

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (Quality Assurance Activity – Australian and New Zealand Audit of Surgical Mortality) Declaration 2022

Purpose

Part VC of the *Health Insurance Act 1973* (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, public hospital services and the Pharmaceutical Benefits Scheme. The scheme encourages participation in such activities by protecting certain information from disclosure and by providing some protection from civil liability to certain persons engaged in respect of their engagement in those activities in good faith.

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 of the Act applies.

The purpose of the Declaration is to declare the Australian and New Zealand Audit of Surgical Mortality (ANZASM) to be a quality assurance activity (Activity) to which Part VC of the Act applies. The ANZASM provides a self-reporting and hospital or health-system based notification system for surgeons, anaesthetists and radiologists relating to patient mortality occurring in certain surgical contexts. Commonwealth Qualified Privilege is required for ANZASM as cases are assessed across state and territory borders, therefore it is necessary to protect this information as a national program. The purpose of declaring the ANZASM is to protect notifications from disclosure and to provide some protection to the people who make the notifications from civil liability. The main objective of the Activity is to enhance the existing data on surgical mortality and improve the overall quality and safety of perioperative healthcare resulting in better patient outcomes.

The Declaration covers the audit process for ANZASM, which is evaluated on an ongoing basis through various methods including public reporting on aggregated data; contracted deliverables to the relevant state and territory health department in each region; ongoing governance by each regional audit management committee; strategic and national review by the ANZASM Steering Committee; and review of reports and publications by the Royal Australasian College of Surgeons Surgical Audit Committee, Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG) and Australian and New Zealand College of Anaesthetists (ANZCA).

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

Authority

The *Health Insurance (Quality Assurance Activity – Australian and New Zealand Audit of Surgical Mortality) Declaration 2022* (Declaration) is a Declaration made under subsection 124X(1) of the Act.

Reliance on subsection 33(3) of the Acts Interpretation Act 1901

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Commencement

The instrument is a disallowable legislative instrument for the purposes of the *Legislation Act 2003*. The Declaration commences the day after registration of the instrument on the Federal Register of Legislation.

Consultation

The Royal Australasian College of Surgeons (RACS), as the applicant for Declaration of the Activity, was consulted on the purpose and content of the Declaration.

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

Section 1 – Name

Section 1 provides for the instrument to be referred to as the *Health Insurance (Quality Assurance Activity – Australian and New Zealand Audit of Surgical Mortality) Declaration 2022*.

Section 2 – Commencement

Section 2 provides that the instrument commences on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

Section 3 provides that the instrument is made under subsection 124X(1) of the *Health Insurance Act 1973*.

Section 4 – Repeal

Section 4 provides that the instrument will be repealed when it ceases to be in force in accordance with subsection 124X(4) of the *Health Insurance Act 1973*.

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

Section 5 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 – Name and description of quality assurance activity

Schedule 1 provides that the name of the activity is the ‘Australian and New Zealand Audit of Surgical Mortality’.

The ANZASM is managed by the Royal Australasian College of Surgeons (RACS). RACS is an association of surgeons that provides education, development and research services. RACS is the recognised specialist college responsible for the training and assessment of medical practitioners as specialist surgeons in all fields of surgery. RACS is accredited by the Australian Medical Council on behalf of the Medical Board of Australia for this purpose.

The Schedule describes the ANZASM as providing a self-reporting system for participating surgeons, anaesthetists and radiologists to record information relating to patient deaths in hospitals where the patient was under the care of:

- a) a surgeon (surgical admissions), whether or not an operation was performed; or
- b) a physician (medical and non-surgical admission) and there was surgical intervention.

The Schedule describes the ANZASM as comprising a group of regionally based surgical mortality audits, being the:

- a) Australian Capital Territory Audit of Surgical Mortality;
- b) New South Wales' (NSW) Collaborative Hospitals Audit of Surgical Mortality;
- c) Northern Territory Audit of Surgical Mortality;
- d) Queensland Audit of Surgical Mortality;
- e) South Australian Audit of Surgical Mortality;
- f) Tasmanian Audit of Surgical Mortality;
- g) Victorian Audit of Surgical Mortality (VASM); and
- h) Western Australian Audit of Surgical Mortality.

The regional audits in each jurisdiction come under the governance of ANZASM, with the exception of the NSW Collaborative Hospitals Audit of Surgical Mortality, which is managed by the NSW Clinical Excellence Commission and co-governed in collaboration with RACS and follows the ANZASM process.

The ANZASM includes but is not limited to:

- a) notification of death by surgeon, radiologist or anaesthetist, hospital or health system;
- b) completion and review of relevant case form;
- c) report to reporting surgeon, anaesthetist or radiologist by assessing surgeon;
- d) public reporting on aggregated data;
- e) strategic and national review by the ANZASM Steering Committee; and
- f) the making of recommendations and monitoring of the implementation of those recommendations (including by the Victorian Perioperative Consultative Council (VPCC) in respect of the ANZASM in accordance with its functions under Division 2 of Part 4 of the Public Health and Wellbeing Act 2008 (Vic)).

The Victorian Audit of Surgical Mortality (VASM) includes the participation of the VPCC as established under the *Public Health and Wellbeing Act 2008* (Vic) and *Public Health and Wellbeing Regulations 2019* (Vic). Inclusion of the VPCC permits sharing of documents and information related to individual mortality cases which the VASM considers requires multidisciplinary review, and anaesthetic-related mortality cases with the VPCC. The documents and information are shared between the VASM and VPCC for the purposes of sharing notifications of mortality from the health sector and validating notifications received by each body to confirm the accurate capture and triage of mortality, and avoidance of case duplication. In regions where there is no similar functioning committee as the VPCC, the process is to manage information under the respective Audit of Surgical Mortality Committee that would have representation from the respective State or Territory Department of Health. Cases prioritised for further multidisciplinary clinical review (such as anaesthetic-related, involve transfers, or have serious clinical management issues, or those assessed as preventable deaths) are input into a Registry held by the respective Department of Health. The Registry model operates similar to the VPCC with cases for hospital review referred from various different sources including the coroner, mortality and morbidity reports from health services, private hospitals, complaints, clinicians, other registries and other health organisations.

State and Territory Departments of Health receive data reporting, publications summarising the lessons identified from audits (case note reviews), trend analysis, and research publications (where viable) on surgical care preceding patient death in their retrospective healthcare system, whether surgery was performed or not.

Statement of Compatibility with Human Rights

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

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The 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 – Australian and New Zealand Audits of Surgical Mortality) Declaration 2022* (the Declaration) declares the Australian and New Zealand Audit of Surgical Mortality (Activity) to be a quality assurance activity to which Part VC of the *Health Insurance Act 1973* (the Act) applies. The Activity is managed by the Royal Australasian College of Surgeons (RACS). RACS is the recognised specialist college responsible for the training and assessment of medical practitioners as specialist surgeons in all fields of surgery. RACS is accredited by the Australian Medical Council on behalf of the Medical Board of Australia for this purpose. RACS conducts a range of research into various factors of surgical clinical practice to advance surgical practice in Australia and New Zealand. 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

The 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 for the benefit of improving healthcare.

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. Non-identifying information that will be disclosed by ANZASM includes de-identified aggregated data within annual reports; de-identified ‘cases of the month’ summarising educational content to health practitioners, hospitals and Departments of Health; ad hoc reports such as quarterly ‘Case Note Review Booklets’ relating to specific data analysis questions; and research articles in academic journals.

Conclusion

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

Professor Paul Kelly
Chief Medical Officer
Department of Health