

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Health

### **DECLARATION OF QUALITY ASSURANCE ACTIVITY UNDER SECTION 124X OF THE *HEALTH INSURANCE ACT 1973***

**QAA 1/2013**

Part VC of the *Health Insurance Act 1973* (the Act) creates a scheme to encourage efficient quality assurance activities. Those activities help to ensure the quality of health services that are funded by the Government, through Medicare benefits, the Pharmaceutical Benefits Scheme, Public Hospitals and/or Health Program Grants. The scheme encourages participation in such activities by protecting certain information from disclosure, and also by providing some protection from civil liability to certain persons engaged in those activities in good faith, in respect of those activities.

In order for Part VC to apply to an activity, the Minister or her delegate must make a Declaration pursuant to Section 124X of the Act, that the activity described in the Declaration is a quality assurance activity to which Part VC applies. Regulations 23C to 23G of the *Health Insurance Regulations 1975* (the Regulations) set out the public interest criteria that must be met by quality assurance activities in order to be Declared under section 124X.

This Declaration has effect from the day after registration on the Federal Register of Legislative Instruments. Section 124X(4) of the Act prescribes that, unless sooner revoked, this determination ceases to be in force at the end of five years after the Instrument of Declaration was signed.

The purpose of the Declaration is to declare one quality assurance activity as a qualified privilege activity under section 124X of the Act. The activity is titled the Incident Recording and Reporting Program. It is being conducted by the Australian and New Zealand Tripartite Anaesthetic Data Committee (ANZTADC).

Before the Minister or her delegate can make a Declaration, certain requirements must be met.

Firstly, the Minister or her delegate must be satisfied that the persons engaged in the activity are authorised to do so as described in paragraph 124X(3)(a) of the Act. The ANZTADC meets the requirement as the persons engaged in the activity is authorised either by an educational institution or by an association of health professionals.

Secondly, paragraph 124X(3)(b) of the Act provides that the Minister or her delegate must be satisfied that it is in the public interest to have Part VC of the Act apply to the activity. In doing so, the Minister or her delegate must have regard to criteria prescribed by the Regulations. The criteria relevant to the activities are in regulations 23C, 23D and 23E or 23F and 23G. The ANZTADC activity meets the relevant criteria prescribed by the Regulations.

## CONSULTATION

Consultations regarding the applications for Declaration were undertaken on 6 December 2012. This included obtaining advice on the potential value of Declaring the activity as a quality assurance activity for the purposes of the Act, the methodology used to conduct the activity, and whether the application meets the criteria required for Declaration, in particular those criteria relating to whether it is in the public interest to Declare the activity.

Those consulted included members of the Qualified Privilege Advisory Group, which includes an external clinician; a legal expert; a quality manager working in the field of health care quality assurance; and a consumer representative.

The Declaration of the activity will not result in any direct or substantial indirect effect on business.

The Declaration commences the day after registration on the Federal Register of Legislative Instruments.

The Declaration is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **DECLARATION OF QUALITY ASSURANCE ACTIVITY UNDER SECTION 124X HEALTH INSURANCE ACT 1973**

#### **QAA 1/2013**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

The Instrument declares one quality assurance activity as qualified privilege activities under section 124X of the *Health Insurance Act 1973* (the Act). A declaration under the Act encourages participation in such activities by protecting certain information from disclosure and providing some protection from civil liability to people participating in the activity. However, the Qualified Privilege Scheme (QPS) does not remove the right of individuals to seek legal redress to resolve disputes with their doctor nor allow medical practitioners to avoid scrutiny by medical registration boards and/or health complaints processes.

#### **Human rights implications**

This legislative instrument engages Article 2 and 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) by assisting with the progressive realisation by all appropriate means of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

The QPS is aimed at encouraging participation in quality assurance activities. These quality assurance activities help to ensure the quality of health services that are funded by the Government, for example, through Medicare benefits and/or the Pharmaceutical Benefits Scheme.

#### **Conclusion**

This Legislative Instrument is compatible with human rights because it advances the protection of human rights.

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