AOA SUBMISSION

Use of the title ‘surgeon’ by medical practitioners in the Health Practitioner Regulation National Law Consultation - Regulation Impact Statement

18 March 2022

AUSTRALIAN ORTHOPAEDIC ASSOCIATION

Introduction

The Australian Orthopaedic Association and the Australian Orthopaedic Foot & Ankle Society welcomes the opportunity to submit a response regarding the *“Use of the title ‘surgeon’ by medical practitioners in the Health Practitioner Regulation National Law - Consultation Regulation Impact Statement”.*

The Australian Orthopaedic Association (AOA) is the peak professional body for Orthopaedic surgeons in Australia. The AOA provides high quality specialist education, training and continuing professional development. The AOA is committed to ensuring the highest possible standard of orthopaedic care, and is the leading authority in the provision of Orthopaedic information to the community.

The Australian Orthopaedic Foot and Ankle Society (AOFAS) is a subspecialty society of the AOA, consisting of experienced Orthopaedic surgeons with a dedicated focus on the care of foot and ankle conditions. This subspecialty group was created to foster the continuing education and innovation of foot and ankle care to patients around Australia.

Being medically trained practitioners, AOA and AOFAS members can provide experienced care in both the medical and surgical aspect of foot and ankle conditions. Members of the society have the recognised training with the Australian Orthopaedic Association and Royal Australasian College of Surgeons to provide treatment in both public and private hospitals.

The AOA has sought feedback on the above document from members, consumer representatives on AOA committees, and AOA internal groups with the overall conclusion being that the document is too verbose for a web-based article. This may deter those that need or want to refer to the document from doing so. It would be better placed as a reference document, with a summary of each section as a quick guide and then if clarification is required, then a summary should refer to the reference document.

General Comments

The AOA and the AOFAS would like to offer the following submission to the Regulation Impact Statement (RIS) Committee regarding the use and regulation of the term ‘surgeon’.

We support the reasoning that the regulation of the term ‘surgeon’ is required to protect patients and to manage public expectations that those using the term ‘surgeon’ are medically trained and governed.

The issue of the use of the title ‘surgeon’ is not only applicable to cosmetic surgeons.

We disagree with the statement made in page 21 that “*Health authorities are not aware of other surgical practices where a similarly broad range of practitioners are operating, or of similar levels of public confusion about the competence and appropriate activity of other surgeons, because they are more clearly designated and regulated by the Medical Board and professional colleges”*.

Podiatric surgeons – who are trained as podiatrists and do not undergo the same teaching, training or clinical governance as medical practitioners – are able to use the title ‘surgeon’, despite not completing a medical degree or undertaking externally

accredited surgical training, as is the requirement of other medically-trained individuals answerable to the Australian Medical Council (AMC).

Th AOA has made many submissions to the Australian Health Workforce Ministerial Council (AHWMC), the Ministerial Council and Government Health Ministers at both Federal and State levels, regarding this group of practitioners who are not medically-trained and who use the term ‘surgeon’. A common complaint made to AOFAS members is that patients are unaware their podiatric surgeon was not medically-trained, nor registered as a medical practitioner, nor a fellow of the Royal Australasian College of Surgeons.

We believe an inclusion of the general use of the term ‘surgeon’ by allied health professionals falls within this RIS as the terms of the RIS state on page 17 “The consultation requests information relating to cosmetic and/or other surgery”. We feel that this represents an opportunity for the term ‘surgeon’ to be fully and comprehensively reviewed in all disciplines of health care.

History of the term ‘podiatric surgeon’ Concerns of the AOA and AOFAS

Prior to the formation of the National Registration Legislation (NRL), the terms ‘surgeon’ and ‘doctor’ were protected titles in the vast majority of Australian states.

Indeed, if a person who had a PhD in a health science were to see a patient in a hospital setting, the legislation required that they identify themselves as a doctor of that health science rather than just utilise the term ‘doctor’.

It was the intention of the NRL to retain this protection of the term ‘surgeon’ for medical practitioners who are medically and surgically trained. Assurances were given by Dr. Louise Morauta (Project Director, National Registration and Accreditation Implementation Project on behalf of the Australian government) to the AOA and AOFAS representatives regarding the implementation of the National Registration and Accreditation Implementation Project Forums that the intention was to protect the title ‘surgeon’. The public perception of the term ‘surgeon’ was not meant to be confused with that of a specialist podiatrist.

Submissions were made to the Australian Government Senate by the Australian Podiatry Association and by the Australasian College of Podiatric Surgeons (ACPS) to the Senate Community Affairs Committee 13 July 2009, whereby they complained that the recognition of Podiatric surgeons was not part of the NRL. The reason suggested was there was no independent accreditation of the ACPS. Despite this, when the NRL was passed the terms ‘doctor’ and ‘surgeon’ were not among the protected titles despite assurances that had been given by Government representatives. No explanation was ever offered regarding the reason for the exclusion.

Despite these changes, there was no public education campaign to advise the general public regarding the loss of regulation of the title ‘surgeon’. Subsequently, the majority of the general public still believe surgeons are medically-trained doctors. A Galaxy Poll stated that 96% of the general population think that if someone calls themselves ‘surgeon’, then that individual is medically trained and has completed a basic medical degree followed by specialist training in surgery. However, a podiatrist without medical training and AMC certified Specialist training is still able to use the title ‘surgeon’.

Multiple representations have been made to all levels of Government, and to all reviews of the NRL regarding this issue, and no action has been taken to date.

Concerns of the AOA and AOFAS

The AOA and AOFAS represent Foot and Ankle Orthopaedic Surgeons. We are in a unique position to brief the Committee regarding the effects of the legislation, in the interests of Public Safety.

We can quote to the Committee that there have been a number of publicised cases where Podiatric surgeons have been prosecuted or disciplined by their respective State Boards, on the basis of poor patient outcomes, and less than acceptable clinical care. The human consequence of these poor outcomes is a significant medical, psychological and financial stress to patients, with eventual suspension or restrictions on practice for responsible podiatric surgeons.

There are a total of 36 podiatric surgeons in Australia. It is our understanding that five have been suspended or required to undergo supervised practice, representing 14% of the cohort. Some of the podiatric surgeons who have been sanctioned by APHRA have held – and some continue to hold – senior positions, including the Current President of the Australasian College of Podiatric Surgeons.

Patients are unaware that the term ‘podiatric surgeon’ is not the same as ‘Orthopaedic surgeon’. There is a very high likelihood that there will continue to be confusion regarding the actual qualifications of a practitioner utilising the title ‘surgeon’ as the training is very different. Subsequently, members of the public may find it difficult to make an informed choice regarding the qualifications of the practitioner they choose to provide care.

Summary of APHRA notifications

The Podiatry Board receives a disproportionate number of APHRA notifications about podiatric surgeons in comparison to general podiatrists:

Year	Number of registered podiatrists	Number of registered podiatric surgeons	Percentage of registered podiatrists who are also podiatric surgeons	Total number of notifications made to AHPRA regarding podiatrists	Percentage of notifications involving podiatric surgeons
2016/17	4895	30	0.6%	42	14.2%
2017/18	5120	35	0.6%	54	11.4%
2018/19	5209	33	0.6%	102	2.9%
2019/20	5420	36	0.6%	79	4%
2020/21	5747	36	0.6%	77	10.2%

The average podiatric surgeon will have a notification made to the Podiatry Board every 5 years.

To put this in perspective, the Australasian College of Podiatric Surgeons (ACPS) Audit data of 2016 shows the combined 27 members performed a total of 2080 cases. If one removes the 30% of toenail surgeries (which are within the skillset of a general podiatrist) there were a total of 1456 cases done by the podiatric surgical cohort; a single podiatric surgeon will do on average, a total of 53 cases per year. This equates to *one APHRA notification per 250 cases performed per podiatric surgeon.*

The author practices exclusively in Foot and Ankle surgery and has had one notification in 25 years of practice, having performed over 20,000 cases in that period. In this author’s experience, the notification rate for podiatric surgeons is over 80 times the rate of a single Foot and Ankle trained Orthopaedic surgeon.

There have been highly publicised cases about significant podiatric surgery complications. Throughout the last thirteen years, four Senior committee members of the Australasian College of Podiatric Surgeons have had restrictions or suspensions placed on their practices (R.Hermann, P. Bours, M. Horta, P. Butterworth). This represents 4 out of the 24 active members of the ACPS at the time, with significant adverse findings made with respect to the standard of their work.

Whilst the Podiatry Board has individually sanctioned podiatric surgeons who have disastrous outcomes, and in some cases deregistered the podiatric surgeon completely, the use of the title ‘surgeon’ remains confusing to the general public. The variation in the accreditation and training of a podiatric surgeon (there are two training bodies) leads to non-uniform surgical standards, and as the legal findings show, significant safety issues. Notifications made to APHRA are not necessary in legal proceedings, and so we cannot offer the Committee any specific information regarding the frequency of litigation of podiatric surgeons.

Furthermore, the Podiatry Board of Australia is not designed or required to regulate surgeons. The Podiatry Board does not contain a position for a medical practitioner or orthopaedic surgeon and the Board does not have expertise in surgical outcomes, except for the current 36 podiatric surgeons it oversees.

Whilst the Podiatry Board has expertise in supervising Podiatrists, it is not equipped to understand the implications of surgical practice or independently assess outcomes in an informed way. It does not engage with the Royal Australasian College of Surgeons, and does not define standards of surgical care equivalent to those of the Australian Medical Council.

It is unlikely the general public are aware that podiatric surgeons are not held accountable to the same clinical governance standards as a medically trained orthopaedic surgeon.

Accreditation Process for a Podiatric Surgeon in Australia

The method of Acceptance of the National Definition of podiatric surgeon is confusing and often misunderstood by the general public. The Australian Podiatry Board initially named the Australia and New Zealand Podiatry Accreditation Council (ANZPAC) to accredit the training programs for podiatric surgery. There are no medically or

surgically trained individuals of a recognised AMC accredited Surgical College on the ANZPAC committee. ANZPAC had no experience in accrediting surgical training or providing clinical governance to health practitioners performing surgical procedures.

Prior to being awarded the implementation of the NRL, ANZPAC began the process of defining the educational requirements to be a *surgeon*. The method and execution of this process is concerning and may alarm a member of the public who has no understanding of the process.

A submission defining surgical training standards was prepared by Dr Susan Owen, who is not a Doctor of Medicine or Surgery, but rather, a Doctor of education. Dr Owen (PhD) was a “Community Member” of ANZPAC, and as such had no education or training in medicine, surgery, podiatric surgery or podiatry.

The request for ANZPAC to devise a standard of training was funded by the Victorian Podiatry Board. At the time, the President of the Victorian Podiatry Board was a podiatric surgeon and the President of the Australasian College of Podiatric Surgery. The same individual was also on the ANZPAC Board, and was an active participant in the adoption of this report, which accepted his own college’s standard of training.

This represents a significant conflict of interest.

This individual, in his role as president of the Victorian Podiatry Board and as President of ACPS, advocated for the acceptance of the Owen Report which accepted the ACPS standard as being adequate. He actively argued against another individual who was an American trained and qualified podiatric surgeon member (Mr Dan Poratt) who was concerned that Dr Owen’s PhD was not qualified to define surgical standards, and who demonstrated that the international standards were being ignored. (Which the PBA and ANZPAC agreed to adopt in the NRL formation documents)

Mr Poratt refused to accept the validity of the report and was then expelled from ANZPAC. Despite the clear conflict of interest, the President of the ACPS was active in the vote on the adoption of the Report. Clearly, as President of the Australasian College of Podiatric Surgeons, he had significant conflicts of interest, and should have recused himself, and not been involved in these discussions and the deliberations of ANZPAC.

Exclusion from such discussions as President was a requirement of ANZPAC's constitution, but this did not occur. ANZPAC then presented the report to the Podiatry Board of Australia (of which the same individual was a member at the time), recommending that they accept the ACPS and UWA standard of training for a podiatric surgeon. This training was therefore accepted as standard.

There was no inspection of the podiatric surgical training bodies, no interviews with trainees, no assessment of patient outcomes or review of complaints lodged with APHRA, and no assessment of the podiatric surgical training bodies’ adherence to their own proclaimed standards that preceded the acceptance of the Standard.

The AOA and the AOFAS believe that it is inappropriate for the Podiatry Board of Australia to establish a separate standard of surgical education, training and care, defined by individuals and an institution with no experience in either Medical or Surgical standards and this allows persons access to the restricted title “podiatric surgeon”.

The PBA has now compounded this problem by ceasing to use ANZPAC, rather now having an internal Accreditation Committee within APHRA, and so there is no accountability nor transparency. The same individual is now the Deputy Chair of that committee.

The PBA then presented to AHWMC an application to create a separate Register for Podiatric Surgeons. The PBA failed to advise the Ministers that there were contrary views from numerous stakeholders, as required in the NRL formation documentation.

The Ministers then allowed the formation of a Specialist Register, and approved the protected title “podiatric surgeon”.

All of this activity occurred before the NRL legislation came into effect.

There remain significant concerns about the validity and independence of accreditation of podiatric surgical training, and confusion now abounds as podiatric surgeons have the ability to use the title ‘surgeon’ interchangeably with medically-trained practitioners. This contradicts the fundamental tenet of the National Registration: that all individuals delivering health services should be of a required standard, independent of their respective discipline.

Subsequent letters from stakeholders to relevant Health Ministers have detailed this issue, and have also led to promises of a review of the title ‘surgeon’ to avoid the public being misled about the qualifications and training of the health practitioner treating them.

Recommendation

It is with this history that we make the following recommendations to the Committee:

Premise: It is the position of the AOA and the AOFAS that patients have a right to choose and understand the qualifications of an individual who may perform their surgery.

It is also our position that patients cannot give informed consent to surgery if there is a misunderstanding of the title of the person offering to perform such a surgical procedure. The term ‘podiatric surgeon’ is misleading to the general public as there is no indication that such a health practitioner is not medically-trained.

Solution: We believe the term ‘surgeon’ should be restricted to those individuals with the requisite medical training provided by a Specialist Surgical college, whose training and standards are accepted and accredited independently by the AMC.

Issues discussed in the Regulation Impact statement

With respect to the issues raised in the RIS:

Narrowing the definition of the title ‘surgeon’ would not impact on doctors who are not fellows of the RACS, yet have undertaken rigorous surgical training, such as Obstetricians and Gynaecologists, Ophthalmologists or Dermatologists, as they are accredited by the AMC. Similarly, the dental/oral surgeons are accredited by the AMC.

We recommend that the term ‘podiatric surgeon’ be abolished and that podiatrists not be permitted to use the title ‘surgeon’. In the interest of public safety and informed patient decision making, we advocate that the term ‘Operative Podiatric Technician’ replaces the term ‘podiatric surgeon’.

This offers the government a universal solution to all Health Professionals who wish to offer surgical services, but whose Colleges or Associations are not accredited by the AMC.

We believe that the term “Operative Technician” (with a profession specific descriptor) may safely be used by Cosmetic and Podiatric practitioners, and other groups in future, in order to clearly indicate to the public that whilst the “Operative Technician” may have undergone further training, there is a recognised difference between that training and an AMC certified surgeon.

We believe the suggestion in the RIS that there should be a financial burden on the individual who wants to practice surgery, and use the term surgeon, is not warranted.

The cost of compliance for AMC accreditation lies with the relevant College concerned, not to the individual practitioner. If the College concerned wants to have its members use the term surgeon, it needs to submit to AMC certification. Otherwise, it has no financial burden other than changing marketing material for podiatric surgeons.

It is also important to realise that the financial burden of training described in the RIS is already being borne by individuals who are members of approved Colleges.

Arguments about the costs to International Medical Graduates (IMGs) are not valid, as the College to which the applicant would be seeking admission would be the same as their country of origin. The only issue is that they might have used the title ‘surgeon’ in the past, and could not do so here.

The issue of tourism is not something that Australian Regulations can influence.

Australian regulations have no authority over the use of the title ‘surgeon’ overseas. However, the consumers in these cases are making a conscious and informed decision NOT to use an Australian service and are therefore aware there is no surety offered as to the qualifications of the operator. It is a person’s right to make that choice, but in contrast to the current local situation, those persons are making an informed decision which is not the current situation in Australia.

In conclusion

It is in the interests of patient safety that the title ‘surgeon’ be restricted to medically-trained practitioners who undertake AMC accredited surgical training. This would exclude both cosmetic surgeons and podiatric surgeons from using the title ‘surgeon’, thus addressing public confusion regarding the qualifications and training of a health practitioner performing an invasive procedure.

The adoption of a protected term “Operative Technician” affords a future-proof, generic and portable solution to the problem of assisting patients to identify the qualifications of people offering surgical services, with minimal interruption in the practices of the individuals affected.

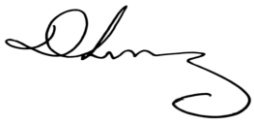
It should be recognised that in the future, other Allied Health Practitioners may want to offer surgical services. Protection of the relevant title as above allows differentiation of these groups from their general discipline and indicates to the general public that the person offering a service may have undergone further training, but does not have the qualifications of an AMC accredited Surgical Specialist, and is not a Surgeon in the general public’s common use of the term ‘surgeon’.

This solution offers the maximal patient protection with minimum expense and the modifications to the legislation can occur through regulation, after assent from the AHMWC, and can be done within the structure and intent of current legislation.

There would be minimal expense to affected individuals, but with the enormous benefit of Public Safety and informed patient decision making.

These changes can be brought about by appropriate regulation, providing Government with an effective and efficient resolution of this very important issue.

Thank you for the opportunity to provide a response.



Annette Holian

AOA President

David Lunz

AOFAS President