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**Submission to IP Australia: ACIP's Recommendation on the Innovation Patent System**

Complementary Medicines Australia (CMA) welcomes the opportunity to respond to IP Australia on the Advisory Council on Intellectual Property (ACIP's) recommendation on the Innovation Patent System, consultation paper, August 2015. As the peak industry body representing the growing complementary medicines sector, CMA writes to express its strong support for industry innovation.

Regulated in Australia as medicines under the *Therapeutic Goods Act 1989*, complementary medicines include vitamins, mineral and nutritional supplements, homeopathic, aromatherapy products and herbal medicines (unless specifically exempt). The term 'complementary medicine' also comprises traditional medicines, including traditional Chinese medicines, Ayurvedic, Australian Indigenous and Western herbal medicines. Other natural healthcare products may be regulated as foods, such as functional foods and special purpose foods, or as cosmetics, such as natural cosmetics that use herbals and botanicals.

Roughly, two-thirds of all Australians use complementary medicines. They are generally available for self-selection by consumers and can be obtained from retail outlets such as pharmacies, supermarkets and health food stores. The majority of complementary medicines are indicated for the relief of symptoms of minor, self-limiting conditions, maintaining health and wellbeing, or the promotion or enhancement of health.<sup>1</sup>

The Australian complementary medicines industry holds great potential to grow exponentially and to contribute further to the strength of high-skill local manufacturing, employment opportunities and development of a range of technical and vocational skills, and to Australian exports. Unlike in some other jurisdictions, the Australian regulation of complementary medicines as *medicines* facilitates their integration within mainstream medicine, both locally and around the world.<sup>2</sup> This reputation has led to a rapidly growing demand for Australian complementary medicines in the Asian region, and is coupled with a growing middle class and ageing population base that embraces complementary medicines.

To leverage the accumulated knowledge, capabilities and a strong international branding for excellence, Australian complementary medicine businesses need the ability to invest in research and development, and to drive networks into global markets. However, there is a major barrier to the level of investment that businesses direct towards research and development, and that is a lack of innovation protection. In the case of the complementary medicines industry, there is currently little or no incentive to invest in research

<sup>1</sup> Source TGA, <http://www.tga.gov.au/industry/cm-basics-regulation-overview.htm>

<sup>2</sup> National Institute of Complementary Medicine. (2015). Highlighting complementary medicine research

and development due to a lack of data protection and/or market exclusivity. Complementary medicines are rarely able to be patented because they cannot meet the requirements of novelty and secrecy, given their history of use is often in the public domain.

That is why CMA supports the continuation of the innovation patent system, a system designed to assist Australian businesses with intellectual property rights (IPRs) for their “lower level inventions”. The continuation of the system facilitates the reduction in compliance burden on users by providing easier, cost effective and more efficient rights for innovations from that of the standard patent.

As part of cutting red tape in the IP system and the government’s regulation reform agenda, CMA recommends that prior to further consideration of the abolition of the innovation patent system, a stakeholder roundtable be convened to explore options and alternative suggestions to encourage innovation amongst SMEs.

CMA highlights that the 2012 changes to the *Raising the Bar Act* included a number of initiatives to strengthen standards for the granting of patents to provide greater certainty to Australian users of the innovation patent system. CMA submits that considerations for a review or abolition of the patent system should include the “bedding down” of these changes to the legislation. Other concerns noted by the Advisory Council over potential abuse of the innovation patent system should be dealt with from an administrative review or further refinement of the current system, rather than be used as supporting evidence for complete removal of such a system or for an increase to the inventiveness threshold.

CMA’s 2013 submission to the ACIP’s review of the innovation patent system suggested that no further consideration should be given to raising the inventiveness threshold for innovation patents to the same level as that for a standard patent as this would remove one of the main objective of the system, to stimulate innovation and R&D in Australian SMEs.

Thank you for the opportunity to submit our feedback to the ACIP’s recommendation on the Innovation Patent System. We would be pleased to discuss any points of this submission further as required and to explore other options.

Yours sincerely,



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