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AusBiotech is pleased to provide comments on the ‘Accelerated assessment of medical devices – Priority Review pathway; Implementation Version 1.0, November 2016’.

AusBiotech is a well-connected network of over 3,000 members in the life sciences industry, which includes bio-therapeutics, medical technology (devices and diagnostics), food technology, industrial and agricultural biotechnology sectors. The industry consists of an estimated 900 biotechnology companies (400 therapeutics and diagnostics and 400 – 900 medical technology companies) and employs in excess of 45,000 Australians.

AusMedtech, an AusBiotech program, is dedicated to the development, growth and prosperity of the Australian medical technology (device and diagnostics) industry, by providing initiatives to facilitate success in product development, manufacturing and commercialisation, and encouraging links between industry, research and governments.

The AusMedtech Regulatory Affairs Expert Panel is an expert group from amongst AusBiotech’s member organisations, who provide advice on matters including the regulation of medical devices. The Panel members have reviewed the consultation document and joined AusBiotech’s broader membership to form the basis of this submission.

AusBiotech would like to commend the Therapeutic Goods Administration (TGA) on their continuing efforts to work with industry to reform and improve its service. AusBiotech is supportive of the TGA’s intention to implement an accelerated assessment pathway for medical devices, referred to in their paper as Priority Review. We understand that this pathway will continue to require medical devices to meet the essential principles, including clinical evidence requirements, while expediting assessment through administrative changes. Further, we acknowledge that the implementation of Priority Review as an accelerated assessment pathway is in response to Recommendations 15 and 19 of the March 2015 report of the Medicines and Medical Devices Review (MMDR) and its later acceptance by the Federal Government in September 2016. The recommendations are reproduced below and state:

**Recommendation Fifteen**
The Panel recommends that: [...] 
2. In order to provide timely access to devices that are safe, high quality and fit for purpose, there be multiple pathways to seek approval for the inclusion of other classes of medical device in the ARTG. Such pathways to provide for: [...] 

*Pathway Three: Expedited approval of medical devices in certain circumstances.*

**Recommendation Nineteen**
The Panel recommends that:
1. The Australian government develop transparent criteria under which application may be made for accelerated assessment of novel medical devices for inclusion in the ARTG. 
2. In circumstances where accelerated assessment is granted, the Australian NRA have capacity to place conditions on the inclusion of the medical device in the ARTG.

In principle, AusBiotech supports the addition of a Priority Review pathway to create a means for expedited approval of medical devices in certain circumstances. It appears that the proposed implementation plan outlined in the TGA’s consultation paper, however, does not satisfy the intent of the MMDR recommendations, in particular Recommendation Nineteen (19.2). As proposed, the Priority
Review Pathway will likely result in limited and inconsequential reduction in review times as it allows for expediting assessment through administrative changes only (queue-jumping). This will result in limited benefit to the Australian public and to manufacturers/sponsors.

It is clear that the intent of Recommendation 19.2 is to enable the Australian National Regulatory Authority to accelerate assessment of novel and much-needed medical devices by placing certain conditions on the inclusion of the medical device on the Australian Register of Therapeutic Goods (ARTG). This would require, for example, medical devices to still meet the essential principles (as occurs in other regulatory jurisdictions), however, be more strongly supported by post-market data rather than full reliance on pre-market data. The very nature of innovative devices, or existing devices with new and novel intended purposes, means that there can be limited clinical data available. The benefit/risk profile for innovative medical devices striving to service certain patient populations would likely tolerate the shift of emphasis from pre-clinical to post-clinical data. AusBiotech proposes that the TGA consider a ‘provisional approval’, as recommended for medicines in certain circumstances, as this type of process could more adequately address the need for making available, in a timely fashion, innovative devices to the patient populations that need them.

A key concern for our industry is that the pathway, as currently proposed, may adversely impact wait times for the vast majority of industry members that would be following the ‘business as usual’ pathway if it is not adequately resourced. In addition, the availability and accessibility (in a timely manner) of subject matter experts to allow for rapid and adequate assessment of applications may be limited since these devices will be incorporating novel and in many cases unprecedented technologies and/or clinical applications. This is especially significant if there is a continued expectation for full clinical evaluation reports.

Responses to specific questions asked within the consultation paper follow, along with some additional comments.

**Current environment**

- Are there any other environmental issues that would inform or benefit the development of this proposal?
- Are there other issues to be considered in developing this proposal?

AusBiotech recommends that additional consideration be given to the fact that the benefit/risk profile may be different for specific subgroups of patients. That is, the novel medical device may not have favourable benefits/risk profile from a public health perspective. However, a certain cohort of patients may be able to tolerate greater risk (i.e. less pre-submission clinical evidence) and the TGA could consider restriction of the intended use to this patient population via the addition of conditions to the ARTG entry.

We also suggest that the impact of the proposed implementation of a Priority Review pathway on insurers as a stakeholder group should be given consideration.
Principles and criteria

- Are the criteria appropriate to restrict acceptance for Priority Review to the truly new and novel devices for patients in immediate need? Noting that acceptance of a large number of applications would undermine the viability of Priority Review.

- Do the proposed criteria cover all issues which should be considered in assessing a medical device for Priority Review designation?

- What is your estimated likelihood of making an application for a medical device to have Priority Review designation?

The majority of the principles outlined in the paper are very important to uphold and AusBiotech emphasises the criticality of the Principle #8. However, we do not support Principle #5.

**Principle #8: The designation and registration processes should not result in an unreasonable diversion of TGA resources from business as usual activities.**

The vast majority of manufacturers will NOT require access to this pathway, however, they would be unfairly impacted if this principle were not upheld.

**Principle #5: There will be transparency of the criteria, and of designation and registration decisions.**

The proposal to make designation and registration decisions publicly available is not supported as the review (as currently proposed) is no different from a business-as-usual review process. This could lead to competitive disadvantage for the manufacturer of novel devices.

- Are the criteria appropriate to restrict acceptance for Priority Review to the truly new and novel devices for patients in immediate need? Noting that acceptance of a large number of applications would undermine the viability of Priority Review.

The proposal as outlined would certainly restrict acceptance, however, we have concerns that given the time needed to collect the degree of clinical data required there would not be any real gain in time to market overall for patients in immediate need.

We also have concerns that ‘large numbers of applications’ will only ‘undermine the viability of Priority Review’ if the TGA is not adequately resourced. Criteria should not be restricted based on the desire to limit resources. The majority of manufacturers/sponsors and the Australian public would be willing to support, through appropriate cost recovery, the expedited availability of truly novel medical devices or novel applications of medical devices, regardless of how many are registered for approval.

- Do the proposed criteria cover all issues which should be considered in assessing a medical device for Priority Review designation?

AusBiotech proposes that the criteria for Priority Review designation include the following, which is part of the US Food and Drug Administration’s criteria for priority review:

_The availability of the device is in the best interest of patients. That is, the device provides a specific public health benefit, or meets the need of a well-defined patient population. This may also apply to a device that was designed or modified to address an unanticipated serious failure occurring in a_
critical component of an approved device for which there are no alternatives, or for which alternative
treatment would entail substantial risk of morbidity for the patient.

In addition, we do not support in vitro devices (IVDs) being singled out (final criterion - in the case of in
IVDs ONLY, early availability in Australia will result in a major public health benefit) - as it appears that the
same would apply to all medical devices, not just IVDs. AusBiotech requests additional clarification of this
criterion.

The criteria are heavily weighted to extensive pre-market clinical data (as per TGA’s current practice).
Therefore, the potential gains in time to market are minimal and as such we do not believe that the
proposal achieves the objective as specified by the MMDR. The aim is to encourage the development of
novel devices and/or of novel applications of current devices and deliver them to the populations that
would benefit from them in an expedited manner. We contend that less dependence on pre-clinical data,
which is almost always going to be limited for novel devices, would achieve a far better outcome for those
situations where the benefits would still outweigh the risks.

- What is your estimated likelihood of making an application for a medical device to have Priority
  Review designation?

It is highly unlikely that manufacturers and sponsors would view the Priority Review Pathway as having
utility if the criteria remain as indicated.

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<th>Implementation of Priority Review</th>
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<td>Is the proposed sponsor alert timeframe adequate for industry?</td>
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Decisions will need to be made promptly, within six (6) weeks. Large submissions will undermine this, as
will applications that are incomplete in meeting the criteria. Will applicants be able to present a
succinct and compelling argument for Priority Review designation, independent of the full application
process?

In the proposed implementation it is expected that sponsors on receipt of designation advice will
promptly submit their full application for conformity assessment or inclusion. Is this a reasonable
expectation?

It is proposed that priority review status will be revoked if timeframes for reply to request for
information are not met. Is the existing practice of a twenty (20) working day timeframe appropriate?

Is the proposed approach to publication of Priority Review applications and decisions appropriate?

Is the proposal to publish medical device product information for consumers supported, and what
extent of detail would consumers seek?

Is the Priority Review pathway for designated applications adequately detailed? If not, which areas are
unclear or require more detail?
Is the proposed sponsor alert timeframe adequate for industry?

A shorter alert time is recommended as the sponsor will generally be well prepared prior to making the alert. However, we acknowledge the challenge for the sponsor to identify relevant medical experts to provide support for the submission of novel devices or novel applications of existing devices.

Decisions will need to be made promptly, within six (6) weeks. Large submissions will undermine this, as will applications that are incomplete in meeting the criteria.

We suggest that six weeks is too long for a decision to be made on priority review acceptance and therefore defeats the purpose of expedited review, especially if the sponsor alert timeframe remains as four weeks. The four week timeframe could be used by the TGA to have a team assembled and ready for review, especially as there is no further reduction in time expected except from that achieved through jumping the queue.

Will applicants be able to present a succinct and compelling argument for Priority Review designation, independent of the full application process?

This will depend, to a certain degree, on the guidance documents clearly describing the format and type of information required by the TGA to make a decision. Being novel devices, different types of information may be required depending on the individual device. It is expected there will be a need for sponsors to collaborate closely and efficiently with the TGA through the designation review process.

In the proposed implementation it is expected that sponsors on receipt of designation advice will promptly submit their full application for conformity assessment or inclusion. Is this a reasonable expectation?

Yes, this is a reasonable expectation. It is anticipated that close collaboration and communication with the TGA may be required through this period as expectations may be difficult to predict. AusBiotech recommends that some tolerance should be both expected and permitted throughout this process. Value comes from the collaboration and resultant education of the TGA in the novel technology.

It is proposed that priority review status will be revoked if timeframes for reply to request for information are not met. Is the existing practice of a twenty (20) working day timeframe appropriate?

Yes, it is agreed that twenty (20) working days is an appropriate timeframe.

Is the proposed approach to publication of Priority Review applications and decisions appropriate?

No, we do not believe that the approach is appropriate. Publication of applications is not relevant to the assessment phase of the process and the current application decisions are not published. Therefore, given the proposed Priority Review does not impact the assessment pathway, applications processed via the Priority Review should not be subject to a differential publication. This raises the following concerns:

1. It introduces a disclosure that could disadvantage the device owner with no accompanying benefit for the public, therefore imposing a competitive disadvantage.

2. It appears to be against the intent of the Advertising Code that prohibits the mentioning of unapproved devices so as to not create unrealistic expectations on device availability.
Is the proposal to publish medical device product information for consumers supported, and what extent of detail would consumers seek?

We do not consider this an appropriate approach. Publication of medical device product information for consumers is not a requirement for business as usual ARTG entries and therefore should not be required for applications processed via Priority Review. Publication as proposed would be detrimental to the product owner (as above) and it also may send a message to users/consumers that the device has had different/less scrutiny than other business as usual assessments and therefore may pose a potential risk. If the Priority Review pathway was in any way different (e.g. an expedited review based on less clinical data than business as usual applications) then this approach would be warranted.

Additional Comment:
The TGA aims to….. The checklist will be used to ensure that the application is complete and of good quality i.e. it includes unredacted copies of FDA and/or EC assessment reports to document overseas approval. (p 12)

It is not part of the ‘business as usual assessment requirements’ to provide US FDA or EC assessment reports to TGA and therefore it is unclear why these requirements are listed here. However, it should be noted that we would welcome the opportunity to submit unredacted copies of FDA and/or EC assessment reports to document overseas approval.

TGA operational impacts

- Are there any gaps in the proposed implementation plan?
- What aspects of the proposed implementation would you suggest for inclusion in a post-implementation review?
- What timeframe would you suggest for the review – 1 year, 2 years or 3 years after commencement?

- Are there any gaps in the proposed implementation plan?

Experts in the area of the specific novel technologies and/or clinical applications of innovative medical devices may be limited in number. Therefore, we propose that the TGA provide assurances that they will be able to identify and ensure rapid access to available experts to meet the proposed timeframes.

- What aspects of the proposed implementation would you suggest for inclusion in a post-implementation review?

Other than those identified, there are none at this stage.

- What timeframe would you suggest for the review – 1 year, 2 years or 3 years after commencement?

We do not believe that one year is reasonable, as it is unlikely high numbers of applications will be received. We suggest that two to three years may be more appropriate, however, it would be preferable that the review occurs after ‘x’ number of applications rather than be limited by time. Therefore, the value of the pathway should be assessed based on a statistically relevant number of applications.
**Additional Comments:**

*Designation for Priority Review will be revoked if..... (p13)*

The conditions under which the designation for Priority Review will be revoked (p 13) are generally acceptable, however, we recommend that ‘the eligibility criteria for Priority Review are no longer met’ condition should be more clearly explained, including details of the TGA’s course of action if two applications for similar devices for Priority Review designations are received concurrently (or close together). In this instance would one application be accepted and the other not, and, how would this decision be made? Further, if application is accepted for Priority Review but does not subsequently deliver an adequate submission – this would unnecessarily delay review of the alternative application.

*Post-market scrutiny will apply consistently as for any device assessed through the normal submission (p 13)*

This is, of course, acceptable and expected, however AusBiotech members prefer to see more reliance on post-market versus pre-market evidence in the cases of these novel products in order to hasten availability of product to the patient populations they will assist (benefits outweigh risks).

*Cost Recovery (p 14)*

The current proposal for cost recovery to occur through a Priority Review application fee is considered appropriate. It is noted that annual fees would not be impacted, however, most AusBiotech members would support a modest increase in annual fees if there was confidence that the pathway will yield devices being available sooner for at-need patient populations.

In summary, AusBiotech supports the implementation of a Priority Review pathway that fully addresses Recommendation Fifteen and Nineteen of the MMDR. However, we recommend that the TGA consider the recommendations proposed in our submission to enable the development a Priority Review Pathway, that would deliver real beneficial outcomes to patients by accelerating not only the application for designation but also the assessment of novel medical devices for conformity assessment and/or ARTG inclusion.