

Performing surgery on a patient against their will is a severe violation of Australian law. It crosses the line from medical negligence into **trespass to the person (battery)** and criminal **assault**.<sup>1</sup>

Because you specified "against their will" (implying the patient explicitly refused or did not consent, rather than just a failure to explain risks), this can attract **criminal penalties** in addition to civil lawsuits.

The penalties vary by state and the severity of the injury caused by the surgery.

**Disclaimer:** I am an AI, not a lawyer. The following is legal information, not advice. If this is a real-world situation, you should contact a criminal lawyer or the police immediately.

## 1. Criminal Penalties in Victoria

In Victoria, this conduct is prosecuted under the *Crimes Act 1958*. The specific charge depends on the severity of the physical harm caused by the surgery.

Offence	Legislation	Maximum Penalty
Common Assault	<i>Crimes Act 1958</i> s 23	5 years imprisonment (indictable)
Causing Injury Intentionally	<i>Crimes Act 1958</i> s 18	10 years imprisonment
Causing Serious Injury Recklessly	<i>Crimes Act 1958</i> s 17	15 years imprisonment
Causing Serious Injury Intentionally	<i>Crimes Act 1958</i> s 16	20 years imprisonment

- Note:** "Injury" includes physical harm (like a surgical incision). "Serious Injury" includes conduct that endangers life or causes substantial/protracted harm (e.g., removing an organ). If a surgeon knows a patient refused but operates anyway, this may be considered "intentional."

## 2. Criminal Penalties in New South Wales

In NSW, these offences are prosecuted under the *Crimes Act 1900*.<sup>2</sup>

Offence	Legislation	Maximum Penalty
Common Assault	<i>Crimes Act 1900</i> s 61	2 years imprisonment
Assault Occasioning Actual Bodily Harm	<i>Crimes Act 1900</i> s 59	5 years imprisonment
Reckless Grievous Bodily Harm	<i>Crimes Act 1900</i> s 35	10 years imprisonment
Grievous Bodily Harm with Intent	<i>Crimes Act 1900</i> s 33	25 years imprisonment

- **Note:** Surgery almost always causes "Actual Bodily Harm" (breaking the skin) or "Grievous Bodily Harm" (causing permanent disfigurement or serious injury). If done against a patient's will, the law views the surgical tools as weapons used to inflict these injuries unlawfully.

### 3. Civil Penalties (Both States)

Aside from jail time, the patient can sue the surgeon and the hospital for **Medical Battery** (Trespass to the Person).

- **Damages:** The court can award massive financial compensation for pain, suffering, medical costs, and loss of income.
- **Aggravated/Exemplary Damages:** Because the act was "against their will" (ignoring a refusal), courts in both Vic and NSW may award additional "punitive" damages to punish the surgeon for their arrogant or malicious conduct.

### 4. Professional Consequences

The surgeon would almost certainly face:

- **Deregistration:** Immediate suspension and permanent removal of their license to practice medicine by AHPRA (Australian Health Practitioner Regulation Agency).
- **Employment Termination:** Immediate firing by the hospital.

### Important Exception: Emergency Treatment

There is one major legal defense: Emergency Necessity.<sup>3</sup>

If a patient is unconscious or unable to consent, and the surgery is immediately necessary to save their life or prevent serious permanent damage, the law allows a doctor to operate

without consent.

- **However:** If a competent adult patient is conscious and explicitly says "No" (e.g., a Jehovah's Witness refusing a blood transfusion), the doctor **cannot** operate, even if the patient will die without it. Operating in that scenario constitutes assault.