



**Australian Government**

**Department of Health and Ageing**  
Therapeutic Goods Administration

# **Proposed amendments to the new regulatory framework for *In Vitro* Diagnostic medical devices (IVDs)**

Version 1.0, 30 April 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. 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](http://www.tga.gov.au)>.

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## Version history

Version	Description of change	Author	Effective date
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## Introduction

*In vitro* diagnostic medical devices (IVDs) are pathology tests and related instrumentation used to carry out testing on human samples. The results of these tests are intended to assist in clinical diagnosis and management. IVDs are typically used in diagnostic laboratories, other laboratories (blood and tissue screening laboratories), at point of care, and in some cases in the home.

The new regulatory framework for IVDs commenced on 1 July 2010 and comes into full effect at the end of a four year transition period on 30 June 2014.

A number of outstanding issues have been identified in relation to the regulation of IVDs under the new framework, particularly in relation to difficulties some members of the sector anticipate in achieving timely compliance with the new requirements.

## Purpose

This paper canvasses some limited and specific amendments to the new Regulatory Framework for *In Vitro* Diagnostic Medical Devices. The TGA invites comments from stakeholders on the proposed options to assist the TGA with its consideration of the issues relating to compliance with the IVD regulatory framework.

This is a consultation paper and does not represent the TGA's final view on the issues raised.

## Is there a need for change?

This paper has been developed to address issues raised by various members of the IVD sector concerning their ability to comply with the new regulatory framework and to ensure the continuity of supply of key IVDs in Australia.

## Background

### The new regulatory framework for IVDs

The new framework for IVDs was introduced to ensure that IVDs undergo a level of regulatory scrutiny that is commensurate with the risks associated with their use. Under the framework, IVDs are regulated as medical devices and, unless exempt, all IVDs must comply with the new requirements from 1 July 2014.

The framework has the following features:

- a 4-tier classification schema (Class 1-4 IVD) based on different levels of risk for each class of device, with Class 4 being the highest risk classification (the 4-tier classification schema is provided in Appendix 1);
- a requirement that all commercial IVDs and Class 4 in-house IVDs for therapeutic use are included in the ARTG from 1 July 2014;
- all IVDs must comply with a set of Essential Principles for quality, safety and performance;
- conformity assessment procedures, based on risk classification, to be applied by manufacturers to demonstrate initial and on-going compliance with the Essential Principles;
- provisions for post-market monitoring, including compliance testing, adverse event reporting and recall procedures.

### What's in and what's out of the new IVD framework?

IVDs are regulated under Chapter 4 of the *Therapeutic Goods Act 1989* (the Act) and the Therapeutic Goods (Medical Devices) Regulations 2002 (the Medical Devices Regulations).

All IVDs, whether previously (prior to 1 July 2010) registered, listed or exempt, are to be regulated under the new framework from 1 July 2014. This includes tests for serious infectious diseases, tests for screening blood, tissues and organs and cellular products for safety and compatibility, pregnancy tests, glucose monitors, and genetic tests (with the exception of those such as kinship testing that do not have a therapeutic purpose and therefore do not fall within the remit of the Act).

The new framework encompasses both commercially manufactured IVDs as well as in-house IVDs (those IVDs developed or modified by providers for use in their own laboratories). The TGA was asked by the Australian Health Ministers' Advisory Council (AHMAC) to address the level of regulatory oversight of in-house IVDs. From the earliest discussions on the development of a new regulatory framework for IVDs it was intended that in-house IVDs would be subject to the new requirements. Following public consultation, agreement on the new IVD framework was reached in 2003-04 after consideration by AHMAC and the Australian Health Ministers' Conference.

## Regulation of IVDs prior to the introduction of the new regulatory framework

Prior to 1 July 2010, IVDs were regulated as diagnostic goods for *in vitro* use under Parts 3-2 and 3-3 of the Act in conjunction with the Therapeutic Goods Regulations 1990. Tests for Human Immunodeficiency Virus (HIV) and Hepatitis C Virus (HCV) were required to be registered in the ARTG. Tests for home use (pregnancy tests and glucose monitoring kits), tests that include human origin material, blood collection tubes or diagnostic goods for *in vitro* use that were listed on the Pharmaceutical Benefits Scheme (PBS) were required to be listed in the ARTG.

All IVDs listed, registered, or currently exempt from entry in the ARTG may continue to be regulated under the pre-existing framework until 30 June 2014. However, any new commercial IVDs introduced to the Australian market after commencement of the transition period on 1 July 2010 must be included in the ARTG prior to supply.

## International regulation of in-house IVDs

The new framework largely reflects the philosophies and recommendations of the Global Harmonization Task Force (GHTF), thereby ensuring that Australian regulatory practice is consistent with the direction of developments in the global regulatory community.

That said, the GHTF guidelines do not specifically address the regulation of in-house IVDs, and at the present time the majority of other overseas regulators exclude these from the requirements of their regulatory frameworks.

To date, the US is the only other jurisdiction to regulate in-house IVDs substantively. While “laboratory developed tests” (the designation given to in-house IVDs) are currently exempt from review by the US Food and Drug Administration (FDA), they are nevertheless regulated under the provisions of the Clinical Laboratory Improvement Amendment 1988, that established quality standards for, and oversight of all laboratories conducting testing on human specimens for the diagnosis, prevention or treatment of disease. The US has also promulgated regulations covering Analyte Specific Reagents, which are used as the basis of laboratory developed IVDs.

On 26 September 2012 the European Commission (EC) released a proposal for new IVD Regulations that will replace the current *In Vitro* Diagnostic Medical Devices Directive (IVDD). The Regulations are to include requirements for in-house IVDs that ensure a higher level of safety and performance for high risk IVDs, irrespective of their place of manufacture. The EC proposal requires review by the European Parliament and Council but is expected to be adopted in 2014-2015, with a five year transition period.

## Issues and proposals

The following describes several key outstanding issues identified during the first two years (July 2010 – July 2012) of the transition period of the new regulatory framework for IVDs and presents proposals to address these for consideration and comment by stakeholders.

### Issue 1: timeframe for valid applications for inclusion in the ARTG

#### Current situation

To ensure continuity of supply, under the transition provisions for the new regulatory framework for IVDs, valid applications for the inclusion of all commercial IVDs and Class 4 in-house IVDs in the ARTG must be lodged with the TGA by 30 June 2014.

Prior to applying for inclusion in the ARTG,

- Australian manufacturers of Class 2, 3 and 4 IVDs,
- overseas manufacturers of Class 4 IVDs, and
- Australian laboratories providing services using Class 4 in-house IVDs, must first obtain TGA Conformity Assessment Certificates for their products. This is irrespective of whether they hold certificates or licences issued by overseas bodies.

A TGA conformity assessment requires the manufacturer or laboratory to demonstrate that both the IVD and the process used to manufacture it conform to the requirements of the therapeutic goods legislation.

#### Issues with the timeframe for inclusion in the ARTG

The legislated timeframe for evaluation of an application for TGA conformity assessment including design examination is 255 TGA working days. The TGA has become aware that some manufacturers may have difficulty submitting applications for TGA conformity assessment in time to allow assessment to be completed prior to the end of the transition period.

The TGA expects that many IVDs, for which applications for TGA conformity assessment have not yet been lodged, will be unable to meet the requirement to lodge a valid ARTG application by 30 June 2014.

### Proposal 1A: staged transition to the new IVD framework

*The transition would be staged to allow additional time for compliance with the new regulatory framework. Commercial manufacturers would be required to submit valid applications for TGA conformity assessment certification by 30 June 2014, and valid applications for inclusion in the ARTG would be required by 30 June 2015.*

### How would the proposal work?

Under this proposal, Australian commercial manufacturers of Class 2 and 3 IVDs and *all* commercial Class 4 IVD manufacturers would be required to lodge valid applications for TGA conformity assessment certification by 30 June 2014. The lodgement of valid applications for inclusion in the ARTG would be subject to a new deadline of 30 June 2015, and supply of the IVDs would be permitted to continue during the intervening period.

Additional measures are proposed in relation to specific issues of concern with respect to laboratories using Class 4 in-house IVDs. These are presented in section two of this paper.

### Benefits of the proposal

This proposal is intended to facilitate continuity in the supply of IVDs to the Australian market by providing additional time for commercial manufacturers to obtain their TGA Conformity Assessment Certificates and seek inclusion in the ARTG.



- What are the risks and benefits of this proposal?
- Does this proposal provide sufficient time for commercial manufacturers and sponsors of Class 4 IVDs to apply for inclusion in the ARTG?

### Proposal 1B: retain existing timeframes for transition to new regulatory framework

Retain the legislated timeframes, with manufacturers and sponsors of commercial IVDs and Class 4 in-house IVDs required to lodge valid applications for inclusion in the ARTG by 30 June 2014.

### How would the proposal work?

Under this proposal there would be no changes made to the new regulatory framework for IVDs. Manufacturers and sponsors of commercial IVDs and Australian laboratories providing services using Class 4 in-house IVDs would continue to be required to submit their applications for inclusion in the ARTG by 30 June 2014. Any products without TGA Conformity Assessment Certificates prior to that date would be unable to maintain continuity of supply.

### Benefits of the proposal

This proposal reflects the status quo, and requires all commercial and Class 4 in-house IVDs supplied from 1 July 2014 to be included in the ARTG.



- What are the risks and benefits of this proposal?
- Do the current timeframes provide sufficient time for transition to the new framework?

## Issue 2: regulatory requirements for Class 4 in-house IVDs

### Current situation

A conformity assessment is the systematic and ongoing examination of evidence concerning the safety, performance, benefits and risks of an IVD and of the procedures and processes used to manufacture it. A conformity assessment is intended to ensure an IVD complies with the Essential Principles and other requirements of the therapeutic goods legislation.

The classification of an IVD determines the conformity assessment procedure to be applied. Devices with a higher classification (higher risk) must undergo a more stringent conformity assessment than devices with a lower classification.

With respect to in-house IVDs, the following requirements apply:

- Although in-house IVDs in Classes 1, 2 and 3 are exempt from inclusion in the ARTG they must comply with the Essential Principles, and with the conformity assessment procedures specified in Part 6A of Schedule 3 of the Therapeutic Goods (Medical Devices) Regulations 2002. These include:
  - the requirement for each laboratory to hold National Association of Testing Authorities (NATA)/ Royal College of Pathologists of Australasia (RCPA) accreditation as a medical testing laboratory;
  - compliance with the National Pathology Accreditation Advisory Council (NPAAC) standard for the development and use of in-house IVDs; and
  - the requirement to notify the TGA annually of Class 1, 2 and 3 in-house IVDs manufactured in the previous year.
- Laboratories that utilise Class 4 in-house IVDs are also required to hold a TGA conformity assessment certificate [either full Quality Management System (QMS) and design examination, or production QMS and type examination] issued prior to 1 July 2014 to enable valid ARTG applications to be submitted by that date; and
- Class 4 in-house IVDs require inclusion in the ARTG and are regulated in the same manner as commercial Class 4 IVDs.

Note 1: Laboratories providing blood and tissue donor screening services are already required to hold and maintain current GMP licences.

Note 2: Other tests used during the processing or final release testing of a blood or biological product to demonstrate microbial control (e.g. testing for bacterial endotoxins or mycoplasma) are considered to be part of the manufacturing process and as such are required to conform to GMP.

### **Issues concerning the regulation of Class 4 in-house IVDs**

Under the new IVD framework all in-house IVDs for donor screening are deemed to be Class 4 (high risk) IVDs and are subject to the same regulatory requirements as commercial Class 4 IVDs. This includes Class 4 in-house IVDs developed *de novo* or modified from (predicated on) commercial Class 3 or 4 IVDs.

As part of the application for conformity assessment certification, a laboratory must be able to demonstrate that both the IVD and the processes used to manufacture or modify it conform to the requirements of the therapeutic goods legislation.

This means that where a commercial IVD is used as the basis for the development of a Class 4 in-house IVD, detailed information concerning the commercial IVD may be required in order for the laboratory to prepare its application for TGA conformity assessment. In many cases this information may not be readily obtainable.

Moreover, where the commercial Class 4 IVD has already been evaluated by the TGA and included in the ARTG, requiring an in-house IVD predicated on that commercial IVD to undergo full re-evaluation of the previously submitted evidence may be an unreasonable regulatory burden.

#### ***Cadaveric samples***

Currently only a limited number of commercial serology IVDs are available for use on cadaveric samples for tissue donor testing in Australia. Some laboratories are instead using commercial donor screening IVDs not validated for cadaveric sampling, thus reflecting a variation to the intended purpose.

To meet the requirements of the new regulatory framework, from 1 July 2014 testing laboratories will be required to use either a commercial IVD that has been validated for use on cadaveric samples, or to seek registration for any Class 4 in-house IVDs modified from commercial IVDs or manufactured *de novo* for this purpose.

To date only one manufacturer of commercial IVDs has indicated that it intends to submit cadaveric validation data for its range of serology screening tests. Several manufacturers have indicated that they do not intend to validate their commercial serology tests for cadaveric donor screening.

The TGA has been advised that most testing laboratories will have difficulty in complying with the regulations for Class 4 in-house IVDs, particularly for those based on commercial IVDs, as they will be unable to submit full manufacturing and design control evidence without access to the original manufacturers' data. Testing laboratories have also expressed concern over the costs associated with the regulatory requirements and that this may render the ongoing provision of these (mainly low volume) tests uneconomic.

#### ***Classification of IVDs***

Under the new regulatory framework *any* IVD used for donor screening is considered to be a Class 4 IVD. Commercial Class 3 IVDs for infectious diseases that are used for donor screening are also regulated as Class 4 in-house IVDs. This up-classification of Class 3 IVDs for infectious diseases will affect donor screening testing laboratories as they will be required to comply with the regulatory requirements for Class 4 IVDs from 1 July 2014.

Similar to the situation, regarding IVDs used for cadaveric sampling, the TGA is aware that testing laboratories that undertake blood and tissue donor screening are reporting substantial difficulties in complying with the new requirements.

## **Proposal 2A: A modified conformity assessment procedure for the regulation of Class 4 in-house IVDs predicated on commercial IVDs**

Introduce a modified assessment procedure for a specific subset of Class 4 in-house IVDs where the TGA evaluation is limited to the assessment and validation of the changes made to the commercial IVD, on which it is based.

### **How would the proposal work?**

Under this proposal a modified conformity assessment procedure would apply to certain Class 4 in-house IVDs predicated on registered commercial IVDs.

The application of this modified conformity assessment procedure would be risk based with the level of evaluation determined by the nature and extent of the modification(s) made to the commercial IVD.

The TGA would consider the following to be modifications that do not represent fundamental changes to the design of the IVD:

- a variation from the manufacturer's intended purpose (i.e. the use of cadaveric samples in a device intended for live donor sampling);
- the use of specimens outside the recommended storage conditions;
- the addition of a pre-analytical processing step (e.g. pre-specimen processing to render a specimen suitable for use); or
- the use of a Class 3 IVD for donor screening where a Class 4 IVD is unavailable (e.g. malaria).

The following are examples of what would be considered modifications to the design or components of the IVD:

- the addition/alteration/substitution/removal of a component of the IVD; or
- the addition/alteration/removal of a processing step; or
- the use of a different specimen extraction method from that specified by the manufacturer.

The proposed modified conformity assessment procedure would apply only to Class 4 in-house IVDs that have modifications that are not considered to represent fundamental changes to the design of the IVD. Class 4 in-house IVDs that have undergone modifications affecting the components or design of the IVD, or developed either from published sources or first principles would be required to undergo a full conformity assessment process, similar to that applicable to commercial Class 4 IVDs.

The use of a modified conformity assessment procedure would be contingent on the prior inclusion in the ARTG of the predicate (commercial) IVD. In order to ensure that the commercial products on which these Class 4 in-house IVDs are based have already undergone evaluation and are registered a new deadline of 30 June 2016 for valid applications for inclusion in the ARTG is proposed for these Class 4 in-house IVDs.

In addition, laboratories using Class 4 in-house IVDs would be required to:

- maintain a Good Manufacturing Practice (GMP) licence, and/or NATA/RCPA as a medical testing laboratory as a medical testing laboratory demonstrating compliance with the international standard ISO 15189 (Medical laboratories – Particular requirements for quality and competence); and
- demonstrate compliance with the NPAAC standard Requirements for the Development and Use of In-house *In Vitro* Diagnostic Devices (IVDs).

Where these conditions are met, a conformity assessment would consist primarily of an evaluation of the adequacy of the data validating the performance of the Class 4 in-house IVD in its modified state/setting.

This more limited conformity assessment requirement is expected to be associated with a commensurate reduction in the applicable fees and charges.

### Benefits of the proposal

This option is intended to reduce the regulatory burden and avoid unnecessarily duplication in evaluation. Limiting the evaluation to assessing the validation of any differences between the Class 4 in-house IVD and the product on which it is based will help to ensure that testing laboratories can continue providing essential screening services for blood and tissue products, and donor organs.



- What are the risks and benefits of this proposal?
- How well does the proposed modified conformity assessment process address the identified issues of compliance with the new regulatory framework for Class 4 in-house IVDs?
- Do you hold or are you able to obtain sufficient data to support the validation of your Class 4 in-house IVDs?
- If this proposal does not address your concerns please provide specific examples of issues that would not be addressed by the proposals presented in this paper.

## Proposal 2B: A modified conformity assessment procedure for the regulation of all Class 4 in-house IVDs

Introduce a modified conformity assessment procedure for Class 4 in-house IVDs where a laboratory would be required to hold NATA/RCPA accreditation as a medical testing laboratory. The laboratory would be required to provide validation data to the TGA for assessment of compliance with the Essential Principles.

### How would the proposal work?

Under this proposal a modified conformity assessment procedure would apply to all Class 4 in-house IVDs (see 'in-house IVD' provided in Appendix 1). This includes:

- Class 4 in-house IVD developed *de novo*; and

- Class 4 in-house IVD modified from a registered commercial IVD.

The application of this modified conformity assessment procedure would be risk based, with the level of evaluation determined by the origin of the IVD (i.e. *de novo* versus modified commercial IVD). For an in-house IVD based on a registered commercial IVD the extent of the modification(s) would determine the level of evaluation required.

The laboratory would be required to:

- maintain a Good Manufacturing Practice (GMP) licence, and/or NATA/RCPA accreditation as a medical testing laboratory demonstrating compliance with the international standard ISO 15189 (Medical laboratories – Particular requirements for quality and competence);
- demonstrate compliance with the NPAAC standard Requirements for the Development and Use of In-house *In Vitro* Diagnostic Devices (IVDs); and
- provide validation data to the TGA for evaluation of compliance with the Essential Principles.

Where these conditions are met, conformity assessment would consist primarily of an evaluation of the data validating the performance of the Class 4 in-house IVD. Inclusion in the ARTG will not be required however, the TGA will maintain a database of approved Class 4 in-house IVDs.

This more limited conformity assessment requirement is expected to be associated with a commensurate reduction in the applicable fees and charges.

In order to ensure that the commercial product on which the Class 4 in-house IVD is based has already undergone evaluation and registration this modified conformity assessment procedure would not apply until after the 1 July 2015 deadline set in Proposal 1A. For Class 4 in-house IVDs in use, laboratories would have until 30 June 2016 to complete the process outlined in this proposal. After this date, this process will need to be completed for any Class 4 in-house IVDs prior to use (unless an exemption applies under the Act).

### Benefits of the proposal

This option is intended to reduce regulatory burden on laboratories and increase the capacity of laboratories to comply with the new regulatory requirements while still maintaining the TGA regulatory oversight of Class 4 in-house IVDs.



- What are the risks and benefits of this proposal?
- How well does this proposal address the identified issues of compliance with the new regulatory framework for Class 4 in-house IVDs?
- Do you hold or are you able to obtain sufficient data to support the validation of your Class 4 in-house IVDs?
- If this proposal does not address your specific concerns please give reasons and where possible provide specific examples.

## Proposal 2C: retain the current regulatory framework for Class 4 in-house IVDs

Maintain the status quo, providing for a full conformity assessment for all of Class 4 IVDs supplied in Australia after 30 June 2014.

### How would the proposal work?

Under this proposal the conformity assessment requirements for Class 4 in-house IVDs would remain unchanged.

### Benefits of the proposal

This proposal ensures a high level of safety and performance for the regulation of IVDs by requiring the same level of regulation for commercial and in-house Class 4 IVDs.



- Are there any additional risks and benefits of retaining the current regulatory framework?
- What difficulties do you anticipate in transitioning your Class 4 in-house IVDs to the new framework?

## Issue 3: Performance evaluations for design examinations

### Current situation

Prior to the commencement of the new IVD framework, IVDs for HIV and HCV testing required inclusion in the ARTG. As part of the assessment of applications for registration, practical laboratory performance testing of sample IVDs was undertaken to confirm that each product met the manufacturer's intended purpose and performance claims.

However, under the new framework the TGA may request samples of IVDs for evaluation, but the TGA has no legislative remit to require or undertake a performance evaluation (practical laboratory testing) of a Class 4 IVD that has been submitted for a design examination certificate prior to inclusion in the ARTG.

### Why is this an issue?

Currently performance testing results cannot be taken into consideration by the Delegate when making a decision with respect to a conformity assessment design examination certificate. This may disadvantage some applications.

The absence of a provision enabling the TGA to undertake a performance evaluation where an application is submitted for a design examination Conformity Assessment Certificate was an unintended omission from the new regulatory framework for IVDs.

## Proposal 3: Selective performance evaluation of Class 4 IVDs that are submitted for design examination

*Amend the Therapeutic Goods (Medical Device) Regulations 2002 to provide the TGA with the legislative remit to undertake performance evaluations (practical laboratory testing) of Class 4 IVDs submitted for a design examination Conformity Assessment Certificate.*

### How would the proposal work?

The regulations would be amended to provide the TGA with the appropriate remit to undertake a performance evaluation of any Class 4 IVD where an application has been submitted for a design examination Conformity Assessment Certificate.

Performance evaluation would not be undertaken routinely but would be determined according to the level of risk represented by the type of IVD, the intended purpose, the performance claims made by the manufacturer, and the technology used. For example, a Class 4 IVD using a new technology, a new IVD used to detect a serious infectious disease, or a Class 4 IVD with novel indications for use, would be candidates for performance testing. The outcome of the performance evaluation could then be taken into consideration by the Delegate when making a decision on the application for the Conformity Assessment Design Examination Certificate.

### Benefits of this proposal

The ability to undertake a performance evaluation of these IVDs is important to enable the TGA and consumers to have confidence that the IVD will perform in accordance with the manufacturers' claims.



- What are the risks and benefits of this proposal?
- Are there other ways to ensure that public health and safety are not compromised?

## Issue 4: Regulation of tests for predisposition or susceptibility to disease

The regulatory status of genetic tests to determine predisposition or susceptibility to a disease or condition is currently anomalous. Although these tests fall within the definition of therapeutic goods under subsection 3(1) of the Act, the definition of a medical device under section 41BD of the Act does not capture all IVDs. In particular, it excludes those IVDs intended to diagnose susceptibility to disease. This means that genetic and other tests for susceptibility to disease continue to be regulated as 'Other Therapeutic Goods' under Part 3-2 of the Act rather than IVDs under the new framework – contrary to the expressed intention at the time the IVD framework was developed. The inclusion of genetic testing was also clearly articulated in the 2004 Regulatory Impact Statement.

## Proposal 4: Amend the definition of a medical device to include predisposition and susceptibility tests

Define genetic tests that determine predisposition or susceptibility to a disease or condition as medical devices rather than 'other therapeutic goods'.

### How would the proposal work?

The TGA is proposing to amend the definition of a medical device to include tests for predisposition and susceptibility to disease. The TGA would welcome any comments on this proposal and will take these into consideration prior to making any changes.

If a change is progressed, affected stakeholders will be notified of the proposed amendment and advised of the regulatory requirements for the continued supply of these IVDs.

### Benefits of this proposal

Because of the potential ramifications of the results of tests for predisposition and susceptibility to disease it is in the interests of both consumers and providers that TGA is able to regulate these products in a manner that reflects the level of risk they represent. This was the intention when the new regulatory framework was developed and this amendment is proposed to correct an unintended oversight.



- Does the proposed change affect you? If so, how?
- What are the benefits and risks of the proposed change?

# Summary

## Summary of the proposals in this paper

Issue	Proposal
Concern over ability to meet the timeframe for valid applications in the ARTG	<b>Proposal 1A:</b> Introduce a staged transition to the new IVD framework.
	<b>Proposal 1B:</b> Retain the existing timeframe for transition to the new regulatory timeframes.
Concern over capacity to comply with the new regulatory requirements for Class 4 in-house IVDs	<p><b>Proposal 2A:</b> Introduce a modified conformity assessment procedure for the regulation of Class 4 in-house IVDs predicated on commercial IVDs, with staged timeframe for compliance.</p> <p><b>Proposal 2B:</b> Introduce a modified conformity assessment procedure for the regulation of all Class 4 in-house IVDs, with staged timeframe for compliance.</p> <p><b>Proposal 2C:</b> Retain the regulatory requirements for Class 4 in-house IVDs, with full conformity assessment procedures, with effect from 1 July 2014.</p>
Omission of the provision for performance evaluations for design examinations	<b>Proposal 3:</b> Introduce selective performance evaluation of Class 4 IVDs submitted for design examination.
Omission of tests for predisposition or susceptibility to disease from the definition of a medical device	<b>Proposal 4:</b> Amend the definition of a medical device to include tests for predisposition and susceptibility tests.

The above table has been developed to summarise the different proposals. It provides the issue raised and the proposals that address the issue.

The proposed amendments have been developed to address the four key outstanding issues that have been identified during the first two years (July 2010 – July 2012) of the transition period of the new regulatory framework for IVDs.

Stakeholders' responses to the proposals will assist in determining the changes required to enable manufacturers, sponsors and laboratories to comply with the new regulatory framework for IVDs. Additionally, the responses will inform both the regulatory impact statement (RIS) and the cost recovery impact statement (CRIS) that the TGA is developing to assess the potential effects of the proposed amendments on all IVD stakeholders.

The TGA will continue to improve its existing regulatory processes for IVDs. These include improvements such as streamlining business processes, targeting efforts to risk and clarifying expectations of manufacturers, sponsors, laboratories and users through

improved guidance materials, and ensuring that all relevant information is available on the TGA website.



- How might the proposed changes to the new regulatory framework for IVDs work most effectively?
- How do the proposals for change fit into the broader IVD framework?
- Regarding possible amendments to the new regulatory framework for IVDs, what are the highest priorities for you, or your organisation? Why?
- Do the proposed changes pose any potential regulatory impact on your operation? If so, can you please give a clear indication of where there may be an associated cost (current costs can be found at <http://www.tga.gov.au/pdf/fees-120829.pdf>).

# Making submissions

## Content of submissions

Submissions may address any, or all, of the proposed changes to the new regulatory framework for IVDs.



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

In addition, submissions might include:

- suggested improvements or alternatives to the proposed changes;
- whether or not you support the specific or parts of proposals or a combination of proposals. If you do not support the proposals you may make suggestions for an alternative that is acceptable to you; and
- an assessment of how the proposed change will impact on you. This 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 submissions will inform the RIS and the CRIS that is being developed by the TGA.

## How to respond

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

Electronic submissions are preferred and should be emailed to [devicereforms@tga.gov.au](mailto:devicereforms@tga.gov.au) please include **'Proposed Amendments to the New Regulatory Framework for IVDs'** in the subject line of the email.

Alternatively, hard copy may be mailed to:

IVD Stream  
Devices Conformity Assessment Section  
Office of Devices Authorisation  
Therapeutic Goods Administration  
PO Box 100  
WODEN ACT 2606

## **What will happen?**

Submissions will be reviewed and considered by the TGA and any updates on proposed actions will be made available on the TGA's Internet site.

## **Confidentiality**

All submissions will be placed on the TGA website unless marked 'IN CONFIDENCE'. Any in-confidence material contained within your submission should be provided under a separate cover and a justification provided on the TGA submission coversheet.

For a submission made by an individual, 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 TGA submission coversheet.

## **Enquiries**

Questions relating to submission should be directed to the IVD Stream Leader, Michelle McNiven by email to [michelle.mcniven@tga.gov.au](mailto:michelle.mcniven@tga.gov.au) or by telephone to 02 6232 8822.

## Appendix 1 – Glossary of terms

**ARTG** – Australian Register of Therapeutic Goods

**CA** - conformity assessment - the systematic and ongoing examination of evidence and procedures to ensure that a medical device complies with the Essential Principles. A conformity assessment provides objective evidence of the safety, performance, benefits and risks for a specific medical device and enables regulatory bodies to ensure that products placed on the market conform to the applicable regulatory requirements.

**Cadaveric sample** – sample taken from a non beating heart donor

**Classification of IVDs** – IVD medical devices are classified according to the risk posed to the health of the public or an individual, and relates to the risk of an incorrect result arising from the use of the IVD.

Class 1 IVD – no public health risk or low personal risk

Class 2 IVD – low public health risk or moderate personal risk

Class 3 IVD – moderate public health risk or higher personal risk

Class 4 IVD – high public health risk

The same classification rules apply to both commercial IVDs and in-house IVDs.

**CRIS** – Cost Recovery Impact Statement - a statement documenting compliance with the cost recovery policy. Only agencies with significant cost recovery arrangements must prepare a CRIS.

**design examination** – an assessment based on the design and development records produced under the manufacturer’s quality management system and compiled/summarised into a ‘design dossier’.

**EP** – Essential Principles – a set of principles that define the basic principles for quality, safety and performance of the device

**FDA** – US Food and Drug Administration

**GHTF** – Global Harmonization Task Force – was a group of representatives from national medical device regulatory authorities and the regulated industry. The GHTF comprised of representatives from five founding members grouped into three geographical areas, where each actively regulated medical devices using their own unique regulatory framework. The GHTF was superseded by the **International Medical Device Regulators Forum (IMDRF)** in 2011.

**GMP** – good manufacturing practice - a set of principles and procedures that, when followed by manufacturers of therapeutic goods to ensure that the products manufactured will meet appropriate quality standards.

**In-house IVD** - an IVD medical device used within the confines or scope of an Australian medical laboratory or laboratory network that has been developed from first principles, developed or modified from a published source or commercial IVD; or used for a purpose other than that intended by the manufacturer; and is not supplied for use outside that medical laboratory or medical laboratory network.

**Intended purpose** - the purpose that the manufacturer of the device intends it to be used, as stated in the information provided with the device, the instructions for use, or any advertising material applying to the device.

**ISO 13485** – International Standard 13485:2003 for medical devices quality management systems required for regulatory purposes. ISO 13485 represents the requirements for a comprehensive management system for the design and manufacture of medical devices.

**ISO 15189** – International Standard 15189 for Medical laboratories, particularly the requirements for quality and competence. It is the standard against which the Quality Management System will be assessed and the assessment will include review of the validation data for any in-house IVDs that are changed or newly implemented since the time of last audit.

**IVD** – *In vitro* diagnostic medical device – a medical device that is:

- a. a reagent, calibrator, control material, kit, specimen receptacle, software, instrument, apparatus, equipment or system, whether used alone or in combination with another diagnostic product for *in vitro* use; and
- b. intended by the manufacturer to be used *in vitro* for the examination of a specimen derived from the human body, solely or principally for:
  - i. giving information about a physiological or pathological state or a congenital abnormality; or
  - ii. determining safety and compatibility with a potential recipient; or
  - iii. monitoring therapeutic measures; and
- c. not a product that is:
  - i. intended for general laboratory use; and
  - ii. not manufactured, sold or presented for use as an IVD medical device.

**NATA** – National Association of Testing Authorities, Australia – provides assessment, accreditation and training services to laboratories and technical facilities throughout Australia and internationally.

**NPAAC** – National Pathology Accreditation Advisory Council - advises the Commonwealth, state and territory health ministers on matters relating to the accreditation of pathology laboratories.

**Predicate IVD** – a commercial IVD from which an in-house IVD has been developed or adapted.

**QMS** – Quality Management System

**RCPA** – Royal College of Pathologists of Australasia – the organisation representing pathologists in Australasia.

**RIS** – Regulatory Impact Statement - a document prepared by a department, agency, statutory authority or board responsible for a regulatory proposal following consultation with affected parties, formalising and documenting some of the steps that must be taken in good policy formulation.

**TGA CA** - TGA Conformity Assessment - carried out according to ISO 13485:2003. See also CA

## **Therapeutic Goods Administration**

PO Box 100 Woden ACT 2606 Australia  
Email: [info@tga.gov.au](mailto:info@tga.gov.au) Phone: 1800 020 653 Fax: 02 6232 8605  
[www.tga.gov.au](http://www.tga.gov.au)