

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (Quality Assurance Activity – Northern Territory Department of Health Perinatal and Maternal Mortality Committee) Declaration 2023

Purpose and operation

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 Medicare benefits and public hospital services. 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 those activities in good faith.

The purpose of the *Health Insurance (Quality Assurance Activity – Northern Territory Department of Health Perinatal and Maternal Mortality Committee) Declaration 2023* (the Declaration) is to declare the Northern Territory Department of Health Perinatal and Maternal Mortality (PaMM) Committee (the Activity) to be a quality assurance activity to which Part VC of the Act applies.

The Activity is undertaken by the Northern Territory (NT) Department of Health. The Activity applies only to health services provided in Australia. The Activity involves the review of perinatal and maternal deaths and cases of substantial morbidity that occur in public hospitals, public health services or other publicly funded health facilities in the NT, in respect of which Medicare benefits are or would be payable and in relation to which Commonwealth funding for public hospital services is provided.

Review, analysis and assessment by clinician peers regarding the operational and clinical issues and factors which contribute to unexpected events resulting in death or substantial morbidity are a regular feature of hospital operations. Most jurisdictions in Australia permit these activities to operate under qualified privilege. However, as at the date of the making of this Declaration, there is currently no legislation in the NT to cover the Activity and accordingly, it is open for Part VC of the Act to apply to the Activity.

The purpose of the clinician-led Activity is to improve patient safety by identifying the single most important factor leading to the chain of events resulting in the death or morbidity event, making recommendations, then implementing the recommendations and monitoring the outcomes in order to prevent or reduce the likelihood of the same type of event occurring again. Participants may include medical practitioners, midwives and social workers.

Health services are encouraged to review perinatal and maternal deaths that occur in their facilities, as well as deaths that have occurred elsewhere when the patient was treated predominantly at one of their facilities. The extent of review of a death depends on the type of

death and whether it was unexpected. This review is performed initially at local Mortality and Morbidity meetings and potential contributing factors are identified. Review, analysis and assessment is then undertaken by participants about the factors that may have contributed to the events, and subsequent committee discussion and reflection occurs amongst clinician peers, as well as reviews of professional evidence from the event and available literature. Depending on the circumstances of the event, the conduct of individuals involved in the events may also be discussed. However, the prevailing focus of the Activity is to gather evidence and information in an environment oriented towards learning from analysis of the event.

The PaMM Committee analyses these events, and where appropriate makes recommendations about changes or improvements to policies, procedures, guidelines or practices relating to the provision of health services. The PaMM Committee communicates the recommendations to the NT Health Clinical Governance Committee and the NT Maternal and Newborn Network for dissemination to and action by relevant services. The recommendations are kept on an action register, maintained and monitored by the PaMM secretariat and chair. Implementation is monitored and reported on in the NT Department of Health annual report.

The number of cases reviewed, high level process information about individual cases and recommendations will be published in the NT Department of Health annual report, and annually in the NT Department of Health's Clinical Quality and Patient Safety Surveillance Report for the Health Services and Chief Executive Officer. This information will be deidentified. Information will not be published if it could identify a person either directly or indirectly, expressly or by implication.

The Declaration will encourage health care providers in the NT working with women in pregnancy, during birth and postnatally and with babies/neonates to provide honest feedback and reflection about factors that may have contributed to a mortality or morbidity event, because it will allow them to participate in the Activity without concern for apportionment of blame to clinicians. It will encourage NT health care providers to accept, implement and monitor recommendations provided by the PaMM Committee.

Authority

The Declaration is a declaration made under subsection 124X(1) of the Act. Subsection 124X(1) of the Act provides that the Minister may, by legislative instrument, declare a quality assurance activity to be a quality assurance activity to which Part VC 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.

Commencement

The Declaration commences on the day after it is registered on the Federal Register of Legislation.

Consultation

The Clinical Excellence and Patient Safety section of the NT Department of Health, as the applicant for declaring the Activity, and the Australian Commission on Safety and Quality in Health Care were 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 the NT Department of Health. The declaration of the Activity will not result in any direct or substantial indirect effect on business.

General

The 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**.

Health Insurance (Quality Assurance Activity – Northern Territory Department of Health Perinatal and Maternal Mortality Committee) Declaration 2023

Section 1 – Name

This section provides that the name of the Declaration is the *Health Insurance (Quality Assurance Activity – Northern Territory Department of Health Perinatal and Maternal Mortality Committee) Declaration 2023*.

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 – 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 quality assurance 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

Item 1 – Name of activity

Item 1 provides that the name of the quality assurance activity is ‘The Northern Territory Department of Health Perinatal and Maternal Mortality Committee (Activity).

Item 2 – Description of activity

Item 2 describes the quality assurance activity as a clinician-led activity that enables clinical review of identified cases to discuss and evaluate contributing clinical factors that may have led to perinatal and maternal deaths and morbidity, and the making and monitoring of recommendations about changes or improvements in a policy, procedure or practice relating to health services to reduce the likelihood of, or prevent, the same type of event from occurring again.

De-identified information will be published in the NT Department of Health annual report, and annually in the NT Department of Health’s Clinical Quality and Patient Safety Surveillance Report for the Health Services and Chief Executive Officer.

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 – Northern Territory Department of Health Perinatal and Maternal Mortality Committee) Declaration 2023

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 (Northern Territory Department of Health Perinatal and Maternal Mortality Committee) Declaration 2023* (the Declaration) declares the Northern Territory (NT) Department of Health Perinatal and Maternal Mortality (PaMM) Committee (the Activity) 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 improve patient safety by identifying the single most important factor leading to the chain of events resulting in the death or morbidity event, making recommendations, then implementing and monitoring the recommendations in order to prevent or reduce the likelihood of the same type of event occurring again. 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 with 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 clinical management and delivery of care within facilities in the NT. Participants may include medical practitioners, midwives and social workers.

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, as it involves the collection, storage, security, use, disclosure or publication of personal information. Data collected as part of the quality assurance activity will be de-identified following the morbidity and mortality meeting to ensure that no individual or individuals are identified prior to analysis or disclosure of the information. Participants will publish a range of information relating to clinical and system factors that contribute to perinatal and maternal morbidity and mortality in the NT Department of Health annual report, and annually in the NT Department of Health's Clinical Quality and Patient Safety Surveillance Report for the Health Services and Chief Executive Officer.

Conclusion

This 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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