

## EXPLANATORY STATEMENT

### *HEALTH INSURANCE ACT 1973*

#### *Health Insurance (Quality Assurance Activity – BreastSurgANZ Quality Audit) Declaration 2020*

Part VC of the *Health Insurance Act 1973* (the Act) creates a scheme to encourage efficient quality assurance activities in connection with the provision of health services. Those activities help to ensure the quality of health services that are funded by the Government, including through the Medicare Benefits Schedule, the Pharmaceutical Benefits Scheme, and 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.

Subsection 124X(1) of the Act provides that the Minister may, by legislative instrument, declare a quality assurance activity described in the declaration to be a quality assurance activity to which Part VC applies.

The purpose of the *Health Insurance (Quality Assurance Activity – BreastSurgANZ Quality Audit) Declaration 2020* (the Declaration) is to declare the Breast Surgeons of Australia and New Zealand (BreastSurgANZ) Quality Audit (BQA) activity to be a quality assurance activity to which Part VC of the Act applies.

The BQA is a clinical audit that collects breast cancer surgery information from breast surgeons. The BQA compares surgeons' clinical results with Quality Threshold for Key Performance Indicators (KPIs) set by the BQA Subcommittee, relating to a patient's optimal care pathway.

The activity will be engaged in by BreastSurgANZ, which is a specialty society for surgeons treating breast cancer. The quality assurance activity described in this declaration applies only to health services provided in Australia. The BQA is operated by the Royal Australasian College of Surgeons (RACS) under contract with BreastSurgANZ. RACS employs staff in the Research, Audit & Academic Surgery Division of the College, who manage the audit under direction from the BreastSurgANZ Quality Audit Subcommittee that reports to the BreastSurgANZ Council.

The BQA promotes collaborative research to improve breast cancer care through teaching, research, and the development of evidence-based strategies that monitor individual members' surgical performance and improve outcomes using evidence based benchmarks produced from the audit. Surgeons can access their own data and the BQA analyse aggregate data to establish an evidence base to make changes in recommended treatments to improve breast surgery outcomes. The BQA aims to ensure BreastSurgANZ members are practising breast cancer surgery to the highest standards assessed by compliance with evidence based KPIs through:

- 1) self-assessment of a surgeon's own performance compared to the KPIs,
- 2) review of aggregate compliance with minimum standards by BreastSurgANZ to confidentially inform surgeons if their practices are consistent with best practice, and
- 3) individual practice audit by means of a confidential quality improvement and feedback process that closes the audit cycle loop.

Copies of reports using de-identified BQA data are published on the BQA website for access by the general public. Peer reviewed articles and papers using de-identified and aggregated BQA data are routinely published in journals and presented at specialist meetings. The RACS audit staff also prepare annual reports for BreastSurgANZ as well as consumer summaries of recent research utilising audit data. The BQA provides copies of these papers and findings to the Minister, or the delegate of the Minister, during the course of undertaking this activity.

This declaration follows the previously declared activity QAA 6/2015. This declaration is likely to encourage a greater level of participation than the previously declared activity. Ongoing protection will likely support an increase in the rate of case submissions from breast surgeons. The Declaration is a legislative instrument for the purposes of the *Legislation Act 2003*. The Declaration commences on the day after registration on the Federal Register of Legislation.

Details of the Declaration are set out in **Attachment A**.

## **CONSULTATION**

BreastSurgANZ, as the applicant for declaration of the activity, was consulted in relation to the content of the Declaration.

Further consultation was not considered necessary as the quality assurance activity relates only to the conduct of the BQA activity, which is an activity undertaken by BreastSurgANZ.

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

### **Section 1 – Name**

This section provides for the Declaration to be referred to as the *Health Insurance (Quality Assurance Activity – BreastSurgANZ Quality Audit) Declaration 2020* (the Declaration).

### **Section 2 – Commencement**

This section provides that the Declaration commences on the day after it is registered on the Federal Register of Legislation.

### **Section 3 – Authority**

This section provides that the Declaration is made under subsection 124X(1) of the *Health Insurance Act 1973*.

### **Section 4 – Cessation**

This section provides that the Declaration will cease to be in force at the end of 5 years after the date on which it is signed. Subsection 124X(4) of the *Health Insurance Act 1973* provides that a declaration of a quality assurance activity ceases to be in force at the end of 5 years after it is signed, unless sooner revoked.

### **Section 5 – Schedule**

This section provides that the activity described in the Schedule is declared to be a quality assurance activity to which Part VC of the *Health Insurance Act 1973* applies.

### **Schedule 1 – Description of quality assurance activity**

The Schedule provides that the name of the activity is ‘Breast Cancer Surgeons of Australia and New Zealand Quality Audit’. It describes the quality assurance activity as a clinical audit that collects breast cancer surgery compliance information from breast surgeons, and compares clinical results with Quality Threshold for Key Performance Indicators set by the BQA Subcommittee, relating to a patient’s optimal care pathway.

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

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

*Health Insurance (Quality Assurance Activity – BreastSurgANZ Quality Audit) Declaration  
2020*

This Declaration 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 *Health Insurance (Quality Assurance Activity – BreastSurgANZ Quality Audit) Declaration 2020* (the Declaration) declares the Breast Surgeons of Australia and New Zealand Breast Quality Audit to be a quality assurance activity to which Part VC of the *Health Insurance Act 1973* (the Act) applies. Information known solely as the result of conducting the activity, or documents created solely for the purposes of the activity, will be covered by qualified privilege.

### **Human rights implications**

This Declaration engages the right to health as set out in Article 12 of the International Covenant on Economic, Social and Cultural Rights 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 Qualified Privilege Scheme established by Part VC of the Act is aimed at encouraging participation in quality assurance activities that help ensure the highest possible health care standards are maintained. The quality assurance activity described in this Declaration will provide participants with a greater degree of confidence and security that their participation is solely for the benefit of establishing and improving outcomes of community health care.

This Declaration also engages, but does not limit, the right to privacy as contained in Article 17 of the International Covenant on Civil and Political Rights by involving the collection, storage, security, use, disclosure or publication of personal information. Data collected as part of the quality assurance activity will be de-identified to ensure that no individual or individuals are identified prior to analysis or disclosure of the information.

### **Conclusion**

This Declaration is compatible with human rights as it promotes the right to health and does not limit the right to privacy.

**Prof. Brendan Murphy**  
**Chief Medical Officer**  
**Department of Health**