

1992

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

HEALTH INSURANCE
(QUALITY ASSURANCE CONFIDENTIALITY) AMENDMENT BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister for Health, Housing and Community
Services, the Honourable Brian Howe MP)



**HEALTH INSURANCE (QUALITY ASSURANCE CONFIDENTIALITY)
AMENDMENT BILL 1992**

GENERAL OUTLINE

This Bill will promote the undertaking of a range of quality assurance activities in relation to the provision of health services relating to certain funding or payments by the Commonwealth under the Health Insurance Act 1973 and the National Health Act 1953. This will be done by providing for statutory confidentiality and immunity protection in respect of quality assurance activities declared by the Minister by a disallowable instrument, in accordance with specified criteria, as declared quality assurance activities for the purposes of the Act.

The Bill will amend the Health Insurance Act 1973 by the inclusion of a new Part VC in relation to quality assurance activities in connection with the provision of applicable health services.

The Bill prohibits the disclosure of information known solely as a result of declared quality assurance activities to another person and the disclosure of such information or the production of relevant documents to a court. However, the Minister may authorise disclosure of information about conduct that may constitute a serious criminal offence. The Bill will not preclude the disclosure of information which does not identify either expressly or by implication, a particular individual or individuals.

The Bill will provide statutory immunity from civil proceedings to members of committees carrying out declared quality assurance activities. Statutory immunity will only attach to persons who engage in good faith in declared quality assurance activities in circumstances where the rights or interests of other people who provide health services are adversely affected. The Committee will be obliged to act within the law of procedural fairness, as the only action which will lie against Committee members is an action for breach of the rules.

FINANCIAL IMPACT STATEMENT

Establishing this statutory protective framework for quality assurance activities is of itself largely cost-neutral.

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NOTES ON CLAUSES

Part I - PRELIMINARY

Clause 1 - Short Title etc.

Subclause 1(1)

This new subclause is a formal requirement and provides for the Act to be cited as the Health Insurance (Quality Assurance Confidentiality) Amendment Act 1992.

Subclause 1(2)

This new subclause is a formal provision in that it identifies the Health Insurance Act 1973 as the "Principal Act" referred to in this Bill.

Clause 2 - Commencement

This new clause provides that the Part will come into operation on the day on which it receives Royal Assent.

Clause 3 - Insertion of New Part VC

This new clause inserts a new Part VC - Quality Assurance Confidentiality - after Part VB of the Principal Act. This Part provides for statutory protection in the form of confidentiality and immunity provisions to quality assurance activities which are declared by the Minister to be an activity to which this Part applies.

New Section 106J - Object of this Part

This new section provides that the object of this Part is to encourage efficient quality assurance activities in connection with the provision of certain health services.

For the purpose of achieving that object, this Part contains provisions:

(a) prohibiting:

- (i) the disclosure of information that becomes known only as a result of those activities; or
- (ii) the production to a court of a document that was brought into existence solely for the purpose of those activities; and

(b) protecting persons engaging in those activities in good faith from civil liability in respect of the activities.

New Section 106K - Interpretation

This new section is the interpretation section of the Part. Of particular note are the following definitions:

"authority" in relation to the disclosure of information means an authority given by the Minister under section 106N;

"court" includes a tribunal, authority or person having power to require the production of documents or the answering of questions;

"declared quality assurance activity" means a quality assurance activity declared by the Minister under section 106L to be an activity to which this Part applies;

"disclose" in relation to information means to give, reveal or communicate in any way;

"health service" includes any administrative or other service related to a health service;

"person" (except in reference to another person in section 106Q) includes a committee or other body of persons, or member of such committee or body;

"quality" in relation to health services provided by a person includes the practices of the person in providing the services or the competence of the person to provide the services;

"quality assurance activity" means: an assessment or evaluation of the quality, or a study of the incidence or causes of conditions or circumstances that may affect the quality of health services provided by a person, where that service is one in respect of which a payment may be made under Part II, III or IV of the Health Insurance Act 1973 or Division 2 of Part VII of the National Health Act 1953, and recommendations about such services;

"serious offence" means an offence punishable by imprisonment for a period of more than one year.

New subsection 106K(2) provides that, for the purposes of this Part, information can be said to have become known solely as a result of quality assurance activities even if it was previously known by the person in respect of whom the activity is engaged in.

New Section 106L - Declaration of a Quality Assurance Activity

This new section empowers the Minister to declare a quality assurance activity to be an activity to which this Part applies. New subsection 106L(1) provides that the Minister may by signed writing, declare a quality assurance activity described in the declaration to be a quality assurance activity to which this Part applies.

New subsection 106L(2) provides that a declaration may describe a quality assurance activity in any one or more of the following ways: by reference to the nature of the activity; by reference to a person who is engaging or proposes to engage in the activity; by reference to circumstances in which the activity is being or is proposed to be engaged in.

New subsection 106L(3) provides that the Minister must not make a declaration in respect of a quality assurance activity unless the Minister is satisfied that: any person who is engaging or proposing to engage in the activity is authorised to do so: under a law or by an authority of the Commonwealth, of a State or of a Territory; or by a body that provides health care; or by an educational institution; or by a body established wholly or partly for the purposes of research; or by an association of health professionals; or by any other prescribed body; and it is in the public interest that this Part should apply to the activity.

New subsection 106L(4) provides that the declaration ceases to be in force at the end of 5 years after the instrument of declaration was signed. This subsection does not prevent the Minister from making a further declaration in respect of the same activity. By virtue of the Acts Interpretation Act 1901 the Minister is also able to revoke a declaration at any time by the same process.

New Section 106M - Information about a Declared Quality Assurance Activity Not to be Disclosed

This new section requires that information known solely as a result of a declared quality assurance activity must not be disclosed. New subsection 106M(1) requires that a person who acquires information that becomes known solely as a result of a declared quality assurance activity, whether the information was acquired in the course of engaging in that activity, as a result of a disclosure under new section 106N or in any other way, must not, except for the purposes of that activity or in accordance with authority given by the Minister, either make a record of that information or disclose that information to another person or to a court. This subsection provides for imprisonment for 2 years for failure to comply.

New subsection 106M(2) provides that a person cannot be required to produce to a court any document that was brought into existence solely for the purposes of a declared quality assurance activity, or disclose to a court any information that became known solely as a result of such an activity, except when necessary for the purposes of this Part (see also new section 106N).

New subsection 106M(3) provides that the non-disclosure provisions of subsections (1) and (2) do not apply to information that does not identify either expressly or by implication, a particular individual or individuals.

New subsection 106M(4) provides that subsection (2) does not apply to a document that does not identify either expressly or by implication, a particular individual or individuals.

New subsection 106M(5) provides that disclosure of information is not prohibited if the person or each of the persons who would be identified by the disclosure, consents to disclosure of that information.

New subsection 106M(6) provides that disclosure of information to the Minister is not prohibited for the purpose of enabling the Minister to decide whether to authorise the disclosure of information under new section 106N.

New subsection 106M(7) provides for this section to continue to apply even if a quality assurance activity ceases to be a declared quality assurance activity in respect of information that becomes known, or a document that is brought into existence at a time when the quality assurance activity was declared.

New Section 106N - Minister May Authorise Disclosure of Information about a Serious Offence

This new section empowers the Minister to authorise disclosure of information about any conduct that may be a serious offence (as defined). This section applies to information that became known after the Part solely as a result of declared quality assurance activity, whether that conduct took place before or after the commencement.

However, the Minister can only authorise disclosure of information for the purposes of law enforcement, a Royal Commission, or other purpose prescribed by the regulations.

New Section 106P - Declaration to be Disallowable Instruments

This new section provides that an instrument of declaration of a quality assurance activity made under new section 106L is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

New Section 106Q - Immunity from Suit

This new section provides for immunity from action, suit or other civil proceeding (except for proceedings in respect of a breach of the law of procedural fairness) in circumstances where a person engages in any conduct in good faith in connection with a declared quality assurance activity; and the conduct adversely affects any right or interest of another person who provides health services; and the relevant person engages in the conduct as a member of a committee for the purposes of making an assessment or an evaluation of services provided by that other person; and all or a majority of the committee members are of the same health profession as that other person.

New subsection 106Q(2) provides that the section continues to apply even if after the conduct ceased to be engaged in, the relevant quality assurance activity ceases to be a declared quality assurance activity.

New Section 106R - This Part is to Complement Corresponding State and Territory Laws

New section 106R provides that it is not the intention of the Parliament that this Part should exclude or affect the operation of relevant State or Territory laws on quality assurance activities and this Part applies to those persons in respect of that activity only to the extent to which the relevant State or Territory law would not otherwise apply. The effect of this section is that if a committee of persons is authorised by a law of a State or Territory to engage in quality assurance activities; and if the relevant State or Territory law has the same general purpose as this Part, then this Part does not apply, exclude or affect the operation of the relevant State or Territory law.