



Australian Government
Department of Health and Ageing

cc: Mr Learmouth
Mr Cook

RECEIVED

22 MAR 2011

Parliamentary Section

MINUTE TO THE MINISTER

MINISTER ROXON

Critical Date:

STAGE 1 - MINISTERIAL DISCRETION REQUEST -
REFERENCE NUMBER:

PURPOSE: For your decision as to whether or not you will agree to consider a request to exercise your discretionary power under section 90A of the *National Health Act 1953* (the Act) to approve a pharmacy to supply pharmaceutical benefits at

ISSUE:

2. (pharmacist) has requested that you exercise your discretionary power under section 90A of the Act to approve a pharmacy in

REASON FOR CRITICAL DATE

3. Under the Act, you are required to decide whether or not you agree to consider this request within three months of its receipt (in this case by . If no decision is made to consider within this three month period, you will be taken to have decided not to consider the request.

BACKGROUND:

The Pharmacist request

4. On applied for approval under section 90A of the Act to supply pharmaceutical benefits at the premises.

All section 90 applications must be referred to the Australian Community Pharmacy Authority (the Authority) for assessment against the Rules. The Rules set out strict location-based criteria that must be satisfied before the Authority can recommend to Medicare Australia (as the Secretary's delegate) that the application be approved.

5. the Authority assessed the application against the requirements specified in and recommended that it not be approved. The Authority was not satisfied that the proposed premises are not in a rural locality as required under is classified as category 4 under the Pharmacy Access/Remoteness Index of Australia (PhARIA). For the purposes of the Rules, is a rural locality. The nearest approved pharmacy is 1.42 km away. This means that the application would also not satisfy the criteria of which requires that the proposed premises are at least by straight line from the nearest approved pharmacy. the delegate in Medicare Australia rejected the application.

6. the Department received a valid request from the pharmacist, asking that you exercise your discretion and approve the proposed pharmacy at (see request at Attachment B).

Legislative power

7. When the delegate's decision, on a recommendation from the Authority, is to reject an application you have the discretion to override that decision and approve the application, particularly in circumstances where there is an unintended negative consequence of the Rules. However, the Act only permits you to exercise this discretion if you are satisfied that:

- | | | | |
|----------------------------------------------|----------------------------------------------|--------------------------------------|-------------------------------------------|
| <input type="checkbox"/> Health Reform | <input type="checkbox"/> Election Commitment | <input type="checkbox"/> COAG Reform | <input type="checkbox"/> Budget |
| <input type="checkbox"/> Minority Government | <input type="checkbox"/> Legislation | <input type="checkbox"/> Appointment | <input checked="" type="checkbox"/> Other |

- (a) The delegate's decision 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.

Stage 1 decision

8. If you decide to consider the request, you will then have a further three months in which to decide whether or not to exercise your discretion to approve the pharmacy (Stage 2 decision). An extract from the *Guidelines for Ministerial Discretion* (the Guidelines), including a flow chart setting out the process for exercising your discretion under the Act is at Attachment C.

Factors that you may consider

9. You may take a range of factors into account in deciding whether a community has reasonable access to the supply of pharmaceutical benefits by an approved pharmacist and if it is in the public interest to approve the application. These factors include the objectives of the Rules, the reason(s) the application did not meet the Rules, the relevant community's characteristics, current level of access and any other factors you consider relevant.

RELEVANCE TO ELECTION COMMITMENTS/GOVERNMENT POLICY/COAG REFORM AGENDA:

10. Nil

Remote Service Delivery National Partnership (RSDNP):

11. This is not relevant to the RSDNP because this minute relates to a Ministerial Discretion request for

COMMENT:

12. The Department's analysis of this request is presented for your consideration at Attachment A.

consider exercising your discretionary power to approve the pharmacist to supply pharmaceutical benefits at

13.

There is an approved pharmacy 1.42 km from the proposed premises and a total of four approved pharmacies in , all within a 3 km radius of the proposed premises. These pharmacies provide access to PBS medicines for a total of 56.5 hours per week, including Saturday and Sunday trading. Refer to map at Attachment D.

14. A map of the area is at Attachment E, showing the location of the proposed premises in relation to the nearest approved pharmacy.

15. Letters of support from

are at Attachment F.

16. Signatures gathered by petition from residents of are at Attachment G.

17. Comments from nearby pharmacists provided to the Authority at the time of the applicant's original application are at Attachment H.

18. If you decide not to consider the request, the decision made by Medicare Australia to not approve the application under the Act will stand.

19. The applicant and affected third parties are entitled to request a Statement of Reasons for your decision. If the stated reasons for your decision do not satisfy the parties, they may choose to exercise further legal options.

Sensitivity:

20.

Financial Implications:

21. Nil

Compliance with Commonwealth Grant Guidelines:

22. Nil

Legislation/Timing of Proposed Legislative Changes:

23. Nil

Timing/Handling:

24. You have until _____ to decide whether or not to consider the request. If no decision is made by this date, you will be taken to have decided not to consider this request. If you decide to consider the request, then you have a further three months in which to decide whether or not to exercise your discretion.

Consultations:

25. No divisions or agencies were consulted in the preparation of this Minute.


26. The Secretary was not consulted on the approach of this Minute.

COMMUNICATION ACTIVITIES

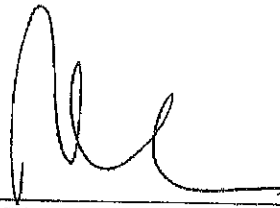
27. There are no community awareness opportunities relating to this item.

RECOMMENDATION

R1. That you this request (Reference number DP048) to exercise your
discretionary power under section 90A of the *National Health Act 1953*.



 Felicity McNeill
 Acting First Assistant Secretary
 Pharmaceutical Benefits Division
 18 February 2011
 Outcome: 2: Access to Pharmaceutical Services



 NICOLA ROXON

R1.

16 MAR 2011

IN: 11000256

Contact Officer:
 Tony Wynd x7595
 Director
 Pharmacy Location Rules
 Community Pharmacy Branch

MINISTER'S COMMENTS:

Advice Rating	1	2	3	4	5	Comments
Timeliness						
Presentation						
Quality of Advice						
	Poor		Satisfactory		Excellent	

ATTACHMENTS:

- Attachment A - Summary of Facts and Evidence
- Attachment B - Request for Ministerial Discretion Approval
- Attachment C - Extract from Ministerial Discretion Guidelines
- Attachment D - Map of surrounding approved pharmacies within a 3 km radius to proposed pharmacy
- Attachment E - Map of marked with proposed premises and nearest approved pharmacy
- Attachment F - Letters of support
- Attachment G - Copy of petition
- Attachment H - Comments from surrounding pharmacists