

EXPLANATORY STATEMENT

ISSUED BY THE AUTHORITY OF

THE MINISTER FOR HEALTH

HEALTH INSURANCE ACT 1973

DECLARATION OF QUALITY ASSURANCE ACTIVITY

UNDER SECTION 124X

QAA 6/2015

Part VC of the *Health Insurance Act 1973* (the Act) creates a scheme to encourage efficient quality assurance activities. 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/or 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.

In order for Part VC to apply to an activity, the Minister must make a Declaration pursuant to section 124X of the Act, that the activity described in the Declaration is a quality assurance activity to which Part VC applies. Regulations 23C to 23G of the *Health Insurance Regulations 1975* (the Regulations) set out the public interest criteria that must be met by quality assurance activities to be declared under the section 124X.

This Declaration under subsection 124X(1) applies Part VC of the Act to the following activity:

1. The BreastSurgANZ Quality Audit and Outlier Process (the Activity).

An overview of the activity for which the Declaration pursuant to section 124X is made is contained in **Attachment B**.

Before the Minister can make a Declaration, certain requirements must be met.

Firstly, the Minister must be satisfied that the persons engaged in the activity are authorised to do so as described in paragraph 124X(3)(a) of the Act.

The Activity meets the requirements of paragraph 124X (3)(a) in that the persons engaged in this Activity are authorised to do so by Breast Surgeons of Australia and New Zealand Inc. (BreastSurgANZ), which is an association of health professionals.

Secondly, paragraph 124X(3)(b) of the Act provides that the Minister must be satisfied that it is in the public interest to have Part VC of the Act apply to the Activity. In doing so, the Minister must have regard to criteria prescribed by regulations 23C to 23G (inclusive) of the Regulations.

The Activity meets the criteria as follows:

- As required by regulation 23C, the Activity includes the disclosure of non-identifying information that concerns the quality of service assessed, evaluated or studied. Certain reports are available on the BreastSurgANZ website <http://www.breastsurganz.com/BQA>. Papers are also published in peer reviewed journals by BreastSurgANZ members and results presented at specialist meetings.
- Regulation 23D does not apply as the Activity will be undertaken in more than one State or Territory.
- Regulation 23E does not apply as the Activity has previously been engaged in Australia.
- Regulation 23F applies as the Activity has previously been carried out in Australia. This is a re-declaration of the activity previously declared as a quality assurance activity to which Part VC of the Act applies by declaration QAA 1/2010. The Minister's re-declaration will encourage increased participation in the activity by persons who provide health services by providing participants with confidence and security that documents created solely for the purposes of the Activity or information acquired by a person solely as a result of the Activity will be afforded the relevant protections from disclosure by Part VC.
- Regulation 23G does not apply as the Activity does not include the assessment or evaluation by a person of the services, skill or performance of a health practitioner for the purpose of determining the health care practitioner's clinical practicing rights.

CONSULTATION

Consultations regarding the application for declaration of this Activity were undertaken in June 2015 by the Chair of the Qualified Privilege Advisory Group. This included an assessment of the potential value of declaring the Activity as a quality assurance activity for the purposes of the Act, the methodology used to conduct the Activity, and whether the application met the criteria required for declaration.

Those consulted included the Department of Health's Principal Medical Advisor, Dr Andrew Singer.

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

The Declaration has effect from the day after registration on the Federal Register of Legislative Instruments. This Declaration ceases to be in force at the end of 5 years after the instrument of declaration is signed.

The Declaration is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

QAA 6/2015

ATTACHMENT A

1. THE NATIONAL BREAST CANCER AUDIT AND OUTLIER PROCESS

Purpose

The National Breast Cancer Audit is a clinical audit that collects medical information about a patient's early breast cancer treatment and compares the surgeon's performance to quality thresholds (minimum standards), which have been developed using the Guidelines for the Management of Early Breast Cancer. These minimum standards are used to inform the surgeons if their practices are consistent with best practice.

Participating surgeons become part of a quality information system designed to improve performance and quality of health care. The 'Outlier Process' involves identifying surgeons who do not meet the minimum thresholds and counselling them to improve their practices.

Objective/s

The objectives of the activity are to:

- improve the surgical care and management for all people with early breast cancer in Australia and New Zealand;
- keep up to date with changes in treatment based on available evidence and to ensure wide dissemination of this information to practitioners; and
- inform potential changes in clinical practice to improve patient outcomes and to provide information on the uptake of evidence-based treatment practices under different circumstances.

Statement of Compatibility with Human Rights

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

DECLARATION OF QUALITY ASSURANCE ACTIVITY UNDER SECTION 124X OF THE HEALTH INSURANCE ACT 1973 QAA 6/2015

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

This Legislative Instrument declares an activity to be a quality assurance activity to which Part VC of the *Health Insurance Act 1973* applies. Information produced solely for the purpose of this activity will be covered by qualified privilege.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Prof Chris Baggoley
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Department of Health