

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**.¹

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*.²

Offence	Legislation	Maximum Penalty
Common Assault	<i>Crimes Act 1900 s 61</i>	2 years imprisonment
Assault Occasioning Actual Bodily Harm	<i>Crimes Act 1900 s 59</i>	5 years imprisonment
Reckless Grievous Bodily Harm	<i>Crimes Act 1900 s 35</i>	10 years imprisonment
Grievous Bodily Harm with Intent	<i>Crimes Act 1900 s 33</i>	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.³

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.