers.

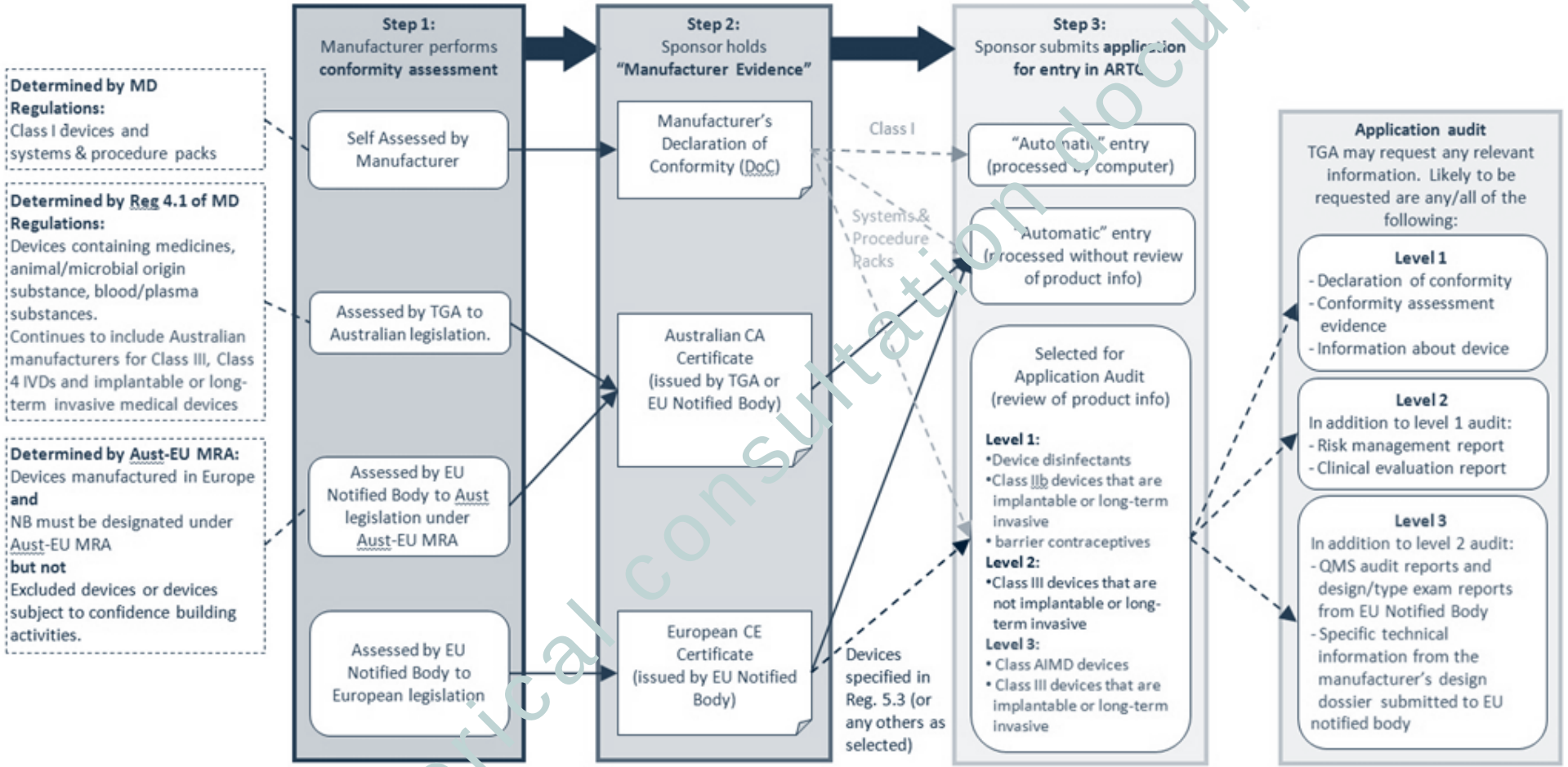
Reforms

- Wider, clearer scope for EU legislation on medical devices - extended to include, for example, implants for aesthetic purposes, and clarified as regards genetic tests
- Stronger supervision of independent assessment bodies by national authorities
- More powers for assessment bodies to ensure thorough testing and regular checks on manufacturers, including unannounced factory inspections
- Clearer rights & responsibilities for manufacturers, importers and distributors, which would also apply to diagnostic services and internet sales
- Extended Eudamed database on medical devices - will provide comprehensive information on products available on the EU market. Non-confidential data will be publicly available
- Better traceability of medical devices throughout the supply chain - enabling a swift and effective response to safety problems (for example recalls)
- Stricter requirements for clinical evidence to support assessments of medical devices
- Updated classification rules dividing medical devices into 4 different risk categories and health & safety requirements, including labelling rules - to keep pace with technological and scientific progress
- Better coordination between national surveillance authorities, with the Commission providing scientific, technical and logistic support
- International guidelines to be incorporated into EU law.

Proposals key dates to come into effect

- Target for adoption of the proposed changes to medical device regulation is 2014.
- The new rules would then gradually come into effect from 2015 to 2019.

Attachment D: Proposed Supply Pathway for Devices (other than IVDs) in Australia



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Reference/Publication #