MEDICINES Australia
BETTER HEALTH THROUGH RESEARCH AND INNOVATION

29 April 2008

Commissioner Michael Woods
Regulatory Burdens Review
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

Dear Mr Woods

By email: regulatoryburdens@pc.gov.au

Dear Commissioner

Please find attached Medicines Australia's submission to the Productivity Commission's Annual Review of Regulatory Burdens on Business – Manufacturing and Distributive Trades. The submission identifies a number of regulatory burdens affecting the innovative pharmaceuticals industry.

Medicines Australia represents the innovative medicines industry in Australia. Our member companies comprise almost 80 percent of the prescription pharmaceuticals market, and are engaged in the research and development, manufacture, supply and trade of prescription medicines. The industry employs over 30,000 people and is a major innovator and exporter for Australian manufacturing.

Medicines Australia has long been advocating for a number of regulatory reforms that would provide the Australian community with more timely access to new and innovative medicines, as well as provide a more efficient, effective and predictable operating environment for the pharmaceuticals industry.

I trust that these comments are of assistance in your consideration of this matter. I would be happy to discuss these matters further with you at your convenience. If you have any queries on the submission, please contact Michael Fitzsimons, Policy Manager, at Medicines Australia on 02 6122 8570 or at michael.fitzsimons@medicinesaustralia.com.au.

Yours sincerely

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Medicines Australia's Submission to the Productivity Commission

Annual Review of Regulatory Burdens on Business – Manufacturing and Distributive Trades

About Medicines Australia

Medicines Australia represents the innovative medicines industry in Australia. Our member companies comprise almost 80 percent of the prescription pharmaceuticals market, and are engaged in the research and development, manufacture, supply and trade of prescription medicines.

Medicines save lives, reduce and cure disease. Medicines Australia is committed to enhancing the health of Australians by providing access to the latest and most innovative medicines that are of the highest quality, safety and efficacy.

The pharmaceuticals industry is a key industry in Australia which provides benefits to both Australians' health and the health of Australia's economy. Companies in this sector are constantly working on bringing new effective medicines to patients and invested around $752 million in research and development in 2005-06.

Our Association represents a high technology, knowledge-intensive industry, contributing significantly to the Australian economy as an employer and exporter. The industry sells over $11 billion worth of medications domestically and directly employs over 30,000 people in Australia including over 14,000 in manufacturing. In 2007, Australian pharmaceutical manufacturing exports totalled $3.9 billion.

Medicines Australia represents the innovative medicines industry by:

- Participating in health and industry policy development
- Building and maintaining relationships with government to ensure the continuation of a viable pharmaceutical industry
- Actively engaging with key consumer groups to better understand their needs and issues and educating the general community about the industry in Australia
- Administering the Code of Conduct which sets the standard for the ethical marketing and promotion of prescription medicines
- Working along with other health professional organisations to discuss issues of mutual concern

Regulatory burden

The prescription pharmaceutical industry faces a plethora of regulations and controls on its operation, given the important role the industry plays in the health system. There is little prospect that the overall policy towards the regulation of the prescription pharmaceutical industry is likely to be softened any time soon and, arguably, is in fact becoming more onerous. Therefore regulatory efficiency is a key issue facing the industry and has a material impact on the industry's viability. The industry in Australia faces a range of regulatory hurdles at various stages its operations.

Prior to releasing products on the market, there are substantial research activities the industry undertakes. Significant regulations impact on the industry's research and development activities, such as the conduct of clinical trials, ethical approvals and regulation of basic discovery research. The procedures for securing and maintaining intellectual property rights also contribute to the regulatory burden for industry. This is especially important given the significance of protecting intellectual property in ensuring the viability of the innovative medicines industry.

Once a medicine has been developed and research is completed, regulatory evaluation and approval of the medicine is required. For prescription medicines, registration of the medicine must be approved before it can be sold in Australia. This registration activity is managed by the Federal Government's Therapeutic Goods Administration (TGA). The TGA administers the *Therapeutic Goods Act 1989,* and the associated regulations, to ensure the safety and efficacy of all therapeutic goods, including prescription medicines sold on the Australian market. The community expects the safety and efficacy of medicines to be rigorously monitored. Given that achieving regulatory approval is a prerequisite for selling medicines in Australia, the efficiency of the regulatory process is an important influence on the industry's operations.

Once available on the Australian market, often companies will seek to have their products listed on the Federal Government's Pharmaceutical Benefits Scheme (PBS), which subsidises the cost of medicines for Australian patients. While not a mandatory requirement for selling a medicine in Australia, the fact that around 80 per cent of prescription medicines are subsidised by the PBS means that in many cases companies need to have their products listed on the PBS to be competitive in the market. Companies that do not have their products listed on the PBS operate in the much smaller private prescription market. This means that the various processes and procedures that companies are required to negotiate to achieve a PBS listing, and subsequent administrative processes that apply to products on the PBS, are a major regulatory issue for Medicines Australia members.

The process of manufacturing a medicine in Australia is also governed by the comprehensive regulatory system administered by the TGA. The community similarly expects that the medicines it takes are made to the highest standards and the TGA has a very good international reputation. There are

various requirements about how medicines should be made, the standards that should be adhered to, and the processes in place to ensure the quality and safety of manufacture. The safety and quality of medicines is a key competitive issue for innovative manufacturers and Medicines Australia members ensure their strict adherence to these regulatory provisions. The result, again, is that regulations are a major influence on the performance of the industry.

Once a product is on the market, the marketing of medicines in Australia is also heavily regulated. This extends to how medicines can or cannot be marketed to the community and health professionals, as well as the additional requirements from the Australian Competition and Consumer Commission for the pharmaceutical industry (particularly Medicines Australia members) to disclose details and costs of educational events to health professionals. Moreover, advertising prescription medicines direct to consumers is banned in Australia, instilling further regulatory constraints on the operation of this manufacturing industry.

The pharmaceuticals industry is impacted by a range of regulatory systems at many stages of its supply chain. Regulation and its efficiency therefore have a major influence on the industry's viability and operating environment. In this context, Medicines Australia has identified the following regulations which may be imposing burdens upon the pharmaceuticals industry.

1. Registration of medicines.

Australia New Zealand Therapeutic Products Authority

The *Therapeutic Goods Act 1989* and associated *Therapeutic Goods Regulations 1990* form the basis for the medicines regulatory system in Australia. These provisions were reviewed in recent years as part of the Australian Government's negotiation with New Zealand to establish a joint trans-Tasman regulatory agency, the Australia New Zealand Therapeutic Products Authority (ANZTPA). However, due to a decision by the New Zealand Parliament in July 2007 the ANZTPA reforms have has been postponed indefinitely.

The proposed ANZTPA reforms to regulatory processes included a range of initiatives to improve the regulatory process, including reviews of:

- pre-market evaluation and assessment;
- product licensing for both countries;
- controls on manufacture;
- post-market monitoring and surveillance; and
- setting standards for both Australia and New Zealand.

Many of the suggested changes would significantly improve the efficiency of the regulatory system in Australia. The Federal Government has indicated it is examining if and how to proceed with some of these reforms. From the industry's perspective it will be important to support the progression of these reforms as far as possible. They represent a real opportunity for government, industry and the community and they should not be lost simply because ANZTPA itself has not been implemented to date.

Good Manufacturing Practice

The TGA's Manufacturers Assessment Branch (MAB) provides Australian manufacturers with licences to manufacture therapeutic goods in Australia. Licences are issued following a rigorous auditing process to establish the manufacturers' adherence to the principles of Good Manufacturing Practice (GMP). In practice many parts of the manufacturing process is conducted in countries outside Australia. The TGA has a responsibility to ensure that every part of the manufacture of a therapeutic good is conducted under the principles of Good Manufacturing Practice (GMP). GMP audits are repeated throughout many global regulatory authorities, although information may seldom be shared. The TGAs Manufacturers Assessment Branch is currently initiating improvements to communication of audits, particularly of overseas manufacturers, between jurisdictions.

In order to establish adherence to the principles of GMP by overseas manufacturers supplying Australian companies with drugs or ingredients, the Manufacturers Assessment Branch (MAB) may conduct actual visits to overseas manufacturers. Alternatively the Australian sponsor may provide specific documentation from the overseas manufacturer to demonstrate their adherence to GMP. These documents are reviewed by MAB and an assessment is made as to the overseas manufacturer's compliance with GMP. A clearance certificate of GMP compliance for an overseas manufacturer is issued for a period of time, dependant on the assessment and determined by the MAB. The time taken to conduct paperwork (or desktop) audits is not constrained by any legislated timeframes. Companies are frequently left waiting for months for such assessments to take place. Often the current GMP clearance has expired. Finally, when clearances are received, they have short expiry terms requiring companies to make new applications within a short time-frame. This is time and labour intensive as well as a costly regulatory burden.

Although MAB are reviewing their processes and recruiting to enhance their limited resources, there is scope for these processes to be evaluated and for the times and costs associated with both local (Australian) manufacturing audits and overseas audits or desk-top assessments to be analysed. There is concern that the recently revised 16th Edition of Guidelines for the Clearance of Overseas Manufacturers will lead to a significant increase in the number of actual overseas audit visits by MAB. This will add a considerable cost, time and regulatory burden to industry. Therefore, there may to be scope for efficiencies to be obtained from improved regulatory development in this area.

Improvement of TGA communication and technology systems

The current system for registration for marketing medicines in Australia requires submission of hard copy submissions to the TGA, requiring extensive use of paper and transport of these hard copy documents. The preparation of these hard copy submissions causes a burden on industry in the time taken to print, the cost of materials, the work in collating volumes of paperwork, as well as the transport and printing costs in providing this material to TGA. Having to review paper copies also increases the time taken for TGA to review of submissions. Complex submissions to TGA often run to many volumes of paperwork.

Medicines Australia there may be scope to identify initiatives to make the process more efficient, including electronic lodgement of documents with TGA. Electronic lodgement would reduce the cost to business, as well as potentially speed up the regulatory process.

Regulation of clinical trials

Currently, Pharmaceutical companies who undertake clinical trials in multiple states in Australia need to obtain ethics clearance from the respective Human Research Ethics Committees in each state.

This adds unnecessary burden on the industry in having to navigate it's way though the different regulatory and approval processes as the applications for clinical trials need to be tailored for each jurisdiction.

Medicines Australia is aware that the is a current initiative being undertaken by National Health and Medical Research Council (NHMRC) to enable better co-ordination of clinical trials. A more coordinated approach to clinical trials would be more efficient for the industry and potentially save time in achieving regulatory approval for clinical trials.

2. Pharmaceutical Benefits Scheme

The Commonwealth Government's Pharmaceutical Benefits Scheme (PBS) has provided reliable, timely and affordable access to a wide range of medicines for all Australians.

Before a medicine can be subsidised via the PBS, the Pharmaceutical Benefits Advisory Committee (PBAC) must assess it and make a positive recommendation for its listing. The PBAC is an independent expert body whose membership includes doctors, other health professionals and a consumer representative.

In submissions to the PBAC, companies need to provide evidence of efficacy and safety and well as a cost-effectiveness analysis demonstrating that having the medicine on the PBS represents value for money for the taxpayer. Companies also have to engage in pricing negotiations and pricing submissions to the Pharmaceutical Benefits Pricing Authority (PBPA). These submissions can impose a significant regulatory burden on innovative pharmaceutical companies. This is particularly the case for complex submissions, such as where there is a request for further information or clarification is required, or where a medicine has been rejected previously and requires multiple resubmissions in order to achieve a positive recommendation from PBAC. While there are a range of regulatory issues that impact on the industry as a result of this process, there are some specific issues that warrant further consideration.

Streamlining of PBS and TGA processes

As illustrated above, the listing of a medicine on the Pharmaceutical Benefit Scheme can be quite a resource intensive process.

The joint DoHA – Medicines Australia Access to Medicines Working Group, announced as part of the PBS reforms in November 2006, is examining the capacity to further streamline and coordinate TGA and PBAC processes to reduce the time it takes to list a medicine on the PBS. This will enable more timely availability of innovative medicines to the Australian public.

This work represents an important opportunity to improve the regulatory and reimbursement assessment systems from the point of view of government, industry and patients.

WAMTC Methodology in PBS Reference Pricing

Reference pricing is a policy adopted by the Commonwealth Government for the purposes of pricing medicines that have been assessed as being of equivalent safety and efficacy for a common clinical indication. Typically, the lowest priced brand or drug is set as the benchmark against which all other relevant products are priced.

In most cases, the benchmark price is set by establishing the equi-effective doses of the linked drugs. Such "therapeutic relativities" are usually derived from the clinical trial data that are submitted when a PBS listing is sought.

For a number of drugs, however, the benchmark price is set by ascertaining the actual patterns of usage in the community, and taking a weighted average of a monthly treatment cost amongst all drugs in the therapeutic group. The Weighted Average Monthly Treatment Cost method of calculating a benchmark price is used for drugs that have been assessed as being "clinically interchangeable at the patient level."

There are currently seven Therapeutic Premium Groups (TGP) that are referenced priced by WAMTC. These include drugs, which among other things, are used to treat depression, hypertension and angina; to lower high cholesterol; and to treat and protect against a variety of gastric and other ulcers.

Like all drugs on the PBS, the price of those drugs that form a TGP are reviewed annually. In the case of the TGPs this is done by a recalculation of the WAMTC. The WAMTC is calculated by analysing treatment costs from a weighted sample of 12 months of clinician prescribing data. As part of the review process, sponsors are invited to submit pricing proposals. The drug with the lowest average monthly treatment cost is then set as the benchmark for pricing purposes. The remaining drugs with the TGP must then be priced within a range that accounts for errors assumed by the sampling process (in this case 95% confidence intervals).

The application of the WAMTC method for reference pricing purposes generates substantial financial and administrative costs to both the Government and industry.

A WAMTC review can take between 10 to 14 weeks. During this time, considerable resources are allocated by both Government and companies to collecting, collating and analysing data, followed by verification of the accuracy of the WAMTC calculation. The cost of purchasing data alone is prohibitive. For example, the costs of purchasing necessary data range from $8,000 and $16,000 for an ad-hoc WAMTC query. The total average cost thus amounts to between $110,000-120,000 per annum for each company. Considering that there are around seven WAMTC reviews each year, and any one review will have a number of companies involved – each required to collect and submit their own data – the compliance cost to the industry as a whole of participating in WAMTC reviews will be much higher.

3. Innovation Tax Incentives

Medicines Australia welcomed changes to the 175% innovation premium in 2007 because they partially addressed the market failure relating to overseas ownership of intellectual property. These changes may help bring further R&D investment to Australia by multinational corporations. But it is worthwhile to note that similar (or identical) tax concessions exist in most developed countries, and do not constitute a singularly compelling incentive to locate R&D activities in Australia.

More importantly, the International Premium creates an undue prejudice against existing R&D operations of multinational corporations. According to PriceWaterhouseCoopers, "This tax break enhances the attractiveness of Australia as an R&D centre in terms of new entrants, as it represents a competitive tax outcome." However, this gives more favourable treatment to new R&D performers at the expense of those already located in Australia.

When neither a company nor an associate has been present in Australia for at least 10 years (including a branch operation), the prior R&D history is deemed to be zero and therefore all of the R&D expenditure in the first year could be claimable at the full 175% rate.

If any such company spends, say, $10 million on qualifying R&D in an Australian facility, it would get an additional tax deduction of $7.5 million in year one, which is a tax benefit of $2.25 million. This treatment presents opportunities to those international groups who have not previously been in the Australian market, or at least not at any time during the past 10 years. And the effective Australian tax rate for these companies could be as low as 23% for the first five years.

The International Premium allows a 100% deduction for the R&D base cost and a 75% additional deduction for expenditure incurred in excess of the prior three-year running average. For multinational companies with existing facilities in Australia, in the transitional year, being the income year for a company commencing after June 30, 2007 and ending before July 1, 2008, the expenditure history for these groups for the three prior years is deemed to be 90%, 80%, and 70% respectively of the transitional year expenditure.

If companies choose to make an R&D tax claim under these transitional rules, they can only expect to do so if an incremental increase in R&D expenditure is higher as a proportion of total R&D over a rolling base (or an increase of nearly 20% annually in order to maintain a 4 cent return on each additional dollar invested in R&D). For the innovative medicines industry this is difficult, given the original high base level of R&D spending the industry undertakes. And if a company with existing presence in Australia cannot or does not make an R&D tax claim under these transitional rules, the company has to 'earn' its three year R&D history, in which case it cannot access the International Premium until at least 2012. In either case, an overall reduction in effective tax rate is not achieved by multinationals that already have R&D facilities in Australia.

4. Australian Competition and Consumer Commission Requirement for Medicines Australia Member Companies to Disclose All Educational Meetings and Symposia.

There are also significant regulations affecting the information companies provide to the marketplace on their medicines. The Australian Competition and Consumer Commission requires all Medicines Australia member companies to disclose all educational meetings and symposia to Medicines Australia. A summary report of these events is publicly available on the Medicines Australia website. This is to be undertaken for the next five years.

While MA has agreed to implement this determination, it has imposed another significant administrative burden upon the pharmaceutical industry. The reporting and disclosure process imposes considerable administrative and

financial burden upon companies with the cost of compliance for the industry in the millions of dollars.

This cost of compliance will ultimately be either passed on the consumer or be funded at the expense of other company activities such as research and development.

5. Intellectual Property

A strong legal framework on intellectual property rights is of critical importance to the pharmaceutical industry and its investments. The ability to enforce patent rights and appropriate data exclusivity periods are critical to secure ongoing investment in high-cost and high-risk R&D.

Data Exclusivity

Current data exclusivity provisions in Australia are not as extensive as overseas practice. They are not as generous as provisions in the United States, the European Union, and Japan. As one of the key contributors to the world's total research and development output, Australia's intellectual property provisions should not leave open the possibility of weakening its prospects of attracting foreign and domestic investment into innovative industries. The lack of adequate data exclusivity is of particular importance in light of recent "springboarding" amendments in the *Patents Act*. These amendments enable manufacturers of generic (competitor) medicines to register their products at any time during the life of a patent for export purposes. In addition, data exclusivity is only provided for in relation to new active components which have not been listed on the Australian Register of Therapeutic Goods before. Data exclusivity is not provided for new uses of existing chemical compounds.

A weak data exclusivity regime undermines an otherwise strong intellectual property regime in Australia, and constitutes an immediate disincentive for innovative pharmaceuticals to continue to invest in the research and development of new medicines or in the discovery of new uses for existing medicines.

Patent Linkage

Patent linkage ensures that generic copies of innovative medicines cannot be registered with regulatory authorities while the latter is still under an effective patent. Australia does not currently offer an effective patent linkage system, and it is not clear that provisions to improve the operation of such a system have been successful. Moreover, past efforts to remedy the situation were hampered by amendments introduced by the Australian Parliament in passing legislation to implement the Australia-United States free trade agreement in 2004. These amendments facilitate early market entry by generics before patent expiry without prior notice to the patent holder, and actively deter patent holders from defending their patents. Together with the springboarding changes, these AUSFTA amendments enable the marketing of generic

medicines while valid patents are still in place. The difficulties and lack of certainty created by the amended system increases the complexity and cost of innovator companies legitimately enforcing their patents where a generic manufacturer has breached a patent. The costs to innovator companies of monitoring and enforcing their patents have, if anything, increased as a result of these changes, leading to a less efficient regulatory environment.