Health Practitioner Regulation National Law (Surgeons) Amendment Bill 2023

Explanatory Notes

Short title

The short title of the Bill is the Health Practitioner Regulation National Law (Surgeons) Amendment Bill 2023 (the Bill).

Policy objectives and the reasons for them

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.

Australian Health Ministers agreed to the amendments on 24 February 2023.

Overview of the National Law and National Registration and Accreditation Scheme

The National Law sets out the legal framework for Australia's National Registration and Accreditation Scheme (National Scheme) for health professions. The National Scheme commenced in 2010 through the adoption of the National Law by all states and territories.

The National Scheme ensures that only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered. It allows health practitioners to have a single registration recognised anywhere in Australia and provides for uniform standards for the registration of health practitioners and the accreditation of health education providers.

The National Scheme uses a 'protection of title' model, which restricts who can use specified professional titles, including specialist titles. It provides powers to prosecute or take disciplinary action against persons who unlawfully use a protected title or falsely hold themselves or another person out as holding registration or a particular type of registration, specialty or endorsement that they do not hold. This model protects health care consumers by ensuring they are not misled. Specifically, title protections allow members of the public to be confident that a health practitioner is in fact registered under the National Law and appropriately qualified and competent to practise the profession.

Under the *Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions* between all states and territories and the Commonwealth

(March 2008), 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. Western Australia does not directly apply the National Law but has enacted corresponding legislation.[1]

Use of the title 'surgeon'

Recent reviews into the regulation of cosmetic surgery in Australia demonstrate a need to strengthen title protections under the National Law to ensure that medical practitioners using the title 'surgeon' possess the degree of advanced surgical training and qualifications that health consumers already assume and should be able to expect.

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 post-graduate surgical training. This is because the National Law does not protect 'surgeon' as a stand-alone title. Rather, it is protected only when used to refer to an approved specialist title, such as 'specialist general surgeon' or 'specialist plastic surgeon.'

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.

This confusion is particularly evident in relation to cosmetic surgery. Cosmetic surgery is not an approved specialty under the National Law. As such, any medical practitioner may market themselves as a cosmetic or aesthetic surgeon, regardless of their qualifications and level of training.

In November 2021, the Medical Board of Australia (the Medical Board) and the Australian Health Practitioner Regulation Agency (Ahpra) commissioned an external review of patient safety issues in the cosmetic surgery industry, including how to strengthen the regulation of practitioners in the industry. This *Independent review of the regulation of medical practitioners who perform cosmetic surgery* (Independent Review) was led by Mr Andrew Brown, former Queensland Health Ombudsman, and included public consultation from 4 March to 14 April 2022.

Submissions received as part of the Independent Review raised concerns about the absence of any minimum standards for who can call themselves a 'surgeon.' The review observed:

> [C]onsumers are largely left on their own when it comes to selecting a practitioner to perform cosmetic surgery. Often they are required to sift through a plethora of advertising and marketing material, seek to understand various titles and try to make sense of numerous qualifications, all in an attempt to identify a qualified and competent practitioner. This is an unacceptable situation.[2]

[1] *Health Practitioner Regulation National Law (WA) Act 2010* (WA).
[2] Independent Review, p 5, available at: https://www.ahpra.gov.au/Resources/Cosmetic-surgery-hub/Cosmetic-surgery-review.aspx

These concerns were also evident in feedback to the Consultation Regulation Impact Statement *Use of the title 'surgeon' by medical practitioners in the Health Practitioner Regulation National Law* (the Consultation RIS).[3] The consultation findings demonstrated significant public confusion about medical practitioners' titles and qualifications associated with the use of the title 'surgeon'[4] and suggested a gap between how consumers understand the title 'surgeon' and how it is used by some medical practitioners.

The confusion and information asymmetry surrounding the title 'surgeon' presents significant risks to consumers. This undermines an important aim of the National Law: to provide confidence to the public that a person claiming to have relevant qualifications or training is in fact appropriately qualified and competent to practice.

Feedback on the Consultation RIS also indicated significant concerns about the risk and harm associated with the cosmetic surgery industry. These concerns were evident from the standpoint of both the consumer and medical professional.

As outlined in the Consultation RIS, a variety of harms have been caused by poor cosmetic surgery and post-surgery practices in cases where practitioners have performed cosmetic surgery outside their area of competence. Some of these harms include cyanosis (deoxygenation of the skin), split wounds, fevers and infections, excruciating pain, haemorrhage, excessive tissue trauma, scarring, local anaesthetic toxicity, sepsis, pneumothorax (collapsed lung), central nervous depression, cardiac arrest, and death.[5] These risks are amplified if cosmetic surgery is not performed by an appropriately qualified, trained, and experienced medical practitioner.

Government and regulators are charged with ensuring that regulation protects the public. This obligation was recently strengthened by the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2022*, which amended the National Law to introduce a paramount guiding principle of public protection and public confidence in the safety of services provided by registered health practitioners, and to provide regulators with greater powers to identify and respond to public safety concerns.

The Bill aims to lessen confusion around use of the title 'surgeon' by medical practitioners to allow people to make more informed choices about their health care and, as part of a wider range of reforms, to strengthen the regulation of cosmetic surgery in Australia.

Clarification of section 196 of the National Law

Separate from the title protection reforms, the Bill amends section 196(4) of the National Law to remove ambiguity and clarify the operation of this section.

[3] The Consultation RIS is available at: https://engage.vic.gov.au/medical-practitioners-use-title-surgeon-under-national-law
[4] Consultation RIS, p 27.
[5] *Medical practitioners' use of the title 'surgeon' under the Health Practitioner Regulation National Law*, Decision Regulation Impact Statement, p 23-25.

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, section 196(4) also allows the tribunal to:

- disqualify the person from applying for registration for a specified period;
- prohibit the person from providing health services or using a title; or
- impose restrictions on the person's provision of health services.

A review of decisions applying section 196(4) reveals tribunals have reached divergent interpretations of this provision. Tribunals in some jurisdictions have, in certain decisions, taken the position that the decisions in section 196(4) are mutually exclusive, so that a decision to disqualify a person from applying for registration for a specified period precludes a decision to prohibit the person from providing health services or using a title. Other tribunals have taken the opposite position and in numerous cases have made orders that simultaneously disqualify and prohibit a practitioner.

The Bill aims to remove the ambiguities in section 196(4) of the National Law by clarifying that the decisions in subsection (4) are not mutually exclusive

The Bill also makes other amendments to clarify the operation of orders made under section 196. Section 196(4)(c) allows a tribunal to impose restrictions on the provision of health services by a health practitioner whose registration has been cancelled by the tribunal, or who was no longer registered at the time of the hearing. This provision was inserted into the National Law by the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2022*.

Allowing tribunals to impose restrictions on the provision of health services provides more flexibility for tribunals to respond to the circumstances of particular matters. However, it had been intended that the imposition of these restrictions would be reflected on the public registers and enforceable in the same way as an order issued under section 196(4)(b) prohibiting a practitioner from providing health services. However, this is not the case.

The Bill aims to treat decisions made under section 196(4)(c) the same as decisions made under section 196(4)(b) to increase the transparency and enforceability of those decisions.

Achievement of policy objectives

The Bill amends the National Law to address the information and power asymmetry between patients and medical practitioners. It does this through protecting the title 'surgeon' within the medical profession.

Separately, the Bill includes an amendment to clarify the intent and operation of section 196(4) of the National Law.

Protecting use of the title 'surgeon'

The Bill protects the use of the title 'surgeon' within the medical profession by ensuring only those medical practitioners with significant surgical training can use the title or make claims or hold themselves out as a 'surgeon'.

Specifically, the Bill makes it an offence for a medical practitioner who is not a member of a defined *surgical class* to knowingly or recklessly—

- use the title 'surgeon';
- use another title, name, initial, symbol, word or description that could reasonably indicate the practitioner is in a surgical class; or
- hold themselves out as being a member of a surgical class.

To address circumstances where an employer or other person falsely claims a medical practitioner is a 'surgeon,' it will also be an offence for the employer or other person to knowingly or recklessly—

- use the title 'surgeon' in respect of a medical practitioner that is not a member of a surgical class;
- hold a medical practitioner out as being a member of a surgical class when they are not; or
- use another title, name, initial, symbol, word or description that indicates a medical practitioner is a member of a surgical class when they are not.

The new offences carry a maximum penalty of $60,000 or 3 years imprisonment for an individual or $120,000 for a body corporate. These are the same as the maximum penalties for the existing offences prohibiting misuse of professional and specialist titles under the National Law.

The title offences will apply whether the word 'surgeon' is used in isolation or in combination with other words. This means titles such as 'cosmetic surgeon' and 'aesthetic surgeon' will be subject to the same restrictions as the generic title 'surgeon' and could only be used by medical practitioners within a surgical class.

The Bill defines *surgical class* to include medical practitioners holding specialist registration in three recognised medical specialties: surgery, obstetrics and gynaecology, and ophthalmology. To be registered in these specialities, a medical practitioner is required to have successfully undertaken significant Australian Medical College (AMC) specialist surgical training (or equivalent training in the case of international medical graduates with specialist registration). Practitioners in these specialties often practice sophisticated surgery as part of their normal scope of practice.

To accommodate potential future changes to the medical profession, the Bill also defines *surgical class* to include the following classes of medical practitioners:

- medical practitioners holding specialist registration in another recognised specialty in the medical profession with the word 'surgeon' in a specialist title for the specialty; and
- other classes prescribed by regulation.

In prescribing any additional classes of medical professions that can use the title 'surgeon,' Australian Health Ministers must have regard to advice of the Medical Board, if provided, and the surgical training required to be a member of the approved class. The Medical Board is the appropriate body to advise Health Ministers on this matter as it is the primary regulator of medical training, accreditation and registration standards in Australia.

Restrictions on use of the title 'surgeon' will not apply to the use of specialist titles, such as 'specialist plastic surgeon' or 'specialist orthopaedic surgeon.' Existing provisions of the National Law already protect the use of specialist titles, which are reserved for practitioners who hold registration in the relevant specialties.

Use of the title 'surgeon' will also not be restricted for practitioners who are registered in a health profession other than the medical profession. In general, use of the title 'surgeon' by a non-medical practitioner is already prohibited by section 113 of the National Law because it could be reasonably expected to induce a belief that the person is registered in the medical profession. However, there are some circumstances in which it is lawful for a non-medical practitioner to use the title 'surgeon.' For example, registered podiatrists who hold specialist registration in podiatric surgery are entitled to refer to themselves as 'podiatric surgeons.' Similarly, the title 'oral surgeon' is approved for use by members of the dental profession who hold specialist registration in that field. Additionally, for historical reasons, some dentists may still use the informal title 'dental surgeon' in their practice. The Bill does not restrict the use of the title by practitioners outside of the medical profession.

Protecting the title 'surgeon' in this manner reflects community and professional needs and expectations.

Clarifying section 196 of the National Law

To address the divergence in tribunal interpretation and remove any ambiguity, the Bill clarifies the decisions listed in subsection 196(4) of the National Law are not mutually exclusive. This amendment reflects the intent of the provision and provides flexibility for tribunals to make the decisions appropriate to individual matters.

The Bill also clarifies that a decision made under section 196(4)(c) to impose restrictions on a person's provision of health services is a prohibition order. This means that sections 196A, 222, 223 and 227 of the National Law apply to such orders, just as they do to decisions made under section 196(4)(b) to prohibit a person from providing health services or using a title.

Alternative ways of achieving policy objectives

Protecting use of the title 'surgeon'

The Bill proposes to protect the title 'surgeon' to protect the public and strengthen the regulation of cosmetic surgery in Australia.

On 13 December 2021, Australian Health Ministers released the Consultation RIS for public comment. The Consultation RIS was prompted by Health Ministers' concerns about the cosmetic surgery industry.

The Consultation RIS sought feedback on whether use of the title 'surgeon' within the medical profession was confusing for members of the public and, if so, whether this confusion was contributing to avoidable and disproportionate risks and harms to the public. It also sought feedback to determine if current regulation is sufficiently effective in protecting the public from risks related to cosmetic surgery. In doing so, it canvassed a range of options. The options canvassed in the Consultation RIS are:

- maintaining the status quo with existing regulatory and other tools;
- non-legislative reforms to assist patients to make informed choices about their health care, including public information campaigns and increased provider liability for non-economic damages;
- strengthening the existing regulatory framework by, for example, updating the Medical Board's Code of Conduct and other guidelines for medical practitioners;
- restricting the title 'surgeon' under the National Law, with two sub-options—
    - restricting the title 'surgeon' to the ten surgical specialty fields of practice approved by the Ministerial Council; or
    - restricting the title 'surgeon' to specialist medical practitioners with significant surgical training.

Another option mentioned, but discounted, in the Consultation RIS, is to restrict some cosmetic and other surgery practices. This option was not canvassed in the Consultation RIS as it is counter to the general functioning of the National Law. The National Law, with very few exceptions, functions by restricting the use of protected professional titles rather than by imposing practice restrictions. This is because practices evolve and can do so rapidly in response to technological and disciplinary innovations. This makes prescribing practices in legislation impractical.

In December 2022, Australian Health Ministers published the Decision RIS *Medical practitioners' use of the title 'surgeon' under the Health Practitioner Regulation National Law* (Decision RIS). 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. This option, combined with non-legislative reforms already underway,[6] will have the greatest impact in addressing consumer confusion and reducing risks and harms to the public, while appropriately balancing the legislative burden of restricting a title.

Clarifying ambiguities in section 196 of the National Law

There are no alternative ways to clarify the ambiguities in section 196(4) of the National Law.

[6] At the time the Decision RIS was released, Australian Health Ministers had agreed to non-legislative reforms, including a public information campaign and improving guidance and education for medical practitioners who perform cosmetic surgery.

Estimated cost for government implementation

It is anticipated that the overall costs to the Queensland Government of implementing these proposals will be minimal and met through existing budget allocations.

The National Scheme is funded by practitioners' registration fees, with fees set by each National Board to reflect the cost of regulating each profession under the National Law.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles in the *Legislative Standards Act 1992*. Potential breaches of fundamental legislative principles are addressed below.

Whether the legislation has sufficient regard to the rights and liberties of individuals

Under section 4(2)(a) of the Legislative Standards Act, legislation must have sufficient regard to the rights and liberties of individuals. In considering whether the proposed amendments have sufficient regard to the rights and liberties of individuals, the following issues are relevant.

Offence provisions

Although not specifically enumerated in the Legislative Standards Act, for legislation to have sufficient regard to the rights and liberties of individuals, the consequences imposed by legislation should be proportionate and relevant to the actions to which they are applied.

The Bill includes new offences applicable to persons who unlawfully use the title 'surgeon' or hold themselves or others out as being authorised or qualified to use the title 'surgeon.' Consistent with the existing title protection offences in the National Law, the new offences will be indictable with a maximum penalty of—

- $60,000 or 3 years imprisonment or both for an individual; and
- $120,000 for a body corporate.

The offences are designed to protect the public from harm by ensuring they are not misled about the qualifications and competency of medical practitioners. The offences and associated penalties are consistent with existing offences and penalties within the National Law, and the penalties are proportionate to the seriousness of the offences, particularly considering the potential risks to patients. The penalties are necessary to ensure there are sufficient deterrents against non-compliance. For comparison, the penalty for misrepresenting or advertising oneself as being entitled to engage in legal practice under the *Legal Profession Act 2007* is 300 penalty units ($43,125) or 2 years imprisonment (s 25).

Restrictions on ordinary activities must be justified

Also not specifically enumerated in the Legislative Standards Act, legislation should not, without sufficient justification, unduly restrict ordinary activities.[7] This includes unduly interfering in a person's conduct of business.

The former Scrutiny of Legislation Committee considered provisions regulating the use of a title or name for a business and restrictions on advertising as raising an issue about the rights and liberties of an individual. However, such restrictions can be justified, particularly if the rationale for the restrictions is the promotion of public health and safety or fair trading.

The Bill will restrict medical practitioners from taking or using the title 'surgeon' unless they are a member of an approved surgical class with appropriate surgical training. As with other titles protected under the National Law, restricting the use of the title 'surgeon' protects health care consumers by ensuring they are not misled. Such restrictions are justified to ensure that medical practitioners using the title 'surgeon' possess the degree of advanced surgical training and qualifications that health consumers already assume and should be able to expect. Protection of the title is consistent with the title protection scheme of the National Law.

Whether the proposed legislation has sufficient regard to the institution of Parliament

Under section 4(2)(b) of the Legislative Standards Act, legislation must have sufficient regard to the institution of Parliament. In considering whether the proposed amendments have sufficient regard to the institution of Parliament, the following issues are relevant.

Delegation of legislative powers

Section 4(4)(a) of the Legislative Standards Act provides that legislation has sufficient regard to the institution of Parliament if it allows the delegation of legislative power only in appropriate cases and to appropriate persons.

The Bill will empower Australian Health Ministers, acting as the *Ministerial Council* for the National Law, to prescribe in regulation additional classes of medical practitioners that are permitted to use the title 'surgeon.' 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.

[7] See, e.g., *Fundamental Legislative Principles, The OQPC Notebook*, pp. 118-120 (updated Jan 2008).

The process is also similar to the existing process for approving specialties and specialty titles in certain health professions under section 13 of the National Law, which are approved by Australian Health Ministers.

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. The Bill provides that the Ministerial Council must have regard to any relevant advice from the National Board for the medical profession and the surgical training required to be undertaken by a member of a proposed class.

The delegation of legislative powers in these circumstances is appropriate and justified.

Consultation

In December 2021, Australian Health Ministers publicly released a Consultation RIS which sought feedback on potential issues arising from use of the title by medical practitioners and proposed options for reform. An expert health consumer organisation was engaged to survey members of the public about their cosmetic surgery experiences.

Submissions were received from 150 professional stakeholders and nearly 1,400 responses were made to the consumer survey.

On 14 December 2022, Health Ministers announced the Decision RIS, which analysed the submissions and consumer survey responses. The Decision RIS also considered the findings of the Independent Review, which received 249 submissions and 595 public survey responses.

Stakeholders consulted through the Consultation RIS and Independent Review include 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.

Feedback confirmed that many consumers experienced significant confusion about the titles and qualifications of medical practitioners. The feedback also indicated widespread concerns about the regulation of cosmetic surgery and instances of risk and harm associated with this industry, both among consumers and professional bodies.

There were divergent views about the most appropriate way to address the identified problems. However, stakeholders overwhelmingly did not support maintaining the status quo. Professional and consumer respondents to the consultation indicated that the current regulatory framework is inadequate to address the identified concerns.

Many stakeholders noted that implementation of one reform in isolation may not be sufficient to address the problem and that a response combining elements from different options in a coordinated and complementary manner may be required. The title protection amendments in

the Bill are one of several reforms agreed by Health Ministers to respond to the risks associated with cosmetic surgery and to strengthen regulation in this area.

There was general support from stakeholders for the implementation of a major public information campaign (Option 2.1 of the Consultation RIS) and substantial support from stakeholders to strengthen the existing regulatory framework (Option 3 of the Consultation RIS), including support for establishing an area of practice endorsement for cosmetic surgery and greater scrutiny of cosmetic surgery advertising. Australian Health Ministers have agreed to implement these non-legislative reforms.

There were differing views among stakeholders on restricting the title 'surgeon' under the National Law.

Organisations that indicated full or partial support for title restriction included professional colleges and organisations such as the Royal Australasian College of Surgeons, the Australian Medical Association, the Australasian Society of Aesthetic Plastic Surgeons, regulators and complaints-handling bodies such as the Office of the Health Ombudsman (Queensland) and other organisations such as Maurice Blackburn Lawyers. Stakeholders that supported this option generally argued that—

- the term 'surgeon' carries significant weight with the general public;
- consumers are likely to believe that practitioners using the title 'surgeon' have significant surgical education and training, including postgraduate surgical training;
- consumers are likely to be confused or misled by the use of the term 'surgeon' in some circumstances, including the term 'cosmetic surgeon'; and
- there is potential for consumers to be exposed to unacceptable levels of risk and harm as a result.

Title restriction was opposed by a range of stakeholders, including organisations representing cosmetic surgeons, businesses providing cosmetic surgery and a large number of individual practitioners and organisations.

The Australian College of Rural and Remote Medicine opposed title protection, stating that imposing regulation upon this generic title is likely to involve excessive compliance costs and litigation and may cause confusion. The Royal Australian College of General Practitioners noted potential impacts of title restriction on General Practitioner (GP) proceduralists. The proposed title protection amendments have been developed to minimise any unintended impacts on GP proceduralists and the availability of rural health care.

Where consumers provided feedback on the title 'surgeon,' they were generally supportive of reforms to provide clarity on what the title means, and which practitioners would be permitted to use it.

The proposed amendments to the National Law align with the recommendation from the Decision RIS to restrict use of the title 'surgeon' to medical practitioners with significant accredited surgical training. This, combined with non-legislative reforms already underway, will have the greatest impact in addressing consumer confusion and reducing risks and harms to the public.

Consistency with legislation of other jurisdictions

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

Notes on provisions

Short title

Clause 1 provides that the short title of the Act will be the *Health Practitioner Regulation National Law (Surgeons) Amendment Act 2023*.

Law amended

Clause 2 states that the Act amends the Health Practitioner Regulation National Law (National Law). The National Law is set out in the schedule to the *Health Practitioner Regulation National Law Act 2009* (Qld).

Amendment of s 5 (Definitions)

Clause 3 amends the definition of *prohibition order* in section 5 of the National Law. It provides that a prohibition order includes a decision by a responsible jurisdiction under section 196(4)(c).

Insertion of new s 115A

Clause 4 inserts new section 115A (Claims by persons as to membership of surgical class) into the title protection provisions of the National Law. This new section protects the use of the title 'surgeon' within the medical profession.

Subsection (1) applies only to medical practitioners who are not members of a 'surgical class', which is a new term defined in subsection (5) of this clause. Under this subsection, it is an offence for such a medical practitioner to knowingly or recklessly do any of the following:

- take or use the title 'surgeon';
- take or use a title, name, initial, symbol, word or description that could be reasonably understood to indicate the practitioner is a surgeon;
- claim to be, or hold out as being, a surgeon.

The maximum penalty for an offence under this subsection is $60,000 or 3 years imprisonment or both.

The purpose of this subsection is to ensure that a medical practitioner using the title 'surgeon', or otherwise implying that they are a 'surgeon', possesses an appropriate level of advanced surgical training and qualifications. This will protect health care consumers from being misled about medical practitioners' qualifications and training.

Subsection (2) addresses circumstances where an employer or other person falsely claims that another person who is a medical practitioner is a 'surgeon.' Specifically, it makes it an offence for a person to knowingly or recklessly do any of the following in relation to a medical practitioner that is not a member of a surgical class—

- use the title 'surgeon'; or

- take or use another title, name, initial, symbol, word or description that could be reasonably understood to indicate the practitioner is a surgeon; or
- use another title, name, initial, symbol, word or description that could reasonably be understood to indicate the medical practitioner is a surgeon.

The maximum penalty for an offence under this subsection is $60,000 or 3 years imprisonment or both for an individual or $120,000 for a body corporate.

Under existing section 241A of the National Law, the new offences in sections 115A(1) and (2) are indictable offences that are misdemeanours.

Subsection 3 sets out circumstances when the misuse of title offences in subsections (1)(a) and (2)(a) apply.

The offences in subsections (1)(a) and (2)(a) apply when the title 'surgeon' is used in isolation and when it is used in combination with other words. For example, this means titles such as 'cosmetic surgeon' and 'aesthetic surgeon' would be subject to the same restrictions as the generic title 'surgeon' and can only be used by medical practitioners who are members of a surgical class. The offences also apply whether use of the title 'surgeon' is in English or any other language.

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.

Subsection 4 provides that the *Ministerial Council* for purposes of the National law must have regard to certain matters before making regulations prescribing an additional class of medical practitioner as a *surgical class*. They must have regard to (but are not required to adhere to) the advice of the Medical Board, if provided, about prescribing the class. They must also

have regard to the extent of surgical training that is required of members of the proposed class.

Subsection 5 defines 'surgical class' for purposes of this new section. The definition of 'surgical class' includes medical practitioners holding specialist registration in three recognised medical specialties: surgery, obstetrics and gynaecology, and ophthalmology. This is in recognition that specialists holding registration in these specialties are required to have successfully undertaken significant Australian Medical College (AMC) specialist surgical training (or equivalent training in the case of international medical graduates with specialist registration). Practitioners in these specialties often practice sophisticated surgery as part of their normal scope of practice.

To accommodate potential future changes to the medical profession, other classes that fall within the definition of 'surgical class' are:

- medical practitioners holding specialist registration in another recognised specialty in the medical profession with the word 'surgeon' in a specialist title for the specialty. There are, at the time of this Bill, no other medical specialties with a recognised specialist title that uses the word 'surgeon' outside of the three above-named and included specialties. However, if such a specialist title is approved in the future, practitioners entitled to use that specialist title will also be members of the 'surgical class.'
- another class of medical practitioner prescribed by regulations made by Australian Health Ministers acting as the Ministerial Council for purposes of the National Law. This will allow Australian Health Ministers to add additional classes of medical practitioner within the meaning of 'surgical class.'

Amendment of s 196 (Decision by responsible tribunal about registered health practitioner)

Clause 5 clarifies an ambiguity in section 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, or the person does not hold registration, section 196(4) allows the tribunal to also decide to disqualify the person from applying for registration for a specified period, prohibit the person from providing health services or using a title, or impose restrictions on the person's provision of health services.

Tribunals have reached divergent interpretations as to whether they can take more than one of the actions set out in section 196(4), or if the actions are mutually exclusive. To address these conflicting interpretations and remove any ambiguity, this clause clarifies the decisions listed in subsection 196(4) are not mutually exclusive. A tribunal can decide to do one or more of the actions, as fits the circumstances.

Insertion of new pt 15

Clause 6 inserts a new part 14 into the National Law. This new part contains a transitional provision relating prohibition orders made under section 196(4)(c).

The transitional provision provides that sections 196A, 222, 223 and 227 apply in relation to prohibition orders made under section 196(4)(c) even if the order was made before the commencement of this section. The transitional provision will only apply these sections prospectively. For example, the offences under section 196A will only apply to acts committed after the commencement of the transitional provision in relation to a prohibition order issued under section 196(4)(c).