



The Hon Mark Butler MP
Minister for Health and Aged Care

Statement of Reasons

This statement is provided in response to a request received on 27 October 2022 from s11C(1) for a Statement of Reasons under section 13 of the *Administrative Decisions (Judicial Review) Act 1977*. This statement is made in relation to a decision made by me, as Minister for Health and Aged Care, under subsection 90A(2) of the *National Health Act 1953*, to substitute (for the Secretary's decision) a decision to approve another pharmacist for the purpose of s38

Definitions

In this statement:

'Act' means the *National Health Act 1953*;

'Applicant' means the pharmacist who applied for approval under section 90 of the Act; and subsequently under subsection 90B(1) for the exercise of the Minister for Health and Aged Care's discretion under subsection 90A(2) of the Act;

'Authority' means the Australian Community Pharmacy Authority established under section 99J of the Act;

'department' means the Australian Government Department of Health and Aged Care;

'Location Rules' means the *National Health (Australian Community Pharmacy Authority Rules) Determination 2018* (PB 46 of 2018) made under section 99L of the Act;

'Minister' means the Minister for Health and Aged Care;

'Ministerial Submission' means a Ministerial Submission, provided by my department on 26 September 2022, in relation to the request for approval by the Applicant made under subsection 90B(1) of the Act;

'proposed premises' means premises located at s38

'Secretary' means the Secretary of the Department of Health and Aged Care;

'section 90 Application' means the application made by the Applicant on 16 December 2021 under section 90 of the Act for approval to supply pharmaceutical benefits at the proposed premises.

ATTACHMENT A**National Health Act 1953**

Sections 90A and 90B of the Act provide as follows:

90A Minister may substitute decision approving pharmacist

- (1) This section applies in relation to a decision of the Secretary under section 90 rejecting an application by a pharmacist for approval to supply pharmaceutical benefits at particular premises, if:
 - (a) the application was made on or after 1 July 2006; and
 - (b) the decision was made on the basis that the application did not comply with the requirements of the relevant rules determined by the Minister under section 99L.
- (2) The Minister may substitute for the Secretary's decision a decision approving the pharmacist for the purpose of supplying pharmaceutical benefits at the particular premises if the Minister is satisfied that:
 - (a) the Secretary'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.
- (3) For the purposes of subsection (2):

community means a group of people that, in the opinion of the Minister, constitutes a community.

reasonable access, in relation to pharmaceutical benefits supplied by an approved pharmacist, means access that, in the opinion of the Minister, is reasonable.
- (4) The power under subsection (2) may only be exercised:
 - (a) on request by the pharmacist made under section 90B; and
 - (b) by the Minister personally.
- (5) Subject to subsection 90B(5), the Minister does not have a duty to consider whether to exercise the power under subsection (2) in respect of the Secretary's decision.
- (6) The power under subsection (2) does not authorise the Minister to approve a pharmacist for the purpose of supplying pharmaceutical benefits at particular premises at which the pharmacist is not permitted, under the law of the State or Territory in which the premises are situated, to carry on business.
- (7) A decision by the Minister not to exercise the power under subsection (2) in respect of the Secretary's decision does not prevent the pharmacist from making an application to the Administrative Appeals Tribunal under subsection 105AB(7) for review of the Secretary's decision.
- (8) For the purposes of this section (other than subsection (7)):
 - (a) a reference to a decision of the Secretary includes a reference to a decision of the Secretary that has been affirmed by a decision of the Administrative Appeals Tribunal or an order of a federal court; and
 - (b) a reference to a decision of the Administrative Appeals Tribunal includes a reference to a decision of the Administrative Appeals Tribunal that has been affirmed by an order of a federal court.

90B Request to Minister to approve pharmacist

- (1) If section 90A applies to a decision of the Secretary under section 90 rejecting an application by a pharmacist, the pharmacist may, in writing, request the Minister to exercise the Minister's power under subsection 90A(2) in respect of the Secretary's decision.
- (2) The Minister may determine the form in which a request under subsection (1) must be made and, if the Minister does so, such a request must be made in that form.
- (3) A request under subsection (1) must be made:
 - (a) within 30 days after the pharmacist is notified of the Secretary's decision; or
 - (b) if the pharmacist has applied to the Administrative Appeals Tribunal for review of the Secretary's decision—within 30 days after:

- (i) the pharmacist is given a copy of the Administrative Appeals Tribunal's decision affirming the Secretary's decision; or
 - (ii) the application has been discontinued, withdrawn or dismissed; or
- (c) if the pharmacist has sought an order from a federal court in respect of the Secretary's decision or a decision of the Administrative Appeals Tribunal affirming the Secretary's decision—within 30 days after:
 - (i) the court has made an order affirming the Secretary's decision or the Administrative Appeals Tribunal's decision, as the case requires; or
 - (ii) the court proceeding has been discontinued, withdrawn or dismissed.
- (4) The Minister must, within 3 months after receiving a request under subsection (1), personally decide whether to consider the request. If the Minister has not made a decision within this period, the Minister is taken to have decided not to consider the request.
- (5) If the Minister decides to consider a request under subsection (1), the Minister must, within 3 months after making that decision, personally decide whether to exercise the power under subsection 90A(2) in respect of the Secretary's decision. If the Minister has not made a decision within this period, the Minister is taken to have decided not to exercise the power under subsection 90A(2) in respect of the Secretary's decision.
- (6) The Secretary must, by notice in writing, advise the pharmacist of:
 - (a) the decision made, or taken to have been made, by the Minister under subsection (4); and
 - (b) if applicable, the decision made, or taken to have been made, by the Minister under subsection (5).