



Health Practitioner Regulation National Law (Surgeons) Amendment Bill 2023

Report No. 35, 57th Parliament
Health and Environment Committee
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Health and Environment Committee

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Chair's foreword

This report presents a summary of the Health and Environment Committee's examination of the Health Practitioner Regulation National Law (Surgeons) Amendment Bill 2023.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

During the course of the inquiry the committee heard a range of divergent views from peak bodies representing various medical practitioners and specialities, as well as training organisations, lawyers and insurers.

The committee deeply appreciates the views articulated by the various bodies and notes the concerns expressed in submissions and at the public hearing regarding who should be able to use the title 'surgeon'.

Whilst the various medical bodies could not reach agreement on this issue, there was broad agreement that protecting the public from harm caused by unqualified or underqualified practitioners was key. The goal of reforming the National Law to secure that protection was widely endorsed.

Queensland is very proud to be the host jurisdiction for the National Law and is proud to lead the nation in strengthening the regulation of the cosmetic surgery industry.

This Bill is the next step in that process.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank our Parliamentary Service staff and officers from Queensland Health who provided information for the committee.

I commend this report to the House.

A handwritten signature in blue ink, appearing to read 'Aaron Harper'.

Aaron Harper MP
Chair

Recommendation

Recommendation	5
The committee recommends the Health Practitioner Regulation National Law (Surgeons) Amendment Bill 2023 be passed.	5

Executive Summary

This report presents a summary of the Health and Environment Committee's examination of the Health Practitioner Regulation National Law (Surgeons) Amendment Bill 2023 (Bill).

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

The Bill achieves its aim by amending the Health Practitioner Regulation National Law (National Law). Queensland is the host jurisdiction for the National Law under the *Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions* between all states and territories and the Commonwealth.

Australian Health Ministers agreed to the amendments proposed in the Bill.

The committee is satisfied that the Bill will meet its policy objectives, and therefore recommends that the Bill be passed.

In making this recommendation, the committee has considered a range of factors relating to the National Law. These include:

- the views of stakeholders who engaged with the inquiry, the majority of whom indicated support for the proposed changes
- public confusion about the term 'surgeon' and use of the term by some practitioners
- the absence of minimum standards for who could call themselves a (cosmetic) 'surgeon'
- concerns about the regulation of cosmetic surgery and instances of risk and harm associated with the industry
- the expectation that all surgeons have comparable qualifications and advanced surgical training, including in respect of cosmetic surgery which is not an approved speciality under the National Law
- ambiguity around the operation of s 196 of the National Law that sets out the decisions a tribunal may make after hearing a matter about a registered health practitioner.

If the Bill is passed, the proposed changes to the National Law will apply automatically in all other states and territories except Western Australia which must pass its own separate legislation, and New South Wales and South Australia where amendments must be adopted by regulation.

The Bill raises issues relating to the fundamental legislative principles set out in the *Legislative Standards Act 1992* and to human rights prescribed in the *Human Rights Act 2019*:

- whether the Bill's proposed expansion of options available to a tribunal in making a decision about a registered health practitioner adequately safeguards a practitioner's right to privacy and reputation
- whether the Bill, in enabling the Ministerial Council to prescribe in regulation additional classes of medical practitioners permitted to use the title 'surgeon', allows the delegation of legislative power only in appropriate cases and to appropriate persons, and sufficiently subjects exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.

After considering these issues, the committee is satisfied that sufficient regard has been had to fundamental legislative principles, and that any limitations on human rights are reasonable and justified.

1 Introduction

1.1 Policy objectives of the Bill

In amending the Health Practitioner Regulation National Law (National Law), the objectives of the Health Practitioner Regulation National Law (Surgeons) Amendment Bill 2023 (Bill) are to:

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

1.2 Background

1.2.1 The National framework for health professionals’ registration and accreditation

The National Law is the legal framework for Australia’s National Registration and Accreditation Scheme (the Scheme) for health professionals. The Scheme commenced in 2010 following adoption of the National Law by all Australian States and Territories.

Under the Intergovernmental Agreement for the Scheme, Queensland is the host jurisdiction for the National Law. The National Law is set out in the schedule to the *Health Practitioner Regulation National Law Act 2009* (Qld), as amended from time to time and applied as a law of each participating jurisdiction, with local variations.¹

The Scheme ensures only health practitioners who are suitably trained and qualified to practise competently and ethically are registered to practise throughout Australia and provides for uniform standards for health practitioner registration, and accreditation of health education providers.

The Scheme protects titles by restricting usage of specified professional titles, including specialist titles, and provides for disciplinary or prosecutorial sanctions against persons unlawfully using a protected title or falsely holding themselves out as holding either registration, or a particular type of registration, specialty, or endorsement, that they do not hold.

Restricting title usage to only those appropriately qualified and trained allows the public to be confident that a health practitioner is registered under the National Law and is therefore appropriately qualified and competent to practise as a health practitioner.²

In respect of surgeons however, the National Law only protects the title ‘surgeon’ as adjunct to an approved specialist title (e.g. ‘specialist plastic surgeon’), with specialist titles reserved for practitioners registered in a relevant specialty. As the National Law does not protect ‘surgeon’ as a stand-alone title, any registered medical practitioner could call themselves a ‘surgeon’ even if not registered in a surgical specialty and even without any significant post-graduate surgical training.

As cosmetic surgery is not an approved specialty under the National Law, any medical practitioner could market themselves as a cosmetic or aesthetic surgeon, regardless of their qualifications and level of training.

A diversity of qualifications and experience amongst purported surgeons confuses the public who expect all surgeons to have comparable qualifications and appropriate advanced surgical training.³

¹ Explanatory notes, p 2.

² Explanatory notes, p 1.

³ Explanatory notes, p 2.

1.2.2 Consultation informing the Bill

The explanatory notes outline the consultation that informed development of the Bill. That consultation is discussed below:

- In response to concerns about adverse patient outcomes, in November 2021, the Medical Board of Australia⁴ (MB) and the Australian Health Practitioner Regulation Agency (Ahpra) commissioned an independent external review of patient safety issues in the cosmetic surgery industry ('Independent review of the regulation of medical practitioners who perform cosmetic surgery') as well as how to strengthen the regulation of medical practitioners who perform cosmetic surgery. This review received 249 submissions and 595 public survey responses, with the findings and recommendations handed down in September 2022.⁵ Submissions to that review raised concerns about the absence of minimum standards for who could call themselves a (cosmetic) 'surgeon'.⁶
- The Consultation Regulation Impact Statement 'Use of the title 'surgeon' by medical practitioners in the Health Practitioner Regulation National Law' (Consultation RIS)⁷ sought feedback on potential issues arising from use of the title 'surgeon' by medical practitioners and proposed options for reform. It outlined a variety of patient harms caused by poor cosmetic surgery and post-surgery practices in cases where medical practitioners performed cosmetic surgery outside their area/scope of competence. Even risks inherent to surgery are amplified where cosmetic surgery is not performed by an appropriately qualified, trained and experienced medical practitioner. Submissions on the Consultation RIS were received from 150 professional stakeholders and nearly 1,400 responses were made to a dedicated consumer survey.⁸
- Further consultation findings demonstrated that there is significant public confusion about medical practitioners' titles and qualifications associated with the title 'surgeon' and a gap between consumer understanding of what a 'surgeon' is and the usage of the term by some practitioners.⁹

The department advised that the stakeholders consulted through the Consultation RIS and Independent Review included professional bodies and associations, consumer groups, law firms and insurers, regulators, government agencies and health complaints bodies (including the Queensland Health Ombudsman), hospital associations, cosmetic representative organisations and cosmetic facilities, and additional groups advocating on behalf of a diverse range of interests and issues.¹⁰

On 14 December 2022, Australian Health Ministers (health ministers) published the Decision RIS *Medical practitioners' use of the title 'surgeon' under the Health Practitioner Regulation National Law* (Decision RIS), which analysed the submissions and consumer survey responses from the earlier RIS. The Decision RIS also considered the findings of the Independent Review. The Decision RIS recommended restricting use of the title 'surgeon' to medical practitioners with significant surgical training. This recommendation was informed by submissions to the Consultation RIS, the Independent Review, and expert advice provided to health ministers by the Medical Board.¹¹

⁴ The MB is the primary Australian regulator for medical training, accreditation and registration standards.

⁵ Queensland Health, correspondence, 28 April 2023, attachment, p 5.

⁶ Explanatory notes, p 2.

⁷ Explanatory notes, p 3.

⁸ Explanatory notes, p 10; Queensland Health, correspondence, 28 April 2023, attachment, p 5.

⁹ Explanatory notes, p 3.

¹⁰ Queensland Health, correspondence, 28 April 2023, attachment, p 5.

¹¹ Queensland Health, correspondence, 28 April 2023, attachment, p 6.

The health ministers also agreed to strengthen the regulation of cosmetic surgery by protecting use of the title ‘surgeon’ under the National Law to only being able to be used by those medical practitioners with appropriate advanced surgical training and qualifications.

As well as title protection, health ministers agreed to further consumer protection measures for cosmetic surgery using complementary, non-legislative actions. The agreed actions include:

- directing the MB to develop an Area of Practice endorsement to establish the qualifications and training required to perform high-risk cosmetic procedures
- directing the Australian Commission on Safety and Quality in Health Care to review licensing standards for private health facilities where cosmetic procedures are performed, and to develop national standards for the safe delivery of cosmetic procedures
- improving guidance and education for medical practitioners who perform cosmetic surgery
- commissioning a public education campaign in relation to cosmetic surgery; and
- directing Ahpra to ‘crack down’ on misleading advertising in cosmetic surgery.¹²

Additional targeted consultation on the issue of which medical practitioners should be entitled to use the title ‘surgeon’ was undertaken in February 2023.¹³

Feedback from the consultation reinforced that many consumers experienced significant confusion about the titles and qualifications of medical practitioners, and that there are widespread concerns about the regulation of cosmetic surgery and instances of risk and harm associated with the industry, both among consumers and professional bodies.¹⁴

There were divergent views about the most appropriate way to address the identified problems. However, according to the department, stakeholders did not support maintaining the status quo. Respondents to the consultation indicated that the current regulatory framework is inadequate to address the identified concerns, and that a response combining elements from different options in a coordinated and complementary manner may be required.¹⁵

Stakeholders also differed in their views on the merits of restricting the title ‘surgeon’ under the National Law.

The following stakeholders support the classes of medication practitioner included in the Bill: the Royal Australian College of General Practitioners (RACGP), the Royal Australasian College of Surgeons (RACS), the Royal Australian and New Zealand College of Obstetricians and Gynaecologists, the Royal Australian and New Zealand College of Ophthalmologists, the Australasian College of Dermatologists, the Australasian Society of Aesthetic Plastic Surgeons (ASAPS), the Australian Society of Plastic Surgeons (ASPS), and the Cosmetic Physicians College of Australia.¹⁶

The following stakeholders did not support the scope of title protection in the Bill:

- The Australian College of Rural and Remote Medicine (ACRRM), which advocated for the surgical training in their fellowship program to be considered sufficient for being included within the ‘surgical class.’¹⁷

¹² Queensland Health, correspondence, 28 April 2023, p 7.

¹³ Queensland Health, correspondence, 28 April 2023, attachment, p 6.

¹⁴ Queensland Health, correspondence, 28 April 2023, attachment, p 6.

¹⁵ Queensland Health, correspondence, 28 April 2023, attachment, p 6.

¹⁶ Queensland Health, correspondence, 28 April 2023, attachment, p 6.

¹⁷ According to the department, although the ACRRM fellowship is not included in the initial scope of the ‘surgical classes,’ the Bill has been drafted to minimise any impact on the provision of rural medicine.

- The Australian Orthopaedic Association and Australian Medical Association provided feedback that podiatrists should also be restricted from using the title ‘surgeon’.¹⁸
- The Australian College of Cosmetic Surgery and Medicine gave their feedback that title protection is unnecessary, and that the ministerially agreed non-legislative reform of establishing an Area of Practice endorsement in cosmetic surgery was sufficient to address public safety concerns.¹⁹

1.2.3 Reforming the National Law

On 24 February 2023, health ministers formally agreed to amend the National Law 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.

As host jurisdiction for the National Law, Queensland is responsible for leading development of the Bill reforms in consultation with other Australian jurisdictions.

A more detailed examination of what the Bill does is below in chapter 2.

1.3 Legislative compliance

The committee’s deliberations included assessing whether or not the Bill complies with the Parliament’s requirements for legislation as contained in the *Parliament of Queensland Act 2001*, *Legislative Standards Act 1992* (LSA) and the *Human Rights Act 2019* (HRA).

1.3.1 Legislative Standards Act 1992

Our assessment of the Bill’s compliance with the LSA identified an issue of fundamental legislative principle related to delegation of legislative power, discussed further in section 2.2.3 of this report.

In addition, Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced and sets out the information an explanatory note should contain. Explanatory notes were tabled with the introduction of the Bill. The notes contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill’s aims and origins.

1.3.2 Human Rights Act 2019

The committee’s assessments of the Bill’s compatibility with the HRA identified potential limitations on the right to privacy, but did not find the Bill incompatible with the HRA. The issues identified are discussed in section 2.3.6.1 of this report.

A statement of compatibility was tabled with the introduction of the Bill as required by s 38 of the HRA. The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

1.4 Should the Bill be passed?

The committee is required to determine whether or not to recommend that the Bill be passed.

¹⁸ As agreed by Health Ministers, the Bill does not restrict use of the title within the podiatry profession or any other health profession outside of the medical profession.

¹⁹ According to the department, the Area of Practice endorsement will not address the reasonable expectation that a medical practitioner using the title ‘surgeon’ should have significant accredited surgical training.

Recommendation

The committee recommends that the Health Practitioner Regulation National Law (Surgeons) Amendment Bill 2023 be passed.

2 Examination of the Bill

This section discusses key issues raised during the committee's examination of the Bill. It does not discuss all consequential, minor or technical amendments.

2.1 Offence of knowingly or recklessly falsely holding self or another out as a 'surgeon'

The Bill makes it an offence for a medical practitioner who is not a member of a defined 'surgical class' to knowingly or recklessly hold themselves out as being a member of a surgical class, use the title 'surgeon', or use another title, name, initial, symbol, word or description that could reasonably indicate the practitioner is in a 'surgical class'. Employers or other persons who knowingly or recklessly use the title 'surgeon' or hold a medical practitioner out as being a member of a surgical class when they are not, also commit an offence.²⁰

'Surgical class' is defined to include medical practitioners holding specialist registration in three recognised medical specialties:

- surgery – including surgical sub-specialties²¹
- obstetrics and gynaecology
- ophthalmology.

Registration in these specialties requires a medical practitioner to successfully complete significant Australian Medical Council (AMC) specialist surgical training (or equivalent training for international medical graduates with specialist registration).

To 'future proof' the legislation to accommodate potential future changes to the medical profession, two additional classes of practitioners are also included in the definition of 'surgical class', being:

- a medical practitioner holding specialist registration in another recognised speciality in the medical profession with the word 'surgeon' in the title for the speciality²²
- another class of medical practitioners prescribed by regulations made by the Ministerial Council/health ministers under the National Law.²³ In prescribing any additional classes of medical professionals that can use the title 'surgeon', the Ministerial Council must have regard to any advice provided by the MB and to the surgical training required to be a member of the proposed class.²⁴

The Bill does not restrict the use of the title 'surgeon' by practitioners who are registered in a health profession other than the medical profession.

Generally, use of 'surgeon' by a non-medical practitioner is already prohibited under s 113 of the National Law save for some limited exceptions, being, for example, registered podiatrists with specialist registration in podiatric surgery who may refer to themselves as 'podiatric surgeons', and

²⁰ Bill, cl 4 inserting new s 115A (Claims by persons as to membership of surgical class) into the title protection provisions of the National Law.

²¹ Sub-specialties in fields of specialty practice approved for the specialty of surgery under the National Law, s 13.

²² Bill, cl 4, proposed new s 115A(5)(d).

²³ Bill, cl 4, proposed new s 115A(5)(e).

²⁴ Bill, cl 4, proposed new s 115A(4).

‘oral surgeon’ may be used by members of the dental profession with specialist registration in that field. Additionally, some dentists may still use the informal title of ‘dental surgeon’ in their practice.²⁵

Maximum penalties for these new offences are \$60,000 or 3 years imprisonment or both for an individual, or \$120,000 for a body corporate, mirroring the maximum penalties for existing offences under the National Law that prohibit misuse of professional and specialist titles.²⁶

2.1.1 Exceptions to the offence provisions

The exceptions to the offence provisions are outlined in the explanatory notes for the Bill:

The offences in subsections (1)(a) and (2)(a) do not apply to, or in relation to, a medical practitioner who is not a member of a surgical class if the practitioner holds registration in the dentists division of the dental profession. For historical reasons, some dentists may use the informal title ‘dental surgeon’ in connection with their practice. Although the offences do not restrict the title ‘surgeon’ in the dental profession, there may be some practitioners registered in both the dental and medical professions. Without an exception, these dual-registered practitioners would not be able to use the title ‘surgeon.’ As it is not proposed to restrict use of the title beyond the medical profession, this subsection provides an exception to the offence, allowing dentists that are also medical practitioners to use the title ‘surgeon.’

The offences in subsections (1)(a) and (2)(a) also do not apply to or in relation to a medical practitioner who is not a member of a surgical class if the practitioner is permitted under this Law, or another law of a State or Territory, to take or use the title ‘surgeon’ for practising a profession other than the medical profession. This exception to the offence for the misuse of title applies to registered medical practitioners who also hold registration in a different profession for which use of the title ‘surgeon’ is permitted by law. For example, the title ‘podiatric surgeon’ is an approved specialist title for the podiatry profession. This exception to the offence will allow podiatrists registered in the recognised specialty of podiatric surgery to continue to use the title ‘podiatric surgeon’ even if they also hold registration in the medical profession. Other similar examples include specialists in oral surgery, who are permitted to use the approved specialist title oral surgeon. This exception would also apply to professionals outside of the health professions, such as to veterinary surgeons that also hold registration in the medical profession.²⁷

2.2 Key issues raised in submissions

Submitters to the inquiry identified a number of key issues of concern for their organisations. An overview of some of these concerns is below, by topic. For a fuller understanding of the matters raised by a submitter, their submission should be consulted in its entirety.

The submission from Maurice Blackburn Lawyers (Maurice Blackburn) arguably encapsulates the fundamental concerns at the heart of these reforms:

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.

²⁵ Explanatory notes, p 6.

²⁶ Queensland Health, correspondence, 28 April 2023, p 3.

²⁷ Explanatory notes, p 14.

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.²⁸

...

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 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.²⁹

2.2.1 Title protection

A number of submitters³⁰ expressed direct support for the Bill's title protection amendments. Advocates for title protection recognised that the amendments would likely reduce consumer confusion around practitioner titles, qualifications and skill levels/competencies, thereby better informing patient decision-making and enhancing protections for cosmetic surgery consumers.

Other submitters agreed with the need to protect the title of 'surgeon' but expressed concerns that the Bill did not take the optimal approach to ensuring this protection. Those concerns are outlined in the sections that follow.

2.2.2 Tightening the use of the title 'surgeon' by the medical profession

Some submissions³¹ advocate for tighter restrictions on who can use the title 'surgeon' within the medical profession, suggesting that use of the title be limited to practitioners with AMC accredited specialist surgical training.

As noted above, the Bill will enable the Ministerial Council/health ministers to prescribe additional classes of medical practitioner that can use the title 'surgeon'.

RACS and others³² raised concerns about clause 4, particularly proposed new s 115A(5) and the regulation-making power it gives to health ministers. RACS was concerned that this would allow the Ministerial Council to approve extra classes of medical practitioner to use the title 'surgeon' without their having appropriate surgical training to use that title, including some who may hold a future endorsement in cosmetic surgery.

As commented by Associate Professor Anthony Lynham, Member of the Australian and New Zealand Association for Oral and Maxillofacial Surgeons (ANZAOMS) at the committee's public hearing:

It seems a very simple thing to me and to a number of my colleagues to restrict the title of 'surgeon' to AMC recognised specialities.

... It is quite simple: the public just has to know who their surgeon is, who is operating on them.³³

²⁸ Submission 16, p 2.

²⁹ Submission 16, pp 3-4.

³⁰ See, for example, submissions from the Australasian Society of Aesthetic Plastic Surgeons (submission 5), Health Ombudsman (submission 6), Ahpra & the National Boards (submission 9); and Catholic Health Australia (submission 17).

³¹ See for example submissions 2, 4, 7, 11, 12, 13, 14, 15.

³² See for example submissions 2, 4, 7, 11, 12, 13.

³³ Public hearing transcript, Brisbane, 22 May 2023, p 17.

RACS advocated for limits to the Ministerial Council discretion to prescribe additional 'surgical classes' to those recognised by the Medical Board as having significant surgery in their normal practice scope, as well as both AMC accredited training and standards of practice equivalent to the initially recognised surgical classes. RACS submission also acknowledged a potential need to allow the use of the title 'surgeon' by certain general practitioners (GPs) in rural areas of need.

RACS outlined the rigorous training requirements for medical practitioners in the nine surgical specialties and noted similar training is required of the other named specialties in the 'surgical class'.

The departmental response to submissions reiterated the limits on the exercise of this Ministerial Council discretion for prescribing any additional classes as outlined above.

The rationale for the Ministerial Council discretion was acknowledged by the department in its response to submissions, with the department noting:

The ability to prescribe additional classes accommodates future changes to the medical profession. This requires some flexibility to allow Health Ministers to consider future potentially unanticipated circumstances. For example, this flexibility will allow Health Ministers to consider recognition of comparable overseas training, the approval of new medical specialties or sub-specialties, and the unique circumstances of hard-to-staff locations or areas of need.³⁴

2.2.3 Issue of fundamental legislative principle: delegation of legislative power in regulation making by the Ministerial Council

Fundamental legislative principles include requiring that legislation has sufficient regard to the institution of Parliament. Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill:

- allows the delegation of legislative power only in appropriate cases and to appropriate persons
- sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.³⁵

The Bill would enable the Ministerial Council³⁶ to prescribe in regulation additional classes of medical practitioners permitted to use the title 'surgeon'.³⁷

Before making such a regulation, the Ministerial Council must have regard to:

- any advice the MB gives to the Ministerial Council about prescribing the class
- the surgical training required to be undertaken by members of the proposed class.³⁸

Regulations made by the Ministerial Council under the National Law must be tabled in the Queensland Parliament.³⁹ The Queensland Parliament may disallow a regulation made under the National Law in the same way a regulation made under a Queensland Act may be disallowed.⁴⁰ However, a regulation made under the National Law does not cease to have effect in Queensland unless the regulation is disallowed in a majority of the participating jurisdictions.⁴¹ This means that if the Bill is passed, Queensland Parliament could disallow a regulation prescribing a class of medical practitioner as a

³⁴ Queensland Health, correspondence, 18 May 2023, p 2.

³⁵ LSA, s 4(4)(a), (b).

³⁶ The Ministerial Council is constituted by Australia's Health Ministers: National Law, s 5.

³⁷ Bill, cl 4 (National Law, new s 115A(5)(e)).

³⁸ Bill, cl 4 (National Law, new s 115A(4)).

³⁹ National Law, s 246(1). However, failure to comply with this requirement does not affect the validity of the regulation: National Law, s 246(1A). Nevertheless, even if the regulation is not tabled, it may be disallowed: National Law, s 246(1C), (1D).

⁴⁰ National Law, s 246(1B). See *Statutory Instruments Act 1992*, s 50.

⁴¹ National Law, s 246(2).

surgical class, but the regulation would remain effective unless the majority of participating jurisdictions disallowed it.⁴² The explanatory notes do not address this limitation on the ability of the Queensland Parliament to scrutinise regulations made under the National Law.

In addressing matters of fundamental legislative principle related to the appropriateness of the delegation of legislative powers, the explanatory notes state:

Allowing additional classes to be set out in a regulation provides the needed flexibility to update the list from time to time. This may be required, for instance, if new specialties or fields of specialty practice are recognised or there are future changes to the registration or accreditation standards for existing specialties.

Determining appropriate classes requires a detailed examination of the training, qualifications, accreditation standards, and supervision requirements for many different medical specialties and fields of specialty practice. The list of classes may need to be updated quickly if there are changes to registration or accreditation standards or recognised specialties, making it difficult to set out the classes in the Act.⁴³

Additionally, the explanatory notes state that the Bill's proposed process is 'similar to the existing process for approving specialties and specialty titles in certain health professions under s 13 of the National Law, which are approved by Australian Health Ministers'.⁴⁴

The explanatory notes assert that the Ministerial Council is the appropriate body to prescribe the additional surgical classes:

Given the Ministerial Council's role under the National Law, including its powers to make regulations, issue policy directions and approve registration standards, it is the appropriate entity to determine the relevant classes. The Bill also provides guidance to the Ministerial Council about its decision-making.⁴⁵

Committee comment

Noting the justifications provided in the explanatory notes, the committee is satisfied that the delegation of legislative power to the Ministerial Council to prescribe a class of medical practitioner as a surgical class is an appropriate delegation of power.

In this instance, given the proposed content of the regulation (i.e. prescribing another class of medical practitioner as a surgical class), the matters the Ministerial Council must have regard to before making a regulation, and that any regulation must be tabled in the Queensland Parliament and may be disallowed, the committee is satisfied that the Bill has sufficient regard to parliament even though a regulation made under the National Law that is disallowed by the Queensland Parliament continues to have effect unless it is disallowed in the majority of participating jurisdictions.

2.2.4 Title restrictions beyond the medical profession

Several submissions⁴⁶ advocated for extending title restrictions to other health professions beyond the medical profession.

⁴² If a regulation is disallowed in a majority of the participating jurisdictions, it ceases to have effect in all participating jurisdictions on the date of its disallowance in the last of the jurisdictions forming the majority: National Law, s 246(3).

⁴³ Explanatory notes, p 9.

⁴⁴ Explanatory notes, p 10. Section 13 of the National Law specifies the health professions for which 'specialist' recognition operates under the National Law, and provides that, if a health profession is a profession for which specialist recognition operates, the Ministerial Council may, on the recommendation of the National Board established for the profession, approve a list of specialties for the profession; and approve one or more specialist titles for each specialty in the list.

⁴⁵ Explanatory notes, p 10.

⁴⁶ See for example submissions 1, 2, 7, 8, 11, 12, 13, 16.

The Australian Orthopaedic Association and the Australian Orthopaedic Foot and Ankle Society⁴⁷ advocated for the AMC to be responsible for accrediting surgical training for ‘surgeons’ across all health professions, raising concerns about podiatrists using the title ‘podiatric surgeon’.

ANZAOMS⁴⁸ similarly advocated for expanding restrictions on the use of the title ‘surgeon’ to all health practitioners, referring to their specific concern with the use of the specialist title ‘oral surgeon’ within the dental profession, stating that consumers would reasonably believe someone using the title ‘oral surgeon’ was a medically qualified surgeon.

The AMA⁴⁹ thought restrictions on use of the title ‘surgeon’ should extend beyond medical practitioners, particularly to podiatrists who lack medical or surgical training of a standard comparable with medical practitioners.

2.2.5 ‘Surgical class’ to include additional classes of medical practitioner

Rural generalists are specialist GPs trained to provide context-appropriate skilled services in rural and remote areas. Their scope of practice is defined across primary, secondary and emergency care, including providing much needed surgical, obstetrics and gynaecological, and other non-procedural advanced skills, to Australia’s rural and remote communities.⁵⁰

ACRRM⁵¹ expressed concern that the amendments fail to recognise the role of ‘Rural Generalists’ who provide skilled services in rural and remote areas, including critical surgical services. The ACRRM was concerned that this omission could serve to erode community confidence in the skills of rural doctors. ACRRM advocated for their fellowship program’s surgical training to be considered sufficient for inclusion within the ‘surgical class.’

The AMA⁵² also stated that it would consider supporting a title such as ‘rural generalist surgeon’ if such class of medical practitioner were approved as a sub-speciality, subject to appropriate consultation.

The committee notes advice that currently rural generalists are non-AMC accredited surgical specialists afforded a specialist general practitioner title under Ahpra⁵³ and are presently seeking to have a separate AMC accredited specialty put into place.⁵⁴

In response to a question taken on notice at the public hearing, Ahpra advised the committee:

No one wants to bring surgical services in rural Australia to a halt. Title protection is a restriction on language, not a restriction on practice. Protecting the title ‘surgeon’ will not stop medical practitioners in rural and regional Australian from continuing to provide much needed surgical care when they have the skills to do so. It will simply stop these practitioners calling themselves surgeons. This is an important distinction in the context of wider conversations about pressures on Australia’s health workforce.

GP surgeons and rural generalists are highly skilled individuals who have gained considerable surgical experience and have qualifications in surgery. However, they are not specialist surgeons. If the Bill is passed, the Medical Board would be happy to discuss with the Colleges, suitable title/s that could be used

⁴⁷ Submission 2.

⁴⁸ Submission 11.

⁴⁹ Submission 12.

⁵⁰ Public hearing transcript, Brisbane, 22 May 2023, p 14.

⁵¹ Submission 3.

⁵² Submission 12.

⁵³ Dr Rebecca Won, Australian Society of Plastic Surgeons, public hearing transcript, Brisbane, 22 May 2023, p 7.

⁵⁴ Public hearing transcript, Brisbane, 22 May 2023, p 11.

to inform the public about their advanced training, and extended scope and competencies, that does not put these medical practitioners at risk of inadvertently breaching the National Law.⁵⁵

Committee comment

The committee acknowledges the vital work undertaken by rural generalists and the diverse range of skills they must exhibit in providing medical and emergency care in rural and remote communities.

We also note the advice from Ahpra in respect of processes already in-train for Australian Medical Council accreditation and better recognition of the crucial community role of rural generalists.

The committee supports steps being taken to ensure that rural generalists receive well-deserved acknowledgement and recognition for their skills, dedication and commitment to securing good health outcomes for patients wherever they might be across the country.

RACGP⁵⁶ advocated for GPs who gained their surgical skills through fellowship with the RACGP or the ACRRM to be able to use the title 'surgeon', including the title 'GP-Surgeon', stating that failing to do so diminishes the role and skills of GP specialists. RACGP also contended that the title 'surgeon' should not be restricted to only those practitioners with RACS training.

As noted by the department in its response, the initial classes of medical practitioner who will be permitted to use the title 'surgeon' were determined by health ministers on advice of the MB. The initial classes include those recognised medical specialties for which practitioners must have successfully undertaken significant accredited specialist surgical training and whose members often practice complex surgery within the normal scope of their practice.

The department advised that although the ACRRM and RACGP fellowships are not included in the initial scope of the 'surgical classes,' the Bill was drafted to minimise impacts on the provision of rural medicine, noting that although rural and other GPs will not be able to call themselves 'surgeon' they will still be able to continue performing surgeries that are within their scope of practice.⁵⁷

2.2.6 Australian Defence Force surgeon titles

The Medical Indemnity Protection Society (MIPS)⁵⁸ queried the impact of title protection amendments on medical practitioners employed in the Australian Defence Force (ADF), noting that some ADF medical practitioners carry titles such as 'Surgeon General', 'Surgeon Commander', 'Lieutenant Surgeon' or 'Staff Surgeon'.⁵⁹

The department advised that its discussions with the Commonwealth Department of Defence specifically about use of the title 'Surgeon General' outlined that:

The title protection provisions should not be construed so broadly as to reach matters that have no connection to the regulation of registered health practitioners or the provision of regulated health services.

When read in the context of the objectives and guiding principles of the Health Practitioner Regulation National Law (National Law, ss 3 and 3A), the purpose of the National Law's title protection scheme, and the stated purpose of the Bill, it is clear that the proposed title offences would not prohibit use of customary names or titles — such as 'Surgeon General,' 'Surgeon Commander' or 'Staff Surgeon' — that are used to refer to an official rank or title, or that are otherwise generally understood to refer to matters distinct from the general provision of medical care.⁶⁰

⁵⁵ Ahpra & the National Boards, correspondence, 22 May 2023, p 2.

⁵⁶ Submission 10.

⁵⁷ Queensland Health, correspondence, 18 May 2023, p 5.

⁵⁸ Submission 1.

⁵⁹ Submission 1, pp 1-2.

⁶⁰ Queensland Health, correspondence, 18 May 2023, p 6.

2.2.7 Trainee surgical registrars

The issue of (trainee) surgical and other registrars who are undertaking a surgical training program but have not yet attained fellowship being informally referred to as ‘surgeons’ in hospital settings, was raised by the AMA.⁶¹ The department acknowledged the ‘critical’ importance of communication and education to successful implementation of the title protection amendments.⁶² Regardless of setting, only those medical practitioners who are members of a ‘surgical class’ will be able to publicly use the title ‘surgeon’ or otherwise hold themselves out as ‘surgeons’.

2.3 Other issues

2.3.1 Conduct of surgeries in approved facilities

RACS⁶³ expressed concerns about unqualified practitioners conducting surgery outside their scope of practice in unregulated facilities, advocating for performance of surgeries (only) in approved facilities with independent oversight to ensure practitioners are working within their scope of practice.

The department noted the concern was beyond the scope of the Bill, advising that the Australian Commission on Safety and Quality in Health Care has been tasked with urgently undertaking ‘work to safeguard patients by leading a review of licensing standards and arrangements of private hospitals, day procedure centres and clinics where cosmetic procedures are performed and to develop national standards for the safe delivery of high-quality cosmetic procedures’.

2.3.2 Public information campaigns

Some submitters acknowledged the utility of public information campaigns to educate patients and assist them to understand ‘titles’ and who ‘is’ and ‘is not’ a surgeon.⁶⁴ Maurice Blackburn⁶⁵ also advocated for greater awareness of consent requirements, and public information campaigns that highlight the questions consumers should ask to make an informed choice (for surgery) and give clear information about the courses of action that are available to patients should something go wrong.

The department noted that this concern was beyond the scope of the Bill, but advised that a national public education campaign has been commissioned as part of the aforementioned suite of national reforms intended to strengthen regulation of the cosmetic surgery industry.

A national public education campaign led by the Commonwealth Department of Health and Aged Care was launched on 5 April 2023 and is currently live. It highlights the importance that Australians are aware of the risks involved in cosmetic surgery and that they have the information to support an informed and safer choice. It also advises the public to report cosmetic surgery issues to the Ahpra Cosmetic Surgery Hotline.

2.3.3 Updating professional guidelines

MIPS⁶⁶ contends that the MB *Guidelines for registered medical practitioners who advertise cosmetic surgery* should be updated to ensure medical practitioners who perform cosmetic surgery but are not members of a ‘surgical class’ are aware of the title restrictions.

In response the department confirmed that education and awareness of title restrictions for both practitioners and the public will be critical to successfully implementing the reforms.

⁶¹ Submission 12, p 3.

⁶² Queensland Health, correspondence, 18 May 2023, p 7.

⁶³ Submission 15.

⁶⁴ See for example - Australasian Society of Aesthetic Plastic Surgeons (submission 5) and Maurice Blackburn Lawyers (submission 16).

⁶⁵ Submission 16.

⁶⁶ Submission 1.

2.3.4 Compensatory damages

Maurice Blackburn⁶⁷ observed that making practitioners more accountable for compensatory damages, as well as the prescribed penalties in the Bill, would reduce the incidence of under-qualified practitioners offering higher risk services.

The departmental response noted that all health practitioners have an existing duty of care to avoid causing reasonably foreseeable harm, with breaches of that duty [likely] constituting negligence. They noted that the Bill does not change the application of civil liability legislation to the health professions.

2.3.5 Compliance and enforcement of title protection reforms

ASAPS⁶⁸ advocated for the proactive monitoring and enforcement of title restrictions.

The department's response to submissions acknowledged Ahpra's role in implementing the changes nationally, and Ahpra's acknowledgement that the amendments will give them clear tools to take action if the title 'surgeon' is misused and/or consumers are misled. The department noted that, given the National Law has an existing title protection scheme, implementation of the Bill (and related) reforms should only require minor system changes and updating of internal policies and procedures. Further the department advised that Ahpra and the MB have updated their practice guidelines and advertising obligations, effective from 1 July 2023.

2.3.6 Tribunal decision-making amendments – section 196(4) of the National Law

Separate to the amendments to protect the title of 'surgeon', the Bill also proposes amendments to clarify s 196(4) of the National Law.

Section 196 of the National Law sets out the decisions a tribunal may make after hearing a matter about a registered health practitioner. A possible decision includes cancelling the practitioner's registration. If a tribunal decides to cancel a person's registration under this section, or the person does not hold registration, s 196(4) allows the tribunal to:

- disqualify the practitioner from re-applying for a period of time
- impose prohibitions or restrictions on the person's ability to provide 'health services',⁶⁹ or
- prohibit the person from using a specified title.⁷⁰

A review of tribunal decisions across jurisdictions has shown divergent interpretations of the provision. Some have taken the position that the types of decisions are mutually exclusive, so that a decision to disqualify a person from applying for registration precludes a decision to prohibit the person from providing health services or using a title. Other tribunals have taken the opposite position, and have made orders that simultaneously disqualify a practitioner and prohibit them from providing health services or using specified titles.⁷¹

The Bill clarifies that the decisions in s 196(4) are not mutually exclusive. According to the department, by making this amendment it will provide greater flexibility for tribunals to make decisions appropriate to the circumstances of the matter.⁷²

In addition, the Bill seeks to amend s 196(4)(c). It was intended that this provision, in allowing a tribunal to impose restrictions on the provision of health services by a health practitioner whose

⁶⁷ Submission 16.

⁶⁸ Submission 5.

⁶⁹ 'Health services' includes services for which practitioners are not required to be registered under the National Law.

⁷⁰ Explanatory notes, p 4.

⁷¹ Explanatory notes, p 4.

⁷² Queensland Health, correspondence, 28 April 2023, attachment, p 5.

registration has been cancelled by the tribunal, or who was no longer registered at the time of the hearing, would be reflected on the public registers and enforceable.⁷³ However, this is not the case. Under the National Law, the public national register for a health profession is to include the names of all persons subject to a prohibition order.⁷⁴ The Bill amends the definition of ‘prohibition order’ in s 5 of the National Law to provide that it includes an order made under s 196(4)(c).⁷⁵

A transitional provision has been included to provide for the publishing and enforcement of prohibition orders made under s 196(4)(c) before commencement of this section. However, the transitional provision will only apply to these sections prospectively. For example, the offences relating to prohibition orders under s 196A will only apply to acts committed after the commencement of the transitional provision in relation to a prohibition order issued under s 196(4)(c).⁷⁶

Several submitters supported the proposed amendments aimed at clarifying tribunal decision-making, stating that the amendments will prevent practitioners from engaging in unregulated health services that may expose the public to harm, will benefit patient safety, and will provide clarity to practitioners about the outcomes of tribunal decisions.⁷⁷

2.3.6.1 Tribunal decision making – right to privacy

Under s 25 of the HRA, a person has the right to privacy and reputation, which protects individuals from unlawful or arbitrary interference and attacks upon their privacy, family, home, correspondence or reputation.⁷⁸

The Bill would expand the options available to a tribunal in making a decision about a registered health practitioner so that, if the tribunal decides to cancel a person’s registration under the National Law, the tribunal may decide to impose restrictions on the provision of any health service by the person.

By amending the definition of ‘prohibition order’ in the National Law to include such tribunal-imposed restrictions on practice, the decisions would then be required to be recorded in public national registers, which is a limitation on the right to privacy of the relevant practitioners.

The statement of compatibility advises that the purpose of the limitation is to ensure there is adequate information available about practitioners so that healthcare consumers can make more informed decisions that may impact the course of their treatment and their health outcomes. It states:

The amendments will make information available to consumers about tribunal-imposed restrictions on a practitioner’s provision of services. Such information is important to inform consumer choice. Publishing the information will also help prevent practitioners from performing health services for which they have been restricted.⁷⁹

The statement of compatibility advises that there are ‘no reasonably available, less restrictive alternatives to achieve the identified purpose’, and that the proposed amendment ‘treats tribunal-imposed restrictions the same as tribunal-imposed prohibitions, which are already required to be published on the national registers’.⁸⁰

⁷³ In the same way as an order issued under s 196(4)(b) Prohibiting a practitioner from providing health services.

⁷⁴ National Law, s 222(4)(b).

⁷⁵ Explanatory notes, p 4.

⁷⁶ Explanatory notes, p 16; Queensland Health, correspondence, 28 April 2023, attachment, p 5.

⁷⁷ Medical Indemnity Protection Society, submission 1, p 1; Australasian College for Emergency Medicine, submission 14, p 1.

⁷⁸ Statement of compatibility, p 6.

⁷⁹ Statement of compatibility, p 6.

⁸⁰ Statement of compatibility, p 7.

Committee comment

The committee considers that the Bill appropriately balances practitioner rights to privacy with ensuring healthcare consumers have sufficient information to make informed choices and give informed consent to procedures, and that any potential limitation on the right to privacy is reasonable and demonstrably justified, having regard to section 13 of the HRA.

Appendix A – Submitters

Sub #	Submitter
1	Medical Indemnity Protection Society
2	Australian Orthopaedic Association & Australian Orthopaedic Foot and Ankle Society
3	Australian College of Rural and Remote Medicine
4	Australian Society of Plastic Surgeons
5	Australasian Society of Aesthetic Plastic Surgeons
6	Office of the Health Ombudsman
7	Dr Jeffery Peereboom, Orthopaedic Surgeon
8	Private Healthcare Australia
9	Ahpra & the National Boards
10	Royal Australian College of General Practitioners
11	The Australian and New Zealand Association of Oral and Maxillofacial Surgeons
12	Australian Medical Association
13	Council of Procedural Specialists
14	Australasian College for Emergency Medicine
15	Royal Australasian College of Surgeons
16	Maurice Blackburn Lawyers
17	Catholic Health Australia
18	The Australasian College of Dermatologists
19	The Australasian College of Cosmetic Surgery and Medicine

Appendix B – Officials at public briefings

Brisbane, 3 May 2023

Queensland Health

- Karson Mahler, Director, Legislative Policy Unit, Strategy, Policy and Reform Division
- Kirsten Slape, Manager, Legislative Policy Unit, Strategy, Policy and Reform Division

Brisbane, 22 May 2023

Queensland Health

- Karson Mahler, Director, Legislative Policy Unit, Strategy, Policy and Reform Division
- Kirsten Slape, Manager, Legislative Policy Unit, Strategy, Policy and Reform Division

Appendix C – Witnesses at public hearing

Brisbane, 22 May 2023

Royal Australasian College of Surgeons

- Professor Owen Ung, Vice-President
- Professor Mark Frydenberg AM, Chair, Health Policy & Advocacy Committee & Councillor

Council of Procedural Specialists

- Associate Professor David Scott OAM, Chair
- Dr Mark Jackson, Executive Member, President Elect, Australian and New Zealand Society for Vascular Surgery

Australian Society of Plastic Surgeons

- Dr Rebecca Won, Queensland Member
- Dr Dan Kennedy, Queensland Member

Australian Medical Association

- Dr Danielle McMullen, Vice-President
- Dr Mark Duncan-Smith, AMA Council of Private Specialist Practice

Australian College of Rural and Remote Medicine

- Dr Dan Halliday, President

The Australian and New Zealand Association for Oral and Maxillofacial Surgeons

- Dr Patrishia Bordbar, President
- The Hon Associate Professor Anthony Lynham, ANZAOMS Member
- Ms Belinda Mellowes, Executive Officer

Private Healthcare Australia

- Mr Ben Harris, Director Policy and Research

Australian Orthopaedic Foot and Ankle Society & Dr Jeffery Peereboom, Orthopaedic Surgeon

- Dr Jeffery Peereboom, Orthopaedic Surgeon

Australian Orthopaedic Association

- Mr Adrian Cosenza, Chief Executive Officer

Ahpra and Medical Board of Australia

- Mr Martin Fletcher, Chief Executive Officer, Ahpra
- Dr Jamie Orchard, General Counsel, Ahpra
- Dr Anne Tonkin AO, Chair, Medical Board of Australia

Queensland Health Ombudsman

- Dr Lynne Coulson Barr OAM