



HEALTH AND ENVIRONMENT COMMITTEE

Members present:

Mr AD Harper MP—Chair
Mr R Molhoek MP
Mr SSJ Andrew MP
Ms AB King MP
Ms JE Pease MP
Mr A Powell MP

Staff present:

Ms R Easten—Committee Secretary
Ms R Duncan—Assistant Committee Secretary

PUBLIC BRIEFING—INQUIRY INTO THE HEALTH PRACTITIONER REGULATION NATIONAL LAW (SURGEONS) AMENDMENT BILL 2023

TRANSCRIPT OF PROCEEDINGS

Monday, 22 May 2023

Brisbane

MONDAY, 22 MAY 2023

The committee met at 12.22 pm.

CHAIR: Good afternoon. I declare open this public briefing for the Health and Environment Committee's inquiry into the Health Practitioner Regulation National Law (Surgeons) Amendment Bill 2023. I am Aaron Harper, the member for Thuringowa and chair of the committee. I would like to start by respectfully acknowledging the traditional custodians of the land on which we meet today and pay our respects to elders past and present. We are fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander people, whose lands, winds and waters we all now share. Other committee members here with me today are Rob Molhoek, member for Southport and deputy chair; Joan Pease, member for Lytton; Ali King, member for Pumicestone; Andrew Powell, member for Glass House; and joining us shortly will be Stephen Andrew, member for Mirani.

On 20 April 2023 the Hon. Yvette D'Ath, then minister for health and ambulance services, introduced the Health Practitioner Regulation National Law (Surgeons) Amendment Bill 2023 into the Queensland parliament and referred it to this committee for detailed consideration and report. The briefing today by representatives from Queensland Health is to respond to the issues raised in submissions and in the public hearing for the inquiry. This briefing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. I remind committee members that officers are here to provide factual or technical information. Questions seeking an opinion about policy should be directed to the minister or left to debate on the floor of the House.

MAHLER, Mr Karson, Director, Legislative Policy Unit, Strategy, Policy and Reform Division, Queensland Health

SLAPE, Ms Kirsten, Manager, Legislative Policy Unit, Strategy, Policy and Reform Division, Queensland Health

CHAIR: Welcome. I invite you to make an opening statement and then we will go to any questions.

Mr Mahler: Thank you for the opportunity to further brief you on the Health Practitioner Regulation National Law (Surgeons) Amendment Bill 2023 and to respond to the issues raised by submitters. I would also like to start by acknowledging the traditional custodians of the land on which we are meeting today and pay my respects to their elders past, present and emerging.

This bill prioritises public safety by ensuring healthcare consumers are not misled and can be confident that a medical practitioner claiming to be a surgeon is in fact appropriately qualified to perform surgery. With the committee's permission, I will not summarise the amendments in the bill again. Instead, I will briefly respond to some of the key issues raised during the proceedings today and in the written submissions made to the committee. Before doing so, I should thank everyone who made submissions on the bill, through both the Queensland process and the national regulatory impact statement. We had over 150 practitioners and professional organisations and nearly 1,400 members of the public that made submissions to the consultation process. Contributions from professionals and the public throughout the development of the bill speak to the wideranging community interest in the matter. With that said, I will now speak briefly on some of the issues that have been raised and then we would be happy to take questions.

Consultation on the regulation of cosmetic surgery in Australia has demonstrated the need to protect the title 'surgeon' to reduce confusion among the public about the training and qualifications of medical practitioners. Consistent with what we have heard today, most of the submissions to the committee broadly agree that the title 'surgeon' should be protected. Where there seems to be a difference of opinion is about who should be approved to use the title. Some stakeholders want to broaden who can call themselves a surgeon, while others would like to narrow the discretion of health ministers to approve additional classes of surgeons in the future.

On the matter of who should be able to call themselves a surgeon, the submissions broadly reflect two questions: within the medical profession, which practitioners should be able to use the title 'surgeon'; and, separately, should the restrictions on title extend beyond the medical profession to practitioners registered in the other 15 health professions, including in particular podiatrists and dentists?

On the first question, concerning which medical practitioners should be able to use the title 'surgeon', the bill defines the approved surgical classes, as we all know at this point, to include medical practitioners with specialist registration in surgery, obstetrics and gynaecology or ophthalmology. These were the classes determined by health ministers based on advice of the Australian Medical Board. To be registered in these three specialties, a medical practitioner is required to have successfully undertaken significant AMC specialist surgical training or equivalent training in the case of international medical graduates, which is an important point. Complex surgery is also part of the normal scope of practice for these specialists.

The bill will allow the ministerial council, which comprises health ministers of all states and territories and the Commonwealth, to make regulations prescribing additional classes of medical practitioners that can use the title 'surgeon'. The ability to prescribe additional classes by regulation will accommodate future changes to the medical profession or the broader healthcare sector. This will provide flexibility for health ministers to consider and adapt to new and unanticipated circumstances. For example, health ministers will be able to consider factors such as the recognition of comparable overseas training, the approval of new medical specialties or subspecialties, and the unique circumstances of hard-to-staff locations or areas of need. This critical flexibility would be undermined if the committee were to accept the amendments proposed by several stakeholders today, by which I refer to the various suggestions around clause 5 of the bill. The department's view is that the proposed amendments to clause 5 are unnecessary and could be counterproductive, and we would be happy to discuss that further.

The bill does include constraints and guidance to support ministers in making decisions about allowing additional classes of medical practitioners to use the title 'surgeon'. In particular, clause 4 of the bill will require health ministers to have regard to any advice of the Medical Board, and the Medical Board in turn would seek advice from the Australian Medical Council. The bill will also require health ministers to have regard to the surgical training required to be a member of the approved class, so there are intelligible principles in the legislation that do not allow classes to be prescribed without due regard to the qualifications of practitioners. As the primary regulator of medical training, accreditation and registration standards in Australia, the Medical Board is the most appropriate entity to advise health ministers on these matters, in consultation with the Australian Medical Council, and that is codified in the legislation.

We note that the Australian College of Rural and Remote Medicine and the Royal Australian College of General Practitioners seek to add practitioners in their fellowships to the initial scope of surgical classes. The Medical Board and health ministers considered this during the development of the bill. Consistent with the advice of the Medical Board at that time, health ministers decided to restrict the title 'surgeon' to practitioners with specialist surgical training as included in the bill, however, retaining the flexibility to consider these classes in future. The bill has also been drafted to minimise any impact on GPs and their provision of rural medicine. While rural and other GPs will not be able to use the title 'surgeon' under the bill as drafted, their Medicare reimbursements and scope of practice will not be limited by the bill.

I will turn briefly to the second question that I mentioned: whether the restrictions on title should be extended beyond the medical profession. It is important to recognise that the existing provisions of the National Law already prohibit most non-medical practitioners from calling themselves surgeons. This is for the simple reason that in almost all cases the use of the title 'surgeon' would reasonably imply that a person is a medical practitioner. As the committee is aware, there are some narrow exceptions to that general rule. As noted in the department's response to submissions and in the explanatory notes to the bill, podiatrists who hold specialist registration in podiatric surgery would still be able to use the title 'podiatric surgeon'. Similarly, dentists who hold specialist registration in oral surgery could continue to call themselves oral surgeons. They would not be able to call themselves cosmetic surgeons. They would not be able to hold themselves out as general surgeons or as any other type of surgeons. They could refer to themselves as oral surgeons or podiatric surgeons. Finally, dentists may continue to use the historical title of dental surgeon, although it is very unclear that many dentists are still doing that. It is an historical anomaly and not one that the bill seeks to address.

In these narrow circumstances, health ministers have made the judgement that the use of the title 'surgeon' is unlikely to lead to confusion about a practitioner's qualifications; for example, by suggesting that they are qualified to perform surgery that is outside their scope of practice. It should be emphasised, as Mr Fletcher mentioned earlier, that the existing title protection provisions in the National Law would prevent these practitioners from holding themselves out in a way that implied they were members of the medical profession or that they hold registration in a surgical specialty that they do not. Inappropriate use of the title 'surgeon' could also be a consideration in whether a practitioner was wrongfully holding out in this manner.

The final issue I would like to touch on briefly is implementation and communication of the reforms. The title protection provisions fit within the National Law's existing title protection scheme. As such, Ahpra advises that only minimal changes are required to support regulatory implementation, but education and communication will be critical to ensuring the success of the title protection and broader cosmetic surgery reforms. Ahpra's submission indicates it is committed to working with the Commonwealth to explain the reforms and provide stronger guidance for doctors who perform cosmetic surgery. Health ministers have also commissioned a national public education campaign as part of their suite of reforms to strengthen the regulation of cosmetic surgery. That campaign was launched 5 April and highlights the importance of prospective patients being aware of the risks involved in cosmetic surgery and having quality information to support an informed and safe choice. The campaign also advises the public to report cosmetic surgery issues to Ahpra's newly activated cosmetic surgery hotline.

Ahpra and the Medical Board have also updated their practice guidelines and advertising obligations for practitioners who perform cosmetic surgery, which will be effective from 1 July 2023. Other appropriate ways to communicate the changes to practitioners and the public are also being considered. Thank you, Chair, for the opportunity to address the committee. We would be very pleased to take any questions.

CHAIR: I am going to open it up to the committee.

Mr POWELL: Thank you for your contribution and responding to some of the concerns raised by submissions. You did mention in your opening comments that you do not believe there needs to be further amendment to subsection (5)(e) as has been raised. You offered to unpack that a little bit; would you mind doing so?

Mr Mahler: Happily. The purpose of that clause, as I mentioned, is to provide some flexibility for health ministers to enlarge the classes of prescribed practitioners who can use the title 'surgeon' in the future. It is subject to tight constraints around having to consider the advice of the Medical Board and then, by extension, the Australian medical college. It is not intended to up-end the well-established scheme under the National Law for accrediting new specialties, recognising those specialties, but it is intended to provide a critical amount of flexibility to address some of the scenarios that we have heard about today, for example with your rural generalists.

There is a lot we do not necessarily know, and we do not want to have unintended consequences as a result of this legislation. We heard that Queensland has specialist equivalence recognition around rural generalists. Other states and territories that will also be subject to this legislation—because it is not Queensland specific legislation—have their own innovative workforce arrangements, so there needs to be some recognition of that and some ability to consider those edge cases and, if needed, to tweak the prescribed classes. However, ministers have made the decision—and we are here today because health ministers have made the decision—that in the main only registered health practitioners who have advanced surgical qualifications should be able to use the title 'surgeon'.

The initial classes that are set out in the bill align strictly with that policy intent. We heard some examples today or hypothetical scenarios about, for example, that ministers could create a grandfathering exemption or some sort of blanket rule that would allow all American trained physicians to come in and call themselves surgeons. I would submit that these are quite speculative and, frankly, not very realistic scenarios, given that we are dealing with a well-established national scheme with rigorous accreditation and registration processes that are baked into the scheme.

This bill picks up on those processes. For example, if ministers were recognising additional classes of prescribed practitioners, presumably they would be doing that on the basis of the Medical Board's advice and the AMC's advice. In all likelihood, there will be in that situation an accreditation standard, a registration standard—all of the things that you would need to recognise a specialty under the National Law. The idea that that provision creates an end run or some sort of ability to just recognise new classes of practitioners on a whim I would submit is probably a little bit hysterical and

not very realistic in practice. Relatedly, if we were to go down that pathway of trying to prescribe in primary legislation every single possible class of surgeon and anticipate how that might need to change over time, I think the committee can probably appreciate how that could become quite unworkable. For those reasons, the department does not consider that those proposed amendments are necessary.

Mr POWELL: Just to be clear, that is amendments to either tighten it, as we heard from RACS and others, or to amend it, as we heard from rural GPs. The rural GPs were looking to add an amendment that put them as a class.

Mr Mahler: That is right. With the rural GPs—

Mr POWELL: Not using their correct title, but for the sake of—

Mr Mahler: I understand the question. I think the issue with rural GPs is that they would like to have their fellowship recognised now so they can use the title 'surgeon'. Health ministers were not ready to go quite that far, because they have taken a very public protective approach, so they wanted to start with only the RACS trained surgical specialties. However, they wanted to preserve that flexibility so they can go back over the course of the next six to 12 months and say, 'Are there some tweaks we need to make?'—for example, to be able to recognise some limited ability for rural generalists or some of these overseas trained practitioners who are coming in perhaps with full internationally recognised qualifications but they are going through the registration processes here. Are there some exceptions, some refinements, that need to be made so that those practitioners are able to use an appropriate title and are not subject to criminal penalties if, for example, they are going through the registration process and referring to themselves as a surgeon because they are qualified as a surgeon overseas. Those are a couple of examples of where that flexibility might come into play.

CHAIR: Notwithstanding that rural generalists have an application in front of the AMC currently that may well put them within that cohort.

Mr Mahler: That is right.

Mr MOLHOEK: I think it was well documented during the health inquiry we conducted about two years ago that there was incredible frustration by rural health groups around the two-tier recognition of rural health specialists and their qualifications versus other groups. I do think it is an issue that needs to be fleshed out.

CHAIR: It is in front of the AMC.

Mr MOLHOEK: It is probably not for this bill, but there is a lot of frustration in rural health about the lack of recognition.

CHAIR: And they are in front of the AMC currently.

Ms PEASE: You may have answered this question in discussions with the member for Glass House. One of our presenters made a statement around overseas trained surgeons and the potential that they might not have suitable credentials. You talked about how they are going through the process. Is there any potential that people who do not have appropriate qualifications can still use the title 'surgeon' which they would not be credentialed to use in Australia?

Mr Mahler: No, that would not be the case. Under the bill it is limited to practitioners who hold current specialist registration in one of those surgical fields. My comment was around the flexibility of having that regulation-making power to be able to potentially, in situations—because recruitment of medical practitioners from overseas is a big issue right now. There is a lot of work going on nationally. We do not want to be creating barriers to that happening. There could be unintended consequences. For example, an eminent surgeon from Great Britain might come to Australia and be applying for registration. Because of the way that the title protections are set out in the National Law, they could potentially be ensnared in a criminal offence provision if this legislation were strictly interpreted and strictly construed. That is a situation where perhaps ministers might take advice and decide to create a narrow exception for an overseas practitioner who has certain qualifications that are beyond repute. They have to go through the formalities of becoming registered in Australia, but perhaps clarifying that while they are doing that if they refer to themselves as a surgeon outside of the clinical context—obviously they are not practising, but if they simply continue to refer to themselves as a surgeon—then they are not committing the criminal offence of holding themselves out as such.

Ms PEASE: What I am trying to understand is the opposite end of that. You might have the eminent surgeon, but what about people who are not? What about those who are coming in and might hold qualifications because they have done some limited training as a surgeon? Is there any

possibility that the same could happen in that circumstance where they have a qualification of limited surgical ability but are able to get around it and call themselves 'surgeon' and make out to be surgeons?

Mr Mahler: There is always the possibility with delegated legislation, I suppose, that your delegates could go rogue and create all sorts of exemptions, so it is a hypothetical possibility. Going back to what I said before, we need to recognise that health ministers have requested these reforms and crafted them because they are seriously concerned about the misuse of the title 'surgeon'. It seems unlikely that—

Ms PEASE: Yes, unlikely; it sounds like it would be.

Mr Mahler: I think they would be carefully considering, if they were to use this at all—and, frankly, they may not, but if they were to use this flexibility then they would be taking the advice of the Medical Board and the AMC and carefully working through those issues and working with the departments to narrowly tailor something, if it were necessary. I think we have to give, at some point, a little faith and credit to our elected representatives to make those decisions.

Ms KING: We so seldom hear that.

CHAIR: We will take that as a compliment.

Mr Mahler: With expert advice and counsel of their departments, I am sure.

CHAIR: Thank you for clarifying.

Mr ANDREW: Say a cosmetic surgery practice sees high demand for small and different types of surgeries. The person who runs that practice is a surgeon. Is it possible that some of the people who work within that practice and have done some of the procedures but are not surgeons can still work within that practice underneath that surgeon's name? Can they still carry out procedures? Does the bill catch them? Say the person in charge of the practice is a surgeon but some of the people who work within the practice are not surgeons and are still doing the procedures.

Mr Mahler: I think I understand the question. Is it about how these protections will affect allied professionals who are working with somebody who is a surgeon?

Mr ANDREW: That is correct.

Mr Mahler: No. Every practitioner has to represent themselves consistent with their qualifications. If you are working for a surgeon, that does not mean you can ride on their coat-tails and suggest that you are qualified to perform surgery.

Ms Slape: It might come down to an analysis of the circumstances. Are you going in saying, 'I am an associate of this surgical office and I can perform this surgery'? How far are you going down the track of saying, 'I am a surgeon' without saying that you are a surgeon? The bill is not restricted to just using the title 'surgeon'; it is also holding yourself out as a surgeon. In the circumstances, if a practitioner is leading a patient to believe that they are a surgeon through what is on the door, what they are saying, what their qualifications are, they would be captured.

Mr ANDREW: They could say, 'We have done this procedure a thousand times before.'

Ms Slape: 'I have done it a thousand times. I am a member of the awesome cosmetic surgeons'—

Mr ANDREW: 'And the guy who runs and owns the show is a surgeon so I am working under his guidance.'

Ms Slape: Yes: 'I am working under his guidance and I have this level of surgery.' If you are going down the track where you are holding yourself out as a surgeon then you would be captured by the bill and prohibited from doing so.

Mr MOLHOEK: I have a question for you to take on notice. It is similar to the question I asked of the OHO but it goes in a slightly different direction. In terms of all the different categories of surgeons, right through to general registrants who perform cosmetic surgery, do we have any data on how many there are in Queensland who fit in all these different categories?

Mr Mahler: I am sure we can provide that.

CHAIR: There being no further questions, I thank the representatives from Queensland Health for being here today and for their contribution. I declare this briefing closed.

The committee adjourned at 12.48 pm.