



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



**Plain English Guide**  
**to the**  
**Draft Medicines Rule,**  
**Draft Medical Devices Rule, and**  
**key components of the Draft**  
**Administration and Interpretation**  
**Rules**

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## ABBREVIATIONS

AAT	Administrative Appeals Tribunal
AIMD	Active implantable medical device
ANZTPA	Australia New Zealand Therapeutic Products Authority
ARTG	Australian Register of Therapeutic Goods
GMP	Good Manufacturing Practice
IAC	Interim Advertising Council
IVD device	<i>In vitro</i> diagnostic device
Medsafe	Medicines and Medical Devices Safety Authority, New Zealand
OTC medicine	Over-the-counter medicine
TGA	Therapeutic Goods Administration, Australia
TPIMC	Therapeutic Products Interim Ministerial Council

## A. INTRODUCTION

On 10 December 2003 the Australian and New Zealand Governments signed an agreement to establish a joint scheme for the regulation of therapeutic products in the two countries (the Treaty). The joint regulatory scheme will be administered by a single, bi-national authority, the Australia New Zealand Therapeutics Products Authority (the Authority). The Authority will replace the Therapeutic Goods Administration (TGA) in Australia and the Medicines and Medical Devices Safety Authority (Medsafe) in New Zealand and will be accountable to both the Australian and New Zealand Governments.

This document describes the joint regulatory scheme, under which the Authority will regulate therapeutic products using a risk-based approach. The regulatory provisions described in this document are outlined in the draft Ministerial Council Rules.

This document is structured as follows:

- Part B** defines the regulatory scheme;
- Part C** relates to the regulation of medicines, including prescription, OTC and complementary medicines;
- Part D** relates to the regulation of medical devices;
- Part E** relates to the regulation of therapeutic products that are not medicines or medical devices;
- Part F** relates to general regulatory provisions applying to all types of therapeutic products; and
- Part G** relates to transition provisions.

## **B. DEFINING THE REGULATORY SCHEME**

### **1. OBJECTIVES OF THE AUTHORITY AND THE REGULATORY SCHEME**

The Authority will safeguard public health and safety in Australia and New Zealand by maintaining and administering a joint scheme, consistent with international best practice, for the regulation of the quality, safety, and efficacy or performance of therapeutic products and their manufacture, supply, import, export and promotion.

This will be achieved through a framework that:

1. applies a level of regulation that is commensurate with the potential risks to public health and safety posed by therapeutic products;
2. balances these risks and the potential benefits to be obtained by users from the availability of these products in Australia and New Zealand;
3. ensures consumers have sufficient, accurate information to enable them to select and use therapeutic products safely and effectively;
4. assists New Zealand and the States and Territories of Australia to adopt a uniform approach to controlling consumer access to therapeutic products; and
5. as far as possible, harmonises requirements with overseas regulators of equivalent standards.

### **2. SCOPE OF THE REGULATORY SCHEME**

The Authority will regulate the import of therapeutic products into Australia and/or New Zealand, export of therapeutic products from Australia and/or New Zealand and the supply, manufacture and promotion of therapeutic products in Australia and/or New Zealand, and associated activities.

The individual or company in Australia or New Zealand with the legal responsibility for a therapeutic product that is imported into, supplied in or exported from Australia and/or New Zealand will be known as the sponsor of the product (each separate product can only have one sponsor). Therapeutic products can only be transferred from Australia to New Zealand (or *vice versa*) with the written permission of the sponsor of the product.

Article 1 of the Treaty defines ‘therapeutic product’ for the purposes of the joint scheme. This definition includes the following, all of which will be regulated under the joint scheme:

- prescription medicines;
- over-the-counter (OTC) medicines (including most sunscreens);
- complementary medicines;
- human blood and blood components;
- cellular and tissue therapies;
- medical devices (including *in vitro* diagnostic devices, sterilants and instrument-grade disinfectants); and
- other products meeting the definition of therapeutic product (or declared in the Rules to be therapeutic products).

Hospital-, household- and commercial-grade disinfectants and menstrual tampons will not be regulated under the joint scheme. Options for the regulation of these types of products in Australia once the Authority commences operation are being developed. Current arrangements for the regulation of these types of products in New Zealand will continue.

Article 12 of the Treaty enables either country to depart from the regulatory scheme in respect of a therapeutic product or a class of therapeutic products in exceptional circumstances subject to the safeguards contained in that article, such as the annual review of the continuing need for the departure.

Article 11 of the Treaty provides for a single country product licence to be issued in those exceptional circumstances where one country has decided to depart from the joint regulatory scheme in relation to a particular therapeutic product or type of product, where the Managing Director deems such a restriction necessary or where the Rules provide for such differences.

Article 10 of the Treaty provides for the Managing Director to declare in Orders that products, or products when used, promoted or presented in a particular way, are or are not therapeutic products, for the purposes of the Treaty. If the Managing Director is considering making a decision to declare a product to be, or not to be, a therapeutic product, he/she may request the sponsor to provide information or documents to assist in making the decision.

### **3. COVERAGE OF THE REGULATORY SCHEME**

Currently, in Australia, the *Therapeutic Goods Act 1989* (the Therapeutic Goods Act) enables the TGA to make decisions that apply nationally about the manufacture, supply, import, export and promotion of therapeutic goods. Activities that cannot be regulated by the Commonwealth due to constitutional restrictions are regulated by the States and Territories. Individuals who supply therapeutic goods only within a State or Territory (sole traders) are thus not regulated by the TGA. There are no similar constitutional restrictions in New Zealand. Medsafe regulates both corporations and individuals.

The Australian States and Territories have agreed for some time that sole traders should be subject to uniform legislative requirements and have agreed to enact legislation complementary to the Therapeutic Goods Act. New South Wales and Tasmania have already enacted complementary legislation that adopts the Therapeutic Goods Act by reference. Victoria adopted legislation, in the same terms as the Therapeutic Goods Act, in 1995 but is currently considering the “adopt by reference” approach. Other jurisdictions are at various stages of legislative development.

The Treaty between Australia and New Zealand will enable the Authority to regulate sole traders in Australia. The States and Territories will still regulate wholesalers, healthcare practice and certain activities in hospitals, and retain controls over some aspects of supply at retail level.

## 4. REGULATORY FRAMEWORK

A framework, comprising Acts in both countries, Rules and Orders, will replace the existing Australian Therapeutic Goods Act, its Regulations and Orders and the existing New Zealand *Medicines Act 1981* (the Medicines Act) and its Regulations.

**Acts** in both countries will contain the broad regulatory matters and obligations that must be contained in primary legislation, including criminal offences and penalties. Each Act will recognise the Authority as the regulator of therapeutic products for that country, and will give effect to the regulatory decisions of the Authority made through its Managing Director.

A Ministerial Council, comprising the Australian and New Zealand Ministers of Health, will make a single set of **Rules** (analogous to regulations in the current Australian and New Zealand regulatory systems). These Rules will contain much of the detail of the regulatory requirements and some institutional matters. The regulatory requirements for medicines and the regulatory requirements for medical devices will be set out in separate parts of the Rules. The regulatory requirements for therapeutic products that are not medicines or medical devices will be set out in separate parts of the Rules<sup>1</sup>.

The Managing Director of the Authority will make **Orders** in relation to technical matters such as standards, manufacturing principles and packaging and labelling requirements.

## 5. INTERNATIONAL HARMONISATION

The Authority will operate through agreements with overseas regulators of an equivalent standard in order to avoid unnecessary duplication of regulatory requirements. Examples would be in the licensing of manufacturers and the determination of standards.

<sup>1</sup> Human tissues, viable animal origin materials and biological therapies including blood and blood components are to be regulated under the joint scheme, the regulatory requirements applying to such products and therapies will be set out in a part of the Rules separate from medicines, medical devices.

## C. MEDICINES

### 1. INTRODUCTION

Under the joint regulatory scheme, a **medicine** is defined as a therapeutic product that is a substance or combination of substances that is presented as having properties for treating or preventing a disease, ailment, defect or injury in human beings; or may be used in human beings with a view to making a medical diagnosis or to restoring, correcting, maintaining or modifying physiological functions.

This definition includes:

- prescription medicines;
- OTC medicines;
- complementary medicines, including herbal medicines, vitamin and mineral supplements, other nutritional supplements, traditional medicines such as Ayurvedic medicines and traditional Chinese medicines, homoeopathic medicines and aromatherapy oils<sup>2</sup>;
- most medical gases;
- vaccines;
- allergens;
- biotechnology medicines;
- plasma products, including immunoglobulins;
- radiopharmaceuticals;
- most radiocontrast agents;
- dialysis solutions, except a haemodialysis solution; and
- sunscreens.

The Managing Director may declare that a therapeutic product is, or is not, a medicine for the purposes of the joint scheme.

Following a review conducted into the regulation of products at the interface between cosmetics and therapeutic products, the following products (currently regulated as medicines in Australia), will no longer be classified and regulated as medicines by the Authority provided these products conform to all the required cosmetic guidelines in Australia and New Zealand:

- Antiperspirants;
- Antidandruff shampoos containing ingredients that are unscheduled;
- Sunscreens with SPF less than 4;
- Moisturisers containing a secondary sunscreen;
- Antibacterial skin washes provided that they are not indicated for clinical use;
- Anti-acne skin cleansers;
- Breath fresheners and products for care of the teeth and mouth containing ingredients that are unscheduled including:
  - Dentifrices<sup>3</sup> (excluding desensitising products),
  - Mouthwash,

<sup>2</sup> Information specific to complementary medicines is included as Attachment 1.

<sup>3</sup> A dentifrice is a paste, powder or liquid for cleaning the teeth.

- Dental bleachers/whiteners.

Medicines will be regulated by the Authority using a risk-based approach based on the following key elements:

- compliance with standards;
- product licensing;
- licensing of manufacturers; and
- post-market monitoring and surveillance.

All aspects of the regulation of medicines will be carried out by appropriately skilled and qualified staff. Whilst the organisational structure of the Authority has yet to be finalised separate units within the Authority will be responsible for regulating different types of medicines, namely:

- prescription medicines and other specified products<sup>4</sup>;
- OTC medicines; and
- complementary medicines.

## **2. STANDARDS**

The Managing Director may determine standards for medicines and these will be set out in Orders.

Standards may relate to:

- the quality of medicines and ingredients in medicines;
- the manufacture of medicines and ingredients in medicines;
- containers, closures and packaging;
- presentation of medicines;
- information for consumers and healthcare professionals, including product labels;
- terminology to be used in applications and in information for consumers or healthcare professionals; or
- other matters concerning the quality, safety and efficacy of medicines.

Medicines must conform to all relevant standards, except with the written consent of the Managing Director.

In determining standards, the Managing Director will consult with an expert advisory committee specifically established to advise on standards, except in exceptional (public health or emergency) circumstances. Where the determination of a standard is made under the exceptional circumstance provision, the Managing Director will seek retrospective advice from the committee within six months of the decision. The Managing Director may seek endorsement of standards from the Ministerial Council.

Standards determined in Managing Director's Orders will have priority over other standards. Where no such Order is applicable, the Rules provide for a list of Authority approved sources

<sup>4</sup> Specified products will include injectable medicine dosage forms and special dosage forms such as transdermal systems and osmotic pumps.

of monographs (“default” Standards) to apply to medicines in circumstances where no other applicable standard is prescribed.

### **3. MANUFACTURE OF MEDICINES**

The manufacturing and quality control of medicines for supply in or export from Australia and/or New Zealand will be required to be of an acceptable standard.

#### **a) Manufacturing Principles**

The criteria used to assess and determine standards of manufacture will be set out in manufacturing principles, which will be determined by the Managing Director and set out in Orders.

Manufacturing principles may relate to:

1. the standards to be maintained, and premises and the equipment to be used, for the manufacture of medicines for use in humans; or
2. procedures for quality assurance and quality control to be employed in the manufacture of medicines for use in humans; and
3. the qualifications and experience required of people employed in the manufacture of medicines for use in humans; and
4. the manufacturing practices to be employed in the manufacture of medicines for use in humans; and
5. other matters relevant to the quality, safety and efficacy of medicines for use in humans that are manufactured in Australia or New Zealand.

Before determining the standards by which the manufacturing principles will be satisfied, the Managing Director may take advice from relevant expert advisory committees.

#### **b) Issuing of Manufacturing Licences**

Australian and New Zealand manufacturers of medicines will be required to hold a manufacturing licence granted by the Managing Director, unless exempted from this requirement.

##### **(i) Obtaining a Manufacturing Licence**

To obtain a manufacturing licence, the manufacturer will submit an application to the Authority. The application must:

1. be in a form approved by the Managing Director; and
2. identify the therapeutic products or classes of therapeutic products that the applicant proposes to manufacture; and
3. identify the premises where the products will be manufactured; and
4. identify the steps in manufacture that the applicant proposes to carry out; and

5. state the names, qualifications and experience of the people who will control the production of the products and the quality control measures that are to be employed; and
6. be accompanied by the prescribed fee.

The Managing Director may obtain additional information from the applicant.

The Managing Director may require the applicant for a manufacturing licence to allow an authorised person to inspect the premises, equipment, processes and facilities that will be used to manufacture therapeutic products.

Provided the applicant has met all the requirements, the Managing Director will grant a manufacturing licence unless he/she is satisfied that:

1. the applicant will be unable to comply with the manufacturing principles; or
2. the premises are not satisfactory for the manufacture of the products; or
3. the applicant is not a fit and proper person to hold a licence; or
4. a person who is participating in, or is likely to participate in, managing the applicant's affairs is not a fit and proper person to participate in the management of the affairs of a holder of a licence; or
5. a person who has, or is likely to have, effective control over the applicant is not a fit and proper person to have effective control over a holder of a licence.

In determining whether the applicant is a fit and proper person to hold a licence the Managing Director may have regard to:

- any suspension or revocation of a manufacturing licence granted to the applicant, or a person who controls the applicant, or a person who was under the applicant's control at the time of the suspension or revocation;
- any conviction for an offence against a law of the Commonwealth of Australia or a law of a State or Territory, or a law of New Zealand against the applicant, a person in control of the applicant or a person under the applicant's control at the time of the offence or conviction; and
- any failure to comply with a condition of a manufacturing licence by the applicant, a person in control of the applicant or a person under the applicant's control at the time of the failure.

A manufacturing licence will relate to a particular manufacturer and manufacturing site, specified step(s) in manufacture and specified type(s) of therapeutic product.

The Managing Director must notify the applicant in writing of the decision to grant or refuse a manufacturing licence, and give reasons for a refusal.

### ***(ii) Imposition of Conditions on a Manufacturing Licence***

The Managing Director may impose conditions on a manufacturing licence.

A manufacturing licence will be granted subject to the following **standard conditions**.

The licence holder will (unless the licence states otherwise):

- Display publicly at the premises specified in the licence a copy of the licence and of any document issued by the Managing Director imposing or amending the conditions applicable to that licence.
- Ensure that the medicines conform to any applicable standards.
- Ensure that the manufacturing principles are observed in carrying out any steps in the manufacture of medicines under the licence.
- Notify the Managing Director in writing as soon as the product licence holder become aware of any information that indicates that:
  - the use of the medicine in accordance with the recommendations for their use may have an unintended harmful effect; or
  - the medicine, when used in accordance with the recommendations for its use, may not be as effective as was suggested in information previously provided to the Managing Director; or
  - the quality, safety or efficacy of the medicine is unacceptable.
- Keep records showing:
  - (a) the materials used in the manufacture of the medicine, the supplier and quantities of the materials used and details of the tests performed on those materials;
  - (b) the procedures and controls employed in the manufacture of the medicine, including the results of tests carried out during the processing of the medicine;
  - (c) details of the tests performed on the medicines and the results of those tests;
  - (d) the stability studies (if any) that validate the recommended shelf life and appropriate storage conditions of the medicine.
- Where the goods to which the licence relates are produced in identifiable batches:
  - (a) assign a batch number to each batch of the medicine; and
  - (b) if it is not unreasonable in the circumstances, retain at the premises a sample of each batch of the medicine for not less than 12 months after the expiry date of the batch or, if there is no expiry date, for at least 6 years after completion of manufacture of the medicine.
- Retain records at the licensed premises for at least 12 months after the expiry date of the batch of medicine to which they relate.
- Ensure that the persons nominated by the licence holder as having control of the production of the goods and of the quality control measures that are to be employed in the manufacture of the goods maintain that control.
- Allow an authorised person to enter the manufacturing premises, inspect the premises, the medicines and any of the substances used in the manufacture of the medicines manufactured at the premises or any processes relating to the manufacture of medicines, take samples of medicines and of substances used in the manufacturing process, photograph the premises or medicines or processes, answer questions relating to procedures carried out at the premises and, if requested to do so by an authorised person, produce documents relating to the manufacture of medicines at those premises and allow the person to copy the documents, and produce batch samples for examination.

- Once a year give the Managing Director:
  - if requested to do so by the Managing Director, details of medicines manufactured by or on behalf of the licence holder during the previous 12 months; and
  - the name, qualifications and details of the relevant experience of any person nominated by the licence holder as having control of the production of the medicines and the quality control measures that are to be employed in the manufacture of the medicines.
- Provide to the Managing Director, in the event that the licence holder wishes to replace a person nominated on the licence as having control of production of medicines or quality control measures in respect of the manufacture of medicines, the name, qualifications and experience of that other person.

In addition to the standard conditions, the Managing Director may impose special conditions on a manufacturing licence at the time it is granted or subsequently and may also vary or remove existing conditions. A new or varied condition that is necessary to prevent imminent risk of death, serious illness or serious injury will come into effect immediately. In any other case, the new or varied condition will come into effect on the date specified by the Managing Director in the written notice, and not less than 20 working days after the notice is given to the licence holder.

### ***(iii) Suspension or Revocation of Manufacturing Licence***

The Managing Director may, by notice in writing, revoke a manufacturing licence or suspend a licence for a specified period of time if:

1. the licence holder or a person who controls the licence holder or a person controlled by the licence holder has been convicted of certain offences;
2. the licence holder or a person who controls the licence holder or a person controlled by the licence holder has breached a condition of the licence; or
3. the holder is not a fit and proper person to hold a licence; or
4. a person who is participating in managing the licence holder's affairs or has effective control over the licence holder is not a fit and proper person for that purpose; or
5. the licence holder requests in writing that the licence be revoked or suspended; or
6. the licence holder ceases to carry on the business of manufacturing the medicines to which the licence relates; or
7. any applicable prescribed audit fees, have not been paid within 20 working days after they become payable.

Where the Managing Director proposes to revoke a licence or suspend a licence otherwise than at the request of the holder of the licence, he/she must, unless he/she considers that failure to revoke or suspend the licence immediately would create an imminent risk of death, serious illness or serious injury:

1. give the licence holder written notice of the proposal to suspend or revoke the licence and the reasons for the proposed action; and
2. give the licence holder an opportunity to make submissions to the Managing Director in relation to the proposed action (except where the proposed action is to be taken as a

result of a failure to pay the annual licensing charge or an applicable prescribed audit fee); and

3. take into account any submission made by the licence holder before making a decision relating to the revocation or suspension of the licence.

A suspension may be revoked by notice in writing from the Managing Director. A licence that has been suspended may be revoked.

#### **(iv) Validity of a Manufacturing Licence**

Once issued, a manufacturing licence will remain valid for up to three years, unless it is suspended or revoked during that time. At the end of this period, it will be reissued for a further three years based on satisfactory compliance and audit history.

In addition, to maintain the licence the manufacturer must on the anniversary of the first date of issue of the licence, declare that:

- the manufacturer data profile is accurate and up to date,
- the statement on fit and proper person is accurate and up to date, and
- the manufacturer complies with the requirements of GMP.

If the manufacturer fails to provide the required declarations before the due date, the licence will lapse.

All declarations must be in a form approved by the Managing Director.

The Managing Director may vary the terms of a manufacturing licence, as a result of his/her consideration of the renewal application or as a consequence of an audit.

The Managing Director may refuse to renew a manufacturing licence, if the manufacturer fails to provide, or refuses to provide, adequate certifications.

The Managing Director may revoke a manufacturing licence at any time if the manufacturer provides false information or makes false certifications.

#### **c) Exemption from Manufacturing Licensing**

Certain medicines or classes of medicines will be exempt from the requirement to be manufactured by a licensed person. Additionally, certain persons will be exempt from the requirement to obtain a manufacturing licence when manufacturing specified medicines in specified circumstances and subject to any applicable conditions.

The types of **medicines** that are exempt from the requirement to be manufactured by a licensed manufacturer include, but are not necessarily limited to:

1. medicines prepared for initial experimental studies in human volunteers;
2. ingredients (except water) used in the manufacture of medicines where the ingredients do not have a therapeutic action or are herbal materials, or oils extracted from herbs, the sole therapeutic use of which is as starting materials for use by licensed manufacturers;

3. dentifrices<sup>5</sup> that contain no more than 1000 milligrams per kilogram of fluoride or any other therapeutically active substance;
4. medicated insect repellents for dermal use, if the medication consists solely of an antiseptic having a secondary role in the formulation;
5. lotions, shampoos or hairdressings for the prevention or treatment of dandruff;
6. sunscreens for dermal application that meet specified criteria (still to be determined);
7. medicated soaps;
8. medicated throat lozenges, where the medication consists only of volatile oils and their constituents either alone or in combination with ascorbic acid or its salts;
9. medicated space sprays where the medication consists only of volatile oils and their constituents;
10. bulk, liquified medical gases;
11. allergens for skin patch testing on unbroken skin;
12. medicinal oxygen cylinders that have been decant filled, transfilled or cascade filled by a hospital or an ambulance, fire or rescue service.

When a medicine is contained within a medical device, the container must meet the medical device requirements. Manufacturers of containers are exempt from manufacturing licensing except where the container is a sterile syringe or a container, not made of glass, designed for the storage and parenteral administration of a therapeutic product (commonly referred to as "large volume parenteral infusion bags").

The **persons** that will be exempt from the requirement to obtain a manufacturing licence include, but may not be limited to, the following persons under the following conditions:

1. medical practitioner, dentist and other health care worker registered under a law of New Zealand or a State or Territory of Australia, provided that the medicine is manufactured specifically for the treatment of a patient under his or her care;
2. pharmacists registered under a law in Australia or New Zealand who manufacture medicines in a pharmacy where the he/she practices and the medicine is for supply directly to a patient at that pharmacy;
3. radiochemists and pharmacists in public hospitals where the manufacture of the medicine is by the person when employed by the public hospital or public institution, subject to certain conditions;
4. complementary healthcare practitioners engaged in the manufacture of any herbal, homoeopathic or nutritional supplement preparation where the preparation is for use in the course of his or her business and the preparations are manufactured on the premises that the person carrying on the business occupies and that he or she is able to close so as to exclude the public; and the person carrying on the business supplies the preparation for administration to a particular person after consulting with that person and uses his or her own judgment as to the treatment required; or

<sup>5</sup> A dentifrice is a paste, powder or liquid for cleaning the teeth.

5. a person who applies supplementary labelling to a manufactured product provided that the supplementary label contains only a name and address or the product licence identifier of the medicine.

#### **4. ISSUING OF PRODUCT LICENCES**

A medicine may only be:

- imported into Australia or New Zealand; or
- exported to a third country from Australia or New Zealand; or
- supplied in Australia or New Zealand

by, or with the written approval of, the holder of a product licence granted by the Managing Director of the Authority, unless specifically exempted (*see Section C4(h): Exemptions from Product Licensing*).

A sponsor intending only to export a product from Australia and/or New Zealand to a third country may obtain a special type of product licence, an 'export only product licence'.

The Managing Director will decide to grant (or to refuse) a product licence on the basis of an application submitted to the Authority, which in the case of some medicines includes certifications made by the sponsor. For certain medicines the Authority will also need to approve product information documents and labelling before a product licence can be granted.

As a general principle, a product licence application for a medicine should demonstrate that potential risks are outweighed by the therapeutic benefit of the medicine.

If a medicine is incorporated in a medical device, then the safety and quality of the medical device must be verified in accordance with the requirements for medical devices, and the ancillary action of the device must be verified having regard to the intended purpose of the medicine, before a product licence can be granted.

To maintain a product licence, a sponsor must ensure that the product that is the subject of the licence complies at all times with:

- the information submitted in the product licence application; and
- any certifications made therein by the sponsor; and
- the approved product information and labelling.

In general, changes to any of the information upon which the granting of the product licence was based must be the subject of an additional application and be authorised by the Managing Director before they may be implemented.

A register of product licences will be maintained by the Authority.

## a) Classification of Medicines

### ***Medicines intended for supply in Australia and/or New Zealand***

Medicines intended for supply in Australia and/or New Zealand will be classified as Class 1 medicines or Class 2 medicines. The classification will determine the product licensing procedure that applies to the medicine.

The classification of a medicine will be based on a number of factors, including:

- the intrinsic risk of the product (e.g. the toxicity of its ingredients);
- risks associated with the quality of the product (e.g. requirements for sterility); and
- the intended use(s) of the product.

In the discussion paper, *A Proposal for a Trans Tasman Agency to Regulate Therapeutic Products*, released for consultation in June 2002, it was proposed that there be three classes of medicine – Class I (low risk), Class II (medium risk) and Class III (high risk). Following consultation and further consideration, it was determined that, under the proposed three-class approach, there would be no difference **in legislation** between the product licensing procedure for a Class II medicine and the product licensing procedure for a Class III medicine. Both would be based on an evaluation of the safety, quality and efficacy of the medicine undertaken by the Authority to determine if a product licence should be granted. Therefore, it was decided that, **for the purposes of legislation**, a two-class approach would be adopted.

In the two-class scheme Class 1 medicines are low risk and the product licensing procedure will be based on certifications made by the sponsor and validation of key data by the Authority. The Authority will be able to conduct post-licence audits to check that sponsors certifications are correct. As described in the June 2002 discussion paper, it is anticipated, based on the Australian experience, that the majority of complementary medicines will be Class 1 medicines.

Class 2 medicines are higher risk and the product licensing procedure will be based on an evaluation of the quality, safety and efficacy of the medicine undertaken by the Authority. However, within this class there is a continuum of risk and the product licensing process and data requirements applying to a Class 2 medicine will be commensurate with the risks associated with the medicine. The following examples illustrate this point.

#### ***Example 1***

A new medicine containing a novel active substance (e.g. a new chemical entity) and intended for the prevention of heart disease would be classified as a ‘higher risk’ medicine and therefore Class 2. In this case, there may be risks associated with both the active ingredient and the intended use of the medicine. The sponsor would be required to submit for evaluation a complete data package on the quality, safety and efficacy of the medicine to demonstrate that the product does prevent heart disease, that the product is safe for the intended use and that it can be manufactured to an acceptable quality.

#### ***Example 2***

A new medicine containing a generic version of a known active ingredient and intended for the prevention of heart disease would also be classified as a ‘higher risk’ medicine and therefore Class 2. In this case, the active ingredient is well-established

and, if the sponsor can show sufficient similarity to the innovator product (e.g. by establishing bioequivalence), then safety and efficacy may be inferred from the evaluation of the innovator product. Therefore, it may be sufficient for the sponsor of the generic product to supply a data package demonstrating quality of the generic and bioequivalence with the innovator.

### **Example 3**

A medicine containing vitamin E and intended for the prevention of heart disease would also be classified as a 'higher risk' medicine and therefore Class 2. In this case, the active ingredient is well-established and is considered to be 'low risk', however, there may be risks associated with the intended use of the medicine because it relates to prevention of a serious disease. The safety of the active ingredient in the product would already be established and therefore a full safety data package would not be required from the sponsor as part of the evaluation process. The sponsor would however be required to submit for evaluation data on the quality and efficacy of the medicine to demonstrate that the product does prevent heart disease and that it can be manufactured to an acceptable quality.

### **Medicines intended only for export**

Medicines intended only for export from Australia and/or New Zealand to a third country will be classified as export only medicines. The product licensing procedure for export only medicines will be based on certifications made by the sponsor and validation of key data by the Authority. The Authority will be able to conduct post-licence audits to check that sponsor certifications are correct. The licensing procedures will differ depending on the risks associated with the medicine, with provision for the Authority to conduct pre-licence audits of some higher risk export only medicines, e.g. those containing new substances.

More detailed information about the product licensing procedures that will apply to different classes of medicines is provided in *Section B3(c): Obtaining a Product Licence*.

#### **(i) Class 2 Medicines**

All medicines will be Class 2 medicines except those that:

- meet the criteria for classification as Class 1 medicines; or
- are export only medicines; or
- are exempt from product licensing.

#### **(ii) Class 1 Medicines**

Class 1 medicines will be medicines with overall low risk assessed on the basis of all contributing risk factors and will include:

1. medicines that:
  - a) contain only ingredients included on a published list of permitted ingredients and complying with any relevant conditions set out in the list; and
  - b) do not contain certain types of ingredients, e.g. ingredients that are scheduled as prescription medicines, pharmacist-only medicines or pharmacy medicines or that meet the requirements for such scheduling; and

- c) are not required to be sterile<sup>6</sup>; and
  - d) are not intended to carry indications that make an implied or direct reference to a serious disease, disorder or condition; and
  - e) are not intended to carry indications that offer to treat, cure, prevent (other than with a sunscreen for the prevention of sunburn, skin cancer or premature skin ageing) or manage a disease, disorder or condition unless specifically permitted by the Managing Director; and
  - f) do not contain ingredients that are prohibited imports for the purposes of the Australian and/or New Zealand customs legislation; or
1. homoeopathic or anthroposophic medicines that:
- a) include only homoeopathic or anthroposophic preparations derived from mother substances included on a published list of permitted mother substances, and complying with any relevant conditions set out in the list; and
  - b) do not contain certain types of ingredients, e.g. ingredients that are scheduled as prescription medicines, pharmacist-only medicines or pharmacy medicines or that meet the requirements for such scheduling (unless otherwise permitted<sup>7</sup>); and
  - c) are not required, by a standard, to be sterile<sup>8</sup>; and
  - d) are not intended to carry indications that make an implied or direct reference to a serious disease, disorder or condition; and
  - e) are not intended to carry indications that offer to treat, cure, prevent or manage a disease, disorder or condition; and
  - f) do not contain ingredients that are prohibited imports for the purposes of the Australian and/or New Zealand customs legislation; or
  - (g) sunscreen preparations that meet specified criteria<sup>9</sup>; or
  - (h) other 'low risk' medicines that meet criteria set out in the Rules, e.g. medicated throat lozenges that meet specified criteria.

### ***(iii) Ingredients Permitted in Class 1 Medicines***

Prior to commencement of the joint regulatory scheme, a list of ingredients permitted in Class 1 medicines will be developed. This list will be based on the ingredients currently permitted in listed medicines in Australia. In addition, ingredients that are used in dietary supplements and traditional remedies in New Zealand but which are not currently permitted in listed medicines in Australia would need to be evaluated for suitability for inclusion in Class 1 medicines. Ingredients that are considered suitable for use in Class 1 medicines will be included in the Authority's permitted ingredients list.

<sup>6</sup> Irrespective of formulation or intended purpose, if a medicine is required to be sterile, it cannot be a Class 1 medicine.

<sup>7</sup> It is proposed that certain homoeopathic or anthroposophic preparations, derived from scheduled substances which do not have a general concentration cut-off, may be permitted to be included in Class 1 homoeopathic or anthroposophic medicines, providing they meet specific requirements outlined in a Managing Director Order, including the requirement that they are only present at concentrations at or below 1 nanogram/gram.

<sup>8</sup> Irrespective of formulation or intended purpose, if a medicine is required to be sterile, it cannot be a Class 1 medicine.

<sup>9</sup> Primary sunscreen preparations with SPF > 4.

There will be a separate list developed, in consultation with stakeholders, for those mother substances from which it is appropriate that homoeopathic or anthroposophic preparations be derived. Appropriate homoeopathic and anthroposophic references will be used as a basis for this list, and consideration will also be given to homoeopathic preparations which are currently included in listed medicines in Australia (although justification for a particular substance as a homoeopathic preparation will be required before inclusion in the final list).

Following commencement of the joint scheme, a person may apply to have a substance added to the list of ingredients permitted for use in Class 1 medicines. The application is to be in a form approved by the Managing Director and accompanied by the prescribed fee.

Specific provisions will also be developed for inclusion of a new homoeopathic or anthroposophic mother substance in the list of mother substances permitted for use in Class 1 medicines.

The Authority may screen the application prior to accepting it for evaluation and may reject the application if:

- it is not in the correct form; or
- the applicant has not complied with a request for information made under the Rules; or
- the correct fee has not been paid.

Timeframes for evaluation of an application will not be specified in Rules but the Authority may set target timeframes.

In evaluating the application, the Authority will have regard to whether the substance:

- is of acceptable quality; and
- meets the requirements for not being scheduled as a prescription medicine, pharmacist-only medicine or pharmacy medicine; and
- is safe as an ingredient for use in Class 1 medicines considering its likely use; and other matters the Managing Director considers relevant.

Following evaluation of the application by the Authority, the Managing Director will make a decision to approve or reject the application and may seek the advice of relevant expert advisory committees or other relevant experts before making a decision. The Managing Director may attach conditions to the use of the substance in Class 1 medicines.

If the Managing Director decides to approve the application, the decision will be notified to the applicant and the substance (and associated conditions, if any) will be added to the permitted ingredients list. If the application is rejected, the decision will be notified to the applicant.

The Authority will publish and maintain the permitted ingredients lists.

## **b) The Product Licence**

Generally, a product licence will be a dual-country licence, i.e. it will permit the medicine that is the subject of the product licence to be imported into, exported from and supplied in both Australia and New Zealand. The only exceptions will be:

- a single country product licence, which will be issued only in those exceptional circumstances where one country has decided to depart from the joint regulatory scheme in relation to a particular therapeutic product or type of product or where the Managing Director deems such a restriction necessary (Article 11 paragraph 4 of the Treaty refers); and
- an export only licence, which will be issued if the sponsor intends only to export a product from Australia and/or New Zealand to a third country.

The product licence document will provide a summary of the particulars of the medicine(s) that is/are the subject of the licence, and set out or refer to the conditions, subject to which the licence has been granted. The product licence will include:

- the unique identifier for the product;
- the date the product licence was granted;
- the dates and details of variations to the licence;
- the country(ies) in which the product licence is valid;
- particulars about:
  - the licence holder;
  - the medicine(s);
  - the manufacture of the medicine(s), including manufacturers; and
  - the intended use of the medicine(s);
- the conditions subject to which the product licence is granted; and
- other information relevant to the issuing of the licence.

The particulars included on the product licence may differ depending on the classification of the medicine. The final details are still to be determined.

Generally, a product licence will remain valid provided annual charges are paid and the product licence is not suspended or revoked. The exception will be the provisional product licence, which will be issued for a time-limited period (see below).

### **(i) Product Licence Identifier**

When the Managing Director grants a product licence for a medicine, a unique identifier for that medicine will be assigned. When the Managing Director groups multiple medicines on a product licence, a single, unique identifier will be assigned to the group.

### **(ii) Provisional Product Licence**

In exceptional circumstances, where the Authority has assessed an application and considers that a product licence should not be issued, the Managing Director may, in consultation with the applicant, consider granting a provisional licence. A provisional product licence for a medicine would be for a time-limited period and subject to conditions and further evaluation of the medicine prior to completion of the provisional authorisation period.

A provisional product licence may be granted where there is insufficient safety or efficacy information to justify the granting of a full product licence but the Managing Director accepts that there is a clinical need for the medicine to be available. A provisional product licence may be granted on the basis of clinical trials establishing that the medicine has an effect on a surrogate endpoint. Approval will be subject to the requirement that the applicant study the medicine further, to verify and describe its clinical benefit.

Provisional product licences will only be granted for medicines to be used in the prevention or treatment of life-threatening illnesses and where, based on the data provided, the Managing Director is satisfied that the medicine is likely to provide meaningful therapeutic benefits to patients over existing treatments. This allows limited access to a medicine where the potential benefit is considered greater than the risk of non-treatment.

The Managing Director will be able to impose conditions on a provisional product licence that restricts use of the product to certain prescriber groups and/or certain target patient populations. An obligation will be placed on the sponsor to ensure that these restrictions are adhered to as a condition of licensing.

A provisional product licence would only be granted for an initial period of two years during which time the sponsor of the medicine will need to submit data to support the granting of a full product licence. The provisional licence holder will need to report periodically to the Managing Director on the progress in obtaining this data. It will be possible to extend the period of validity for a further period of no more than two years. If no data to support the granting of a full product licence are submitted within the two-year extension period, the provisional product licence will lapse and the medicine will no longer be able to be supplied.

The provisional product licence may be revoked at any time if a post-marketing clinical study fails to verify clinical benefit or post-marketing restrictions are inadequate to assure safe use of the medicine.

Evaluation of the additional data required to support the granting of a full product licence will incur an additional evaluation fee.

Advertising or promotion of medicines that are the subject of provisional product licences may only occur with the approval of the Managing Director.

### ***(iii) Separate and Distinct Products***

Generally, a separate product licence will be issued for each new therapeutic product. The circumstances in which a medicine is a new product (i.e. separate and distinct from other therapeutic products and requiring a new licence) will depend on the classification of the medicine and the nature of the difference or change.

A **Class 1 medicine** will be separate and distinct from other therapeutic products if it has a different:

- product name; or
- dosage form; or
- active ingredient; or

- quantity of an active ingredient; or
- excipient ingredient; or
- quantity of a restricted ingredient that is an excipient ingredient; or
- concentration of a restricted ingredient, if the restriction on the ingredient relates to its concentration; or
- recommended single or daily dose set out in the directions for use, if, in respect of a restricted ingredient, the restriction relates to its quantity in the recommended single or daily dose; or
- indication; or
- sponsor.

A restricted ingredient is defined as an ingredient permitted for use in a Class 1 medicine but is restricted in its quantity or concentration by operation of any of the following:

- (i) a Managing Directors Order;
- (ii) The Scheduling Standard;
- (iii) a condition of a product licence;
- (iv) a standard;
- (v) any other provision of a Managing Directors Order relating to Class 1 medicines.

Each product may only have one sponsor. In other words, identical products with different sponsors would be considered to be separate and distinct products and would require separate approval for supply (and would incur separate annual fees).

The requirements for 'separate and distinct' outlined above provides Sponsors with the same provisions to those currently included for Listed medicines under the *Therapeutic Goods Act 1989*. However, changes have been made to extend the circumstances by which sponsors will be able to 'Group' certain changes. Further information is provided below.

A **Class 2 medicine** will be separate and distinct from other therapeutic products if it has a different:

- product name; or
- dosage form; or
- formulation; or
- strength; or
- indication; or
- directions for use; or
- type of container (disregarding container size; container material may vary); or
- sponsor.

**Class 1** and **Class 2** medicines that are licensed for supply in Australia and New Zealand may also be exported to a third country. Certain differences will be permitted between the export version of the product and the product intended for supply in Australia and New Zealand, without the need for a new licence.

For **Class 1** medicines, the following export versions will be permitted provided the product remains a **Class 1** medicine:

- different export names<sup>10</sup>;
- different quantities of excipients;
- different excipients that are colours, flavours, fragrances, inks or empty capsule shells;
- different directions for use;
- different containers;
- different manufacturers;
- different pack sizes; or
- non-compliance with aspects of the standard for labelling.

For Class 2 medicines the only permitted export versions will be different export names.

An **export-only medicine** that meets the criteria for classification as a **Class 1** medicine will be separate and distinct from other therapeutic products if it has a different:

- dosage form;
- formulation or composition;
- strength or size (disregarding packaging size); or
- indications.

Any other export only medicine will be separate and distinct from other therapeutic products if it has a different:

- dosage form; or
- formulation or composition;
- strength, or size (disregarding packaging size);
- indications;
- directions for use; or
- type of container (disregarding container size; container material may vary).

#### ***(iv) Grouping of Medicines on a Product Licence***

In certain circumstances it will be possible to 'group' more than one medicine under a group product licence and under a single group licence identifier.

For **Class 1** medicines it will be possible to make the following changes and 'group' the new medicine under the same licence provided that the new medicine is intended to replace the existing medicine:

- The removal or addition of an excipient;
- The change to the quantity of an excipient that is a restricted ingredient;
- Different indications;

<sup>10</sup> The 'product name' for a Class 1 or Class 2 medicine means the name assigned to the product by an applicant or licence holder, including any trade name or trade mark, together with other information (such as statements or logos) appearing on the label that, in combination, uniquely distinguish therapeutic products supplied, or to be supplied, by the applicant or licence holder from each other; or from therapeutic products supplied by other persons. The sponsor may export the same product under different names and these will be referred to as 'export names'.

- Different product name;
- Different product export name;
- Different directions for use.

This allows sponsors to remove or add excipient ingredients without the need to obtain for a new licence.

The circumstances in which medicines can be grouped will vary depending on the type of product and will be set out in Orders.

### **c) Obtaining a Product Licence**

To obtain a product licence for a new medicine, the sponsor will be required to submit an application to the Authority. A sponsor must have a presence in Australia or New Zealand and the resources to implement post-market requirements in relation to the product. The application is to be in a form approved by the Managing Director and accompanied by the prescribed fee.

The Authority will assess the application before a decision is made by the Managing Director to grant (or to refuse) a product licence.

The process for obtaining a product licence, the data requirements and the product licence application fees will depend on the classification of the medicine. In the case of Class 2 medicines other factors will also be relevant, such as:

- whether the medicine contains a new active substance or is a generic medicine;
- the intended use(s) of the medicine;
- the proposed dosage form(s) and route(s) of administration;
- whether the medicine is a complementary medicine; and
- the likely scheduling of the medicine.

The following sections describe the product licensing procedures for Class I, Class 2 and export only medicines, which will be set out in the Rules.

#### **(i) Class 1 Medicines**

For Class 1 medicines, the product licence application is to be made in a form approved by the Managing Director and will contain information about the sponsor, the medicine and its manufacture. In the application, the sponsor will be required to certify that:

- the medicine is a Class 1 medicine; and
- the medicine is safe for the purpose/s for which it is designed to be used; and
- the medicine conforms to every standard (if any) applicable to the medicine; and
- advertising of the medicine conforms to every advertising requirement (if any) applicable to the medicine; and
- the medicine complies with all prescribed criteria for quality and safety; and
- if the medicine has been manufactured in Australia or New Zealand, each step in the manufacture of the medicine has been carried out by a person who is the holder of a licence to carry out that step (unless the medicine or manufacturer is exempt from this requirement); and

- the medicine does not contain substances that are prohibited imports for the purposes of the Australian and/or New Zealand Customs legislation; and
- the sponsor holds information or evidence to support any claim that the applicant makes in relation to the medicine; and
- the sponsor holds product specifications and draft or actual labels for the medicine; and
- the sponsor holds data to demonstrate that the product specifications will continue to be met for the period of the shelf life under the nominated storage conditions;
- all of the manufacturers of the medicine are nominated as manufacturers in the application; and
- the sponsor is a resident of, or is carrying on business in, Australia or New Zealand; and
- the information included in or with the application is correct; and
- the presentation of the medicine is acceptable.

In the following circumstances, it will also be necessary for the sponsor to obtain certifications from the Managing Director, prior to submitting the application:

- if a step in the manufacture of the medicine has been carried out outside Australia or New Zealand, the Managing Director must have certified that the manufacturing and quality control procedures used in each such step are acceptable (unless the medicine or manufacturer is exempt from this requirement); or
- if the medicine contains any ingredient of human or animal origin, the Managing Director must have certified that the ingredient/s from the specified source (including country of origin) are satisfactory for use in a human medicine, for example, in terms of minimising the risk of transmission of Transmissible Spongiform Encephalopathies.

On receipt of a product licence application for a Class 1 medicine, the Managing Director will grant a product licence if:

- the application has been made in the correct form; and
- the application is complete and is accompanied by the correct fee; and
- requisite certifications from the Managing Director have been obtained, prior to submission of the application; and
- key data in the application have been validated by the Authority.

If the decision is to grant a product licence, the Managing Director will provide a copy of the product licence to the applicant. The product licence will be effective from the date specified on the licence.

At any time after a product licence has been granted for a Class 1 medicine, the Managing Director may:

- audit the licence application to determine whether any or all the matters certified by the applicant are correct; or
- evaluate the quality, safety and efficacy of the medicine; or
- conduct a risk assessment of the medicine.

## **(ii) Class 2 Medicines**

A product licence application for a Class 2 medicine is to be made in a form approved by the Managing Director and accompanied by the prescribed fee.

The data requirements will be contained in guidelines.

The Authority may screen the application prior to accepting it for evaluation and may reject the application if:

- it is not in the correct form; or
- the sponsor has not complied with a request for information made by the Managing Director under the Rules; or
- the correct fee has not been paid.

If the application is accepted, the Authority will evaluate the application. In evaluating the application, the Authority will have regard to whether:

- the quality, safety and efficacy of the product for the purposes for which it is to be used have been satisfactorily established, acknowledging that the concepts of safety and efficacy must be judged in relation to each other and in accordance with the state of contemporary relevant scientific knowledge;
- the presentation of the product is acceptable;
- the medicine conforms to any applicable standard;
- all of the manufacturers of the product are nominated as manufacturers of the product in the application;
- each step in the manufacture of the medicine has been carried out by a manufacturer who is licensed to carry out that step in the case of a medicine manufactured in Australia or New Zealand;
- the manufacturing and quality control procedures used in the manufacture of the medicine are acceptable in the case of a medicine manufactured outside Australia or New Zealand;

and other matters the Managing Director considers relevant.

The Managing Director will make a decision to grant or to refuse a product licence on the basis of the evaluation and may seek advice from relevant expert advisory committees or other relevant experts before making a decision.

The Managing Director will notify the applicant of the decision to grant or refuse a product licence within 20 working days of the decision being made. If the decision is to grant a product licence, the Managing Director will provide a copy of the product licence to the applicant. The product licence will be effective from the date specified on the licence.

## **(iii) Export Only Medicines**

In general, medicines intended only for export from Australia and/or New Zealand to a third country (export only medicines) will be expected to meet similar regulatory standards to those that apply to medicines intended for supply in Australia and New Zealand. Sponsors of export only medicines will be required to obtain an export only product licence, unless

specifically exempted (*see Section C4(h): Exemptions from Product Licensing*). The export only licensing system is designed to:

- provide a mechanism to ensure that export only medicines meet appropriate quality and safety standards, consistent with the Authority's international public health obligations;
- ensure that the Authority has in its records the particulars required to provide export certifications for export only medicines;
- ensure that, in the event of a safety concern related to a particular substance, manufacturer or sponsor, the Authority is able readily and rapidly to identify all medicines at risk, whether supplied in Australia or New Zealand or exported to a third country and take appropriate action; and
- minimise the regulatory impost on sponsors of export only medicines, recognising that, in many importing countries, medicines exported from Australia and/or New Zealand will be subject to relevant local regulatory requirements.

### ***Application requirements for export only product licences***

In order to obtain a product licence for an export only medicine, the sponsor will be required to submit to the Authority an application in a form approved by the Managing Director and accompanied by the prescribed fee.

In the application, the sponsor will be required to make certifications in relation to the medicine. These will include certifications that:

1. the medicine is intended only for export from Australia and/or New Zealand to a third country and will not be supplied in Australia or New Zealand; and
2. the medicine is safe for the purposes for which it is to be used; and
3. the medicine conforms to every standard (if any) applicable to the medicine; and
4. the medicine complies with any requirements for quality and safety; and
5. if the medicine has been manufactured in Australia or New Zealand, each step in the manufacture of the medicine has been carried out by a person who is the holder of a licence to carry out that step (unless the medicine or manufacturer is exempt from this requirement); and
6. either the applicant holds information or evidence to support any claim that the applicant makes relating to the medicine; or the applicant has a written agreement with the importer of the medicine in the destination country, which states that the importer is responsible for substantiation of any claims made in relation to the medicine; and
7. either the applicant holds data to demonstrate that the product specifications will continue to be met for the period of the shelf life under the nominated storage conditions; or the applicant has a written agreement with the importer of the medicine in the destination country, which states that the importer is responsible for nominating the shelf life of the medicine; and
8. the applicant holds product specifications and draft or actual labels for the medicine; and
9. the medicine does not contain a substance the exportation of which is prohibited under Australian Customs legislation (in the case of a medicine exported from Australia) or

New Zealand Customs legislation (in the case of a medicine exported from New Zealand); and

10. the medicine meets all relevant regulatory requirements in the destination country; and
11. all the information included in or with the application is correct.

Where applicable, the sponsor will also be required to certify that the medicine meets the criteria to be classified as a Class 1 medicine.

In the following circumstances, it will be necessary for the applicant to obtain certifications from the Managing Director, prior to submitting the application:

- if a step in the manufacture of the medicine has been carried out outside Australia or New Zealand. In this case, the Managing Director must have certified that the manufacturing and quality control procedures used in each such step are acceptable (unless the medicine or manufacturer is exempt from this requirement); or
- if the medicine contains any ingredient of human or animal origin. In this case, the Managing Director must have certified that the ingredient/s from the specified source (including country of origin) are satisfactory for use in a human medicine, for example, in terms of minimising the risk of transmission of Transmissible Spongiform Encephalopathies.

***Export only medicines that meet the criteria for classification as Class 1 medicines***

On receipt of a product licence application for an export only medicine that meets the criteria for classification as a Class 1 medicine, the Managing Director will grant an export only product licence if:

- the application has been made in the correct form;
- the application is complete and is accompanied by the correct fee;
- requisite certifications from the Managing Director have been obtained, prior to submission of the application; and
- key data in the application have been validated by the Authority.

If the decision is to grant a product licence, the Managing Director will provide a copy of the product licence to the applicant. The product licence will be effective from the date specified on the licence.

After a product licence has been granted for an export only medicine meeting the criteria for classification as a Class 1 medicine, the Managing Director may:

- audit the licence application for the medicine to determine whether any or all the matters certified by the applicant are correct; or
- evaluate the quality, safety and efficacy of the medicine; or
- conduct a risk assessment of the medicine.

***Export only medicines that do not meet the criteria for classification as Class 1 medicines***

On receipt of an export only product licence application for a medicine that does **not** meet the criteria for classification as a Class 1 medicine, the Managing Director will select for pre-

licence audit any application for a medicine containing a new substance, and any application where the applicant has indicated that the medicine was refused a licence for supply in Australia and/or New Zealand or was the subject of a product licence that has been revoked or suspended. In addition, the Managing Director may select any other application for audit.

**If the application is not selected for pre-licence audit,** the Managing Director will grant an export only product licence if:

- the application has been made in the correct form;
- the application is complete and is accompanied by the correct fee; and
- requisite certifications from the Managing Director have been obtained, prior to submission of the application; and
- key data in the application have been validated by the Authority.

If the decision is to grant a product licence, the Managing Director will provide a copy of the product licence to the applicant. The product licence will be effective from the date specified on the licence.

**If the application is selected for pre-licence audit,** the Managing Director will inform the sponsor within 10 working days that the application has been selected for audit and request the applicant to provide further information and documentation necessary for the audit. The Managing Director may refuse to grant a product licence if the sponsor fails or refuses to provide all of the necessary information or documentation within 10 working days from the date of the notice of the audit. The audit may be conducted on any or all aspects of the application.

On completion of the audit, the Managing Director will grant an export only product licence if:

- the application has been made in the correct form;
- the application is complete and is accompanied by the correct fee;
- requisite certifications from the Managing Director have been obtained, prior to submission of the application; and
- key data in the application have been validated by the Authority; and
- the Managing Director is satisfied as to all aspects considered in the audit.

Where the Managing Director is not satisfied as to the safety of an export only medicine, he/she may contact the regulatory authority in the country to which the product is to be exported in order to confirm that the authority has no objections to the product being licensed for export from Australia/New Zealand for supply to that country.

If the decision is to grant a product licence, the Managing Director will provide a copy of the product licence to the applicant. The product licence will be effective from the date specified on the licence.

At any time after a product licence has been granted for an export only medicine, the Managing Director may:

- audit the licence application to determine whether any or all the matters certified by the applicant are correct; or
- evaluate the quality, safety and efficacy of the medicine; or

- conduct a risk assessment of the medicine.

#### **(iv) Statutory Timeframes for Product Licence Applications**

Statutory timeframes will apply to product licence applications for all Class 2 medicines. Such applications will be accepted or rejected for evaluation within 40 working days of receipt of the application. If the application is accepted for evaluation, a decision to grant or to refuse a product licence will be made within 255 working days of receipt of the application. A sponsor will be notified within 20 working days of a decision to grant a licence.

The penalty to the Authority for not completing applications within statutory timeframes will be a forfeit of 25% of the application fee. Evaluation timeframes and associated penalties will be applied to individual applications rather than to the overall performance of the Authority.

#### **(v) Priority Evaluation**

The Authority may give priority to evaluation of an application for a product licence in respect of a medicine in circumstances where:

- (a) the active ingredient is a new chemical entity;
- (b) the medicine is indicated for the treatment or diagnosis of a serious, life-threatening or severely debilitating disease or condition; and
- (c) there is clinical evidence that the medicine may provide an important therapeutic gain.

Priority will only be given if the treatment potentially offers a major benefit over currently available therapies.

For an application to receive priority status, the sponsor will be required to make a commitment to give priority to responding to requests to provide information to the Authority. Failure of the sponsor to respond adequately to questions within agreed timeframes may result in loss of priority status.

#### **d) Conditions on a Product Licence**

The granting of a product licence will be subject to certain standard conditions that will be set out in the Rules. Additionally, the Managing Director may impose conditions on a product licence at the time it is granted, and may impose new conditions or vary existing conditions on an existing product licence. The product licence cannot be used to impose any conditions relating to the price of the medicine.

##### **(i) Standard Conditions**

The following standard conditions will apply to **all licensed medicines**.

- The product licence identifier for the medicine shall be placed on the label of the product in accordance with the requirements in the relevant Rules and Orders.

- The sponsor must not, by any means, intentionally or recklessly advertise a licensed medicine for an indication other than those included on the product licence for the medicine.
- The sponsor shall not supply a licensed medicine after the expiry date of the batch of the product.
- Sponsors of licensed medicines are to allow authorised persons to enter any premises where the sponsor deals with those medicines:
  - to inspect those premises and medicines at those premises; and
  - to take samples of medicines or ingredients/components of medicines.

If requested to do so by an authorised person, the sponsor is to produce documents relating to the medicines or their ingredients/components and allow the authorised person to copy the documents.

- The sponsor of a licensed medicine is to keep such records relating to the product as are necessary to:
  - expedite recall if necessary of any batch of the product;
  - identify the country(ies) to which each batch of the product was exported; and
  - identify the manufacturer(s) of each batch of the product.
- Where any part of or step in the manufacture of the product in Australia, New Zealand or any other country is sub-contracted to a third party who is not the sponsor, the sponsor is to keep copies of relevant Good Manufacturing Practice (GMP) agreements relating to such manufacture and provide such copies to the Managing Director if requested to do so.
- Sponsors of licensed medicines are to keep a record, in relation each batch of a medicine, of all the manufacturers involved in the manufacture of that batch. The record is to be kept at least until the end of the period 12 months after the expiry date for the batch of the medicine. If requested to do so by an authorised person, the sponsor is to make available such records for audit.
- The sponsor of a licensed medicine is to retain records of the distribution (including export) of the product for a period of five years and provide the records or copies of the records to the Managing Director if requested to do so.
- Where a licensed medicine is distributed to countries outside Australia and New Zealand, product recall or other similar regulatory action taken in relation to a product outside Australia and New Zealand, which has or may have relevance to the quality, safety and efficacy of the product distributed in Australia and/or New Zealand, must be notified to the Managing Director immediately the action or information is known to the sponsor.
- If requested to do so by the Managing Director, the sponsor of a licensed medicine is to supply a reasonable number of samples of a medicine for testing purposes, together with any other materials reasonably considered necessary to allow testing to be performed.
 

The samples are to be appropriate for the proposed testing purpose, supplied at the sponsor's expense and delivered to the Authority within the period specified within the request and in accordance with any other requirements specified in the request.
- If the manufacture of the licensed medicine is carried out in Australia or New Zealand the manufacturer must be licensed.
- Where a step in the manufacture of a licensed medicine is carried out outside Australia or New Zealand and, if that step were carried out in Australia or New Zealand it would be required to be carried by a licensed manufacturer, the sponsor of the medicine shall, upon

request at any time by the Managing Director, provide to the Managing Director a form of evidence, acceptable to the Managing Director, which establishes the satisfactory standard of manufacture of the medicine. The sponsor must retain current evidence and, within 20 working days of its expiration, supply updated evidence to the Managing Director. If an acceptable form of evidence is not available, the sponsor shall pay the costs of an audit of the manufacturer where this is considered necessary by the Managing Director, and with the written agreement of the manufacturer.

- Where the medicine contains a substance, which is included in the Fourth Schedule to the Australian Customs (Prohibited Imports) Regulations or the Eighth Schedule to the Australian Customs (Prohibited Exports) Regulations, the sponsor shall, at the time of importation of the product into Australia or exportation of the product from Australia, be in possession of a licence and a permission for importation or exportation of each consignment of the product as required by that legislation.
- Where the medicine contains a substance, which requires specific approval from New Zealand Customs before importation into or export from New Zealand can occur, the sponsor shall, at the time of importation of the product into New Zealand or exportation of the product from New Zealand, be in possession of an approval for importation or exportation of each consignment of the product as required by the appropriate New Zealand legislation.
- If the particulars on a product licence for a medicine change or if there are changes to:
  - information contained in the product licence application for the medicine or any subsequent product licence variation applications for the medicine, being information that would have been relevant to a decision to licence the medicine or to vary the licence for the medicine, including information on the formulation or composition of the medicine and information on the manufacture of the medicine; or
  - the approved product information for the medicine (if the medicine is of a type for which approved product information is required); or
  - the labels for the medicine (if the medicine is a Class 2 medicine)the sponsor must apply to vary the product licence.

The changes shall not be implemented until the Managing Director has varied the product licence other than where the medicine is a Class 2 medicine and the only effect of the variation is to reduce the class of persons for whom the product is suitable or to add a warning or precaution, in which case the change may be implemented immediately.

In addition to the above, the following standard condition will apply to **all licensed Class 2 medicines**:

- The sponsor of a licensed Class 2 medicine must advise the Managing Director of the date of initial supply of the medicine.
- A copy of the label (or, if more than one label, labels) to be used in respect of a licensed Class 2 medicine is to be provided to the Managing Director, upon:
  - the commencement of the supply of the medicine; or
  - request by the Managing Director.

Where practicable actual labels should be provided attached to a sheet of paper, which identifies the product by its name and product licence identifier. Photocopies (actual size)

are acceptable where the label information is printed or embossed directly onto the container.

- The sponsor of a licensed Class 2 medicine must, at any time after the product licence has been issued, inform the Managing Director if a marketing application for the medicine (including an application for extension of indications, a new dosage form, a new route of administration or a new dose strength) is rejected in the United States, Canada or the European Union and must provide details of the rejection.

In addition to the above, the following standard condition will apply to **all licensed Class 1 medicines**:

- The sponsor of a Class 1 medicine must hold information or evidence to support any claim made in relation to the medicine, and must retain that information or evidence throughout the period of licensing and provide it to the Managing Director on request.

In addition to the above, the following standard conditions will apply to **all licensed export only medicines**:

- Where the sponsor of an export only medicine has certified that he/she has a written agreement with the importer of the product in the destination country, which states that the importer is responsible for substantiation of any claims made in relation to the medicine, the sponsor will provide a copy of the agreement to the Managing Director on request.
- Where the sponsor of an export only medicine has certified that he/she has a written agreement with the importer of the product in the destination country, which states that the importer is responsible for nominating the shelf life of the medicine, the sponsor will provide a copy of the agreement to the Managing Director on request.
- The sponsor shall not export any export only medicine for supply after the expiry date of the batch of the product.

## **(ii) Specific Conditions**

In addition to the standard conditions, the Managing Director may impose specific conditions on a product licence. The Managing Director may also, by a notice given in writing, impose specific conditions on an existing product licence or vary or remove existing conditions.

Conditions may relate to:

- the manufacture of the medicine;
- the custody, use, supply, disposal or destruction of the medicine;
- the keeping of records relating to the medicine;
- matters dealt with in standards applicable to the medicine;
- the promotion, including advertising, of the medicine; or
- such other matters relating to the medicine as the Managing Director thinks appropriate.

Unless otherwise specified, conditions imposed by the Managing Director relate to all batches of the product that are the subject of the product licence. However, the Managing Director may impose conditions that relate only to specific batches of the product.

If the imposition or variation of conditions is necessary to prevent imminent risk of death, serious illness or serious injury, they will have immediate effect. If the Managing Director is satisfied that there is a potential risk of death, serious illness or serious injury if a medicine continues to be licensed subject to existing conditions and that by the imposition or variation of conditions it is likely that the potential risk may be addressed, the new or varied conditions will have immediate effect. In any other case, the new or varied conditions will take effect no earlier than 20 working days after notice is given to the sponsor.

#### **e) Product Licence Variation**

The Managing Director may vary the terms of a product licence if the particulars on the licence are incomplete or incorrect.

The Managing Director may also vary the terms of a product licence following application by the sponsor to vary the particulars in relation to the product.

Where changes to a licensed product result in the creation of a new product, i.e. a separate and distinct product, a new product licence application and a separate product licence is required. In other cases, changes will be treated as product licence variations.

The sponsor must apply to vary the product licence if there are changes to:

- information contained in the product licence application for the medicine or any subsequent product licence variation applications for the medicine, being information that would have been relevant to a decision to licence the medicine or to vary the licence for the medicine, including information on the formulation or composition of the medicine and information on the manufacture of the medicine; or
- the approved product information for the medicine (if the medicine is of a type for which approved product information is required); or
- the labels for the medicine (if the medicine is a Class 2 medicine).

An application to vary a product licence must be in a form approved by the Managing Director and accompanied by the prescribed fee.

#### **(i) Product Licence Variations for Class 1 Medicines**

If the product is a Class 1 medicine, the application to vary the product licence will include:

- details of the change(s); and
- certifications by the sponsor (as required in a product licence application for a Class 1 medicine); and
- certifications from the Managing Director (as required in a product licence application for a Class 1 medicine), if relevant to the change(s).

On receipt of a variation application for a Class 1 medicine, the Managing Director will vary the product licence if:

- the application has been made in the correct form; and
- the application is complete and is accompanied by the correct fee; and

- requisite certifications from the Managing Director have been obtained, prior to submission of the application; and
- the changed medicine remains a Class 1 medicine; and
- the change does not create a separate and distinct product; and
- key data in the application have been validated by the Authority.

**(ii) Product Licence Variations for Class 2 Medicines**

In the case of product licence variation applications for Class 2 medicines, the Managing Director must make a decision as to the appropriateness of the requested variation.

If the only effect of the variation is to reduce the class of persons for whom the product is suitable or to add a warning or precaution, and the Managing Director is satisfied that the variation requested does not result in an unacceptable presentation, the Managing Director must vary the licence.

If the variation results in a separate and distinct product, it will not be approved and an application for a new product licence will be required.

In certain circumstances, an application to vary a product licence for a Class 2 medicine may be approved on the basis of certifications made by the applicant. The details are still to be finalised and will be the subject of a specific consultation document. In general, the applicant will certify certain matters in the variation application including that they hold evidence to support the change and that they will provide that evidence to the Authority if requested to do so. The Authority will be able to audit ‘self-certified’ variations.

**(iii) Product licence Variations for Export Only Medicines**

An application to vary a product licence for an export only medicine will include:

- details of the change(s) to the product; and
- certifications by the sponsor (as required in a product licence application for an export only medicine); and
- certifications from the Managing Director (as required in a product licence application for an export only medicine), if relevant to the change(s).

On receipt of a variation application for an export only medicine, the Managing Director will vary the product licence if:

- the application has been made in the correct form; and
- the application is complete and is accompanied by the correct fee; and
- requisite certifications from the Managing Director have been obtained, prior to submission of the application; and
- the changed medicine remains an export only medicine; and
- the change does not create a separate and distinct product; and
- key data in the application have been validated by the Authority.

#### **(iv) Statutory Timeframes for Product Licence Variation Applications**

Where an application to vary the product licence for a Class 2 medicine relates only to one or more of the following details:

- the specifications for the active ingredient, finished product or excipients; or
- the method of manufacture of the active ingredient; or
- the manufacturing procedure for the finished product or the site of manufacture of the active ingredient or the finished product; or
- the shelf life; or
- the storage conditions; or
- the labelling

and clinical, toxicological or bioequivalence data are not required to support the variation, the application will be decided within 45 working days of receipt of the application. If the Managing Director has not made a decision within 45 days, the application is deemed to have been approved.

If the Managing Director has notified the applicant of an objection to the requested variation, a decision must be made within 30 working days of receipt of the applicant's response to the objection. Otherwise, the Managing Director is taken to have approved the application.

Where variations to Class 2 medicine product licences do not fit the above criteria, a default period of 255 working days applies.

#### **f) Data Protection**

When evaluating a product licence application for a medicine, the Managing Director must not use protected information relating to other medicines. Information is protected information if:

1. the information was given to the Managing Director in relation to an application to licence a medicine (the new medicine) consisting of, or containing, an active component; and
2. the information is about the active component and is not available to the public; and
3. when the application to licence the new medicine was lodged:
  - no other medicine consisting of, or containing, that active component was licensed; and
  - no such medicine had been licensed at any time before then; and
4. five years have not passed since the day the new medicine became licensed; and
5. the person in relation to whom the new medicine is licensed has not given the Managing Director permission in writing for the Managing Director to use the information.

#### **g) Revocation and Suspension of Product Licences**

The Managing Director may suspend or revoke a product licence in the event that the sponsor fails to comply with relevant regulatory requirements, including the product licence

conditions, or the Authority receives new information on the safety, quality or efficacy of a medicine that makes such an action necessary. In certain circumstances, a product licence can be revoked with immediate effect.

**(i) Automatic Revocation**

The Managing Director must revoke a product licence if:

1. the product licence for the medicine has been suspended and the period applying to suspension expires before the suspension is revoked (*see Section C4(g)(iv): Suspension of a Product Licence*); or
2. he/she becomes aware that protected information was used in evaluating the medicine for licensing.

**(ii) Revocation of Product Licence with Immediate Effect**

In certain circumstances, the Managing Director may revoke a product licence with immediate effect, in which case the sponsor must immediately cease import, supply or export of the product. In certain circumstances, the product may also be recalled.

The Managing Director must notify the sponsor in writing of a decision to revoke a product licence with immediate effect.

The Managing Director may revoke (with immediate effect) a product licence for a **Class I, Class 2 or export only medicine** if:

1. he/she is satisfied that there would be imminent risk of death, serious illness or serious injury if the medicine continues to be licensed; or
2. the product is no longer a therapeutic product; or
3. the product is no longer a medicine; or
4. the product becomes exempt from product licensing; or
5. the sponsor requests in writing that the product licence be revoked; or
6. the annual charge for the product licence is not paid within 20 working days after it becomes payable; or
7. the sponsor does not comply with a direction or requirement in relation to advertising made by an authority constituted by or under the legislation; or
8. the product contains substances that are prohibited imports for the purposes of the Australian and/or New Zealand Customs legislation; or
9. the sponsor has refused or failed to comply with the conditions of the product licence relating to the manufacture of the product, record-keeping requirements, or the requirement to allow authorised persons to enter and inspect premises, take samples and view and copy documents; or
10. if a manufacturer of the medicine has failed to comply with the manufacturing principles.

In addition to the above circumstances applying to all licensed medicines, the Managing Director may revoke (with immediate effect) a product licence for a **Class 1 medicine** if:

1. the medicine is not a Class 1 medicine;
2. the medicine is exempt from product licensing; or
3. it appears to the Managing Director that the sponsor has incorrectly certified that:
  - (a) the medicine is a Class 1 medicine; or
  - (b) if the medicine has been manufactured in Australia or New Zealand, each step in the manufacture of the medicine has been carried out by a person who is the holder of a licence to carry out that step (unless the medicine or manufacturer is exempt from this requirement); or
  - (c) the medicine does not contain substances that are prohibited imports for the purposes of the Australian and/or New Zealand Customs legislation; or
4. it appears that the requirement to obtain certifications from the Managing Director prior to submitting the product licence application was not fulfilled; or
5. there is a serious breach of the requirements relating to advertising and, as a result of the breach, the presentation of the medicine is misleading to a significant extent; or
6. the sponsor fails to comply (within 20 working days) with a request for information or documents made by the Managing Director for the purpose of ascertaining whether the medicine should have been licensed; or
7. it appears to the Authority that the presentation of the medicine is unacceptable.

In addition to the above circumstances applying to all licensed medicines, the Managing Director may revoke (with immediate effect) a product licence for an **export only medicine** if:

1. the medicine is not an export only medicine; or
2. it appears to the Managing Director that the sponsor has incorrectly certified that:
  - (a) the medicine is intended only for export from Australia and/or New Zealand to a third country and will not be supplied in Australia and/or New Zealand; or
  - (b) if the medicine has been manufactured in Australia or New Zealand, each step in the manufacture of the medicine has been carried out by a person who is the holder of a licence to carry out that step (unless the medicine or manufacturer is exempt from this requirement); or
  - (c) the medicine does not contain substances that are prohibited imports for the purposes of the Australian and/or New Zealand Customs legislation; or
  - (d) the medicine meets the criteria for classification as a Class 1 medicine (this applies only to those export only medicines licensed on the basis that they meet the criteria to be classified as Class 1 medicines); or
2. it appears that the requirement to obtain certifications from the Managing Director prior to submitting the product licence application was not fulfilled; or
3. the sponsor fails to comply (within 20 working days) with a request for information or documents made by the Managing Director for the purpose of ascertaining whether the medicine should have been licensed.

### ***(iii) Revocation of Product Licence after Notice of Proposal to Revoke***

If the Managing Director decides that a product licence should be revoked and the Rules do not provide for the licence to be revoked with immediate effect, the Managing Director must notify the sponsor of the intention to revoke the licence and give the sponsor the opportunity to respond to the proposed action. Before making a decision on a proposal to revoke a product licence, the Managing Director must consider submissions made by the sponsor in relation to the proposed action.

The sponsor may continue to import, supply or export the product until such time as the Managing Director notifies the sponsor in writing of the decision to revoke the product licence.

The Managing Director may revoke a product licence for a **Class 1, Class 2 or export only medicine** (following a notice of proposal to revoke) if:

1. the product has changed so that it has become separate and distinct from the product that was licensed; or
2. the sponsor has refused or failed to comply with a condition on the product licence (except where there are grounds for immediate revocation for refusal or failure to comply with a condition); or
3. the product does not conform to a requirement relating to advertising applicable to the product; or
4. he/she is satisfied that the quality, safety or efficacy of the product is unacceptable; or
5. the product does not conform to a standard applicable to the product; or
6. he/she is satisfied that the presentation of the product is unacceptable; or
7. the classification for determining the level of assessment of the product changes; or
8. the sponsor has failed to notify the Managing Director, within the prescribed time period, of information that:
  - contradicts information already supplied to the Authority by the sponsor; or
  - indicates that the use of the product in accordance with its recommendations for use may have an unintended harmful effect; or
  - indicates that the product, when used as recommended, may not be as effective as the product licence application or information already supplied by the sponsor suggests; or
  - indicates that the quality, safety or efficacy of the product is unacceptable; or
9. a step in the manufacture of the medicine in Australia or New Zealand was carried out by a person who did not hold a licence to carry out that step in the manufacture of that type or class of medicine (and neither the manufacturer nor the medicine was exempted from the manufacturing licensing requirement); or
10. where a step in the manufacture of the medicine is carried out outside Australia or New Zealand and, if that step were carried out in Australia or New Zealand it would be required to be carried out by a licensed manufacturer:
  - (a) the sponsor was unable to provide the Managing Director with acceptable evidence establishing the satisfactory standard of manufacture of the medicine; or
  - (b) if acceptable evidence was not available:

- the manufacturer refused to be audited by the Authority; or
- the sponsor refused to pay for the audit; or
- the Authority was unable to inspect the manufacturer for health or security reasons (and neither the manufacturer nor the medicine was exempted from the manufacturing licensing requirement).

In addition to the above circumstances applying to all licensed medicines, the Managing Director may revoke a product licence for a **Class 1 medicine** or an **export only medicine** (following a notice of proposal to revoke) if it appears that any of the certifications made by the sponsor in the product licence application are incorrect (other than those certifications referred to in relation to immediate revocation of a licence).

#### ***(iv) Suspension of a Product Licence***

Suspension of a product licence will stop further import, supply, export or promotion of a product pending provision of additional information by the sponsor to enable the Managing Director to determine whether or not the product licence should remain valid or be revoked.

The Managing Director may suspend a product licence for a medicine if he/she is satisfied that:

1. there is a potential risk of death, serious illness or serious injury if the medicine continues to be licensed and it is likely that, within the period of the suspension, the sponsor will be able to take the action necessary to ensure that the medicine would not cause a potential risk of death, serious illness or serious injury if it were to continue to be licensed; or
2. it is likely there are grounds for revoking the product licence.

Item 2 does not apply if the following grounds for revocation exist:

- the Managing Director is satisfied that there would be imminent risk of death, serious illness or serious injury if the product continued to be licensed; or
- the sponsor requests in writing that the product licence be revoked; or
- protected information was used in evaluating the product for licensing; or
- the sponsor fails to comply (within 20 working days) with a request for information or documents made by the Managing Director for the purpose of ascertaining whether the medicine should have been licensed (in relation to Class 1 medicines and export only medicines).

The Managing Director must notify the sponsor in writing if he/she decides to suspend a licence.

Before suspending a product licence because it is likely there are grounds for revoking the product licence, and if the Managing Director would be required to give notice of an intention to revoke the licence, then he/she must:

- inform the sponsor in writing of the intention to suspend the licence and set out the reasons for such an action; and
- give the sponsor reasonable opportunity to make submissions in relation to the proposed action; and
- consider submissions made by the sponsor in relation to the proposed action.

In all other circumstances, suspension of a product licence is to take effect on the day on which the notice is given to the sponsor.

The period of suspension must not exceed 6 months. The period of suspension may be extended by up to an additional 6 months if the sponsor is able to show that he/she has taken steps to remove the grounds for suspending the licence. The period of suspension cannot be extended a second time (i.e. it can not be extended beyond a total period of twelve months).

The suspension has effect until:

- it is revoked by the Managing Director; or
- the end of the suspension period specified in the notice; or
- if the period of suspension was extended by the Managing Director, the end of the extension period.

The Managing Director may revoke a product licence suspension:

- on his/her own initiative; or
- if the sponsor of the product applies in writing to the Managing Director.

The Managing Director must revoke the suspension if satisfied that:

- the ground on which the product licence was suspended no longer applies; and
- there are no other grounds for suspending the product licence.

If the Managing Director revokes a suspension, he/she must advise the sponsor in writing within 20 working days after making the decision to revoke the suspension.

If, after an application by the sponsor, the Managing Director decides not to revoke the suspension, he/she must advise the sponsor in writing of his/her decision, giving reasons for the decision, within 20 working days of the decision being made.

## **h) Exemption from Product Licensing**

Certain medicines or classes of medicines will be exempt from product licensing in specified circumstances, and subject to any applicable conditions. These exemptions include, but are not necessarily limited to:

1. Medicines used in life-threatening and other grave cases<sup>11</sup> provided:
  - the patient (or their guardian) has given informed consent to the medicine being used;
  - at the time the medicine is used, the medical practitioner responsible for using the medicine signs a statement in relation to the patient in the form approved by the Managing Director and sends a copy of the statement to the Authority within 20 working days; and

<sup>11</sup> defined as a person who is seriously ill with a condition that is reasonably likely to lead to the death of the person within a matter of months; or has a medical condition that, in the absence of immediate treatment, is likely to lead to the imminent loss of an arm, leg, hand or foot of the person; or an organ of the person; or the person's sight.

- the medicine is dispensed on the prescription of a medical practitioner who has prescribed the medicine in accordance with good clinical practice.
2. Medicines imported for use in the treatment of the importer or the importer's immediate family, provided the importation is not prohibited under Customs legislation and the importation of injections containing material of human or animal origin (other than insulin injections) has been approved by the Managing Director. (Note that medicines produced by recombinant DNA technology do not fit the definition of material of animal origin.) The quantity imported in one importation must not be more than 3 months' supply at the maximum dose recommended by the manufacturer, and the total amount imported in a 12 month period must not exceed 15 months' supply.
  3. Medicines that are exported, provided they are not for commercial supply and do not contain a substance the exportation of which is prohibited under Customs legislation in the exporting country. This exemption includes medicines for humanitarian donations and persons leaving Australia or New Zealand with medicines for personal use. In the case of humanitarian donations, the donor must keep records of the medicines exported for this purpose and these records must be made available to the Managing Director upon request. This exemption does not cover medicines intended for use in clinical trials on humans.
  4. Samples of medicines imported, exported, manufactured, or supplied for:
    - (a) submission to a regulatory authority; or
    - (b) subjection to developmental or quality control procedures; or
    - (c) examination, demonstration or display; or
    - (d) subjection to analysis or laboratory testing procedures; but not for supply for therapeutic use in humans.
  5. Medicines imported solely for the purpose of export that remain subject to Customs control in the importing country and that are not subject to any process of manufacture in Australia or New Zealand.
  6. Medicines (other than medicines for gene therapy or somatic cell therapy) that are dispensed, or extemporaneously compounded, for therapeutic use in a particular person.
  7. Medicated insect repellents for dermal use, where the medication is an antiseptic with a secondary role in the formulation and the preparation does not contain any ingredient that is a new substance.
  8. Starting materials used in the manufacture of medicines, except when they are pre-packaged for supply for other therapeutic purposes or formulated as a dosage form.
  9. Allergens for skin patch testing on unbroken skin.
  10. Radiopharmaceutical cold kits manufactured by a radiochemist or a pharmacist in a hospital, consisting of containers of sterile reagents to which radioisotope is added immediately before injection into the patient, subject to certain conditions.
  11. Medicines manufactured for a private or public hospital or public institution in accordance with a formulation specified by that hospital or institution, and provided that:
    - the medicine is manufactured under a contract between the manufacturer and the hospital or institution;
    - the medicine is for use by or in connection with a patient of the hospital or institution;

- there are no licensed medicines that are substantially similar, in all relevant aspects, to the medicine being manufactured under the contract;
  - the medicine is manufactured at premises in Australia or New Zealand;
  - the person manufacturing the medicine holds a licence to do so; and
  - the person manufacturing the medicine notifies the Managing Director quarterly of the medicines manufactured during each quarter and the hospital or institution with which the contract to manufacture the medicines was held.
12. Medicines (other than prohibited imports) imported by a member of a group of persons visiting Australia or New Zealand, provided that:
- the medicines are intended to be used and are used only for the treatment of a member or members of the group;
  - the group of persons is either:
    - a group of persons visiting Australia or New Zealand to participate in a national or international sporting event; or
    - members of the military forces of another country visiting Australia or New Zealand for military training; or
    - a group of persons including the Head of State or Head of Government of a foreign country and senior Government officials of that country who are visiting Australia or New Zealand;
  - any unused medicines are destroyed at the end of the visit or removed from Australia or New Zealand;
  - a member of the group takes responsibility for the control and custody of the medicines while the group is in Australia or New Zealand;
  - that person carries a list, in English, of the name of the active ingredient(s), strength and quantity of each medicine imported, and keeps a record of the use of the medicines while the group is in Australia or New Zealand; and
  - the list or record is to be provided to a customs officer or other authorised person on request.
13. Medicines imported by a medical practitioner or a member of a medical team accompanying a person to Australia or New Zealand who has a critical illness and is under the direct care of the medical practitioner or team. The medicines must be for use in the treatment of the person with the critical illness and their importation must not be prohibited under Customs legislation.
14. Medicines on a ship (including a yacht or other marine vessel) or aircraft visiting Australia or New Zealand if they are part of the medical supplies of the ship or aircraft. The medicines must be for use in the treatment of a passenger or member of the crew of the ship or aircraft and their importation must not be prohibited under Customs legislation. The medicines must not be removed from the ship or aircraft whilst it is in Australia or New Zealand.
15. Medicines that are the subject of an approval provided in emergency situations. This exemption may be used to enable medicines to be stockpiled as quickly as possible in preparation for dealing with a potential threat to public health, or made available urgently in order to deal with an actual threat to public health caused by an emergency. Medicines may be exempt from licensing under this provision only if it is in the national interest of one or both countries. The exemption will be subject to the conditions specified in the exemption notice. The exemption will cease to have effect if and when the medicines become licensed or the exemption is revoked or varied.

16. Medicines for which the Managing Director grants an approval to enable the medicine to be used for the treatment of a person or for experimental purposes in humans (*see also Part F3: Clinical Trials and Access to Unlicensed Therapeutic Products*).
17. Medicines used under an authority given by the Managing Director for a specified medical practitioner to supply specified unlicensed medicines or classes of medicines to specified recipients or classes of recipients. Conditions may be imposed on this kind of authorisation.
18. Medicines for which the Managing Director has granted an approval in the interests of public health where he/she is satisfied that no licensed product that could act as a substitute is available, or any such product is in short supply.

Following a review of the regulation of homoeopathic medicines and the requirements for product licensing under the joint scheme, the following exemption from product licensing is proposed:

19. It is proposed that non-sterile, single preparation homoeopathic medicines that are not subject to the Scheduling Standard (except where the concentration of mother substance is 1 nanogram/kg or less, or is specifically permitted at a lower concentration) and are not derived from certain specified mother substances (such as those with a potentially infectious nature eg. nosodes and some sarcodes), will be exempt from the requirement to obtain a Class 1 or Class 2 medicines licence prior to supply, providing the concentration of mother substance in the preparation is equal to or less than 10 mg per litre or per kilogram (and other conditions, outlined below, are met).
20. To ensure that the products are manufactured to a suitable level of GMP, and to ensure traceability for adverse reaction, complaint and recall purposes, the label of the homoeopathic medicine will be required to include the manufacturer's licence number (of the manufacturer responsible for the 'release for sale' step of manufacture). This manufacturer will also be required to record and maintain details (including licence numbers) for all other manufacturers involved in the production of the medicine.
21. Industry contends that these products would only be accessed by practitioners and consumers who are aware of their appropriate use, or have been advised to purchase a particular preparation by a practitioner. However, a system to record the supply of these types of products may need to be established.
22. Although these medicines will not be permitted to be promoted for therapeutic use (and hence will not include indications on the label), they must otherwise comply with the Authority labelling standard, and must be labelled with a statement such as '*to be used only in accordance with homoeopathic (or anthroposophic) principles*' (or words to that effect).
23. Single substance homoeopathic or anthroposophic preparations supplied as starting materials to licensed manufacturers will also be exempt from the requirement to obtain a Class 1 medicines licence. This will enable licensed manufacturers to source starting potencies from external sources (eg. via import). This exemption is for product licensing only, and does not apply to GMP.

Medicines that are exempted from product licensing and are imported into Australia or New Zealand and held under the direct control of the sponsor until dispensed or authorised for supply must be:

- supplied only in accordance with the relevant notification, approval, authorisation or prescription; and
- kept in a warehouse or a properly secured area under the control of the sponsor.

If not used within 12 months of importation, the medicines must be destroyed within one month of the end of that period. The sponsor must keep records relating to the source of supply of the medicines, and if the medicines are destroyed, the sponsor must keep records relating to the destruction. The sponsor must provide copies of the records to the Managing Director on request.

If a person supplies a batch of a medicine that is exempt from product licensing and the Managing Director is satisfied that the medicine does not conform to an applicable standard or is not fit to be used for its intended purpose, then the Managing Director may issue a notice requiring the person to take steps to recover any unused portion of that batch of medicine. The notice may also specify how and when the medicine is to be recovered.

## **5. OBTAINING INFORMATION**

The Managing Director may obtain information about medicines, the manufacture of medicines and applications pertaining to medicines or the manufacture of medicines.

The Managing Director may, by a notice in writing, require a person who:

- has imported a medicine into Australia or New Zealand;
- has supplied a medicine in Australia or New Zealand;
- has exported a medicine from Australia or New Zealand;
- has manufactured a medicine in Australia or New Zealand;
- is an applicant for a product licence for a medicine; or
- is the sponsor of a licensed medicine

to supply information or documents, including information or documents relating to:

1. the formulation or composition of the product;
2. the indications of the product;
3. directions for use of the product;
4. the manufacture of the product, including the manufacturer of the product;
5. the presentation of the product;
6. the quality, safety and efficacy of the product;
7. the conformity of the product to a standard applicable to the product;
8. advertising material relating to the product;
9. the conformity of the product to a requirement relating to advertising applicable to the product;
10. whether the product complies with conditions imposed on a product licence for the product;
11. the regulatory history of the product in any country; or

12. any further information in relation to the product or to the application for a product licence as specified in the notice.

The Managing Director may, by a notice in writing, require a person who is an applicant for a manufacturing licence or holds a manufacturing licence to supply information or documents relating to one or more of the following:

1. whether the manufacturer complies with conditions (if any) imposed on a manufacturing licence for the manufacturer; or
2. any further information in relation to the manufacturer or to the application for a manufacturing licence as specified in the notice.

All notices must specify a reasonable period in which the sponsor/manufacturer is to comply. The notices may also specify the form in which the information is to be supplied.

## **6. ADVERSE EVENT REPORTING**

A comprehensive adverse event monitoring program will operate in Australia and New Zealand under the directorship of the Authority, and this program will monitor the safety of medicines supplied in Australia and New Zealand. The program will provide for:

- the submission of reports of suspected adverse events and problems with medicines, in accordance with the Rules. The submission of these reports will be mandatory for sponsors and voluntary for healthcare professionals and consumers;
- guidance for the reporting of these events, including the types of reports that must or may be submitted;
- electronic database/s, with capacity to store and process information from either country or from both countries;
- pharmacovigilance requirements, based on current guidelines and set out in Rules and/or Orders;
- auditing of sponsors for compliance with pharmacovigilance requirements;
- systems for the review of reports in both countries;
- systems for communicating, within the Authority, information on actual or potential problems with medicines and for developing policy on pharmacovigilance and adverse event reporting matters; and
- systems for the dissemination of information to healthcare professionals and consumers on problems with medicines.

Sponsors of medicines will be required to monitor actively the performance of their medicines in the market place. At any time while a product licence has effect, as soon as a sponsor becomes aware of particular information in relation to the licensed medicine, the sponsor must inform the Managing Director in writing. Where details of adverse events are reported to the sponsor by a third party, the sponsor must keep the details of this third-party and provide the details to the Managing Director on request.

The particular information that must be reported within a specified period includes:

- information regarding the medicine that contradicts information already provided to the Authority;

- information that indicates that the use of the medicine in accordance with the recommendations for its use may have an unintended harmful effect;
- information that indicates that the medicine, when used in accordance with the recommendations for its use, may not be as effective as information already provided to the Authority might suggest; or
- information that indicates that the quality, safety or efficacy of the medicine is unacceptable.

The Rules may provide for circumstances where sponsors are not obliged to provide certain types of information, even though it is of the particular type listed above.

The Managing Director may order an audit of the sponsor's premises by an authorised person, to check for compliance with adverse event reporting requirements.

Sponsors may be required to provide usage data for licensed medicines either annually or on request.

If an application for a product licence is withdrawn or lapses, the Managing Director may, within 10 working days of withdrawal of the application, give the applicant written notice requiring the applicant to inform the Managing Director in writing whether the applicant is aware of any information of a kind mentioned in the list above. The applicant must comply with the requirements of such a request within 20 working days of receiving the request and must not provide information that is false or misleading.

The Managing Director may seek advice regarding adverse event reporting from relevant expert advisory committees.

## **7. RECALLS AND PUBLIC NOTIFICATION**

Recalls will be classified by the Authority, in consultation with the sponsor where appropriate, according to the European classification system, as follows:

- *Class I recalls* occur when defects in medicines are potentially life-threatening or could cause a serious risk to health;
- *Class II recalls* occur when defects in medicines could cause illness or mistreatment, but are not Class I; or
- *Class III recalls* occur when defects in medicines may not pose a significant hazard to health, but withdrawal may be initiated for other reasons.

The Managing Director may, in writing, impose on a sponsor requirements relating to medicines, if the medicines are supplied while licensed and:

- do not conform with standards applicable to the medicines; or
- the manufacturing principles have not been observed in the manufacture of the medicines; or
- the Managing Director is satisfied that the quality, safety or efficacy of the medicines is unacceptable.

The requirements may be one or more of the following:

- recover the medicines that have been distributed;
- inform the public or a specified class of persons that one or more of the circumstances referred to above have occurred in relation to the medicines;
- publish information relating to the manufacture or distribution of the medicines; or
- advise the Authority of the destruction etc., of the recalled medicines.

Also, these requirements may be imposed on persons supplying medicines that are exempt from product licensing if:

- the medicines do not conform with a standard applicable to the medicines; or
- the manufacturing principles have not been observed in the manufacture of the medicines; or
- the Managing Director is satisfied that the quality, safety or efficacy of the medicines is unacceptable.

Requirements will also be imposed on persons manufacturing, importing, exporting or supplying medicines that do not have a product licence and are not exempt from product licensing requirements. Additionally requirements will be imposed on persons manufacturing, importing, exporting or supplying counterfeit medicines.

If a medicine that is the subject of a product licence is supplied but one or more steps in its manufacture has been carried out by an unlicensed manufacturer, requirements may be imposed on the sponsor of the medicine. Requirements may also be imposed on the sponsor of a medicine if the product licence has been suspended or revoked.

In addition, the Managing Director may impose requirements on a person if the person supplies or has supplied medicines that have been, or could possibly have been, subject to actual or potential tampering.

The Managing Director may require the medicine affected by the recall to be recalled permanently or, where corrective action may be undertaken, to be recalled temporarily until supply may recommence. The Managing Director may limit recall requirements to the batches of the medicine affected by the recall.

If a medicine is supplied that is exempt from product licensing requirements because of an emergency and it does not conform to a standard applicable to a medicine of this kind, then the Managing Director may require the person supplying the medicine to recover the medicine.

The Authority will be able to order a previous sponsor, or a current sponsor if the previous sponsor cannot be identified or is insolvent, to undertake a recall of a medicine if the previous sponsor was the sponsor at the time of the distribution of the medicine.

The Authority will be able to instigate a mandatory recall procedure in cases where the sponsor is unwilling or unable to conduct the recall voluntarily. Where the Authority undertakes a recall, it may recover costs from any party involved in the sale or supply of the medicines, as appropriate. When requirements are imposed under this provision, the Managing Director must publish a notice setting out the particulars of the requirement.

## D. MEDICAL DEVICES

### 1. INTRODUCTION

Under the joint regulatory scheme, a *medical device* is:

any instrument, apparatus, implement, machine, appliance, implant, software, material or other similar or related article, including any diagnostic goods for *in vitro* use, intended by the person under whose name it is or is to be supplied, to be used alone or in combination, for human beings for the specific purpose for one or more of the following:

- i. diagnosis, prevention, monitoring, treatment or alleviation of disease;
- ii. diagnosis, monitoring, treatment, alleviation of or compensation for an injury or handicap;
- iii. investigation, replacement, modification or support of the anatomy or of a physiological process;
- iv. supporting or sustaining life;
- v. control of conception;
- vi. disinfection of medical devices;
- vii. providing information for medical purposes by means of *in vitro* examination of specimens derived from the human body;
- viii. and that does not achieve its principal intended action in or on the human body by pharmacological, chemical, immunological or metabolic means, but that may be assisted in its function by such means.

It should be noted that an accessory to such an instrument, apparatus, appliance, material or other article, whilst not being a medical device, will be regulated as a medical device.

The key features of the joint regulatory scheme for medical devices are:

- product licensing as the central point of control of supply of medical devices in Australia and New Zealand;
- prescribed essential principles for the quality, safety and performance of the medical device that must be complied with before the product can be supplied;
- a device classification scheme based on different levels of risk for each class of device with five classes of medical device - Class I, Class IIa, Class IIb, Class III and Active Implantable Medical Device (AIMD);
- a choice of procedures that can be employed by manufacturers to demonstrate initial compliance and on-going compliance with the essential principles. These procedures may include obligations on manufacturers for quality systems, type testing, and/or design examination depending on risk class for the device;
- the use of recognised standards to satisfy the requirements of the essential principles;
- a comprehensive post market surveillance including compliance testing and adverse event reporting and appropriate regulatory controls for the manufacturing processes of medical devices;
- mechanisms of access to unlicensed devices; and
- a framework for the regulation of *in vitro* diagnostic (IVD) devices as a subset of medical devices (*see Section D9: Framework for the Regulation of In Vitro Diagnostic Devices*).

The *manufacturer* of a medical device is the person who accepts responsibility for the design, production, packaging and labelling of the device before it is supplied under the person's name.

A manufacturer of a medical device, may also be the person, who, with a view to supplying the device in their name, performs one or more of the following actions using ready-made products - assembles, packages, undertakes refurbishment of the device, processes the device, labels the device or assigns the device its purpose by means of information supplied.

However, a person is not taken to be the manufacturer of a medical device if the device is a customised medical device where the person assembles or adapts the device for an individual patient, the device has already been supplied and the assembly and adaptation is in accordance with the intended purpose of the device.

## **2. ESSENTIAL PRINCIPLES AND MEDICAL DEVICE STANDARDS**

All medical devices are required to comply with the essential principles, which set out requirements relating to safety and performance characteristics of medical devices.

The essential principles are about identifying and mitigating risk and ensuring that devices are safe and perform as intended. They do not inherently specify how the principles can be satisfied or complied with. A principles-based set of requirements accounts for technological advances and changes in the application of medical devices.

There are two groups of essential principles:

1. General Principles, which apply to all medical devices:
  - the use of a medical device must not compromise health and safety when used as intended and the residual risks of the device must not outweigh the benefits;
  - the design and construction of a medical device have to conform with generally acknowledged safety principles;
  - medical devices are to be suitable for the intended purpose;
  - long term safety;
  - medical devices are not adversely affected by transport or storage; and
  - the benefits are to outweigh any side effects.
  
2. Particular 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 (labelling, instructions for use and advertising material); and
  - clinical evidence.

The application of the particular principles will depend on the intended purpose and technology used in the medical device.

Both the general principles and the relevant particular principles must be considered, and if applicable, complied with, in order for a medical device to be considered to comply with the essential principles.

Medical device standards orders for products and conformity assessment standards orders for manufacturing or quality management system processes may be determined by the Authority. Compliance with applicable medical device standards are not mandatory, but it is one way to establish compliance with essential principles. Other ways, including other relevant standards, may be used to demonstrate compliance with the essential principles.

To claim compliance with a medical device standard or a conformity assessment standard, the device must fall within the scope of the standard and the requirements of the standard must be explicitly applied.

Standards orders will usually reference international or Australian or New Zealand standards that were originally developed for voluntary use or as regulatory standards. Clauses of these standards may demonstrate compliance with one or more of the essential principles or one or more aspects of the conformity assessment procedures. It is equally possible that several clauses of a standard or multiple standards are required to demonstrate compliance with one essential principle or one aspect of a conformity assessment procedure. The relationship between clauses and essential principles and aspects of conformity assessment procedures will be set out in the Orders themselves. If a manufacturer chooses to use a medical device standard or conformity assessment standard, compliance cannot be claimed if relevant aspects of the clause or clauses have been ignored, or methods or requirements of a clause have been modified.

The requirements of a more specific standard will take precedence over a more general standard.

### **3. CONFORMITY ASSESSMENT PROCEDURES**

‘Conformity assessment procedure’ is the term used to define the pre-market process that a manufacturer follows in order to demonstrate compliance with regulatory requirements. Conformity assessment procedures are obligations on the manufacturer. Depending on the procedure chosen, assessment of the final design, the controls implemented for production and the manufacturer’s courses of action may have to be assessed by the Authority or another acceptable conformity assessment body through arrangements with overseas regulators. In essence, the application of a conformity assessment procedure required for a medical device is commensurate with the level and nature of risk posed by the medical device to the patient or user. This ranges from manufacturer self-assessment, for the lowest risk medical devices, through to a full quality management system and product design dossier review, for conformity with the essential principles for the highest risk devices.

The common elements in most of the conformity assessment procedures are:

- **Quality management system certification**  
Manufacturers of devices must define, implement and ensure effective controls on the manufacturing processes and have those controls assessed by the Authority. As compliance with the essential principles must be an objective of the application of the manufacturing controls they must be integrated into the quality management system or manufacturing process. Conformity assessment procedures implemented by the manufacturer of all but class I devices, are assessable by the Authority.
- **Quality management system certification surveillance audits**  
Quality management system certification only remains valid when it is periodically inspected. A re- inspection audit is referred to as a surveillance audit. The audits ensure that the manufacturer is continuing to apply the approved quality system or manufacturing process to existing product and to any new product introduced since the previous surveillance or certification audit. A program of surveillance audits will be established for all manufacturers issued with quality management systems certification.
- **Post-market monitoring system**  
A manufacturer must implement and maintain a post-market monitoring system to seek and assess information concerning the performance of devices after supply. Any reportable events must be conveyed to the Authority, either directly from the manufacturer or through the Australian or New Zealand sponsor.

When a conformity assessment procedure requires a quality management system the post production monitoring must be implemented as part of that system.

As part of the conformity assessment procedures, the manufacturer of a medical device will be required to make a declaration of conformity which, in most cases, declares that the medical device complies with:

- the applicable provisions of the essential principles;
- the classification rules; and
- the conformity assessment procedures;

before being supplied in Australia or New Zealand.

The declaration also requires the manufacturer to provide:

- their name and address;
- details of the:
  - scope of devices covered by the declaration (including product identification information);
  - quality management certification;
  - device classification;
  - device nomenclature code;
  - conformity assessment standards (quality management system standards);
  - medical device standards (product standards); and
  - other standards used to show conformity with the essential principles or elements of the conformity assessment procedures
  - relevant to the conformity assessment procedure and the manufacture of the medical device covered by the declaration.

Special conformity assessment procedures apply to medical devices that have a special purpose, such as those that are exempt from a product licence (but not from the essential principles or conformity assessment procedures), intended for special and experimental use, or custom-made devices for a medical practitioner, custom-made or customized devices for a specific patient.

### **a) Classification of Medical Devices**

The classification of a medical device determines the conformity assessment procedure(s) a manufacturer can choose to ensure that the device is adequately assessed to conform to the particular requirements for the class of device.

Medical devices will be classified by the manufacturer according to the intended purpose of the medical device and the degree of risk involved to the patient and the user. The device classifications will be determined using a set of rules which take into account the level of invasiveness in the human body, duration and location of use and whether the device is powered or not.

The benefits of a rules-based classification system include:

- the immediate ability to deal with devices incorporating new technologies; and
- increased transparency, accountability and consistency in the regulation of medical devices in that all devices are subject to a level of scrutiny commensurate with their risks to individual and public health.

The five classifications of medical devices are those used in Australia and also in Europe and are based on the recommendations of the Global Harmonisation Task Force:

- Class I (low risk);
- Class IIa (low-medium risk);
- Class IIb (medium-high risk);
- Class III (high risk); and
- Active Implantable Medical Devices (AIMD; high risk).

The classification may change depending on the site of use, the addition of a medicinal component, or the intended purpose specified by the manufacturer.

Higher-class devices will undergo a more stringent form of conformity assessment than lower class devices. Certification by the Authority or a designated notified body is required for higher risk devices.

### **b) Conformity Assessment Standards**

Conformity assessment standards may be determined by the Managing Director and set out in Orders. Compliance with applicable conformity assessment standards is not mandatory, but it is one way to establish that one or more parts of the conformity assessment procedures have been applied to medical devices.

#### 4. ISSUING OF CONFORMITY ASSESSMENT CERTIFICATES

The Managing Director can issue a conformity assessment certificate in respect of a manufacturer of medical devices, signifying one or more of the following:

- that relevant quality management systems and manufacturing processes required by the conformity assessment procedures have been applied to the manufacture of the device;
- compliance with the essential principles for the device have been demonstrated; or
- compliance with other requirements of the conformity assessment procedures have been met.

A conformity assessment certificate may be required before a valid application can be made for a product licence for a kind of medical device.

A conformity assessment certificate issued by the Authority is required for:

- a manufacturer who manufactures medical devices in Australia and/or New Zealand; and
- medical devices manufactured outside Australia and/or New Zealand of the following kinds:
  - medical devices that contain or are manufactured using cells, tissues or tissue derivatives of animal origin that have been rendered non-viable (other than those that are intended to come into contact with intact skin only);
  - medical devices that contain or are manufactured using cells, tissues or derivatives of microbial or recombinant origin and are intended for use in or on the human body;
  - medical devices incorporating stable derivatives of human blood or human plasma that are liable to act on the human body in a way that is ancillary to the device;
  - medical devices that incorporate, or are intended to incorporate, as an integral part, a substance that, if used separately, might be considered to be a medicine that is intended to act on the patient in a way ancillary to the device.

Conformity assessment certificates are not required for:

1. any of the following:
  - a Class I medical device that is not intended to be supplied in a sterile state or that does not have a measuring function;
  - an exempt device;
  - a medical device that is exempt for special or experimental uses;
  - a medical device that is the subject of an exemption for a medical practitioner;
  - a system or procedure pack, where all relevant conformity assessment procedures have been applied to the device/s and medicines or other therapeutic products are licensed;
  - custom made medical devices: or
2. a manufacturer of a medical device of a kind mentioned in item 1, above.

When an application has been made for a conformity assessment certificate the decision to issue the certificate will depend on several factors:

- whether the application procedures have been followed;
- the application and satisfactory assessment of quality management systems, where required;

- satisfactory demonstration of compliance with the essential principles;
- whether the applicant for the certificate:
  - is a fit and proper person to hold a conformity assessment certificate, taking into account whether the person;
    - has had a conformity assessment certificate suspended or revoked;
    - has had a conviction for an offence against an Australian or New Zealand law;
    - has failed to comply with a condition of a conformity assessment certificate;
- whether people who participate, or who are likely to participate in the management of the applicant's affairs:
  - are fit and proper persons to participate in the management of the applicant's affairs, taking into account whether they;
    - have had a conformity assessment certificate suspended or revoked;
    - have had a conviction for an offence against an Australian or New Zealand law;
    - have failed to comply with a condition of a conformity assessment certificate;
- whether people who have effective control, or who are likely to have effective control over the applicant:
  - are fit and proper people to have effective control over a manufacturer who has been issued a conformity assessment certificate, taking into account whether they;
    - have had a conformity assessment certificate suspended or revoked;
    - have had a conviction for an offence against an Australian or New Zealand law;
    - have failed to comply with a condition of a conformity assessment certificate.

The Managing Director may, by written notice, require the applicant to allow an authorised person to inspect:

- the premises (including premises outside Australia or New Zealand) and equipment, processes and facilities that are being or will be used to manufacture medical devices of the kind in question; and
- any other kinds of therapeutic products being supplied in Australia or New Zealand on those premises.

After making a decision, the Managing Director must notify the applicant in writing and:

- if the decision is not to issue the certificate, state in the notice the reasons for the decision; or
- if the decision is to issue the certificate and all assessment fees that are due have been paid, issue the certificate to the manufacturer.

A conformity assessment certificate must specify whether it covers all medical devices manufactured by the manufacturer or only specified medical devices.

The conformity assessment certificate commences on the day specified on the certificate.

An application for a conformity assessment certificate lapses if the applicant:

- does not provide information required for the certificate to be issued;
- does not provide, if requested, a reasonable number of samples of the kind of medical device to which the application relates;
- the applicant fails to provide information relating to a kind of medical device to which the application relates within 10 working days of the day specified in a notice from the Managing Director;

- information provided by the applicant in relation to the application is false or misleading;
- the applicant fails to allow an authorised person to carry out an audit; or
- the applicant fails to pay an assessment fee for the application within the specified period, after being notified of the decision to issue a conformity assessment certificate.

The applicant for a conformity assessment certificate may give the Managing Director written notice that the applicant wishes to treat the application as having been refused if the applicant has not been notified of a decision within a prescribed period. In which case it is considered that the Managing Director had decided not to issue the certificate.

#### **a) Statutory Timeframes for Conformity Assessment Certification Applications**

At commencement of the joint scheme, statutory timeframes will apply to conformity assessment applications for medical devices.

After the application is accepted for assessment, a decision to grant or to refuse a conformity assessment certificate will be made within 255 working days of receipt of the application.

A sponsor will be notified within 20 working days of a decision to grant a conformity assessment certificate.

The penalty to the Authority for not completing applications within statutory timeframes will be the forfeit of 25% of the application fee to the applicant.

Assessment timeframes and associated penalties will be applied to individual applications rather than to overall performance of the Authority.

#### **b) Conditions on a Conformity Assessment Certificate**

When a conformity assessment certificate is issued to a manufacturer of a medical device by the Authority, conditions will be imposed on the certificate. Breaching any of these conditions may lead to the suspension or revocation of the certificate.

The following standard conditions will be imposed automatically when a conformity assessment certificate is issued:

- **Entry and audit powers**  
The manufacturer will allow an authorised person to:
  - enter premises, at any reasonable time, including premises outside Australia or New Zealand, at which the manufacturer, or any other person deals with the medical devices covered by the certificate; and
  - inspect those premises and the equipment, processes and facilities used to manufacture the medical devices, and to take samples of the devices; and
  - to see and copy any requested documents relating to the medical device, compliance with the Essential Principles or the manufacturer's quality management system.

- **Review**  
The manufacturer will cooperate with any review by the Authority of the application of quality management systems, the compliance with the essential principles and any other conformity assessment procedures specified in the Rules, relating to the certificate.
- **Notification of substantial changes**  
The manufacturer will notify the Authority, in writing, of any plan for substantial changes to the:
  - quality management systems; or
  - product range; or
  - the product design
- **Fees**  
Any prescribed fees for a review of a conformity assessment certificate will be paid when they are due.

Additionally, the Managing Director may impose special conditions on a conformity assessment certificate at the time it is issued or subsequently and may also vary or remove existing conditions.

Additional conditions, imposed on a conformity assessment certificate issued by the Authority, may include:

- conditions on the medical devices covered by the certificate; or
- conditions on the manufacturer's quality management system; or
- new conditions at the request of the manufacturer or the Authority; or
- varying or removing existing conditions, at the request of the manufacturer or the Authority, if the medical benefits do not outweigh the residual risk/s of death, serious illness or serious injury, as determined by the application of current risk analysis and assessment procedures, at the request of the manufacturer or the Authority.

### **c) Revocation or Suspension of a Conformity Assessment Certificate**

The Managing Director may revoke a conformity assessment certificate or suspend a certificate for a period of time. In certain circumstances, a conformity assessment certificate can be revoked with immediate effect.

#### ***(i) Automatic Revocation***

The Managing Director must revoke a conformity assessment certificate if the conformity assessment certificate has been suspended and the period applying to the suspension expires before the suspension is revoked.

#### ***(ii) Revocation with Immediate Effect***

In certain circumstances, the Managing Director may revoke a conformity assessment certificate with immediate effect, in which case the sponsor must immediately cease import, supply or export of the product. In certain circumstances, the product may also be recalled.

The Managing Director may revoke (with immediate effect) a conformity assessment certificate for a medical device if the manufacturer requests in writing the revocation of the conformity assessment certificate.

### ***(iii) Revocation after Notice of Proposal to Revoke***

If the Managing Director decides that a conformity assessment certificate should be revoked and the legislation does not provide for the certificate to be revoked with immediate effect, the Managing Director must advise the manufacturer of the intention to revoke the certificate and give the manufacturer the opportunity to respond to the proposed action.

The Managing Director may revoke a conformity assessment certificate for a medical device if:

1. The conformity assessment procedures have not been applied to medical devices of a kind to which the certificate applies;
2. The certificate holder refuses or fails to comply with a condition to which the certificate is subject;
3. The Managing Director has given the manufacturer of the kind of medical device a notice requesting information or documents relating to that kind of medical device or a quality management system to which the certificate applies and the manufacturer fails to comply with the notice within 10 working days of the day specified in the notice;
4. The manufacturer in respect of whom the certificate is issued no longer manufactures any of the kinds of medical devices to which the certificate applies;
5. The manufacturer is not a fit and proper person to hold a conformity assessment certificate;
6. A person who is participating in managing the manufacturer's affairs is not a fit or proper person to participate in managing the affairs of a manufacturer in respect of whom a conformity assessment certificate is issued; or
7. A person who has effective control over a manufacturer is not a fit or proper person to have effective control over a manufacturer in respect of whom a conformity assessment certificate is issued.

In these circumstances, before making a decision on a proposal to revoke a conformity assessment certificate, the Managing Director must:

- inform the manufacturer in writing of the intention to revoke the certificate and set out the reasons for such an action; and
- give the manufacturer reasonable opportunity to make submissions in response to the proposed action; and
- consider submissions made by the manufacturer in relation to the proposed action.

### ***(iv) Limiting Revocation to Some Kinds of Medical Devices***

The Managing Director may limit the revocation of conformity assessment certificates to some kinds of medical device, or some medical devices of the kinds, to which the certificate applies.

If the revocation is limited, the Managing Director must vary the certificate so that it no longer applies to the medical devices revoked.

**(v) *Date of Effect of Revocation of Conformity Assessment Certificates***

The revocation of a conformity assessment certificate, or variation of a conformity assessment certificate in cases of limited revocation, has effect:

- where revocation or variation is immediate, from the day on which the notice of revocation or variation is given to the manufacturer in relation to whom the certificate is issued; or
- where specified in the notice.

**(vi) *Suspension***

Suspension of a conformity assessment certificate leads to suspension of product licences for the kinds of medical devices to which the certificate applied, pending provision of additional information by the manufacturer to enable the Managing Director to determine whether or not the conformity assessment certificate should remain valid or be revoked.

The suspension may be limited to some medical devices of that kind.

The Managing Director may suspend a conformity assessment certificate for a medical device if the Managing Director is satisfied that there are grounds for revoking the certificate.

The Managing Director may suspend (with immediate effect) a conformity assessment certificate for a medical device if the Managing Director is satisfied that the suspension is necessary as the medical benefits do not outweigh the residual risk/s of death, serious illness or serious injury.

The Managing Director must notify the sponsor in writing if he/she decides to suspend a conformity assessment certificate.

Before suspending a conformity assessment certificate because it is likely there are grounds for revoking the certificate, and if the Managing Director would be required to give notice of an intention to revoke the certificate, then he/she must:

- inform the manufacturer in writing of the intention to suspend the certificate and set out the reasons for such an action; and
- give the manufacturer reasonable opportunity to make submissions in relation to the proposed action; and
- consider submissions made by the manufacturer in relation to the proposed action.

Where the suspension is necessary as the medical benefits do not outweigh the residual risk/s of death, serious illness or serious injury, the notice takes effect on the day on which the notice is given. In all other circumstances, suspension of a conformity assessment certificate is to take effect no earlier than 20 working days after the day on which the notice was given.

The period of suspension must not exceed 6 months. The period of suspension may be extended by up to an additional 6 months if the manufacturer is able to show that he/she has taken steps to remove the grounds for suspending the certificate. The period of suspension

cannot be extended a second time (i.e. it cannot be extended beyond two suspension periods, to a maximum of twelve months).

The suspension has effect until:

- it is revoked by the Managing Director; or
- the end of the suspension period specified in the notice; or
- if the period of suspension was extended by the Managing Director, the end of the extension period.

The Managing Director may revoke a conformity assessment certificate suspension:

- on his/her own initiative; or
- if the manufacturer in relation to whom the conformity assessment certificate was issued or the person who applied for the certificate (if not the manufacturer) applies in writing to the Managing Director.

The Managing Director must revoke the suspension if satisfied that:

- the ground on which the conformity assessment certificate was suspended no longer applies; and
- there are no other grounds for suspending the conformity assessment certificate.

If the Managing Director revokes a suspension, he/she must advise the manufacturer in writing within 20 working days after making the decision to revoke the suspension.

If, after an application by the manufacturer, or the person who applied for the certificate if not the manufacturer, the Managing Director decides not to revoke the suspension, he/she must advise the person in writing of his/her decision, giving reasons for the decision, within 20 working days of the decision being made.

#### **d) Validity of a Conformity Assessment Certificate**

Once issued, a conformity assessment certificate will remain valid for five years after the date of issue. At the end of this period, it will be re-issued for a further five years based on satisfactory compliance and audit history.

The manufacturer must ensure that the manufacturer data profile including the declarations required for fit and proper person are accurate and up to date at the time of each interim surveillance audit.

All declarations must be in a form approved by the Managing Director.

The Managing Director may vary the terms of a conformity assessment certificate, as a result of his/her consideration of the renewal application or as a consequence of an audit.

The Managing Director may refuse to renew a conformity assessment certificate, if the manufacturer fails to provide, or refuses to provide, adequate declarations.

The Authority may revoke a conformity assessment certificate at any time if the manufacturer provides false information or makes false declarations.

## 5. ISSUING OF PRODUCT LICENCES

### a) The Product Licence

A medical device may only be

- imported into Australia or New Zealand; or
- exported to a third country from Australia or New Zealand; or
- supplied in Australia or New Zealand

by, or with the written approval of, the holder of a product licence issued by the Managing Director of the Authority, unless specifically exempted.

A sponsor intending only to export a medical device from Australia and/or New Zealand to a third country may obtain a special type of product licence, an 'export only product licence'.

A product licence will be granted on the basis of an application submitted to the Authority, including certifications made by the sponsor, a copy of the manufacturer's declaration of conformity and, in most cases, a conformity assessment certification.

To maintain a product licence, a sponsor must ensure that the manufacturer continues to meet the obligations placed upon him by the legislation and hence that the certifications made by the sponsor at the time of application remain true. Any significant changes by the manufacturer to any of the information upon which the conformity assessment certification was issued must be subject to further assessment and approval. In many cases this will not affect the validity of the product licence if the manufacturer has met their obligations. Any change to a detail recorded on the product licence must also be the subject of an additional application and approval by the Authority.

A register of product licences will be maintained by the Authority.

Generally, a product licence will be a dual-country licence, i.e. it will permit the import into, export from and supply in both Australia and New Zealand of the medical device that is the subject of the product licence. The only exceptions will be:

- single country licence, which will be issued only in those exceptional circumstances where one country has decided to depart from the joint regulatory scheme in relation to a particular therapeutic product or type of product or where the Authority deems such a restriction necessary; and
- export only licence, which will be issued if the sponsor intends only to export a product from Australia and/or New Zealand to a third country.

The product licence document will provide a summary of the particulars of the product(s) that is/are the subject of the licence and set out or refer to the conditions, subject to which the licence has been granted. The product licence will include:

- the date of its commencement;
- the licence number for the kind of medical device;
- particulars about:
  - the licence holder;
  - the manufacturer;
  - the device nomenclature code;

- the medical device classification;
- in the case of Class III medical device or a Class AIMD medical device – the unique product identifier;
- the intended use of the kind of medical device;
- the country, or countries, in which the licence has effect;
- the conditions subject to which the licence is granted;
- other information, if any, that may be relevant to the issuing of the licence.

**(i) Product Licence Identifier**

When the Managing Director issues a product licence for a medical device, a unique licence identifier is to be assigned.

When the Managing Director groups multiple medical devices on a product licence, a single, unique product licence identifier is to be assigned to the group.

**(ii) Provisional Product Licence**

In exceptional circumstances, and in consultation with the applicant, the Managing Director may issue a provisional product licence for a medical device for a time-limited period subject to conditions and further assessment of the medical device prior to completion of the provisional authorisation period.

A provisional product licence may be issued where there is insufficient clinical evidence available substantiating conformity with the essential principles but the Authority considers that there is a clinical need for the medical device to be available such as the prevention or treatment of a life-threatening disease or condition, and the medical device offers a likely superior therapeutic benefits to patients over existing treatments. This allows limited access to a medical device where the potential benefit is considered greater than the risk of non-treatment.

The Managing Director will be able to impose conditions on a provisional product licence including that:

- (a) the licence holder must continue to obtain clinical evidence to substantiate conformity with the essential principles and provide evidence on at least an annual basis;
- (b) restrictions can be placed on the use of the devices to certain persons, such as medical practitioners and/or certain target patient populations;
- (c) the licence holder is responsible for ensuring that these restrictions are adhered to as a condition of licensing;
- (d) the licence holders must also ensure that any advertising or promotion of the medical device is in compliance with the Rules and has written approval of the Authority.

A provisional product licence would be granted for an initial period of two years, during which time the licence holder of the medical device must submit data to the Authority to support their application for a full product licence. The provisional licence holder will need to provide a periodic report to the Authority on the progress in obtaining this data. It will be possible to extend the period of validity for a period of no more than two years. If the

required data are not submitted within the two-year extension period, the provisional product licence will lapse and the medical device will no longer be able to be supplied.

The provisional product licence may be revoked at any time if a post-marketing clinical study fails to verify clinical benefit or post-marketing restrictions are inadequate to assure safe use of the medical device.

Assessment of the additional data required to support the granting of a full product licence will incur an additional assessment fee.

### ***(iii) Kind of medical device***

Generally, a separate product licence will be issued for each new kind of medical device. The circumstances in which a medical device is a new kind of medical device will depend on the type of device, its classification and the nature of the difference or change.

Medical devices are taken to be of the same kind if they:

- have the same sponsor;
- have the same manufacturer;
- have the same device nomenclature system code<sup>12</sup>;
- have the same medical device classification; and
- are the same in any other characteristics necessary to identify the device and any variants.

## **b) Obtaining a Product Licence**

Before a person can supply a medical device in Australia and/or New Zealand they are required to make an application for a product licence, unless the device is exempted from this requirement.

To obtain a product licence for a new medical device, the sponsor will be required to submit an application to the Authority, in a format approved by the Managing Director and accompanied by the prescribed fee. A sponsor must have a presence in Australia or New Zealand and the resources to implement post-market requirements in relation to the product.

In making an application for a product licence, the applicant must certify that:

- (1) the manufacturer has determined that the devices of the kind concerned are medical devices;
- (2) the device is intended for a purpose specified by the manufacturer;
- (3) the device has been correctly classified by the manufacturer in accordance with the medical device classifications;

<sup>12</sup> Global Medical Device Nomenclature (GMDN) codes are used for grouping procedures. The GMDN is a collection of internationally recognised terms to accurately describe and catalogue medical devices, providing generic device descriptors and for the purposes of data exchange, vigilance activities and commercial identification.

- (4) the device has been declared to conform with the essential principles, and the sponsor is either in possession of sufficient information to substantiate compliance with the essential principles or has procedures in place to ensure that the information can be obtained from the manufacturer within the prescribed timeframe;
- (5) an appropriate conformity assessment procedure has been applied to the device and the sponsor is either in possession of sufficient information to substantiate the manufacturer's declaration of conformity with the essential principles or has procedures in place to ensure that the information can be obtained within the prescribed time;
- (6) the advertising material relating to the device complies with all applicable requirements;
- (7) the device does not contain any substances that are a prohibited import for the purposes of the *Customs Act 1901* (Cth) and the *Customs and Excise Act 1999* (NZ);
- (8) the information included in or with the application is complete and correct;
- (9) the applicant is a resident of or carries on business in, Australia or New Zealand.

In most cases, the manufacturer of a medical device will be required to hold a conformity assessment certificate. The certificate and the manufacturer's declaration of conformity will need to be presented as part of the application process for a product licence.

A product licence for a medical device will usually be issued automatically once an effective application is submitted with the required certifications and declarations. However, applications may be selected for an application audit by the Authority, which involves checking some or all aspects of the application and certification.

If the application is an effective application (i.e. is made in accordance with an approved format and complies with the requirements in relation to certifications) and is not selected for audit, the Managing Director will issue a product licence for the device.

If the application is successful, conditions will then be imposed on the licence holder, for example to allow an authorised person to enter premises at any reasonable time to inspect premises and take samples of device products.

Penalties may be imposed if the product licence conditions are breached.

If the application is selected for auditing, the Managing Director may consider all or some aspects of when making a decision to issue or to refuse a product licence:

- whether the application is a proper application; and
- whether the certifications made by the Sponsor are correct.

### **(i) Priority Assessment**

The Authority may give priority to the assessment of product licence applications with respect to a new medical device that is intended for the treatment or diagnosis of a serious, life-threatening or severely debilitating disease or condition.

Priority will only be given if the treatment potentially offers a major benefit over currently available treatments or diagnoses.

For an application to receive priority status, the sponsor will be required to make a commitment to give priority to providing information to the Authority. Failure of the sponsor to respond adequately to questions within agreed timeframes may result in loss of priority status.

The circumstances in which priority status can be granted and the timeframes to apply will be outlined in guidelines.

### **c) Conditions on a Product Licence**

Conditions may be imposed on product licences for medical devices. These will be appropriate to ensure that the relevant requirements continue to be met throughout the life of the product. The product licence cannot be used to impose any conditions relating to the price of the product.

#### **(i) Standard Conditions**

The legislation will set out conditions that will apply to all licensed medical devices or to specified types and/or classes of medical devices.

Standard conditions relating to entry and audit powers, delivery of samples, availability of information and advertising material will apply to all licensed medical devices and require the sponsor to:

- allow an authorised person from the Authority to enter, at any reasonable time, any premises, including premises outside Australia and New Zealand, at which that person, or any other person deals with the medical devices. This is required so that the authorised person can inspect the premises and medical devices and to take samples. If requested by the authorised person the sponsor will also need to produce any documents relating to the medical device and to allow the documents to be copied by the authorised person;
- if requested to do so by the Managing Director, supply a reasonable number of samples of a medical device for testing purposes, together with any other materials reasonably considered necessary to allow testing to be performed. The samples are to be appropriate for the proposed testing purpose, supplied at the sponsor's expense and delivered to the Authority within the period specified within the request and in accordance with any other requirements specified in the request;
- have sufficient information to substantiate compliance with the essential principles and give this information to the Authority, if requested, or has procedures in place to ensure that the information can be obtained from the manufacturer;
- have possession of sufficient information to substantiate that the conformity assessment procedures have been applied to the medical device and give this information to the Authority, if requested;
- have possession of relevant information relating to any changes to the medical device including the product range, the quality management system, or manufacturing processes or the manufacturer of the medical device and give this information to the Authority, if requested;
- give information to the Authority about any malfunction or deterioration in the characteristics or performance of the medical device or any inadequacy in the design,

manufacture, labelling of the device, instructions for use or advertising materials for the medical device, or any use in accordance with, or contrary to, the use intended by the manufacturer that:

- led to the death of a patient or a user of the medical device or a serious deterioration in their state of health, or another person, within 10 working days after becoming aware of the event or occurrence, or
  - led to a serious threat to public health, within 48 hours of becoming aware of the event, or
  - that might lead to the death of a patient or a user of the medical device or a serious deterioration in their state of health, or another person, within 30 working days of becoming aware of the event;
- give information to the Authority to confirm whether or not a medical device complies with essential principles;
  - give information to the Authority to confirm whether or not a certificate that certifies compliance with the essential principles or the application of relevant conformity assessment procedures, and which was issued by a body other than the Authority and was used to support an application for a product licence, has been restricted, suspended, revoked or is no longer valid;
  - give the manufacturer of the medical device information relevant to the manufacturer's obligations under the conformity assessment procedures, especially the requirements for post-market monitoring, and whether the medical device complies with the essential principles; and
  - ensure advertising material used is consistent with the intended purpose for the medical device.

## **(ii) Specific Conditions**

In addition to the standard conditions, the Managing Director may impose specific conditions as part of the decision to issue a product licence.

Conditions may relate to:

- the manufacture of the product;
- the custody, intended purpose, supply, disposal or destruction of the product;
- the keeping of records relating to the product, including records relating to the tracking and location of the devices after their supply;
- matters dealt with in the essential principles;
- other matters relating to the product that the Managing Director thinks appropriate.

The Managing Director may also, by a notice given in writing, impose specific conditions on an existing product licence or vary or remove existing conditions. If the imposition or variation of the condition is necessary to prevent imminent risk of death, serious illness or serious injury, it will have immediate effect. In any other case, it will take effect no earlier than 20 working days after notice is given to the sponsor.

#### **d) Product Licence Variations**

The Managing Director will be able to vary the terms of a product licence. The legislation will set out the circumstances in which a change to a medical device results in a new kind of medical device. Other changes will be treated as product licence variations.

The Managing Director may vary the terms of the product licence, following a request by the holder of the product licence or at his/her own initiative, if the particulars on a product licence are incomplete or incorrect. If the only effect is a change in the intended purpose the Authority may vary the licence in accordance with the request.

The sponsor of a medical device must apply for variation of a product licence if the sponsor becomes aware that previous certifications are now known to be false, or they do not possess information required to be held.

#### **e) Suspension and Revocation of Product Licences**

The Managing Director may suspend or revoke a product licence in the event that the sponsor fails to comply with relevant regulatory requirements, including the product licence conditions, or the Authority receives new information on the safety, quality or performance of a medical device, which makes such an action necessary. In certain circumstances, a product licence can be revoked with immediate effect.

##### **(i) Automatic Revocation**

The Managing Director must revoke a product licence if:

- (1) the product licence has been suspended and the period applying to the suspension expires before the suspension is revoked; or
- (2) a conformity assessment certificate applying to that kind of device is revoked.

##### **(ii) Revocation with Immediate Effect**

In certain circumstances, the Managing Director may revoke a product licence with immediate effect, in which case the sponsor must immediately cease import, supply or export of the product. In certain circumstances, the product may also be recalled.

The Managing Director may revoke (with immediate effect) a product licence for a medical device if:

- (1) satisfied that there would be an imminent risk of death, serious illness or serious injury if the devices that are the subject of the licence continue to be available for supply or export;
- (2) devices of that kind are no longer therapeutic products;
- (3) devices of that kind are no longer medical devices;
- (4) devices of that kind become exempt devices;
- (5) the sponsor requests in writing the revocation of the product licence;
- (6) the Managing Director is satisfied that a statement made in or in connection with the product licence application or related certifications was false or misleading;

- (7) the annual charge for the product licence is not paid within 20 working days after it becomes payable;
- (8) the sponsor does not comply with a direction or requirement made under the Advertising Rule in relation to advertising; or
- (9) there is a serious breach, involving the kind of device, of the advertising requirements applicable under the legislation and the Managing Director is satisfied that the breach is significant and that, as a result of the breach, the presentation of devices of that kind is misleading to a significant extent;
- (10) the sponsor fails to comply (within 10 working days) with a request for information or documents made by the Managing Director for the purpose of ascertaining whether medical devices of that kind should have been licensed; or
- (11) the sponsor fails to comply (within 10 working days) with a request for information or documents made by the Managing Director for the purpose of ascertaining whether medical devices of that kind are being supplied, imported or exported from Australia or New Zealand.

The Managing Director must notify the sponsor in writing of a decision to revoke a product licence with immediate effect.

### ***(iii) Revocation after Notice of Proposal to Revoke***

If the Managing Director decides that a product licence should be revoked and the legislation does not provide for the licence to be revoked with immediate effect, the Managing Director must advise the sponsor of the intention to revoke the licence and give the sponsor the opportunity to respond to the proposed action. Before making a decision on a proposal to revoke a product licence the Managing Director must consider submissions made by the sponsor in relation to the proposed action.

The sponsor may continue to import, supply or export the product until such time as the Managing Director notifies the sponsor in writing of the decision to revoke the product licence.

The Managing Director may revoke a product licence for a medical device (following a notice of proposal to revoke) if:

- (1) the medical devices are no longer of the same kind as the medical device described in the product licence;
- (2) the sponsor has failed to comply with a condition of the licence;
- (3) the sponsor fails to comply with a notice given by the Managing Director requiring the sponsor to provide information or documents in relation to the kind of device, within 10 working days from the day specified in the notice;
- (4) the Managing Director is satisfied that the medical benefits of the kind of device do not outweigh the residual risk;
- (5) the Managing Director is satisfied that any certification, in relation to the application for issue of the licence is no longer correct; or
- (6) the sponsor has failed to notify the Authority of a change in ownership of the licence.

#### **(iv) Suspension**

Suspension of a product licence will stop further import, supply or export of a product pending provision of additional information by the sponsor to enable the Managing Director to determine whether or not the product licence should remain valid or be revoked.

The Managing Director may suspend a product licence for a medical device if:

- (1) the Managing Director is satisfied that:
  - the medical benefits of using the medical devices that are subject of the licence do not outweigh the residual risk; and
  - it is likely that the manufacturer of the devices will, within the period of the suspension, be able to take the action necessary to ensure that the devices do not cause death, serious illness or serious injury if they were continue to be available for supply or export; or
- (2) the Managing Director is satisfied that it is likely that there are grounds for revoking the licence.

The Managing Director must notify the sponsor in writing if he/she decides to suspend a licence.

Before suspending a product licence because it is likely there are grounds for revoking the product licence, and if the Managing Director would be required to give notice of an intention to revoke the licence then the notice:

- would inform the sponsor of the reasons for the suspension;
- would specify the period of the suspension;
- may include conditions to be complied with by the sponsor as a prerequisite to a decision whether to withdraw the suspension.

Before suspending a product licence, the Managing Director must:

- give the sponsor reasonable opportunity to make submissions in relation to the proposed action; and
- consider submissions made by the sponsor in relation to the proposed action.

In all other circumstances, suspension of a product licence is to take effect on the day on which the notice is given to the sponsor.

The suspension may be limited to some medical devices of that kind.

#### **Duration of Suspension**

Suspension of a product licence takes effect on the day on which the sponsor is notified of the decision.

The suspension has effect until:

- it is revoked by the Managing Director; or
- the end of the suspension period specified in the notice; or

- if the period of suspension was extended by the Managing Director, the end of the extension period.

### **Withdrawal of suspension**

The Managing Director must revoke the suspension if satisfied that:

- the ground on which the product licence was suspended no longer applies; and
- there are no other grounds for suspending the product licence.

The Managing Director may revoke a product licence suspension:

- on his/her own initiative; or
- if the sponsor of the product applies in writing to the Managing Director.

If the Managing Director revokes a suspension, he/she must advise the sponsor in writing within 20 working days after making the decision to revoke the suspension.

If, after an application by the sponsor, the Managing Director decides not to revoke the suspension, he/she must advise the sponsor in writing of his/her decision, giving reasons for the decision, within 20 working days of the decision being made.

## **f) Exemptions from Product Licensing**

Certain medical devices or kinds of medical devices will be exempted from product licensing in specified circumstances, and subject to any applicable conditions. These exemptions include, but are not necessarily limited to:

1. Medical devices used in life-threatening or otherwise grave cases<sup>13</sup> provided:
  - the patient (or their guardian) has given informed consent to the device being used;
  - at the time the device is used, the medical practitioner responsible for using the device signs a statement in relation to the patient in the form approved by the Managing Director and sends a copy of the statement to the Authority within 20 working days; and
  - the device is used in accordance with the direction of the medical practitioner who requested its use and in accordance with good clinical practice.
2. Medical devices imported into Australia or New Zealand for use in the treatment of the importer or the importer's immediate family provided the importation is not prohibited under Customs legislation. In the case of a device that contains or is manufactured using, tissues, cells or tissue derivatives of animal origin that have been rendered non-viable or are of bacterial or recombinant origin, the importer must obtain written permission from the Managing Director before importation can take place. Written permission from the Managing Director must also be obtained if the device incorporates a stable derivative of human blood or plasma.

In the case of a medical device classified as Class IIa or higher, the quantity imported in one importation must not be more than the amount required to give 3 months treatment

<sup>13</sup>. defined as a person who is seriously ill with a condition that is reasonably likely to lead to the death of the person within a matter of months; or has a medical condition that, in the absence of immediate treatment, is likely to lead to the imminent loss of an arm, leg, hand or foot of the person; or an organ of the person; or the person's sight

using the device according to the treating medical practitioner's directions. The total amount imported in a 12-month period must not exceed 15 months' supply.

3. Medical devices that are exported from Australia or New Zealand provided they are not for commercial supply and do not contain a substance the exportation of which is prohibited under Customs legislation in the exporting country. This exemption does not cover medical devices intended for use in clinical trials on humans.
4. Samples of medical devices imported into, exported from, manufactured in, or supplied in Australia or New Zealand for any of the following purposes:
  - submission to a regulatory authority; or
  - subjection to developmental or quality control procedures; or
  - examination, demonstration or display, with notice to the effect that the device is not available for general supply unless it is the subject of a product licence; or
  - subjection to analysis or laboratory testing procedures.

Medical devices covered by this provision can not be supplied for use in or on a human being.

5. Medical devices imported into Australia or New Zealand solely for the purpose of export that remain subject to Customs control in the importing country and that are not subject to any process of manufacture in Australia or New Zealand.
6. A custom made medical device that is specifically made in accordance with a request by a health professional specifying the design characteristics or construction of the medical device and is intended to be used only in relation to a particular individual or intended to be used by the health professional to meet special needs arising in the course of their practice. Custom made devices will be exempt from having a product licence, but would need to meet the essential principles as far as possible and comply with the conformity assessment procedures for custom made devices.
7. Medical devices imported by a member of a group of persons visiting Australia or New Zealand, provided that:
  - the medical devices are intended to be used and are used only for the treatment of a member or members of the group;
  - the group of persons is either:
    - a group of persons visiting Australia or New Zealand to participate in a national or international sporting event; or
    - members of the military forces of another country visiting Australia or New Zealand for military training; or
    - a group of persons including the Head of State or Head of Government of a foreign country and senior Government officials of that country who are visiting Australia or New Zealand
  - the devices are destroyed at the end of the visit or removed from Australia or New Zealand;
  - a member of the group takes responsibility for the control and custody of the devices while the group is in Australia or New Zealand;
  - that person carries a list, in English, of the name of the quantity and nature of each device imported, and keeps a record of the use of the devices while the group is in Australia or New Zealand; and
  - the list or record is be provided to a customs officer or other authorised person on request.

8. Medical devices imported by a medical practitioner or a member of a medical team accompanying a person to Australia or New Zealand who has a critical illness and is under the direct care of the medical practitioner or team. The devices must be for use in the treatment of the person with the critical illness and their importation must not be prohibited under Customs legislation.
9. Medical devices on a ship (including a yacht or other marine vessel) or aircraft visiting Australia or New Zealand if they are part of the medical supplies of the ship or aircraft. The devices must be for use in the treatment of a passenger or member of the crew of the ship or aircraft and their importation must not be prohibited under Customs legislation. The quantity of the devices imported must be consistent with the quantity required for the treatment of the passengers or crew. The devices must not be removed from the ship or aircraft whilst it is in Australia or New Zealand.
10. Medical devices that are the subject of an approval given in emergency situations. This exemption may be used to enable medical devices to be stockpiled as quickly as possible in preparation for dealing with a potential threat to public health, or made available urgently in order to deal with an actual threat to public health caused by an emergency.
11. Medical devices for which the Managing Director grants an approval to enable the medical device to be used for the treatment of a person or for experimental purposes in humans (*see also Part F3: Clinical Trials and Access to Unlicensed Therapeutic Products*).
12. Medical devices used under a written authority from the Managing Director for a specified medical practitioner to use specified unlicensed medical devices or kinds of medical devices in the treatment of specified recipients or classes of recipients. Conditions may be imposed on this kind of authorisation.
13. Medical devices for which the Managing Director has granted an exemption in the interests of public health where he/she is satisfied that no licensed product that could act as a substitute is available, or any such product is in short supply.

Any medical device that is exempt from product licensing requirements and is imported into Australia or New Zealand and held under the direct control of the sponsor, must be:

- supplied only in accordance with the relevant notification, approval, authorisation or medical practitioner's direction; and
- kept in a warehouse or a properly secured area under the control of the sponsor.

If not used within 12 months of importation, the device must be destroyed or returned to the consignor of the device within one month of the end of that period. The sponsor must keep records relating to the source of supply of the device, and if the device is destroyed, the sponsor must keep records relating to the destruction. The sponsor must provide copies of the records to the Managing Director on request.

If a person supplies a medical device that is exempt from product licensing and the Managing Director is satisfied that the medical device does not conform to an applicable standard or is not fit to be used for its intended purpose, then the Managing Director may issue a notice requiring the person to take steps to recover any unused device. The notice may also specify how and when the device is to be recovered.

## **6. OBTAINING INFORMATION**

The Managing Director may obtain information about medical devices or the manufacture of medical devices or applications pertaining to medical devices.

The Managing Director may, by a notice in writing, request information or documents relating to:

- the application of conformity assessment procedures;
- compliance with essential principles;
- whether the devices comply with conditions (if any) imposed on a conformity assessment certificate;
- whether the devices comply with every requirement (if any) relating to advertising;
- compliance with other requirements; or
- whether devices of that kind are being supplied in Australia or New Zealand, imported into Australia or New Zealand or exported from Australia or New Zealand.

The Managing Director may, in relation to kinds of medical devices exempt from product licensing, seek information or documents relating to the distribution of, and other matters relating to, medical devices that are exempt from product licensing.

The notice must specify a reasonable period in which the sponsor is to comply. The notice may specify the form in which the information is to be supplied to the Authority.

## **7. POST MARKET SURVEILLANCE INCLUDING ADVERSE EVENT REPORTING**

The Authority will have systems, procedures and strategies in place for the reporting of problems with medical devices.

A comprehensive adverse incident monitoring program will operate in Australia and New Zealand under the directorship of the Authority, and this program will monitor the safety of medical devices supplied in Australia and New Zealand.

Manufacturers and sponsors will be required to report adverse events involving their medical devices to the Authority within statutory timeframes that depend on the seriousness of the incident<sup>14</sup>. The Authority will review all adverse event reports and undertake investigations if required.

Post market surveillance of medical devices by the Authority will include the compliance testing of medical devices and an Authority audit of the technical files and certification for products not assessed as part of an application to supply the medical device in Australia or New Zealand.

Manufacturers and sponsors will be required to actively monitor the performance of their products in the market place. At any time while a product licence has effect, as soon as a

<sup>14</sup> Health care professionals and consumers are also able to report voluntarily adverse events to the Authority.

manufacturer or sponsor becomes aware of particular information in relation to the licensed product, the manufacturer or sponsor must inform the Managing Director in writing.

The particular information that must be reported with respect to medical devices includes information relating to:

- any malfunction or deterioration in the characteristics or performance of a kind of device; or
- any inadequacy in the design, production, labelling, instructions for use or advertising materials of a kind of device; or
- any use in accordance with, or contrary to, the use intended by the manufacturer of the kind of device;

that might lead, or might have led, to the death of a patient or a user of the device, or to a serious deterioration in the person's health.

Additionally, the manufacturer or sponsor must report information that:

- relates to any technical or medical reason for a malfunction or deterioration in the characteristics or performance of a device that has led the manufacturer to take steps to recover devices of that kind that have been distributed; or
- indicates that a device of that kind does not comply with the essential principles; or
- indicates that a certificate used to signify compliance with the essential principles or the application of relevant conformity assessment procedures to a particular device, has been restricted, suspended, revoked or is no longer in effect.

The Rules may provide for circumstances where sponsors are not obliged to provide certain types of information, even though it is of the particular type listed above.

Unless otherwise specified in the Rules, it will be an offence if a sponsor fails to provide the particular information listed above within the period specified in the Rules. Adverse event reporting by healthcare professionals and consumers will remain voluntary. Provisions will be put in place to maintain the confidentiality of the reporting scheme.

If an application for a product licence is withdrawn or lapses, the Managing Director may give the applicant written notice requiring the applicant to inform the Authority in writing whether the applicant is aware of any information of a kind mentioned in the list above. A person must comply with the requirements of a request of this kind within 25 working days of receiving the request and must not provide information that is false or misleading.

In addition, sponsors will be required to provide usage data for licensed products either annually or on request.

The Managing Director may seek advice regarding adverse event reporting from the relevant expert advisory committees.

Other features of the adverse event monitoring program include international information exchange between regulatory authorities and between inter-governmental agencies within Australia and New Zealand.

## 8. RECALLS AND PUBLIC NOTIFICATION

Recalls (including hazard alerts) will be classified by the Authority, in consultation with the sponsor where appropriate, according to a classification system, as follows:

- *Class I recalls* occur when defects in medical devices are potentially life-threatening or could cause a serious risk to health;
- *Class II recalls* occur when defects in medical devices could cause illness or mistreatment, but are not Class I; or
- *Class III recalls* occur when defects in medical devices may not pose a significant hazard to health, but withdrawal may be initiated for other reasons.

The Managing Director may, in writing, impose requirements relating to medical devices on a sponsor, if the medical devices are supplied while licensed and:

- do not conform with essential principles applicable to the device; or
- the conformity assessment procedures have not been observed in the manufacture of the device; or
- the Managing Director is satisfied that the quality, safety or performance of a device is unacceptable.

The requirements may be one or more of the following:

- recover the medical devices that have been distributed;
- inform the public or a specified class of persons that the circumstances referred to above have occurred in relation to the medical devices;
- publish information relating to the manufacture or distribution of the medical devices; or
- advise the Authority of the destruction etc., of the recalled medical devices.

Requirements may also be imposed on the sponsor of a device if the product licence has been suspended or revoked.

Requirements may be imposed on persons supplying medical devices that are exempt from product licensing if:

- the devices do not conform with essential principles applicable to the devices; or
- the conformity assessment procedures have not been observed in the manufacture of the devices; or
- the Managing Director is satisfied that the quality, safety or performance of a device is unacceptable.

Requirements will also be imposed on persons manufacturing, importing, exporting or supplying medical devices that do not have a product licence and are not exempt from product licensing requirements. Additionally requirements will be imposed on persons manufacturing, importing, exporting or supplying counterfeit products.

In addition, the Managing Director may impose requirements on a person if the person supplies or has supplied medical devices that have been, or could possibly have been, subject to actual or potential tampering.

The Managing Director may limit recall requirements to the kind of medical device affected by the recall.

The Managing Director may require the medical device affected by the recall to be recalled permanently or, where corrective action may be undertaken, to be recalled temporarily until supply may recommence.

If a medical device is supplied that is exempt from product licensing requirements and it does not conform to essential principles applicable to a device of this kind, then the Managing Director may require the person supplying the device to recover the device.

The Authority will be able to order a previous sponsor, or a current sponsor if the previous sponsor cannot be identified or is insolvent, to undertake a recall of a medical device if the previous sponsor was the sponsor at the time of the distribution of the device.

The Authority will be able to instigate a mandatory recall procedure in cases where the sponsor is unwilling or unable to conduct the recall voluntarily. Where the Authority undertakes a recall, it may recover costs from any party involved in the sale or supply of the medical devices, as appropriate.

When requirements are imposed under this provision, the Managing Director must publish a notice setting out the particulars of the requirement.

## **9. FRAMEWORK FOR THE REGULATION OF IN VITRO DIAGNOSTIC DEVICES**

The regulatory framework for *in vitro* diagnostic devices is not included in the current draft of the Medical Devices Rule but will be included in subsequent drafts. This specific aspect of the regulatory scheme for medical devices will be the subject of future consultation. The following description is included to provide information on the proposed framework.

Although *in vitro* diagnostic devices (IVDs) fit the definition of a medical device, there are some points of difference in the manner in which they are to be regulated. A new regulatory framework for IVDs is being finalised, which when implemented will be included in the Rule for medical devices. This framework is aligned with the principles of the GHTF model (i.e. essential principles, rules-based risk classification, application of quality systems and IVD standards, etc.), but it also takes into account the special nature of IVDs with, for example, a separate classification system and classification rules.

Although IVDs will be regulated as a sub-set of medical devices, they have their own definition as:

any medical device which is a reagent, reagent product, calibrator, control material, kit, instrument, apparatus, equipment or system, whether used alone or in combination (with other diagnostic goods for *in vitro* use), intended by the manufacturer to be used *in vitro* for the examination of specimens derived from the human body, solely or principally for the purpose of giving information about a physiological or pathological state, a congenital abnormality or to determine safety and compatibility with a potential recipient or to monitor therapeutic measures.

The agreed framework will also cover “in-house” IVDs, which are those developed within a laboratory or laboratory network and not supplied in a commercial context. They are defined as an IVD that is:

- 1) developed *de novo*; or
- 2) taken or modified from a published source; or
- 3) modified from a commercial or other validated assay system, where the modifications would be likely to change the performance characteristics against the sample population on which the original validation was performed; and for use in that particular laboratory or laboratory network.

Commercial IVDs being used clinically for a purpose other than that originally intended by the manufacturer are also classed as in-house IVDs and will be regulated as such. This aspect of the framework will be introduced following the implementation of the commercial IVD framework.

#### **a) Key Elements of the Framework**

- IVDs will be regulated by the Authority as a subset of medical devices, and the same elements will apply as apply to medical devices.
- The framework will cover all commercial and in-house IVDs. All IVDs should conform to a set of essential principles defining quality, safety and performance. These essential principles are the same as those developed for medical devices, with five additional essential principles that specifically relate to IVDs.
- There will be a number of IVD Standards Orders determined by the Authority. These Standards Orders will usually reference the international standards that have been developed for the purposes of standardising the quality, safety and performance aspects of IVDs. Standards will be used within the IVD framework in the same way as they are used in assessing the compliance of other medical devices with the essential principles.
- Manufacturers of IVDs should have quality systems in place to ensure that the product meets its design specifications and complies with the essential principles. The extent of Authority oversight in relation to pre-market assessment of IVDs will depend on the risk posed by the particular IVD. IVDs are classified into four classes, based on risk, with levels of regulatory oversight commensurate with the risk posed.

#### **b) Classification of IVDs**

IVDs will be classified into four classes, based on risk:

- Class 1 IVD (no public health risk / low personal risk)
- Class 2 IVD (low public health risk / moderate personal risk)
- Class 3 IVD (moderate public health risk /high personal risk)
- Class 4 IVD (high public health risk)

***Class 1 IVDs - Devices in this class present no public health risk, or a low personal risk***

Examples include laboratory equipment intended for use in *in-vitro* diagnostic testing e.g. HPLC instrument, automated differential cell counter.

***Class 2 IVDs - Devices in this class present a low public health risk and moderate personal risk***

Class 2 IVDs are those that detect the presence or exposure to infectious agents that are not easily propagated in the Australian and New Zealand populations or that cause self-limiting diseases. Class 2 IVDs that present a moderate individual risk include those giving results that are not intended to be used as the sole determinant in a diagnostic situation, or where an erroneous result rarely puts the individual in immediate danger.

Examples include home use IVD's for the detection of pregnancy or ovulation, tests for sodium, ALT, lactic dehydrogenase, ferritin or folate, computerised cervical cytology, tests for Epstein Barr virus, autoimmune tests.

***Class 3 IVDs - Devices in this class present a moderate public health risk, or a high individual risk***

These are IVDs used to diagnose serious infectious diseases where there is a risk of propagation in the community, or where an erroneous result would put the patient in an imminent life-threatening situation, or would have a major negative impact on outcome. The devices provide the critical, or sole, determinant for the correct diagnosis. They may also present a high individual risk because of the stress and anxiety resulting from the information and the nature of the possible follow-up measures.

Those IVDs used to detect the infectious agents that cause a serious disease with a risk of propagation in the Australian and New Zealand populations will be regulated as Class 3. This would include tests for diseases on the Australian Notifiable Diseases List and the New Zealand Notifiable Disease Schedules, except where they are specified as being in Class 4.

Examples of Class III IVDs are those used in:

- Detecting the presence of a transmissible agent that causes a serious disease with a risk of propagation in the Australian and New Zealand populations. Example: Rabies.
- Detecting the presence of, or exposure to, a serious sexually transmitted agent. Such as *Chlamydia trachomatis*, *Neisseria gonorrhoeae* etc.
- Detecting the presence in cerebrospinal fluid or blood of an infectious agent that constitutes a significant public health risk. Examples: *Neisseria meningitidis* or *Cryptococcus neoformans*.
- Detecting the presence of an infectious agent where there is a significant risk that an erroneous result would cause death or severe disability to the individual or foetus being tested. Examples: *Toxoplasma*, *Varicella Zoster Virus*.
- Screening pre-natal women in order to determine their immune status towards transmissible agents. Examples: Rubella.
- Determining infective disease status or immune status, and where there is a risk that an erroneous result will lead to a patient management decision resulting in an imminent life-threatening situation for the patient. Example: Influenza, *Haemophilus influenzae B*
- Screening for, or in the diagnosis of, cancer, including cancer staging, where initial therapeutic decisions will be made based on the outcome of the test results.
- Predictive genetic screening, when the outcome of the test would ordinarily result in a substantial impact on the life of the individual. Examples: Guthrie test for phenylketonuria, Huntington's Disease, Cystic Fibrosis.

- Monitoring levels of medicines, substances or biological components, when there is a risk that an erroneous result will lead to a patient management decision resulting in an immediate life-threatening situation for the patient. Examples: Cardiac markers, cyclosporin, prothrombin time testing, digoxin.

***Class 4 IVDs - Devices in this class present a high public health risk***

All tests used for universal screening and confirmatory testing of the blood supply and organ and tissue donations for pathogens will be regulated as Class 4 IVDs. This includes IVDs for specific markers for HIV, HBV, HCV, syphilis, and HTLV. It also includes IVDs for specific markers used to screen blood and tissue in selected populations. Examples: tests for CMV IgG, dengue fever, malaria, West Nile Virus, Parvovirus B 19 NAT.

Also captured are IVDs used to diagnose diseases with a high public health impact. Although this is subject to interpretation, the presence of national strategies (eg policy papers) relating to these diseases will provide a guide to which IVDs should be captured by this rule. Other considerations include implications of transmission and diagnosis, therapy, that is, general public health responses. Examples: IVDs used to diagnose HIV and HCV.

However, IVDs intended only for patient monitoring are captured by a separate rule, making them either Class 2 or Class 3, depending upon the impact that an erroneous result would have on the long-term outcome for the patient. In the examples given, a Hepatitis C quantitative NAT is considered Class 3, if used only for monitoring response to therapy.

Additionally, IVD's with an intended function of detecting agents used in biowarfare activities will be classified as Class 4 eg anthrax.

High risk blood grouping tests (ABO, rhesus and anti-Kell) will fall into Class 4.

**c) Pre-market Requirements for IVDs**

**(i) Commercial IVDs**

The conformity assessment procedures for IVDs will incorporate the same requirements for quality management system certification, surveillance audits and post-market monitoring systems as for medical devices. Manufacturers will also be required to make a declaration of conformity as part of the conformity assessment procedures (*see D.3*).

Class 1 IVDs           Manufacturers will be required to self-declare that the IVDs manufactured comply with the essential principles. They will not be required to have a certified quality management system. The sponsor will be required to hold a product licence for each “type” of IVD supplied.

Class 2 IVDs           Manufacturers will be required to submit an application to the Authority, which includes evidence that the IVD design supports the use of the IVD in the way proposed by the manufacturer. Manufacturers will be required to meet manufacturing standards and have their systems certified by the Authority, unless other acceptable certification is in place.

Class 3 IVDs	The Authority will perform an assessment that all the documentation is present and appears to have been assembled with sufficient rigour, but will not normally evaluate the material in depth. However, the Authority will retain the right to question any deficiencies or discrepancies noted. Manufacturers will be required to meet manufacturing standards and have their systems certified by the Authority, unless other acceptable certification is in place.
Class 4 IVDs	The manufacturer will submit, for assessment by the Authority, a detailed application containing all documentation relevant to the design and manufacture of the IVD. Manufacturers will be required to meet manufacturing standards and have their systems certified by the Authority, unless other acceptable certification is in place. The Authority will in most instances carry out performance testing to ensure that the IVD performs as intended specifically in relation to the population profiles in Australia and New Zealand.

**(ii) In-house IVDs**

Class 1-3 IVDs	An Authority-endorsed standard which includes requirements for the validation of in-house IVDs will be the basis for validation of performance characteristics of lower risk in-house IVDs. Laboratories manufacturing in-house tests must notify the Authority of the types of IVDs manufactured in each laboratory included on a register.
Class 4 IVDs	Class 4 in-house IVDs will be subject to the same level of regulatory control, by the Authority, as applied to the commercial IVDs.

**d) Issuing of Conformity Assessment Certificates**

As for medical devices, the Authority can issue a conformity assessment certificate in respect of a manufacturer of *in-vitro* diagnostic devices, signifying one or more of the following:

- that relevant quality management systems have been applied to the manufacture of the IVD;
- the essential principles for the IVD have been complied with; and
- other certification requirements of the conformity assessment procedures have been met.

A conformity assessment certificate may be required before a valid application can be made for a product licence for a kind of IVD. (The definition of a “kind of IVD” mirrors the definition of a “kind of medical device”.)

A conformity assessment certificate is required for:

- a manufacturer who manufactures IVDs in Australia and/or New Zealand;
- Class 4 IVDs manufactured outside Australia and/or New Zealand; or
- others who do not have appropriate overseas certification.

These requirements do not apply to:

1. any of the following:
  - an exempt IVD;
  - an IVD that is exempt for special or experimental uses;
  - an IVD that is the subject of an exemption for a medical practitioner; or
2. a manufacturer of an IVD of a kind mentioned in item 1, above.

Other issues related to issuance of a conformity assessment certificate for IVDs will apply as for other medical devices (*see D.4*). These include:

- requirement for “fit and proper person” certification;
- notice of requirement to allow an authorised person to inspect the premises, equipment, processes and facilities used to manufacture IVDs;
- decisions on issuance of the conformity assessment certificate;
- commencement of the certificate;
- lapsing of the certificate;
- conditions imposed on the certificate;
- revocation or suspension of the certificate; and validity of the certificate.

#### **e) Issuing of Product Licences**

Product licences will be issued for IVDs in the same way as for medical devices. The provisions of D.5 apply, with the following points to note:

- statutory timeframes will apply to product licence application design dossier reviews (including performance testing, if required) for Class 4 IVDs (*see D.5 b (I)*);
- the exemptions from product licensing for IVDs have not yet been fully determined. The exemptions are likely to include, but may not be limited to;
- IVDs imported into Australia or New Zealand for use in the diagnosis of the importer or the importer’s immediate family, provided the importation is not prohibited under Customs legislation;
- Samples of IVDs imported into, or exported from, manufactured in, or supplied in Australia or New Zealand for the purposes of:
  - Submission to a regulatory authority; or
  - Subjection to developmental or quality control procedures; or
  - Examination, demonstration or display, with notice to the effect that the device is not available for general supply unless it is the subject of a product licence; or
  - Subjection to analysis or laboratory testing procedures.

Patient results cannot be reported if IVDs covered by this provision are used for testing.

#### **f) Post-market Notification of Poorly Performing Tests**

Manufacturers will be required to have in place systems to review experience from the use of an IVD once it is approved for use, and to implement appropriate corrective actions. The legislation will also include a requirement to notify the Authority of serious adverse incidents within specified timeframes. The provisions of D.7 will apply.

#### **g) Clinical Trials and Access to Unlicensed IVDs**

Clinical trials and access to unlicensed IVDs will be in line with the provisions that will be put in place for medical devices (*see also Part F3: Clinical Trials and Access to Unlicensed Therapeutic Products*).

#### **h) Access to IVDs for Home-use**

IVDs intended for home-use (i.e. tests not carried out under the supervision of a health-care provider) will be regulated in accordance with the risk class, with particular attention to be paid to instructions for use. However, the following IVDs will be prohibited from home-use:

- (a) All those used to test blood and tissues for pathogens or diagnose notifiable infectious diseases;
- (b) All genetic tests; and
- (c) All those used to test for serious disorders, such as cancer and myocardial infarction.

#### **i) IVDs for Non-therapeutic Use**

IVDs for non-therapeutic use include tests for parentage and kinship testing, drug tests used in sport and tests for alcohol and illicit drugs. These tests will fall outside the scope of the joint regulatory scheme for therapeutic products because they are not for therapeutic use.

## **E. OTHER THERAPEUTIC PRODUCTS**

The Rules will set out the regulatory requirements that will apply to therapeutic products that are not medicines or medical devices ('other therapeutic products'). The regulation of 'other therapeutic products' will be based on the following key elements:

- compliance with standards;
- product licensing;
- licensing of manufacturers where appropriate; and
- post-market surveillance including adverse event reporting.

Currently hospital-, household- and commercial-grade disinfectants and menstrual tampons are regulated as therapeutic devices in Australia but do not fit the definition of therapeutic product under the joint scheme. Such products will be regulated in Australia only and will not be regulated under the joint scheme

Human tissues and cellular therapies, viable animal origin materials, biological therapies, blood and blood products will be regulated under the joint scheme. The regulatory requirements applying to such products and therapies will be set out in a part of the Rules separate from medicines, medical devices.

## F. GENERAL PROVISIONS

Note: The regulatory arrangements for advertising and scheduling are not included in the current drafts of the Rules but will be included in subsequent documents. These specific aspects of the regulatory scheme will be the subject of future consultation. The following descriptions are included to provide information on the proposed arrangements.

### 1. ADVERTISING

A new co-regulatory model for the advertising of therapeutic products in Australia and New Zealand was developed by the Interim Advertising Council (IAC) and approved by the Therapeutic Products Interim Ministerial Council (TPIMC) in December 2005. Key stakeholder interest groups were directly involved in the process of developing the new advertising model through representation on the IAC. The IAC report and the proposed advertising model (including a *Description of the Joint Regulatory Scheme for the Advertising of Therapeutic Products*) were published in December 2005 on the Australia New Zealand Therapeutic Products Authority (ANZTPA) project website at <http://www.anztpa.org/advert/index.htm>.

A trans-Tasman advertising scheme for therapeutic products will include:

- a definition of *advertisement* that identifies the scope of the advertising scheme;
- the requirement to comply with the Australia New Zealand Therapeutic Products Advertising Code, developed as the standard for advertising of therapeutic products in Australia and New Zealand and which will be applied for the pre-approval of certain advertisements and consideration of complaints about advertisements;
- the requirement for certain therapeutic product advertisements to be approved, prior to publication;
- a range of sanctions for non-compliance with the advertising code and other relevant legislation;
- the implementation and monitoring of governance arrangements to oversee the management of the advertising scheme;
- the ability to develop and maintain processes for the pre-approval of advertisements, for the handling of complaints about advertisements and for appeals regarding advertising decisions; and
- expert advisory arrangements for proposals to change the Australia New Zealand Therapeutic Products Advertising Code.

The scheme will also allow for possible differences between advertising policy in Australia and New Zealand.

An Advertising Implementation Steering Group is to be established shortly to guide the implementation of operational aspects of the new advertising model in both countries.

## 2. SCHEDULING

A model has been developed for a joint Australia/New Zealand scheme for the scheduling of medicines and an Australia-only scheme for the scheduling of poisons.

The development of the model takes into account the relevant recommendations in the *Review of Drugs, Poisons and Controlled Substances Legislation* (the Galbally Review). The Galbally Review was undertaken in Australia in 1999-2000 to examine Commonwealth, State and Territory drugs, poisons and controlled substances legislation in relation to obligations under National Competition Policy and the Competition Principles Agreement.

In particular, Recommendation 7 of the Galbally Review recommended that the National Drugs and Poisons Scheduling Committee, which currently deals with the scheduling of all classes of substances in Australia, be disbanded and replaced with two separate committees, one responsible for scheduling of medicines<sup>15</sup> and the other responsible for scheduling agricultural, veterinary and household chemicals. The Galbally Review also recommended that decisions regarding the scheduling of medicines be made as part of the evaluation process for therapeutic products.

It is anticipated that the following arrangements for medicines will apply.

### ***Scheduling of medicines in Australia and New Zealand***

The new joint scheme for the scheduling of medicines will include:

- processes for the handling of scheduling applications, with decisions being made by the Managing Director as part of the evaluation processes for therapeutic products under the joint regulatory scheme;
- processes for handling applications for re-scheduling of medicines, with decisions being made by the Managing Director;
- development and maintenance of a publication<sup>16</sup> which contains recommended schedules that should apply to medicines. The publication will be adopted into legislation by the Australian States and Territories and allows for New Zealand to adopt scheduling entries for substances for human therapeutic use only<sup>17</sup>;
- expert advisory arrangements in relation to scheduling;
- arrangements for the development and management of an overarching scheduling policy framework and protocols for scheduling;
- requirements for public consultation; and
- processes for the handling of requests for internal review regarding scheduling decisions.

<sup>15</sup> Reference to the scheduling of medicines means the scheduling of the substances in the medicines.

<sup>16</sup> This publication will be separated into the scheduling of medicines and the scheduling of poisons.

<sup>17</sup> Provision will also be made in the legislative framework for the Australian States and Territories and New Zealand to make different scheduling decisions concerning medicines to those included in the standard due to environmental, cultural or jurisdictional differences. In New Zealand, Misuse of Drugs legislation will also apply to some medicines.

### **3. CLINICAL TRIALS AND ACCESS TO UNLICENSED THERAPEUTIC PRODUCTS**

The joint regulatory scheme includes provisions relating to the regulation of clinical trials and other mechanisms of access to unlicensed therapeutic products in Australia and New Zealand.

#### **a) Clinical Trials**

The Rule provisions include two mechanisms where an approval may be obtained to use an unlicensed product in the context of a clinical trial. One mechanism requires the Authority to review the trial proposal together with submitted data. Following this review, if satisfied, the Authority may issue an approval for the use of the product in the particular trial. The second mechanism involves the Authority granting an approval for the use of an unlicensed product, in a clinical trial, based on certifications supplied by the applicant. There is no assessment of data by the Authority. The trial proposals are reviewed by an appropriate ethics committee that endorses the trials and undertakes to monitor them in an ongoing fashion.

The Authority may mandate that trials of certain products or types of product must obtain their approval via the first mechanism, that is, the Authority must assess the trial proposal and data to support the proposal and be satisfied with the procedural protocol. For example, most gene therapy trials in Australia are currently subject to a similar requirement.

#### **b) Individual patient use**

The Rules provide avenues of access that permit the use of unlicensed products by medical practitioners for individual patient treatment, or treatment of classes of patients with particular diagnoses.

As mentioned previously, patients with a life-threatening or serious illness or condition, where timeliness of treatment is essential, can gain immediate access to an unlicensed product. In less serious cases, there is an application process whereby the Authority can grant approval for individual use of unlicensed products for the treatment of a particular patient.

Where a particular practitioner may treat a significant number of patients for the same serious condition with the same unapproved product (or class of products), single approvals may be obtained from the Authority that allow the practitioner to use these particular unlicensed products for multiple patients.

### **4. EXPERT ADVISORY COMMITTEES**

Article 4(e) of the Treaty provides for the Ministerial Council to establish expert advisory committees, which will advise the Managing Director, and to appoint and remove the members of those committees.

The following general principles will apply to all expert advisory committees:

- Committee members will be selected from relevant experts in Australia and New Zealand and the overall balance of each committee will reflect contemporary practice (including medical practice) in both countries.

- Membership of each committee will be determined on the basis of requisite expertise. Members will not be appointed to represent particular jurisdictions or interests, unless justified by a committee's terms of reference.
- The role of each committee will be advisory. Regulatory decisions will be the responsibility of the Managing Director or his/her delegate.

#### **a) Establishment of Committees**

The Ministerial Council will be able to appoint committees to provide advice on matters related to the functions of the Authority and will determine the functions of any such committee.

The following committees will be established in the Rules at commencement of operation of the joint scheme.

##### **(i) Expert Advisory Committee on Prescription Medicines**

An expert advisory committee will advise the Managing Director on matters concerning prescription medicines and other specified products<sup>18</sup> and on any other matters referred to it by the Managing Director.

Membership of the Committee will consist of a small number of core members, who will be eligible to attend all meetings of the Committee and a larger number of associate members who will attend only those meetings where their expertise is required.

The core members will include:

- three medical practitioners eminent in the medical profession, of which at least two are specialists in clinical medicine; and
- a pharmacologist, or someone who holds a university degree in science or a branch of science and has specialised in pharmaceutical science.

The associate members will include:

- a pharmaceutical chemist with expertise in the manufacture of therapeutic products;
- a toxicologist;
- a medical practitioner currently engaged in general practice; and
- a person with expertise in consumer issues.

All other associate members must satisfy at least one of these four criteria, or must be a medical practitioner with specialist qualifications and experience in a field of medicine that complements the expertise of the core members with medical qualifications.

##### **(ii) Expert Advisory Committee on OTC Medicines**

An expert advisory committee will advise the Managing Director on matters concerning OTC medicines and on any other matters referred to it by the Managing Director.

<sup>18</sup> Specified products will include injectable medicine dosage forms and special dosage forms such as transdermal systems and osmotic pumps.

Members of the Committee will have expertise in the following fields:

- general medical practice;
- specialist medical practice relevant to the Committee's functions;
- pharmaceutical chemistry;
- pharmacology;
- toxicology;
- microbiology;
- community pharmacy;
- manufacture of medicines; and
- consumer issues.

### ***(iii) Expert Advisory Committee on Complementary Medicines***

An expert advisory committee will advise the Managing Director on matters concerning complementary medicines and on any other matters referred to it by the Managing Director.

Members of the Committee will have expertise in the following fields:

- complementary medical practice;
- manufacture of medicines;
- consumer issues;
- medical practice;
- herbal medicine;
- naturopathy;
- nutrition or nutritional medicine;
- pharmacognosy;
- pharmacology;
- toxicology; and
- epidemiology.

Some members will be required to have professional clinical experience in one of these fields.

### ***(iv) Expert Advisory Committee for Medical Devices***

An expert advisory committee will advise the Managing Director on matters concerning medical devices and on any other matters referred to it by the Managing Director.

Membership of the Committee will consist of a small number of core members, who will be eligible to attend all meetings of the Committee and a larger number of associate members who will attend only those meetings where their expertise is required.

The core members will include:

- three medical practitioners eminent in the medical profession, of which at least two of them must be specialists in clinical medicine;
- a person with expertise in consumer issues;

- a person with expertise in the manufacture of medical devices;
- a biomedical engineer, or someone who holds a university degree in biomedical engineering; and
- a person with either expertise in biomaterials, or who holds a university degree in biomaterial science.

The associate members will include:

- a medical practitioner eminent in the medical profession;
- a biomedical engineer, or someone who holds a university degree in biomedical engineering; and
- a person with either expertise in biomaterials, or who holds a university degree in biomaterial science.

#### **(v) *Expert Advisory Committee on Adverse Reactions to Medicines***

An expert advisory committee will advise the Managing Director on matters concerning adverse reactions to medicines and the risk-benefit profiles of medicines. The Committee will be able to provide advice on all matters related to the safety, quality and efficacy of medicines; risk-benefit profiles of medicines; surveillance issues and recall activities; and general policy matters relating to pharmacovigilance.

The membership of this Committee is still under review but may have members with expertise in:

- gastroenterology;
- clinical epidemiology;
- paediatrics;
- clinical pharmacology;
- current Australian general practice;
- current New Zealand general practice; and
- OTC and complementary medicines.

In addition, some members of the Committee may have expertise and experience in one or more of the following fields:

- endocrinology;
- infectious diseases;
- neurology;
- dermatology;
- psychiatry;
- renal medicine;
- haematology; and
- hospital pharmacy.

#### **(vi) Expert Advisory Committee on Standards**

An expert advisory committee on standards will advise the Managing Director on matters concerning standards for therapeutic products, labelling and packaging of therapeutic products and manufacturing principles for therapeutic products and on any other matters referred to it by the Managing Director. Details of the membership of the Committee are described in Division 8.8 of the draft Administration and Interpretation Rule.

#### **(vii) Expert Advisory Committee on Medicine Scheduling**

Under the model that is being developed for a joint Australia/New Zealand scheme for the scheduling of medicines, a committee will be established to provide expert advice to the Managing Director on matters concerning the scheduling of medicines and substances in medicines. Consultation on the proposed model including the functions and membership of this committee occurred in August 2005. Details of the consultation outcome have been published on the TGA website at <http://www.tga.gov.au/consult/2005/scheduling.htm#pdf>.

#### **(viii) Expert Advisory Committee on Advertising**

Under the model developed by the IAC and approved by the TPIMC, an Advertising Council will be established to provide advice to the Authority in relation to matters concerning the advertising of therapeutic products. Further details on the Advertising Council can be found in the document *Description of the Joint Regulatory Scheme for the Advertising of Therapeutic Products – December 2005* published on the ANZTPA project website at <http://www.anztpa.org/advert/advmodel.pdf>.

### **b) Appointment of Members and Termination of Appointments**

The Ministerial Council will appoint Committee members. The Ministerial Council will also appoint a member of each Committee to be its Chair. These appointments will be in writing.

Committee members will be appointed for a term of up to three years. Members may not be appointed for more than three consecutive terms. No more than one third of members can be replaced at the one time.

A Committee member may resign at any time by signed notice of resignation given to the Ministerial Council.

The Ministerial Council will have the power to terminate a Committee member's appointment where the Council feels that it is necessary to do so. For example, for reasons of physical or mental incapacity, misbehaviour, incompetence, inefficiency, bankruptcy or failure to comply with disclosure of interest provisions.

Any leave of absence from Committee meetings is to be granted by the Ministerial Council in the case of the Chair of the Committee, or by the Chair in the case of another member. The Ministerial Council will be able to appoint acting members to committees, for a set period (for example, 12 months).

### **c) Consideration of Issues by Committees**

All committees will be able to appoint sub-committees consisting of members of the parent Committee, as well as other relevant persons. Any proposal to establish such a body must first be approved by the Managing Director. The function of a sub-committee will be to inquire into, and report to the parent Committee on, any specified matter that is within the functions of the Committee.

With the agreement of the Managing Director, committees may obtain additional expert advice.

The Managing Director will be able to provide a copy of any advice provided by one Committee to another Committee for comment, if he/she believes that this is appropriate.

### **d) Conduct of Meetings**

In general, the procedure of each Committee (and sub-committee) meeting is to be decided by the particular Committee, within the parameters set by the Rules. Each Committee may conduct its proceedings in any way it considers appropriate.

Generally Chairs of Committees will preside at Committee meetings, or they may nominate another member of the Committee to preside.

The Ministerial Council and the Managing Director will be able to give directions to committees about the performance of their functions, which must be complied with, but not about the advice provided by the committees.

Where the membership of an expert advisory committee includes core members and associate members, a core member is eligible to attend all meetings of the relevant committee. An associate member is eligible to attend a meeting of the relevant committee only at the invitation of the chair of that committee.

At a Committee meeting, a quorum will exist when at least half of the members invited to participate in that meeting are present. Where the membership of a committee includes core members and associate members, at least half of the core members must also be present at the meeting. In the development of advice to the Managing Director, a decision made at a Committee meeting by a majority of the votes of the members present and voting will be considered a decision of the Committee. The member presiding at a Committee meeting will have a deliberative vote and, in the event of an equality of votes, will also have the casting vote.

All Committees will be required to keep a record of their proceedings (including reasons for any recommendations made) and to prepare any other report about their activities that is requested by the Managing Director or Ministerial Council. Committees will also be required to pass their advice on to other persons or bodies if directed to do so by the Ministerial Council.

## **5. OBTAINING SAMPLES, EXAMINATION, TESTING, ANALYSIS OF PRODUCTS**

The Authority will have in place testing programs for medicines, medical devices and other therapeutic products. Such programs will assist with the investigation of adverse reaction reports, adverse incident reports and complaints in relation to therapeutic products. Testing programs will also be used for post-market testing of therapeutic products for compliance with relevant standards and other requirements.

The Authority will be able to obtain samples of therapeutic products for testing and will have in place systems to ensure the integrity of its testing programs.

## **6. PAYMENT OF FEES AND CHARGES**

Article 15 of the Treaty provides that fees and charges may be collected by the Authority in connection with the performance of its functions and that these fees and charges will be prescribed in Rules.

The fees and charges will be designed to recover the full costs of the Authority's activities in an efficient and equitable manner and will comply with such other principles or requirements as may be prescribed in the Rules.

The Ministerial Council will seek recommendations from the Board in respect of fees and charges and ensure appropriate stakeholder consultation.

The Authority may engage in activities that fall outside the scope of the joint regulatory scheme. For activities that the Authority performs that do not fall within the joint regulatory scheme, either Australia or New Zealand may agree to provide funding to the Authority in connection with such activities, or the Authority may be empowered to collect fees or charges in respect of such activities.

The Authority will not be subject to income tax in either Australia or New Zealand.

The model to be used for the collection of fees and charges is to be developed and will be the subject of further consultation.

## **7. REVIEW OF DECISIONS**

Regulatory decisions of the Authority will be subject to both merits and judicial review. The Treaty sets out a framework for merits and judicial review of Authority decisions in Articles 13 and 14 respectively. The Managing Director will make all regulatory decisions on behalf of the Authority. In practice delegates of the Managing Director will make most regulatory decisions.

### **a) Merits Review**

Merits review is a process where a reviewer steps into the shoes of the decision-maker and examines whether the correct or preferable decision was made. Currently the Australian Administrative Appeals Tribunal (AAT) provides independent external merits review of the

TGA's regulatory decisions. The Medicines Review Committee in New Zealand may review Medsafe's regulatory decisions.

The decisions that will be subject to merits review are primarily those in relation to granting product licences, manufacturing licences, advertising approval, and exemptions from compliance with regulatory requirements or other regulatory approvals. The Treaty calls these regulatory actions 'Approvals'. It will also be possible to review the amendment, suspension or revocation of an Approval. A full list of initial regulatory decisions that will be subject to internal review is set out in the consultation draft of the Administration and Interpretation Rule.

There will be a two-stage merits review process:

- an applicant may ask the Authority for an internal review of the initial regulatory decision; and
- if a person is dissatisfied with the outcome of that review, they may apply to an independent merits review tribunal (called in the Treaty a 'Review Tribunal'), which will sit in each country, for a review of the decision.

The Ministerial Council Rules will provide for internal review of Authority decisions. Currently in Australia the Minister of Health (in practice his/her delegate) reviews a TGA decision upon request. In New Zealand, Medsafe has a similar informal process. Under the new scheme the Managing Director organise for a more senior person who was not previously involved in the making of the initial decision to review the decision

The two Implementing Acts will provide for external review before a Review Tribunal. The AAT will continue to be the review tribunal for Australia while New Zealand will establish a new Tribunal. An applicant may choose where to commence the review proceedings, but will be able to bring only one application. The procedures of the two review tribunals are expected to be substantially the same and based upon the AAT procedures. There will be a mechanism to transfer the review to the tribunal of the other country where a tribunal considers that this is in the interests of justice.

Review Tribunal members (in both countries) will be drawn from a common Merits Review Panel of experts that the Ministerial Council appoints. When making appointments to the Merits Review Panel, the Ministerial Council must be satisfied that the person is appropriately qualified to serve on a tribunal, having regard to their knowledge of and experience in medicines, therapeutic products, public administration or law.

The Ministerial Council will designate one member of the Merits Review Panel as the Principal Member for merits reviews conducted in New Zealand and another member as the Principal Member for Australia. It is expected that the Australian Principal Member of the Merits Review Panel for reviews conducted in Australia will be the President of the AAT. These Principal Members will be responsible for determining the appropriate composition of a Review Tribunal to hear a particular matter, having regard to the nature of and purposes of the merits review before it. They will chair initial and important review matters.

Only a person whose interests are affected by a decision of the Authority will have the standing to apply for internal or external merits review and only decisions that have been

subject to internal review, or that have been made personally by the Managing Director, can be reviewed by a Review Tribunal.

When undertaking a merits review, a Review Tribunal will be able to exercise all the powers and discretions of the Authority when considering the matter which is to be the subject of review. A Review Tribunal may affirm the Authority's decision, vary it, or set it aside and either substitute another decision or refer the matter back to the Authority for reconsideration in accordance with any recommendations or direction a tribunal may give to the Authority.

There will be a right of appeal from a Review Tribunal decision on questions of law to the Federal Court in Australia (the normal avenue following AAT decisions) where the merits review was conducted in Australia and a similar right of appeal to the High Court in New Zealand where the review was conducted in New Zealand.

Decisions of a Merits Review Tribunal or a Court in one country will have effect in the other country because the decision will be in effect the decision of the Authority, which applies in both countries.

## **b) Judicial Review**

It is not proposed to alter the existing judicial review arrangements in each country. Measures will ensure that the two systems are able to operate effectively together. Judicial review of administrative decisions of the Authority will be available in the High Court of New Zealand under the *Judicature Amendment Act 1972* and the Federal Court of Australia under the *Administrative Decisions (Judicial Review) Act 1977*, but there will be cooperation to ensure that a decision is reviewed by only one court.

Administrative decisions of the Authority or a Rule or Order will have effect, subject to any orders made by the Federal Court or High Court (in Australia) or the High Court in New Zealand that affect that decision, Rule or Order.

The current grounds for judicial review in New Zealand and Australia will apply to the decisions of the Authority (e.g. breach of natural justice, no jurisdiction to make the decision, improper exercise of power, taking an irrelevant consideration into account, error of law). The current remedies available in New Zealand and Australia on review will also apply.

To ensure there is no overlapping of judicial review proceedings, a court will be able, on its own initiative or on the application of a Party to the proceedings, to stay the proceedings if it considers that it would be more appropriate, in the interests of the effective, just and efficient determination of those proceedings, for them to be heard in a court of the other country. A court will make this decision taking into account relevant factors such as the country of residence of the applicant and whether similar proceedings involving the same issues are being, or have already been, heard by the Court of the other country. A court will also be able to stay proceedings on its own motion if the court of the other country has already dealt with the same or a similar matter.

## **G. TRANSITION PROVISIONS**

The overarching principles to apply to the transitional arrangements are outlined in Article 21 of the Treaty, i.e.

*“On and after the commencement date, the manufacture, supply, import, export or promotion of a therapeutic product that was lawful in the territory of one Party immediately before the commencement date continues to be lawful in the territory of that Party for a specified period by virtue of the deemed grant of a transitional approval under the Scheme on the terms and conditions (if any) that applied in respect of the manufacture, supply, import, export or promotion of that therapeutic product before the commencement date.”*

### **1. CURRENT APPROVALS**

#### **a) Product Approvals**

The treaty obligations on both countries mean that at commencement of the joint scheme, all products that could be lawfully supplied in Australia or New Zealand can continue to be supplied in the country in which they were being supplied lawfully, for the duration of a specified transition period. In practical terms this means that all products entered on the ARTG will be deemed to hold a transitional approval that applies in Australia only. These transitional approvals will apply on the same terms and conditions as applied to the entry of that product on the ARTG under the Therapeutic Goods Act. Likewise, in New Zealand, any product that has been granted a ministerial consent under section 20 of the Medicines Act, or provisional consent under section 23 of the Medicines Act, will be deemed to hold a transitional approval that applies in New Zealand only. These transitional approvals will be issued on the same terms and conditions as applied to that product under the Medicines Act. Transitional product approvals will be valid for three years.

The situation for medical devices and complementary medicines that are being supplied in New Zealand prior to commencement of the joint scheme is more complex. Provided that sponsors of these products can demonstrate that the products were being lawfully supplied in New Zealand prior to commencement of the joint scheme, these products will be granted a transitional approval enabling continued supply in New Zealand for a three year transitional period. In order to prove that these products were being lawfully supplied prior to commencement of the joint scheme, sponsors will need to register the details of these products with Medsafe.

A process of entering New Zealand medical devices onto an interim register is already well under way. A similar process has been developed for New Zealand complementary medicines and sponsors of New Zealand complementary medicines are able to register their details on an interim register of complementary medicines.

The Treaty does not provide for transitional approvals for products that were being supplied unlawfully prior to commencement of the joint scheme. Some complementary medicines currently being supplied in New Zealand may not be eligible for a transitional approval since they are being supplied as either unlawful dietary supplements (because they are making therapeutic claims) or as unlawful medicines (because they have not received consent to supply under the Medicines Act).

During the transition period, all products including those on the interim New Zealand registers will need to apply for (and be granted) a full Authority product licence issued by the Authority or, at the end of the transition period, the transitional approval will lapse.

Products that are available in both Australia and New Zealand prior to commencement of the joint scheme will not be entitled to a full Authority product licence enabling supply in both countries until the sponsor of the product has demonstrated that the product complies with all requirements under the joint scheme (including labelling requirements). A result of this arrangement is that where a product is legally available in both Australia and New Zealand prior to commencement of the joint scheme, it will be granted two transitional approvals (one for Australia and one for New Zealand) until such time as a full Authority product licence has been applied for, and granted.

It will be possible for the Authority to impose additional or different conditions on a transitional approval in accordance with the Rules. Every transitional approval will lapse at the end of the transition period. Therefore, prior to the end of the transition period, all products will need to demonstrate that they meet the standards of the Authority in order to obtain a full Authority product licence enabling supply in both countries. At the end of the transition period, any product that has not gained a full Authority product licence from the Authority will no longer be able to be supplied. This condition will be imposed in order to ensure sponsors apply for a full Authority licence thus ensuring that all approved products meet the Authority standards.

Any Class 1 medicine manufactured solely from ingredients included on the list of substances permitted for inclusion in Class 1 medicines will be granted a full Authority product licence once the sponsor of the product has demonstrated compliance with all Authority requirements. The criteria that Class 1 medicines need to meet will be set out in the Rules and will include criteria relating to indications, ingredients, quality and manufacture.

Many ingredients currently contained in products that are being sold as dietary supplements in New Zealand are being evaluated for inclusion on a list of permitted ingredients for inclusion in Class 1 medicines. This will assist sponsors of New Zealand complementary medicines in obtaining a full Authority product licence via the electronic, self-declared process that will apply to all Class 1 medicines. However, New Zealand complementary medicine sponsors will also need to gain appropriate manufacturing licences or pre-clearance based on evidence of appropriate GMP, before a Class 1 full Authority product licence can be issued.

Having demonstrated compliance with Authority standards, a full Authority product licence will be issued enabling supply in both Australia and New Zealand. The extent of supply will be a marketing decision of the sponsor.

## **b) Manufacturing Approvals**

On the date of commencement of the joint scheme, lawful manufacture of therapeutic products in Australia and New Zealand will continue to be lawful by the deemed grant of a transitional approval to the lawful manufacturer of these products.

In other words, any manufacturer of therapeutic products authorised under the Therapeutic Goods Act or the Medicines Act in either Australia or New Zealand will be granted a

transitional approval that applies on the terms under which the existing approval was issued. This transitional approval will be valid for a period of two years.

During the period of the transitional approval, the holder of the transitional approval will have to apply to the Authority for a full Authority manufacturing licence. This licence application will be assessed against requirements under the joint scheme and will be issued under the terms and conditions of all full Authority manufacturing licences issued by the Authority.

### **c) Other Activities and Exemptions**

Apart from existing product and manufacturing approvals, there will be other regulatory actions that will already have been commenced at the time the joint scheme comes into existence such as suspensions of manufacturing licences, pending cancellations, prosecutions, recalls, monitoring action and audits, and property that has been seized under search powers. In order to accommodate the finalisation of these activities, the regulatory action will be finalised under the legislation existing when the activity was commenced.

All post-market surveillance activities, appeals and reviews that were commenced under the Therapeutic Goods Act or the Medicines Act but not completed by the commencement date of the joint scheme, will be completed under the legislation under which the activity was commenced.

Upon commencement of the joint scheme, products, persons or activities that were exempt from regulatory requirements under the Therapeutic Goods Act and Medicines Act will continue to be exempt from regulatory requirements for the duration of the transition period or for the period stated in the exemption (whichever is the shorter). At the end of the transition period the exemption will only remain in place if the Authority legislation or Rules continues to specifically exempt these products, persons or activities. If, at the end of the transition period, the Authority legislation or Rules no longer exempts these products, persons or activities, then the exemption will cease and compliance with the relevant requirements under the joint scheme will need to be demonstrated.

It is anticipated that clinical trials that are ongoing at commencement of the joint scheme will be allowed to be finalised under the same conditions of exemption that were applied under the Therapeutic Goods Act and Medicines Act. Clinical trials commencing after commencement of the joint scheme will have to comply with relevant requirements under the joint scheme. The details applying to exemptions to product licensing under special access schemes are described elsewhere.

## **2. APPLICATIONS IN PROGRESS**

The transitional system set up in each country will deal with applications for product approvals received by the TGA under the Therapeutic Goods Act and Medsafe under the Medicines Act prior to commencement of the joint scheme but not finalised by the commencement date of the joint scheme.

The transitional systems will ensure that applications for product approvals are determined on the same basis as applied to the application before the commencement date of the joint scheme and will provide for the grant of transitional approvals. These transitional approvals

will be valid only for the duration of the transition period and only in the country where the original application was received.

Applicants whose applications for product approval were lodged under the Therapeutic Goods Act or the Medicines Act but which are not, or are unlikely to be, finalised by the commencement of the joint scheme, may elect to have their applications determined by the Authority under the joint scheme rather than under the legislation under which they were submitted. In order to do this, the applicant will need to withdraw the original application and resubmit the appropriate application to the Authority. Every applicant to whom this situation applies must elect within three months of the commencement of the joint scheme to either have their application completed in accordance with the legislation under which the application was made (and any applicable Rules and Orders) or withdraw their application and make a new application for a full Authority product licence in accordance with the requirements of the Authority. If an application is withdrawn under this provision, a full refund of the original application fee will be made to the sponsor and the sponsor will then have to pay the full Authority evaluation fee. Any statutory timeframes applying to evaluations will restart on the day the new application was made to the Authority.

### **3. THE TRANSITION PERIOD**

#### **a) Existing Products**

All therapeutic products that are entered on the ARTG or have ministerial consent in New Zealand will receive transitional approvals that are valid for a period of three years from the commencement date of the joint scheme.

It may be possible to grant extensions of time in which to obtain a full Authority product licence under certain circumstances. Following the transition period, extensions to transitional approvals will only be granted to products that can demonstrate an ongoing program designed to demonstrate conformance to the Authority standards. However, holders of transitional approvals will be encouraged to gain full Authority product licences during the transition period by incurring increased fees for applications received during any period of extension.

In exceptional circumstances (i.e. a clearly demonstrated clinical need) certain products that are unable to demonstrate compliance with Authority standards may be issued a conditional product licence enabling continued supply in the country in which they were legally supplied prior to commencement of the joint scheme.

#### **b) Existing Manufacturing Licences - Medicines**

Licensed manufacturers in Australia and New Zealand will be able to continue to manufacture under the terms of their existing licence for a period of no more than two years following commencement of the joint scheme. During this two-year transition period, manufacturers will need to submit an application to the Authority for a full Authority manufacturing licence. Given that current Australian and New Zealand processes for the granting of manufacturing licences are well aligned, then gaining a full Authority manufacturing licence should not be significantly more onerous for manufacturers than maintaining their current national licences.

**c) Existing Conformity Assessment Certificates or Licences – Medical Devices**

Medical device manufacturers who have been issued with conformity assessment certificates by the TGA and licensed New Zealand manufacturers of products that will be medical devices under the joint scheme will be able to continue to manufacture under the conditions of their existing conformity assessment certificate or licence for a period of three years following commencement of the joint scheme. During this three year period, manufacturers will need to submit an application to the Agency for an Agency issued conformity assessment certificate.

**d) Manufacturers Not Previously Licensed – Medical Devices**

Medical device manufacturers in New Zealand who, prior to establishment of the Agency, were not required to be licensed, will be authorised to continue manufacturing activities for the duration of the three year transition period. They will, however, be required to submit an application for conformity assessment within two years of commencement of the joint scheme.

**e) Other Ongoing Activities**

Ongoing regulatory activities such as recalls, suspensions, appeals and prosecutions will need to be completed under the legislation under which they were initiated. Therefore, the transition period for these activities will need to be long enough to complete all activities or to enable the activity to be transferred to the Authority.

Other activities such as clinical trials or approvals under the special access scheme will need to be concluded under the terms and duration of the existing approvals. For new activities, new approvals will need to be applied for and granted under the joint scheme.

**PLAIN ENGLISH GUIDE TO THE DRAFT MINISTERIAL COUNCIL RULES  
RELATING TO COMPLEMENTARY MEDICINES**

### **Complementary Medicine Definitions**

#### *Definition of a complementary medicine*

Clear and unambiguous definitions are critical in determining the regulatory requirements and processes applicable to a particular medicinal product or ingredient.

The draft definition of a complementary medicine has been developed to more clearly define the boundary for those medicines to be regulated as complementary medicines. The proposed definition includes objective criteria for determining the eligibility of a medicinal product or ingredient to be regulated as a complementary medicine. It is important to note that even if a medicinal product or ingredient is determined not to be a complementary medicine, it may still be eligible for regulation as a Class 1 medicine.

The definition of complementary medicine details those therapeutic products that will be regulated as complementary medicines, and includes homoeopathic and anthroposophic medicines, and essences. Table 1 describes the categories of substances that will be regulated as complementary medicine ingredients. Table 2 describes the categories of substances that will not be regulated as complementary medicine ingredients.

**TABLE 1 – Complementary medicine substances**

<b>Item</b>	<b>Substance</b>
Item 1	A plant or a plant material, an alga, a fungus, a mineral or a non-human animal material
Item 2	A substance or mixture of substances: (a) obtained by expression, extraction, distillation, purification or a traditional preparation of a material described in Item 1; and (b) not subject to any other process involving chemical transformation other than hydrolysis for preparation of the substance or mixture of substances in an active medicinal form.
Item 3	A vitamin or provitamin, including salts and other compounds of the following types: vitamin A vitamin B1 vitamin B2 vitamin B3 vitamin B5 vitamin B6 vitamin B12 vitamin C vitamin D vitamin E vitamin K biotin

Item	Substance
	choline folic acid
Item 4	An amino acid listed in Table 3
Item 5	A synthetic equivalent of a substance specified in item 2, 3 or 4
Item 6	A mineral compound
Item 7	A microorganism, whole or extracted, except a vaccine
Item 8	A substance declared by the Managing Director to be a complementary medicine substance

**TABLE 2 – Substances ineligible for regulation as complementary medicines**

Item	Substance
Item 1	A single chemical entity obtained from a material specified in Item 1 of Table 1 where there is no history of human use of that specified material, <u>or</u> the intrinsic risk of the single chemical entity fulfils the criteria of a substance that should only be available on prescription; or require restriction of manufacture, supply, distribution, possession and use to reduce abuse, misuse and physical or psychological dependence; or the manufacture, possession, sale or use of which should be prohibited to avoid abuse or misuse
Item 2	A medicine requiring evaluation by the Office of Prescription Medicines
Item 3	A substance declared by the Managing Director not to be a complementary medicine substance

Table 3 is subordinate to Item 4 of Table 1, and outlines the 20 amino acids which will be regulated as complementary medicines.

**TABLE 3 – Acceptable Amino Acids**

1	Alanine
2	Arginine
3	Asparagine
4	Aspartic acid
5	Cysteine
6	Glutamine
7	Glutamic acid
8	Glycine
9	Histidine
10	Isoleucine
11	Leucine
12	Lysine
13	Methionine
14	Phenylalanine

15	Proline
16	Serine
17	Threonine
18	Tryptophan
19	Tyrosine
20	Valine

Homoeopathic medicines, anthroposophic medicines and essences (other than those declared not to be therapeutic products) will also be regulated as complementary medicines.

A glossary has been developed to define the terminology used to describe complementary medicines and complementary medicine ingredients. Definitions will be included, where appropriate, in the Medicines Rule, the Administration Rule, or in relevant Managing Director Orders (MDOs).

Ingredients not meeting the proposed definition of a complementary medicine ingredient may still be eligible for use in Class 1 medicines. Ingredients that are currently eligible for use in Listed medicines in Australia, irrespective of whether they meet the proposed definition of a complementary medicine ingredient, will continue to be eligible for use in Class 1 medicines.

#### ***Definitions for homoeopathic and other ‘energetic’ medicines.***

In the context of the draft Rules, the definitions for ‘homoeopathic medicine’, ‘anthroposophic medicine’ or ‘essence’, are regulatory tools, the purpose of which is to enable an appropriate regulatory framework to be effectively implemented for the quality, safety, and efficacy of these medicines. As such, there has been no attempt to capture the definitive philosophy of any particular belief system within the definition.

#### ***Definition of a homoeopathic preparation and a homoeopathic medicine***

The definitions pertaining to homoeopathic remedies were initially based on the current European Union definition of a homoeopathic medicinal product, which has been separated into definitions for ‘*homoeopathic preparation*’ and ‘*homoeopathic medicine*’ to enable single homoeopathic preparations to continue to be permitted to be combined with non-homoeopathic ingredients.

Homoeopathy is a system of medicine in part based on the method of preparation of the ingredients used. The definition for ‘*homoeopathic preparation*’ defines the manufacture of the medicine, and dictates that substances must be manufactured in accordance with monographs for homoeopathic manufacturing procedures described in approved homoeopathic pharmacopoeia<sup>19</sup>. Although the use of homoeopathic medicines in accordance with homoeopathic principles is fundamental to this system of medicine, this factor will be managed by other means, such by requiring appropriate evidence to support the validity of the claim being made for the medicine.

<sup>19</sup> A list of approved homoeopathic pharmacopoeia for this purpose will be developed in consultation with stakeholders, and included in a relevant Managing Director Order.

The definition of '*homoeopathic medicine*' permits multiple homoeopathic preparations to be combined<sup>20</sup>, and also recognises that certain excipients may be necessary for presentation of the homoeopathic medicine in the final dosage form. It may be necessary to specify the excipients permitted in homoeopathic medicines, consistent with homoeopathic philosophy.

### ***Definition of an anthroposophic medicine and an anthroposophic preparation***

Anthroposophy is a system of medicine, which, in a number of countries, particularly Germany, is defined separately, and recognised as having a separate philosophy of use to homoeopathy. Anthroposophic medicine uses a number of preparation methods and ingredients, some of which are derived from unique anthroposophic mother substances. A number of these substances are not covered by the complementary medicine definition, nor by the homoeopathic definition, and if not defined separately, have the potential to be excluded from the most appropriate route of regulation for these products in the joint Agency.

The definition for '*anthroposophic preparation*' defines the manufacture of the medicine, with specific reference to manufacture in accordance with anthroposophic and homoeopathic manufacturing procedures described in an approved anthroposophic source, or approved homoeopathic pharmacopoeia<sup>21</sup>.

An '*anthroposophic medicine*' may contain more than one preparation, and may contain those excipients necessary for presentation of the medicine in its final dosage form. As with homoeopathic medicines, it may be necessary to specify the excipients permitted in anthroposophic medicines consistent with anthroposophic philosophy.

### ***Definition of an 'essence'***

A definition for '*essence*' has been included with the primary intent of specifically excluding certain very low-risk preparations from being regarded as therapeutic products. This will provide clarity to both sponsor and regulator regarding this long-standing issue. However, if the conditions pertaining to this exclusion are not met, then it is most appropriate that these products be evaluated as complementary medicines.

The regulatory definition of '*essence*' is a manufacture-based definition, and pertains to vibrational essences rather than other products sometimes referred to as 'essences', such as essential oils. The definition refers to 'approved essence manufacturing procedures'<sup>22</sup>, states that essences may not be derived from substances referred to in the Scheduling Standard, and permits the inclusion of excipients. It may be necessary to specify the excipients permitted in essence products.

20 The issue of combination homoeopathic products was an area of considerable contention between stakeholders, with some practitioners in particular, rejecting the use of multiple ingredient products within the homoeopathic paradigm. However, from a regulatory perspective, it is the medicine itself that may be regulated, not the use of that medicine.

21 A list of approved anthroposophic sources and homoeopathic pharmacopoeia for this purpose will be developed, in consultation with stakeholders, and included in a relevant Managing Director Order.

22 A list of recognised essence manufacturing procedures will be determined following further consultation with essence manufacturers in both Australia and New Zealand, and incorporated into an appropriate Managing Director Order.

### ***Definition of a Class 1 permitted ingredient***

A *Class 1 permitted ingredient* is an ingredient that has been approved for use in Class 1 medicines, and that has been included in an appropriate Managing Director Order (MDO)<sup>23</sup>. Class 1 permitted ingredients may have restrictions on eligibility including: dosage, labelling or substance based restrictions. It is anticipated that separate MDOs will be established for vitamins, minerals, and other substances; herbal materials; and mother substances eligible for inclusion in homoeopathic or anthroposophic (and where appropriate, essence) preparations. Only those herbal materials that meet the definition of a 'Class 1 herbal ingredient' will be considered to be a Class 1 permitted ingredient.

### ***Definition of a 'Class 1 herbal ingredient' and 'herbal material'***

The fundamental purpose for defining 'herbal substance' preparations in the *Therapeutic Goods Regulations 1990* (the Regulations) in Australia, was to identify those low risk herbal ingredients, prepared according to traditional herbal medicine, and/or established pharmaceutical practice, which could be included in Listed (low risk) medicines. The definition was intended to cover the more usual forms of traditional herbal preparations such as fresh and dry herbs, essential oils, tinctures, decoctions, infusions and simple extracts.

The rationale for this was that where there has been a history of traditional use, or use in established pharmaceutical practice, herbal medicines prepared and prescribed according to that tradition are likely to be of low risk to the public. Thus, where many practitioners have, over a long period of time, observed the therapeutic and adverse effects of using a herb, then the indications, preparation, dosage and formulation have been adapted to maximise the therapeutic effectiveness and minimise the risk.

Non-traditional methods of preparation of otherwise low risk herbal materials, including the use of non-traditional solvents, can quantitatively and/or qualitatively change the component profile of a herbal material. Such changes may affect safety (and efficacy).

The term 'herbal substance' has caused confusion for a number of years, as it is usually not considered in its regulatory context, namely, as an ingredient eligible for use in a low risk (Class 1) medicine. To more clearly indicate the intent of the term, that is to identify those herbal ingredients suitable for use in a Class I medicine, the term 'herbal substance' has been replaced by the term '*Class 1 herbal ingredient*'.

The definition of '*Class 1 herbal ingredient*' identifies both traditional and non-traditional preparations of herbal material that will be permitted for use in Class I medicines.

The term '*herbal material*' has been defined to ensure that, for the purpose of a Class 1 herbal ingredients, accepted traditional and non-traditional methodologies may only be applied to those plant parts, of specific herbal species, that have been previously approved for use in Class 1 medicines. The traditional preparation of a herbal material approved for use in Class I medicines is restricted to the specific traditional methodology pertaining to a given herbal material.<sup>24</sup>

<sup>23</sup> MDOs will replace the current Australian Therapeutic Goods Orders (TGOs).

<sup>24</sup> That is, a traditional method of preparation applied to one species of plant may not have been traditionally used with another plant species and such a preparation will require assessment or evaluation before use,

Clearly differentiated from traditional preparations are those modern phyto-pharmaceutical preparations of approved herbal materials that can establish a low-risk status by other means. Non-traditional preparations of approved herbal materials may not include those preparations which involve chemical transformation of the herbal material, as this will change the chemical profile of the original material to such a degree that relying on sponsor-justified suitability for inclusion in Class 1 medicines is not appropriate.

Sponsors are given two options for determining the low-risk status of non-traditional preparations of approved herbal materials. The option of equivalence, in the context of the definition, is intended to provide an alternative for sponsors wishing to justify the safety of a non-traditional herbal preparation, and is taken to mean that the herbal material has a component profile 'equivalent to' or 'not significantly different from' that obtained traditionally and on which its safety was originally based. Appropriate guidelines to establish when a preparation may be considered 'not significantly different' will need to be developed in consultation with stakeholders.

The definition of a herbal substance (herbal material) has also been revised to recognise that there are other options for establishing the safety of a non-traditional herbal preparation of a herbal material, for example, evidence of safe use of the non-traditional herbal material in other countries. Guidance, developed in consultation with stakeholders, will also be required to establish the data requirements for justifying the safety of non-traditional herbal preparations. Justifications will be audited as part of post-market monitoring of complementary medicines.

## *Other Regulatory Requirements Included in the Draft Ministerial Council Rules*

### ***Medicines required to obtain a Class I or Class II product licence***

#### ***Class I medicines***

Low risk medicines, generally, will contain only those ingredients that have an established low risk status. Specific lists of permitted substances will be included in Managing Director Orders (MDOs). There will be a process, similar to the current arrangements for new low-risk substances in Australia, for the evaluation of new Class 1 substances with the intent of including them in MDOs. Substances included in MDOs may have restrictions on use, including, dosage, labelling or substance based restrictions.

Combination of Class 1 permitted ingredients will be allowed, except where specifically excluded.

Homoeopathic and anthroposophic medicines are separately regulated as Class 1 medicines, except where they are specifically exempt or require a Class 2 medicines licence.

Homoeopathic or anthroposophic preparations that have been derived from those substances permitted in the MDOs for vitamins, minerals, herbal materials and other substances, may, where derived from a valid, permitted, homoeopathic or anthroposophic mother substance, be eligible to be combined with other Class 1 permitted substances.

The MDO for homoeopathic and anthroposophic mother substances will be developed in consultation with stakeholders, using appropriate homoeopathic and anthroposophic references as a basis. This MDO will list permitted homoeopathic and anthroposophic starting materials, and the potencies (concentrations), at which they may be included in Class 1 medicines. Potency (concentration) or other restrictions may apply to the use of:

- substances included in the Scheduling Standard; and
- substances that have not been approved as Class 1 permitted ingredients; and
- mother substances derived from materials with infectious potential.

Any homoeopathic or anthroposophic medicine that contains a preparation with a concentration of mother substance greater than 10mg/kg<sup>25</sup> will require a Class 1 product licence (providing it does not contain a substance otherwise subject to the Scheduling Standard), as will any homoeopathic or anthroposophic medicine that is promoted for therapeutic use, irrespective of concentration (dilution) of the homoeopathic or anthroposophic preparation, providing it is not required to be sterile. Any combination homoeopathic medicine (combination of homoeopathic potencies) will also be required to obtain a Class 1 product licence.

Where a multi-ingredient homoeopathic or anthroposophic medicine contains a preparation that is derived from a substance where the Scheduling Standard may apply (eg. current SUSDP Schedule 8, 9 or Appendix C substances), the concentration of the mother substance must be 1 nanogram/kg or less, unless a higher concentration is specifically permitted in the MDO for mother substances.

<sup>25</sup> This is the current concentration cut-off for most substances included in Schedule 2-6 of the *Standard for the Uniform Scheduling of Drugs and Poisons* (SUSDP).

A Class 1 product licence will also be required for homoeopathic or anthroposophic medicines containing a preparation derived from mother substances of human or zoological origin with infectious potential, with the provision that adequate measures have been taken to minimise the risk of agents of infection in the preparation. A schedule of the MDO for mother substances will specify the restrictions applicable to such products, and conditions of licensing may apply.

### *Class 2 medicines*

All sterile dosage forms, including homoeopathic or anthroposophic medicines required to be sterile, will require a Class 2 product licence, as will any medicine containing a homoeopathic or anthroposophic substance subject to the Scheduling Standard (other than where the substance is a single homoeopathic preparation where the concentration of the mother substance is 1 nanogram/kg or less, or where specifically permitted in the MDO for mother substances).

### *Exemption from product licensing*

If all single ingredient homoeopathic preparations are required to obtain a Class 1 medicines licence prior to supply, there is the very real potential that a large number of rarely required remedies will cease to be available for practitioner use, as it would not be economically feasible to manufacture, supply and maintain a product licence for the many potential 'products'. Given that there is currently no formally approved government provision for identifying properly trained and competent practitioners, it is therefore pragmatic to propose that certain, single ingredient homoeopathic or anthroposophic preparations be exempt from the requirement to obtain a Class 1 medicines licence (yet still be available for retail sale), to ensure that they remain available for practitioner use.

It is proposed that non-sterile, single preparation homoeopathic medicines that are not subject to the Scheduling Standard (except where the concentration of mother substance is 1 nanogram/kg or less, or is specifically permitted at a lower concentration) and are not derived from certain specified mother substances (such as those with a potentially infectious nature eg. nosodes and some sarcodes), will be exempt from the requirement to obtain a Class 1 or Class 2 medicines licence prior to supply, providing the concentration of mother substance in the preparation is equal to or less than 10 mg per litre or per kilogram (and other conditions, outlined below, are met).

To ensure that the products are manufactured to a suitable level of GMP, and to ensure traceability for adverse reaction, complaint and recall purposes, the label of the homoeopathic medicine will be required to include the manufacturer's licence number (of the manufacturer responsible for the 'release for sale' step of manufacture). This manufacturer will also be required to record and maintain details (including licence numbers) for all other manufacturers involved in the production of the medicine.

Industry contends that these products would only be accessed by practitioners and consumers who are aware of their appropriate use, or have been advised to purchase a particular

preparation by a practitioner. However, a system to record the supply of these types of products may need to be established.

Although these medicines will not be permitted to be promoted for therapeutic use (and hence will not include indications on the label), they must otherwise comply with the joint Agency labelling standard, and must be labelled with a statement such as '*to be used only in accordance with homoeopathic (or anthroposophic) principles*' (or words to that effect).

Single substance homoeopathic or anthroposophic preparations supplied as starting materials to licensed manufacturers will also be exempt from the requirement to obtain a Class 1 medicines licence. This will enable licensed manufacturers to source starting potencies from external sources (eg. via import). This exemption is for product licensing only, and does not apply to GMP.

### ***Declared not to be a therapeutic product***

It is proposed that essences that contain a concentration of the mother substance equal to or less than 10 mg per litre or per kilogram, that are not referred to in the Scheduling Standard, that are not required to be sterile, and that make no therapeutic claim, will not be considered to be therapeutic products. If therapeutic claims are made, or any of the other conditions are not met, then they will be evaluated as complementary medicines and will need to meet all requirements currently applicable to complementary medicines.

Further consultation with relevant stakeholders is required, in order to determine appropriate claims for essence products – similar to the process undertaken for the cosmetic claims guidelines.

## EXPLANATORY NOTES & GLOSSARY

The Draft Medicines Rule includes the provision that a Glossary may be developed (as part of a Managing Director Order [MDO]) to define terms or expressions that relate to complementary medicines<sup>1</sup>.

The following definitions include those that are currently included in the Draft Medicines Rule (prefaced with an asterisk [\*]), and those that it is anticipated will be included in an MDO. Appropriate consultation will be undertaken with respect to the development of any MDO.

**Alga.** A division of eukaryotic, photosynthetic, non-flowering organisms.

**Allergen.** Preparations derived from a substance in Item 1 of Table 1 that cause or provoke allergic (hypersensitivity) disease.

**Amino acid.** Class of organic molecules that contains amino and carboxyl groups. Alpha amino acids form the main constituents of proteins found in plant, plant material, microorganisms or non-human animal material. The  $\alpha$ -amino acids for the purposes of this definition are included in Table 3.

**Animal.** An invertebrate or vertebrate member of the animal kingdom.

**\*Anthroposophic medicine** means a medicine that:

- (a) contains one or more anthroposophic preparations; and
- (b) may contain excipients necessary for presentation of the medicine in the final dosage form.

**\*Anthroposophic preparation** means a preparation prepared:

- (a) from a mother substance specified, for the purpose of this definition, in an Order; and
- (b) in accordance with:
  - (i) an anthroposophic manufacturing procedure described by an approved anthroposophic reference; or
  - (ii) a homoeopathic manufacturing procedure described in an approved homoeopathic pharmacopoeia.

**\*Approved anthroposophic reference** means an anthroposophic reference specified, for the purpose of this definition, in an Order.

**\*Approved essence manufacturing procedure** means a procedure specified, for the purpose of this definition, in an Order.

**\*Approved herbal material** means a herbal material approved by the Authority, in writing, for use in a Class 1 medicine;

**\*Approved homoeopathic pharmacopoeia** means a homoeopathic pharmacopoeia specified, for the purpose of this definition, in an Order.

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<sup>1</sup> (2) The Authority may, by Order, define or delimit any term or expression that appears in Schedule 1 (not being a term or expression otherwise defined in these Rules) in relation to all complementary medicines or a particular kind of complementary medicines.'

**Chemical transformation.** Any change that alters the chemical structure of a substance. Chemical transformations permitted in the preparation of a complementary medicine substance or mixture of substances include only those occurring incidental to expression, extraction, distillation or traditional preparation; and hydrolysis, where hydrolysis is used to prepare the substance or mixture of substances in an active medicinal form.

**\*Class 1 herbal ingredient** means:

- (a) a traditional preparation of an approved herbal material, obtained by methods traditionally used to prepare that herbal material for therapeutic application; or
- (b) a non-traditional preparation of an approved herbal material that:
  - (i) is not obtained by using a chemical transformation process; and
  - (ii) either:
    - (A) is not significantly different from a traditional preparation of that approved herbal material that is an active ingredient in a licensed Class 1 medicine; or
    - (B) is otherwise assessed by the Authority as safe for use as an ingredient in a Class 1 medicine.

**\*Complementary medicine**, for the purpose of the Medicines Rule, is:

- (a) a medicine that:
  - (i) does not contain an active ingredient other than a substance:
    - (A) specified in Part 1 of Schedule 1<sup>2</sup>; or
    - (B) declared in writing by the Authority to be a complementary medicine substance for the purpose of this definition; and
  - (ii) does not contain a substance:
    - (A) specified in Part 2 of Schedule 1<sup>3</sup>; or
    - (B) declared in writing by the Authority not to be a complementary medicine substance for the purposes of this definition; or
- (b) a homoeopathic medicine; or
- (c) an anthroposophic medicine; or
- (d) an essence.

**Distillation.** A means of separating the more volatile from the less volatile part of a mixture. The only chemical transformations permitted are those occurring incidental to distillation.

**\*Essence** means a preparation that:

- (a) is prepared in accordance with an approved essence manufacturing procedure; and
- (b) is derived from:
  - (i) plant material; or
  - (ii) a mineral; or
  - (iii) non-human animal material; and
- (c) is not derived from a substance that:
  - (i) is included in the Scheduling Standard; or
  - (ii) has the characteristics of a substance that could be included in the Scheduling Standard; and
- (d) may contain excipients necessary for presentation of the preparation in the final dosage form.

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<sup>2</sup> Part 1 of Schedule 1 of the Draft Medicines Rule includes those substances outlined in Table 1 of Attachment 1

<sup>3</sup> Part 2 of Schedule 1 of the Draft Medicines Rule includes those substances outlined in Table 2 of Attachment 1  
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**Enzyme.** A protein that acts as a catalyst for biochemical reactions. Enzymes may be derived from plant, plant material, microorganisms or non-human animal material.

**Expression.** Pressing; expelling by mechanical means. The only chemical transformations permitted are those occurring incidental to expression.

**Extraction.** The process of treating a plant, plant material, microorganism or non-human animal material with a solvent to separate constituents from the original material. The only chemical transformations permitted are those occurring incidental to extraction.

**\*Herbal material** means a plant or part of a plant (defined by its botanical scientific name according to the binominal nomenclature system, including author, and by the plant part), whether whole, fragmented, cut or ground, and in an unprocessed state (whether fresh or dried).

**\*Homoeopathic medicine** means a medicine that:

- (a) contains one or more homoeopathic preparations; and
- (b) may contain excipients necessary for presentation of the medicine in the final dosage form.

**\*Homoeopathic preparation** means a preparation prepared:

- (a) from a mother substance specified, for the purpose of this definition, in an Order; and
- (b) in accordance with a homoeopathic manufacturing procedure described in an approved homoeopathic pharmacopoeia.

**Hydrolysis.** A chemical transformation catalysed by an acid, base or enzyme whereby a substance is cleaved into two or more simpler substances with the uptake of parts of a water molecule on either side of the chemical bond cleaved.

**Mineral.** A naturally occurring inorganic material of defined composition derived from earth. For example, gypsum, hematite, dolomite, alum.

**Mineral compound.** Includes salts or other compounds of elements that have an Australian / New Zealand Recommended Dietary Intake (RDI) or Adequate Intake (AI) for the element. If there is no Australian / New Zealand RDI or AI for the element, it must be recognised as an essential dietary element by inclusion in the national nutrient reference values (or equivalent) of another country.

**\*Mother substance** means a homoeopathic, anthroposophic or essence starting material derived from a plant or a plant material, an alga, a fungus, a micro-organism, an animal material or a chemical, and may include a composition of such starting materials.

**Non-human animal material.** A body part or secretion obtained from an animal other than a human.

**Plant.** A member of the biological Kingdom Plantae, consisting of complex multicellular eukaryotes that have a cell wall composed primarily of cellulose.

**Plant material.** Includes material obtained from a plant such as exudates and pollens.

**Potency.** The measure of processing of a homoeopathic preparation, which also indicates the dilution factor of the homoeopathic mother substance. Dilutions and triturations are obtained from homoeopathic mother substances by a process of potentisation in accordance with a homoeopathic manufacturing procedure: this means successive dilutions and succussions, or successive appropriate triturations, or a combination of the 2 processes.

### **Potency (continued)**

The potentiation steps are usually one of the following:

1 part of the stock plus 9 parts of the vehicle<sup>4</sup>;

1 part of the stock plus 99 parts of the vehicle;

'M', 'LM' (or 'Q') potencies are manufactured according to a specific procedure

The number of potentiation steps defines the degree of dilution; for example, "3X" means 3 decimal potentiation steps, and "C3", "3 CH" or "3C" means 3 centesimal potentiation steps.

Homoeopathic potency may be expressed as:

- 'nX' where each dilution is a decimal or ten fold dilution and 'n' is the number of dilutions such that the total dilution is 10<sup>n</sup>; or
- 'nC' where each dilution is a centesimal or hundred fold dilution and 'n' is the number of dilutions such that the total dilution is 100<sup>n</sup>; or
- 'nM' where each dilution is 1000 centesimal dilutions; or
- 'nLM' or 'LMn', where each dilution of a 3C dilution is a fifty millesimal or fifty thousand fold dilution and 'n' is the number of dilutions such that the total dilution is 50,000<sup>n</sup>.]

**Purification (separation processes).** In relation to Table 1, Item 2, this process does not include techniques or processes that involve chemical transformation of the original material (other than those chemical changes occurring incidentally to expression, extraction, distillation or traditional preparation). Examples of changes occurring incidentally during extraction, steam distillation or traditional preparation include hydrolysis of esters, lactone ring opening and isomerisation.

### **Recognised anthroposophic source:**

- the *Homoeopathic Pharmacopoeia of the United States*<sup>i</sup>;
- the *Homöopathische Arzneimittel* (the German Homoeopathic Pharmacopoeia)<sup>ii</sup>;
- the *British Homoeopathic Pharmacopoeia*<sup>iii</sup>;
- homoeopathic monographs and methods in the *Pharmacopée français*<sup>iv</sup> and the *European Pharmacopoeia*<sup>v</sup>;
- the *Anthroposophic Pharmaceutical Codex*<sup>vi</sup>.

### **Recognised homoeopathic pharmacopoeia:**

- the *Homoeopathic Pharmacopoeia of the United States*<sup>1</sup>;
- the *Homöopathische Arzneimittel* (the German Homoeopathic Pharmacopoeia)<sup>2</sup>;
- the *British Homoeopathic Pharmacopoeia*<sup>3</sup>;
- the *Homoeopathic Pharmacopoeia of India*<sup>vii</sup>;
- homoeopathic monographs and methods in the *Pharmacopée français*<sup>4</sup> the *European Pharmacopoeia*<sup>5</sup>, and the *British Pharmacopoeia*<sup>viii</sup>;

**Single chemical entity** includes substances that exist as a mixture of isomers.

**Synthetic equivalent.** A substance obtained by chemical synthesis that has an identical chemical structure (including chirality) and biological properties to a substance described in Items 2 to 4 in Table 1.

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<sup>4</sup> Vehicles are excipients used for the preparation of certain stocks or for the potentiation process. They may include for example: purified water, alcohol of a suitable concentration, glycerol and lactose.

A semi-synthetic substance may also be acceptable as a complementary medicine provided it has an identical chemical structure and biological properties with a natural counterpart.

***Synthetic equivalent (continued)***

A semi-synthetic substance is produced by a process that chemically changes a related starting material that has been extracted or isolated from a plant or a plant material, an alga, a fungus or a non-human animal material.

***\*Traditional preparation***, in relation to a complementary medicine, means a preparation obtained from a plant, plant material, mineral or a non-human animal material, for therapeutic application in humans:

- (a) using a method that is based on health theories, beliefs or experiences of a traditional healing paradigm; and
- (b) having a documented methodology established over at least 3 generations.

***Vitamins (and provitamins)***. Naturally occurring organic substances, including salts and other forms of the vitamin, required by the body to maintain health and which have an Australian / New Zealand Recommended Dietary Intake (RDI) or Adequate Intake (AI).

If there is no Australian / New Zealand RDI or Adequate Intake (AI) for the vitamin, it must be recognised as an essential nutrient by inclusion in the national nutrient reference values (or equivalent) of another country.

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<sup>i</sup> *Homoeopathic Pharmacopoeia of the United States*. The Homeopathic Pharmacopoeia of the United States Revision Service. Homoeopathic Pharmacopoeia Convention of the United States. 1988-.

<sup>ii</sup> *German Homeopathic Pharmacopoeia*. Stuttgart: Medpharm Scientific; London: The Stationery Office, 2003.

<sup>iii</sup> *British Homoeopathic Pharmacopoeia*. Rutland: British Association of Homoeopathic Manufacturers, 1999. 2nd edition.

<sup>iv</sup> *Pharmacopée française: rédigée par ordre du gouvernement / élaborée sous la direction scientifique de la Commission Nationale de Pharmacopée*. Saint-Denis: Agence du médicament, [2000] 10e éd. refondue.

<sup>v</sup> *European Pharmacopoeia*. Strasbourg: Council of Europe, 2004. 5th edition.

<sup>vi</sup> *Anthroposophic Pharmaceutical Codex*. Dornach: International Association of Anthroposophic Pharmacists.

<sup>vii</sup> *Homoeopathic Pharmacopoeia of India*. Delhi: Government of India Press, 1974- (Volumes still in publication)

<sup>viii</sup> *British Pharmacopoeia 2004*. London: The Stationery Office, 2004.