5 April 2013

Mr Tony Harris
Chair
Pharmaceutical Patents Review
PO Box 200
WODEN ACT 2606

SUBMISSION TO THE PHARMACEUTICAL PATENTS REVIEW

Dear Mr Harris,

Thank you for the opportunity to provide a submission to the Pharmaceutical Patents Review.

Grattan Institute’s recent report on pharmaceutical prices, *Australia’s bad drug deal*, demonstrated that the Pharmaceutical Benefits Scheme (PBS) is paying much higher prices than both its counterpart in New Zealand and public hospitals in Australia. These high prices cost the Government and taxpayers more than $1.3 billion each year. This estimate does not include the impact of longer pharmaceutical patents.

Patent protection is a societal trade-off: restricting choice and competition in order to reward innovation. The longer the patent protection, the greater the reward for innovation. The cost of successful drug development has been increasing in recent decades for a variety of reasons, not just the intrinsic costs of research and development.¹ But any protection from competition, such as patent protection, runs the risk of shielding companies from the need to improve efficiency and develop innovative products. The result is often inefficiency that imposes substantial costs on Australian taxpayers.

It is very hard for external analysts to determine how much protection is required to ensure adequate returns on pharmaceutical innovation. However, at least some leaders in the pharmaceutical industry recognise that there is room to improve the efficiency of research and development, and to pass the savings on to consumers.²

There should be a very high bar for any patent extension (or effective patent extension). It should have demonstrable benefits to Australian patients, commensurate with the obvious costs to Australian taxpayers. In our view, the case for effective patent extension has not been made. The accretions and manipulations allowing extensions beyond the 20-year period Parliament originally agreed should be wound back.

² See recent comments by the Chief Executive of GlaxoSmithKline, http://www.reuters.com/article/2013/03/14/us-glaxosmithkline-prices-idUSBRE92D0RM20130314.
As your draft report notes, the savings from reducing patent protection would be much greater if Grattan Institute's recommendations were implemented. PBS prices for generic drugs are very high compared to those paid by the comparators we examined. Compared to New Zealand, PBS prices for generic drugs are seven times higher. For drugs under patent, the premium paid by the PBS is around 40 per cent. If our recommendations were implemented, generic prices would fall dramatically, leading to much greater savings from earlier patent expiry.

In fact, the benefits of earlier patent expiry would increase even more than our comparisons suggest. The benchmarking we did (under very conservative assumptions) only looked at three other jurisdictions. The international benchmarking we recommend would certainly achieve even greater falls in generic drug prices.

The criteria for assessing pharmaceutical patent rules should be their impact on innovation, and on cost and access to medicines. In our report, we address other, spurious arguments that are sometimes raised to defend high drug prices.

One relevant assertion is that high drug prices – or generous patent protection – will attract research and development funding to Australia. There is no evidence that this is the case. Infrastructure, expertise and costs are far more important determinants of how global pharmaceutical companies direct their research and development resources. Hoping for patent protection and high prices to trickle down into research and development investment is illogical and costly.

Finally, we suggest that the role of the proposed non-statutory Pharmaceutical System Coordinating Committee (Draft Recommendation 10.1) be carried out by the independent statutory body recommended in Australia’s bad drug deal. Currently, a non-statutory body within the Department of Health and Ageing is charged with negotiating pharmaceutical prices. It has failed to achieve competitive prices. We suspect that part of the reason is that it is not truly independent, unlike the Reserve Bank and New Zealand’s pricing authority, PHARMAC.

Being a truly independent statutory body has insulated PHARMAC from political pressure and vested interests. This has helped it negotiate much better drug prices than Australia. A body advising Parliament on drug patenting, marketing and the PBS should be similarly independent. An expert pharmaceutical pricing authority would be well-suited to this role. Consolidating pricing and patenting advice within one organisation would also avoid a proliferation of agencies.

Negotiating fair prices for pharmaceuticals and avoiding excessive monopoly protections will save a huge amount of money each year. As we argue in our report, reducing this kind of waste is crucial to providing more and better health care in the future.

Kind regards,

[Signature]

Stephen Duckett
Director, Health Program
Grattan Institute