Independent review of the regulation of podiatric surgeons in Australia

Professor Ron Paterson

March 2024

Commissioned by the Podiatry Board of Australia and the Australian Health Practitioner Regulation Agency

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Summary

Background

This review was commissioned by the Podiatry Board of Australia in October 2023 to allow the Board to get an independent view of the current regulatory framework for podiatric surgeons and any risks to patient safety, and to recommend improvements to better protect the public.

The review was triggered by the high rate of complaints or notifications about podiatric surgeons. Although podiatric surgeons are a small sector of the podiatry profession – there are only 40, comprising 0.7% of the 6,038 registered podiatrists in Australia – their rate of notifications is five times that of podiatrists. Media articles and calls for reform – mainly from orthopaedic surgeons – have questioned why podiatric surgeons are recognised in the National Registration and Accreditation Scheme (the National Scheme) and suggested that major changes are needed. Other critics have questioned the way podiatric surgeons are regulated in Australia, claiming that the current regulatory system does not ensure consumers are well informed and receive appropriate care.

Purpose of review

The purpose of the review was to examine the existing regulation and regulatory practices used by the Podiatry Board of Australia and the Australian Health Practitioner Regulation Agency (Ahpra); to ensure the appropriate standards, guidance and processes are in place to support safe practice by podiatric surgeons in Australia; and to make recommendations for any necessary changes. The full terms of reference are set out in Appendix A.

Reviewer

The review was carried out by Ron Paterson, Emeritus Professor of Law at the University of Auckland and Senior Fellow at Melbourne Law School. He was formerly New Zealand Health and Disability Commissioner and Parliamentary Ombudsman. Professor Paterson is an international expert on patients' rights, complaints, safety and quality, and the regulation of health professions.

Review process

The initial stage of the review involved gathering information from the Podiatry Board and Ahpra, meeting with the Board and Ahpra staff, and accessing all relevant Board and Ahpra data and policies.

The reviewer met with stakeholders including podiatric surgeons, podiatrists, orthopaedic surgeons, peak bodies, education providers, patients of podiatric surgeons and members of the public. In total approximately 70 meetings were held. The reviewer also met three consumer groups: one of general members of the public; two of patients of podiatric surgeons.

Meetings were held with health practitioner regulators in NSW and Qld, where co-regulatory arrangements are in place. International practice in regulating podiatric surgeons was examined through meetings with regulators in the United Kingdom, the United States, Canada and New Zealand. An overview of the international comparisons is set out in Appendix B.

The review process included publishing a consultation document and a call for submissions from podiatric surgeons, medical practitioners, colleges, education providers, professional associations and members of the public. A total of 130 written submissions were received.

Submissions generally fell into one of two categories: supporters of the current regulatory framework (mainly podiatric surgeons and professional associations from the podiatry and podiatric surgery professions) and critics (mainly orthopaedic surgeons and stakeholders from the medical profession). Submissions covered a full range of issues, including education and training of podiatric surgeons, the safety and quality of podiatric surgery, use of the 'surgeon' title and advertising by podiatric surgeons, the significance of high notification rates and the difficulty of finding independent expert advisors.

History of podiatric surgeons in Australia

Podiatric surgeons treat and manage conditions affecting the foot and ankle, both surgically and non-surgically. Podiatric surgery has been performed by podiatrists in Australia since the 1970s. Podiatric surgeons were originally called 'surgical podiatrists' and in the 1990s the terminology changed to 'podiatric surgeon'.

Since July 2010, when the National Scheme began, podiatric surgeons have been recognised as a specialist area of podiatry, with title protection. They previously had specialist registration in WA and SA, and recognition as an extended scope of practice by the relevant regulatory board in the other states (NSW, Qld, Tas and Vic).

The medical profession has trenchantly opposed specialist registration of podiatric surgery, citing concerns about patient safety and public confusion over the use of the title 'surgeon'. Orthopaedic surgeons, who compete with podiatric surgeons for foot and ankle surgery in the private sector, have campaigned for law changes and opposed any integration of podiatric surgery in the public health system.

Podiatric surgeons have always been a small profession, with 18 at the start of the National

Scheme. Just over half of the 40 podiatric surgeons currently registered are in WA, with smaller numbers in the other mainland states. They work primarily in private practice and perform surgery in private hospitals and day procedure centres.

The Commonwealth Medical Services Advisory Committee has rejected applications for access to Medicare cover for foot and ankle surgery performed by podiatric surgeons, and for Medicare funding for related services such as imaging, pathology, anaesthesia and referrals. The committee noted the lack of evidence of comparative safety and effectiveness, and uncertainty about the level of unmet need for foot and ankle surgery.

Concerns

At the heart of this review are several questions:

- Are podiatric surgeons adequately trained to perform foot and ankle surgery?
- What do patients and members of the public understand about the qualifications of a podiatric surgeon?
- Does the current regulatory framework ensure that registered podiatric surgeons are competent and safe to practise?
- Does the regulatory system respond effectively to complaints or notifications about podiatric surgeons?

Although these questions arise in the context of a very small profession, they raise issues that are fundamental to Australia's National Scheme: *public protection*, in accreditation, in registration and in management of notifications; and *public confidence* in a system intended to give patients and the community assurance of safe practice by registered health practitioners.

Key findings

Education and training of podiatric surgeons

Concerns about the quality of education and training of podiatric surgeons are not supported by the evidence examined for this review and do not explain the high rate of notifications about podiatric surgeons.

The analysis of notifications about podiatric surgeons who are not recent graduates – which are the bulk of notifications – points to poor individual clinical decision making, rather than flaws in their training. Most of these podiatric surgeons trained many years ago, when accreditation standards and processes were not as robust as they are today. Also, after removing frequently notified practitioners from the data, there appears to be minimal differences in the number of notifications about podiatric surgeons by training institution.

The podiatric surgery education programs offered by the Australasian College of Podiatric Surgeons (the College) and the University of Western Australia (UWA) have recently been accredited subject to conditions. Accreditation is based on assessment against sound, contemporary accreditation standards and professional capabilities, not dissimilar to the accreditation of medical education programs.

The accreditation system should be strengthened by including a surgical expert in assessment teams and developing accreditation standards for training sites.

There is an unfortunate history of animosity between the two approved education providers about the respective merits of their education programs. If the small profession of podiatric surgery in Australia is to be sustainable, the leaders of the two education providers need to work together, to draw on the strengths of the university teaching model of UWA and the practical training and work-integrated learning of the College model.

Public and patient understanding about the qualifications of a podiatric surgeon

When people hear the term 'podiatric surgeon' they assume the practitioner is medically qualified. Confusion about the qualification of a podiatric surgeon matters since a patient may feel misled when informed that the practitioner they consulted was not, after all, medically qualified. As seen in recent media reports, some patients were alarmed to learn that their podiatric surgeon was not a medical practitioner. This may lead to a loss of public confidence in the safety of foot and ankle surgery performed by podiatric surgeons and in the regulatory system.

The continued use of the title 'podiatric surgeon' is confusing and problematic. It is recommended the specialist title be changed to 'surgical podiatrist' – a reform that can be made by the Podiatry Board, subject to consultation and ministerial approval. This would make it clear that the practitioner is a podiatrist who performs surgery, and should reduce consumer confusion about the practitioner's qualifications and training.

The proposed change would resolve a long-standing issue and can be achieved without amending the Health Practitioner Regulation National Law (the National Law). In 2023, in the context of cosmetic surgery, the National Law was amended to restrict the use of the 'surgeon' title by medical practitioners who are not members of a surgical class. Lawmakers were not persuaded to restrict the use of the title 'surgeon' by non-medical practitioners, noting that 'oral surgeon' and 'podiatric surgeon' are specialist titles recognised in the National Law for suitably qualified dentists and podiatrists.

Misleading advertising is also a problem. Consumers are vulnerable to exaggerated or misrepresented claims about the training, skills and experience of a practitioner, and the benefits of their treatments. Some information on podiatric surgeons' websites appears to exaggerate the practitioner's training, qualifications, registration, experience and

competence. Ahpra's Guidelines for advertising a regulated health service should include clearer information about advertisers' obligations under the National Law, with examples specific to podiatric surgery.

In 17 cases where Ahpra received a complaint about advertising by a podiatric surgeon, breaches included using testimonials, creating an unreasonable expectation of beneficial treatment, offering inducements without stating the terms and conditions, and false or misleading use of a specialist title. In each case the matter was closed after an educational letter to the advertiser and a subsequent check to confirm compliance. In no case was a prosecution brought, even though one podiatric surgeon was the subject of multiple advertising complaints. Ahpra needs to take a tougher, deterrent approach to repeat offenders.

Registration standards for podiatric surgeons

The community and patients rely on the public Register of practitioners and current registration status as assurance from the regulator that it is safe to consult a registered podiatric surgeon. It is obviously preferable to take a preventive approach that targets areas that have given rise to complaints and concerns, rather than wait until problems arise.

The Podiatry Board has developed a specialist registration standard for podiatric surgery and a continuing professional development (CPD) registration standard. Both would benefit from a planned update.

Current registration standards do not assure competent and safe practice. Podiatric surgeons are eligible for, but not required to hold, an endorsement for scheduled medicines (ESM) – an important qualification for safe practice. Almost one-third (12) of the 40 registered podiatric surgeons do not hold an ESM. It should be mandatory for a registered podiatric surgeon to hold an ESM.

The podiatric surgery specialty would benefit from a professional performance framework along the lines of the Medical Board of Australia's framework, with its five pillars of strengthened CPD, active assurance of safe practice (identifying risk factors), strengthened responses to practitioners with multiple substantiated complaints, guidance to support practitioners and collaborations to foster a positive culture.

CPD requirements for podiatric surgeons should also be strengthened to align more closely with the Medical Board's approach to practitioners, reviewing their performance and measuring results as part of their CPD.

Public protection would be improved by the Podiatry Board issuing guidelines for podiatric surgeons that clearly articulate expectations in areas such as patient selection, informed consent, peri-operative care, liaison with GPs and arrangements for post-operative care.

There is no basis for a restriction of the scope of practice of podiatric surgeons, which would be inconsistent with how other health professions are regulated in Australia. Analysis of notifications did not reveal complaints focused on any specific procedure or group of procedures, or on a particular area of the foot (eg forefoot, mid-foot or ankle). There was also no evidence to suggest that a scope of practice limitation would improve public safety or address the issues raised in the review.

Handling of complaints about podiatric surgeons

Although podiatric surgeons remain a small sector of the podiatry profession, they continue to have a higher rate of notifications than podiatrists (five times higher in the past eight years). From 1 July 2010 to 30 June 2023, there were 82 notifications related to 25 podiatric surgeons. This represents a much higher rate of notifications (almost nine times higher) than the comparable group of orthopaedic surgeons who received a notification related to the foot or ankle, once frequently notified practitioners are removed from both groups. Concerningly, 66% of the notifications received about podiatric surgeons over that period relate to nine podiatric surgeons who were each the subject of three or more notifications.

These outliers significantly inflate the results. Given the very small number of both podiatric surgeons and notifications about podiatric surgeons, any generalisations and comparisons should be made with caution.

Close analysis of the nature of the notifications about podiatric surgeons over the past 13 years reveals a pattern of patient dissatisfaction (some of it fuelled by orthopaedic surgeons) but does not indicate widespread safety and quality problems in podiatric surgery. The extensive material examined for this review does not show that most podiatric surgeons are practising unsafely.

There is some evidence that some procedures carried out by a small number of podiatric surgeons are not safe or of acceptable quality. Some patients have suffered significant harm due to a range of contributing factors, including poor patient selection, inappropriate surgical procedures, poor operative techniques and substandard after-care. They deserve to have their complaints properly investigated by regulators, with appropriate remedial action, and to be compensated if they bring a successful civil claim in the courts.

There are no denominator data showing how many procedures were done by a podiatric surgeon and how many procedures were done by an orthopaedic surgeon. Nor is there a good-quality clinical registry for foot and ankle surgery in Australia with data about adverse events and patient-reported outcomes.

The regulatory framework for handling complaints is sound and generally operates effectively. There is a need for proportionality in the regulatory responses

from the Podiatry Board and Ahpra, while keeping the public safe. This is important bearing in mind that podiatric surgeons comprise only 40 of the 877,119 registered health practitioners in Australia.

One notable feature of the handling of complaints about podiatric surgeons is the difficulty of finding independent expert clinical advice in such a small profession. A second notable feature is related: a failure to use the valuable regulatory tool of a performance assessment, particularly in cases when a practitioner has received multiple notifications relating to clinical practice or when a single notification suggests broader competence concerns.

Recommended improvements in regulatory practice include consistent and rigorous application of Ahpra's risk assessment framework, improved processes for getting independent expert clinical advice and better use of the full range of regulatory tools.

At present, the community is denied access to information on the *Register of practitioners* about whether a practitioner has been subject to multiple notifications or had conditions imposed because their clinical practice did not meet an acceptable standard. This issue is broader than podiatric surgeons. It warrants further consideration by Ahpra and health ministers across all health professions, to better meet the principle of transparency enshrined in the National Law and the legitimate expectations of the community.

System safety and quality

Podiatric surgery in Australia is an isolated, private health service, largely excluded from the public health system and denied access to Medicare funding. Private health insurance may cover some of the hospital fees for podiatric surgery, but often the surgery must be wholly funded by the patient.

Podiatric surgeons operate in private settings, including in their rooms for some simple procedures that need only a local anaesthetic, and in private hospitals and day procedure centres for more complex procedures that require sedation or a general anaesthetic. A practitioner's private rooms may not be subject to any safety and quality standards, while hospitals and day procedure centres are covered by the National safety and quality health service standards, which offer a higher level of protection.

The review heard examples of podiatric surgeons working collaboratively with medical practitioners, including orthopaedic and vascular surgeons, and achieving good outcomes for patients. Greater integration of podiatric surgeons in the public health system in Australia (as occurs in the UK) could be an important preventive safety and quality measure, and could also improve access to foot and ankle surgery.

The Australian Government has not identified foot and ankle surgery as a priority area for developing a national clinical quality registry. Some orthopaedic surgeons in private practice in Sydney have established the Sydney Foot and Ankle Registry – their own local registry for participating surgeons. The College maintains a clinical audit. The audit is limited to complications experienced in the first 30 days after surgery and does not record patient-reported outcomes or experience measures. The College's audit tool gathers data using definitions of procedures and indicators that do not appear to be consistent with those used by other established foot and ankle surgery clinical audits or registries.

The small size of the podiatric surgery profession raises questions about its sustainability. With an ageing population and long wait times for orthopaedic surgery in the public system, there will likely be steady growth in consumers seeking advice and treatment for foot and ankle problems. However, without support for the work of podiatric surgeons from the Australian Government and state and territory governments, there is a risk that the profession will remain small and fragile.

In the context of Australia's current health workforce pressures, it makes sense to fix the problems identified in this review, to allow a well-established and generally well-regulated subspecialty to flourish rather than flounder.

The Podiatry Board and Ahpra should work with:

- state and territory health departments (in relation to licensing requirements for facilities where podiatric surgery is performed)
- the Australian Government and state and territory governments (to explore options to integrate podiatric surgeons into the broader health system)
- the Australian Commission on Safety and Quality in Health Care (for advice on improving the College's audit tool).

Recommendations

<table>
<tr><th colspan="2">Registration and practice</th></tr>
<tr><td>1</td><td>The Podiatry Board and Ahpra develop a professional performance framework for the podiatric surgery specialty which is informed by the Medical Board's framework, and which captures the relevant recommendations in this report.</td></tr>
<tr><td>2</td><td>The Podiatry Board and Ahpra strengthen the registration and practice requirements for podiatric surgeons by:
a. requiring all podiatric surgeons to hold an endorsement for scheduled medicines
b. strengthening the continuing professional development (CPD) registration standard to align more closely with the Medical Board's approach to practitioners reviewing their performance and measuring outcomes as part of their CPD
c. developing guidelines for practitioners performing podiatric surgery.</td></tr>
<tr><th colspan="2">Education and training</th></tr>
<tr><td>3</td><td>The Podiatry Board ask the Podiatry Accreditation Committee to:
a. strengthen the requirements for accreditation assessment teams to ensure the teams include relevant surgical expertise, with input from the Australian Medical Council
b. endeavour to appoint one member who sits on both accreditation assessment teams, to help ensure consistency in accreditation assessment of the two podiatric surgery programs
c. ensure accreditation assessments of educational providers take into account the regulatory history of health practitioners who are members of governance committees or academic staff
d. consider developing accreditation standards for training sites to ensure they meet minimum quality clinical standards
e. take into account the areas highlighted in this review, and any recommendations from the National Health Practitioner Ombudsman, in carrying out its accreditation functions and in the review of the accreditation standards planned for 2024.</td></tr>
<tr><th colspan="2">Title</th></tr>
<tr><td>4</td><td>Following consultation, the Podiatry Board seek health ministers' approval to change the protected title for the specialty from 'podiatric surgeon' to an alternative title, such as 'surgical podiatrist'.</td></tr>
<tr><td>5</td><td>Subject to recommendation 4, the Podiatry Board and Ahpra develop additional information for consumers to support their understanding of the title and what it means.</td></tr>
<tr><th colspan="2">Advertising</th></tr>
<tr><td>6</td><td>Ahpra and the National Boards revise the Guidelines for advertising a regulated health service to include clearer information about advertisers' obligations under the National Law, particularly in relation to the use of titles and claims about training, qualifications, registration, experience and competence. This could include:
a. additional resources for advertisers, such as some examples relevant to podiatric surgery
b. an education campaign for practitioners and advertisers to support the effective implementation of any additional guidelines
c. additional information for consumers to strengthen their understanding of podiatric surgery.</td></tr>
<tr><td>7</td><td>Ahpra strengthen its enforcement in response to advertising offences by podiatric surgeons, with a regulatory approach that targets confusing or overstated claims and takes a tougher, deterrent approach to repeat offenders, including by bringing prosecutions in line with Ahpra's Prosecution Guidelines and/or taking disciplinary action under Part 8 of the National Law.</td></tr>
</table>

Handling of complaints	
8	The Podiatry Board and Ahpra apply the risk assessment framework consistently and rigorously, giving appropriate weight to the characteristics of the practitioner (in particular, complaint history, age, isolation and having trained 10 or more years ago) and the characteristics of the practice setting (in particular, for practitioners working in relative isolation in private practice) in the assessment of notifications. This will strengthen the public protective response to notifications.
9	The Podiatry Board and Ahpra improve processes for obtaining expert clinical advice on podiatric surgery cases by: a. asking the Australasian College of Podiatric Surgeons and the University of Western Australia to nominate a small number of experienced, reputable podiatric surgeons for appointment to a panel from which a suitable expert may be chosen b. exploring viable options for getting credible expert clinical advice in podiatric surgery cases, including from a medically qualified surgeon or a podiatric surgeon from an overseas jurisdiction with a comparable health system.
10	The Podiatry Board and Ahpra make better use of the full range of regulatory tools available to respond to notifications, in particular performance assessments for practitioners: • who have had three or more substantiated notifications related to clinical practice over a five-year period, and/or • if the Board reasonably believes, because of a notification or for any other reason, that the way the practitioner practises the profession is or may be unsatisfactory. This recommendation is designed to ensure that the Podiatry Board takes appropriate action in relation to podiatric surgeons who may pose a higher risk to patients due to their notification history or the nature of the most recent notification(s) about them.
11	The Podiatry Board and Ahpra enhance publication of notifications data, including the outcomes of notifications and deidentified case studies of lessons from complaints about podiatric surgeons, as an educative tool for practitioners.
System safety and quality	
12	The Podiatry Board and Ahpra work with state and territory health departments to explore options to require podiatric surgeries expected to need more than a local anaesthetic to be performed in a licensed facility that is accredited to the *National safety and quality health service standards.*
13	The Podiatry Board and Ahpra write to health ministers to request that the Health Workforce Taskforce consider the future role and sustainability of the podiatric surgery specialty. Subject to health ministers' advice, the Podiatry Board and Ahpra should work with the Australian Government and state and territory governments to explore options to integrate podiatric surgeons into the broader healthcare system to improve the quality, safety and affordability of care for patients, and enable practitioners to work to their full scope of practice. The way podiatrists and podiatric surgeons are integrated in the National Health Service in the UK is instructive.
14	Ahpra ask the Australian Commission on Safety and Quality in Health Care to advise the Australasian College of Podiatric Surgeons on how it could improve its clinical audit tool for podiatric surgery. The aim would be to ensure that the audit is redeveloped and used in a way that provides high quality data, with definitions and indicators that are commonly used by other relevant audits and registries, so that it can be used to improve safety and quality for all patients of foot and ankle surgery.

Introduction

Context of the review

Since 1 July 2010, suitably qualified podiatrists have been eligible for specialist registration in Australia as a 'podiatric surgeon'. At 30 June 2023, there were 6,038 registered podiatrists, with 41 (0.7%) having specialist registration as a podiatric surgeon.[1] At the time of this report, March 2024, there are 40 registered podiatric surgeons.

The Podiatry Board of Australia regulates podiatrists and podiatric surgeons in accordance with the Health Practitioner Regulation National Law (the National Law), which is the legal framework for the National Registration and Accreditation Scheme (the National Scheme) for health practitioners in Australia. In exercising its regulatory functions, the Podiatry Board is supported by staff from the Australian Health Practitioner Regulation Agency (Ahpra).

Despite their small numbers, podiatric surgeons have for some time been over-represented in complaints or notifications to the Podiatry Board. On 5 October 2023, the Podiatry Board announced that it had launched an independent review of the regulation of podiatric surgeons. The review was commissioned to allow the Board to get an independent view of the current regulatory framework and risks to patient safety, and to identify opportunities for any improvements or changes that will better protect the public.

Professor Ron Paterson[2] was appointed as the independent reviewer. Professor Paterson convened an expert advisory group comprising:

- Mark Bodycoat, Community member, Medical Board of Australia
- Heather Buchan, Senior Medical Adviser, Australian Commission on Safety and Quality in Health Care
- Richelle McCausland, National Health Practitioner Ombudsman
- Luke Taylor, President, Podiatry Council of NSW.

Terms of reference

The purpose of the review was to examine the existing regulation and regulatory practices in use by the Podiatry Board of Australia and Ahpra to ensure the appropriate standards, guidance and processes are in place to support safe practice by podiatric surgeons in Australia and to make recommendations for any necessary changes.

The scope of the review was to inquire into and report on the regulation of podiatric surgeons, focusing on:

- updates to standards, supporting guidance and professional capabilities which aim to ensure that podiatric surgeons practise podiatric surgery safely within the scope of their qualifications, training and experience
- the risk assessment of notifications about podiatric surgeons
- the Ahpra investigation protocol with regard to podiatric surgeons
- the management of advertising offences
- opportunities for changes, clarifications or further actions in relation to the current regulatory approach to podiatric surgeons.

The review was to provide a contemporary view of risks to patient safety in podiatric surgery and how they should inform the work of the Podiatry Board and Ahpra, having regard to approaches adopted by professional regulators in other countries.

The full terms of reference are set out in Appendix A.

Review process

Information gathering

The first stage of the review involved gathering information from the Podiatry Board and Ahpra, and meeting with the Board and key Ahpra staff, including the CEO and staff in registration, notifications, accreditation, compliance, advertising, policy and legal. The reviewer was provided with all relevant Podiatry Board and Ahpra documents.

The reviewer also met with stakeholders including podiatric surgeons, podiatrists, orthopaedic surgeons, peak bodies, insurance companies, education providers, other regulators, patients of podiatric surgeons and members of the public. In total approximately 70 meetings were held.

The information gathering stage included research into the regulation of podiatric surgeons in other jurisdictions, including in NSW and Qld (where co-regulatory arrangements are in place), and internationally, in the United Kingdom, New Zealand, Canada (British Columbia) and the United States (Oregon). An overview of the international comparisons is set out in Appendix B.

Ahpra's Research, Evaluation and Insights Team prepared a detailed analysis of registration data and notifications (complaints) about podiatric surgeons in the period 1 July 2010 to 30 June 2023, including comparison with notification rates about orthopaedic surgeons who operate on the foot and ankle.

1. Ahpra and National Boards. *Annual report 2022/23*. Available on the Ahpra website, accessed 28 February 2024.
2. Professor Paterson is Emeritus Professor of Law at the University of Auckland and Senior Fellow at Melbourne Law School. He has previously held the positions of New Zealand Health and Disability Commissioner and Parliamentary Ombudsman, and is a recognised international expert on patients' rights, complaints, safety and quality, and the regulation of health professions.

Public consultation phase

The second stage of the review was public consultation. This involved publishing a consultation paper on 20 October 2023 and an invitation for written submissions from stakeholders, including podiatric surgeons, medical practitioners, colleges, education providers, professional associations and members of the public.

The public consultation stage ran from 20 October to 16 November 2023, with late submissions accepted. The review received 130 written submissions.

The reviewer met with three consumer groups: one comprised of general members of the public; two comprised of patients of podiatric surgeons. The groups discussed:

- where consumers go for information about foot problems
- the process they use to select a podiatric surgeon
- consumers' understanding of the term 'podiatric surgeon'
- types of information consumers want to receive before surgery
- consent and expectations about procedures
- advertising about podiatric surgery
- consumer understanding and expectations of complaints processes.

Summary of submissions

Of the 130 written submissions, 79 were in scope[3] and informed the review's findings. The 79 comprised:

- 63 submissions from individuals (patients/consumers (12) and individual practitioners (51))
- 16 submissions from organisations.

Practitioner submissions by profession:

Profession	
Orthopaedic surgeon	38
Podiatrist	5
Podiatric surgeon	5
Other	3
Total	**51**

Further detail of organisational submissions:

Stakeholder	
Government body	6
Medical body	4
Podiatry/podiatric surgeon body	3
Other regulator	1
Public health service (orthopaedic)	1
Education provider	1
Total	**16**

The review received submissions from six government bodies including four state/territory health departments, Safer Care Victoria and the Australian Commission on Safety and Quality in Health Care.

NSW Health supported the review and analysis of any trends or patterns in notification and complaint data, to inform any revisions to the regulatory system. NT Health also supported the review and any recommendations to improve patient safety and enhance the regulatory framework. Safer Care Victoria submitted that the safety of health services relies on local clinical governance.

The Australian Commission on Safety and Quality in Health Care recommended that podiatric surgeons operate in facilities that meet the *National safety and quality health service standards*, and that their CPD requirements be aligned to those of medical colleges such as the Royal Australasian College of Surgeons. Several stakeholders, including the Australian Commission on Safety and Quality in Health Care, recommended enhancing the CPD requirements by strengthening the focus on audit and review.

Submissions generally fell into one of two categories: supporters and critics of the current regulatory framework for podiatric surgeons. The former category mostly comprised submissions from podiatric surgeons and professional associations from the podiatry and podiatric surgery professions; the latter category was mainly submissions from orthopaedic surgeons and medical stakeholders. Notably, 38 of the 51 individual submissions were from orthopaedic surgeons.

The division of opinion reflects a longstanding 'turf war' between orthopaedic surgeons and podiatric surgeons. The review saw evidence of a coordinated campaign by various groups in the medical profession to remove title protection for podiatric surgeons and require their training programs to meet the standards of the Australian Medical Council (AMC) – the accreditation authority for the medical profession. This was reflected in the pattern of submissions from orthopaedic surgeons.

Access to Medicare funding, the public hospital system and the same referral arrangements as medical practitioners (for imaging services, pathology and referral to other specialists) was the single biggest issue raised in general submissions (ie submissions from respondents who were not orthopaedic surgeons), including from podiatrists, podiatric surgeons, organisations and patients. These issues, on which the Australasian College of Podiatric Surgeons (the College) has lobbied governments previously, are outside the scope of this review.

Some general submissions also made specific suggestions to improve the current regulatory framework, including tighter controls on admission

3. The total of 79 counts 44 overlapping submissions from one individual as a single submission. Eight submissions were out of scope and not included in the analysis; eg patients' letters of support for their surgeon.

to training programs, requirements for all podiatric surgeons to have an endorsement for scheduled medicines and a minimum number of practice hours per year,[4] and mandatory participation in the College's clinical audit.

A joint submission from a small group of podiatric surgeons called for an overhaul of the current regulatory system. They advocated for podiatric surgeons to be required to obtain dual qualifications in podiatric surgery and medicine (with training programs accredited by the AMC), and be regulated by both the Podiatry Board and the Medical Board (comparable to oral and maxillofacial surgery, a specialty that requires qualifications in medicine and dentistry and is regulated by the Dental Board and the Medical Board).

The second biggest issue raised in the general submissions was the use of the title 'surgeon' and advertising by podiatric surgeons. It was mostly raised by orthopaedic surgeons and their representative organisations (in 32 of the 40 submissions from individual orthopaedic surgeons and organisations representing them), but also in a few submissions from podiatric surgeons and patients.

Five general submissions raised concerns about the current education and training requirements for podiatric surgeons, although this was balanced by another five general submissions stating that the current education programs are high quality. Concern about education and training was the second biggest issue raised by orthopaedic surgeons (raised in 31 of 40 submissions from individual orthopaedic surgeons and their representative organisations).

Further information and analysis of submission data is included in the relevant chapters of the report.

A list of submitters is included at Appendix C.

Acknowledgements

I acknowledge with thanks all those who contributed to this review: the submitters, participants in focus groups who shared their personal experiences as patients, Ahpra's Community Advisory Council, registered health practitioners (including podiatrists, podiatric surgeons and orthopaedic surgeons), education providers, and staff from professional organisations and regulators who met with me.

I am especially grateful to members of the expert advisory group, who willingly provided their expertise and advice to the review.

I acknowledge the assistance given by the co-regulatory jurisdictions of NSW and Qld: the NSW Health Care Complaints Commissioner, Sue Dawson; the Director of the Health Professional Councils Authority, Ameer Tadros; the President of the NSW Podiatry Council, Luke Taylor; and the Qld Health Ombudsman, Dr Lynne Coulson Barr. My thanks also to staff from the Health and Care Professions Council (UK), the former Registrar and CEO of the College of Physicians and Surgeons of British Columbia, the Executive Director of the Oregon Medical Board, and the Chair and CEO of the Podiatrists Board of New Zealand.

This review resulted from the willingness of the Podiatry Board and Ahpra to subject the regulatory framework and their regulatory practices to external scrutiny. Ahpra CEO Martin Fletcher and numerous Ahpra staff members cooperated fully throughout the review, providing detailed written and face-to-face briefings. My thanks also to Podiatry Board Chair Professor Cylie Williams and members of the Board for their openness and ideas.

Finally, I am grateful to the Ahpra project team for the excellent policy and secretariat support I received during the review.

4. Both are already required for entry to the College's training program.

Overview of history, concerns and possible reforms

Introduction

As reviewer, I am asked to "review the existing regulation and regulatory practices in use by the Podiatry Board of Australia and Ahpra to ensure the appropriate standards, guidance and processes are in place to support safe podiatric surgery practice by podiatric surgeons in Australia and to make any recommendations for any required changes".[5]

The review was triggered by the high rate of notifications (complaints) about podiatric surgeons. Although podiatric surgeons are a small sector of the profession, their rate of notifications is five times that of podiatrists.[6] The Podiatry Board and Ahpra want to understand what is going on. Media articles during the course of the review,[7] and calls for reform (mainly from orthopaedic surgeons), have questioned why podiatric surgeons are recognised in the National Scheme and suggested that major changes are needed. Other critics have questioned the way podiatric surgeons are regulated in Australia, claiming that the current regulatory system "does not ensure consumers are well informed and receive appropriate care in a safe, competent and ethical manner".[8]

This chapter examines the history of podiatric surgeons in Australia; outlines the concerns that have led to this review; and identifies the aims of possible reforms, in light of the objectives and guiding principles of the National Law.

History of podiatric surgeons in Australia

Podiatric surgery has been performed by podiatrists in Australia since the 1970s. Podiatric surgeons were originally called 'surgical podiatrists' and in the 1990s the terminology changed to 'podiatric surgeons'.[9]

Podiatric surgeons treat and manage conditions affecting the foot and ankle, both surgically and non-surgically. In Australia, they work primarily in private practice and perform surgery in private hospitals and day procedure centres. They generally work as part of a surgical team, which includes anaesthetists and other medical practitioners; surgical assistants, including podiatric surgeon registrars or students; and nursing and hospital administration staff.

Podiatric surgeons have always been, and continue to be, a small profession. When the National Scheme began, on 1 July 2010, there were just 18 podiatric surgeons registered in Australia. Since then, there has been slow growth, with 30 podiatric surgeons registered in June 2015 and 40 in March 2024. All registered podiatric surgeons are also registered as podiatrists; they comprise 0.7% of the total number of registered podiatrists. The gender distribution of podiatric surgeons is two-thirds male, one-third female, with 70% over 44 years of age. They practise primarily in metropolitan areas, with an uneven geographic distribution across Australia. Just over half of the 40 registered podiatric surgeons are located in WA, with smaller numbers in the other mainland states and territories.

How did podiatric surgery come to be recognised as a specialty within podiatry? Before the National Scheme, podiatric surgeons had specialist registration in WA and SA and were recognised as an extended scope of practice by the relevant regulatory board in the other states (NSW, Qld, Tas and Vic). Their numbers were small and they faced opposition from the medical profession, notably the Australian Medical Association (AMA), the Royal Australasian College of Surgeons (RACS) and the Australian Orthopaedic Foot and Ankle Society (AOFAS), yet their advocacy for official recognition in the new national health practitioner regulation scheme was successful. What were the arguments that prevailed with the new Podiatry Board of Australia and health ministers in 2009?

The Podiatry Board's October 2009 consultation paper noted the existing specialty recognition in WA and SA. The Board recognised that "podiatric surgeons undertake complex and high-risk surgical procedures that can only be safely performed by practitioners with specialist training and skills".[10] In assessing proposed specialist registration against the objectives and guiding principles of the National Law, the Board commented that recognition of the specialty of podiatric surgeons in the National Scheme would:

- protect the public by ensuring only appropriately qualified and skilled practitioners would use the title 'podiatric surgeon'

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5. *Review of the regulation of podiatric surgeons: Terms of reference.* September 2023. Available on the Ahpra website, accessed 1 February 2024.
6. Ahpra data 1 July 2015 to 30 June 2023.
7. Grieve C et al. 'Sole destroying: How surgeons wield scalpels without medical degrees'. *The Age.* 3 December 2023.
8. Confidential submission from a small group of podiatric surgeons.
9. Gilheany M et al. *The history of podiatric surgery in Australia: Part 1.* Update from the Australasian College of Podiatric Surgeons, Stride for Podiatry. Available on the Australian Podiatry Association website, accessed 30 January 2024.
10. Podiatry Board of Australia. *Consultation paper on registration standards and related matters.* 2009.

- improve access to services by health practitioners in accordance with the public interest by identifying practitioners qualified as podiatric surgeons on the *Register of practitioners*
- help to ensure the continuous development of a flexible, responsive and sustainable Australian health workforce and to enable innovation in the education of, and service delivery by, health practitioners.

The Podiatry Board also noted that recognising podiatric surgeons as a specialty under the National Law would provide a career structure for podiatrists who wish to specialise in procedural work, which could help to keep the scarce skills of podiatrists within the health workforce.

In response to the consultation paper, the AMA, RACS and the Australian Orthopaedic Association raised many of the same arguments that continue to be voiced today in opposition to recognition of podiatric surgeons – in particular, patient safety and potentially misleading the public by use of the title 'surgeon'. Those arguments were considered but rejected by the Podiatry Board and ultimately by the Australian Health Workforce Ministerial Council in approving specialist recognition of podiatric surgeons.

The outcome was that in March 2010 the Australian Health Workforce Ministerial Council approved specialist registration for the podiatric specialty of podiatric surgery, with protection of the specialist title 'podiatric surgeon', registration standards for the podiatry profession (including podiatric surgeons) and approval for an endorsement under which eligible podiatrists (including podiatric surgeons) were qualified to prescribe and administer specified scheduled medicines "to enable podiatrists to provide better, more comprehensive and timely care to their patients". From July 2010, podiatric surgeons have been recognised as a specialist branch of podiatry, with title protection.

Although outside the scope of my review, it is relevant to note that in the past decade, the Australasian College of Podiatric Surgeons (the College) has made detailed submissions to the Commonwealth Medical Services Advisory Committee (MSAC), seeking access to Medicare cover for foot and ankle surgery performed by podiatric surgeons, and for Medicare funding for related services such as imaging, pathology, anaesthesia and referrals. In 2016, MSAC rejected the application on the basis that it was uncertain whether foot and ankle surgery performed by podiatric surgery was inferior to equivalent surgery performed by orthopaedic surgeons, and expressed concern about "the lack of evidence supporting podiatric surgeons' ability to provide pre- and post-operative care and to work in multidisciplinary teams".[11] MSAC noted "it would be helpful if podiatric surgeons could establish their role as part of a multidisciplinary teams in the public setting as a first step in generating Australian-specific data demonstrating the safety and effectiveness of the care they provide and their capability in providing the surgery as well as ensuring pre- and post-operative patient management".

In 2020, MSAC rejected a revised proposal from the College for access to Medicare funding.[12] The committee again noted the lack of evidence of comparative safety and effectiveness and stated that the level of unmet need for foot and ankle surgery was unclear.

Concerns

At the heart of this review are several questions:

- Are podiatric surgeons adequately trained to perform foot and ankle surgery?
- What do patients and members of the public understand about the qualifications of a podiatric surgeon?
- Does the current regulatory framework ensure that registered podiatric surgeons are competent and safe to practise?
- Does the regulatory system respond effectively to complaints or notifications about podiatric surgeons?

Even though these questions arise in the context of a very small profession, they raise issues that are fundamental to Australia's National Scheme: *public protection* in accreditation, in registration and in management of notifications; and *public confidence* in a system intended to give patients and the community assurance of safe practice by registered health practitioners.

In this scene-setting chapter, each of the questions and the relevant area of concern is introduced, before a concluding section that asks what any reforms or improvements to regulatory practices should aim to address.

Education and training of podiatric surgeons

An important issue in the review, raised mainly by orthopaedic surgeons, is the assertion that podiatric surgeons are not adequately trained to perform complex surgical procedures.

There are important differences in the education and training of podiatric surgeons compared with orthopaedic surgeons. For example, orthopaedic surgical training includes access to the public health system, which has the benefits of exposure to, and integration of, practice into multidisciplinary care. However, as discussed in chapter 2, concerns about

11. Medical Services Advisory Committee. *Public summary document. Application No. 1344.1 – Podiatric Surgeons for access to a range of MBS numbers for surgery of the foot and ankle*. 2016.
12. Medical Services Advisory Committee. *Public summary document. Application No. 1344.2 – Assessment of foot and ankle services by podiatric surgeons (Resubmission)*. 2020.

the quality of education and training of podiatric surgeons are not supported by the evidence examined for this review.

The analysis of notifications related to the standard of care provided by podiatric surgeons who are not recent graduates – which are the bulk of notifications – points to poor individual clinical decision making, rather than flaws in their training. Interestingly, after removing frequently notified practitioners from the data,[13] there appears to be minimal difference in the number of notifications about podiatric surgeons by training institution (UWA or the College).

My conclusion is that current education programs are not the source of the issues driving the higher rate of notifications for podiatric surgeons. There are sound, contemporary accreditation standards and professional capabilities in place. The accreditation processes used to assess the education programs, and the providers that deliver them, are appropriate and not dissimilar to the processes used for the accreditation of medical education programs. I have recommended some ways to improve the assessment of podiatric surgery education against accreditation standards.

Public and patient understanding about the qualifications of a podiatric surgeon

A significant issue raised during the review, in my meetings with consumers and in conversations with a wide range of members of the community, including medical practitioners, is the widespread confusion or concern about the use of the term 'podiatric surgeon'. In short, when people hear 'podiatric surgeon' they assume the practitioner is medically qualified.

Confusion about the qualification of a podiatric surgeon matters because of the risk that, when informed that the practitioner they consulted was not, after all, medically qualified, a patient may feel misled. This may, in turn, lead to a loss of public confidence in the safety of foot and ankle surgery performed by podiatric surgeons – and indeed in the regulatory system that oversees such practitioners.

My consultations with consumers who had not consulted a podiatric surgeon confirmed that they did not have a clear understanding of what a podiatric surgeon was, and most believed them to be a medical practitioner.

My impression from interviews with podiatric surgeons is that most explain their qualifications to patients – that they are not a medical practitioner but have specialist training in podiatric surgery. In my meetings with patients who had consulted a podiatric surgeon, they confirmed that they had received a satisfactory explanation of the practitioner's qualifications and experience. However, that is clearly not a universal experience. As is evident in recent media reports and a few of the notifications, some patients may be alarmed to learn that their podiatric surgeon was not, in fact, a medical practitioner.

As discussed in chapter 3, I have concluded that the continued use of the title 'podiatric surgeon' is confusing and problematic and have recommended that the Podiatry Board seek ministerial approval to change the specialist title. Given the implications for their practice, there would need to be a full consultation and opportunity for podiatric surgeons and other interested people to make submissions on the proposed change before consideration by ministers.

A related problem is that the advertising of services by some podiatric surgeons provides information in a way that could mislead the public about their qualifications and about the likely outcomes of any surgery. In chapter 4, I have recommended that the *Guidelines for advertising a regulated health service* be revised to include clearer information about advertisers' obligations under the National Law – particularly in relation to the use of titles and claims about training, qualifications, registration, experience and competence – with specific examples related to podiatric surgery. I have also recommended that Ahpra strengthen its enforcement in response to advertising offences by podiatric surgeons.

Registration standards for podiatric surgeons

A further area of concern that emerged during the review is the adequacy of the regulatory framework to ensure that registered podiatric surgeons are competent and safe to practise. The community and patients rely on the *Register of practitioners* and current registration status as assurance from the regulator that it is safe to consult a registered podiatric surgeon. Some submitters argued that current registration standards are not stringent enough and do not give an assurance of a competent and safe practitioner. They pointed to the high rate of notifications as evidence of poorly performing practitioners on the register. Other submitters noted that podiatric surgeons are eligible for, but not required to hold, an endorsement to prescribe scheduled medicine – and argued that endorsement is essential for safe practice.

The Podiatry Board has developed a specialist registration standard for podiatric surgery and a *Code of conduct* (shared among 12 Boards) that applies to all podiatric surgeons (and podiatrists), and has issued a range of guidelines (eg in relation to advertising and use of social media) that apply to podiatric surgeons (and podiatrists). It has not issued specific guidelines about the practice of podiatric surgery, nor updated the specialist registration standard for podiatric surgery or the CPD registration standard. Both are planned, with revision of the specialist registration standard awaiting the outcome of this review.

13. Frequently notified practitioner means a podiatric surgeon with three or more notifications between 1 July 2010 and 30 June 2023.

In chapter 1, I conclude that the regulatory framework for podiatric surgeons does not currently assure of safe practice. I recommend that the Podiatry Board implement a professional performance framework for the podiatric surgery specialty, require all podiatric surgeons to hold an endorsement for scheduled medicines, strengthen the CPD registration standard, and develop specific guidelines for practitioners undertaking podiatric surgery.

Handling of complaints about podiatric surgeons

There is a perception that the current system has failed to take effective action against individual podiatric surgeons who have been the subject of complaints or notifications. This matters because the community relies on the National Scheme to protect the public and maintain public confidence in the safety of services provided by registered health practitioners.[14]

If that perception is justified, it is a problem that needs to be remedied by changes in regulatory practice and possibly by legislative reform. An intelligent regulator monitors and interrogates its own data and intervenes if a problem becomes apparent. That is what the Podiatry Board and Ahpra have done in commissioning this review.

A specific area of concern is the high rate of notifications about podiatric surgeons – significantly higher than about podiatrists (which is unsurprising given the different nature of their work) but, more relevantly, much higher than about orthopaedic surgeons operating on the foot and ankle.

I examine the Podiatry Board's handling of notifications about podiatric surgeons, and specifically the Board's response to surgeons who have been subject to multiple (three or more) notifications, in chapter 5. I conclude that the regulatory framework is sound and generally well implemented. Strengthening current registration standards should help prevent the problems that are leading to excess notifications.

I recommend rigorous and consistent application of the risk assessment framework, giving appropriate weight to the practitioner's regulatory history and the characteristics of their practice; enhanced processes for obtaining expert clinical advice on podiatric surgery cases; better use of the full range of regulatory tools, notably performance assessments; and enhanced publication of notifications data and lessons from complaints.

Aims of possible reforms

In conducting the review and developing the recommendations outlined in this report, I have been conscious of the need to ensure that any proposed solutions address the terms of reference for this review and align with the objectives and guiding principles of the National Law by aiming to:

1. improve the safety and quality of services provided by podiatric surgeons[15]
2. ensure high-quality education and training of podiatric surgeons[16]
3. better inform patients and the public and strengthen public confidence in the safety of services provided by podiatric surgeons[17]
4. improve access to foot and ankle surgery[18]
5. support the continuous development of a flexible, responsive and sustainable health workforce.[19]

The first three reform aims, relating to safety and quality, high-quality education and training, and public confidence, are fundamental to the regulation of any health profession in Australia under the National Law. But the latter two objectives are also important. There is a lack of published research about whether there is unmet need for foot and ankle surgery in Australia.[20] However, with an ageing population and long wait times for orthopaedic surgery in the public system,[21] it is probably safe to assume that there will be steady growth in consumers seeking advice and treatment for foot and ankle problems and that there is a level of unmet need.

The podiatry workforce plays a large role in preventive healthcare, supporting general practitioners to manage foot disorders, mitigating escalation to high-risk foot clinics, and reducing emergency department presentations and hospital admissions.[22] Recent research recognises some of the

14. National Law s 3A(1).
15. See guiding principles of the National Law s 3A(1)(a). Protection of the public and public confidence in the safety of services provided by registered health practitioners and students are the paramount guiding principle of the National Scheme.
16. National Law s 3(2)(c).
17. See guiding principles of the National Law s 3A(1)(b).
18. National Law s 3(2)(e).
19. National Law s 3(2)(f).
20. In 2020, MSAC was not convinced by data presented by the College based on orthopaedic surgery waiting times and increasing demand for service evident in MBS claims data: Medical Services Advisory Committee. *Public summary document. Application No. 1344.2 – Assessment of foot and ankle services by podiatric surgeons (Resubmission)*. 2020. p 18.
21. Australian Institute of Health and Welfare. 'Patients waiting longer than ever for elective surgery as public hospitals work to clear the backlog', media release. 6 December 2023. Available on the Australian Institute for Health and Welfare website, accessed 28 February 2024. See also Healthcare Spaces. 'The state of orthopaedic surgery'. 30 May 2021. Available on the Healthcare Spaces website, accessed 28 February 2024.
22. Couch A et al. 'Australian podiatry workforce: findings from the PAIGE cross-sectional study of Australian podiatrics'. *Journal of Foot and Ankle Research*. 2023. 16:46. https://doi.org/10.1186/s13047-023-00646-8

challenges of nurturing and sustaining the podiatry profession.[23] The much smaller podiatric surgeon profession faces even greater challenges in being sustainable and valued within a flexible Australian health workforce, as discussed in this report.

At a time of workforce shortages, when the Australian Government is seeking to enable registered health practitioners to work to their full scope of practice and make it easier for international health practitioners to work in Australia,[24] it is important to keep this wider context in mind. Health practitioner regulation needs to be alert to opportunities to advance, rather than hamper, health system goals.[25] As noted in a recent review of health practitioner regulation systems commissioned by WHO, "[health practitioner regulation] generally has not kept pace with the demands for greater flexibility arising from interprofessional team-based practice and a more dynamic division of labor in healthcare."[26]

A *BMJ* editorial nicely summarises some of the challenges in incorporating other health practitioners in teams traditionally led by doctors:[27]

> First: a population's growing health needs … will not be met by doctors alone. Better, more compassionate care requires team members to contribute in their different ways. Second: any new professional group able to influence patient care needs appropriate and clear regulation. Third: it is important to respect professional colleagues and resist tribalism.

Each of the areas of concern discussed in this chapter are considered in more detail in the following chapters, and recommendations are made to improve the regulation of podiatric surgery in Australia, consistent with these reform aims.

23. Couch A et al. 'Australian podiatry workforce: findings from the PAIGE cross-sectional study of Australian podiatrics'. *Journal of Foot and Ankle Research*. 2023. 16:46. https://doi.org/10.1186/s13047-023-00646-8
24. See discussion in chapter 6.
25. Mahat A et al. 'Health practitioner regulation and national health goals'. *Bulletin of the World Health Organization*. 2023. 101:595–604. http://dx.doi.org/10.2471/BLT.21.287728
26. Carlton A-L et al. *Health practitioner regulation systems: A large-scale rapid review of the design, operation and strengthening of health practitioner regulation systems*. 2024. p 158. Available on the World Health Organization website, accessed 28 February 2024.
27. Abbasi K. 'Physician associates: why we need a pause and an urgent review'. *BMJ*. 2024. 384:q185. http://dx.doi.org/10.1136/bmj.q185

1. Registration and practice

Introduction

A national health practitioner board may register only "suitably qualified and competent persons" and may decline to register someone who "fails to meet … an approved registration standard for the profession about the suitability of individuals to be registered in the profession or to competently and safely practise the profession".[28] As a member of the public and potential patient, I rely on the public *Register of practitioners* and current registration status as assurance from the regulator that it is safe to consult a registered practitioner.[29]

Publishing standards, codes and guidelines is one of the main ways a National Board, such as the Podiatry Board, can seek to influence practice by making its expectations clear to the practitioners it regulates. Guidance on good practice is helpful for practitioners and makes it clear to the community what standards are expected. It is obviously preferable to prevent problems by developing tools that support professional practice and by trying to screen out unsuitable practitioners at the point of registration, rather than waiting to react to complaints and notifications.

One of the main issues for this review is whether the Podiatry Board's current standards, codes and guidelines are adequate, and are sufficient to set a minimum standard of safe practice by podiatric surgeons. Throughout the review, I have heard opposing views on this issue.

This chapter examines the concerns raised during the review and recommends some ways to strengthen the current standards and guidelines.

Podiatry Board and Ahpra's powers and remit

Since 2010, the Podiatry Board, supported by Ahpra, has been authorised to grant specialist registration to eligible podiatrists.[30] To be granted specialist registration as a podiatric surgeon in Australia, a podiatrist must meet the eligibility requirements for specialist registration, which includes being qualified and suitable for this type of registration. An applicant for specialist registration must also:

- meet the requirements of the Podiatry Board's *Registration standard for specialist registration for the podiatry specialty of podiatric surgery* and other relevant registration standards including those for recency of practice, continuing professional development (CPD), professional indemnity insurance arrangements and English language skills
- commit to comply with the *Australian National Guidelines for the management of healthcare workers living with blood borne viruses and healthcare workers who perform exposure prone procedures at risk of exposure to blood borne viruses*
- provide information about any impairment that detrimentally affects, or is likely to detrimentally affect, their capacity to practise the profession.

Within the parameters set by the National Law, National Boards can further define and influence the practice of a health profession by registered practitioners by publishing standards, codes and guidelines.[31] The Code of conduct sets out the standards of ethical and professional conduct the Podiatry Board expects of podiatrists and podiatric surgeons. Guidelines allow the Board to give guidance to practitioners and make the Board's expectations of good podiatric and podiatric surgery practice clear.

The *Code of conduct* and guidelines are used by the Podiatry Board and other regulators to evaluate practitioners' conduct and to determine whether conduct has met the required standard. Registration standards, codes and guidelines are admissible in proceedings under the National Law or law of a co-regulatory jurisdiction as evidence of what constitutes appropriate professional conduct or practice of a registered practitioner.[32]

The Podiatry Board has published (see Figure 1):

- the **Code of conduct** that sets out the Podiatry Board's expected standards of professional conduct
- **registration standards** that set out the requirements that applicants for registration and registered podiatrists and podiatric surgeons need to meet to be registered or have their registration endorsed
- **guidelines** for the profession that provide guidance on topics such as the use of social

28. National Law ss 35(1)(a), 55(1)(g).
29. Paterson R. *The good doctor: what patients want.* 2012. p xix.
30. National Law ss 55, 57, 58, 60.
31. National Law s 39.
32. National Law s 41.

Figure 1. Overview of the Podiatry Board's standards, codes and guidelines

	Podiatrist	Podiatric surgeon
Code of conduct	✓	✓
Recency of practice registration standards	✓	✓
English language skills registration standards	✓	✓
Criminal history registration standards	✓	✓
Professional indemnity insurance registration standards	✓	✓
CPD registration standards	✓	✓
+20 hours & Advanced Life Support		✓
Specialist registration standard		✓
Endorsement for scheduled medicines registration standards	✓	✓
Guidelines for advertising a regulated health service and other guidelines	✓	✓
Other guidelines developed by the Podiatry Board	✓	✓

media by health practitioners, keeping and managing health records, advertising by health practitioners and mandatory notifications.

However, National Boards, as regulators, do not issue specific clinical standards for practitioners. That is the role of other bodies such as specialist colleges, professional associations, the Australian Commission on Safety and Quality in Health Care, and the National Health and Medical Research Council.

Code of conduct

Twelve National Boards, including the Podiatry Board, share a *Code of conduct* for the practitioners that they regulate.[33] The code is a critical part of the regulatory framework that each National Board establishes for the profession it regulates in order to protect the public. By defining National Boards' expectations of professional conduct, the code supports the delivery of appropriate care within an ethical framework. Practitioners have a professional responsibility to meet the standards in the code.

Registration standards

In 2015, the Podiatry Board published the Registration standard for specialist registration for the podiatry specialty of podiatric surgery. This standard sets out the requirements that a podiatrist must meet to be granted specialist registration to practise as a podiatric surgeon in Australia and the ongoing requirements to maintain specialist registration.

The registration standard requires that a podiatrist:

- be eligible and qualified for specialist registration,[34] and
- provide evidence of having completed a minimum of two years' full-time (or equivalent) general podiatry practice in a clinical setting.

In mid-2021, the Podiatry Board began a scheduled review of the specialist registration standard. The Board consulted widely throughout 2022. There was broad support for maintaining, with slight modifications, the current standard. However, in 2023, the Podiatry Board, with the approval of health ministers, delayed publication of any revised registration standard pending the findings and recommendations from this review.

The Podiatry Board has also published mandatory registration standards which apply to all podiatrists and podiatric surgeons.[35] These set out the requirements for:

- continuing professional development
- recency of practice
- professional indemnity insurance arrangements
- English language skills
- criminal history.

In addition, the Podiatry Board has published the Endorsement for scheduled medicines (ESM) registration standard, which sets out the requirements for a podiatrist or podiatric surgeon to have their registration endorsed for scheduled medicines.

Under the Podiatry Board's current CPD registration standard, all podiatrists and podiatric surgeons must complete at least 20 hours of CPD each year. Podiatric surgeons must complete an additional 20

33. Ahpra and National Boards. Shared *Code of conduct*. 2022. Available on the Ahpra website, accessed 22 January 2024.

34. National Law ss 57, 58.

35. The registration standards, and associated policies and guidelines are available on the Podiatry Board website.

hours related to their podiatric surgery practice. As detailed later in this chapter, I recommend that the CPD registration standard be strengthened to target individual development needs, with a focus on reviewing performance and measuring patient outcomes.

Podiatric surgeons must also have completed training in advanced life support provided by an approved training organisation. And if their registration is endorsed for scheduled medicines, they must complete an additional 10 hours related to the endorsement.

The CPD must:

- include a range of activities from the categories set out in the Podiatry Board's [guidelines for continuing professional development]
- include a minimum of five hours in an interactive setting with other practitioners, such as face-to-face education
- focus on aspects of podiatry practice that are relevant to their area of professional practice and have clear learning aims and objectives that meet the requirements.

Recency of practice means:[36]

> a health practitioner has maintained an adequate connection with, and recent practice in, the profession since qualifying for or obtaining registration.

Under the recency of practice registration standard, all podiatrists and podiatric surgeons must have practised in their scope of practice for a minimum of:

- 450 hours in the three-year period before applying for registration or renewal of registration, or
- 150 hours in the 12-month period before applying for registration or renewal of registration.

These requirements are broadly consistent across all professions in the National Scheme, with some minor variations across professions.[37]

Problems related to registration and practice

I heard opposing views about the adequacy of the current regulatory framework for podiatric surgeons. Many submitters and stakeholders support the current framework, but I also heard from vocal opponents who consider it inadequate. The two sharply divergent views were expressed both in my meetings with stakeholders and in the written submissions. In general, those supporting the current framework came from the podiatry profession and those opposed to it came from the medical profession (specifically, orthopaedic surgeons).

> Both Australian podiatric surgeons and orthopaedic surgeons are obligated to comparable regulatory compliance, with both specialities being held to high clinical standards, necessitating adherence to professional codes of conduct and ethical guidelines. (Podiatrist)

> Current regulation of podiatric surgery in Australia is not conducted in a manner conducive to producing safe, competent and ethical 'Podiatric Surgeons'. (Orthopaedic surgeon)

Stakeholders who believe the current regulatory framework is not adequate raised many concerns, including the following:

- Not all podiatric surgeons can prescribe medications because they do not hold an ESM. Without the endorsement, podiatric surgeons are unable to prescribe pain medication, antibiotics or other medications for their patients.
- Some podiatric surgeons don't do enough surgery to maintain the currency of their technical skills. Podiatric surgeons should be required to meet the same standards as orthopaedic surgeons.
- The CPD requirements for podiatric surgeons are not sufficient and should be the same as the CPD requirements for orthopaedic surgeons.

Although no specific concerns were raised about the requirements in the registration standards, *Code of conduct* or guidelines, some stakeholders identified areas where requirements should be strengthened. For example, on changing registration standards, codes and guidelines, one submitter commented:

> Recertification processes must include surgical procedure logs, minimum numbers of procedures undertaken annually to maintain certification, adequate clinical audit and use of surgical registries, supervised practice, and observed practice for podiatric surgeons. (Podiatrist)

These issues are explored further in the key findings below and throughout my report.

Key findings

I have come to the conclusion that, in the words of one submitter, "there are opportunities for improved regulatory management of the profession [of podiatric surgery] to ensure that safe, competent,

36. Podiatry Board of Australia. *Registration standard: Recency of practice*. 2016. p 4. Available on the Podiatry Board website, accessed 22 January 2024.

37. The Medical Board of Australia defines the requirements for recency of practice slightly differently. It requires 152 hours or four weeks' full-time equivalent in one registration period or 456 hours or 12 weeks' full-time equivalent over three consecutive registration periods. See Medical Board of Australia. *Registration standard: Recency of practice*. 2016. Available on the Medical Board website, accessed 22 January 2024.

and ethical care is provided to the public".[38] My findings below indicate several areas where change is warranted.

Almost one-third (12) of the 40 registered podiatric surgeons do not hold an ESM. Although many of these practitioners can satisfactorily meet their patients' needs for medications through relationships with practitioners who are authorised to prescribe medicines, patient safety would be better served if all podiatric surgeons held an ESM. This would ensure that podiatric surgeons can meet the medication needs of their patients, both before and after surgery. In addition to requiring newly qualified podiatric surgeons to hold an endorsement, it will be important to ensure that registered podiatric surgeons who do not hold an endorsement are required to do so. Determining the appropriate mechanism to achieve this will be a matter for the Podiatry Board and Ahpra.

The CPD requirements for podiatric surgeons should also be strengthened. Reflecting on performance and reviewing outcomes (including patient-reported outcomes) are important factors in continuous quality improvement in any health profession. They allow an in-depth assessment of clinical care, and variations in clinical care, and foster a culture of performance review and knowledge sharing in the profession.

The Australian Commission on Safety and Quality in Health Care was one of several stakeholders who recommended enhancing the CPD requirements by strengthening the focus on audit and review. Specifically, the Commission recommended that the CPD registration standard be updated to increase the focus on identifying a practitioner's individual development needs and to require a significant portion of CPD to focus on reviewing performance (both self-review and review by others) and measuring patient outcomes. This would also ensure CPD requirements for podiatric surgeons are brought into line with the CPD requirements for specialist medical practitioners.[39]

In considering the broader patient safety issues in the provision of podiatric surgery, I also examined the Professional Performance Framework developed by the Medical Board of Australia.[40] The Medical Board's framework is intended to support medical practitioners to practise competently and ethically throughout their working lives.

Although I acknowledge that the Medical Board's framework applies to medical practitioners, and my focus is the specialty of podiatric surgery, the framework addresses some of the main concerns for podiatric surgery, including the importance of practitioners taking responsibility for their own performance, encouraging the specialty to raise professional standards, and building a positive, collaborative culture.

The Medical Board's Professional Performance Framework is based on five pillars, all of which align with findings in my review, specifically:

- strengthened continuing professional development, including requiring practitioners to do at least 50 hours of CPD per year that includes a mix of reviewing performance, measuring outcomes and doing educational activities
- active assurance of safe practice, including the Board identifying practitioners at risk of poor performance and managing that risk, as well as strategies to address risks associated with increasing age and professional isolation of practitioners
- strengthened assessment and management of medical practitioners with multiple substantiated complaints, including requiring such practitioners to participate in a formal peer review of their performance
- guidance to support practitioners, including through the registration standards and other guidance as required
- collaborations to foster a positive culture in medicine, including by encouraging medical practitioners to commit to reflective practice and lifelong learning and support of their colleagues, as well as working with governments and other agencies to promote individual practitioners accessing their data to support practice review and measuring outcomes.

My recommendations throughout this report touch on all the above pillars. I recommend that the Podiatry Board implement a professional performance framework for the podiatric surgery specialty, to be informed by the Medical Board's framework, and which incorporates all the relevant recommendations in my report. In this chapter I focus on the strengthened CPD pillar.

Following the development and publication of the Professional Performance Framework,[41] the Medical Board reviewed its CPD registration standard which requires all medical practitioners to complete a minimum of 50 hours a year of CPD activities, including at least 25 hours (50%) in CPD activities focused on reviewing performance and measuring outcomes (with a minimum of five hours for each activity type). The Board's 2021 report *The evidence for change: Strengthening continuing professional*

38. Ian Reid, podiatrist.

39. Medical Board of Australia. *Registration standard: Continuing professional development.* 2023. Available on the Medical Board website, accessed 22 January 2024.

40. Medical Board of Australia. *Professional Performance Framework.* Available on the Medical Board website, accessed 28 February 2024.

41. The Professional Performance Framework was released in November 2017 following the report from the expert advisory group on revalidation. The framework is available on the Medical Board website, accessed 28 February 2024. See also the evidence and supporting documents on the Medical Board website, accessed 28 February 2024.

development[42] supports a CPD model beyond educational activities, which includes measuring outcomes and performance review activities. The sorts of CPD activities envisaged by the Medical Board – which would be suitable for enhanced CPD for podiatric surgeons – are shown in Table 1.[43]

Through my discussions with the Podiatry Board, I understand that the Board is open to considering a change to its CPD requirements for podiatric surgeons that aligns more closely with the Medical Board's approach to practitioners reviewing their performance and measuring outcomes as part of their CPD. I recommend that the Board pursue this. Any changes would be subject to and informed by stakeholder consultation.

I appreciate that my recommendations, if accepted, set higher requirements for podiatric surgeons, above what is expected of generally registered podiatrists, but I believe this is warranted to address some of the issues identified through this review, to better protect the public.

I acknowledge that the Medical Board's framework is new and its effectiveness is yet to be evaluated. I encourage the Podiatry Board to draw on the experience of the Medical Board and take account of any evaluation research on the framework.

There is also a need to strengthen the specific guidance for practitioners about what is expected of them in the practice of podiatric surgery. It is obviously preferable to take a preventive approach that targets areas that have given rise to complaints and concerns, rather than wait until problems arise. In my view, new guidelines for registered podiatric surgeons should clearly articulate the Podiatry Board's expectations in relation to:

- patient selection and assessment of patient suitability
- the need for more than one consultation before consent to surgery and for failure of conservative measures prior to surgery
- informed consent, including provision of information about making complaints
- peri-operative care
- patient management, including liaison with GPs and arrangements for post-operative care
- prevention of fly-in fly-out surgery
- training and experience
- advertising requirements
- requirement to hold an ESM
- operating only in facilities that are appropriately licensed and where the practitioner is credentialed.

These guidelines would complement the *Code of conduct*, the Podiatry Board's other standards, codes and guidelines, and the professional capabilities for podiatric surgeons, by targeting areas where improvement is needed to better protect the public and patients of podiatric surgeons. They would set a clear benchmark of expected podiatric surgical practice. If a podiatric surgeon's clinical practice or conduct varied significantly from the guidelines, the practitioner should be asked to explain and justify their decisions and actions. Serious or repeated failure to meet the guidelines could have consequences for a practitioner's registration.

Table 1. CPD examples from the Medical Board of Australia

Individual-focused activities	Group-focused activities	Not directly focused on participant's practice
Measuring outcomes activities		
• audit focused on participant's own practice • root cause analysis • incident report • individual quality improvement project	• audit (practice, national or international) • case reviews • quality improvement project • multidisciplinary team meetings	• assessing incident reports • leading, analysing, writing reports on healthcare outcomes
Reviewing performance activities		
Individual-focused activities	**Group-focused activities**	**Not directly focused on participant's practice**
• professional development plan • self-evaluation and reflection • direct observation of practice by colleague • multi-source feedback • patient experience survey • workplace performance appraisal	• direct observation of practice in team setting • multi-source feedback • patient experience survey • multidisciplinary team meetings • peer review group meetings	• participating in clinical governance/quality assurance committees • accrediting/auditing practices, hospitals, training sites • medico-legal work (report, expert witness)

42. Medical Board of Australia. *The evidence for change: Strengthening continuing professional development.* 2021. Available on the Medical Board website, accessed 28 February 2024.

43. Medical Board of Australia. *Professional development plans and types of CPD*. Available on the Medical Board website, accessed 28 February 2024.

Regulating scope of practice

In my meetings with stakeholders, and in the written submissions, some stakeholders advocated for the Podiatry Board to regulate the scope of practice of podiatric surgeons – for example, by limiting their practice to specific procedures or particular areas of the foot.

I do not favour regulating the scope of practice of podiatric surgeons. I found no evidence to support the need for such a restriction. Analysis of notifications about podiatric surgeons did not reveal complaints focused on any specific procedure or group of procedures, or on a particular area of the foot (eg forefoot, mid-foot or ankle). There was also no evidence to suggest that a scope of practice limitation would improve public safety or address the issues raised in this review.

The National Law is based on a title protection model rather than specifying what health practitioners can and cannot do.[44] Along with other health practitioners in the National Scheme, podiatric surgeons are responsible for determining their own scope of practice based on their qualifications, skills and experience, and the ethical responsibilities and obligations set out in the *Code of conduct*. This includes maintaining adequate knowledge and skills to provide safe and effective care; recognising and working within the limits of their competence and scope of practice; and practising in accordance with the current and accepted evidence base of the health profession.

Introducing a scope of practice limitation for podiatric surgery would be inconsistent with how other health professions are regulated in Australia. I note that a recent WHO-commissioned review of health practitioner regulation systems did not recommend the use of scope of practice limitations:[45]

> There are costs to the health system, the health workforce and health consumers when practitioners are underutilized and scopes of practice are too tightly regulated.

There would also be practical difficulties in defining a scope of practice for foot and ankle surgery[46] and implementing a scope of practice limitation. How would the Podiatry Board determine each individual practitioner's scope of practice? Who would monitor compliance with the scope of practice? How often would a practitioner's scope be assessed or re-assessed? How would limiting scope of practice take into consideration the assessment of a patient's suitability for a particular procedure? My conclusion is that these issues would make a scope of practice limitation difficult, if not impossible, to implement successfully.

Recommendations

1. The Podiatry Board and Ahpra develop a professional performance framework for the podiatric surgery specialty which is informed by the Medical Board's framework, and which captures the relevant recommendations in this report.
2. The Podiatry Board and Ahpra strengthen the registration and practice requirements for podiatric surgeons by:
   a. requiring all podiatric surgeons to hold an endorsement for scheduled medicines
   b. strengthening the continuing professional development (CPD) registration standard to align more closely with the Medical Board's approach to practitioners reviewing their performance and measuring outcomes as part of their CPD
   c. developing guidelines for practitioners performing podiatric surgery.[47]

44. Apart from a few restrictions relating to spinal manipulations, some restricted dental acts and the prescription of optical appliances. See National Law ss 121, 122, 123.
45. Carlton A-L et al. *Health practitioner regulation systems: A large-scale rapid review of the design, operation and strengthening of health practitioner regulation systems*. 2024. p 159. Available on the World Health Organization website, accessed 28 February 2024.
46. The complexity in defining 'what is a foot?' and consequential legal uncertainty in the regulation of podiatric medicine and surgery in the US is described in Safriet B. 'Closing the gap between *can* and *may* in health-care providers' scope of practice: a primer for policymakers'. *Yale Journal on Regulation*. 2002. 19: 301 at 319–232.
47. Similar to the Medical Board of Australia's *Guidelines for registered medical practitioners who perform cosmetic surgery and procedures*, 2023. Available on the Medical Board website, accessed 28 February 2024.

2. Education and training

Introduction

The Australian community rightly assumes that registered health practitioners are suitably qualified, having graduated from high quality education and training programs, and that the granting of registration in their profession means that they are a fit and proper person, able to practise the profession safely and competently. Accreditation of a health practitioner education program and registration of a practitioner in the relevant health profession should give members of the public confidence that they can rely on advice and treatment from that practitioner.

In keeping with these expectations, the guiding principles of the National Scheme are the protection of the public and public confidence in the safety of services provided by registered health practitioners.[48]

One of the objectives of the National Law is to facilitate high-quality education and training of health practitioners. Accreditation of a program of study, and of the education provider that delivers that program, is intended to assure the Podiatry Board and the community that students graduating from the program have the knowledge, skills and professional attributes needed to practise safely and competently.

One of the prominent issues in this review has been the education and training of podiatric surgeons, the standards of education programs, and the processes used to assess and accredit education providers and their programs of study. This issue was raised consistently in my meetings with stakeholders and in written submissions. Most, but not all, of the stakeholders who commented on this issue were medical practitioners. They raised concerns that the standard of education and training of podiatric surgeons in Australia is not high enough, nor equivalent to medical surgical training, and that this has the potential to put patients at risk.

This chapter examines how the current accreditation system works and whether it needs to be improved, to protect patients and justify public confidence.

Podiatry Board and Ahpra's powers and remit

Accreditation

Under the National Law, one of the requirements for specialist registration is that the practitioner is qualified for registration in the specialty, having successfully completed an approved program of study in podiatric surgery.[49] Accreditation involves assessing education providers and their programs of study to ensure that the education program and the provider produce graduates who have the knowledge, skills and professional attributes to safely and competently practise their profession in Australia.

The National Law sets out how the accreditation arrangements in the National Scheme operate.[50] It defines the accreditation functions as follows, although not all accreditation authorities carry out all of these functions:[51]

- developing accreditation standards for approval by National Boards
- assessing programs of study and the education providers that provide those programs of study, to ensure the programs meet approved accreditation standards
- assessing overseas accrediting authorities
- overseeing the assessment of overseas-qualified practitioners seeking registration in Australia
- giving advice to National Boards about issues relating to their accreditation functions.

The National Law requires the National Boards to decide whether the accreditation functions for the profession will be undertaken by an external accreditation entity or a committee established by the Board.[52]

The Podiatry Accreditation Committee (the Committee) was established by the Podiatry Board in 2019, replacing the previous Australian and New Zealand Podiatry Accreditation Council as the accreditation authority for the podiatry profession.[53] The Committee's functions include developing accreditation standards for podiatry and podiatric surgery programs of study for approval by the Podiatry Board, and assessing and monitoring programs of study and education providers against the accreditation standards.

Although members are appointed by the Podiatry Board, the Committee, like all accreditation authorities under the National Scheme, exercises its accreditation functions independently. The Committee has six members (including three podiatrists and one podiatric surgeon), chosen for their skills and experience in podiatry practice, delivery of higher education, course design and evaluation, learning and assessment, clinical teaching

48. National Law s 3A(1).
49. National Law ss 57, 58.
50. National Law Part 6.
51. National Law s 42.
52. National Law s 43.
53. The Podiatry Accreditation Committee was established under section 43 of the National Law and has been carrying out the accreditation functions for the podiatry profession since 1 July 2019.

of students, educational governance, program accreditation, and health or educational regulation.

Ahpra and the National Boards work closely with the accreditation authorities to implement the National Scheme. Accreditation authorities and National Boards have separate but complementary functions under the National Law. For example, an accreditation authority accredits an education program if it meets the accreditation standards, and the relevant National Board approves the program so that graduates of the program are qualified to apply for registration in Australia.

Accreditation standards and professional capabilities

Accreditation standards are used to assess whether a program of study, and the education provider that delivers that program of study, produces graduates with the professional capabilities needed to practise their profession safely and competently. The accreditation standards for podiatric surgery programs require education providers to design and implement a program where the curriculum maps to the professional capabilities for podiatric surgeons.

The professional capabilities identify the knowledge, skills and professional attributes needed to practise safely and competently as a podiatric surgeon in Australia. They describe the threshold or minimum level of professional capability required for registration as a podiatric surgeon.

The Committee accredits education programs that meet the accreditation standards and monitors approved programs and education providers to ensure they meet and continue to meet the accreditation standards. Graduates of an accredited and approved podiatric surgery program are qualified for specialist registration as a podiatric surgeon.

In 2019, the Podiatry Accreditation Committee developed the first set of professional capabilities for podiatric surgeons and revised the accreditation standards for podiatrists and podiatric surgeons to ensure that they reflect the expectations for contemporary practice. In developing the professional capabilities and accreditation standards, the Committee consulted widely with stakeholders. The new professional capabilities and the updated accreditation standards were subsequently approved by the Podiatry Board and took effect in January 2022.

The revised accreditation standards for podiatric surgery programs[54] focus on the demonstration of outcomes and recognise contemporary practice in standards development across Australia and internationally. They accommodate a range of educational models and variations in curriculum design, teaching methods and assessment approaches. To be accredited, an education provider needs to show that student learning outcomes and assessment tasks map to the professional capabilities for podiatric surgeons.

The accreditation standards for podiatric surgery programs are broadly consistent with the accreditation standards used by the Australian Medical Council (AMC) to assess specialist medical programs, although the AMC's standards are more detailed and set out under nine domains.[55] Both sets of accreditation standards are outcome based. That is, they describe the desired educational, program and learning outcomes of the education program, including the knowledge, skills and professional attributes that graduates must demonstrate. They do not prescribe a specific number of hours or procedures that need to be completed in a given program. Outcome-based approaches to accreditation standards are consistent across National Scheme professions. They allow more flexible and innovative approaches to education that are more responsive to changes in community need, evolving healthcare models and innovations in health practice.

I also note that at the time of writing this report, health ministers have commissioned the National Health Practitioner Ombudsman to carry out a 'Processes for progress review', considering the complaint and appeal processes of accreditation organisations, including the fairness and transparency of accreditation processes. Of particular relevance is the Ombudsman's assessment of accreditation authorities' (including the Podiatry Accreditation Committee's) processes regarding the accreditation of programs of study and education providers. The Ombudsman may make recommendations about processes related to:

- the assessment of programs of study and education providers against the accreditation standards, including:
  - the roles, responsibilities and competencies of assessment teams and accreditation committees
  - the intersection of professional competencies, accreditation standards and assessments
  - ensuring accreditation decisions are appropriate, risk based and proportionate
- monitoring of accredited programs of study
- identifying and managing concerns about accredited programs of study
- managing non-compliance with the accreditation standards.

54. Podiatry Accreditation Committee. *Accreditation standards: Podiatric surgery programs*. 2021. Available on the Podiatry Board website, accessed 23 January 2024.

55. Australian Medical Council. *Standards for assessment and accreditation of specialist medical programs by the Australian Medical Council 2023*. Available on the Australian Medical Council website, accessed 23 January 2024.

Obviously, any recommendations from the Ombudsman, alongside the recommendations of this review, may lead to changes in the way podiatric surgery education programs are assessed for accreditation in the future.

Approved programs of study for podiatric surgery

There are two programs that offer an approved qualification for specialist registration as a podiatric surgeon in Australia:

- the University of Western Australia (UWA) Doctor of Podiatric Surgery program
- the Australasian College of Podiatric Surgeons (the College) Fellowship training program.

Both programs were recently assessed and accredited against the accreditation standards that took effect in January 2022. Both programs were accredited subject to a number of conditions. Compliance is monitored by assessors, whose reports are reviewed by the Committee.

Monitoring approved programs of study for podiatric surgery

Figure 2 shows the main stages in the Committee's approach to monitoring approved programs. Details of the process are outlined in the *Guidelines for accreditation of education and training programs*.[56] If, at any time, the Committee is not reasonably satisfied that a program can meet the accreditation standards, it may change the conditions imposed on accreditation or consider additional requirements.

Problems related to education and training

In many meetings with stakeholders, and in just under a third of written submissions, concerns were raised about the education and training of podiatric surgeons. Specific concerns included that:

- the current education and training programs, and the standards that underpin them, are not rigorous enough and do not meet the same standard required of education programs for orthopaedic surgeons
- podiatric surgical trainees do not get enough experience assisting in surgical procedures during their training and should be required to complete a minimum number of procedures during their training
- the level of supervision and peer review for trainees is inadequate
- there is a lack of a multidisciplinary approach to training.

The following comment exemplifies the concerns expressed about the education and training of podiatric surgeons:

> The training system should be more rigorous and improve if they want to participate in surgical activities without bringing harm to patients. They should have to continue to meet standards and do professional development like medical practitioners and surgeons who are part of colleges accredited by the Australian Medical Council. (Medical practitioner)

Stakeholders made several suggestions to address their concerns, including:

- that Australia follow the system of education for podiatric surgeons in the United States, which they believed to be of a superior standard
- that education and training should be to the same standard as for orthopaedic surgeons or oral surgeons in Australia
- having podiatric surgery education programs accredited by the AMC to the same standards as for specialist medical programs
- allowing podiatric surgical trainees to train in public hospitals and in multidisciplinary teams
- increasing the level of peer review required.

Key findings

On close examination, many of the concerns raised about education and training of podiatric surgeons registered in Australia are not substantiated. General concerns about the quality of education and training are not supported by the analysis of notifications, nor by the research carried out for the review. There is no evidence, for example, that current education programs are the source of the issues driving the higher rate of notifications for podiatric surgeons.

Most of the podiatric surgeons who have received multiple notifications trained many years ago, some before the National Scheme was established, when accreditation standards and processes were not as robust as they are today. Analysis of notifications related to the standard of care given by podiatric surgeons reveals poor individual clinical decision making rather than flaws in their training. Interestingly, after removing frequently notified practitioners, there appears to be minimal difference in the number of notifications about podiatric surgeons by training institution (ie UWA or the College).

Figure 2. Monitoring approved programs of study

56. Ahpra and Accreditation Committees. *Guidelines for accreditation of education and training programs*. 2020. p 8. Available on the Podiatry Board website, accessed 28 February 2024.

The approved programs of study for podiatric surgery have recently been accredited subject to conditions. Being accredited with conditions is a reasonably common outcome of accreditation processes, especially for new programs, and is provided for under the National Law.[57] It does not signify fundamental problems with the education program or the provider, but reflects that the Podiatry Accreditation Committee decided, based on the assessment team's findings, that:

- the program and the education provider have substantially (but not fully) met the accreditation standards
- the gaps identified are capable of being remedied by imposing conditions to be met within a specified time.

The Committee advises the education provider what information is needed to show compliance with the conditions and when any reports are due, and evaluates the provider's 'monitoring response', ie whether they have complied.

The accreditation standards and professional capabilities that came into effect in January 2022 reflect contemporary standards and capabilities statements found across National Scheme professions. The key capabilities required by a podiatric surgeon are detailed and appropriate.[58] I am satisfied that the general processes used by the Committee reflect contemporary practice in program accreditation and the processes in place for monitoring programs approved with conditions (such as the two podiatric surgery education programs) are consistent with the approach outlined in the National Law.[59]

Despite the overall level of comfort provided by the accreditation system, I have some concerns about aspects of the accreditation process, specifically the composition of accreditation assessment teams and the level of detail in which governance arrangements are examined.

Accreditation assessment teams are required to:[60]

- have three assessors, including one assessor who is a member of the Committee
- have a team leader chosen on the basis of their knowledge, skills and attributes relating to the program being assessed
- be composed so that the combination of assessors covers the following areas:
  - current registration with the Podiatry Board of Australia
  - sound knowledge of education system and experience in teaching and learning, and
  - sound knowledge of podiatry, and
- include two reservists as required.

There is no requirement to include a member with surgical training and experience when assessing podiatric surgery programs of study. This is a weakness of the current approach to assessment and opens the process to understandable criticism, in particular from orthopaedic surgeons. Despite extensive efforts, the Committee has struggled to appoint a podiatric surgeon as a member of the assessment team, due to the small number of assessors who are podiatric surgeons and perceptions of conflicts of interest.[61] Vehement opposition from orthopaedic surgeons to podiatric surgery education and training, and resistance from podiatric surgeons to the involvement of a competing specialty, has also made it unrealistic to appoint an orthopaedic surgical assessor.

In assessing a training program for a surgical profession, it is clearly desirable to include a practitioner with surgical training and experience in the assessment team. This would help avoid criticism that the assessment team was not fit-for-purpose for accreditation of a surgical education program. However, this problem cannot be solved by the Committee on its own. For surgical membership of the assessment team to be achievable, goodwill and a willingness to collaborate, in the public interest, will be needed from the various medical and podiatric surgery representative bodies.

It is also noteworthy that the accreditation process for podiatric surgery education programs does not draw on the AMC's expertise in the accreditation and assessment of surgical programs. It makes sense for the Podiatry Accreditation Committee to draw on the significant expertise of the AMC in accrediting and assessing surgical education programs. It may be that proceduralists from other medical specialties would be willing to help and that the AMC, with its extensive networks, could facilitate this. This is something worth exploring.

A further option may be to draw on overseas-based colleagues, for example podiatrists practising podiatric surgery in the UK, to provide surgical expertise on accreditation assessment teams. I recognise that involving international colleagues in on-site assessments would increase costs, but it warrants consideration if Australian-based surgical expertise cannot be engaged.

57. National Law s 48.

58. Podiatry Board of Australia. *Professional capabilities for podiatric surgeons.* 2022. Available on the Podiatry Board website, accessed 24 January 2024.

59. National Law s 50.

60. Ahpra and Accreditation Committees. *Approach to establishment of accreditation assessment teams for podiatry*. 2021. p 2. Available on from the Podiatry Board website, accessed 28 February 2024.

61. At present only two podiatric surgeons are accreditation assessors.

I note that although both of the assessment teams for the recent accreditation of the two podiatric surgery education programs (UWA and the College) included one member of the Committee, they did not include a member who was common to both teams. Given that there are only two education programs, which compete in providing distinctly different offerings, it would be sensible for the teams to have at least one member in common to help ensure consistency.

Accreditation standard 2 for podiatric surgery education programs covers academic governance and quality assurance of the education program. The standard states:[62]

> Academic governance and quality improvement arrangements are effective in developing and implementing sustainable, high-quality post-graduate education at a program level.

This standard focuses on the quality of the organisation, governance and academic structure of the education program. It is designed to ensure that the governance arrangements, and the quality of the academic staff, effectively support the education program. Accreditation assessment teams examine the governance structures in place for an education program, their terms of reference and the composition of the governance committees. They also examine the staffing profile of staff managing and leading the program to ensure that all staff have the knowledge, skills and qualifications needed to support the education program at the desired level.

One aspect not adequately examined, however, is the regulatory history of practitioner members of governance committees and members of staff who are registered practitioners. This may result in situations where health practitioners who have conditions on their registration or who have been the subject of multiple notifications are involved in the oversight, design and delivery of education programs.

This is problematic. It is imperative that governance committee members, and the academic staff, demonstrate good standing in their profession and high standards of professional and ethical behaviour, particularly where they are involved in the design, delivery or oversight of education for the next generation of health practitioners. In my view, regulatory history is relevant information for accreditation assessment teams to have access to and consider. Substantiated notifications may render a health practitioner unsuitable to oversee or deliver an education program. The Podiatry Accreditation Committee and Ahpra may need to develop guidelines relating to the use of regulatory history.

Under the current accreditation standards, facilities and health services used for work-integrated learning for podiatric surgeons are required to maintain workplace safety and any licensing, accreditation or registration required in the relevant state or territory.[63] It would be prudent for the Podiatry Accreditation Committee to consider the issues raised by ministers in the policy direction about medical college accreditation of training sites. Although the policy direction is specific to issues in the medical college system, there are lessons in the National Health Practitioner Ombudsman's report and recommendations relevant for other professions.[64]

There is an unfortunate history of animosity between those aligned with each of the two approved education providers about the respective merits of their education programs. Despite claims on both sides of willingness to collaborate, and some attempts at mediation in the past, there continues to be a standoff. The friction in the profession has meant that podiatric surgeons have been unable to present a united front in confronting the challenges and outright hostility from orthopaedic surgeons and other medical representative groups. It is not the role of the Podiatry Board or Ahpra to seek to force collaboration between education providers. However, if the small profession of podiatric surgery in Australia is to be sustainable, the leadership of UWA and the College need to work together and find a way to draw on the strengths of the university teaching model of UWA and the practical training and work-integrated learning of the College model.

A related aspect of sustainability is the size of the program and the very small number of trainees. Given the small number of podiatric surgeons and available training sites, accreditation needs to provide assurance that each program can offer sufficient clinical placements, supervision and resourcing for the student cohort (even with low numbers), and that students are exposed to the full range of podiatric surgical practice. I was assured by Ahpra accreditation staff that assessment teams have regard to sustainability from a student number and financial perspective and consider access to clinical placements and adequacy of supervision.

I note that a review and update of the accreditation standards for the podiatry and other professions is planned to occur in 2024. This will allow timely consideration and consultation on some of these issues.

62. Podiatry Accreditation Committee. *Accreditation standards: Podiatric surgery programs*. 2021. p 11. Available on the Podiatry Board website, accessed 24 January 2024.

63. Accreditation standard 1.5. Podiatry Accreditation Committee. *Accreditation standards: Podiatric surgery programs*. 2021. p 8. Available on the Podiatry Board website, accessed 24 January 2024.

64. Health ministers. 'Ministerial policy direction 2023–1: Medical college accreditation of training sites'. 1 September 2023. Available on the Ahpra website, accessed 24 January 2024. Information on the National Health Practitioner Ombudsman's review is available on the Ombudsman website.

Recommendations

3. The Podiatry Board ask the Podiatry Accreditation Committee to:
   a. strengthen the requirements for accreditation assessment teams to ensure the teams include relevant surgical expertise, with input from the Australian Medical Council
   b. endeavour to appoint one member who sits on both accreditation assessment teams, to help ensure consistency in accreditation assessment of the two podiatric surgery programs
   c. ensure accreditation assessments of education providers take into account the regulatory history of health practitioners who are members of governance committees or academic staff
   d. consider developing accreditation standards for training sites to ensure they meet minimum quality clinical standards
   e. take into account the areas highlighted in this review, and any recommendations from the National Health Practitioner Ombudsman, in carrying out its accreditation functions and in the review of the accreditation standards planned for 2024.

3. Title

Introduction

A strong and consistent message heard during the review was that patients and members of the public are confused about the meaning of the title 'podiatric surgeon', with many believing that a podiatric surgeon must be a medical practitioner. This was particularly evident in the consumer focus groups and in submissions from patients of podiatric surgeons who had a poor surgical outcome and who, after seeking a second opinion from an orthopaedic surgeon, learned that their original procedure was not performed by a medical practitioner after all. It was also a theme in submissions from orthopaedic surgeons.

Ensuring consumers have access to clear, understandable information to help them make informed decisions about their healthcare is critical to protecting people from harm and promoting public safety. The title a practitioner uses is the first piece of information a consumer relies on in making decisions about their healthcare. The confusion and information gaps surrounding the title 'surgeon' present significant risks to consumers. It undermines an important aim of the National Law: to give confidence to the public that a person claiming to have relevant qualifications or training is appropriately qualified and competent to practise.[65]

This chapter examines the feedback received about the use of the title 'podiatric surgeon' and recommends a change of title to better inform consumers. The use of titles in advertising, and the management of complaints about advertising, are outlined in chapter 4.

Podiatry Board and Ahpra's powers and remit

The National Scheme uses a title protection 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. This model protects healthcare 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.[66]

The National Law provides for specialist registration to operate for some professions regulated under the National Scheme, including the medical and dental professions, and other health professions approved by health ministers on the recommendation of a National Board.[67] In 2010, the Podiatry Board received approval from health ministers for specialist registration for the podiatry specialty of podiatric surgery to operate from 1 July 2010, with the protected title of podiatric surgeon.

An approved specialty reflects a distinctive practice area with specialist knowledge and skills over and above those required for generalist practice in a profession. Specialist registration identifies practitioners who have acquired additional education and qualifications for the specialty. It is unlawful for someone to knowingly or recklessly take or use a specialist title for a recognised specialty unless the person is registered under the National Law in the specialty.

Problems related to title

Confusion about the use of the titles 'podiatric surgeon', 'surgeon' and 'doctor' was an important issue raised in the review. When I asked the consumer focus groups what it meant if someone called themselves a podiatric surgeon, most participants said they would assume the practitioner was a medical practitioner and had been to medical school. Participants in the focus groups stated that the most important part of the title is the word 'surgeon.'

> Because he had used doctor and surgeon, I had assumed he had been to medical school. (Consumer focus group participant)

> If anyone has the word surgeon in their title, they should have gone to some sort of medical school. (Consumer focus group participant)

On the other hand, patients who were referred to a podiatric surgeon by a podiatrist reported understanding that they were seeing a well-qualified practitioner who "specialises in ankles and feet" (Consumer focus group participant).

Consumers and patients also raised issues about the use of titles in their submissions, including when 'surgeon' is used in combination with 'doctor':

> Podiatrists should not be allowed to use the titles doctor and surgeon as the use of these titles is misleading and gives patients a false sense of confidence. (Patient)

> The titles 'Dr' and 'surgeon', used in the context of a foot surgeon, are 100% false and misleading. A reasonable person would naturally assume

65. Health Practitioner Regulation National Law (Surgeons) Amendment Bill 2023 Explanatory Notes. p 3. Available on the Queensland Parliament website, accessed 30 January 2024.

66. Health Practitioner Regulation National Law (Surgeons) Amendment Bill 2023 Explanatory Notes. Available on the Queensland Parliament website, accessed 30 January 2024.

67. National Law ss 13(1)(c), 13(2).

> that their surgeon is a medical doctor. Thus, unless this is brought to the patient's attention, it is impossible for a patient to give informed consent. (Patient)

The use of titles was also the single biggest issue raised by orthopaedic surgeons in their submissions. Specifically, they raised concerns about the use of the titles 'surgeon' and 'doctor', stating that only medical practitioners should be allowed to use these titles and that their use by podiatric surgeons creates confusion for patients. Orthopaedic surgeons reported that their patients were "shocked to hear the practitioner was not a doctor" and often said, "But I thought they were a doctor!"

> I have had many patients present to my practice after seeing an operating podiatrist. Uniformly they are shocked to hear that the practitioner is not a doctor and has not undertaken the training that we as orthopaedic surgeons have undertaken. They report that at no time has the operating podiatrist informed them of this ... It is my opinion that the term surgeon applied to this group is misleading to the public and the information provided to the patients is below what would be expected as reasonable. (Orthopaedic surgeon)

Many orthopaedic surgeons also referred to the changes to the National Law in 2023 that strengthened title protections. These aimed to ensure that medical practitioners using the title 'surgeon' possess the degree of advanced surgical training and qualifications that consumers already assume they have and should be able to expect. This means that a medical practitioner can only use the title 'surgeon' if they are registered in one of the recognised specialties of surgery, obstetrics and gynaecology or ophthalmology.[68]

> I take umbrage at the term 'podiatric surgeon'. They are podiatrists who operate. Consumers are entirely uninformed as to their training or competence. Patients are consistently surprised to hear that the person who operated, or is planning to operate, on them is not medically qualified. The recent legislation to protect the title 'Surgeon' is ridiculous as it only limits medical health professionals from using the term. This conveniently allows podiatrists who operate to continue to inappropriately use 'Surgeon'. The failure of the legislation was to not cover ALL health professionals under Ahpra. (Orthopaedic surgeon)

In this review, orthopaedic surgeons stated that they believe these changes to the National Law have raised the community's expectations that all practitioners using the title 'surgeon' will have medical qualifications and training and that continued use of the title by podiatric surgeons creates additional confusion for patients:

> With the recent protection of the title 'surgeon', in particular with regards to cosmetic surgeons, it is inconsistent that a health professional without a medical qualification can still use this title. The title should be changed to 'operative podiatrist' for the sake of clarity and consistency. (Orthopaedic surgeon)

It is worth noting that these are issues on which orthopaedic surgeons have been lobbying governments for many years – since before the start of the National Scheme in 2010.

It should also be noted that the consultation paper for the review did not ask specific questions about the title 'podiatric surgeon' and, in meetings and in their written submissions, podiatric surgeons and the Australasian College of Podiatric Surgeons (the College) unsurprisingly did not comment on this issue.

Key findings

Considering all the evidence examined in this review, it is clear that consumers and patients of podiatric surgeons are confused by the titles 'podiatric surgeon' and 'surgeon'. This is exacerbated when used in conjunction with the term 'doctor'.

In addition, there is confusion about what podiatric surgery is and means, and about the qualifications held by podiatric surgeons. The community believes and expects that someone who calls themselves a 'surgeon' has a medical degree. As evident in recent media reports, some patients may be alarmed to learn that their podiatric surgeon was not, in fact, a medical practitioner. This is important because it taps into other widely held assumptions that:

- because of their training, medically trained practitioners have better knowledge of how any accompanying health problems and treatments may affect management of problems with the foot and ankle
- a podiatric surgeon will have access to the full range of associated treatments (eg prescriptions, imaging and referrals) available to a medical practitioner and will be well linked into the full range of services available in the public health system.

It is no surprise that this appears to be less of an issue if the patient is satisfied with the level of care they have received from a podiatric surgeon.

The issues raised around the title 'podiatric surgeon' do not relate to the standard of care provided by the podiatric surgeon. Rather, they relate to clarity and transparency for the consumer about the type of practitioner they are seeing, and the type of training the practitioner has completed. This is important information to allow a consumer to make an informed decision about who will provide their care.

68. Medical Board of Australia. 'Win for patient safety with 'surgeon' now a protected title'. 13 September 2023. Available on the Medical Board website, accessed 31 January 2024.

The term 'doctor' is not a protected title under the National Law. This is because it is legitimately used by a range of professionals, including dentists, veterinarians and people holding doctoral degrees, such as a Doctor of Philosophy (PhD) or a Doctor of Education (EdD).

Throughout the review, many stakeholders suggested that the protected title for podiatric surgery should be changed to remove reference to 'surgeon'. Submissions from individual orthopaedic surgeons, the Australian Orthopaedic Foot and Ankle Society (AOFAS) and the Australian Medical Association (AMA) argued that, because of consumer confusion about the term 'podiatric surgeon', the National Law should be amended to restrict use of the title 'surgeon' to medically qualified practitioners. Some respondents from the medical profession suggested the title 'operative podiatrist' or 'operating podiatrist' as an alternative.

The protected title for this specialty should be relevant to the practice of podiatric surgery, otherwise consumers will still be confused. The protected title also needs to differentiate practitioners with specialist registration from podiatrists with general registration and clearly indicate that the practitioner performing the surgery is from the podiatry profession. For example, the Health and Care Professions Council (HCPC), which regulates podiatrists in the UK, uses the term 'podiatrist practising podiatric surgery'.

Podiatric surgery has been performed by podiatrists in Australia since the 1970s. According to the College, podiatric surgeons were originally called 'surgical podiatrists' until the late 1990s, when the terminology changed to 'podiatric surgeons'.[69]

Issues of power and prestige are at play when different craft groups use a well-recognised, symbolic title such as 'surgeon'.[70] Professional titles bestow 'symbolic capital'.[71] Privileging the use of the title to one group – medically qualified surgeons – with a long historical claim to the title tends to shore up the power and prestige of that group. It may also have the anti-competitive effect of shutting out a competing craft group performing similar tasks. Thus, there needs to be a strong justification for restricting the use of title 'surgeon'. The rationale for restricting the use of the term should be to reduce consumer confusion and potential harm, on the basis that this cannot be achieved by less directive means.

I have concluded that there *is* a case for changing the protected title. In my view, 'surgical podiatrist' is a more apt description of this specialty. It would make it clear that the practitioner is part of the podiatry profession and should reduce consumer confusion about their qualifications and training. A change in title would help consumers make better informed decisions when seeking specialist advice about foot and ankle problems. Use of the adjective 'surgical' would make it clear that these podiatrists carry out surgery, whereas the descriptor 'operative' is less precise.

I recognise that changing the specialist title would be a significant change for the 40 practitioners who hold specialist registration and have legitimately advertised themselves as 'podiatric surgeons'. Given the implications for their practice, the Podiatry Board would need to conduct a full consultation, giving podiatric surgeons and other interested people an opportunity to make submissions on the proposed change. If a change in title is proposed following consultation, the Podiatry Board would need to make a submission to health ministers recommending approval of an amended protected title for the specialty of podiatric surgery.[72] Any final decision would be taken by ministers.

If a change to the protected title is approved by ministers, a transitional period would be necessary before any changes could be implemented, to allow podiatric surgeons sufficient time to make changes to their practice and advertising to reflect the new title. The Podiatry Board and Ahpra would also need to make changes to regulatory documents and processes, including changes to relevant registration standards, codes and guidelines to reflect the new title.

However, changing the protected title to 'surgical podiatrist' would not, as a matter of law, prevent practitioners from using the title 'surgeon' as the restriction on its use currently only applies to medical practitioners,[73] unless health ministers wished to further amend the National Law.

Further restriction on the use of the title 'surgeon' was considered extensively during the consultations undertaken in 2021, 2022 and 2023 on the Surgeons Bill.[74] The Surgeons Bill was part of a package of reforms introduced to better protect patients considering cosmetic surgery. The Bill amended the National Law to protect use of the title 'surgeon' within the medical profession, meaning that a

69. Gilheany M et al. 'The history of podiatric surgery in Australia: Part 1'. *STRIDE*. April 2021. Available on the Australian Podiatry Association website, accessed 30 January 2024.

70. Borthwick A et al. 'Symbolic power and professional titles: the case of "podiatric surgeon"'. 2015. *Health Sociology Review* 24(3):310–322.

71. Nancarrow S et al. *The Allied Health Professions. A Sociological Perspective.* 2021. pp 162–163.

72. The process for seeking approval for such a change is set out in the Ministerial Council guidance for National Board submissions for the approval of specialties. Australian Health Workforce Ministerial Council, 'Approval of specialties under section 13 of the *Health Practitioner Regulation National Law Act*: Guidance for National Board submissions to the Australian Health Workforce Ministerial Council'. 29 July 2014. Available on the Ahpra website, accessed 31 January 2024.

73. National Law s 115A.

74. Health Practitioner Regulation National Law (Surgeons) Amendment Bill 2023.

medical practitioner can only use the title if they are registered in one of the recognised specialties of surgery, obstetrics and gynaecology, or ophthalmology.[75]

Although 'podiatric surgeon' was out of scope, the appropriateness of this protected title was raised by several stakeholders in submissions to Queensland Parliament's Health and Environment Committee. Health ministers gave extensive consideration to this issue but were not persuaded of the need to restrict the use of the title 'surgeon', noting that 'oral surgeon' and 'podiatric surgeon' are specialist titles recognised in the National Law for suitably qualified dentists and podiatrists.[76]

On the basis of the ministers' decision, coupled with the extended period of time that legislative change needs, I do not recommend pursuing a change to the title 'podiatric surgeon' through legislative amendments. I believe that consumer confusion and public protection can be addressed by amending the protected specialist title for podiatric surgeons, accompanied by information for consumers to support their understanding of the title and what it means. As discussed in chapter 4, there should also be changes to make the advertising obligations under the National Law clearer, particularly in relation to podiatric surgeons' use of titles (see recommendation 6), together with stronger enforcement action.

Recommendations

4. Following consultation, the Podiatry Board seek health ministers' approval to change the protected title for the specialty from 'podiatric surgeon' to an alternative title, such as 'surgical podiatrist'.
5. Subject to recommendation 4, the Podiatry Board and Ahpra develop additional information for consumers to support their understanding of the title and what it means.

75. Medical Board of Australia. 'Win for patient safety with 'surgeon' now a protected title'. 13 September 2023. Available on the Medical Board website, accessed 30 January 2024.

76. Health ministers. *Medical practitioners' use of the title 'surgeon' under the Health Practitioner Regulation National Law: Decision Regulation Impact Statement*. December 2022. p 69. Available on the Engage Victoria website, accessed 28 February 2024.

4. Advertising

Introduction

Increasingly, members of the public rely on the internet and social media when looking for a health practitioner. The imbalance of information between consumers and health practitioners can leave consumers vulnerable to exaggerated or misrepresented claims about the training, skills and experience of a practitioner, and the benefits of the treatments they offer. Regulation of advertising under the National Law, together with Australian Consumer Law, is an important form of consumer protection.

Many people do not know where to seek help for foot and ankle problems. As was clear in the consumer forums held during the review, they are unlikely to have heard of a podiatric surgeon or to understand the training, skills and experience of such a practitioner. If they seek advice from a general practitioner or podiatrist, they may be referred to a podiatric surgeon with an explanation of the reason for the referral. But they may simply type 'foot and ankle specialist' into a search engine and find advertisements from podiatric surgeons or orthopaedic surgeons.

There is evidence of confusion among members of the public, some of which relates to a practitioner's use of the title 'surgeon' (discussed in chapter 3), but some also about the way in which a practitioner advertises their services, including their title.

Against this background, the rules around who can advertise themselves as a podiatric surgeon, how they advertise, and the effectiveness of the current regime for monitoring that advertising, became important areas for scrutiny as part of this review. This chapter examines these issues and makes recommendations for strengthening the regulatory framework.

Podiatry Board and Ahpra's powers and remit

The National Law establishes the requirements for advertising by health practitioners. Advertising includes but is not limited to all forms of verbal, printed or electronic public communication that promotes a regulated health service provider to attract a person to that provider (practitioner or business).[77] It also includes situations where a practitioner provides information for media reports, magazine articles or advertorials, and information they give to patients during a consultation.

The Podiatry Board and Ahpra can influence health practitioner advertising by:

- issuing guidance to practitioners and business owners to help them understand and meet their obligations when advertising their services
- enforcing the advertising offence provision in the National Law, which could include disciplinary action or prosecution, when there is a breach of the requirements.

The National Law requires that advertising must not:[78]

- be false, misleading or deceptive, or likely to be misleading or deceptive
- offer a gift, discount or other inducement, unless the terms and conditions of the offer are also stated
- use testimonials or purported testimonials about the service or business
- create an unreasonable expectation of beneficial treatment, or
- directly or indirectly encourage the indiscriminate or unnecessary use of health services.

Ahpra and the National Boards have jointly developed *Guidelines for advertising a regulated health service* to help registered health practitioners and other advertisers understand their obligations when advertising a regulated health service.[79] The guidelines explain the elements of the National Law related to advertising and give practical examples of acceptable advertising and potential breaches.

A breach of an advertising requirement is a criminal offence for which a court may impose a monetary penalty. Health practitioners found to have breached advertising requirements may also be subject to disciplinary action. In 2022, the National Law was amended and one of the changes was to increase the maximum penalty for advertising offences. For an individual, the maximum penalty per offence increased from $5,000 to $60,000; and for a body corporate, the maximum penalty per offence increased from $10,000 to $120,000.[80]

In addition, under the *Code of conduct,* practitioners must "display a standard of professional behaviour that warrants the trust and respect of the community".

Advertising that does not comply with the National Law and the advertising guidelines may constitute unprofessional behaviour and lead to disciplinary proceedings.

77. A full definition of advertising is contained in the *Guidelines for advertising a regulated health service* p 19. Available on the Podiatry Board website, accessed 28 February 2024.

78. National Law s 133 refers to advertising 'regulated health services'. This is defined in s 133(4) as a service provided by, or usually provided by, a health practitioner.

79. Ahpra and National Boards. *Guidelines for advertising a regulated health service*. 2020. Available on the Podiatry Board website, accessed 24 January 2024.

80. In WA the maximum penalty for advertising offences has not increased and different penalties apply.

As well as meeting the advertising requirements in the National Law, advertisers must comply with other relevant legislation. This could include legislation, policy and guidelines related to:

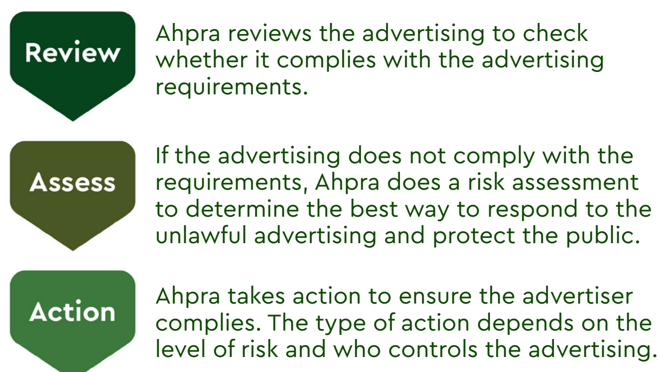
- Australian Consumer Law – a single, national law, which is the principal consumer protection law in Australia
- the Australian Competition and Consumer Commission (ACCC) – who regulate Australian competition, fair trading and the Australian Consumer Law
- the Therapeutic Goods Administration (TGA) – who regulate therapeutic goods including advertising of goods such as medicines and medical devices.

Managing advertising breaches

The process that Ahpra and the National Boards use for managing advertising breaches under the National Law is set out in section 1.3 of the advertising guidelines and detailed in the advertising compliance and enforcement strategy for the National Scheme.[81]

In summary, the process involves reviewing the advertising, completing a risk assessment and taking appropriate action to protect the public (Figure 3):

Figure 3. Managing advertising breaches[82]



Most cases start with Ahpra writing to the advertiser to let them know their advertising breaches the National Law, providing them with educational resources, and requiring them to make a correction within 30 days. The standard approach is to seek the advertiser's voluntary compliance with the National Law through education. In most cases, if the advertiser corrects their advertising, Ahpra will close the matter.

Where the advertiser is a registered practitioner and their advertising is not corrected as requested, Ahpra may propose to impose conditions on their registration which prohibit advertising if they do not comply.

If the advertiser is not a registered practitioner, Ahpra may prosecute if they fail to correct their advertising.

Regardless of whether the advertiser is registered, very serious breaches of the advertising requirements that place the public at significant risk of harm may be subject to prosecution even if the advertising is corrected.

If an advertiser is also in breach of other consumer regulation laws, Ahpra will work with other regulators such as the ACCC or TGA.

Another tool in Ahpra's advertising compliance and enforcement strategy is the ability to check compliance using targeted audits. This is often used in matters that are assessed as medium risk or involve repeated non-compliance.

The 2022 Independent review of the regulation of medical practitioners who perform cosmetic surgery found that while Ahpra does some proactive auditing of a sample of medical practitioners' advertising each year, at that time it did not focus specifically on cosmetic surgery and only audited a limited number of practitioners. The cosmetic surgery review found that in the case of cosmetic surgery, this approach was unlikely to meet current community expectations and recommended that Ahpra carry out an industry-specific audit of cosmetic surgery advertising. That was a useful and necessary strategy to address the risks specific to that industry, but I have not found evidence that such an approach is warranted in relation to podiatric surgery advertising. However, I recommend that Ahpra take a stronger approach to enforcement.

Problems related to advertising

Complaints about advertising by podiatric surgeons

For this review, Ahpra provided details of 17 cases in which a notification (complaint) had been received about advertising by a podiatric surgeon. The advertising breaches included using testimonials, creating an unreasonable expectation of beneficial treatment, offering inducements without stating the terms and conditions, and false and/or misleading use of a specialist title. In each case, the matter was closed after an educational letter was sent to the advertiser and a subsequent check confirmed that the advertising had been modified to comply with the National Law. In no case was a prosecution brought, even though one podiatric surgeon was the subject of multiple complaints, including some made five years apart.

Concerns about use of titles in advertising

The way some podiatric surgeons describe themselves in their advertising is confusing for patients and consumers. A review of the websites of registered podiatric surgeons shows that they use a variety of terms to describe themselves, including:

81. Ahpra and National Boards. *Responsible advertising in healthcare: keeping people safe. Advertising compliance and enforcement strategy for the National Scheme*. 2020. Available on the Ahpra website, accessed 24 January 2024.

82. Extracted from *How we manage complaints*. Available on the Ahpra website, accessed 24 January 2024.

- foot and ankle specialist
- foot and ankle surgeon
- specialist foot [and ankle] surgeon
- expert in foot and ankle surgical reconstruction.

These terms are sometimes used in addition to, or instead of, the term 'podiatric surgeon'. Other descriptions found on the websites included 'leader in the field', 'highly qualified', 'highly accomplished' and 'esteemed in the industry', as well as comments that the practitioner (a podiatric surgeon) 'began his medical career' in podiatry.

Some podiatric surgeons also describe themselves as 'Commonwealth accredited'. It is unclear precisely what this means, although it appears to be a reference to legislative changes made in the early 2000s to recognise podiatric surgeons as accredited podiatrists under the *Health Insurance Act 1973* (Cth). These changes allowed private health insurance funds to provide benefits for the hospital treatment costs (accommodation and nursing care costs) associated with podiatric surgery.

I also found that practitioner qualifications are not always clear or easy to understand on practitioner websites.[83] Some websites include only qualifications in abbreviated forms (such as DPM, MSc or FFPM) or describe qualifications in terms like 'health sciences qualifications' or 'surgical qualifications'. Some include more meaningful descriptions such as 'undergraduate degree in podiatry', although buried below other information on the website. In one of the most striking examples reviewed, the practitioner described qualifications obtained internationally that were unrelated to podiatry or podiatric surgery and were related to professions in which the practitioner is not registered in Australia. This created a false impression that the practitioner is qualified and experienced in multiple health professions and is a medical practitioner.

At the consumer forums, participants stated that they did not understand the title, qualifications or scope of practice of podiatric surgeons, unless they received a clear explanation from a referring practitioner (usually a general practitioner or a podiatrist). This highlights the vulnerability of consumers to misleading advertising by podiatric surgeons.

Advertising issues were also raised in the written submissions, with around 60% of submissions commenting on this issue (46 submissions). Most were from orthopaedic surgeons and related equally to the use of the title 'surgeon' and advertising issues. Two stakeholders suggested that specific advertising guidelines should be developed to address issues with advertising by podiatric surgeons, like those developed by the Medical Board to address advertising of cosmetic surgery. One practitioner suggested:

> The Medical Board of Australia's 'Guidelines for registered medical practitioners who advertise cosmetic surgery' can be seen as the model for the advertising guidelines that can be applied to podiatric surgery. The Podiatry Board should adapt these guidelines for podiatric surgery. (Podiatrist)

Key findings

There is not sufficient evidence of non-compliant advertising leading to harm to warrant a proactive, targeted audit of podiatric surgery advertising. However, some of the terms and descriptions used on practitioner websites appear to exaggerate a practitioner's training, qualifications, registration, experience and competence. Even if the descriptions are true, they are unclear to consumers. They may also create an impression that the podiatric surgeon is a medical practitioner. In short, they are misleading. I believe a stronger enforcement approach is needed that targets confusing or overstated claims by podiatric surgeons and takes a tougher, deterrent approach with repeat offenders. I make a recommendation in relation to this below.

The clearest websites, from a consumer's perspective, used the protected title(s) under the National Scheme (podiatrist and/or podiatric surgeon), although as discussed in chapter 3, this can also be confusing for consumers.

The websites that were easiest to understand openly explained the practitioner's qualifications, experience and competence in language that was unambiguous, free from jargon and easy to find. The following extract is an example of such a website:[84]

> X is a registered podiatric surgeon and an endorsed prescriber with the Podiatry Board of Australia.
>
> X obtained [their] undergraduate podiatry degree in [year] from [university]. After this [they] completed a Master of Podiatry from [university] in [year]. [They] then undertook specialist training in podiatric surgery (foot reconstructive surgery) with the Australasian College of Podiatric Surgeons and has been a fellow since [year].

Advertising plays an important role in shaping people's perceptions of practitioners and their business. Accurate, balanced and clear advertising can help consumers make informed decisions about health services. But that depends on consumers having easy access to accurate, clear and understandable information that is supported by acceptable evidence. Advertising should not be misleading or exaggerate a practitioner's qualifications, skills or experience. And it should not give the impression that the podiatric surgeon is a medical practitioner.

83. This issue is not confined to podiatric surgeons' advertising, as was evident when searching 'foot and ankle' subspecialisation in advertising by orthopaedic surgeons.

84. The practitioner has been de-identified for this report.

However, the issues with podiatric surgery advertising are general in nature. Unlike concerns raised about advertising in the cosmetic surgery review, the concerns about podiatric surgery advertising are not unique to the practice of podiatric surgery.[85] Nor have I seen evidence that podiatric surgery advertising has created significant harm to patients. For this reason, I do not recommend developing profession-specific advertising guidelines (like those developed for cosmetic surgery advertising[86]).

Instead, I recommend strengthening the current advertising guidelines that apply to all professions.

This is an important preventive step that Ahpra and all National Boards can take to support professional practice and provide greater clarity for the public.

Stronger guidelines are an important regulatory tool, but professionalism also has an important role to play. Podiatric surgeons need to raise the bar on what they consider acceptable advertising. My recommendations are limited to the regulatory framework for podiatric surgery, but I encourage podiatric surgeons, both individually and collectively, to ensure that their advertising meets the guidelines and creates accurate impressions for consumers.

Recommendations

6. Ahpra and the National Boards revise the *Guidelines for advertising a regulated health service* to include clearer information about advertisers' obligations under the National Law, particularly in relation to the use of titles and claims about training, qualifications, registration, experience and competence. This could include:
    a. additional resources for advertisers, such as some examples relevant to podiatric surgery[87]
    b. an education campaign for practitioners and advertisers, to support the effective implementation of any additional guidelines
    c. additional information for consumers to strengthen their understanding of podiatric surgery.
7. Ahpra strengthen its enforcement in response to advertising offences by podiatric surgeons, with a regulatory approach that targets confusing or overstated claims and takes a tougher, deterrent approach to repeat offenders, including by bringing prosecutions in line with Ahpra's Prosecution Guidelines and/or taking disciplinary action under Part 8 of the National Law.

85. *Final report: Independent review of the regulation of medical practitioners who perform cosmetic surgery*. 2022. Available on the Ahpra website, accessed 25 January 2024.

86. Medical Board of Australia. *Guidelines for registered medical practitioners who advertise cosmetic surgery*. 2023. Available on the Medical Board website, accessed 25 January 2024. The guidelines require the following:
    - All medical practitioners advertising cosmetic surgery must include clear and unambiguous information about their qualifications and type of medical registration.
    - Information must include the medical practitioner's registration number and whether they hold general registration or specialist registration, including recognised specialty and field of specialty practice (if applicable).
    - Professional memberships can also be included in advertising. However, acronyms must not be used alone without explanation, as this may mislead patients.
    - Claims about a medical practitioner's experience must be accurate and must not mislead the public as to the extent of a medical practitioner's experience or training. For example, it is misleading to use surgical rotations completed during pre-vocational training to imply that a practitioner has done accredited surgical training or has relevant surgical experience.

87. Existing resources for advertisers can be found on the Ahpra website, accessed 25 January 2024. These include some general examples relevant to all professions in the National Scheme together with visual examples of cosmetic surgery advertising.

5. Handling of complaints

Introduction

The trigger for this review was the comparatively higher rate of complaints or notifications about podiatric surgeons.[88] Although podiatric surgeons comprise less than 0.7% of the podiatry profession, the rate of notifications was significantly higher for podiatric surgeons than for podiatrists.

The higher rate of notifications first became apparent during the initial five years of the National Scheme, from 1 July 2010 to 31 June 2015. At that time, 30 podiatrists held specialist registration as a podiatric surgeon.

In 2016, Ahpra examined the nature of the notifications about podiatric surgeons and found that the cases raising concerns of *potential* serious risk to patients were confined to three practitioners.[89] These three practitioners had each received multiple (three or more) notifications.[90] Of the 22 notifications made from 1 July 2010 to 31 June 2015, 17 were about podiatric surgeons registered before the introduction of the National Scheme.

The analysis also identified podiatric surgeons who were male and aged 55 to 64 years as having a notably higher risk of receiving a notification. A higher incidence of notifications was noted relating to informed consent, infection control, post-operative care and the appropriateness or necessity for surgery. Poor communication was a contributing factor in nearly all cases.

The 2016 research cautioned about drawing conclusions from such a small sample but noted that fine-tuning regulation might address the needs of this specialty group. In response, the Podiatry Board adopted an educative approach to address the issues identified. It shared lessons with the profession via Board newsletters and conference presentations, and developed infection prevention and control resources for podiatrists and podiatric surgeons. The Board also shared a high-level summary of the research findings with the two podiatric surgery education providers and met with both providers to discuss the findings and strategies to reduce risks. The strategies included targeted education and CPD, ensuring that the areas giving rise to notifications were well covered in the training curriculum. The Board liaised with the accreditation authority about areas needing focus in the curriculum.

In the intervening years, the Podiatry Board and Ahpra have further strengthened the regulatory framework for podiatric surgeons, with the *Code of conduct*, new accreditation standards and professional capabilities, the establishment of the independent Podiatry Accreditation Committee and, most recently, a suite of changes to the National Law in 2022.[91]

Unfortunately, the much higher rate of notifications about podiatric surgeons has persisted since 2015. Although podiatric surgeons remain a small sector of the podiatry profession, they continue to have a higher rate of notifications than podiatrists: five times higher in the past eight years. Over the same period, podiatric surgeons had a much higher rate of notifications (8.8 times higher) than the comparable group of orthopaedic surgeons who received a notification related to the foot or ankle, once frequently notified practitioners are removed from both groups. Concerningly, 66% of the notifications received about podiatric surgeons over that period relate to nine podiatric surgeons who were each the subject of three or more notifications. These outliers significantly inflate the results.

In light of this data, it is unsurprising that the Podiatry Board and Ahpra decided to commission this review "to ensure the appropriate standards, guidance and processes are in place to support safe podiatric surgery practice by podiatric surgeons in Australia" and to make recommendations for any necessary changes. The terms of reference specify that the review is to inquire into and report on the risk assessment of notifications about podiatric surgeons and the Ahpra investigation protocol with regard to podiatric surgeons.[92]

I gained insights into how the Podiatry Board and Ahpra assess and manage notifications from reviewing documents, in meetings with key Ahpra staff and members of the Podiatry Board and its relevant subcommittees, and in meetings with and submissions from other key stakeholders.

These matters are examined in detail in this chapter, and I set out my findings and recommendations for improvement.

Podiatry Board and Ahpra's powers and remit

One of the Podiatry Board and Ahpra's key functions is to receive and manage notifications about the performance, conduct and health of registered health practitioners, including podiatric surgeons. A 'notification' is a complaint or expression of concern

88. *Review into regulation of podiatric surgeons.* 5 October 2023. Available on the Ahpra website, accessed 28 February 2024.

89. Each of the three podiatric surgeons was registered before the introduction of the National Scheme.

90. One of the podiatric surgeons had been suspended by a tribunal and did not resume practice as a podiatric surgeon. Only one notification about each of the other two practitioners raised patient safety concerns and in both cases the matter was appropriately resolved without concern about ongoing risk.

91. A summary of the 2022 National Law amendments is available on the Ahpra website, accessed 30 January 2024.

92. Terms of reference b) and c) available on the Ahpra website, accessed 28 February 2024.

about the performance or conduct of a health practitioner. The person who makes the notification is called the 'notifier'.

A notification can be made by any person who has a complaint or concern about a health practitioner (eg a patient, another health practitioner or an employer). The Podiatry Board and Ahpra work with the health complaints entity in each state and territory to decide which body is best placed to deal with a complaint about podiatric surgeons.[93]

The Podiatry Board has the power, depending on the nature of the notification, to make determinations about notifications and impose certain sanctions or, in the most serious matters, make referrals to a responsible state or territory tribunal that may determine the matter and impose sanctions.[94]

Part 8 of the National Law governs the Podiatry Board's powers and responsibilities to manage and respond to notifications. The Podiatry Board works with Ahpra to assess, investigate and manage notifications. A risk assessment determines which notifications need investigation – many do not, and a decision may be made to take no further action after the initial assessment. Where some form of regulatory action is needed, the seriousness of the performance or conduct that is the subject of the notification will determine whether the Podiatry Board deals with the notification itself, or refers the matter to a state or territory tribunal.

Ahpra's *Regulatory guide: An overview*[95] contains a succinct summary of the notification management process. It outlines how the National Board for each health profession manages notifications about the health, performance and conduct of practitioners under Part 8 of the National Law. Relevant extracts from the guide are quoted below.

Preliminary assessment

Upon receipt of a notification about a health practitioner (or a student), Ahpra must refer the notification to the applicable Board(s) for preliminary assessment. In some circumstances, Ahpra may refer notifications to the police and/or other national or state-based regulatory bodies.

A Board must, within 60 days after receiving a notification, conduct a preliminary assessment and decide:

- whether or not the notification is about a person who is a health practitioner ... in a health profession for which the Board is established
- whether or not the notification relates to a matter that is a ground for notification, and
- whether or not it is a notification that could also be made to a health complaints entity.

A Board may decide, at the preliminary assessment stage, to take no further action regarding the notification if:[96]

- the notification is frivolous or vexatious or misconceived or lacking in substance
- it is not practicable for the Board to investigate
- the person to whom the notification relates has not been, or is no longer, registered in a health profession
- the subject matter of the notification has already been dealt with adequately by the Board
- the subject matter of the notification is being dealt with, or has already been dealt with, by another entity, or
- the health practitioner to whom the notification relates has taken appropriate steps to remedy the subject matter of the notification and the Board reasonably believes no further action is required about the notification.

If a Board believes that it is necessary to take further action about the notification it may:

- start an investigation into the practitioner
- consider taking immediate action about the practitioner
- consider cautioning the practitioner, which is a warning to a practitioner about their conduct or the way they practise
- consider imposing conditions (or accepting an undertaking) from a practitioner that requires the practitioner to do something or stop doing something
- require the practitioner to undergo a health or performance assessment
- refer the practitioner to a hearing by a panel, or
- refer the practitioner to a responsible tribunal.

Investigation

A Board may investigate a registered health practitioner if it decides it is necessary or appropriate to do so:

- because the Board has received a notification about the practitioner
- because the Board for any other reason believes:
    - the practitioner has or may have an impairment

93. Under section 150 of the National Law.

94. National Law Part 8.

95. More detail on how Ahpra and the National Boards manage notifications about the health, performance and conduct of practitioners is outlined in Ahpra's Regulatory guide: An overview (2022, accessed 15 January 2024) and the full guide (2023, accessed 14 February 2024).

96. National Law s 151(1)(a).

- the way the practitioner practises the profession is or may be unsatisfactory, or
- the practitioner's conduct is or may be unsatisfactory
- to ensure the practitioner is complying with:
  - the conditions imposed on the practitioner's registration, or
  - an undertaking given by the practitioner to the Board.

Potential outcomes of investigation

At the conclusion of an investigation, the investigator must provide the relevant Board with a written report (which includes the investigator's findings and their recommendations about any action to be taken).

The Board will then consider the investigator's report and decide whether or not to take further action about the matter.[97]

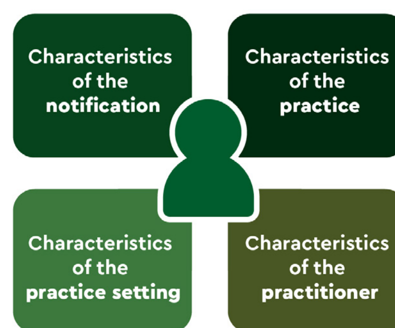
Further action might include:

- referring the matter to another entity (such as a health complaints entity)
- taking immediate action
- directing the practitioner to undergo a health or performance assessment
- taking relevant action under section 178 of the National Law
- referring the matter to a panel, or
- referring the matter to a responsible tribunal.

When assessing a notification about a podiatric surgeon, the Podiatry Board and Ahpra use a standard risk-based assessment methodology. The methodology was developed by Ahpra to help National Boards assess risks that an individual health practitioner might pose. The characteristics considered when assessing risk (as illustrated in Figure 4) include:

- the specific *concern (notification)* raised about the knowledge, skill or judgement possessed, or care exercised, by the practitioner
- the type of *practice* engaged in, including the inherent risk and any relevant standards or guidelines
- the *practice setting,* including the vulnerability of the patient group and whether the practitioner has access to professional peers and support
- the *practitioner* themselves, including their regulatory history and the actions they have taken in response to the concern.

Figure 4. Risk assessment framework



Clinical advisors provide input to the assessment and management of notifications. The decision to request expert clinical advice depends on the nature of the issues raised in the notification. Some matters (such as expected practice in seeking a patient's informed consent) are straightforward, but others (such as the appropriateness of performing procedure X on patient Y, or the appropriate infection control and follow-up for a given procedure) may need advice from an independent expert. To ensure the credibility and reliability of the expert advice, the expert should be a reputable clinical advisor with the skills and experience to assess whether the knowledge, skill or judgement of the practitioner, or their care in a specific case, is below a reasonable standard. The challenge of finding a suitable, non-conflicted expert clinical advisor is discussed further below.

Following initial screening, further consideration is given to the notification, practice and setting, as well as the characteristics of the practitioner, to determine if the matter is low, medium or high clinical risk. As part of a preliminary assessment, section 149(2) of the National Law allows consideration of previous notifications that suggest a pattern of conduct.[98] This is an important power, which enables the regulator to see the full picture of a practitioner's regulatory history. Ahpra staff advised me that regulatory advisors consider such information carefully, to ensure that National Boards and committees have all relevant information when considering what action to take on a new notification. Once a risk rating has been assigned, it informs next steps and helps determine whether a matter needs to progress to investigation.

Ultimately, following the assessment and/or investigation process, determinations can be made about the notification and sanctions can be taken against the practitioner. The seriousness of the conduct or performance matter that is the subject of the notification will dictate whether it is the Podiatry Board, a panel of the Board or a state or territory tribunal that determines the matter and issues sanctions.

97. National Law s 167.

98. See also National Law s 151(2), which states: "A decision by a National Board to take no further action in relation to a notification does not prevent a National Board … taking the notifications into consideration at a later time as part of a pattern of conduct or practice by the health practitioner".

Division 11 of Part 8 of the National Law establishes a process by which certain matters about a health practitioner may be heard by a health panel or a performance and professional standards panel (PPSP). The role of panels is to hear and determine whether a registered health practitioner has an impairment or has behaved in a way that constitutes unsatisfactory performance or unprofessional conduct. In such cases, the panel may:

- impose conditions on the practitioner's registration
- suspend the practitioner's registration (a health panel only)
- caution or reprimand the practitioner (a PPSP only)
- refer the matter to a state or territory tribunal
- refer the matter to another entity, such as a health complaints entity, for investigation or other action.

Performance assessments

A Board can require a health practitioner to undergo a performance assessment if because of a notification or for any other reason the Board reasonably believes that the way they practise the profession is, or may be, unsatisfactory.[99]

The performance assessment process includes the following activities:[100]

- One or two independent assessors with similar scope of practice are appointed.
- The assessors conduct the performance assessment by way of:
  - reviewing the practitioner's responses to their pre-assessment questionnaire
  - observing the way the practitioner practises
  - conducting an interview
  - auditing clinical records
  - role playing or simulating scenarios, and/or
  - evaluating information provided by colleagues, supervisors and peers.
- The performance assessment report is given to the practitioner or nominated recipient.
- The report, including the assessors' findings and recommendations, is discussed with the practitioner.
- The Board or their delegate reviews the report and a summary of discussions with the practitioner and makes a decision.

A performance assessment has never been used by the Podiatry Board for a podiatric surgeon, however I note that performance assessments have been used by the Podiatry Council of NSW[101] in relation to notifications about podiatric surgeons. Two assessors, a podiatric surgeon and a podiatrist, are appointed to carry out a performance assessment of a podiatric surgeon in NSW. The findings of the performance assessment (which includes theoretical and practical components) are used to assess whether the practitioner's knowledge, skill and judgement meets the expected standards at the time of the assessment.[102]

An effective performance assessment of a practitioner's knowledge, skill, judgement or care may use various assessment tools: practitioner interviews, multi-source feedback, random review of patients' health records, direct observation in the practitioner's place of practice, or standardised/simulated patients.[103] A performance assessment can be used as a regulatory tool to assess potential gaps in knowledge and performance and how to remediate them, including where there are multiple complaints or the practitioner practises in isolation. There are benefits if the performance assessment is conducted at the practitioner's place of practice, including the ability to assess competencies and performance while practising[104] and to observe any system issues affecting the practitioner's performance. This approach also allows better consideration of remedial outcomes and better conditions to build a rapport with the practitioner in their familiar environment.[105]

The Podiatry Board also has the power to take immediate action at any time against a practitioner where it reasonably believes that interim regulatory action is necessary to protect the public from a serious risk or is otherwise in the public interest.[106] Immediate action can include suspending the practitioner, imposing conditions on their registration or accepting enforceable undertakings from the practitioner – all on an interim basis.

Although the Podiatry Board has the ability to suspend registration on an interim basis, only a tribunal can make a final decision to suspend a practitioner's registration or cancel their registration.

99. National Law s 170.

100. Ahpra. *Performance assessments*. Available on the Ahpra website, accessed 28 February 2024.

101. The Podiatry Council of NSW manages complaints about the conduct, performance and health of registered health practitioners and students in NSW. Further information is available on the Podiatry Council website.

102. Podiatry Council of NSW. *Fact sheet: Performance assessment: Practitioner*. Available on the Podiatry Council website, accessed 28 February 2024.

103. St George I. 'Assessing doctor's performance'. Medical Council of New Zealand. 2005; Reid A. 'To discipline or not to discipline? Managing poorly performing doctors' in Freckelton I (ed). *Regulating health practitioners.* 2006.

104. St George I. 'Assessing doctor's performance'. Medical Council of New Zealand. 2005.

105. Reid A. 'To discipline or not to discipline? Managing poorly performing doctors' in Freckelton I (ed). *Regulating health practitioners.* 2006. pp 91–112.

106. National Law ss 155 to 159A.

Ahpra and the National Boards, including the Podiatry Board, prioritise notifications that indicate a registered health practitioner may be practising in unsafe or unprofessional ways. 'Protection of the public' is the paramount consideration[107] when managing notifications and deciding the appropriate regulatory or disciplinary action to take. Ahpra's *Regulatory guide* defines 'protection of the public' to mean protection from, among other things:[108]

- practitioners who engage in unethical or unlawful conduct
- practitioners who practise in an unsafe or incompetent manner
- a culture of substandard practice from which harm may flow.

The notifications process is designed to be protective, not punitive. It is also not restorative or compensatory – functions that may be better achieved through a health complaints entity resolution process.

Recent modifications to Ahpra's handling of notifications about podiatric surgeons

In late 2023, Ahpra made some modifications to its handling of notifications about podiatric surgeons, after the concerns that prompted this review were aired, to ensure that future notifications would be managed by a single group of officers.

Specifically, Ahpra developed a new internal guideline, titled *Information to assist in managing podiatric surgery notifications*.[109] The guideline, which took effect from 10 January 2024, gives specific guidance to strengthen the management of notifications relating to podiatric surgery. It sets out areas of risk specific to podiatric surgery practice. It also sets out questions to consider when managing a notification, such as whether the practitioner has professional indemnity insurance, the practice environment (sole or group practice, public or private), where the procedure was performed (private rooms, day-only facility, hospital), and infection control measures.

The guideline is used in conjunction with another internal document called *Streaming emerging issues: Quick reference guide*.[110] This is a high-level guide intended to help identify common concerns and trends, and it provides guidance as to how a notification should be 'streamed'. It also gives examples for notifications staff of where profession-specific clinical input can be obtained from the Clinical Input Service; eg patient assessment, procedure location and clinical records. There are currently two podiatrists contracted to provide Ahpra with clinical input on an as-needed basis.

As part of Ahpra's processes for handling notifications, 'streaming' is the process of reviewing information and making educated predictions about the most appropriate way to manage concerns raised about health practitioners and students. One of the streams is the 'strengthening practice' stream, which acknowledges that most practitioners are insightful professionals who are willing and able to reflect on concerns raised about their practice and can self-regulate in response. 'Streamed' matters may also be categorised into substreams. The substreams most relevant to podiatric surgeon notifications related to clinical performance are:

- Strengthening Practice – A: the notification identifies low level concerns that relate to a practitioner's performance
- Strengthening Practice – B: the notification identifies concerns that indicate a departure from expected community standards or codes of practice
- Strengthening Practice – C: the notification identifies high-risk concerns that relate to a practitioner's performance.

The *Quick reference guide* requires all podiatric surgery notifications to be managed in the Strengthening Practice – C stream, which is used for higher risk and more complex issues. C stream has the potential for higher intervention to protect the public, including directed and enforced approaches. This new streaming process is to be reviewed after six months.

Review of notifications about podiatric surgeons, 2010–23

To assist this review, Ahpra expanded on the 2016 data analysis with a detailed analysis of notifications about podiatric surgeons in the period 1 July 2010 to 30 June 2023.[111] The analysis drew on data in the National Scheme's registration and notification database. It included demographic data about podiatric surgeons registered in Australia, a detailed examination of notifications data and a description of notifications involving podiatric surgeons.

The original data analysis compared notifications about podiatric surgeons with notifications about podiatrists. However, as the review progressed stakeholders noted that more meaningful insights could be gained by comparing notification rates for podiatric surgeons with those for orthopaedic

107. In 2019, health ministers issued *Policy Direction 2019-01: Paramountcy of public protection when administering the National Scheme* to Ahpra and National Boards. Available on the Ahpra website, accessed 16 January 2024.

108. Ahpra. *Regulatory guide: An overview*. 2022. Available on the Ahpra website, accessed 15 January 2024.

109. Ahpra and National Boards. *Guideline: Information to assist in managing podiatric surgery notifications*. 10 January 2024, unpublished.

110. Ahpra and National Boards. *Streaming emerging issues: Quick reference guide*. Updated 19 December 2023, unpublished.

111. Ahpra. 'Analysis of notifications about podiatric surgeons (1 July 2010 to 30 June 2015)'. 2022. Accessed 19 January 2024.

surgeons who operate on the foot and ankle. I therefore asked Ahpra to carry out further analysis comparing notifications about podiatric surgeons with notifications made about orthopaedic surgeons where the notification involved the foot or ankle.[112]

Using the notifications identified in the data analysis as a starting point, I then asked Ahpra to extract a random sample of the notifications (including some about practitioners subject to multiple notifications and others subject to a single notification), so that I could examine the case files in detail. I examined six case files relating to 28 notifications to gain an in-depth view of the assessment and investigation process used by the Podiatry Board and Ahpra. I interviewed members of the Board's Immediate Action Committee (and sat in on one hearing) and the Registration and Notifications Committee, to better understand how they carry out their work. I also asked detailed questions of Ahpra's Regulatory Operations staff who handle notifications about podiatric surgeons and brief the Board and its committees.

A summary of the notifications data

There were 82 notifications about 25 podiatric surgeons in the period 1 July 2010 to 30 June 2023. This total includes notifications received by the co-regulators, the Office of the Health Ombudsman in Qld and the Podiatry Council of NSW.

Fifteen of the 25 podiatric surgeons who received at least one notification were granted specialist registration before the National Scheme began or in the first two years of the National Scheme (1 July 2010 to 30 June 2012), highlighting that newer graduates are less likely to be subject to a notification compared to those who graduated before 30 June 2012.

Between 1 July 2010 and 30 June 2015, the largest number of podiatric surgeons who received at least one notification were those aged 55 to 59 years. Between 1 July 2015 and 30 June 2023, podiatric surgeons aged 49 to 53 years had the largest number of notifications, with those aged 54 to 58 years coming a close second. There is a significant body of research highlighting that age-related changes, both physical and cognitive, can affect the clinical performance of surgeons (medical practitioners) and increase the risk of a complaint about a practitioner. Such changes include general cognitive decline, slower reaction times and decline in memory, as well as sensory changes in vision, visual processing speed and hearing.[113] Studies also show that older age can be a significant risk factor for a complaint about a practitioner.[114]

Patients were the most frequent type of notifier, accounting for 53.7% of notifications. Only 6.1% of notifications were made by an individual identifying as an orthopaedic surgeon, although a range of stakeholders (patients, podiatric surgeons and orthopaedic surgeons) indicated that an orthopaedic surgeon who reviews a patient after unsuccessful podiatric surgery may prompt the patient to notify the regulator. I am satisfied that a significant proportion of notifications about podiatric surgeons were prompted by orthopaedic surgeons who reviewed the patient following podiatric surgery.

Only a fraction of the notifications related to the use of title or alleged misrepresentation of qualifications. The primary issue associated with almost half the notifications about podiatric surgeons related to performing an inadequate or inappropriate procedure or treatment. A thematic analysis of the notifications lodged between 1 July 2010 and 30 June 2023 identified the following four themes:

- unsatisfactory treatment or surgery (including the initial condition not being resolved or becoming worse; new, continued or increased pain and/or swelling; reduced mobility or imbalance; additional soft tissue, bone or joint damage; and neural pain)
- post-operative complications (including infection or chronic swelling, surgical correction being required or an alternative surgery needing to be performed, amputation or hospitalisation)
- a perception that the surgery was not appropriate or was incorrectly executed (for instance, screws in the incorrect location or floating plates)
- poor written and verbal communication skills.

One cohort of podiatric surgeons has been the subject of multiple notifications. As noted earlier, nine of the 25 podiatric surgeons subject to a notification between 1 July 2015 and 30 June 2023 were subject to multiple notifications (ie three or more). Two of those nine practitioners had, respectively, 14 and seven notifications in the past eight years.

The high rate of notifications about podiatric surgeons

Over the period 1 July 2015 to 30 June 2023, the notification rate for podiatric surgeons was five times greater than the rate for podiatrists. The difference

112. Since Ahpra's data systems do not include specific fields for the subspecialty of orthopaedic surgeons, identifying the relevant notifications required keyword searching and filtering results through a manual review of information. Caution should be exercised in interpreting these results as the relative sample sizes are very different.

113. See, for instance, Sherwood R et al. 'The ageing surgeon: a qualitative study of expert opinions on assuring performance and supporting safe career transitions among older surgeons'. *BMJ Quality & Safety*. 2020 February. 29(2):113–121. https://doi.org/10.1136/bmjqs-2019-009596; see also Bieliauskas LA et al. 'Cognitive changes in retirement among senior surgeons (CCRASS): results from the CCRASS study'. *Journal of Vascular Surgery*. 2008. 48(3). https://doi.org/10.1016/j.jvs.2008.07.041; Jung Y et al. 'Association between surgeon age and postoperative complications/mortality: a systematic review and meta-analysis of cohort studies'. *Scientific Reports*. 12, 11251. 2022. https://doi.org/10.1038/s41598-022-15275-7

114. Ryan AT et al. 'Complaints about chiropractors, osteopaths, and physiotherapists: a retrospective cohort study of health, performance, and conduct concerns'. *Chiropractic & Manual Therapies*. 26, 12. 2018. https://doi.org/10.1186/s12998-018-0180-4

can likely be explained by the very different nature of the work performed by podiatric surgeons and podiatrists. A more relevant comparator is the rate for orthopaedic surgeons operating on the foot or ankle. Over the years 2010 to 2023, podiatric surgeons had a notification rate 8.8 times higher than orthopaedic surgeons who received a notification related to the foot or ankle, once frequently notified practitioners are removed from both groups.

What does this tell us? Striking variations in notification rates are not confined to podiatry. Over the same period, orthopaedic surgeons had a notification rate double that of medical practitioners (97.9 compared with 46.4 per 1,000 practitioners). Previous research on complaints to medical regulators in Australia from 2011 to 2016 found that the rate of complaints was more than 10 times higher for surgeons than physicians.[115]

Orthopaedic surgeons are subject to a high rate of complaints and claims.[116] A qualitative research study on a small cohort of patients unhappy after foot and ankle surgery performed by an orthopaedic surgeon in an Australian public hospital highlighted "[t]he high number of patients allocated to surgical clinics results in brief consultations" and the "heterogeneity between doctors regarding their level of training and experience in managing foot and ankle complaints".[117]

The risks involved in surgery and unfulfilled patient expectations may explain the high complaint rates. Foot and ankle surgery is inherently complex and can leave patients with persistent pain.[118] Where surgery is self-funded, in private facilities, a patient unhappy with the result may be more motivated to complain than a patient whose surgery occurred in the public health system or was covered by insurance (as is the case for much orthopaedic surgery). If an unhappy patient of a podiatric surgeon is later reviewed by an orthopaedic surgeon who tells the patient they had the wrong procedure or their surgery was substandard, they may be prompted to lodge a complaint.

Unfortunately, there are no denominator data showing how many foot and ankle procedures were performed by a podiatric surgeon and how many procedures were performed by an orthopaedic surgeon; nor is there a good-quality clinical registry for foot and ankle surgery in Australia with data about adverse events and patient-reported outcomes.[119] The Australasian College of Podiatric Surgeons (the College) collects outcomes data from podiatric surgeons, claiming 100% participation rate among its members.[120] It reports that more than 3,000 patients had surgery from podiatric surgeons in 2022, with 97.4% reporting no complications within 30 days. The College's national quantitative dataset for 2012–22 reported a low hospital readmission rate of 0.3% in the 30 days after surgery.[121]

In its 2020 application for Medicare funding, the College included outcomes data for patients who received foot and ankle surgery from a podiatric surgeon over five years (n=8,142), which compared favourably with administrative data from patients treated by orthopaedic surgeons available from South Australia Health (n=9,337) and Tasmania Health (n=2,851). The Commonwealth Medical Services Advisory Committee considered the evidence to be of low quality and cautiously concluded: "Given the lack of directly comparable evidence for safety and effectiveness, non-inferiority [of surgery performed by podiatric surgeons] could not be established. However ... this also does not show that services provided by podiatric surgeons are inferior to those provided by orthopaedic surgeons."[122]

The Australian Orthopaedic Foot and Ankle Society (AOFAS), the Australian Medical Association (AMA) and the Royal Australasian College of Surgeons (RACS) have long campaigned against recognition of podiatric surgeons as a specialty with title protection in the National Scheme and have opposed applications by the College for Medicare funding for podiatric surgery. They submit that the higher rate of notifications is evidence that the quality of care provided by podiatric surgeons is substandard. Given the context of hostility and professional rivalry, there is reason for caution when seeking to interpret the meaning of the higher rate of notifications about podiatric surgeons.

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115. Tibble HM et al. 'Why do surgeons receive more complaints than their physician peers?'. *ANZ Journal of Surgery*. April 2018. 88(4):269-273. https://doi.org/10.1111/ans.14225
116. Avant. *Claims and complaints insights: Orthopaedic surgeons*. Available on the Avant website, accessed 7 February 2024. One in six Avant orthopaedic surgeon members had a matter raised about the provision of their care over the years 2017–21.
117. Abdalla I et al. '"I'd never have the operation again" – a mixed-methods study on how patients react to adverse outcomes following foot and ankle surgery'. *Journal of Foot and Ankle Research.* 2022. 15:85 https://doi.org/10.1186/s13047-022-00590-z
118. Abdalla I et al. '"I'd never have the operation again" – a mixed-methods study on how patients react to adverse outcomes following foot and ankle surgery'. *Journal of Foot and Ankle Research.* 2022. 15:85 https://doi.org/10.1186/s13047-022-00590-z
119. A national quality register for foot and ankle surgery performed by orthopaedic surgeons has existed in Sweden since 2014: M Coster et al. 'Swefoot – The Swedish national quality register for foot and ankle surgery'. *Foot and Ankle Surgery.* 28(8):1404–1410. A group of NSW orthopaedic surgeons in private practice has also established a clinical registry for outcomes of foot and ankle surgery. Details are available on the Australian Commission on Safety and Quality in Health Care website, accessed 31 January 2024.
120. All Ahpra registered podiatric surgeons are eligible to become members of the College. www.acps.edu.au/about, accessed 31 January 2024.
121. These figures, which have not been independently verified, are from a College media statement in December 2023, available on the College website, accessed 31 January 2024.
122. Medical Services Advisory Committee. *Public summary document. Application No. 1344.2 – Assessment of foot and ankle services by podiatric surgeons (Resubmission).* 2020.

Concerns raised in submissions from stakeholders

Around three-fifths of the written submissions commented on the assessment and management of notifications (38 submissions; 62%).

Three main concerns were raised in submissions and my interviews and meetings with stakeholders.

- The number of practitioners with multiple notifications over time suggests that notifications are not being adequately managed. One practitioner said:

  > The current approach by Ahpra and the Podiatry Board has not been adequate to ensure that poorly performing podiatric surgeons are appropriately disciplined and then mentored to improve. This is evident by the number of podiatric surgeons with current and past restrictions and those who have had multiple sanctions applied. (Orthopaedic surgeon)

- Investigations of notifications need to involve a suitably qualified, experienced and independent podiatric surgeon but this is often difficult in a small profession where many practitioners have pre-existing relationships (for instance, they studied together, are friends, have been each other's supervisors or research partners).
- The risk assessment done by Ahpra is not adequate. It was suggested that Ahpra may focus unduly on the facts of an individual case and not give adequate weight to a practitioner's history and their notification history. This may result in risks to patient safety being downplayed.

Key findings

The number of notifications relative to the size of the podiatric surgery profession, and the commonality in those notifications, is of concern. Nine of the 25 podiatric surgeons subject to a notification between 1 July 2010 and 30 June 2023 were subject to three or more notifications.

Any notification, especially about the standard of clinical care, needs to be assessed carefully by a regulator. However, it is a notable feature of the notifications about podiatric surgeons that many come from or have been triggered by another group of health practitioners – orthopaedic surgeons – who perform similar work and are competitors. The hostility and professional rivalry between podiatric surgeons and orthopaedic surgeons is longstanding and well documented.

The relatively high number of notifications about podiatric surgery is certainly a reason to pause and take a close look at the data, to see if conclusions can be drawn and improvements made. However, given the very small number of both podiatric surgeons and notifications about podiatric surgeons, any generalisations and comparisons should be made with caution.

Close analysis of the nature of the notifications over the past 13 years reveals a pattern of patient dissatisfaction but does not indicate widespread safety and quality problems in podiatric surgery. The extensive material examined for this review does not show that most podiatric surgeons are practising unsafely. There is some evidence that some procedures done by a small number of podiatric surgeons are not safe or of acceptable quality.

Some patients have suffered significant harm due to a range of contributing factors, including poor patient selection, inappropriate surgical procedures being performed, poor operating techniques and substandard after-care. They deserve to have their complaints properly investigated by regulators, with appropriate remedial action, and to be compensated if they bring a successful civil claim in the courts.

As noted above, we do not have denominator data showing how many procedures were performed by a podiatric surgeon and how many procedures were performed by an orthopaedic surgeon; nor is there a good-quality clinical registry for foot and ankle surgery in Australia with data about adverse events and patient-reported outcomes. The AMA observes that "Discussion of podiatric surgery is always plagued by a lack of evidence and an incomplete knowledge of podiatric surgical practices."[123] AOFAS makes the point that notifications to the Podiatry Board may represent only a proportion of "adverse events from all practitioners".[124]

A notification about a health practitioner does not in itself indicate wrongdoing or substandard performance. In common with the approach of other National Boards,[125] and with the practice of health professional regulators internationally, the majority of notifications about podiatric surgeons end in a decision to take no further regulatory action. Since the beginning of the National Scheme, only one podiatric surgeon, who had six notifications, has been referred to a tribunal.[126] Seven other notifications ended in conditions being imposed on the podiatric surgeon, and eight were retained by the relevant state or territory health complaints entity for resolution. Two notifications ended in a caution being issued to the podiatric surgeon.

123. AMA submission.

124. The point could equally be made in relation to notifications to other National Boards, in particular in relation to procedural subspecialties.

125. For example, in the year ended 30 June 2023, 'no further regulatory action' was the outcome of 60.8% notifications closed about medical practitioners. Ahpra and National Boards. *Annual report 2022/23.* p 75. Available at www.ahpra.gov.au/Publications/Annual-reports/Annual-report-2023, accessed 28 February 2024.

126. The outcome was a successful prosecution, leading to a reprimand and suspension, and conditions if the practitioner sought re-registration as a podiatric surgeon. *Health Care Complaints Commission v Bours (No 1).* 2014. NSWCATOD 113; *Health Care Complaints Commission v Bours (No 2).* 2015. NSWCATOD 80.

In summary, the following is evident:

- Exceptional cases of grossly inadequate care are identified and the public protected by strong sanctions, such as suspension – as occurred in the Bours case in NSW in 2015 (and in the Edwards case in New Zealand in 2021[127]).
- The relatively infrequent cases of poor care are identified and the public protected by remediation and the imposition of conditions on the practitioner (eg mentorship and further education), with such conditions appearing on the *Register of practitioners*. This has occurred in relation to practitioners in WA, Vic and NSW in the past two years, as a result of decisions of the Podiatry Board and the NSW Podiatry Council.
- All notifiers, in cases where they are unhappy about the care or information received from a podiatric surgeon, have their complaint thoroughly assessed (with expert clinical advice, if necessary) and unless the Podiatry Board decides that the notification is 'lacking in substance' or has been remedied by the practitioner,[128] the matter proceeds to a formal investigation (again, with expert clinical advice, if necessary).

The system has recently (in January 2024) been strengthened by allocating all podiatric surgery notifications to a stream used by Ahpra for high-risk, more complex issues, with the potential for higher levels of intervention to protect the public. That approach, although sensible as a short-term measure, is blunt and unlikely to be sustainable in the long term.

Overall, it is difficult to see the basis for the AMA's claim that "[t]he Podiatric Surgery industry has been able to enjoy a lack of regulation and this … needs to be addressed" and that the current system has "no checks or balance". As detailed in this review, there is a well-developed regulatory system for the accreditation of podiatric surgery education programs and for the registration and oversight of podiatric surgeons. Although there are some areas that need improving, the regulatory framework for handling complaints is fit-for-purpose. The way the framework has been implemented by the Podiatry Board and Ahpra is consistent with the guiding principles of the National Scheme: public protection and public confidence in the safety of services provided by registered health practitioners.[129]

The recommendations in this review, if enacted, will strengthen the regulatory system – and focus on prevention rather than waiting for concerns to emerge. This is important bearing in mind that podiatric surgeons comprise only 40 of the 877,119 registered health practitioners in Australia as at 30 June 2023.[130] There is a need for proportionality in the regulatory responses from Ahpra and the National Boards, while keeping the public safe.

Performance assessments

One noteworthy feature of the regulatory responses to complaints about podiatric surgeons is that the Podiatry Board has *never* used the valuable tool of a performance assessment. Even when complaint history is taken into account, the assessment and investigation of individual complaints often becomes a lengthy back-and-forth process between a Board (supported by Ahpra regulatory and legal advisors) and a practitioner (defended by legal counsel). The practitioner and counsel are naturally focused on avoiding an adverse finding such as the imposition of conditions, a caution, a finding of unprofessional conduct, or (if the matter is prosecuted before a tribunal) a finding of professional misconduct, with possible sanctions of suspension or cancellation – even though such adverse findings are relatively uncommon.

Australian medical regulators (notably the Medical Council of NSW[131] and the former Medical Board of Victoria) were early adopters of a remedial approach via performance assessments of a practitioner in their place of practice (including records review; observing consultations; evaluating information from colleagues, supervisors and peers; and discussions with the practitioner). This enables a broader picture of the practitioner and their practice, and a tailored response that aims to return the practitioner to safe practice, if possible. Similar 'competence reviews' have been used successfully by the Medical Council of New Zealand and other health practitioner boards for many years.[132] They are particularly well suited to assessing a practitioner subject to multiple notifications or to a single notification that suggests broader competence concerns.

The National Law envisages the use of performance assessments.[133] The assessor for a performance assessment must be "a registered health practitioner

127. *Edwards v Professional Conduct Committee* HPDT (NZ) 1211/Pod20/484P and Pod 21/507P. 15 December 2021. Available at www.hpdt.org.nz/portals/0/Edwards%20v%20A%20Professional%20Conduct%20Committee.pdf. On appeal, the High Court set aside the cancellation of Mr Edwards' registration but ordered that his practice be restricted to podiatry, not podiatric surgery, for three years: *Edwards v Professional Conduct Committee*. 2023. NZHC 148.

128. These are two of the main grounds for taking no further action specified in section 151(1)(a) and (f) of the National Law.

129. National Law s 3A(1).

130. Ahpra and National Boards. *Annual report 2022/23*. p 4. Available at www.ahpra.gov.au/Publications/Annual-reports/Annual-report-2023, accessed 28 February 2024.

131. Reid A. 'To discipline or not to discipline. Managing poorly performing practitioners' in Freckelton I. *Regulating health practitioners*. 2006. pp 91–112.

132. St George I. *Assessing doctors' performance*. Medical Council of New Zealand, 2005. In particular, ch 6, pp 34–38. www.mcnz.org.nz/assets/Publications/59f6765e56/Assessing-Doctors-Performance.pdf.

133. National Law s 170.

who is a member of the health profession for which the National Board is established, who is not a member of the Board",[134] although a second assessor may be "another health practitioner".[135] The statute does not limit this to a practitioner from the same profession, so potentially a podiatrist or a medically qualified surgeon or proceduralist could serve as the second assessor.

Performance assessments have not been regularly used by National Boards – and not at all by the Podiatry Board. In contrast, the Podiatry Council of NSW has ordered 11 performance assessments in relation to nine practitioners (seven podiatrists and two podiatric surgeons) since 1 July 2010.[136]

The underutilisation of this regulatory tool by the Podiatry Board and Ahpra may well be related to the difficulty in finding suitable assessors who are registered as podiatric surgeons in Australia. This issue is discussed below. However, there appears to have been a lack of appreciation of the potential value of this regulatory tool. An adjustment of regulatory practice seems justified.

Expert clinical advice

It is clear that the handling of complaints about podiatric surgeons has been significantly hampered by the difficulty in obtaining independent expert clinical opinion.

This problem is not unique to podiatric surgery – Ahpra staff advised that they also struggle to find suitable peer advisors for other small professions. The small size of the profession (with only 40 registered podiatric surgeons), the fact that many have trained or worked together and know each other (leading to potential conflicts of interest), and the rivalry between graduates of the College and UWA, have compounded the difficulties. The Podiatry Council of NSW reports similar problems.

In some cases I reviewed, the Podiatry Board relied on expert advice from a podiatrist. Although this may be satisfactory for issues such as documentation and record keeping, a podiatrist is not qualified to advise on issues such as patient selection for a procedure or whether surgery was competently performed.

I am familiar with the difficulties faced by a regulator in assessing complaints in specialty areas when it is difficult to find suitable, independent peer advisors. However, I do not regard them as insuperable. In my recommendations below, I suggest ways that the Podiatry Board and Ahpra can overcome the current difficulties. They cannot do it on their own. If the podiatric surgeon profession in Australia is to survive, members of the profession will need to contribute to solutions to this problem. This will require goodwill and cooperation from the College and UWA.

An important aspect of professionalism is the willingness of members of a profession to serve the public interest and, where appropriate, hold colleagues to account by providing fair and objective advice on the quality of their services. The culture of podiatric surgery in Australia needs to mature. The College and UWA should nominate a small number of experienced, reputable podiatric surgeons for appointment to a panel from whom a practitioner may be chosen by regulators and tribunals to provide expert, independent advice on a complaint or proceeding.

A contested aspect of the admissibility of expert clinical advice is whether a regulator or tribunal can only rely on peer advice from a member of the same profession. Surprisingly, there appears to be no determinative tribunal or court ruling on this point.[137] Section 5 of the National Law defines 'unprofessional conduct' by reference to the standard "which might reasonably be expected by the public or the practitioner's professional peers".[138]

The reference to the reasonable expectation of the public is telling. In my opinion, a regulator or tribunal could legitimately rely on expert clinical advice from a health practitioner performing similar procedures to a podiatric surgeon, including a medically qualified surgeon or a podiatric surgeon from an overseas jurisdiction with a comparable health system. Community expectations in this area would support reliance on expert advice from suitably qualified practitioners performing like procedures.[139]

The question "what is the standard of reasonable care and skill expected of a podiatric surgeon in the circumstances of the particular case?" should not be answered exclusively by the standard described by an exact peer. Nor should a complainant's quest for independent assessment of the quality of care they received be defeated by the inability to find a non-conflicted peer practitioner. Although regulators and prosecutors should not 'shop' for favourable experts, I encourage the Podiatry Board and Ahpra (and the co-regulators, where appropriate) to explore viable options for getting credible expert clinical advice in podiatric surgery cases, including from a medically qualified surgeon or a podiatric surgeon from an overseas jurisdiction with a comparable health system.

134. National Law s 171(2)(b).

135. National Law s 171(3).

136. Data provided by the Health Professional Councils Authority.

137. Cases such as *Panegyres v Medical Board of Australia* [2020] WASCA 58 discuss the standard of conduct reasonably expected of a registered health practitioner of the particular practitioner's level or experience, without directly addressing who is a suitable expert (see para [154]).

138. The definition of 'professional misconduct' includes "unprofessional conduct … that amounts to conduct that is substantially below the standard reasonably expected of a registered health practitioner of an equivalent training or experience". National Law s 5(a).

139. It is likely that tribunals will need to grapple with this issue in the context of cosmetic surgery proceedings.

Improving the handling of complaints

I have identified several potential improvements to the assessment and management of notifications about podiatric surgeons. They are summarised in Table 2.

Some stakeholders raised concerns that the Podiatry Board and Ahpra do not have good visibility of civil litigation that may have been brought against a podiatric surgeon. Health ministers have previously consulted on whether the National Scheme should provide for mandatory reporting of professional negligence settlements and judgements.[140] This sensible idea, which would give regulators valuable additional information, is perennially discussed but has not gained support from ministers. In the absence of a mandatory reporting regime, it would be unrealistic and impractical for the Podiatry Board and Ahpra to monitor all civil claims lodged across state and territory jurisdictions.

A guiding principle of the National Scheme is that "the Scheme is to operate in a *transparent*, accountable, efficient, effective and fair way".[141]

However, current practice is that regulatory history, including current or previous notifications, past conditions, and any undertakings and conditions imposed by a National Board or tribunal, is not visible on the public *Register of practitioners*. Even when a National Board or tribunal has imposed conditions on the basis that a practitioner's professional performance does not meet an acceptable standard, the conditions are removed from the register when it is determined by a National Board that the conditions are no longer needed to protect the public, or when the period for which a condition was imposed has lapsed.[142] Once it is removed from the register, the practitioner's regulatory history relating to these conditions is no longer visible – whereas a link to a published tribunal or court decision of an adverse finding that names the practitioner remains indefinitely on the register entry for that practitioner.[143]

The removal of 'spent' conditions is consistent with the idea that a practitioner is entitled to a 'clean slate' once a condition is spent. Health ministers consulted on this issue in 2018[144] and explored whether the National Law should be amended to expand the type of information recorded on the national register, including the specialist registers. For example, ministers asked if details of a practitioner's

Table 2. Key issues identified in management of notifications

Issue	Suggestion for improvement
In some cases, the risk assessment framework appears not to have been adequately applied, resulting in potential risks to patient safety being underplayed.	The risk assessment framework is appropriate, but it needs to be consistently and rigorously applied to ensure risks to patient safety are appropriately assessed. This should include close attention to practitioner history and practice setting.
Some valuable regulatory tools available to the Podiatry Board are infrequently used – notably performance assessments. They may be well suited for practitioners who have received multiple notifications relating to clinical practice or where a single notification suggests broader competence concerns.	The Podiatry Board should make greater use of the full range of regulatory tools available to it, particularly in cases where a practitioner has received multiple notifications relating to clinical practice or where a single notification suggests broader competence concerns. This could include performance assessments or performance and professional standards panels in cases that may not reach the threshold for prosecution.
In a small profession like podiatric surgery, it can be difficult to get independent expert clinical advice from another podiatric surgeon.	The Podiatry Board and Ahpra should request the College and UWA to nominate a small number of experienced, reputable podiatric surgeons for appointment to a panel from whom a practitioner may be chosen to provide expert, independent advice on a notification. Members of such a pool would need to actively manage the potential for conflicts of interest. The Podiatry Board and Ahpra should also explore viable options for obtaining credible expert clinical advice in podiatric surgery cases, including from a medically qualified surgeon or a podiatric surgeon from an overseas jurisdiction with a comparable health system.
The Podiatry Board does not routinely publish thematic analysis of issues raised in complaints about podiatric surgeons.	The Podiatry Board should, via newsletters and other educational publications, report lessons from complaints about podiatric surgeons to inform good practice and be included by education providers in CPD modules.

140. COAG Health Council. *Regulation of Australia's health professions: keeping the National Law up to date and fit for purpose.* Consultation paper, 2018. ch 4.4. See also COAG Health Council. *Communiqué.* 31 October – 1 November 2019 and *Summary of agreed National Registration and Accreditation Scheme (Tranche 2) reform proposals.* Available on the Ahpra website, accessed 26 January 2024.

141. National Law s 3A(2)(a); emphasis added.

142. Ahpra and National Boards. *Possible outcomes.* Available on the Ahpra website, accessed 26 January 2024. See also National Law s 226(3).

143. www.ahpra.gov.au/Resources/Tribunal-decisions, accessed 28 February 2024.

144. Health Council. *Consultation paper: Regulation of Australia's health professions – keeping the National Law up to date and fit for purpose.* 2018. Available on the National Library of Australia archive, accessed 30 January 2024.

regulatory history should be recorded on the *Register of practitioners*. Many registered health practitioners believe that the right to privacy and protection of their professional reputation and livelihood means that their regulatory history should not be visible to the public. Ultimately ministers did not amend the National Law to expand the information about a practitioner's disciplinary history on the register.

A current consultation by health ministers proposes publication of a practitioner's full regulatory history on the register only where a tribunal determines that the practitioner has engaged in 'professional misconduct'[145] because of sexual misconduct, a sexual boundary violation or conviction of a criminal sexual offence.[146]

In my view, while the public would certainly want to know about their practitioner's history of sexual misconduct, they would also reasonably expect to know whether their practitioner has been subject to multiple (eg more than three in the past five years) notifications or had conditions imposed on the basis that their clinical practice did not meet an acceptable standard.[147] At present, the community is denied access to such information on the *Register of practitioners*.

If the focus is community expectations, rather than the privacy and professional reputation of the practitioner, this limited subset of information about substantiated regulatory history relevant to a practitioner's performance, skills and competence should be available on the register. Prospective patients would then be able to ask questions about the reasons for the condition and make an informed choice of practitioner.

I do not consider that podiatric surgeons should be singled out for disclosure of some of their substantiated regulatory history. I encourage Ahpra and health ministers to give further consideration to this issue across all health professions, beyond the scope of the current consultation on sexual misconduct. In my view, the principle of transparency enshrined in the National Law[148] is yet to be fully realised in the operation of the National Scheme, in order to meet the legitimate expectations of the community.

Recommendations

8. The Podiatry Board and Ahpra apply the risk assessment framework consistently and rigorously, giving appropriate weight to the characteristics of the practitioner (in particular, complaint history, age, isolation and having trained 10 or more years ago) and the characteristics of the practice setting (in particular, for practitioners working in relative isolation in private practice) in the assessment of notifications. This will strengthen the public protective response to notifications.
9. The Podiatry Board and Ahpra improve processes for obtaining expert clinical advice on podiatric surgery cases by:
   a. asking the Australasian College of Podiatric Surgeons and the University of Western Australia to nominate a small number of experienced, reputable podiatric surgeons for appointment to a panel from which a suitable expert may be chosen
   b. exploring viable options for getting credible expert clinical advice in podiatric surgery cases, including from a medically qualified surgeon or a podiatric surgeon from an overseas jurisdiction with a comparable health system.
10. The Podiatry Board and Ahpra make better use of the full range of regulatory tools available to respond to notifications, in particular performance assessments for practitioners:
    - who have had three or more substantiated notifications related to clinical practice over a five-year period,[149] and/or
    - if the Board reasonably believes, because of a notification or for any other reason, that the way the practitioner practises the profession is or may be unsatisfactory.[150]

    This recommendation is designed to ensure that the Podiatry Board takes appropriate action in relation to podiatric surgeons who may pose a higher risk to patients due to their notification history or the nature of the most recent notification(s) about them.
11. The Podiatry Board and Ahpra enhance publication of notifications data, including the outcomes of notifications and deidentified case studies of lessons from complaints about podiatric surgeons, as an educative tool for practitioners.

145. See National Law s 5 for the definition of 'professional misconduct'.

146. Health Ministers Meeting, *Management of professional misconduct and strengthening protections for notifiers – Part 1: Expansion of information on the national public register: Background paper.* 2024. p 6. Available from Engage Victoria, accessed 26 January 2024.

147. Compare the views expressed in Paterson R. 'Not so random: patient complaints and 'frequent flier' doctors'. *BMJ Quality & Safety*. 2013. 22:525–527; Paterson R. *The good doctor: what patients want.* 2012. p 215.

148. National Law s 3A(2)(a).

149. See Medical Board of Australia, *Building a professional performance framework.* 2017. p 13. Available on the Medical Board website, accessed 28 February 2024.

150. National Law s 170.

6. System safety and quality

The Podiatry Board and Ahpra are one part of the complex, multi-jurisdictional system that regulates healthcare in Australia. Some aspects of the overall regulatory framework are national, while others are state and territory based. Each regulator plays a different and important role in protecting patients from harm. Some aspects of the practice of podiatric surgeons fall outside the control and responsibility of the Podiatry Board and Ahpra. However, the Podiatry Board and Ahpra are uniquely placed to consider overall system safety and quality issues related to podiatric surgeons across various jurisdictions. For this reason, I recommend that they take a lead role in seeking further reform in these areas.

This chapter explores the broader quality and safety issues raised during the review.

Problems and key findings

An isolated, private health service

Throughout the review, I heard concerns from stakeholders about the fact that podiatric surgery is conducted almost exclusively in the private health system. Podiatric surgery in Australia remains largely excluded from the public health system. Podiatric surgeons work in private practices, often on their own, and carry out procedures in private settings, including their rooms for some simple procedures requiring only a local anaesthetic, and in private hospitals and day procedure centres for more complex procedures requiring sedation or a general anaesthetic.

This raises concerns about the different levels of protection offered to patients in different settings. A practitioner's private rooms may not be subject to any safety and quality standards, while hospitals and day procedure centres are covered by the Australian Commission on Safety and Quality in Health Care's *National safety and quality health service standards*,[151] which offer a higher level of protection.

Stakeholders also raised concerns that some of these settings do not have the capability to manage patient complications effectively as they don't have the facilities or ready access to medical specialties such as vascular surgery, dermatology or endocrinology, if needed. In many situations, this means that a patient needs to be transferred to a higher-level hospital (often in the public health system) to have their complications effectively managed. Delays to treatment for complications, and the lack of continuity in care, pose additional safety risks to patients.

Other concerns raised included lack of oversight, audit and peer review, which are central to training and practice in public health systems. Some stakeholders stated that training and practice in public hospitals bring added layers of supervision, review and clinical governance that improve the quality and safety of care. It also brings collaborative networks across professions that are nurtured during a surgeon's training. This was raised by stakeholders from both the podiatry and medical professions.

> Development of public sector training positions and provision of care within public hospitals in Australia will improve standards of care and efficacy (Ian Reid, podiatrist)

> Access to the public health funding system would better enable podiatric surgeons to perform as part of a multi-disciplinary team and to provide greater checks and balances in the delivery of procedures. (Podiatrist)

> I am director of surgical training at a major metropolitan teaching hospital and whilst I recognise there are deficiencies in the orthopaedic training program, 95% of the orthopaedic surgical training rotations are through public hospitals. As a result, there is continuous oversight and audit of practice. The multidisciplinary nature of public hospitals means junior doctors are constantly supervised and inappropriate practice or patient safety concerns are quickly investigated and discussed at a consultant and health management level. This layer of supervision protects patients from repeated harm and I am concerned that the single-surgeon, mentor based private training system of podiatric surgery is not as regulated or supervised, and unsuspecting patients are unaware of the difference in standards. (Orthopaedic surgeon)

At some meetings, I was told about examples where podiatric surgeons and medical practitioners (including orthopaedic surgeons) work closely together across their professions. Examples were cited of individual orthopaedic or vascular surgeons working collaboratively with podiatric surgeons, together with other specialist medical practitioners. Practitioners reported that these examples work well and achieve the best outcomes for patients.

Some stakeholders (mostly podiatrists and podiatric surgeons) stated that the relative isolation is compounded because podiatric surgeons do not have access to Medicare. This means patients cannot claim a rebate from Medicare for services provided by a podiatric surgeon. Private health insurance may cover some of the hospital fees for podiatric surgery, but often the surgery must be wholly funded by the patient. These are issues on which the Australasian College of Podiatric Surgeons (the College) has previously lobbied the Australian Government, and its applications for access to Medicare cover have been unsuccessful. As noted by the Commonwealth

151. Available on the Australian Commission on Safety and Quality in Health Care website, accessed 20 January 2024.

Medical Services Advisory Committee in rejecting an earlier application by the College:[152]

> it would be helpful if podiatric surgeons could establish their role as part of a multidisciplinary teams in the public setting as a first step in generating Australian-specific data demonstrating the safety and effectiveness of the care they provide and their capability in providing the surgery as well as ensuring pre- and post-operative patient management.

This will remain wishful thinking if podiatric surgeons continue to be ostracised and effectively barred from the public health system.

Although it is beyond the scope of the current review, and beyond the remit of the Podiatry Board and Ahpra, to consider whether podiatric surgeons should be integrated into the public health system (as is the case in the UK), the relatively isolated nature of their practice has an impact on the effectiveness of the regulatory system in ensuring that they are safe to practise. Greater integration of podiatric surgeons in the Australian public health system could be an important preventive safety and quality measure,[153] rather than responding to complaints and notifications after harm has occurred.

Availability of quality data

I heard concerns from stakeholders about the quality of data collected in the audit by the College. Specific concerns included that the audit is limited to complications experienced in the first 30 days after surgery, does not clearly distinguish procedures from operations, and does not record patient-reported outcomes or experiences.

Ideally, there would be an Australian clinical quality registry for foot and ankle surgery that had complete coverage of all clinicians providing this type of surgery and all patients receiving this intervention.

Clinical quality registries are unique safety and quality clinical data collections that systematically monitor the quality of healthcare so that the information can be used to improve care. Clinical quality registries routinely collect and analyse information on the processes of care, health outcomes, patient-reported outcome measures (PROMs) and patient-reported experience measures (PREMs). When clinical quality registries reach their full potential and are of high maturity, they routinely produce reports that can be used by individual practitioners and health services for quality improvement activities – for example, the information gathered can be used to identify benchmarks and significant variance in outcomes.

A significant investment of resources, material and time is needed to establish a national clinical quality registry that meets the guidance on governance, infrastructure, security and privacy compliance, technical standards and reporting developed by the Australian Commission on Safety and Quality in Health Care.[154] The Australian Government has not identified foot and ankle surgery as a priority for development of a national registry.[155] However, some orthopaedic surgeons in private practice in Sydney have established the Sydney Foot and Ankle Registry – their own local registry for participating surgeons.[156]

A clinical audit differs from a registry in that it captures information about care provision at a moment in time rather than continuously gathering data. While a clinical audit does not provide the wealth of information that can be obtained through a clinical quality registry, it can, if properly undertaken, provide important data to help practitioners review their performance and measure outcomes of the care they provide.

The current College audit would benefit from considering the issues raised in this review and from the College ensuring that the audit tool gathers data using definitions of procedures and indicators that are consistent with those used by other established foot and ankle surgery clinical audits or registries. The College should liaise with the Australian Commission on Safety and Quality in Health Care to seek guidance on ways to advance this work.

Sustainability of the profession and the broader policy context

Many stakeholders I met with have been struck by the small size of the podiatric surgery profession and raised questions about its sustainability. Without support for the work of podiatric surgeons from the Australian Government and state and territory governments, there is a risk that the profession will remain small and fragile into the future.

There has been much discussion in the media about the crises in Australian healthcare – skills shortages in key health professions, particularly in rural communities; the uneven distribution of health services across Australia; concerns about the affordability of primary care; long waiting lists for some services; and the increasing incidence of chronic and complex healthcare needs.

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152. Medical Services Advisory Committee. *Public summary document. Application No. 1344.1 – Podiatric Surgeons for access to a range of MBS numbers for surgery of the foot and ankle*. 2016.

153. It would also improve access to foot and ankle surgery in the public health system.

154. Australian Commission on Safety and Quality in Health Care. *Australia's framework for clinical quality registries*. Available on the Commission website, accessed 29 January 2024.

155. Australian Government Department of Health and Aged Care. *National Clinical Quality Registry Program*. Available at www.health.gov.au/our-work/national-clinical-quality-registry-program, accessed 28 February 2024. See also Australian Commission on Safety and Quality in Health Care. *Prioritised list of clinical domains for clinical quality registry development: Final report*. 2016. Available on the Commission website, accessed 28 February 2024.

156. More information on the Sydney Foot and Ankle Registry is available on the Commission website, accessed 29 January 2024.

These are matters for the Australian Government and health ministers to consider, however they are also relevant to the current review, if national, state and territory governments wish podiatric surgeons to take their place in Australia's health workforce of the future.

The Australian Government is conducting a number of reviews to address these issues. In 2022, the *Strengthening Medicare taskforce report* explored areas for government action to redesign primary care as the core of an effective, modern health system.[157] This broader context is important, and led to an independent review now underway, commissioned by the Australian Government Department of Health and Aged Care, *Unleashing the potential of our health workforce – Scope of practice review*.[158] That review is seeking to remove the barriers stopping health professionals working to their full scope of practice, with a particular focus on multidisciplinary teams where members are working to their full scope to deliver best practice care.[159]

Further, a separate independent review, commissioned by the Australian Government Department of Finance, *Independent review of Australia's regulatory settings relating to overseas health practitioners*, has recently examined the issues associated with significant health workforce shortages in Australia, and recommended reforms to streamline regulatory settings to make it easier for international health practitioners to work in Australia.[160] On 6 December 2023, National Cabinet endorsed that review's final report and findings.

In the context of Australia's current health workforce pressures and other independent reviews, it is important that the regulation of podiatric surgeons considers opportunities that support health practitioners to practise safely within their full scope of practice. As noted earlier in this report, health practitioner regulation internationally "has not kept pace with the demands for greater flexibility arising from interprofessional team-based practice and a more dynamic division of labor in healthcare".[161]

It makes sense to fix the problems identified in this review to enable a well-established and generally well-regulated subspecialty to flourish rather than flounder.

Recommendations

12. The Podiatry Board and Ahpra work with state and territory health departments to explore options to require podiatric surgeries expected to need more than a local anaesthetic to be performed in a licensed facility that is accredited to the *National safety and quality health service standards*.
13. The Podiatry Board and Ahpra write to health ministers to request that the Health Workforce Taskforce consider the future role and sustainability of the podiatric surgery specialty. Subject to health ministers' advice, the Podiatry Board and Ahpra should work with the Australian Government and state and territory governments to explore options to integrate podiatric surgeons into the broader healthcare system to improve the quality, safety and affordability of care for patients, and enable practitioners to work to their full scope of practice. The way podiatrists and podiatric surgeons are integrated in the National Health Service in the UK is instructive.
14. Ahpra ask the Australian Commission on Safety and Quality in Health Care to advise the Australasian College of Podiatric Surgeons on how it could improve its clinical audit tool for podiatric surgery. The aim would be to ensure that the audit is redeveloped and used in a way that provides high quality data, with definitions and indicators that are commonly used by other relevant audits and registries, so that it can be used to improve safety and quality for all patients of foot and ankle surgery.

157. Australian Government. *Strengthening Medicare taskforce report.* December 2022. Available on the Department of Health and Aged Care website, accessed 29 January 2024.

158. Australian Government. *Scope of practice review.* Available on the Department of Health and Aged Care website, accessed 29 January 2024.

159. The *Scope of practice review* is focused on primary care but the underlying principles are relevant to this review.

160. *Independent review of Australia's regulatory settings relating to overseas health practitioners: Final report, 2023.* Available on the Department of Finance Regulatory Reform website, accessed 29 January 2024.

161. Carlton A-L et al. *Health practitioner regulation systems: A large-scale rapid review of the design, operation and strengthening of health practitioner regulation systems.* 2024. p 159. Available on the World Health Organization website, accessed 28 February 2024.

Appendix A: Terms of reference September 2023

Background

The Podiatry Board of Australia (Board) has been working in partnership with Ahpra to regulate the podiatry profession in Australia since 1 July 2010. The respective functions of the Board and Ahpra are set out in the National Law.

Since 1 July 2010, specialist registration for the podiatry specialty of podiatric surgery has operated nationally, with the specialist title of 'podiatric surgeon'. Eighteen podiatric surgeons transitioned under the National Law to the National Registration and Accreditation Scheme (National Scheme) with specialist registration or were granted specialist registration in the first year of the scheme.

Currently there are 41 podiatric surgeons with specialist registration, which represents 0.7% of the podiatry profession. Podiatric surgeons primarily work in private practice, and in private hospitals and day procedure centres.

Regulatory framework

The regulatory framework for podiatric surgeons aims to protect the public by ensuring that only practitioners who are suitably trained and qualified to practise podiatric surgery in a competent and ethical manner are registered.

The Board's *Professional capabilities for podiatric surgeons*, which have been in effect since 1 January 2022, identify the knowledge, skills and professional attributes needed to safely and competently practise as a podiatric surgeon in Australia. They describe the threshold or minimum level of professional capability required for registration as a podiatric surgeon. Podiatric surgeons are expected to maintain at least the threshold level of professional capability in all areas relevant to their practice of podiatric surgery.

The accreditation standards for podiatric surgery programs which have been in effect since 1 January 2022, require education providers to demonstrate that the learning outcomes and assessment tasks of their podiatric surgery course map to the professional capabilities for podiatric surgeons. This provides assurance to the Board that graduates of an accredited program have the knowledge, skills and professional attributes needed to safely and competently practise as a podiatric surgeon in Australia.

Once registered, podiatric surgeons are expected to meet their ethical responsibilities and professional obligations set out in the Board's *Code of conduct* and the Board's standards for registration, including maintaining and updating their knowledge and skills through continuing professional development; recognise and work within the limits of their competence and scope of practice; and practise in accordance with the current and accepted evidence base of the profession, including clinical outcomes.

Notifications about podiatric surgeons

Where a podiatric surgeon's professional conduct, performance or health raises concerns for public safety, regulatory action is available under the National Law to manage any risk to the public.

The Board manages notifications about the conduct or performance of registered podiatric surgeons in all states and territories apart from NSW and Qld. In NSW, these matters are managed by the Podiatry Council of NSW supported by the NSW Health Professions Councils Authority (HPCA) and the Health Care Complaints Commission (HCCC), and in Qld they are managed by the Office of the Health Ombudsman (OHO) who refers some matters to the Board and Ahpra to manage.

Although podiatric surgeons represent only a small percent of the podiatry profession, they are associated with a much higher rate of notifications than podiatrists. Most of the notifications received by the Board relate to a small number of individual podiatric surgeons, and some have raised serious concerns about patient safety.

The review

While the Board has taken the necessary regulatory action with regard to notifications it has received about podiatric surgeons, an independent review may identify opportunities for any improvements or changes to the Board and Ahpra's regulatory framework that will better protect the public.

The review of the existing regulatory framework for podiatric surgeons will help ensure that the Board and Ahpra meet their statutory objective to provide for the protection of the public by ensuring that only practitioners who are suitably trained and qualified to practise podiatric surgery in a competent and ethical manner are registered.

Purpose

To review the existing regulation and regulatory practices in use by the Podiatry Board of Australia and Ahpra to ensure the appropriate standards, guidance and processes are in place to support safe podiatric surgery practice by podiatric surgeons in Australia and to make recommendations for any required changes.

This will be undertaken with reference to the:

- National Registration and Accreditation Scheme's statutory objective to provide for the protection of the public, and
- responsibilities of the Podiatry Board of Australia and Ahpra under the National Law.

Scope

The review will inquire and report on:

1. The regulation of podiatric surgeons by the Podiatry Board of Australia and Ahpra focusing on:
    a. updates to standards, supporting guidance and professional capabilities which aim to ensure that podiatric surgeons practise podiatric surgery safely within the scope of their qualifications, training and experience
    b. the risk assessment of notifications about podiatric surgeons
    c. the Ahpra investigation protocol with regard to podiatric surgeons
    d. the management of advertising offences, and
    e. opportunities for changes, clarifications or further actions in relation to the current regulatory approach to podiatric surgeons.
2. Provide a contemporary view of current risks to patient safety in podiatric surgery and how they should inform the work of the Podiatry Board of Australia and Ahpra.

For the purpose of making its recommendations, the review is requested to consider approaches adopted by professional regulators in other countries.

Reviewer

Professor Ron Paterson

Key definitions

Ahpra means the Australian Health Practitioner Regulation Agency.

National Law means the Health Practitioner Regulation National Law, as in force in each state and territory.

Appendix B: International comparisons – UK, New Zealand, US and Canada

United Kingdom

The Health and Care Professions Council (HCPC) regulates podiatrists and podiatric surgeons in the United Kingdom (UK). Until 2020, podiatrists who were practising podiatric surgery were not formally recognised on the HCPC Register as having additional training in podiatric surgery and there were no separate standards for practice and education.

In January 2020, the HCPC added a new annotation to the *Register for podiatrists practising podiatric surgery*. This followed wide consultation in 2010–11, a decision by the HCPC in 2012 that the practice of podiatric surgery should be regulated in the interest of public safety, and a lengthy implementation process during which standards were set for podiatrists and education providers delivering training.

The HCPC uses the term 'podiatrist practising podiatric surgery'[162] for podiatrists who have the annotation. An annotation on the register indicates that a podiatrist has done extra training or had their experience endorsed through an approved education program that meets the HCPC's *Standards for podiatric surgery*.[163]

The current HCPC-approved programs for podiatric surgery are offered by Queen Margaret University, Scotland (Podiatric Surgery Training Programme, three years full time or five years part time), and the University of Huddersfield, England (Master of Podiatric Surgery, three years part time, and Master of Podiatric Surgery, a degree apprenticeship, three years part time).

The *Standards for podiatric surgery* set out the knowledge, understanding and skills that a registered podiatrist must have when they complete their podiatric surgery training, and which they must continue to meet once in practice. They also set out the systems and processes that an education provider must have to deliver the podiatric surgery training safely and effectively.

Podiatrists practising podiatric surgery must also meet the HCPC standards of proficiency relevant to their scope of practice;[164] the standards of conduct, performance and ethics; and the standards for continuing professional development (CPD).

Whenever they renew their registration, registrants are asked to confirm they have met their CPD requirements. The HCPC then chooses 2.5% of registrants from the profession to submit their CPD profile for audit.[165] The HCPC takes a flexible approach to CPD, asking registrants to identify their development needs and choose appropriate CPD activities. The HCPC does not set a number of CPD hours that registrants must complete, nor does it approve or endorse any particular CPD activities.[166]

Podiatrists practising podiatric surgery are a small percentage of registered chiropodists/podiatrists[167] in the UK. As at December 2023, there were 12,279 registered chiropodists/podiatrists,[168] of whom 108 were annotated on the register as podiatrists practising podiatric surgery (0.9%). The HCPC would regard it as a fitness-to-practice concern if someone practised podiatric surgery without the annotation. Employers check that podiatrists practising podiatric surgery have the annotation.

New Zealand

In New Zealand, podiatrists and podiatric surgeons are regulated by the Podiatrists Board of New Zealand (PBNZ) / Te Poari Tiaki Waewae o Aotearoa.

The PBNZ recognises podiatric surgery as an advanced scope of practice (noting that applicants must also hold the podiatrist primary scope of practice). It is one of four scopes of practice the PBNZ has adopted, along with the qualification specifications for each scope. The PBNZ defines the scope of practice of a podiatric surgeon as:[169]

> A registered primary health care practitioner who holds the scope of practice of podiatrist and is further qualified to perform foot surgery by way of sharp toe nail wedge resection; surgical correction of lesser digital deformities affecting the phalanges, metatarsals and associated structures; surgical corrections of deformities affecting the first toe, first metatarsal and associated structures; surgical correction of deformities of the metatarsus, mid-tarsus, rear foot and associated structures; surgical correction and removal of pathological subcutaneous structures such as tendentious and nervous tissues and other connective soft tissue masses of the foot.

162. Podiatrist practising podiatric surgery is not a protected title in the HCPC register.
163. Health and Care Professions Council. *Standards for podiatric surgery*. 2015. Available on the HCPC website, accessed 6 February 2024.
164. Health and Care Professions Council. *Standards of proficiency – chiropodists/podiatrists*. 2024. Available on the HCPC website, accessed 6 February 2024.
165. Health and Care Professions Council. 'CPD audits'. Available on the HCPC website, accessed 28 February 2024.
166. Health and Care Professions Council. 'Continuing professional development and your registration'. 2017. Available on the HCPC website, accessed 28 February 2024.
167. The HCPC register protects the titles 'podiatrist' and 'chiropodist', which historically was used by practitioners. Most new registrants call themselves podiatrists.
168. Registrant snapshot – 4 December 2023. Available on the HCPC website, accessed 6 February 2024.
169. The four scopes of practice are podiatrist, podiatric surgeon, podiatric radiographic imager and visiting podiatric educator/presenter. See scopes of practice on the Podiatrists Board of New Zealand website, accessed 6 February 2024.

All applicants for the podiatric surgeon scope of practice are assessed for the PBNZ by the Australasian College of Podiatric Surgeons or the University of Western Australia. This includes an assessment of recent surgery and surgical outcomes.

The PBNZ expects that podiatric surgeons in New Zealand will only perform procedures that are within the scope of their competence, training and qualifications. All podiatrists in New Zealand, including podiatric surgeons, are required to fulfil podiatry competency standards,[170] the *Principles and standards for the practice of podiatry in New Zealand* and the *Ethical codes and standards of conduct*. They must also complete continuing professional development as part of a two-year recertification cycle.[171] There are additional CPD requirements for podiatric surgeons, including advanced life support (ALS) training, annual peer reviewed case history and clinical administrative audits, and surgical practice audits, which include an audit of the practitioner's surgical practice logbook. The PBNZ audits up to 20% of practitioners in each CPD cycle to ensure compliance.[172] For podiatric surgeons, this includes an audit of their surgical practice logbook.

In April 2023, there were 474 practitioners in New Zealand holding a practising certificate in the podiatrist scope of practice, with two practitioners holding the additional scope of podiatric surgeon.[173] Following a highly publicised finding of professional misconduct in relation to a third podiatric surgeon, whose treatment of six patients was found to be "a significant departure from acceptable professional standards of a reasonably competent podiatrist practising within the scope of podiatric surgery",[174] the practitioner was censured and is no longer allowed to practise as a podiatric surgeon.

The small number of podiatrists practising in the scope of podiatric surgery raises questions about the viability of the specialty in New Zealand.

United States (Oregon)

In the United States, health professionals are regulated by the state in which they work. The Oregon Medical Board is recognised as a leading regulator.

Registration as a podiatric surgeon in the US generally requires completion of the following:

a. A Doctor of Podiatric Medicine (DPM) degree from an accredited professional school – usually a four-year program, the first two years of which are similar to training that either Doctors of Medicine (MD) or Doctors of Osteopathic Medicine (DO) receive but with an emphasis on the foot, ankle and lower extremity.

b. Residency training – typically a minimum of three years' postgraduate residency training in an approved teaching hospital or academic health centre. Residency training postgraduates typically rotate through core areas of medicine and surgery and work alongside their MD and DO counterparts in rotations such as emergency medicine, internal medicine, infectious disease, vascular surgery, general surgery, orthopaedic surgery, plastic surgery, dermatology, podiatric medicine and podiatric surgery.

c. Board Qualification – the DPM degree and residency training allow a graduate to apply for recognition as meeting the requirements for Board Qualification. Once qualified, a graduate needs to gain seven years of clinical experience before applying to the American Board of Foot and Ankle Surgery (ABFAS) for Board Certification.

d. Board Certification – once the graduate has completed seven years of clinical experience, attained hospital privileges in the area of desired certification and passed the clinical log audit and case review, they can apply for certification by the American Board of Podiatric Medicine (ABPM) and/or ABFAS in one or both specialty areas.[175]

The Council on Podiatric Medical Education (CPME) is the independent accreditation authority that assesses and accredits colleges and schools in the field of podiatric medicine. It aims to promote the quality of graduate and postgraduate education, certification and continuing education. In 2023, the CPME adopted revised accreditation standards for Colleges of Podiatric Medicine.[176]

170. Podiatrists Board of New Zealand. *Podiatry competency standards*. 2021. Available on the PBNZ website, accessed 27 February 2024.

171. Podiatrists Board of New Zealand. *Continuing professional development recertification policy*. 2017. Available on the PBNZ website, accessed 27 February 2024.

172. Podiatrists Board of New Zealand. *Continuing professional development audit policy*. 2017. Available on the PBNZ website, accessed 27 February 2024.

173. Podiatrists Board of New Zealand. *Annual report 1 April 2022 – 31 March 2023*. p 6. Available on the PBNZ website, accessed 27 February 2024.

174. *Edwards v Professional Conduct Committee* HPDT (NZ) 1211/Pod20/484P and Pod 21/507P. 15 December 2021. Available on the Health Practitioners Disciplinary Tribunal website, accessed 27 February 2024. On appeal, the High Court set aside the cancellation of Mr Edwards' registration but ordered that his practice be restricted to podiatry, not podiatric surgery, for three years. *Edwards v Professional Conduct Committee* [2023] NZHC 148. Mr Edwards' conduct included inappropriate surgical techniques; poor post-operative care and failure to manage adverse outcomes of treatment; lack of informed consent; and failure to refer to patients' GPs.

175. See information on the pathway to certification available on the ABFAS website, accessed 27 February 2024.

176. *Standards and requirements for accrediting Colleges of Podiatric Medicine*. April 2023. Available on the CPME website, accessed 26 February 2024.

The Oregon Medical Board has licensed podiatric physicians and surgeons (Doctors of Podiatric Medicine or DPMs) since the 1980s. The scope of practice of DPMs allows them to "diagnose and perform medical, physical or surgical treatments related strictly to ailments of the human foot, ankle, and tendons directly attached to and governing the function of the foot and ankle".[177] Podiatrists may apply for an endorsement on their licence to perform ankle surgery in a certified hospital or ambulatory surgical centre in Oregon. There are approximately 220 actively licensed DPMs in Oregon.[178]

To be eligible for a licence, candidates must have:

- graduated from a school or college of podiatric medicine accredited by the CPME, and
- completed one postgraduate year of training in a hospital residency program that is approved by the CPME, or
- completed one postgraduate year in a hospital residency training program not approved by the CPME that has current certification by the ABPM or ABFAS, and
- passed the examination administered by the National Board of Podiatric Medical Examiners.

DPMs in Oregon must practise within the scope of practice defined in statute and within their individual education, training and experience. In August 2023, the Oregon Legislature passed House Bill (HB) 2817 which explicitly states that the practice of podiatry includes "the treatment of the skin, skin-related structures and subcutaneous masses, and wounds involving skin, skin-related structures and subcutaneous masses, on the human leg no further proximal than the tibial tubercle."[179] This language came into effect on 1 January 2024.

Canada (British Columbia)

In British Columbia (BC), podiatric surgeons are regulated by the College of Physicians and Surgeons of British Columbia (CPSBC). The CPSBC regulates podiatric surgeons in two ways, by setting requirements:

- for registration and regulation of the scope of practice of every individual podiatric surgeon, and
- that podiatric surgery is performed in an accredited facility.

To be eligible for registration as a podiatric surgeon in BC, an applicant must:

- have a Doctor of Podiatric Medicine (DPM) degree from one of the recognised podiatric medical education programs listed in the schedule of CPSBC bylaws[180]
- have successfully completed the three-part American Podiatric Medical Licensing Examinations (APMLE) administered by the National Board of Podiatric Medical Examiners or the historic three-part National Board of Podiatric Medical Examinations
- meet English language proficiency requirements
- have Canadian citizenship, be a permanent resident or be legally entitled to live and work in BC
- meet one of the following requirements:
    - have successfully completed a minimum of two years of a CPME-accredited and approved residency
    - if postgraduate training was completed before 1 January 2012, have successfully completed a minimum of a one-year CPME-accredited residency.

For podiatric surgeons in BC, the recognised education programs and residencies are all in the US.

At initial registration, and annually thereafter, the CPSBC monitors the number of procedures each podiatric surgeon performs, to determine if the surgeon has performed enough procedures of a given type to include that procedure in their scope of practice. If the podiatric surgeon does not perform enough procedures, the CPSBC may, following discussion with the practitioner, remove that procedure from their scope of practice or require further training in the procedure.

In addition, podiatric surgeons must also have privileges at the accredited surgical facilities where they wish to perform the surgical procedures within their scope of practice. The CPSBC has an approved procedures list which outlines the setting (office or accredited medical and surgical facility), imaging (yes/no) and room type (procedure room +/− imaging or operating room) requirements for a wide variety of foot and ankle procedures.[181]

Podiatric surgeons must also meet the CPSBC's CPD requirements of 30 hours of CPD a year.[182] A

177. Licensing information is available on the Oregon Medical Board website, accessed 26 February 2024.
178. August 23, 2023 – House Bill (HB) 2817 workgroup meeting. Available on the Oregon Medical Board website, accessed 26 February 2024.
179. HB 2817: Updating Podiatry Practice in Oregon. Available on the Oregon Medical Board website, accessed 26 February 2024.
180. Recognised podiatric medical education programs listed in Schedule D of the CPSBC Bylaws, revised 2 January 2024. Available on the College of Physicians and Surgeons of British Columbia website, accessed 26 February 2024.
181. College of Physicians and Surgeons of British Columbia. *Podiatric surgeon procedures list: Setting, imaging, and room size requirements*, effective 15 April 2023. Available on the College of Physicians and Surgeons of British Columbia website, accessed 28 February 2024.
182. College of Physicians and Surgeons of British Columbia. *Continuing competency requirements for podiatric surgeons* 2023. Available on the College of Physicians and Surgeons of British Columbia website, accessed 28 February 2024.

minimum of 10 hours of CPD must be completed through accredited sources (such as the US CPME) and directly related to the practitioner's scope of practice. The remaining CPD can be through non-accredited sources but must be directly related to their scope of practice.

The CPSBC audits CPD every second year and requires podiatric surgeons to provide proof of completion for all 60 hours of CPD (such as attendance confirmation, passing certification or proof of a published paper).[183]

At the time of writing there are 70 podiatric registrants in BC, 11 of whom have privileges at accredited surgical facilities to perform surgeries.

183. College of Physicians and Surgeons of British Columbia. *Continuing competency requirements for podiatric surgeons*, effective 30 November 2020. Available on the College of Physicians and Surgeons of British Columbia website, accessed 28 February 2024.

Appendix C: List of submitters

This list of submitters includes only those individuals and organisations who consented to have their submissions published with their name. It does not include individuals and organisations who provided confidential submissions or asked to have their submission published without their name.

Submissions from individuals

Matthew Alexander

Murray Blythe

Hamish Curry

Meghan Dares

Catherina Doyle

Richard Freihaut

Rajitha Gunaratne

Kevin Ho

Matthew J Hope

Sharyn King

Nicole Leeks

Christopher Lim

Lisa Mills

Paul Miniter

Sheldon Moniz

Brianna Murphy

Jess Osan

Karen O'Sullivan

Jeff Peereboom

Nathaniel Preston

Pankaj Rao

Ian Reid

Rolf Scharfbilling

Matt Scott-Young

Ronald Sekel

David Shepherd

Rob Story

Thomas Vellios

Submissions from organisations

Australasian College of Podiatric Surgeons

Australian Medical Association

Australian Orthopaedic Foot and Ankle Society

Australian Podiatry Association

Peninsula Health – Orthopaedic Unit

Southern Adelaide Local Health Network – Department of Orthopaedics and Trauma

University of Western Australia

Western Australian Orthopaedic Foot & Ankle Society

Submissions from government bodies

Australian Commission on Safety and Quality in Health Care

NSW Health

NT Health

Safer Care Victoria

Independent review of the regulation of podiatric surgeons in Australia

Commissioned by the Podiatry Board of Australia and the Australian Health Practitioner Regulation Agency

Published: Melbourne, March 2024

Available to download from www.podiatryboard.gov.au

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We acknowledge the Traditional Owners of Country throughout Australia and their continuing connection to lands, waters and communities. We pay our respect to Aboriginal and Torres Strait Islander cultures and Elders past and present.