

PART VC (QUALITY ASSURANCE CONFIDENTIALITY) *Health Insurance Act 1973 (Cth)*

Part VC (quality assurance confidentiality) of the *Health Insurance Act 1973 (Cth)* (the Commonwealth Act) incorporates similar provisions to the WA Act to protect information that is gathered for the purposes of approved quality assurance processes.

The objective of Part VC of the Commonwealth Act is described in that Act as follows:

- (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”¹⁸³.

The Commonwealth Act incorporates similar forms of legal protection to the WA Act, including:

- prohibition on disclosure of “identifying” information that is gathered for approved purposes; (“identifying” information being information that could allow the identity of a person who has received a health care service to be ascertained. The disclosure prohibition in the Commonwealth Act does not apply to de-identified information.)
- protection of persons engaged in approved activities from being compelled to produce documents or otherwise disclose identifying information or give evidence in a court, tribunal, etc., except with the consent of individuals whose identities would be disclosed; and
- provision of legal immunity for persons who engage in approved quality assurance activities in good faith.

The Commonwealth legislative scheme differs from that in the WA Act in the following material respects:

- The Commonwealth Act provides for the Federal Minister for Health (the Federal Minister) to approve quality assurance *activities*, rather than *committees*, and is hence potentially broader in scope and application.

Specifically, the Act contemplates the Federal Minister approving activities by reference to their nature, the person who engages in the activity, or the circumstances in which an activity is engaged in. An activity may be approved for up to five years, not three as under the WA scheme.

The term *quality assurance activity* is defined in the Act to refer to an assessment or evaluation of the quality of health services for which Medicare or pharmaceutical benefits are payable, including the making of recommendations and monitoring of the implementation of recommendations in relation to such services.

- A second difference is that the Commonwealth Act authorises the Federal Minister to disclose information that would otherwise be protected if the information relates to conduct that may involve the commission of an offence against State or Territory law which is punishable by a term of imprisonment of one year or more.

RELATIONSHIP BETWEEN LEGISLATIVE SCHEMES

Provision is made in the Commonwealth Act for co-existence with comparable legislative schemes at State/Territory level.

The Commonwealth Act is not intended to affect (i.e. does not take precedence over) the operation of State/Territory legislation. However, where a State has its own legislative scheme, as Western Australia does, the Commonwealth Act may still apply to the extent that an activity falls outside the scope of the relevant State/Territory legislative scheme.

Thus, if a quality assurance activity cannot be protected under State legislation, it is possible for the Commonwealth's scheme to apply. Regulations made under the *Health Insurance Act 1973 (Cth)* specify matters that the Federal Minister must be satisfied about before he may approve a quality assurance activity that is carried on in only one State for the purposes of the Commonwealth Act.

Publications

Part VC (quality assurance confidentiality) of the *Health Insurance Act 1973*