

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (Quality Assurance Activity – Australasian Vascular Audit) Declaration 2023

Purpose and operation

The *Health Insurance (Quality Assurance Activity - Australasian Vascular Audit) Declaration 2023* (the Declaration) declares the Australasian Vascular Audit (AVA) (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 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 Society for Vascular Surgery (ANZSVS). The quality assurance activity described in this declaration applies only to health services provided in Australia.

The Activity aims to prospectively capture all private and public vascular surgery procedures performed in Australia and New Zealand across five main areas of vascular surgery:

1. Aortic aneurysm, aortic dissection, and aortoiliac occlusive disease
2. Lower limb peripheral arterial disease
3. Stroke prevention from carotid atherosclerosis
4. Vascular access for haemodialysis in renal failure
5. Venous disease including varicose veins

The objectives of the Activity are to:

1. maintain the highest achievable standard of vascular surgery in Australasia, under the auspices of the ANZSVS;
2. allow participants to access their data and compare it with de-identified data from all other users and across hospitals where they operate;
3. allow corrective action by the Audit Monitoring Committee (AMC) in the event of significant adverse patient outcomes thus completing the audit loop; and
4. provide a collection of de-identified data for training, research and publication, including in presentations at ANZSVS annual conferences, AVA public reports and in local and international publications. This would only occur if approved by the AMC.

Users can compare their own results with their entire peer group in real time and produce hospital-level reports to facilitate regular unit audit meetings. There is no ability to visualise individual case data belonging to other surgeons or to view individual case data or aggregated reports for any hospitals other than those belonging to the surgeon who is logged in. Users of the Activity are subject to a random audit of their data to ensure accuracy.

Analysis of data is carried out by the AMC, which is comprised of four experienced clinicians elected from the ANZSVS membership. The AMC investigates and verifies statistically

significant variant results and uses an agreed decision tree process to identify and address underperforming outlier surgeon behaviour on a confidential basis. If a surgeon is identified as an outlier, they are asked to check that the data is correct. In some instances, the data needs correction and the statistically identified outlier may no longer be such after corrections have been made. If the data is correct, the surgeon is asked to explain adverse events in each patient. The AMC then decides if there is a matter requiring further counselling or whether a recommendation should be made for the surgeon to cease performing the procedure. If a surgeon is found to be an outlier, their performance outcomes are monitored in subsequent years.

The AMC can also monitor high-performing results of participants. If another participant wanted to achieve the same standards, the AMC can facilitate communication between consenting parties.

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 described in a declaration 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.

Commencement

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

Consultation

ANZSVS, 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 ANZSVS. The declaration of the Activity will not result in any direct or substantial indirect effect on business.

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**.

***Health Insurance (Quality Assurance Activity – Australasian Vascular Audit)
Declaration 2023***

Part 1 – Preliminary

Section 1 – Name

This section provides that the name of the Declaration is the *Health Insurance (Quality Assurance Activity - Australasian Vascular Audit) 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 ‘Australasian Vascular Audit’.

Item 2 – Description of activity

Item 2 describes the quality assurance activity as an audit that aims to capture all private and public vascular surgery procedures performed in Australia and New Zealand including both open and endovascular procedures. Activity data is entered into a secure database and analysed annually by the AMC to assess in-hospital performance across five main areas of vascular surgery.

ATTACHMENT B

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 – Australasian Vascular Audit) 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 (Quality Assurance Activity - Australasian Vascular Audit) Declaration 2023* (the Declaration) declares the Australasian Vascular Audit 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 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 solely for the benefit of improving 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*, 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 subsequently de-identified to ensure that no individual or individuals are identified prior to disclosure of the information. A range of de-identified information will be provided for training, research and publication, including in presentations at ANZSVS annual conferences, AVA public reports and in local and international publications.

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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