

## EXPLANATORY STATEMENT

### *Health Insurance Act 1973*

#### *Health Insurance (Quality Assurance Activity – Australian Orthopaedic Association National Joint Replacement Registry) Declaration 2022*

#### **Authority**

The *Health Insurance (Quality Assurance Activity – Australian Orthopaedic Association National Joint Replacement Registry) Declaration 2022* (the instrument) is made under subsection 124X(1) of the *Health Insurance Act 1973* (Act).

Subsection 124X(1) of the Act provides that the Minister for Health may, by legislative instrument, declare a quality assurance activity described in a declaration to be a quality assurance activity to which Part VC applies. The *Health Insurance (Quality Assurance Activity – Australian Orthopaedic Association National Joint Replacement Registry) Declaration 2022* declares the Australian Orthopaedic Association National Joint Replacement Registry (Activity) to be a quality assurance activity to which Part VC of the Act applies.

#### **Purpose**

Part VC of the Act creates a scheme to encourage efficient quality assurance activities in connection with the provision of health services. Those activities help to improve the quality of joint replacement and knee osteotomy surgeries that receive funding from 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 by providing some protection from civil liability to certain persons in respect of their engagement in those activities in good faith.

The purpose of this instrument is to declare the Activity to be a quality assurance activity to which Part VC of the Act applies.

The Activity is undertaken by the Australian Orthopaedic Association (AOA). The AOA is the peak professional representative organisation for orthopaedic surgeons in Australia. The AOA is a not-for-profit organisation and is responsible for the management of the Activity, including publicly disseminating Registry data and research outcomes.

The purpose of the Activity is to identify factors that result in improved standards in prostheses and orthopaedic surgical techniques, as well as to improve the benefits and cost effectiveness of those procedures, including patient views.

#### **Consultation**

The AOA, as the applicant for declaring the Activity, was consulted in relation to the Activity and content of the instrument.

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

#### **Commencement**

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

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

The instrument is compatible with the rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A statement of compatibility with human rights is set out in **Attachment B**.

### **Section 1 – Name**

This section provides that the name of the instrument is the *Health Insurance (Quality Assurance Activity – Australian Orthopaedic Association National Joint Replacement Registry) Declaration 2022* (instrument).

### **Section 2 – Commencement**

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

### **Section 3 – Authority**

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

### **Section 4 – Repeal**

This section 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**

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**

#### **Clause 1 – Name of activity**

Clause 1 of Schedule 1 provides that the name of the Activity is the ‘Australian Orthopaedic Association National Joint Replacement Registry (AOANJRR)’.

#### **Clause 2 – Description of activity**

The AOANJRR is a registry that aims to improve the outcome of joint replacement surgery by identifying the factors affecting the outcomes of hip, knee, shoulder, elbow, wrist, ankle and spinal disc replacement, and knee osteotomy procedures, and it educates stakeholders on the comparative performance of and different approaches to joint replacement procedures. Clause 2 of Schedule 1 describes the health services of the AOANJRR that relates to as all joint replacement and knee osteotomy procedures and managing the information that is collected

and used for public disclosures to be made by the AOANJRR.

The AOANJRR also collects Patient Reported Outcome Measures (PROMs) data which capture the patient's perspective on the success of their treatment for these procedures. PROMs data is collected through pre- and post-operative surveys covering the extent of the pain and disability prior to surgery, as well as the extent and timing of recovery and the presence of complications. Information derived from PROMs is used to enhance outcomes, and assist in the design, delivery and funding of health services by aligning clinical outcomes and patient satisfaction.

The integration of PROMs data with other AOANJRR data augments surgeons' ability to evaluate their performance by linking the patient's view with the surgeon's reflections on the outcomes of procedures. PROMs data is also translated into population-based statistics that will be used to inform improvements to clinical practice and patient care standards.

## 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 – Australian Orthopaedic Association National Joint Replacement Registry) Declaration 2022*

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 *Health Insurance (Quality Assurance Activity – Australian Orthopaedic Association National Joint Replacement Registry) Declaration 2022* (the Declaration) declares the Australian Orthopaedic Association National Joint Replacement Registry (Activity) to be a quality assurance activity to which Part VC of the *Health Insurance Act 1973* (Act) applies. The Activity will be conducted by the Australian Orthopaedic Association (AOA). The AOA is the peak not-for-profit professional representative organisation for orthopaedic surgeons in Australia. 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 to ensure that the highest possible health care standards are maintained. The quality assurance activity described in the Declaration will provide participants with a greater degree of confidence and security that their participation is for the benefit of improving healthcare. Patient Reported Outcome Measures (PROMs) data, which captures the patient's perspective on the success of their treatment, is collected on a voluntary basis from patients completing pre- and post-operative surveys covering pain and disability prior to surgery, as well as the extent and timing of recovery and the presence of complications. This information is translated into population-based statistics that are used to inform clinical practice and patient care standards.

The 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 Activity will be de-identified to ensure that no individual or individuals are identified prior to analysis or disclosure of the information. Public disclosures of de-identified information derived from the AOANJRR data will be published in annual

reports and used to enhance surgical outcomes, and assist in the design, delivery and effectiveness of health services by aligning clinical outcomes and patient satisfaction with safe, efficient, and best practice care.

## **Conclusion**

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

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