Australian Government
Department of Health and Aged Care
Therapeutic Goods Administration

Selection criteria for non-mandatory application audits

DRAFT

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Contents

About

This guidance document is intended for sponsors of medical devices seeking to include a medical device (including in vitro diagnostic devices) in the Australian Register of Therapeutic Goods (ARTG). It provides information about how we select medical device applications for non-mandatory audit and is intended to assist you with preparing information for responding to a request for information if your device application is likely to be selected for audit.

Before your device can be selected for audit, it must undergo preliminary assessment. For more information about preliminary assessment, see Application requirements for medical devices – preliminary assessment.

More information about the audit process can be found in the '*Medical device application audits – case management process*' guidance document.

This guidance applies to applications for inclusion in the ARTG only. It does not apply to Device Change Requests (DCRs) and variations.

Application audit framework

Application audits are intended to verify that devices comply with Australian regulatory requirements before they are included in the ARTG. Non-mandatory audits can be undertaken for any type of medical device, including in vitro diagnostic (IVD) medical devices. While we may select any application for any reason, we generally use four main risk-based criteria to guide which applications will be selected for non-mandatory audit. Using a primarily risk-based approach allows us to focus regulatory efforts proportional to risk, reducing regulatory burden and costs while providing Australians with timely access to safe devices.

Areas of risk may include, but are not limited to:

- medical devices that use a particular type of technology
- devices where there are known issues with the performance or use of the device, or
- where there are gaps in evidence submitted with an application

The criteria are dynamic and may change over time to account for emerging safety or performance risks, including where:

- issues have been identified through post market reviews
- standards have not been updated to incorporate new or novel technologies, or
- pre-market assessment for a medical device has taken place under a regulatory system that differs to Australia's regulatory framework.

Regulatory changes

In 2024, Regulation 5.3 of the Therapeutic Goods (Medical Devices) Regulations 2002 was amended to limit mandatory application audits to only some pathways of applications, these pathways are outlined in the '*Medical device application audits – case management process*' guidance.

However, we may select any application for a non-mandatory audit and sponsors will not be charged an application audit assessment fee.

For any application selected for audit there are two possible audit paths – level 1 and level 2. If your application is selected for audit, we will allocate a case manager. '*Medical device application audits – case management process*' guidance outlines what to expect when your application has been selected for audit.

For IVD medical device applications, applicants are strongly encouraged to submit upfront documentation such as the Instructions for Use for higher risk IVDs (i.e., class 3, class 4, all self-tests and Point of Care tests). If supported by European approval, you should also submit the performance

evaluation and assessment report, or Technical Design assessment report issued by the notified body. This will result in effective and streamlined preliminary assessments.

Criteria for audit selection

We base our risk assessment and audit selection decision on information presented in your application, and information held in TGA records and systems. The level of scrutiny or level of audit of your application will align with the classification and risks associated with the device.

There are four main criteria for non-mandatory audit selection that may result in your application being selected for audit:

- Criterion 1 – Aspects related to the application and the device
- Criterion 2 – Regulatory reforms
- Criterion 3 – Post market signals
- Criterion 4 – Factors related to the sponsor or manufacturer

If multiple criteria apply to an application, the audit may involve assessment of a broader range of issues by more than one specialist assessment team.

The TGA will exercise discretion for audit selection. For example, we may not select for audit, if an application meets a criterion, and:

- the sponsor has acknowledged that they meet an audit selection criterion, and has:
  - addressed this in their application; and
  - included relevant evidence to address the issue.
- if after internal review we are satisfied that the identified criterion does not represent regulatory non-compliance, we may not select for audit.
- additionally, if a 'kind of device' has previously been audited and we are satisfied that the new application addresses all the issues, we may not select for audit.

Criterion 1 – Aspects related to the application and the device

1.1 Clarification of information in the application

Your application may pass preliminary assessment and be selected for a non-mandatory application audit if we have any ongoing concerns about the device that may have been raised during preliminary assessment including:

- the intended purpose in the application differs from the purpose approved by the comparable overseas regulator
- the "device" may meet the definition of a medicine in Australia
- the comparable overseas regulator has imposed conditions of market authorisation that may impact the safety or performance of the device in Australia
- the device classification is higher in Australia than it is in the country of approval
- the representative device assessed by the notified body for European IVD Regulation certification (specifically for class 3 IVDs), may not be the true representative of the device
- where the IVD sample type, analyte, or target population is different from that approved by the comparable overseas regulator
- where clinical utility differs in the Australian setting compared to the clinical setting in the comparable overseas regulator country.

What you can do

If you believe your device is likely to be selected for audit because it meets one of the above criteria, you may consider attaching a cover letter providing more information and explaining the implications of any differences between the comparable overseas regulator approval and your application.

1.2 Regulatory history

The regulatory history of a device with the TGA is an important aspect we consider when reviewing an application. We will check if a previous application was made to the TGA for the same device (or a closely related device) that was withdrawn, refused, or remains pending with unresolved safety or performance concerns.

If safety and performance deficiencies identified under the initial application process remain unresolved, any new application is likely to be selected for non-mandatory audit, even if the application has been submitted by a different sponsor. The purpose of the audit will be to ensure identified deficiencies or concerns have been appropriately addressed and closed out.

What you can do

While we are not able to provide you with information about whether we have ever received and refused an application for the device from another sponsor, you could consider asking the manufacturer of the device if they are aware of any prior applications.

If the device you are submitting has previously been withdrawn, refused or remains pending for any reason, you may consider arranging a regulatory engagement meeting with us to discuss what will be required as part of a new application before you apply.

If you are aware that there has been a previous application and the concerns associated with the device have been addressed, you may consider attaching a cover letter to the application explaining what the manufacturer has done to address or mitigate the issues and deficiencies in the previous application, and include any updated clinical evidence reports or instructions for use.

1.3 Regulatory pathway

If the device has been approved by a comparable overseas regulator via certain regulatory pathways, we are likely to select the application for audit.

1.3.1 EU MDR legacy device pathway

We will select applications for Class III medical devices that use:

- European Union Medical Device Regulation (EU MDR) certification based on the EU MDR legacy device pathway, and
- rely on equivalence to an EU Medical Device Directive (MDD) certified device that has not transitioned to the EU MDR, and
- have not been assessed by the TGA, for a level 2 audit.

The EU MDR legacy device pathway is defined under Article 61 (6) and Annex XIV (3) of the EU MDR and allows manufacturers, in limited circumstances, to use the clinical evidence for an equivalent device in relation to a new device.

The application audit will focus on assessing the clinical evidence against Australian requirements and will target whether the equivalence argument and clinical data for the equivalent device are sufficient to demonstrate the safety and performance of the new device.

What you can do

If you know your Class III device was certified under the EU MDR legacy device pathway and you are relying on equivalence to a device that has not transitioned to the EU MDR, please consider arranging a regulatory engagement meeting with us to discuss what will be considered as part of the application audit before you apply.

1.3.2 Japanese pathway with no clinical review

We will select applications for Class III medical devices that use Japanese Pharmaceuticals and Medical Devices Agency (PMDA) certification based on the generic or improved application categories, completed without clinical review, for a non-mandatory level 2 audit.

The PMDA certificate outlines the 'Application Category' and specifies whether a clinical review was undertaken. These categories may allow manufacturers, under limited circumstances, to leverage only non-clinical evidence to demonstrate the device meets safety and performance requirements. The application audit will focus on assessing the clinical evidence against Australian requirements.

Please note: This is not applicable for IVD medical devices.

What you can do

If you are applying for a Class III medical device that is supported by PMDA certification that did not involve clinical review, please consider arranging a regulatory engagement meeting with us to discuss what will be considered as part of the application audit **before you apply**.

1.3.3 Class 4 IVDs with EU IVDR certification and cadaveric claims

Class 4 IVDs with cadaveric claims that are supported by EU IVD Regulation certification will be selected for a non-mandatory application audit.

The EU requirements for these devices differ from the Australian requirements. The audit will focus on ensuring your device meets all relevant Australian regulatory requirements.

What you can do

If you are applying for a Class 4 IVD with cadaveric claims that is supported by EU IVD Regulation, please consider arranging a regulatory engagement meeting with us to discuss what will be considered as part of the application audit **before you apply**.

1.3.4 Transcatheter heart valves without US FDA PMA

Transcatheter heart valves supported by comparable overseas regulator evidence other than US FDA PMA approval will be selected for a non-mandatory application audit. The US FDA requirements for clinical evidence for these devices align with the Australian requirements whereas other jurisdictions, including the EU, do not. The application audit will focus on assessing the clinical evidence against Australian requirements.

What you can do

If you are applying for a transcatheter heart valve supported by comparable overseas regulator evidence other than US FDA PMA approval, please consider arranging a regulatory engagement meeting with us to discuss what will be considered as part of the application audit **before you apply**.

1.3.5 Singapore abridged IVD pathway based on US FDA 510k

IVD medical device applications that have Singapore Health Sciences Authority (HSA) approval via an abridged pathway using US FDA 510k approval will be selected for a non-mandatory level 2 audit.

Note: IVD applications with US FDA 510k approval will be selected for a mandatory application audit.

What you can do

If you are submitting an IVD medical device application that has Singapore Health Sciences Authority (HSA) approval via an abridged pathway using US FDA 510k approval, please consider arranging a regulatory engagement meeting with us to discuss what will be considered as part of the application audit **before you apply**. A cover letter with the information on the approval pathway may also help achieve an efficient preliminary assessment.

Criterion 2 – Regulatory reforms

An Action Plan for Medical Devices was released in 2019 to enhance the safety, performance, and quality of medical devices in Australia and to focus on patient safety. To support compliance with new requirements, we will select applications for devices affected by certain reforms for an application audit.

Applications associated with the following reforms will be selected for a non-mandatory audit:

2.1 IVD companion diagnostics

Each IVD companion diagnostic requires a separate application. We may select these applications for audit and assess the technical documentation for each product to ensure the safety and performance of the companion diagnostic and the associated medicines or biologicals.

The audit will focus on whether there is sufficient evidence that the IVD matches the applicable core characteristics of the clinical trial IVD that supported registration of the relevant indication for use, for the corresponding medicine or biological.

More information about how we regulate IVD companion diagnostics is on our website at:

- Medical devices reforms: IVD companion diagnostics
- Further information about our requirements including instructions for use, product information for corresponding medicines and biologicals, and clinical evidence is at Guidance on regulatory requirements for IVD companion diagnostics.

2.2 Medical device software and artificial intelligence (AI)

A range of reforms have recently been implemented to improve the regulation of software-based medical devices, including software that functions as a medical device. During preliminary assessment of applications for medical device and IVD software, we will focus on checking the devices are correctly classified and certified under new classification rules. In some complex cases, this may result in a non-mandatory application audit.

We may also select any application identified as incorporating AI (Machine Learning, Large Language Models (LLMs) etc.) for an application audit. The assessment we undertake will depend on what the intended purpose of the device is, how it achieves its purpose and what classification the device is. The audit process may include a review of:

- Clinical evidence
- Risk management documentation.
- Validation of the AI.

More information about how we regulate software based medical devices and AI is available on our website at:

- Software-based medical devices
- Is my software regulated?
- Regulation of software based medical devices
- Medical devices reforms: Medical device software regulation

- Classification of active medical devices (including software-based medical devices)
- The European Union Medical Device Regulation – Regulation (EU) 2017/745 (EU MDR)
- Essential Principle 13B guidance

2.3 Patient-matched medical devices

Recent changes to the regulation of patient-matched medical devices manufactured within a design envelope mean an application for inclusion is likely to be selected for audit to ensure the device meets regulatory requirements.

More information about patient-matched medical devices is on our website at:

- Medical devices reforms: Personalised medical devices.
- Regulatory framework for personalised medical devices: Frequently asked questions.

2.4 Patient implant cards and patient information leaflets

All implantable and active implantable medical devices must have patient information materials available in the form of both Patient Information Leaflets and Patient Implant Cards, unless specifically excluded from these requirements. Patient implant cards and patient information leaflets must meet requirements set out in the Essential Principles.

We review all patient implant cards and patient information leaflets, usually during preliminary assessment of the application. If the patient implant card and patient information leaflet for your device are not provided with your initial application, your application will be selected for a level 1 audit.

Information about patient implant materials is on our website at:

- Medical device patient information leaflets and implant cards.

What you can do

To avoid being selected for audit, attach the patient implant card and patient information leaflet to your application.

2.5 Medical devices with a medicinal substance

A medicinal substance incorporated in a medical device must be manufactured according to Good Manufacturing Practice and meet the Australian manufacturing and quality control requirements.

We may select applications for medical devices incorporating medicinal substances for audit when they rely on alternative comparable overseas regulator pathways (other than the EU) to confirm that the medicinal substance is sourced from a Good Manufacturing Practice compliant supplier.

We do not need to verify these requirements for applications that rely on TGA or European Union certification, as these processes ensure Australian regulatory requirements are met.

More information about devices with medicinal substances is available on our website - Medicinal substances in medical devices.

For information regarding specific expectations for clinical evidence requirements, refer to our Clinical evidence guidelines.

2.6 Vaping medical devices

Vaping products meet the definition of a medical device and will be selected for a non-mandatory audit to ensure they meet recently introduced regulatory requirements.

More information about the regulation of vaping products is available here:

- Possessing and supplying vaping goods in Australia | Therapeutic Goods Administration (TGA)
- Importing vaping devices into Australia | Office of Drug Control (ODC).

2.7 Button batteries

The Australian Competition and Consumer Commission (ACCC) has highlighted the risk of button batteries being inadequately sealed in battery compartments, leading to death or serious injury if swallowed by children.

We may select all medical devices that use button batteries for non-mandatory audit to ensure they meet the mandatory standards for batteries. More information about our approach is available on our website.

The ACC have provided further guidance and information:

- https://www.productsafety.gov.au/product-safety-laws/safety-standards-bans/safety-investigations/button-battery-safety-investigation
- Consumer Goods (Products Containing Button/Coin Batteries) Safety Standard
- Consumer Goods (Products Containing Button/Coin Batteries) Information Standard
- Consumer Goods (Button/Coin Batteries) Safety Standard
- Consumer Goods (Button/Coin Batteries) Information Standard
- Button/coin battery safety: a guide for business on the application of mandatory standards, to help suppliers understand the requirements.
- A fact sheet, which summarises the four standards.

2.8 Mercury containing devices

Australia is a signatory to the Minamata Convention that requires parties to take steps to prohibit or restrict the import, export, and manufacture of therapeutic goods containing mercury. The Convention also includes phase out dates for mercury-added products.

We may select any device that contains mercury for a non-mandatory audit.

2.9 Substances introduced into the body or absorbed by the skin

For a medical device that is a substance, or a combination of substances, that are introduced into the body or absorbed by the skin, we may select the application for audit to confirm that the product is a medical device and not a medicine.

Guidance can be found here – Reclassification of medical devices that are substances to be introduced into the body or applied to and absorbed by the skin (tga.gov.au).

Criterion 3 – Post market signals

We conduct post-market reviews of medical devices supplied in Australia to check that devices continue to be safe and fit for their intended purpose and perform as expected throughout their life.

Post market reviews are an important feature of how we regulate medical devices in Australia and confirm that sponsors are meeting their ongoing legal obligations once their device has been included in the ARTG.

More information about post market reviews including details about significant reviews currently underway, is on our website - Medical device post-market reviews.

To support the effectiveness of the post market review program, and to ensure the safety and performance of devices, we will:

- select applications for devices that are the subject of significant post market reviews for an application audit
- continue to select the same kind of devices after a post market review concludes if significant concerns with a broad range of devices from multiple sponsors were identified during the review
- select applications for audit if other post market signals identify a substantial risk for patients arising from certain technologies or clinical uses of a device.

The following devices have previously been the subject of post market review and will continue to be selected for non-mandatory audit for the foreseeable future:

- Breast implants
- Foetal dopplers
- Hyperbaric chambers
- Injectables – cosmetic and dermal fillers
- Joint replacement – Patella metal-backed
- Reprocessed or refurbished devices
- Spinal cord stimulators
- Surgical mesh
- Vaginal rejuvenation medical devices
- Ventilators – Universal, BiPAP, CPAP

Criterion 4 – Factors related to the sponsor or manufacturer

If we identify that a certain sponsor or manufacturer has a broad and consistent history of submitting non-compliant medical device applications to the TGA, or of supplying unsafe medical devices, we are more likely to select applications associated with that manufacturer or sponsor for a non-mandatory application audit.

Version history

Version	Description of change	Author	Effective date
V1.0	DRAFT *'Selection criteria for non-mandatory application audit'* For public consultation	Medical Devices Authorisation Branch	December 2024