

South Australia

Health Practitioner Regulation National Law (South Australia) (Amendment of Law) (No 2) Regulations 2023

under the *Health Practitioner Regulation National Law (South Australia) Act 2010*

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Preamble

- 1 Section 4 of the *Health Practitioner Regulation National Law (South Australia) Act 2010* provides that if the Parliament of Queensland enacts an amendment to the *Health Practitioner Regulation National Law* set out in the Schedule to the *Health Practitioner Regulation National Law Act 2009* of Queensland (the **Queensland Act**), the Governor may, by regulation, modify the *Health Practitioner Regulation National Law (South Australia)* text to give effect to that amendment as a law of South Australia.
 - 2 The Parliament of Queensland has enacted the *Health Practitioner Regulation National Law (Surgeons) Amendment Act 2023* to amend the Queensland Act and the amendments to the *Health Practitioner Regulation National Law (South Australia)* text set out in Part 2 of these regulations give effect to those Queensland amendments.
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- 3 Section 4(6) of the *Health Practitioner Regulation National Law (South Australia) Act 2010* provides that a regulation may take effect from the day of the commencement of an amendment made by the Parliament of Queensland in that State (including a day that is earlier than the day of this regulation's publication in the Gazette—see regulation 2).
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Part 1—Preliminary

1—Short title

These regulations may be cited as the *Health Practitioner Regulation National Law (South Australia) (Amendment of Law) (No 2) Regulations 2023*.

2—Commencement

These regulations will be taken to have come into operation on the day that the *Health Practitioner Regulation National Law (Surgeons) Amendment Act 2023* of Queensland was assented to by the Governor of Queensland.

Editorial note—

The *Health Practitioner Regulation National Law (Surgeons) Amendment Act 2023* of Queensland was assented to on 20 September 2023.

3—Amendment provisions

Pursuant to section 4(4) of the Act, the *Health Practitioner Regulation National Law (South Australia)* text is amended as specified in Part 2 of these regulations.

Part 2—Amendment of *Health Practitioner Regulation National Law (South Australia)*

4—Amendment of section 5—Definitions

Section 5, definition of *prohibition order*, paragraphs (a) and (b)—after "section 196(4)(b)" wherever occurring insert:

or (c)

5—Insertion of section 115A

After section 115 insert:

115A—Claims by persons as to membership of surgical class

- (1) A medical practitioner who is not a member of a surgical class must not knowingly or recklessly do any of the following—
 - (a) take or use the title "surgeon";
 - (b) take or use a title, name, initial, symbol, word or description that, having regard to the circumstances in which it is taken or used, indicates or could be reasonably understood to indicate the practitioner is a member of a surgical class;

- (c) claim to be, or hold out as being, a member of a surgical class.

Maximum penalty: \$60 000 or 3 years imprisonment or both.

- (2) A person must not knowingly or recklessly do any of the following in relation to a medical practitioner who is not a member of a surgical class—
 - (a) take or use the title "surgeon" in relation to the practitioner;
 - (b) take or use a title, name, initial, symbol, word or description that, having regard to the circumstances in which it is taken or used, indicates or could be reasonably understood to indicate the practitioner is a member of a surgical class;
 - (c) claim the practitioner is, or hold the practitioner out as being, a member of a surgical class.

Maximum penalty:

- (a) in the case of an individual—\$60 000 or 3 years imprisonment or both; or
 - (b) in the case of a body corporate—\$120 000.
- (3) Subsections (1)(a) and (2)(a)—
 - (a) apply whether or not the title "surgeon" is taken or used with or without any other words and whether in English or any other language; but
 - (b) do not apply to, or in relation to, a medical practitioner who is not a member of a surgical class if the practitioner—
 - (i) holds registration in the dentists division of the dental profession; or
 - (ii) 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.

- (4) Before making regulations prescribing a class of medical practitioner as a surgical class, the Ministerial Council must have regard to—
 - (a) any advice the National Board for the medical profession gives to the Ministerial Council about prescribing the class; and
 - (b) the surgical training required to be undertaken by members of the proposed class.

- (5) In this section—

surgical class means the following classes of medical practitioners—

- (a) a medical practitioner holding specialist registration in the recognised specialty of surgery;
- (b) a medical practitioner holding specialist registration in the recognised specialty of obstetrics and gynaecology;

- (c) a medical practitioner holding specialist registration in the recognised specialty of ophthalmology;
- (d) a medical practitioner holding specialist registration in another recognised specialty in the medical profession with the word "surgeon" in a specialist title for the specialty;
- (e) another class of medical practitioner prescribed as a surgical class by regulations made by the Ministerial Council.

6—Amendment of section 196—Decision by responsible tribunal about registered health practitioner

Section 196(4)—delete subsection (4) and substitute:

- (4) If the tribunal decides to cancel a person's registration under this Law or the person does not hold registration under this Law, the tribunal may also decide to do one or more of the following—
 - (a) disqualify the person from applying for registration as a registered health practitioner for a specified period;
 - (b) prohibit the person, either permanently or for a stated period, from doing either or both of the following—
 - (i) providing any health service or a specified health service;
 - (ii) using any title or a specified title;
 - (c) impose restrictions, either permanently or for a stated period, on the provision of any health service or a specified health service by the person.

7—Insertion of Part 15

After Part 14 insert:

Part 15—Transitional provision for *Health Practitioner Regulation National Law (Surgeons) Amendment Act 2023*

326—Application of sections 196A, 222, 223 and 227 to particular prohibition orders

- (1) This section applies in relation to a prohibition order that is—
 - (a) a decision by a responsible tribunal of this jurisdiction under section 196(4)(c); or
 - (b) a decision by a responsible tribunal of another jurisdiction under section 196(4)(c) as it applies in the other jurisdiction.
- (2) Sections 196A, 222, 223 and 227 apply in relation to the prohibition order even if the order was made before the commencement.

**Health Practitioner Regulation National Law (South Australia) (Amendment of Law) (No 2)
Regulations 2023**

Amendment of *Health Practitioner Regulation National Law (South Australia)*—Part 2

Editorial note—

As required by section 10AA(2) of the *Legislative Instruments Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 12 October 2023

No 101 of 2023