The Commonwealth Qualified Privilege Scheme

The Commonwealth Qualified Privilege Scheme provides important safeguards for health care professionals who engage in effective quality assurance activities. This is important for all Australians – health care providers, patients, their carers and the community, as it helps to ensure the highest quality of our health care system.

This brochure is designed to provide information about the Commonwealth Qualified Privilege Scheme to those who wish to know more about the Scheme or who are considering applying for a declaration.

Quality assurance

Because health care is complex and continuously changing, health care professionals need to review and evaluate the quality of health care to ensure that the highest possible standards are maintained. This process is commonly called quality assurance or practice improvement.

Quality assurance embraces a wide range of activities. Some examples of these activities are:

- hospital based peer review processes such as clinical audits of surgical mortality rates;
- academic studies of the incidence of or causes of adverse events; and
- performance evaluation of individual health care professionals.

There is widespread support amongst health care professionals and consumers for open and positive participation in quality assurance activities. However, some people may be discouraged from participating in such activities because of fears that:

- information that is generated by the activities will be used in medical negligence litigation;
- they would be embarrassed if information generated by the activities was disclosed; and
- legal action would be taken against them for participating in the assessment or evaluation of the services provided by others.

Effective participation in quality assurance activities

The Commonwealth Qualified Privilege Scheme under Part VC of the Health Insurance Act 1973 is designed to remove these fears and encourage health care professionals to participate in quality assurance activities by providing:

- for the confidentiality of most information that identifies individuals and which becomes known as a result of declared quality assurance activities; and
- protection from civil proceedings (apart from those relating to the rules of procedural fairness) for members of committees that assess or evaluate the quality of health services provided by others.
In order for the privilege provided by the Commonwealth legislation to apply, the Minister for Health must make a declaration in relation to the specific activity.

Making a declaration

Before making a declaration for a quality assurance activity the Minister must be satisfied that:

- the people undertaking the activity are authorised to do so by law or one of the bodies specified in Part VC of the Health Insurance Act 1973; and
- it is in the public interest for the Commonwealth legislation to apply to the activity.

Such declarations are published in the Government Gazette and must also be scrutinised by Parliament. The Parliament has a power to disallow any declaration that the Minister makes and if this occurs the declaration would cease to have effect.

Public Interest Aspect

The Minister must be satisfied, on reasonable grounds, that declaration of the activity would be in the public interest. To be precise, it is not whether the activity itself is in the public interest but whether it being ‘declared’ is in the public interest.

Declaring the activity is said to be in the public interest if the Minister is satisfied that, amongst other things, the declaration will:

- encourage full participation in the activity, or in the case of an activity previously undertaken, encourage participation to a greater extent than in the previous activity; and
- encourage acceptance, implementation and monitoring of any recommendations which arise from the activity.

When considering whether it is in the public interest to make a declaration in relation to an activity the Minister must consider the criteria which is set out in the Health Insurance Regulations 1975.

The Minister may also consider criteria other than those set out in the regulations such as whether the activity in question has been approved by an ethics committee.

Responsibilities associated with declared quality assurance activities

Once an activity is declared, people must comply with the confidentiality requirements in the legislation. This means that any person (including a participant) who acquires information that identifies individuals that became known solely as a result of a declared activity must not disclose, or make a record, of that information.

Failure to do this is a criminal offence that is punishable by up to two years imprisonment.

State and Territory Qualified Privilege Legislation

Commonwealth qualified privilege legislation complements legislation in place in all Australian States and the Australian Capital Territory. The Northern Territory does not currently have local legislation of this type but is in the process of drafting new legislation for this purpose.
Many quality assurance activities take place in only one State or Territory. In these circumstances, the Australian Government would usually recommend that the application be referred to that State or Territory. However, in some circumstances, it may be appropriate to make a declaration under the Commonwealth legislation in relation to quality assurance activities that take place in only one State or Territory. For example, where a quality assurance activity involves a methodology that is new in Australia or has the potential to affect the quality of health care on a national scale.

If a quality assurance activity is to take place in more than one State or Territory, it is generally appropriate to seek a declaration under the Commonwealth legislation.

Health care professionals who are interested in legislative protection for their quality assurance activities and are not sure which legislation (State, Territory or Commonwealth) applies should contact their State or Territory Department of Health to discuss which form of protection is most appropriate.

**Applying for declaration of a quality assurance activity**

A person who wishes to seek a declaration in relation to a quality assurance activity under the Commonwealth legislation must do so by completing the application form approved by the Minister. Applicants are required to provide a range of information including details about the design and expected outcomes of the quality assurance activity. It is essential that this application form be completed in full to ensure comprehensive and accurate assessment of the application against criteria set out in the legislation.

A declaration only relates to the specific quality assurance activity that is the subject of the application. It does not extend to associated or consequential quality assurance activities - these must be the subject of a separate application.

The application form can be obtained from the Department’s internet site at [http://www.health.gov.au/internet/main/publishing.nsf/Content/qps-apply](http://www.health.gov.au/internet/main/publishing.nsf/Content/qps-apply), or by contacting the Director, Therapeutic Device Registers Section on (02) 6289 1555 or email TDR@health.gov.au.

On completion please return the application form to:

The Director  
Therapeutic Device Registers Section  
Safety, Quality and Research Branch  
Department of Health  
MDP 67  
GPO Box 9848  
CANBERRA ACT 2601

Email: TDR@health.gov.au

If you have any questions relating to the Commonwealth Qualified Privilege Scheme or would like assistance completing your application form please contact the Director, Therapeutic Device Registers Section on (02) 6289 1555 or email TDR@health.gov.au.