

Summary of Facts and Evidence

Request for Ministerial Discretion to supply Pharmaceutical Benefits
at

Background

(the pharmacist) has requested on that the Minister exercise her discretionary power under section 90A of the *National Health Act 1953* (the Act) and approve to supply pharmaceutical benefits at

2. This follows the rejection by the delegate at Medicare Australia of the pharmacist's previous application under the provisions of the *National Health (Australian Community Pharmacy Authority Rules) Determination 2006* (the Rules) to supply pharmaceutical benefits at the same address. The pharmacist applied under

This Rule aims to address community need for pharmacy services in urban areas.

3. Under the Rule, the criterion on which the application failed was whether:

4. It should be noted that the pharmacist applied under a specific Rule of their choice. There are 14 rules, each applicable to certain circumstances, including relocation of pharmacies into medical centres, shopping centres and rules for additional pharmacies in rural and urban contexts.

Issue

5. The discretionary power may only be exercised if you are satisfied that:

- (a) The delegate's decision to reject the application will result in a community being left without reasonable access to pharmaceutical benefits supplied by an approved pharmacist; and
- (b) It is in the public interest to approve the pharmacist to supply pharmaceutical benefits.

6. Under the Act, 'reasonable access' means access that, in the opinion of the Minister is reasonable and, 'community' means a group of people that, in the opinion of the Minister, constitutes a community. 'Access' is not defined in the Act and it may be appropriate to refer to the *Macquarie Concise Dictionary*: 'The act or privilege of coming, admittance, approach; the way, means, or opportunity of approach'.

Principles of administrative law

7. When making your decision you should be aware that the following principles of administrative law will apply and may (if not followed) affect the veracity of your decision:

- if you take into account factors that ought not to have been taken into account (irrelevant considerations);
- if you fail to take into account factors (relevant considerations) that ought to have been taken into account; or

- your decision is so unreasonable that no reasonable person would have made that decision.

Relevant considerations

8. Under clause 3.5 of the *Guidelines for Ministerial Discretion, for the discretionary power under Subsection 90A(2) of the National Health Act 1953 to approve a pharmacist to supply pharmaceutical benefits (Guidelines) (Attachment C)*, the matters to which you may have regard in deciding whether a community has reasonable access to the supply of pharmaceutical benefits by an approved pharmacist, and if the approval of a pharmacist is in the public interest, are:

- i the objectives of the Rules as provided in the Fifth Community Pharmacy Agreement;
- ii the policy underlying the Rules;
- iii the reasons why the pharmacist's application did not meet the requirements of the Rules;
- iv the characteristics and demographics of the community to which the pharmacist proposes to supply pharmaceutical benefits;
- v the community's current level of access to the supply of pharmaceutical benefits by an approved pharmacist and whether that access is 'reasonable'; and
- vi any other relevant factors.

Irrelevant considerations

9. Clause 3.6 of the Guidelines outlines matters to which you may not have regard when making a decision under section 90A(2) of the Act. The commercial interests of the pharmacist making the request, or of any other party, are not generally considered to be relevant.

Facts and evidence

10. The proposed premises is located at is located km west of existing approved pharmacies.

has a population of with four

11. The proposed premises is bound by north and Terrace to the east.

Road to the west, Terrace to the

12. The proposed premises is approximately 2.3 km from Hospital and Health Service, 1 km from Medical Centre, 1.7 km from Health Service, 2.3 km from Clinic. Health Practice and 1.7 km from

13. The nearest approved pharmacy is , which is 1.42 km by straight line from the proposed premises. The approved pharmacy trades Monday to Friday 9.00am - 5.30pm. There are no major barriers between the proposed pharmacy and the nearest approved pharmacy.

14. Research conducted by the Department has identified another three approved pharmacies within a 3 km radius of the proposed premises. These are all within the central business district of . The three approved pharmacies trading hours are:

(2.1 km from the proposed premises), Monday to Friday 8.30am - 5.30pm, Thursday 8.30am - 7.00pm and Saturday 8.30am - 4.00pm;

(2.7 km from the proposed premises), Monday to Friday 8.30am – 5.30pm, Saturday 9.00am – 12.00pm and Sunday 10.00am – 12.30pm;

(2.7 km from the proposed premises), Monday to Friday 9.00am – 5.30pm and Saturday 9.00am – 12.00pm. Refer to map at Attachment D.

15. The four approved pharmacies provide access to PBS medicines for a total of 56.5 hours per week, including Saturday and Sunday trading.
16. The proposed premises is located next door to [redacted] Takeaway and is approximately 200 metres from a local shopping strip. This local shopping strip provides for the day to day convenience needs for residents in the local area
17. The Department has found that there are approximately 5 businesses operating in the nearby local shopping strip, including: Lotteries, Deli, Gourmet Meats, Hairstylists and [redacted]
18. The area surrounding the local shopping precinct is residential. The local residents of this area are within a short walk of the proposed pharmacy and would naturally gravitate towards the local shopping strip.
19. The Department also found that there is a public bus service which operates from 9am-11am and a [redacted] service from 12.30pm-4.30pm, Monday to Friday. This service covers the whole of [redacted]. There is also a taxi service for residents.
20. [redacted] is classified as category 4 under the Pharmacy Access/Remoteness Index of Australia (PhARIA). For the purposes of the Rules, [redacted] is a rural locality.
21. [redacted] has a census population of [redacted] persons. The Department has referred to the ABS website www.censusdata.abs.gov.au for 2006 Census data QuickStats: (State Suburb) which is defined as 'a Census specific area where Collection Districts are aggregated to approximate gazetted suburbs and localities'.
22. [redacted] that [redacted] has a population of [redacted] based on the 2006 Census (Census Collection District) data. It appears that the pharmacist is anticipating that residents in towns and areas surrounding [redacted] would use the proposed pharmacy.
23. [redacted] that the [redacted] community is deserving of choice of access to pharmaceutical services through the provision of a fifth pharmacy.
24. It should be noted that whilst the population of the catchment area is a component of the Pharmacy Location Rules, there are no population criteria for exercising Ministerial Discretion.

Representations

25. Letters in support of the proposed premises received [redacted]

Attachment F.

are at

26. Comments from nearby pharmacists [redacted] considered by the Authority, are at Attachment H.

the Applicant's original application

27. A petition signed by _____ from _____ has been presented by the pharmacist. The petition is requesting the Minister for Health and Ageing to exercise Ministerial Discretion to grant a New Pharmacy PBS Approval Number to establish a local community pharmacy at _____ at Attachment G.

Summary of the Pharmacist's claims

28. The pharmacist claims that: