

EXPLANATORY STATEMENT

ISSUED BY THE AUTHORITY OF THE MINISTER FOR HEALTH

HEALTH INSURANCE ACT 1973

DECLARATION OF QUALITY ASSURANCE ACTIVITY UNDER SECTION 124X OF THE *HEALTH INSURANCE ACT 1973* - QAA 6/2017

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 is a quality assurance activity to which Part VC applies.

The *Declaration of Quality Assurance Activity under section 124X of the Health Insurance Act 1973 – QAA 6/2017* (the Declaration) has effect from the day after registration on the Federal Register of Legislation.

The Declaration applies Part VC of the Act to the following activity:

1. Australian and New Zealand College of Anaesthetists (ANZCA): *ANZCA Continuing Professional Development (CPD) Program – Practice Evaluation*.

An overview of the activity is contained in **Attachment A**.

Before making a declaration under section 124X, the Minister must be satisfied that the persons engaging in the activity are authorised to do so in one of the ways set out in paragraph 124X(3)(a) of the Act. The persons engaged in activity are authorised to do so by the Australian and New Zealand College of Anaesthetists (ANZCA) which is an association of health professionals (see subparagraph 124X(3)(a)(vi)).

Paragraph 124X (3)(b) of the Act provides that the Minister must be satisfied that it is in the public interest that Part VC of the Act apply to the activity. In doing so, the Minister must have regard to criteria prescribed by the regulation. The criteria are set out in regulations 23C to 23G of the *Health Insurance Regulations 1975*.

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 the service assessed, evaluated or studied. The outcomes of the practice evaluation activities will be published in the ANZCA Bulletin, the Annual report and on the ANZCA website.
- 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 in Australia.
- Regulation 23F(1) applies as quality assurance activities of this kind have previously been engaged in in Australia.

- Regulation 23F(2)(a) and (b) apply as the application of Part VC of the Act to the activity is necessary to make the activity effective as it encourages greater participation of Fellows of ANZCA, as persons who provide health services. The ANZCA Fellows have identified confidentiality as a fundamental prerequisite to their participation in the activity.
- Regulation 23F(3)(a) and (b) apply as the application of Part VC of the Act to the activity is necessary to make the activity effective by encouraging acceptance and implementation of recommendations by persons who provide health services, and to a greater extent than the acceptance and implementation of the previous activity. The activity does this by including four key practice evaluation activities that include patient and peer recommendations, two of which are mandatory to be completed during a three year cycle.
- Regulation 23F(4)(a) and (b) apply as the application of Part VC of the Act to the activity is necessary to make the activity effective by encouraging participation in monitoring the implementation of the recommendations. The activity does this by monitoring the implementation through a continuous audit cycle.
- Regulation 23G does not apply as the activity will not include the assessment or evaluation by a person of the services, skill or performance of a health care practitioner for the purpose of determining the health care practitioner's clinical practicing rights.

CONSULTATION

The ANZCA Continuing Professional Development (CPD) Program – Practice Evaluation was previously declared a quality assurance activity under section 124X of the Act in 2012 (*Declaration of Quality Assurance Activity under section 124X of the Health Insurance Act 1975 (QAA 1/2012)*). The ANZCA applied to continue the declaration of the activity as a quality assurance activity to which Part VC of the Act applies.

The ANZCA manages the activity and is a specialist medical college responsible for training, examining and specialist accreditation of anaesthetists and pain medicine specialists. They are also responsible for the standards of clinical practice in Australia and New Zealand. Participation in the activity is a mandatory component of the ANZCA's CPD Program, of which the Medical Board of Australia require all registered medical practitioners to participate according to the scope of their practice. It was, therefore not considered necessary to seek wider consultation.

The ANZCA was consulted in relation to the final design and content of the Declaration and their comments were taken into account.

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

The Declaration comes into operation on the day after registration on the Federal Register of Legislation.

Subsection 124X(4) of the Act provides that, unless sooner revoked, a declaration ceases to be in force at the end of 5 years after it was signed. Accordingly, the Declaration provides that it is repealed at the end of 5 years after it is signed.

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

OVERVIEW OF THE ACTIVITY

The activity consists of the self-directed and practice based learning activities required to be undertaken by Anaesthetists and Pain Medicine Specialists participating in the Australian and New Zealand College of Anaesthetists (ANZCA) Continuing Professional Development Program – Practice Evaluation. The activity is a study, analysis and audit of selected aspects of a medical specialist's clinical performance. Participants are required to assess their achievements and consider if their learning needs are met.

An ongoing review across the scope of practice for an anaesthetist and/or pain medicine physician ensures the best possible standards of clinical practice are maintained. Direct observations and clinical audits form the basis of recommendations to improve clinical care, and may be repeated to monitor the progress of implementing recommendations.

There are four key practice evaluation components, of which two are mandatory to be completed during a three year cycle (triennium) of practice:

- Patient experience survey
- Multi-source feedback
- Peer review of practice
- Clinical audit of own practice or significant input into group audit of practice.

The information collected from the activity will support the continual improvement of clinical performance for fellows of the ANZCA. ANZCA will publish an annual audit of non-identifying information from the CPD Program. A copy of this report will be forwarded to the Minister and will also be published in ANZCA's quarterly Bulletin magazine, the College's Annual Report and on the College website

The objectives of the activity are to:

- provide medical specialists with the opportunity to study, analyse and audit selected aspects of their clinical performance with the aim of improving the outcomes of their patients through ongoing review of their practice;
- ensure that high standards of clinical practice are maintained through regular external assessment;
- promote and facilitate the participation of Fellows in effective quality assurance methods within the scope of their practices;
- encourage a culture of self-directed learning, review and open and honest evaluation on professional practice among Fellows; and
- demonstrate the accountability of anaesthetists to the community by monitoring participation and evaluating the effectiveness of the Program.

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 6/2017*

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 *Declaration of Quality Assurance Activity under section 124X of the Health Insurance Act 1973 – QAA 6/2017* (the Declaration) declares the Australian and New Zealand College of Anaesthetists (ANZCA) Continuing Professional Development (CPD) Program – Practice Evaluation to be a quality assurance activity to which Part VC of the *Health Insurance Act 1973* (the Act) applies. 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 Right 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 solely for the benefit of establishing and improving outcomes of the community health care.

Conclusion

This Declaration is compatible with human rights as it promotes the right to health.