

Part VC—Quality assurance confidentiality

124V Object of this Part

- (1) The object of this Part is to encourage efficient quality assurance activities in connection with the provision of certain health services.
- (2) For the purpose of achieving that object, this Part contains provisions:
 - (a) prohibiting:
 - (i) the disclosure of information that became known solely as a result of those activities; or
 - (ii) the production to a court of a document that was brought into existence solely for the purposes of those activities; and
 - (b) protecting certain persons engaging in those activities in good faith from civil liability in respect of the activities.

124W Interpretation

- (1) In this Part, unless the contrary intention appears:

authority, in relation to the disclosure of information, means an authority given by the Minister under section 124Z that is in force when the disclosure takes place.

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 in respect of which a declaration by the Minister under section 124X is in force when the activity is engaged in.

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

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health service includes any administrative or other service related to a health service.

person, except in the reference to another person in section 124ZB, includes a committee or other body of persons, whether incorporated or unincorporated, and includes a member of such a committee or other body.

produce includes permit access to.

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:

- (a) 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, whether before or after the commencement of this Part, being:
 - (i) services in respect of which payments were made, or that are or would be eligible for payments, under Part II or IV; or
 - (ii) services relating to the prescribing of pharmaceutical products in respect of which payments were made, or that are or would be eligible for payments, under Division 3 of Part VII of the *National Health Act 1953*; or
 - (iii) services in respect of which payments were made under the former *Health Care (Appropriation) Act 1998*, or that are or would be eligible for such payments; or
- (b) the making of a recommendation about the provision of those services as a result of such an assessment, evaluation or study; or
- (c) the monitoring of the implementation of such a recommendation.

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

- (2) For the purposes of this Part:
- (a) information about a matter is not taken to have become known merely because of the existence or dissemination of suspicions, allegations or rumours about that matter; and
 - (b) information may be taken to have become known solely as a result of a declared quality assurance activity even though it was previously known to a person whose actions have been or are being investigated by the persons engaging in the quality assurance activity.

124X Minister may declare quality assurance activity to be an activity to which this Part applies

- (1) The Minister may, by legislative instrument, declare a quality assurance activity described in the declaration to be a quality assurance activity to which this Part applies.
- (2) A declaration may describe a quality assurance activity in any way, including any one or more of the following ways:
- (a) by reference to the nature of the activity;
 - (b) by reference to a person who is engaging or proposes to engage in the activity;
 - (c) by reference to circumstances in which the activity is being, or is proposed to be, engaged in.
- (3) The Minister must not make a declaration in respect of a quality assurance activity unless the Minister is satisfied that:
- (a) any person who is engaging, or proposes to engage, in the activity is authorised to do so:
 - (i) under a law of the Commonwealth, of a State or of a Territory; or
 - (ii) by, or by an authority of, the Commonwealth, a State or a Territory; or
 - (iii) by a body that provides health care; or
 - (iv) by an educational institution; or
 - (v) by a body established wholly or partly for the purposes of research; or

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- (vi) by an association of health professionals; or
 - (vii) by any other prescribed body; and
 - (b) it is in the public interest, having regard to such criteria as are prescribed by the regulations, that this Part should apply to the activity.
- (4) A declaration, unless sooner revoked, ceases to be in force at the end of 5 years after the instrument of declaration was signed, but this subsection does not prevent the Minister from making a further declaration in respect of the same activity.

124Y Information about declared quality assurance activity not to be disclosed

- (1) Subject to this section, a person who acquires any information that became known solely as a result of a declared quality assurance activity, whether the person acquired the information in the course of engaging in that activity, as a result of a disclosure under section 124Z or in any other way, must not, except for the purposes of that activity or in accordance with an authority given by the Minister, directly or indirectly make a record of that information or disclose that information to another person or to a court.

Penalty: Imprisonment for 2 years.

- (2) Subject to this section, a person cannot be required:
- (a) to produce to a court a document that was brought into existence solely for the purposes of a declared quality assurance activity; or
 - (b) to disclose to a court any information that became known solely as a result of such an activity;
- except when it is necessary to produce the document or disclose the information for the purposes of this Part.
- (3) Subsections (1) and (2) do not apply to information that does not identify, either expressly or by implication, a particular individual or particular individuals.

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- (4) Subsection (2) does not apply to a document that does not identify, either expressly or by implication, a particular individual or particular individuals.
- (5) This section does not prohibit a disclosure of information if the person, or each of the persons, who would be directly or indirectly identified by the disclosure consents to that disclosure of the information.
- (6) This section does not prohibit the disclosure of information to the Minister for the purpose of enabling the Minister to decide whether to authorise the disclosure of the information under section 124Z.
- (7) If a quality assurance activity ceases to be a declared quality assurance activity, this section nevertheless continues to apply in respect of information that became known, or a document that was brought into existence, at a time when the activity was a declared quality assurance activity.

124Z Minister may authorise disclosure of information about a serious offence

- (1) If it appears to the Minister that information that became known after the commencement of this Part solely as a result of a declared quality assurance activity relates to conduct, whether the conduct took place before or after that commencement, that may have been a serious offence against a law (whether written or unwritten) in force in any State or Territory, the Minister may, by signed writing, authorise the information to be disclosed in a way stated in the instrument of authority for the purposes of law enforcement, a Royal Commission or any other prescribed purpose.
- (2) Subsection (1) does not permit the Minister to authorise the disclosure of information of a non-factual nature (such as statements of opinion) unless the information consists only of matter contained in a report prepared by a person who engaged in the quality assurance activity.

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124ZB Immunity from suit of members of assessment or evaluation committees

- (1) If:
- (a) a person (*the relevant person*) engages in any conduct in good faith in connection with a declared quality assurance activity; and
 - (b) the conduct adversely affects any right or interest of another person, being a person who provides health services; and
 - (c) the relevant person engages in the conduct as a member of a committee for the purposes of the making of an assessment or evaluation of services provided by that other person; and
 - (d) all or a majority of the members of the committee are health professionals belonging to the same health profession as that other person;
- no action, suit or other civil proceeding, other than a proceeding in respect of a breach of the rules of law relating to procedural fairness that is alleged to have occurred in the course of that conduct, may be brought by the other person against the relevant person in respect of that conduct.
- (2) If, after the conduct ceased to be engaged in, the relevant quality assurance activity ceases to be a declared quality assurance activity, this section nevertheless continues to apply in respect of the conduct.

124ZC This Part is to complement corresponding State and Territory laws

- If:
- (a) a committee of persons is authorised by a law of a State or Territory to engage in a quality assurance activity; and
 - (b) a law of that State or Territory (*the relevant State or Territory law*) that has the same general purpose as this Part would, if this Part had not been enacted, apply to the persons who are members of that committee in respect of that activity;

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it is the intention of the Parliament that this Part is not to exclude or affect the operation of the relevant State or Territory law 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.