




Speech By
Hon. Shannon Fentiman

MEMBER FOR WATERFORD

Record of Proceedings, 12 September 2023

**HEALTH PRACTITIONER REGULATION NATIONAL LAW (SURGEONS)
AMENDMENT BILL**

Second Reading

 **Hon. SM FENTIMAN** (Waterford—ALP) (Minister for Health, Mental Health and Ambulance Services and Minister for Women) (11.39 am): I move—

That the bill be now read a second time.

On 20 April 2023 the Health Practitioner Regulation National Law (Surgeons) Amendment Bill 2023 was introduced. The bill was referred to the Health and Environment Committee for consideration. On 2 June the committee tabled its report on the bill. The committee made one recommendation—that the bill be passed—and I thank the committee for its thorough consideration.

The bill amends the Health Practitioner Regulation National Law as hosted by Queensland and applies to all states and territories. The reforms in the bill were endorsed by Australian health ministers in February 2023 following extensive public consultation across the country. As host jurisdiction for the national law, Queensland is responsible for enacting the reforms on behalf of all jurisdictions. The bill amends the national law to protect the title 'surgeon' within the medical profession. It does so by restricting which medical practitioners can use the title and establishing criminal penalties for persons who unlawfully use the title. These are commonsense reforms to reflect what the public already reasonably assumes—that is, that doctors calling themselves a surgeon or a cosmetic surgeon have had the advanced surgical training to go along with the title.

We know that the cosmetic surgery industry is growing and the sector is becoming increasingly more difficult and dangerous for healthcare consumers to navigate, and that is why these reforms are necessary. The bill goes hand in hand with other steps being taken by Ahpra. Recently, we have seen Ahpra move to introduce tighter regulations for the injectables industry, including non-surgical cosmetic procedures like botox and thread lifts. Australians currently spend over \$1 billion on these non-surgical procedures, yet no minimum standards, education or training exists in this space. That is why Ahpra is introducing stronger consultation requirements for patients prior to procedures going ahead, stronger advertising guidelines, and stronger rules around the use of online influencers and brand ambassadors, because we know this type of content can pose a particular risk to younger people.

The reforms in this bill complement these changes and support the broader nationwide push to better regulate the cosmetics industry because this is about keeping people safe. In September last year, Ahpra established a cosmetic surgery hotline. As of 7 August this year, it had already received 394 calls from patients and their families to make a notification or seek information about the notification process. The hotline also received calls from the public seeking general information and from practitioners seeking clarification about cosmetic surgery guidelines. Ahpra's recently formed Cosmetic Surgery Enforcement Unit and the national boards are currently managing 271 notifications related to cosmetic surgery. These notifications relate to 94 health practitioners. Of these, 14 doctors cannot

currently practise or perform cosmetic surgery due to their registration being suspended, surrendered or subject to significant restrictions. Of the 271 open matters, 49 are about 15 registered medical practitioners whose principal place of practice is listed as Queensland.

Feedback from a national consultation process on title protection and cosmetic surgery confirmed some cosmetic surgery consumers bear heavy costs for their procedures, including health complications, hospital fees to correct botched surgeries, loss of income and time, and mental distress. I want to take a moment to give real-life examples of some of the heartbreaking stories we have encountered in considering the need to strengthen the regulation of cosmetic surgery in Australia.

Consider, for example, a recent matter where the New South Wales Civil and Administrative Tribunal suspended a Sydney doctor after a cosmetic procedure went horribly wrong. The doctor, who had limited surgical training, performed abdominal lipolysis, a procedure for removing fat, on a patient who suffered complications and became unresponsive during surgery. She was taken by ambulance to the emergency department at a local hospital where she was treated for a serious cardiac condition and inappropriate dosage of morphine and another drug. There were a number of factors that led to the patient being hospitalised. The doctor failed to take baseline observations of the patient or perform an ECG to check the patient's heart prior to surgery. He also failed to appropriately monitor the patient during the procedure. Distressingly, the doctor was not prepared for emergencies, had inadequate safety protocols and did not have the appropriate drugs and equipment available to respond appropriately, including not even having a cardiac defibrillator to resuscitate patients. The tribunal found the doctor's conduct showed significant failings across a wide domain and that he was incompetent to perform the procedure. Not only was he inadequately trained in the procedure; he also had a disastrously low level understanding of the drugs he routinely used. There was a serious potential of harm to the patient, and it was a case of sheer luck rather than professional competence that saved the patients from a much more serious outcome.

In a separate matter, this time before the Victorian Civil and Administrative Tribunal, a doctor engaged in unprofessional conduct by performing liposuction procedures that were beyond the doctor's competency and training. The doctor performed these risky procedures on multiple patients, several of whom were injured or experienced other adverse outcomes. If that were not concerning enough, the doctor asked her receptionist to assist in these liposuction operations despite the receptionist not being appropriately trained. This was a serious breach of the relevant guidelines and minimum standards of care for patients undergoing intravenous anaesthesia. These guidelines are put in place to protect the lives of patients undergoing serious operations where complications can arise unexpectedly. Some of the patients suffered from severe scarring requiring follow-up treatment by plastic surgeons. These surgeons were so alarmed by the poor standard of care provided that they notified the regulator of their concerns.

In another tragic case, the Victorian Civil and Administrative Tribunal determined a practitioner's lack of surgical competency posed such a serious risk that immediate action was necessary to protect the public. The tribunal based its decision in part on video and photographic material and accounts by patients and others that it considered harrowing and shocking. The tribunal also had concerns with the practitioner's general and ethical competency, including poor hygiene and infection control, disrespectful behaviour towards patients, filming and posting on social media without informed consent. The tribunal was most concerned by the practitioner's apparent failure to appreciate the fundamental need for patients to provide informed consent to procedures. The tribunal found the practitioner prioritised his own interests above those of his patients, demonstrating the lack of a solid ethical foundation for the practice.

There are many other similarly distressing stories. I am sure that each of us is aware of other horrifying experiences reported by the media and to Ahpra that are the subject of legal proceedings. Unfortunately, these harrowing cases are the tip of the iceberg and more patients than ever before are reporting serious adverse effects from cosmetic procedures. Put quite simply, no person should have to endure such treatment from a medical professional. All surgery comes with risks. Unexpected complications can arise, even under the care of the most skilled and experienced practitioner, but these risks are needlessly amplified when procedures are performed by unqualified or underqualified doctors, and the risks are further compounded when patients are misled by the medical professional they have entrusted to perform their surgery and manage any complications that may arise.

It is reasonable for a patient to expect that a doctor calling themselves 'surgeon' has the surgical qualifications to back up the title. Without significant surgical training, a doctor holding themselves out as a surgeon is leading their patients to believe they are more qualified than they actually are. To address these serious concerns, the bill will introduce strict protections on the use of the title 'surgeon' within the medical profession.

The bill protects the title 'surgeon' in the same way that other professional titles are protected under the national law. It will be an offence for a medical practitioner to use the title 'surgeon' if they do not have the approved surgical training and qualifications. It will also be an offence for an employer or other person to say that a medical practitioner is a surgeon when they are not. The offences will apply whether the title 'surgeon' is used in isolation or in combination with other words which means that 'cosmetic surgeon' and 'aesthetic surgeon' will also be restricted to those doctors who have surgical training. The offences will also apply if a doctor holds themselves out as a surgeon even if they do not use the title itself, and this will prevent practitioners from circumventing the protections by implying that they are a surgeon when they are not.

The bill sets out which doctors will be able to use the title 'surgeon'. These doctors are said to be in an approved surgical class. The doctors in the initial surgical classes are those who hold specialist registration in any of the three recognised medical specialties—surgery, obstetrics and gynaecology, and ophthalmology. These classes were determined by Australian health ministers with the advice of the Medical Board of Australia.

To be registered in these specialties, a medical practitioner is required to have successfully undertaken significant Australian Medical Council specialist surgical training or equivalent training in the case of international medical graduates. Specialists in these fields routinely perform complex surgery as part of their normal scope of practice. The bill will enable Australian health ministers to prescribe by regulation additional classes of medical practitioner that can use the title 'surgeon'. The ability to prescribe additional classes will accommodate future changes to the medical profession and 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 approval of new medical specialties or subspecialties and the unique circumstances of hard-to-staff locations for areas of need.

In deciding whether to prescribe an additional class of surgeon, the bill will require health ministers to have regard to the extent of surgical training required to be a member of the class. The bill will also require health ministers to consider any advice of the Medical Board. The Medical Board is the appropriate entity to advise health ministers on these matters and it is the primary regulator of medical training, accreditation and registration standards in Australia. The Medical Board is also the body that advises health ministers about medical specialties and specialist titles, so a similar process will be followed.

Protecting the title 'surgeon' will provide assurance to patients that a doctor using the title is appropriately trained and qualified and that they are expected to meet safe and professional standards of practice. The reform will increase patient protection and safety, increase satisfaction with operative outcomes, and improve public confidence in the medical profession and the national scheme. Separately, the bill makes minor but important changes to clarify the decision-making authority of tribunals when hearing matters about health practitioners.

The bill amends an ambiguous provision in the national law to clarify that if a tribunal cancels a practitioner's registration it can also do any or all of the following: disqualify the person from reapplying for registration for a specified period of time; or prohibit or restrict the person from providing certain health services or using certain titles. This is the interpretation that has been used by the Queensland Civil and Administrative Tribunal. The bill also amends the definition of 'prohibition order' to ensure that an order restricting a practitioner from providing health services is enforceable and recorded on the public register. This treats a tribunal's restrictions on services in the same way as a tribunal's prohibitions on services.

We know the vast majority of doctors are doing the right thing. They are hardworking, principled and act with the best interests for their patients in mind. However, there are some who flaunt the rules and use deceptive advertising and language to mislead patients and give them false confidence. This has led to devastating outcomes for some healthcare consumers, many of whom shared their stories with us as we were developing the bill. The reforms in this bill will prevent patients from being misled and safeguard the public's trust in the medical profession.

In closing, I would like to again thank the Health and Environment Committee for its carefully considered review of the bill, and I extend my sincere appreciation to all Australian health ministers for their commitment to strengthening the regulation of cosmetic surgery and for the urgency with which they have progressed these critical public protections.

I also want to thank the many and varied stakeholders who provided feedback on the bill during the national consultation process and the committee's review. The national consultation process drew submissions from 150 practitioners and professional organisations. Nearly 1,400 members of the public made submissions to the dedicated consumer survey sharing their experiences with cosmetic surgery.

The serious and lasting harms that have been experienced by some patients is heartbreaking and unacceptable. The bill, along with other reforms already underway, will strengthen the regulation of cosmetic surgery in Queensland and across Australia. I commend the bill to the House.