

These forms can be accessed at:

<https://www.humanservices.gov.au/organisations/health-professionals/enablers/register-online-claiming-pbs/32456>.

Ordering PBS stationery

To register to order PBS stationery, email The Cameron's Group at pbs@camerons.net.

Once registered, your online account will allow you to order PBS stationery relevant to your approval.

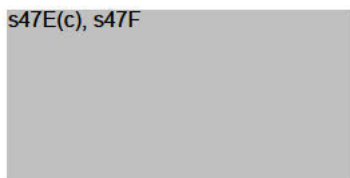
Efficient Funding of Chemotherapy (EFC) arrangements

Should you wish to claim eligible EFC items you will need to obtain a Compounder ID for your pharmacy or the ID of the compounder used to prepare these medicines. More information on how to obtain a Compounder ID can be found at www.pbs.gov.au/ccps.

If you have any enquiries regarding this Ministerial approval, please call the Ministerial Discretion hotline on (02) 6289 2425 or email 90Apharmacy@health.gov.au.

Yours sincerely

s47E(c), s47F



Harry Rothenfluh PhD

Delegate of the Secretary of the Department of Health

30 January 2019

Attachments

Certificate of Approval

Notification of bank account details for approved pharmacist form

Authority to authorise pharmacist(s) to sign claim forms on behalf of approved pharmacist(s) form



Australian Government
Department of Health

Approval to Supply Pharmaceutical Benefits

National Health Act 1953

s38

with approval number: s38

has approval to supply pharmaceutical benefits at the premises situated at

s38

effective from the **18th** day of **January** in the year **2019**

s47F

30 January 2019

Delegate, Department of Health

From: [90Apharmacy](#)
To: s47F
Subject: RE: Ministerial Discretion request - s38 [SEC=UNCLASSIFIED]
Date: Friday, 14 September 2018 1:45:56 PM
Attachments: [image001.png](#)
[Stg2 - Ministers decision - Notice of approval - DP 200.pdf](#)
[Conditions of approval - F2017L01297 - 25 September 2017.pdf](#)

Dear s47F

Please find attached correspondence regarding your request, made on behalf of s47F
for approval to supply PBS medicines in s38

Regards

s47E(c), s47F

Ministerial Discretion
Pharmacy Approvals Section
Compliance Systems Branch
Australian Government Department of Health
T: 11C | E: 90Apharmacy@health.gov.au
MDP 659, PO Box 9848, Canberra ACT 2601, Australia

The Department of Health acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, sea and community. We pay our respects to them and their cultures, and to elders both past and present

s38



Australian Government
Department of Health

Ref No: DP200

s47F

Notice of Approval

Issued under subsection 90B(6) of the *National Health Act 1953*

I, Anthony Millgate, delegate of the Secretary of the Department of Health under subsection 90B(6) of the *National Health Act 1953* (the Act), am writing to notify you that on **10 September 2018**, the Minister for Health, the Hon Greg Hunt MP (the Minister), approved:

s38

to supply Pharmaceutical Benefits Scheme (PBS) medicines at:

s38

It is important to note that the approval is subject to the conditions specified in section 92A of the Act, including those determined by the Minister under paragraph 92A(1)(f) of the Act (refer attached extract of the *National Health (Pharmaceutical Benefits) (Conditions of approval for approved pharmacists) Determination 2017*).

As the application was originally made under s38 of the *National Health (Australian Community Pharmacy Authority Rules) Determination 2011* (the Pharmacy Location Rules), it is subject to the restrictions applicable to that Item (see Item 317 of the Pharmacy Location Rules).

The Department of Human Services (DHS) has been advised of the Minister's decision and asked to allocate a number to the approval.

You should liaise with the Pharmacy Program Officer in DHS (telephone 132 290) regarding the allocation of an approval number.

If you have any enquiries regarding this notice, please call (02) 6289 2425 or send an email to 90Apharmacy@health.gov.au.

Yours sincerely

s47E(c), s47F

Anthony Millgate
Assistant Secretary
Compliance Systems Branch

13 September 2018

Encl

From: [90Apharmacy](#)
To: s47F
Subject: Re: Statement of Reasons for s38 [SEC=UNCLASSIFIED]
Date: Tuesday, 16 October 2018 8:07:57 AM
Attachments: [image003.png](#)
[SoR_s38](#) - signed 7 Oct 2018.pdf

Dear s47F

Please find attached the Statement of Reasons for the Ministers decision to approve the supply of PBS medicines at premises in s38

Regards

s47E(c), s47F

Ministerial Discretion
Pharmacy Approvals Section
Compliance Systems Branch
Australian Government Department of Health
T: (02) 6289 2425 | E: 90Apharmacy@health.gov.au
MDP 659, PO Box 9848, Canberra ACT 2601, Australia

The Department of Health acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, sea and community. We pay our respects to them and their cultures, and to elders both past and present

s38

s47F

Our ref: DP200

Dear Mr s47F

Request for a Statement of Reasons – s38

Thank you for your email dated 17 September 2018 requesting a Statement of Reasons, under subsection 13(1) of the *Administrative Decisions (Judicial Review) Act 1977* in relation to the decision made by the Minister for Health, the Hon Greg Hunt MP, on 10 September 2018, to approve a pharmacist to supply pharmaceutical benefits at s38

Please find the Statement of Reasons attached. The Statement of Reasons sets out the findings on the material questions of fact, referring to the evidence or other material on which those findings were based, but does not include any information which must not be divulged under section 135A of the *National Health Act 1953*.

Yours sincerely

s47E(c), s47F

Lynda Hurley
Director
Pharmacy Approvals Section
Provider Benefits Integrity Division

15 October 2018

Encl



The Hon Greg Hunt MP
Minister for Health

Statement of Reasons under section 13 of the AD(JR) Act

This statement has been prepared in response to a request made by s47F on behalf of s38 received 17 September 2018, for a Statement of Reasons under section 13 of the *Administrative Decisions (Judicial Review) Act 1977* (the ADJR Act).

The request was made in relation to my decision made on 10 September 2018, as Minister for Health, under subsection 90A(2) of the *National Health Act 1953* (the Act), to exercise my discretion to approve a pharmacist to supply Pharmaceutical Benefits Schedule medicines (PBS medicines) at s38 s38

Definitions

In this statement:

'the ADJR Act' means the *Administrative Decisions (Judicial Review) Act 1977*;

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

'the Applicant' means the pharmacist who applied for approval under section 90 of the Act; and for the exercise of the discretionary power under subsection 90B(1) of the Act;

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

'the first Ministerial Submission' means Ministerial Submission MS18-000646, dated 31 May 2018, the first of two Ministerial Submissions provided by my Department in relation to the request for approval by the Applicant under section 90B(1) of the Act;

'the Location Rules' means the *National Health (Australian Community Pharmacy Authority Rules) Determination 2011* (PB 65 of 2011) made under section 99L of the Act;

s38

'PBS medicines' means pharmaceutical benefits supplied in accordance with the Act;

'the proposed pharmacy' means s38

'the second Ministerial Submission' means Ministerial Submission MS18-001304, dated 27 July 2018, the second of two Ministerial Submissions provided by my Department in relation to the request for approval by the Applicant under subsection 90B(1) of the Act;

'the Secretary' means the Secretary to the Department of Health; and

'the section 90 Application' means the application made under section 90 of the Act for approval to supply pharmaceutical benefits at the proposed premises.

Background

1. On 11 December 2017, the Applicant made an application to the Department of Human Services under section 90 of the Act to supply PBS medicines at the proposed pharmacy.
2. In accordance with subsection 90(3A) of the Act, the section 90 Application was referred to the Australian Community Pharmacy Authority (the Authority) for consideration under the *National Health (Australian Community Pharmacy Authority Rules) Determination 2011*.
3. On 19 January 2018, the Authority recommended to the delegate of the Secretary of my Department (an officer in the Department of Human Services), that the Applicant's section 90 Application not be approved because it was not satisfied that s38 [REDACTED] had been met.
4. Under section 11 of the Location Rules, the Authority must recommend that an application not be approved under section 90 of the Act if a requirement under the Location Rules that applied to the application is not met.
5. On 20 February 2018, the Secretary's delegate rejected the section 90 Application. That was in accordance with subsection 90(3B) of the Act, as the Authority had recommended that the section 90 Application not be approved.

Request for exercise of Discretionary Power

6. Under subsection 90B(1) of the Act, if section 90A applies to a rejection under section 90, a pharmacist can lodge a request with my Department for the exercise of my discretionary power under subsection 90A(2) of the Act. Subsection 90A(2) of the Act provides that I may, in certain circumstances, substitute a rejection by the Secretary or delegate under section 90 with an approval decision.
7. On 27 March 2018, my Department received a request from the Applicant, made under subsection 90B(1) of the Act and in accordance with the requirements set out in s 90B.

s38 [REDACTED]

Exercise of discretionary power

s38 [REDACTED]

s38

15. On 10 September 2018, in accordance with subsection 90B(5) of the Act, I decided to exercise my discretion under subsection 90A(2) of the Act to approve the Applicant for the purpose of supplying of PBS medicines at the proposed pharmacy.

s38

19. An extract of the relevant legislation is at Attachment A.

Evidence

20. I considered the second Ministerial Submission from Simon Cotterell, First Assistant Secretary, Provider Benefits Integrity Division of my Department, and its attachments, including the following:

s38

- Summary of the Ministerial discretionary process and the Location Rules.
- Map of the proposed pharmacy, nearest pharmacies, supermarkets and medical centres.
- Correspondence in support of the request.

Findings on material questions of fact

21. I found that, based on information provided by the Applicant and online research by my Department which was summarised in the second Ministerial Submission,

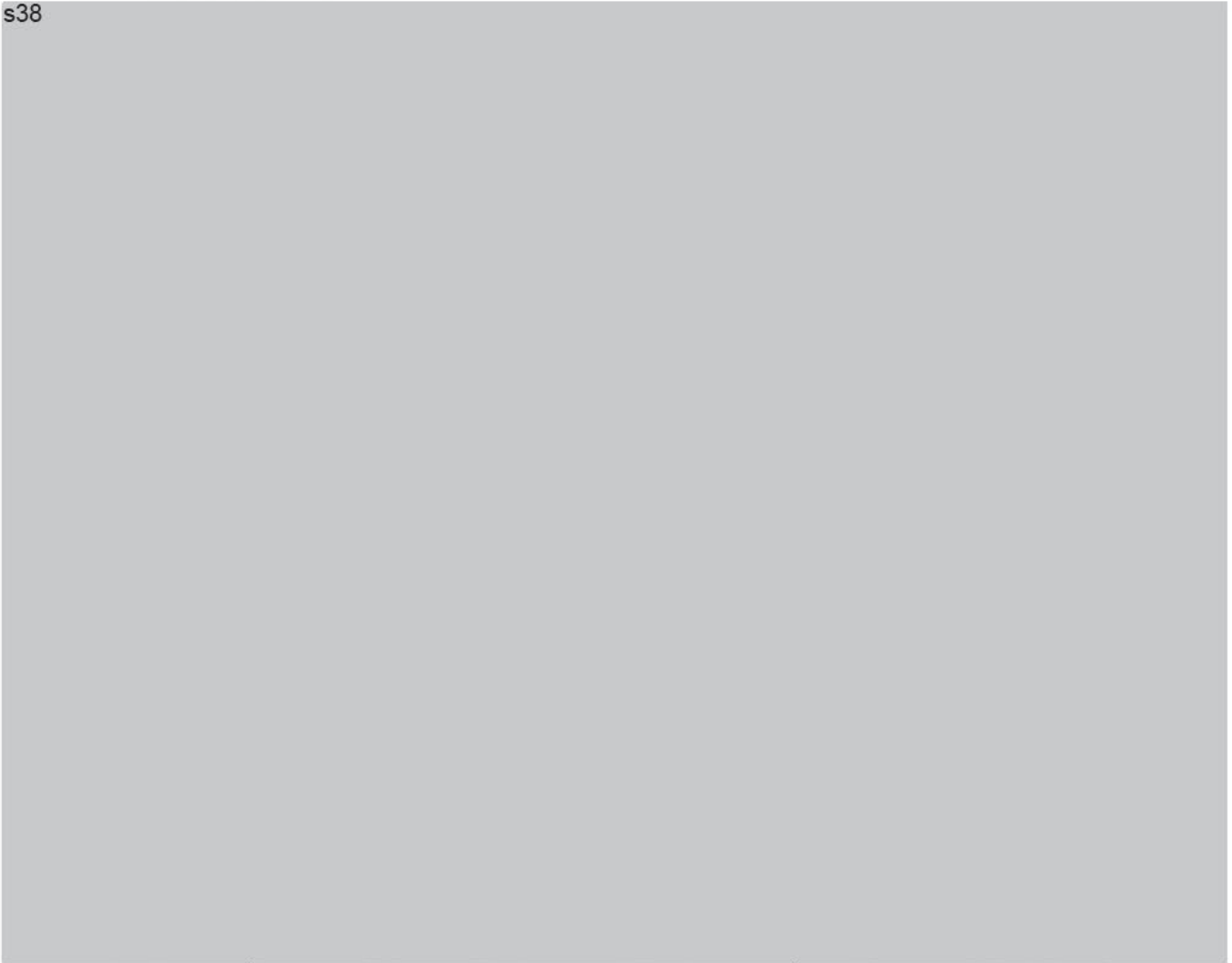
s38

Decision

44. In accordance with subsection 90B(5) of the Act, I decided to exercise the power under subsection 90A(2) of the Act to approve the Applicant for the purpose of supplying PBS medicines at the proposed pharmacy.

Reasons for decision

s38



s38

For these reasons, I was satisfied that the decision of the Secretary's delegate would leave that community without reasonable access to pharmaceutical benefits.

50. For the reasons outlined in the preceding paragraph, I was also satisfied that it was in the public interest to approve the Applicant. In forming this opinion and considering whether granting approval would be in the public interest, I also had regard to the existence of correspondence and a petition in support of the proposed pharmacy.

51. Accordingly, I was satisfied that the criteria for me to exercise my discretionary power to approve the Applicant under subsection 90A(2) were met. Specifically, I was satisfied that the Secretary's decision to reject the section 90A application would result in a community being left without reasonable access to pharmaceutical benefits supplied by an approved pharmacist, and I was satisfied that it is in the public interest to approve the pharmacist.
52. Therefore, I decided to exercise my discretion and approved the Applicant for the purpose of supplying PBS medicines at the proposed pharmacy.



Greg Hunt

07 OCT 2018

Released under the Freedom of Information Act 1982 by the Department of Health, Disability and Ageing

ATTACHMENT ANational 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 90L.
- (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).

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Approval to supply pharmaceutical benefits at a community pharmacy

Any premises that is approved under the relevant State/Territory law to operate as a pharmacy, is able to have prescription medicines dispensed at those premises. However, only those pharmacy premises that are also approved by the Australian Government, under section 90 of the *National Health Act 1953* (Act), can operate as a community pharmacy to dispense prescription medicines subsidised under the Pharmaceutical Benefits Scheme (PBS) (pharmaceutical benefits).

As at 30 June 2025, there were 6,013 approved pharmacies in Australia.

All applications for approval to supply pharmaceutical benefits at particular pharmacy premises must be made to the Secretary of the Department of the Health, Disability and Ageing (department). The Secretary has delegated this power, under section 90 of the Act, to certain officers in the department (Secretary's delegate).

The Secretary's delegate must refer all applications involving the establishment of a new pharmacy, or relocation of an existing approved pharmacy, to the Australian Community Pharmacy Authority (Authority). The Authority assesses those applications against the requirements of the Pharmacy Location Rules (Rules) and makes recommendations as to whether or not each application should be approved. Refer to [section 2 and 3](#) for more details regarding the Authority and the Rules.

If a pharmacy is not approved, as a result of its failure to meet the requirements of the Rules, a request can be made to you to approve the pharmacy using your Ministerial discretion power.

1. Ministerial Discretion to Approve a Pharmacist

The Fourth Community Pharmacy Agreement provided for an amendment to the Act to give the Minister for Health the power to approve a pharmacist to supply pharmaceutical benefits at particular premises.

As Minister for Health and Ageing, you have the discretionary power to substitute the Secretary's decision, not to approve a pharmacist, with a decision to approve a pharmacist to supply pharmaceutical benefits at particular premises.

The intention of your discretionary power is to provide flexibility to respond on an individual and timely basis in circumstances where the application of the Rules (refer to [section 2](#)) results in a community being left without reasonable access to pharmacy services.

The Act provides that a pharmacist can only request you to exercise your discretionary power after an application has been considered by the Authority (refer to [section 3](#)) and rejected by the Secretary's delegate.

A pharmacist can lodge a request with the department, seeking the exercise of your discretionary power, within 30 days of notification by the Secretary's delegate that the application was rejected.

An amendment to the Act to streamline the process for such a request was made in September 2025. This removes the requirement for you, as Minister for Health and Ageing, to first decide within 3 months of a request being made, whether to consider a request, and if so, then deciding within 3 months of that decision whether to approve the request. You must now, within 4 months after receiving a request, personally decide whether to approve the request. If you have not made a decision within this period, it will be taken that you have decided not to approve the request.

Subsection 90A(2) of the Act provides

“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.”*

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*’.

Section 90D of the Act provides that you may write to any other person advising of the request and invite comments on, or information or documents relevant to, the request within a specified period. Several officers in the department have delegation to perform this function on your behalf. However, under the secrecy provisions specified in section 135A of the Act, further details related to a particular Ministerial Discretion request cannot be divulged to a third party.

A flow chart outlining the Ministerial Discretion process, including reference to relevant provisions under the Act, is at the end of this attachment.

Principles of administrative law

When making your decision you should be aware that the following principles of administrative law will apply and may (if not followed) leave your decision subject to judicial scrutiny:

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

Relevant considerations

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, include:

- i the objectives of the Rules as provided in the Fourth Community Pharmacy Agreement (2005)
- 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

The commercial interests of the pharmacist making the request, or of any other party, are not generally considered to be relevant.

Right of Appeal

The applicant and affected third parties can appeal decisions made by the Authority and/or the Minister.

Under section 13(1) of the *Administrative Decisions Judicial Review Act 1977* (ADJR Act), any "aggrieved party" may seek a Statement of Reasons in relation to your decision. If the stated reasons for your decision do not satisfy the parties, they may choose to exercise further legal options.

If an application by a pharmacist for approval to supply pharmaceutical benefits is rejected by the Secretary's delegate, after consideration by the Authority, the pharmacist may either appeal the decision to the Administrative Review Tribunal (ART) for an independent review of the Authority's decision or request the exercise of your discretionary power to approve the pharmacist to supply pharmaceutical benefits at the particular premises. A pharmacist can also request you exercise your discretionary power following an unsuccessful appeal to the ART.

An aggrieved party may appeal a decision to the Federal Court.

2. The Pharmacy Location Rules (Rules)

The Rules have been established under the National Health (Australian Community Pharmacy Authority Rules) Determination 2018.

The Rules allow pharmacists to make application for approval to supply pharmaceutical benefits at particular pharmacy premises. There are 13 rules, each applicable to certain circumstances, including the relocation of an existing approved pharmacy, the establishment of a new pharmacy where: the nearest approved pharmacy is at least 1.5 km by straight line from the proposed premises and there are services that reflect a location that is likely to be well frequented; the proposed premises are in a designated complex as defined by the Rules to include a large medical centre, a small shopping centre, a large shopping centre or a large private hospital; and in a rural/urban locality where there is only one pharmacy and services in that locality to demonstrate a likely need for an additional pharmacy. Applicants choose to apply under the rule which best suits their circumstances.

Each rule sets out strict location-based criteria that must be satisfied before the Authority can recommend that the pharmacist can be approved.

The specific overall objectives of the Rules are to ensure:

- all Australians have reasonable access to pharmaceutical benefits
- a commercially viable and sustainable network of community pharmacies dispensing pharmaceutical benefits
- improved efficiency through increased competition between pharmacies
- improved flexibility to respond to the community need for pharmacy services
- increased local access to community pharmacies for persons in rural and remote regions of Australia, and
- continued development of an effective, efficient and well-distributed community pharmacy network in Australia.

3. Australian Community Pharmacy Authority (Authority)

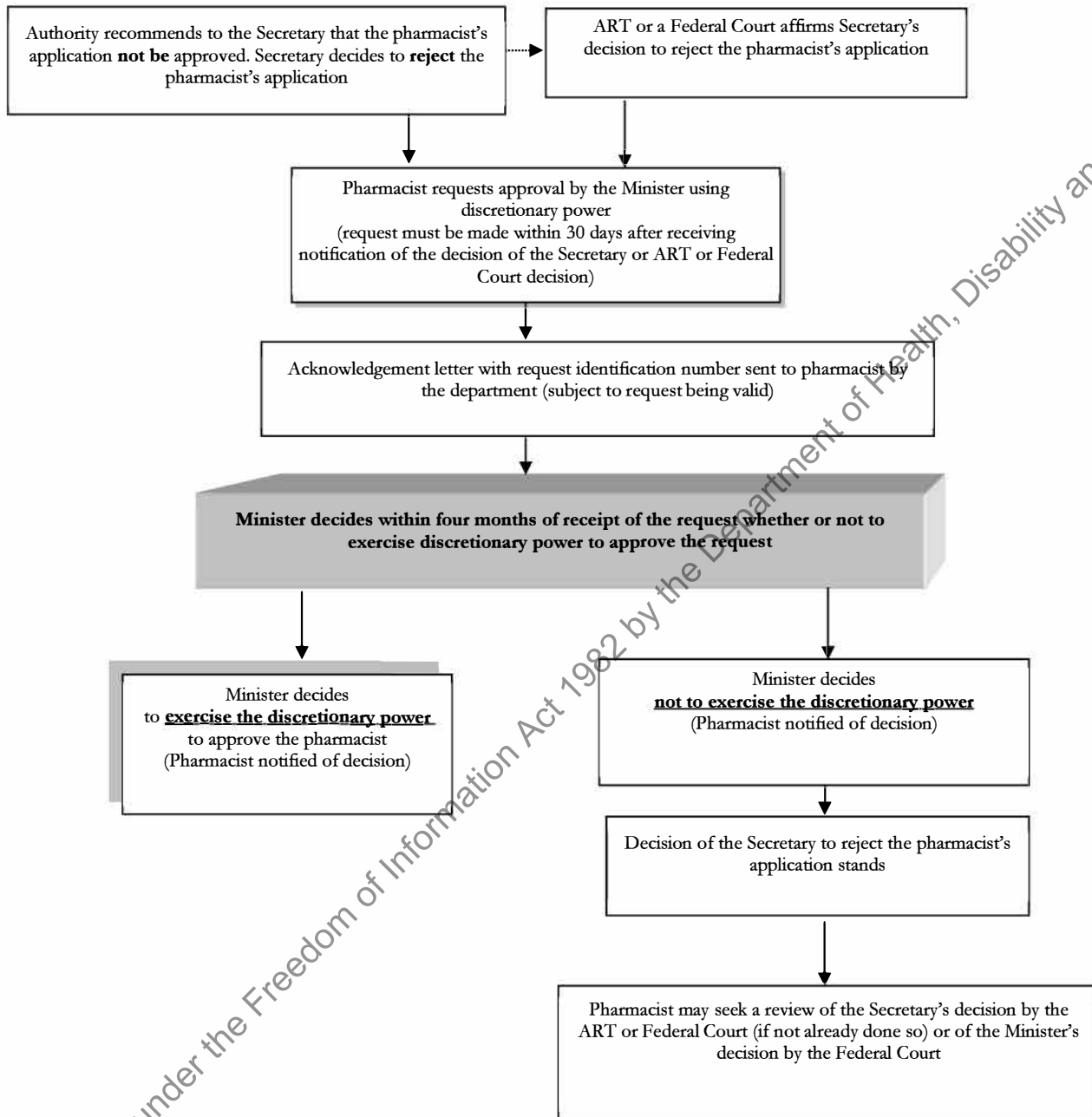
The Secretary's delegate may grant approval to a pharmacist to supply pharmaceutical benefits at particular pharmacy premises subject to the application being referred to the Authority, and the Authority recommending the pharmacist be approved because it was satisfied that the application met all requirements of the Rules (refer to section 2).

The Authority is an independent statutory authority established under s99J of the Act. The Authority comprises six members. All members are appointed by the Minister except the departmental member, who is appointed by the Secretary. Members appointed by the Minister are appointed for up to a three-year term and are eligible for reappointment for a further term(s).

The Authority meets approximately 9 times per year to assess applications against the requirements of the Rules and makes recommendations as to whether an applicant should be approved. Following each meeting, the Authority's secretariat, located in the department, informs the Secretary's delegate, in writing, of the decision made by the Authority in respect of each application. The Secretary's delegate in turn advises each applicant of the outcome.

Released under the Freedom of Information Act 1982 by the Department of Health, Disability and Ageing

MINISTER'S DISCRETIONARY POWER FLOWCHART



Approval to supply pharmaceutical benefits at a community pharmacy

Document 104

Any premises that is approved under the relevant State/Territory law to operate as a pharmacy, is able to have prescription medicines dispensed at those premises. However, only those pharmacy premises that are also approved by the Australian Government, under section 90 of the *National Health Act 1953* (Act), can operate as a community pharmacy to dispense prescription medicines subsidised under the Pharmaceutical Benefits Scheme (PBS) (pharmaceutical benefits).

As at 30 June 2025, there were 6,013 approved pharmacies in Australia.

All applications for approval to supply pharmaceutical benefits at particular pharmacy premises must be made to the Secretary of the Department of the Health, Disability and Ageing (department). The Secretary has delegated this power, under section 90 of the Act, to certain officers in the department (Secretary's delegate).

The Secretary's delegate must refer all applications involving the establishment of a new pharmacy, or relocation of an existing approved pharmacy, to the Australian Community Pharmacy Authority (Authority). The Authority assesses those applications against the requirements of the Pharmacy Location Rules (Rules) and makes recommendations as to whether or not each application should be approved. Refer to [section 2 and 3](#) for more details regarding the Authority and the Rules.

If a pharmacy is not approved, as a result of its failure to meet the requirements of the Rules, a request can be made to you to approve the pharmacy using your Ministerial discretion power.

1. Ministerial Discretion to Approve a Pharmacist

The Fourth Community Pharmacy Agreement provided for an amendment to the Act to give the Minister for Health the power to approve a pharmacist to supply pharmaceutical benefits at particular premises.

As Minister for Health and Ageing, you have the discretionary power to substitute the Secretary's decision, not to approve a pharmacist, with a decision to approve a pharmacist to supply pharmaceutical benefits at particular premises.

The intention of your discretionary power is to provide flexibility to respond on an individual and timely basis in circumstances where the application of the Rules (refer to [section 2](#)) results in a community being left without reasonable access to pharmacy services.

The Act provides that a pharmacist can only request you to exercise your discretionary power after an application has been considered by the Authority (refer to [section 3](#)) and rejected by the Secretary's delegate.

A pharmacist can lodge a request with the department, seeking the exercise of your discretionary power, within 30 days of notification by the Secretary's delegate that the application was rejected.

An amendment to the Act to streamline the process for such a request was made in September 2025. This removes the requirement for you, as Minister for Health and Ageing, to first decide within 3 months of a request being made, whether to consider a request, and if so, then deciding within 3 months of that decision whether to approve the request. You must now, within 4 months after receiving a request, personally decide whether to approve the request. If you have not made a decision within this period, it will be taken that you have decided not to approve the request.

Subsection 90A(2) of the Act provides

“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.”*

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*’.

Section 90D of the Act provides that you may write to any other person advising of the request and invite comments on, or information or documents relevant to, the request within a specified period. Several officers in the department have delegation to perform this function on your behalf. However, under the secrecy provisions specified in section 135A of the Act, further details related to a particular Ministerial Discretion request cannot be divulged to a third party.

A flow chart outlining the Ministerial Discretion process, including reference to relevant provisions under the Act, is at the end of this attachment.

Principles of administrative law

When making your decision you should be aware that the following principles of administrative law will apply and may (if not followed) leave your decision subject to judicial scrutiny:

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

Relevant considerations

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, include:

- i the objectives of the Rules as provided in the Fourth Community Pharmacy Agreement (2005)
- 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

The commercial interests of the pharmacist making the request, or of any other party, are not generally considered to be relevant.

Right of Appeal

The applicant and affected third parties can appeal decisions made by the Authority and/or the Minister.

Under section 13(1) of the *Administrative Decisions Judicial Review Act 1977* (ADJR Act), any "aggrieved party" may seek a Statement of Reasons in relation to your decision. If the stated reasons for your decision do not satisfy the parties, they may choose to exercise further legal options.

If an application by a pharmacist for approval to supply pharmaceutical benefits is rejected by the Secretary's delegate, after consideration by the Authority, the pharmacist may either appeal the decision to the Administrative Review Tribunal (ART) for an independent review of the Authority's decision or request the exercise of your discretionary power to approve the pharmacist to supply pharmaceutical benefits at the particular premises. A pharmacist can also request you exercise your discretionary power following an unsuccessful appeal to the ART.

An aggrieved party may appeal a decision to the Federal Court.

2. The Pharmacy Location Rules (Rules)

The Rules have been established under the National Health (Australian Community Pharmacy Authority Rules) Determination 2018.

The Rules allow pharmacists to make application for approval to supply pharmaceutical benefits at particular pharmacy premises. There are 13 rules, each applicable to certain circumstances, including the relocation of an existing approved pharmacy, the establishment of a new pharmacy where: the nearest approved pharmacy is at least 1.5 km by straight line from the proposed premises and there are services that reflect a location that is likely to be well frequented; the proposed premises are in a designated complex as defined by the Rules to include a large medical centre, a small shopping centre, a large shopping centre or a large private hospital; and in a rural/urban locality where there is only one pharmacy and services in that locality to demonstrate a likely need for an additional pharmacy. Applicants choose to apply under the rule which best suits their circumstances.

Each rule sets out strict location-based criteria that must be satisfied before the Authority can recommend that the pharmacist can be approved.

The specific overall objectives of the Rules are to ensure:

- all Australians have reasonable access to pharmaceutical benefits
- a commercially viable and sustainable network of community pharmacies dispensing pharmaceutical benefits
- improved efficiency through increased competition between pharmacies
- improved flexibility to respond to the community need for pharmacy services
- increased local access to community pharmacies for persons in rural and remote regions of Australia, and
- continued development of an effective, efficient and well-distributed community pharmacy network in Australia.

3. Australian Community Pharmacy Authority (Authority)

The Secretary's delegate may grant approval to a pharmacist to supply pharmaceutical benefits at particular pharmacy premises subject to the application being referred to the Authority, and the Authority recommending the pharmacist be approved because it was satisfied that the application met all requirements of the Rules (refer to section 2).

The Authority is an independent statutory authority established under s99J of the Act. The Authority comprises six members. All members are appointed by the Minister except the departmental member, who is appointed by the Secretary. Members appointed by the Minister are appointed for up to a three-year term and are eligible for reappointment for a further term(s).

The Authority meets approximately 9 times per year to assess applications against the requirements of the Rules and makes recommendations as to whether an applicant should be approved. Following each meeting, the Authority's secretariat, located in the department, informs the Secretary's delegate, in writing, of the decision made by the Authority in respect of each application. The Secretary's delegate in turn advises each applicant of the outcome.

Released under the Freedom of Information Act 1982 by the Department of Health, Disability and Ageing

MINISTER'S DISCRETIONARY POWER FLOWCHART

