

## Health Practitioner Regulation National Law (Surgeons) Amendment Bill 2023

**Submission No:** 16  
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**Publication:**  
**Attachments:**  
**Submitter Comments:**

12 May 2023

Committee Secretary  
Health and Environment Committee  
Parliament House  
George Street  
BRISBANE Qld 4000

**By email:** [hec@parliament.qld.gov.au](mailto:hec@parliament.qld.gov.au)

Dear Madam/Sir,

We welcome the opportunity to provide feedback in relation to the Committee's examination of the *Health Practitioner Regulation National Law (Surgeons) Amendment Bill 2023* (the Bill).

Maurice Blackburn Pty Ltd is a plaintiff law firm with 34 permanent offices and 30 visiting offices nationally throughout all mainland States and Territories. Our Queensland practice consists of 14 permanent offices and 8 visiting offices across rural, regional and metropolitan centres. The firm specialises in road injuries, work injuries, medical negligence, abuse law, employment and industrial law, dust diseases, superannuation (particularly total and permanent disability claims), negligent financial and other advice, and consumer and commercial class actions. The firm also has a substantial social justice practice.

All our contributions to public policy discussions are based on the lived experience of the clients we serve, and the observations of Maurice Blackburn staff who serve them. To this end, we are pleased to have been a regular contributor to public policy discussions related to concerns which have arisen as a result of poor consumer experiences within the cosmetic surgery industry nationally, and in the use of the word 'surgeon'.

## Context

Maurice Blackburn welcomes the introduction of this important Bill. In doing so, we limit our comments to the proposed amendments to introduce a protected title of 'surgeon'. We make no comment on the provisions relating to the decision-making authority of tribunals other than to say that we acknowledge the aims of those proposed changes.

Our considerable experience in providing legal assistance to consumers who have fallen victim to poor surgical practice in cosmetic surgery has clearly and consistently demonstrated that the industry is not regulated in the same way as other forms of surgery. This is a long-standing issue.

We believe that restricting the use of the word 'surgeon' within this industry will provide a positive first step to improving consumer outcomes. We applaud the Australian Health Ministers/Ministerial Council for taking action to address this.



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Maurice Blackburn has long held concerns that allowing the use of a discreet title such as 'cosmetic surgeon' has given the impression that users of that title are specialists who have completed full surgical training, when the reality is generally very different. It is a profoundly misleading title.

This is in direct contrast to Plastic Surgeons who must complete extensive training before being able to use that title. Medical practitioners, for example, cannot reasonably hold themselves out as a specialist in orthopaedics and undertake orthopaedic surgery without the necessary training and qualifications and specialist registration. Comparable restrictions that prevent this occurring should be applied to people who refer to themselves as 'surgeon' or 'cosmetic surgeon', without the appropriate training and qualification.

Maurice Blackburn welcomes that the issues specifically pertaining to cosmetic surgery are clearly articulated on page 2 of the Explanatory Notes.

Cosmetic medicine and surgery occupy a unique position within the healthcare profession. Normally, medical or surgical treatment is provided in the context of some illness, injury or disease. By contrast, cosmetic surgery or treatment is generally non-essential, motivated by aesthetics and instigated by the patient. More than any other area of medicine, it is a commercial arrangement usually carried out in a 'for profit' environment and this dramatically changes the dynamic and the relationship between doctor and patient. The interpretation of what constitutes adequate consent and after-care under these circumstances, is wildly different from those that apply in other forms of surgery.

The term 'surgeon' carries enormous weight in the community and assumptions are invariably made about the expertise of the person using it. To allow people who have not undergone the appropriate training to use it is misleading, undermines informed consent and does nothing to protect the public.

Surgical procedures generally carry the highest risks and the most devastating complications. The community expects that those who carry out these procedures are appropriately qualified and appropriately regulated.

## **About the Bill**

From our reading, the structure and content of the Bill appears to represent an appropriate approach to achieving the policy objectives, as spelled out in the Explanatory Notes, namely:

*The Bill amends the Health Practitioner Regulation National Law (National Law).*

*The objectives of the amendments are to:*

- protect the title 'surgeon' within the medical profession to safeguard the public and strengthen the regulation of cosmetic surgery in Australia; and*
- clarify the decision-making authority of tribunals after hearing a matter about a registered health practitioner.*

We believe that restricting the use of the title 'surgeon' to those who are a member of a specified *surgical class* (as defined under the proposed section 115A (5) of the Bill) is an appropriate mechanism. The exceptions to this (as spelled out in the proposed section 115A (3) of the Bill) are, we believe, also appropriate. We note, however, that additional consideration of these exceptions may be required in the future, should ongoing concerns around consumer protection arise. We suggest that the Committee might consider requesting a review of these provisions, say, two years after the adoption of the Bill.

We believe that the introduction of new offences for those who misuse the title of 'surgeon' is also appropriate, as it is consistent with sanctions currently applicable to breaches on restrictions on the use of specialist titles. We also believe that the nominated sanctions for misuse of the title are in line with community expectations.

Maurice Blackburn congratulates the Australian Health Ministers on their commitment to ongoing consultation in the lead up to the development of this Bill and taking seriously the input received from stakeholders in the Bill's construction.

We believe that the Committee should recommend that the Bill be passed. The ring-fencing of the title 'surgeon' is an important first step in ensuring that consumers' experience with medical practitioners is improved, and the incidence of malpractice is reduced.

As noted in the consultation materials that have led to the development of the current Bill, there are other steps that will be required in the future to ensure that consumer harms arising from unqualified practitioners are minimised. The highest of these priorities is that a comprehensive consumer education program should accompany the implementation of this Bill.

## **Consumer Awareness and Informed Choice**

The Explanatory Notes tell us that:

*The diversity of qualifications and experience of those calling themselves 'surgeons' has caused confusion for health care consumers, who reasonably assume all practitioners using the title have comparable qualifications with an appropriate level of advanced surgical training. (p.2)*

This reflects our on-the-ground experience, in advising and assisting consumers in accessing justice following a poor experience within the health profession.

In order to achieve the objective of safeguarding the public from such confusion, it is important that the carriage of this Bill is accompanied by a consumer education mechanism which helps provide clarity around who is and who is not a surgeon.<sup>1</sup>

The existence of exceptions or carve-outs in any law has the capacity to perpetuate confusion. The exceptions articulated in the Explanatory Notes for specialist titles such as 'podiatric surgeon' etc, may be a source of confusion for health consumers.

By way of example, we note that some consumers may not appreciate that foot surgery can be performed by a fully trained orthopaedic surgeon with a specialty in foot and ankle surgery or a podiatric surgeon, who is a podiatrist who has undergone extensive postgraduate training provided by the Australasian College of Podiatric Surgeons. While we make no comment as to the safety and outcomes of procedures performed by each of these practitioners, we flag this as an example of potential consumer confusion which may require further consideration in the future.

In our experience, where there is a commercial (as opposed to therapeutic) impetus to a surgical procedure, informed consent processes often lack the rigour that is expected in other areas of medicine. Informed consent has an ethical aspect to it and the process of

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<sup>1</sup> We note that broad stakeholder support for a major public information campaign is referred to on page 11 of the Explanatory Notes.



selling a 'product', rather than a treatment, risks encouraging poor practice as there is a clear self-interest in the practitioner downplaying the risks and encouraging the patient to agree.

It is important that public information campaigns around who is, and who is not a surgeon focus on providing access to accurate information about provider training and experience, greater awareness of consent requirements and what questions consumers should be asking in order to make an informed choice.

Consumers also need clear information about the courses of action available to them should something go wrong. While we are pleased to see the inclusion of penalties for breaches of the proper use of the title 'surgeon' included in the Bill as a disincentive to poor practice, these penalties do not help consumers who have fallen victim to malpractice.

Maurice Blackburn believes that, alongside penalties, making practitioners more accountable for compensatory damages (in particular non-economic damages as a result of poor practice) would reduce the number of under qualified practitioners seeking to offer these services. It would also provide greater deterrence and accountability for people who continue to practice in the area, even once the use of the title 'surgeon' is restricted.

Maurice Blackburn would be pleased to elaborate further on the gaps in recourse that result from the various state and territory compensatory frameworks, if that would be beneficial to the committee.

## **Recommendations**

1. That the Committee recommend that the Bill be passed
2. That Western Australia, New South Wales and South Australia be urged to implement the changes as soon as possible.
3. That the Committee clearly articulate the need for consumer information accompanying the Bill, which helps provide clarity around who is and who is not a surgeon.

Please do not hesitate to contact me and my colleagues on [REDACTED] or at [REDACTED] if we can further assist with the Committee's important work.

Yours faithfully,

[REDACTED]

Dimitra Dubrow  
**Principal Lawyer**  
**Medical Negligence Law**  
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