Australian Government
Department of Health
Therapeutic Goods Administration

Consultation: Whether the TGA should publish that a prescription medicine is under evaluation

Transparency reforms

Version 1.0, February 2019

TGA Health Safety Regulation

Confidentiality
All submissions received will be placed on the TGA's Internet site, unless marked confidential. Any confidential material contained within your submission should be provided under a separate cover and clearly marked "IN CONFIDENCE". Reasons for a claim to confidentiality must be included in the space provided on the TGA submission form. For submission made by individuals, all personal details, other than your name, will be removed from your submission before it is published on the TGA's Internet site. In addition, a list of parties making submissions will be published. If you do not wish to be identified with your submission you must specifically request this in the space provided on the submission form.

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Purpose and scope

The focus of this paper is to seek your feedback on:

- *Whether or not the Therapeutic Goods Administration (TGA) should in future disclose earlier that a prescription medicine is under evaluation and what types of prescription medicines should be published?*

The Therapeutic Goods Administration (the TGA), a part of the Department of Health, is committed to better health and wellbeing for all Australians through regulatory excellence. This includes being appropriately transparent about our regulatory activities, as well as engaging in meaningful stakeholder engagement and education.

At present, we consistently notify the public once a medicine has been evaluated, but only following its registration. Once a prescription medicine has been evaluated and approved for market authorisation and registered on the Australian Register of Therapeutic Goods (ARTG), information about that medicine becomes publicly available. The ARTG entry includes information such as the medicine name, the sponsor and the approved use of the medicine.

For the majority of approved and rejected new chemical entities or new biological prescription medicines, as well as new uses for these medicines, additional detailed information is published following registration (approvals) or completion of the process (rejections). These Australian Public Assessment Reports (AusPARs) include the process and outcome of the evaluation.

Your feedback

Are you a patient, consumer group, healthcare provider, industry representative body, company, researcher or other interested party?

We seek your views, including reasons in support or concerns, on four options set out below for the point in time in the evaluation of an application for a registration of a prescription medicine applications that the TGA should publish the fact that evaluation is taking place.

This paper reflects increasing commitment to transparency by government agencies. It provides for stakeholder feedback options other than the TGA maintaining its silence on the existence of an application for registration of a medicine, while it is in process. There has been increased demand from the public for knowledge of a potential marketing approval for medicines to treat their conditions or those of their family and loved ones; the application for registration of Spinraza® (see the case study) is an example of the extent of the public's keen interest. We anticipate that this interest would continue to grow.

Making this information available to the public is made more complex by the fact that it does not follow from the approval of a medicine for marketing by a comparable overseas regulator that it will receive approval in Australia. The TGA's independent decision takes local factors into consideration and independently determines quality safety and efficacy of the intended use, taking any proposed risk mitigation measures into account.

Information about the status of an application for registration of a medicine is of commercial value to sponsors when a pharmaceutical patent exists. Pharmaceutical patents include patents for claims with active ingredients, new formulations and methods of production or use. These issues have been extensively canvassed in other forums including the *Pharmaceutical Patents Review Report 2013* and in Chapter 10 of the Productivity Commission's September 2016 report into *Intellectual Property Arrangements*. The consultation does not seek to relook at these issues.

We invite you to be clear in your submissions about the effect any increased transparency would have on you. Your input will alert us to implications of each option and will inform future steps.

Medicines that are considered in scope for this consultation are prescription medicines that are lodged as applications for:

- New medicines (new chemical entities, new biological prescription medicines, new fixed dose combinations)
- New uses for medicines (extension of indications)
- Generic or biosimilar medicines.

Current approach to publication of submissions under evaluation

The TGA does not release information about the acceptance of an application for prescription medicine evaluation, nor about the ongoing evaluation of applications unless this information is already publicly available. This means that when asked, the TGA will 'neither confirm nor deny' the acceptance for evaluation of any prescription medicine application[1].

The reason we take this position is because we recognise that information as to whether an application for registration has been made is potentially of commercial value to the relevant applicant; accordingly, it is for the applicant to manage whether disclosure of an application is commercially prudent and, if so, the optimum moment for that disclosure.

In the iNova (FOI) case[2] before the Federal Court, the TGA successfully made the case that information about the fact that a company had lodged an application with the TGA for marketing approval was information that would, and should, be treated as confidential. It was open to the TGA, in response to iNova's application for correspondence received by the TGA for applications to register a specified product, to decline to state whether a document existed.

However, as part of the general move towards greater government transparency, the TGA and other parts of the Department of Health already publish information on prescription medicines in specific circumstances:

- The decisions of the medicines scheduling delegate on new S4 prescription only substances, which are typically published some months ahead of regulatory decisions on particular products that contain these substances. This information may indicate that there is a submission under evaluation by the TGA and includes the use of the product.
- Agendas for meetings of the Pharmaceutical Benefits Advisory Committee (PBAC) are made public 2-3 months ahead of the meeting as a requirement of the Australia – United States Free Trade Agreement, which came into effect on 1 January 2005. Publication of the PBAC agenda may also identify that an application for registration is under evaluation by the TGA. In addition, the TGA-PBAC parallel process arrangements mean an evaluation may be still ongoing at the time of the publication of the agenda.
- The TGA also publishes the outcome of the formal process to designate orphan drug status or determine a drug's priority/provisional status, which occur prior to submission and

[1] https://www.tga.gov.au/sites/default/files/regulation-basics-disclosure-cci-140514.pdf
[2] https://jade.io/article/208260 - Secretary, Department of Health and Ageing v iNova Pharmaceuticals (Australia) Pty Limited [2010] FCA 1442

acceptance of medicines for evaluation. These notices indicate, by proxy, that submissions for certain prescription medicines may have been received or are imminent.

- Where the TGA and regulators such as Health Canada are work sharing on the review of a medicine, Health Canada will publish that the medicine is under active review by them (see Table 1).

A sponsor retains the right to make public, at any time, information about an application to the TGA.[3] Under the current approach an application will usually only become apparent when the outcome of consideration by the TGA results in a new ARTG entry. As part of their shareholder communication, sponsors may also choose to publish that a medicine has been accepted for evaluation by a regulator. Similarly, ongoing trials or the acceptance of a product for evaluation by a regulator may be made public as part of conference proceedings, presentations or news releases.

A recent case study – Spinraza® (nusinersen)

Nusinersen, marketed as Spinraza®, is a medication used in treating spinal muscular atrophy (SMA). This is a rare neuromuscular disorder in its various stages affecting neonates, infants and children. At the time, no specific treatment options for SMA were registered in Australia. The medicine underwent evaluation, beginning in late 2016, and was approved by the TGA in November 2017 for the treatment of 5q Spinal Muscular Atrophy (SMA). For patients, carers and patient advocacy groups the imminent availability of the medicine in Australia was of great interest and the TGA received numerous requests from members of Parliament and the public on the status of its evaluation.

Timeline of the evolving responses to enquiries

January to May 2017 – The TGA maintained the policy of 'neither confirm nor deny' in relation to prescription medicine applications accepted for evaluation.

April 2017 – Company News release provides advice that the company has 'submitted regulatory filings' for Australia.

During May 2017 - it was announced at the RACP Congress that the TGA had accepted Spinraza for evaluation.

During November 2017 - Spinraza was registered by the TGA and the evaluation was also made public by the PBAC.

On 25 January 2018 - the scheduling delegate's final decision for nusinersen was published on the TGA website, and it was included in Schedule 4 of the Poisons Standard on 1 February 2018.

Availability of information is a cornerstone of informed decision making. From a patient perspective earlier knowledge about potential availability of treatments, should they be approved, may be considered as part of discussion about options for medical treatment and care with their healthcare practitioners. The recent example of Spinraza shows the often keen interest which patients and their carers and healthcare practitioners have in information about the evaluation status of applications for registration of prescription medicines.

[3] Page 13 of https://www.tga.gov.au/sites/default/files/regulation-basics-disclosure-cci-140514.pdf

International approaches to the publication of submissions under evaluation

Overseas regulators take varying approaches to publication of submissions under evaluation. The approach ranges from those that do not disclose any information, to disclosure of information about applications under evaluation at different time points in the evaluation process, prior to approval of the medicine. All listed regulators (Table 1) publish information about medicines following their approval. The European Medicines Agency (EMA) and Health Canada, have adopted the approach of publically announcing when they accept a prescription medicine for evaluation. These approaches are outlined in the table below.

It should be noted that the TGA often receives applications later than EMA, Health Canada and in particular the U.S. Food and Drug Administration (FDA), so the TGA approvals and potentially applications for certain medicines may occur well after the conclusion of an evaluation and announcement of approval in another jurisdiction.

Table 1: Publication of prescription medicines under evaluation – International comparison January 2019

Agency	Timing	Active ingredient	Therapeutic area	Indication	Sponsor	Includes Generics
EMA	when accepted	yes	yes	no	no	yes (centrally authorised products only)
FDA*	no	no	no	no	no	no
Health Canada	when accepted	yes	yes	no	no	yes**
PMDA (Japan)	after evaluation reports have been prepared	yes		yes		no***
HSA Singapore	no	no	no	no	no	no
Swiss Medic (Switzerland)	within 60 days of receipt of an application	yes	yes	no	yes	yes
UK (decentralised)	no	no	no	no	no	no
Sweden (decentralised)	no	no	no	no	no	no

* FDA is prohibited by law from commenting on investigational drugs, proposed clinical trials in the United States, or drugs pending approval. This information is considered confidential to the manufacturers. However, company stock exchange disclosures often indicate filing activities.
** Since October 2018
*** Generics are first published on the date of approval (later in the process), biosimilars are published following evaluation

Note: Health Canada has just announced a consultation to add company names to the 'Generic Submissions under Review List'[4]

Q1: Please specify your preference in terms of information that should be included in a potential published list (e.g. active ingredient, tradename, therapeutic area versus indication, sponsor name)?

Transparency options for consideration

The TGA seeks feedback on the range of options presented below. These options present different scenarios on the type of prescription medicine to be included or the timing of publishing the information.

Option 1: maintain TGA's current publication arrangements

Under this option, there would be no change to the current TGA approach.

The long standing TGA practice has been to treat the existence of a prescription medicine application as confidential until it is approved and entered on the ARTG, or the existence of an application becomes publically available (e.g. public announcement by the sponsor or ARTG entry/publication of an AusPAR). This option also maintains the existing practice of publishing additional information in specific circumstances; see Current approach to submissions under evaluation.

Consideration for this kind of approach is that:

- Less information is published by the TGA than some comparable overseas regulators which provide information on medicines under evaluation.
- If the information is not publically available, consumers and healthcare professionals have only one option to become aware of the submissions under evaluation in Australia – to seek it from sponsors.
- The applicant determines, according to its commercial interest, whether to disclose the fact of its application and, if so, the optimum moment at which to do so.

[4] https://www.canada.ca/en/health-canada/services/drugs-health-products/public-involvement-consultations/drug-products/notice-company-names-generic-submissions-under-review.html

Q2: Do you support Option 1?

a. yes

   If yes, provide the reasons why you support the option

b. no

   If no, provide the reasons why you don't support the option

c. with modification

   What changes to option 1 do you propose?

Q3: What would be the impact of maintaining Option 1 on you individually, or for your organisation (if affiliated)?

Option 2: list all applications accepted for evaluation

Under this option, the TGA would publish that a prescription medicine has been accepted for evaluation for:

- **new chemical entities** (including biological prescription medicines);
- **extensions of indications**; and
- all **generic** and **biosimilar medicines**

This option would provide information on all new chemical entities (including new biological prescription medicines), extensions of indication and all generic and biosimilar applications when applications for registration are accepted for evaluation. This information would be of interest to both consumers and other interested parties including healthcare professionals and industry. It is recognised that certain innovator companies may prefer this option because it will provide a significant early warning of generic medications about to enter the market.

Other considerations of implementing this approach include:

- Affording the highest level of application transparency and a consistent approach.
- Consistency with some comparable overseas regulators.
- Potentially discouraging some early generic applications, whilst their legal position is still being determined.
- Discloses information that has traditionally been regarded as of commercial value to the applicants (who have therefore been considered as the appropriate decision maker for any disclosure).

Q4: Do you support Option 2?

a. yes

   If yes, provide the reasons why you support the option

b. no

   If no, provide the reasons why you don't support the option

c. with modification

   What changes to Option 2 do you propose ?

Q5: What would be the impact of implementing Option 2 on you individually, or your organization (if affiliated)?

Option 3: list all applications at two different time points

Under this option, the TGA would publish that an application has been accepted for evaluation earlier than under Option 1 (on registration) but the time of publication would vary according to whether the medicine is a new medicine or a generic medicine or biosimilar.

(1) **new chemical entities** (including biological medicines) and extensions of indication would be on **acceptance** of application for evaluation;

(2) **generic/biosimilar medicines** would be later in the process, on **approval** of an application, but **before** registration on the ARTG.

As applications for new medicines have generated significant public interest, this option would provide information on these medicines to patients and health care professionals at the time of acceptance for evaluation. Implementation of this option would provide information on medicines of highest public interest earlier in the process and for generics/biosimilars later in the process.

Generally, there is less public interest in whether a generic or biosimilar medicine is under evaluation by TGA in Australia. Earlier publication of generic or biosimilar approvals prior to ARTG entry allows more transparency of forthcoming competition to sponsors of originator medicines and potentially, purchasers of biosimilar and generic products.

Considerations for implementing this approach are:

- Builds confidence via transparency of the regulatory process.
- It is consistent with the approach of some regulators.
- Applies different criteria to innovator and generic and biosimilar medicines.
- Discloses information that has traditionally been regarded as of commercial value to the applicants who have therefore been considered as the decision maker for any disclosure.

Q6: Do you support Option 3?

a. yes

   If yes, provide the reasons why you support the option

b. no

   If no, provide the reasons why you don't support the option

c. with modification

   What changes to Option 3 do you propose?

Q7: What would be the impact of implementing Option 2 on you individually, or your organization (if affiliated)?

Option 4: list applications of innovator medicines of highest public interest, but not generic or biosimilar medicines

Under this option, the TGA will only publish when it has accepted high profile (innovator) prescription medicines for evaluation, i.e. publishing all **new chemical entities** (including new biological medicines) and **extensions of indication** when applications are accepted for evaluation, but not generic or biosimilar medicine applications.

Like option 2, this would provide information, at time of acceptance for evaluation, on all new innovator prescription medicines. However, the same information would not be available for generic medicines.

Other considerations of implementing this approach:

- similar to Japan's approach to publication.
- applies very different criteria for transparency of innovator medicines compared to generic medicines.
- maintains the status quo for generic medicine applications.
- supports the strategy underpinning regulation of therapeutic goods through providing timely information on medicines that are of highest public interest.
- discloses information that has traditionally been regarded as of commercial value to the applicants who have therefore been considered as the decision maker for any disclosure.

Q8: Do you support Option 4?

a. yes

   If yes, provide the reasons why you support the option

b. no

   If no, provide the reasons why you don't support the option

c. with modification

   What changes to Option 4 do you propose?

Q9: What would be the impact of implementing Option 4 on you individually, or your organization (if affiliated)?

The Therapeutic Goods Administration (TGA) invites comments from interested parties. Comments can address any or all of the questions in this Consultation Paper.

Submissions must be lodged using the online consultation submission form to upload your submission in either pdf or word format. Alternatively, hardcopy submissions with a printed coversheet may be mailed to:

Transparency, Reforms and Evaluation Support Section
Therapeutic Goods Administration
PO Box 100
WODEN ACT 2606

For accessibility reasons, please lodge responses in a Word or rich text format (RTF) format.

The closing date for comments is 29 March 2019.

Version history

Version	Description of change	Author	Effective date
V1.0	Original publication	Prescription Medicines Authorisation Branch	February 2019

Therapeutic Goods Administration

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