

Health Practitioner Regulation National Law (Surgeons) Amendment Bill 2023

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Ms Renee Easten
Committee Secretary
Health and Environment Committee
Parliament House
George Street
Brisbane Qld 4000

Via email: hec@parliament.qld.gov.au

Dear Ms Easten

Submission on the *Health Practitioner Regulation National Law (Surgeons) Amendment Bill 2023*

Thank you for inviting the Australian Health Practitioner Regulation Agency (Ahpra) and the National Boards to make a submission to the Health and Environment Committee on the *Health Practitioner Regulation National Law (Surgeons) Amendment Bill 2023* (the Bill) that was introduced into Queensland Parliament by the Hon Yvette D'Ath, Minister for Health and Ambulance Services on 20 April 2023.

Summary of submission

- Ahpra and the National Boards support the proposed changes to protect the title 'surgeon' within the medical profession. We believe they support public safety and strengthen the regulation of cosmetic surgery in Australia.
- We support the Bill clarifying the decision-making authority of state and territory tribunals after hearing a matter about a registered health practitioner.
- It is important to view the amendment to protect the title 'surgeon' in the broader context of a suite of reforms that the Medical Board of Australia (MBA), Ahpra and Australian Health Ministers have agreed are necessary to protect the public from serious risk of harm from the cosmetic surgery industry. These reforms are summarised in [Diagram 1](#) below. Many of these reforms arise from recommendations from the [Independent review of the regulation of medical practitioners who perform cosmetic surgery](#) (the independent review).

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Ahpra and the National Boards regulate these registered health professions: Aboriginal and Torres Strait Islander health practice, Chinese medicine, chiropractic, dental, medical, medical radiation practice, midwifery, nursing, occupational therapy, optometry, osteopathy, paramedicine, pharmacy, physiotherapy, podiatry and psychology.



About us and our work relevant to the Bill

The National Scheme is now in its thirteenth year of operation. The Queensland Health and Environment Committee is aware of the work that we do in Queensland in conjunction with the Queensland Health Ombudsman (OHO). Trust is fundamentally important to being an effective regulator. Ahpra and the National Boards rely on members of the community, health practitioners, students, employers, co-regulators, educators and many others to engage and work with us as national regulators. They expect us to be fair, transparent, responsive, empathic and accountable as we regulate and work effectively with our partners to keep the public safe.

Nationally, Ahpra works in partnership with 15 National Boards to regulate over 850,000 registered health practitioners from 16 health professions. Together, our primary role is to protect the public and set the standards and policies that all registered health practitioners must meet. Our mission is to protect the public by regulating health practitioners fairly and effectively to facilitate access to safer healthcare. The National Law prescribes the roles and powers that National Boards and Ahpra have in addressing concerns about the practice and conduct of registered health practitioners (and in certain circumstances, registered students).¹

As a professional standards regulator, National Boards have powers to intervene when there is an ongoing risk to the public that requires regulatory oversight, or the performance or behaviour of the practitioner is so far below the standard expected that their overall fitness to practise is called into question. Ahpra is responsible for prosecuting breaches of protected titles and 'holding out' offences under the National Law, including when the alleged breach is by a registered health practitioner.

¹ Health Practitioner Regulation National Law, as in force in each state and territory (the National Law). Part 5 sets out the functions of National Boards. Part 4 sets out the functions of Ahpra as the National Agency for the scheme. Part 8 sets out health performance and conduct powers. The National Law, as it applies in each state and territory, is accessible from that jurisdiction's Legislation website.

The Bill

We take the opportunity to comment on the key changes and expected benefits for public safety and awareness, should the Bill be passed.

a. Protecting the title 'surgeon' – how will this help protect the public

We welcome an explicit provision being inserted in the National Law to protect the use of the title 'surgeon' within the medical profession, to ensure that only medical practitioners with significant surgical training can use the title, make claims, or hold themselves out as being a surgeon. Consistent with other title protection provisions already in the National Law, it will also be an offence for an employer or other person to falsely claim a medical practitioner is a surgeon or hold a person out as being a surgeon.

There is confusion about the use of the title surgeon, particularly in the cosmetic surgery sector. Feedback received from the independent review and through consultation arising from the *Decision RIS - medical practitioners' use of the title surgeon under the National Law* confirms this. The change being progressed in the Bill – in combination with the broader suite of reforms for cosmetic surgery – will help to address this confusion.

In practical terms, having a specific title protection for 'surgeon' will give us clear and necessary tools to prosecute individuals who breach consumers' trust and confidence. These tools are backed by new offences for both misuse of this specific title and/or misleading consumers about the specialist qualifications of a medical practitioner. For example, the amendment will allow us to take action to stop practitioners casually or formally adopting the title of 'surgeon' as a shorthand way of presenting themselves as having specialist qualifications and skills when they are not registered in a surgical class – whether on business cards, in social media, in professional profiles or in conversations with colleagues and patients.

b. Definition of 'surgical class'

The title protection provision is crafted so that only those medical practitioners who are included in a 'surgical class' can use the protected title 'surgeon'. Surgical class means medical practitioners holding specialist registration in three specialties: surgery, obstetrics and gynaecology and ophthalmology. To future proof the change, provision is also made for other classes to be prescribed by regulation.

The Medical Board of Australia (the Medical Board) recognises that the definition of surgical class is consistent with their advice to Health Ministers that only medical practitioners who have successfully undertaken significant, Australian Medical Council (AMC) accredited specialist surgical training (or equivalent in the case of international medical graduates with specialist registration) should be able to use the title.

The Medical Board publishes a [List of specialties, fields and related titles](#) that identifies the three specialties included in the definition of surgical class – and for surgery the fields of specialty practice.

As a result, the Medical Board and Ahpra understand that an individual holding specialist registration as follows will be able to lawfully use the title 'surgeon' if the Bill is passed:

Individuals with specialist registration in **surgery** –

- Cardio-thoracic surgery
- General surgery
- Neurosurgery
- Orthopaedic surgery
- Otolaryngology – head and neck surgery
- Oral and maxillofacial surgery
- Paediatric surgery
- Plastic surgery
- Urology
- Vascular surgery

Individuals with specialist registration in **ophthalmology** – commonly referred to as 'eye surgeons'

Individuals with specialist registration in **obstetrics and gynaecology** – commonly referred to as 'gynaecological surgeons'

The Medical Board also acknowledges that if in the future, other classes of medical practitioners are being considered, that Australian Health Ministers must have regard to any advice provided by the Board before a class is prescribed by regulation. The Board is the appropriate body to advise Ministers on this matter.

c. Clarification of application of change to other registered health professions

Ahpra and the National Boards support the clarification that the title protection provisions do not apply to practitioners who are registered in a health profession other than medicine. Registered podiatrists who hold specialist registration in podiatric surgery are lawfully able to use the title 'podiatric surgeon'. The title 'oral surgeon' is a protected title for dentists who are registered dental specialists and some dentists still use the informal title 'dental surgeon' in their practice of dentistry. Of course, other current protected titles for the medical profession and other registered health professions will continue to apply, so the title protection proposed in the Bill acts as an additional and valuable safeguard.

d. Penalties

The maximum penalty for a breach of this provision (which is a criminal offence) is \$60,000 or three years imprisonment for an individual or \$120,000 for a body corporate. This aligns with penalties for the other protected title and holding out provisions of the National Law. Ahpra and the National Boards fully support the penalties being set at this level to send a clear message that breaches are serious and to deter unscrupulous practices and behaviour.

e. Clarification of s.196 of the National Law (decision by responsible tribunal about registered health practitioner)

Ahpra and the National Boards support this change to address the split in interpretation of Tribunal decision-making. Ensuring nationally consistent decision-making by Tribunals hearing the most serious matters brought to them under the National Law is critically important to the National Registration and Accreditation Scheme. We also support the Bill putting beyond doubt that the imposition of *restrictions* on the provision of health services by a Tribunal will be reflected on the public register and is enforceable in the same way as an order issued by a Tribunal to *prohibit* a practitioner from providing health services.

Interface between protection of title 'surgeon' and establishing an area of practice endorsement for cosmetic surgery

The area of practice endorsement for cosmetic surgery for medical practitioners:

- is one part of a package of reforms designed to clean up the cosmetic surgery industry, raise standards and better protect patients
- will enable patients to make informed choices
- will make it clear on the public register if a doctor has met high standards – either as a surgeon with specialist registration, through an endorsement for cosmetic surgery, or both.

The reform follows a public consultation in December 2022 and acts on the recommendations made by the independent review.

In her first reading speech, Minister D'Ath observed that: *The public reasonably assumes that doctors calling themselves a 'surgeon', or a 'cosmetic surgeon' or an 'aesthetic surgeon' have at least a minimum level of advanced specialist surgical training. However, this is not always the case. Currently, any registered medical practitioner may refer to themselves as a 'surgeon', even if they are not registered in a surgical specialty and have not completed any significant postgraduate surgical training.*

The Bill makes it clear that if a person uses the word 'surgeon' either by itself or with other words, such as 'cosmetic surgeon' or 'aesthetic surgeon', and that person is not a medical practitioner in a surgical class, that this would be an offence which may be prosecuted by Ahpra.

We understand that health consumers want to make informed and safe choices about cosmetic surgery and cosmetic procedures. The demand for cosmetic surgery already outstrips supply by surgeons.

Earlier this year, [Health Ministers](#) confirmed that an area of practice endorsement for cosmetic surgery will operate for the medical profession and approved a new registration standard recommended by the Medical Board for the endorsement, to help patients know who is trained and qualified to perform cosmetic surgery safely. The standard will take effect on 1 July 2023, along with [stronger guidance](#) for

doctors who perform cosmetic surgery and new rules for doctors advertising cosmetic surgery delivered by the Medical Board and Ahpra.

The endorsement will make it clear on the public register if a doctor has met cosmetic surgery **standards** set by the [Australian Medical Council \(AMC\)](#) and the [Medical Board of Australia](#). An endorsement on a medical practitioner's registration provides a strong regulatory tool that will complement the Bill's title protection. An endorsement will tell consumers who is trained and qualified. Without it, consumers will be no better informed than they are now and the opportunity to clean up the cosmetic industry will be lost.

If a medical practitioner has an endorsement on their registration for cosmetic surgery, this will appear on the public register against the practitioner's name and qualifications. The practitioner will be able to say that they hold an endorsement on their registration for cosmetic surgery. They will not be able to say they are a 'cosmetic surgeon' because they have an endorsement. If the Bill is passed, to use the title 'surgeon', a medical practitioner must hold specialist registration in the prescribed surgical class.

It is now open for cosmetic surgery training providers to apply for accreditation of their training program by the AMC. If their program meets the AMC accreditation standards, their graduates will be eligible to seek the endorsement on their registration, as they will hold qualifications that are recognised for the endorsement. The same rigorous process that accredits the training programs of specialist medical colleges (like the Royal Australasian College of Surgeons) has set the standards of training (accreditation standards) required for cosmetic surgery endorsement and will assess the applications from education providers.

The Medical Board and Ahpra acknowledge the expertise of specialist surgeons and endorse health ministers' decision to protect the title 'surgeon' to stop anyone without specialist registration in the prescribed surgical class from using the title 'surgeon'. An area of practice endorsement provides a safe alternative and clear information for consumers should they decide to seek cosmetic surgery from a doctor who is not a surgeon. The two reforms of title protection and establishing an area of practice endorsement for cosmetic surgery will help consumers better understand and identify qualified medical practitioners.

Implementation

If the Queensland Parliament passes the Bill into law, it will be Ahpra's job to implement the changes nationally. We will be ready to implement all changes to begin on assent. We expect to make minor system changes to support implementation and we will revise our internal policies and procedures.

The change to protect the title 'surgeon' is an important step in addressing the information and power asymmetry between patient and practitioners. It will work in the context of wider reforms designed to make the cosmetic surgery industry safer. Education and awareness will be critical to the successful implementation of the reforms. The Commonwealth is leading a nation-wide public campaign about cosmetic surgery so that consumers have access to quality information that will inform their choices. Ahpra will continue to work with the Commonwealth to explain how the reforms to cosmetic surgery, including title protection (if passed), establishing an area of practice endorsement, and stronger guidance for doctors who perform cosmetic surgery and new rules for doctors advertising cosmetic surgery will work together to give consumers more information that will help inform their choices and reform this industry.

For the change to assist with Tribunal interpretation, we will update the relevant chapter in our published *Regulatory Guide*. We will work with the National Boards and delegated decision makers and Ahpra staff to ensure the changes are well understood to support nationally consistent decision-making.

Closing

Cosmetic practice is a billion-dollar industry where demand for cosmetic surgery and cosmetic procedures across Australia appears to be increasing rapidly.² We have previously shared data with Health Ministers, Senators, and the Independent Reviewer that shows notifications raising concerns

² The Decision RIS for Health Ministers sources a 2018 Australasian College of Cosmetic Surgery (ACCS) (now the Australasian College of Cosmetic Surgery and Medicine (ACCSM)) estimate that Australians spend about \$1 billion annually on cosmetic procedures. Survey data included in the Decision RIS indicated demand for cosmetic procedures across Australia is thought to be increasing rapidly, even though firm evidence is difficult to source.

about cosmetic surgery are spread across specialist surgeons and other medical practitioners who undertake cosmetic surgery and procedures.

Through the suite of reforms to cosmetic surgery, we want people who choose to have cosmetic surgery to be better informed and protected, and for the doctors who perform cosmetic surgery to be trained to a safe standard. We want the public to have information so they can be confident they will receive safe care and, if things go wrong, that they will be supported and that their concerns will be acted on.

We recognise the importance of this Bill in addressing confusion about use of the title 'surgeon' by medical practitioners, particularly in the cosmetic surgery industry. Ahpra is confident that the Bill will ensure that medical practitioners who call themselves a surgeon have the level of advanced surgical training that is reasonably expected by health consumers. When people look up a medical practitioner on the public register, their qualifications, and the fact that they are registered as a specialist surgeon will be visible. Ahpra will be given clear tools to take action if the protected title 'surgeon' is misused and/or consumers are misled.

We would like to acknowledge the substantial collaboration and engagement nationally during the drafting of the Bill, led by Queensland, the Commonwealth, and Victoria, within a condensed timeframe, to bring these important changes to Health Ministers and to Parliament as a matter of urgency.

Ahpra appreciates the opportunity to contribute to discussions on the Bill and would welcome an opportunity to speak with the Committee and answer any questions members may have at the scheduled public hearing on 22 May, if this would be helpful.

If you have any queries about this response, please do not hesitate to contact me.

Yours sincerely



Martin Fletcher
Chief Executive Officer