

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (Quality Assurance Activity – The Australian and New Zealand Tripartite Anaesthetic Data Committee (ANZTADC) Incident Recording and Reporting Program web based anaesthetic incident reporting system – webAIRS) Declaration 2023

Purpose and operation

The *Health Insurance (Quality Assurance Activity – The Australian and New Zealand Tripartite Anaesthetic Data Committee (ANZTADC) Incident Recording and Reporting Program web based anaesthetic incident reporting system – webAIRS) Declaration 2023* (the Declaration) declares the Australian and New Zealand Tripartite Anaesthetic Data Committee (ANZTADC) Incident Recording and Reporting Program web based anaesthetic incident reporting system – webAIRS (the Activity), to be a quality assurance activity to which Part VC of the *Health Insurance Act 1973* (the Act) applies.

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 ensure the quality of health services that are funded by the Government, including through Medicare benefits, 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.

The body authorising the Activity is the Australian and New Zealand College of Anaesthetists (ANZCA). The Activity will be undertaken by ANZCA in coordination with the ANZTADC, which reports to the ANZCA Council. The three parent organisations represented on the ANZTADC are ANZCA, the Australian Society of Anaesthetists and New Zealand Society of Anaesthetists. All members of the three parent organisations are eligible to participate in the Activity.

Authority

Subsection 124X(1) of the Act provides that the Minister may, by legislative instrument, declare a quality assurance activity described in a declaration to be a quality assurance activity to which Part VC of the Act applies. The Declaration declares the Australian and New Zealand Tripartite Anaesthetic Data Committee (ANZTADC) Incident Recording and Reporting Program web based anaesthetic incident recording system - webAIRS (the Activity), to be a quality assurance activity to which Part VC of the Act applies.

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.

Consultation

ANZCA, as the applicant for declaring the activity, was consulted in relation to the content of the Declaration. Wider consultation was not considered necessary as the quality assurance activity only relates to the gathering of information for the Activity, as conducted by ANZCA. The declaration of the Activity will not result in any direct or substantial indirect effect on business.

Commencement

This Declaration commences on 16 April 2023.

General

This Declaration is a disallowable legislative instrument for the purposes of the *Legislation Act 2003*.

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

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

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Part 1—Preliminary

Section 1 – Name

This section provides that the name of the Declaration is the *Health Insurance (Quality Assurance Activity – The Australian and New Zealand Tripartite Anaesthetic Data Committee (ANZTADC) Incident Recording and Reporting Program web based anaesthetic incident reporting system – webAIRS) Declaration 2023*.

Section 2 – Commencement

This section provides that the Declaration commences on 16 April 2023.

Section 3 – Authority

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

Section 4 – Repeal

This section provides that the Declaration 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 and New Zealand Tripartite Anaesthetic Data Committee (ANZTADC) Incident Recording and Reporting Program web based anaesthetic incident reporting system – webAIRS’.

Clause 2 – Description of activity

Clause 2 of Schedule 1 describes the quality assurance activity as a program that captures, analyses and disseminates de-identified data about critical anaesthetic incidents that occur in Australia and New Zealand across a spectrum of incident severity, from near miss to severe harm, through a voluntary web-based incident reporting system called webAIRS.

The webAIRS program provides a secure, de-identified repository for incident data and providers will be made aware of their responsibilities in compliance with the requirements of declared quality assurance activities to ensure the confidentiality of any identifiable data. The program encourages open self-reflective practice based on national level de-identified data and participation earns anaesthetists continuing professional development points. Local level reporting does not form part of this quality assurance activity.

The ANZTADC leads the process of analysing the cleansed data and release of findings. This includes aggregation of the data, so it is suitable for reporting purposes. Data is reported anonymously into the webAIRS portal. After data is entered into the webAIRS portal it is reviewed to ensure that any potentially identifiable information is removed from the incident reports. In the event that anaesthetists accidentally enter identifying data this is removed through the data cleansing process, including location and health practitioner identifiers. A webAIRS data analyst is employed specifically to undertake this process. The ANZTADC Coordinator and the Medical Director then undertake further data cleansing. Only when the data is cleansed does it become a part of the dataset used for analysis to compile case reports using numerical values such as patient BMI, age, date, time and length of procedure.

Nominated authors use the de-identified data to produce reports for anaesthetists via monthly e-News, quarterly articles in the ANZCA Bulletin, journal publications, conference presentations and workshops. Advisory notices are also available on the webAIRS website for registered users.

Statement of Compatibility with Human Rights

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

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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 – The Australian and New Zealand Tripartite Anaesthetic Data Committee (ANZTADC) Incident Recording and Reporting Program web based anaesthetic incident reporting system – webAIRS) Declaration 2023* (the Declaration) declares The Australian and New Zealand Tripartite Anaesthetic Data Committee (ANZTADC) Incident Recording and Reporting Program web based anaesthetic incident reporting system – webAIRS to be a quality assurance activity to which Part VC of the *Health Insurance Act 1973* (the Act) applies.

The purpose of the Activity is to capture, analyse and disseminate de-identified national data about critical anaesthetic incidents that occur in Australia and New Zealand through a voluntary web-based incident reporting system. Information known solely as the result of 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 to ensure that 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 Activity will be de-identified to ensure that no individual or individuals are identified prior to analysis or disclosure of the information. Nominated authors will use the de-identified data to produce reports and disseminate the information in anaesthetic specific journal publications and at annual scientific meetings.

Conclusion

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

Professor Paul Kelly

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