



Response template for submissions to the *Independent review of the regulation of medical practitioners who perform cosmetic surgery*

You are invited to have your say about the regulation of medical practitioners (doctors) who perform cosmetic surgery by making a submission to this independent review.

The consultation questions from the consultation paper are outlined below. Submissions can address some or all of these questions, and you can include any evidence or examples that you think are relevant.

Submissions can be emailed to:

Mr Andrew Brown, Independent Reviewer
marked '*Submission to the independent review on cosmetic surgery*' at CSReview@ahpra.gov.au.

The closing date for submissions is 5.00pm AEST 14 April 2022.

Your details

Name	██████████
Organisation (if applicable)	Avant Mutual
Email address	████████████████████

Your responses to the consultation questions

Codes and Guidelines

<p>1. Do the current <i>Guidelines for registered medical practitioners who perform cosmetic medical and surgical procedures</i> adequately address issues relevant to the current and expected future practice of cosmetic surgery and contribute to safe practice that is within a practitioner's scope, qualifications, training and experience?</p>
<p>The current Guidelines contain useful guidance on many aspects of cosmetic medical and surgical practice, for example the sections on patient assessment, responsibilities for patients under 18, consent and patient management.</p> <p>However, the sections on 'Training and experience' (section 8), 'Qualifications and titles' (section 9) and 'Facilities' (section 11) are not detailed.</p> <p>The effectiveness of the Guidelines is predicated on consumers having a level of awareness and understanding, for example to know what 'appropriate training, expertise, and experience to perform the procedure' would entail.</p> <p>The Guidelines do not give guidance to practitioners about the "necessary training" required before undertaking cosmetic medical and surgical procedures, nor about the standards required for facilities in which cosmetic procedures are performed.</p> <p>We note that the current Guidelines were issued almost 7 years ago and are due for review. To be relevant and effective, the Guidelines need to be reviewed regularly and updated as needed.</p> <p>Other aspects of the Guidelines that could be strengthened are outlined in answer to question 2.</p>
<p>2. What changes are necessary and why? What additional areas should the guidelines address to achieve the above purpose?</p>
<p>As noted in answer to question 1, there are three sections which could give more guidance:</p> <ol style="list-style-type: none"><p>1. Section 8 Training and experience</p><p>This section could outline the minimum skill requirement/standard required for a practitioner to be able to perform different cosmetic procedures. Avant supports AMC-accredited training, education and professional development programs and minimum standards for practitioners involved in cosmetic surgery practice.</p><p>Section 4.1 states information discussed with a patient must include "the medical practitioner's qualification and experience", but this does not address any lack of knowledge on the part of the patient or uncertainty regarding what qualifications and experience are.</p><p>Section 8.2 could be amended to refer to regulatory frameworks relevant to training and experience such as the "Registration Standard: Recency of practice", particularly the section regarding 'Requirements for medical practitioners who are changing their scope of practice'.</p><p>2. Section 9 Qualifications and titles</p><p>The requirements under the National Law regarding claims about qualifications and title, particularly the holding out provisions, can be confusing to practitioners. Reference could be made to Ahpra's Guidelines for advertising a regulated health service (specifically section 4.1.4) in this section.</p><p>3. Section 11 Facilities</p><p>This section notes that the Board expects practitioners to "be familiar with" the relevant legislation, regulations and standards of the jurisdiction. The Board should expect practitioners to comply (rather than simply be familiar) with these.</p>

The challenge for practitioners is that the legislation is not nationally consistent. Lack of consistency in state and territory legislation relating to private health facility licensing and prescribed cosmetic surgical procedures means that some jurisdictions have less stringent requirements. This leaves open the opportunity for patients and/or doctors to travel across borders to take advantage of more lenient regulatory environments.

We strongly support national consistency in the regulatory framework, and we support the performance of cosmetic surgical procedures in licensed facilities.

Changes to legislation are more difficult to achieve than changes to guidelines, so the Guidelines should be amended to include:

- Guidance on the types of facilities where procedures can be performed, including licensing and staffing requirements.
- A requirement that all anaesthesia, sedation and analgesia for cosmetic surgery should be provided in accordance with ANZCA guidelines and position statements, particularly PG09(G).

The Guidelines could also be strengthened by:

- Having a longer cooling off period (currently 7 days) for procedures on patients over 18 years of age (section 4).
- Incorporating information in the FAQs and Information Sheets regarding financial arrangements into the Guidelines (section 12). This would provide greater clarity and transparency for practitioners and patients. Alternatively, noting that the FAQs and Information Sheet may be intended to be more responsive and easily updated, this supporting information could be more clearly referred to on the Medical Board's website and in the patient resources.

3. Please provide any further comment in relation to the use of codes and guidelines relevant to the practice of cosmetic surgery.

The use of codes and guidelines and their effect would be strengthened by nationally consistent legislation regarding cosmetic surgery. The Guidelines, and any accompanying codes and resources, could be used to enhance practitioners' understanding of their obligations and also educate and protect patients.

There should be greater awareness of and adherence to the Guidelines, in particular in relation to the existing provisions regarding the requirements for:

- independent psychological evaluation and counselling for patients before major procedures if there are indications that the patient has significant underlying psychological problems which may make them an unsuitable candidate for the procedure (section 2.4);
- the consent discussion with the patient (section 4.1);
- the treating practitioner's involvement in post-procedure care (section 5);
- the medical practitioner to be responsible for those they are supervising or asking to assist in the care of the patient (section 6).

It is also important that the Guidelines are disseminated and promoted continually or at regular intervals to address any persistent lack of awareness.

Ahpra's [webpage for cosmetic surgery and procedures](#) is a good resource for patients and could be more widely promoted. This could be part of a broader public education and information campaign. The Guidelines could require practitioners to direct patients to this resource, or other nationally consistent patient resources. The resource page should also refer to the Guidelines to increase patient awareness of the requirements for practitioners.

However, we see that the role of the codes and guidelines is to set out the expectations of and for the profession and while these can be referred to in patient materials, they should not be used as the main source of communication with patients about cosmetic surgery. See our responses below to questions 26 onwards regarding “Information to consumers”.

Management of notifications

4. Having regard to Ahpra and the Medical Board’s powers and remit, what changes do you consider are necessary to the approach of Ahpra and the Medical Board in managing cosmetic surgery notifications, including their risk assessment process, and why?

Notifications about practitioners performing cosmetic procedures are managed in the same way as notifications about other practitioners. Avant supports a risk-based approach to managing concerns raised about practitioners and protecting patients from harm. This needs to be balanced with the inherent stress created for practitioners who are the subject of a notification.

Lack of timeliness in the notifications process remains an issue. This can have a negative impact on practitioners and their patients. With a continuing increase in complaints numbers, it is not clear to us that Ahpra and the Boards currently have sufficient resources to fulfil the objectives outlined in the National Law, and this includes managing all notifications, not only those regarding cosmetic surgery. Resources should be targeted to managing the highest risk matters.

Any complaints-based process is necessarily reactive but the challenges regarding the cosmetic surgery industry are much broader than regulating the conduct of individual practitioners. Many practitioners provide appropriate care to patients who are satisfied with the outcomes. Any isolated improvement in how notifications are managed in the absence of other system-wide changes is unlikely to result in the change that is needed.

5. Please provide any further relevant comment in relation to the management of notifications about medical practitioners involved in cosmetic surgery.

Advertising restrictions

6. Is Ahpra and the Medical Board's current approach to regulating advertising in cosmetic surgery sufficient?

To some degree, yes. However, overall the advertising requirements for medical practitioners are confusing, and are of variable effectiveness in regulating practitioners' conduct.

Advertising of cosmetic surgery is subject to the same regulation as all other areas of practice. Based on our experience we understand that cosmetic practice is very competitive and therefore, there is greater use of and reliance on advertising. Patients considering cosmetic procedures will rely on a range of information but will be most influenced by online advertising and social media. Any regulation of advertising must be considered in this context and needs to be flexible and responsive to the rapid changes of the online and social media environment in which advertising is taking place.

Avant supports Ahpra's current regulatory approach to advertising, particularly the 'check and correct' focus to encourage advertisers to be aware of their obligations and educate themselves and ensure compliance. However, monitoring and regulating advertising, in this industry where advertising has a significant influence on patients, requires substantial resources. Thus, while the Ahpra advertising guidelines and approach are generally reasonable, Ahpra needs to be adequately resourced to properly monitor and regulate advertising.

There is persistent misunderstanding or lack of awareness from practitioners and practices that they are obliged to comply with advertising obligations contained in the National Law and that there are statutory offences for which they can be prosecuted.

The main sources of advertising obligations with which we assist members are:

1. Section 133 of the National Law which prohibits, among other things, misleading and deceptive conduct in advertising health services and the use of testimonials.
2. Sections 113 to 119 of the National Law which contain the title protections and prohibit practitioners from claiming they have specialist qualifications when they do not.
3. The Australian Consumer Law which, among other things, prevents misleading and deceptive conduct.

In our experience many practitioners are not aware that they must comply with the Australian Consumer Law as well as the National Law, particularly in the area of cosmetic surgery. See further our response to question 7.

7. What should be improved and why and how?

As cosmetic surgery is essentially a commercial rather than a therapeutic product, one option is for the Australian Competition and Consumer Commission (ACCC) to regulate advertising in this industry.

Practitioners in this area would benefit from greater understanding of their advertising obligations, particularly that the provisions of the Australian Consumer Law apply to them, including for example that practitioners must take care not to mislead patients relating to fees, procedures or outcomes.

For example:

1. The ACCC has published resources specifically for medical professionals setting out practitioners' obligations in this area. There are opportunities for greater cooperation between the ACCC and Ahpra to raise awareness of the broader obligations on practitioners and practices under the *Competition and Consumer Act 2010* and Australian Consumer Law. That resource page states that it was developed in response to feedback confirming a demand for this sort of information. While Ahpra's Advertising Guidelines currently refer to other regulators in section 2.2 and Appendix 3, there could be a more explicit reference to the ACCC's resources in the document itself or in the resources on Ahpra's Advertising Hub.

2. The Guidelines regarding cosmetic procedures and the Advertising Guidelines both make reference to the title protection provisions (sections 113-119) of the National Law under which there are offences for practitioners holding themselves out as having a title or qualifications that they do not have. The Guidelines go some way to explaining the nuances of the area but there remains a lack of understanding and confusion amongst practitioners as to how their legislative and professional obligations intersect. More clarity and awareness are needed in this regard.

See also our response to question 9.

8. Do the current [Guidelines for advertising a regulated health service](#) adequately address risks in relation to advertising of cosmetic surgery, or is a more specific regulatory response required?

The updated version of the 'Guidelines for advertising a regulated health service' released in December 2020, and the accompanying resources on Ahpra's Advertising Hub, go some way to providing greater clarity for practitioners when advertising their services. These would need to be reviewed again following a decision on whether the prohibition on testimonials will be removed from the National Law in the tranche two amendments.

Allowing testimonials is likely to have a significant impact on advertising in this area, given the key role of advertising in this industry. Education about what an appropriate and legal testimonial is (according to Australian Consumer Law) should be included in revised Guidelines.

9. Does the promotion of cosmetic surgery via social media raise any issues that are not adequately addressed by the advertising guidelines, or that require any specific regulatory response?

The promotion of cosmetic procedures via social media presents challenges for regulation. While section 133 of the National Law and Ahpra's 'Guidelines for advertising a regulated health service' ("the Advertising Guidelines") set out the expectations, the widespread use of social media platforms to promote cosmetic surgery present challenges for regulation and enforcement, given the lack of resourcing to meet this level of use.

It is anticipated that the use of social media for advertising in all areas of practice, including cosmetic practice, will continue to increase. This can and should be done safely with regard to the professional obligations of practitioners and the best interests of patients and prospective patients. There have been some changes by the platforms themselves in how they monitor and respond to any concerns regarding content.

The current version of the Advertising Guidelines and its definition of advertising makes it clear that the advertising restrictions of section 133 of the National Law apply to practitioners' advertising on social media. What is less clear is how third-party websites are viewed, especially those that practitioners can interact with or have some involvement in. The decision regarding testimonials in tranche two of the National Law reforms will impact on this area.

Given the persistent lack of clarity and the prevalent use of social media, greater guidance with examples and further resources for practitioners would assist, to supplement the legislative provisions and the existing Advertising Guidelines. Ahpra's Advertising Hub goes some way to addressing this but it is unclear whether practitioners are aware of these resources and readily refer to them to ensure their advertising is compliant. Social media itself could be used as a medium to increase awareness.

10. Please provide any further relevant comment in relation to the regulation of advertising.

The regulation of advertising must be done in conjunction with regulation of other professional obligations and in a nationally consistent manner. Ahpra needs to be properly resourced to educate practitioners and monitor compliance. Guidelines and accompanying resources need to be regularly reviewed and updated as needed to ensure they address current practices given the rapid changes particularly online. This is especially applicable to regulation of advertising using social media platforms.

More broadly in relation to advertising, in our experience, many practitioners continue to be concerned about how the prohibition on testimonials applies in the context of websites over which

they have no control, and in the context of responding to negative online comments particularly where the comment raises clinical issues, when they have limited scope to address these negative comments on third-party websites.

Title protection and endorsement for approved areas of practice

11. To what extent would establishing an endorsement in relation to the practice of cosmetic surgery address relevant issues of concern in the sector (including patient safety issues)?

Avant does not have a preference between endorsement or title protection for cosmetic surgery practice. Whichever model is adopted, we believe it should be underpinned by AMC-accredited training, education and professional development programs and minimum standards for practitioners involved in this area of practice. The AMC and the Medical Board of Australia are best placed to determine this.

However, we believe that addressing the issue of title protection or endorsement alone will not change the risk landscape significantly. Economic factors are likely to continue to drive consumers to seek out lower cost providers, either in Australia or overseas. Regulatory change and consumer education and safeguards are key to addressing this. The consequence if left unchanged is the ongoing and potential increasing cost of revision surgery to the public health system and dissatisfaction on the part of patients.

Regulating the conduct of cosmetic surgery in licensed facilities, including requirements for anaesthesia, is important to ensure quality of care and enhance patient safety.

12. Would establishing an endorsement in relation to cosmetic surgery provide more clarity about the specific skills and qualifications of practitioners holding the endorsement?

While Avant does not have a preference between title protection or establishing an endorsement, it would provide more clarity if there were an endorsement that is underpinned by AMC-accredited training, education and professional development programs for practitioners involved in cosmetic surgery.

13. What programs of study (existing or new) would provide appropriate qualifications?

It is up to the Medical Board of Australia and the AMC to determine the minimum skills, training and standards required for, and the nature of the procedures that fall within the scope of, cosmetic surgery practice.

14. Please provide any further relevant comment in relation to specialist title protection and endorsement for approved areas of practice relevant to cosmetic surgery.

Avant's view is that while the use of 'surgeon' is causing confusion, the title 'surgeon' is too broad and if protected will have impacts on other specialities within the medical profession.

Another option for consideration is protecting the title 'specialist cosmetic surgeon', which would be consistent with the current model for other specialty title protection under the National Law. This should be accompanied by minimum standards accredited by the AMC for training and scope of practice.

However, as noted above, we also believe that addressing this issue alone will not change the risk landscape significantly. Economic factors are likely to continue to drive consumers to seek out lower cost providers, either in Australia or overseas. Regulatory change and consumer education and safeguards are key to addressing this. The consequence if left unchanged is the ongoing and potential increasing cost of revision surgery to the public health system and dissatisfaction on the part of patients.

Cooperation with other regulators

15. Are there barriers to effective information flow and referral of matters between Ahpra and the Medical Board and other regulators?
<p>In our experience, information is shared between the Medical Board/Ahpra and other agencies, and information sharing between regulators and agencies is increasing.</p> <p>Avant is concerned where there is duplication of processes and longer timeframes involved because of the involvement of multiple regulators, or a lack of clarity around which regulator is involved in which process.</p> <p>Sometimes there can be significant delays in regulators dealing with matters arising out of the same incident. For example there may be a coronial inquiry and a finding that a practitioner be referred to Ahpra, then delay in Ahpra completing the investigation.</p> <p>We are also concerned to ensure that information passing between Ahpra and other agencies (including local law enforcement and health complaints agencies) is provided to practitioners – especially those proceeding through the disciplinary or compliance process – in a timely and comprehensive manner.</p>
16. If yes, what are the barriers, and what could be improved?
17. Do roles and responsibilities require clarification?
<p>It is often unclear to practitioners why more than one regulator might be dealing with a matter. Clarity about roles and responsibilities of different regulators would assist.</p>
18. Please provide any further relevant comment about cooperating with other regulators.

Facilitating mandatory and voluntary notifications

19. Do the Medical Board's current mandatory notifications guidelines adequately explain the mandatory reporting obligations?
<p>Avant supports the Medical Board's current guidelines for mandatory notifications. The use of flowcharts and tables (particularly the factors to help assess the severity and likelihood of a risk), are helpful tools for practitioners to assist them decide whether conduct requires a notification.</p> <p>If Ahpra believes that there is scope to improve the guidelines and clarify practitioners' obligations, then supplementary material could be added to the Medical Board's website.</p> <p>The guidelines include six examples of conduct that may constitute a significant departure from accepted professional standards. The examples are general in nature and involve medication</p>

errors. Avant is supportive of more material that seeks to clarify when a practitioner may have an obligation to report a significant departure from professional standards, including in the context of cosmetic surgery procedures, practices and outcomes.

In explaining 'accepted professional standards', the guidelines reference 'documents like the code of conduct and guidelines'. It may not be clear that a departure from the standards set in other documents are also relevant. The sources of 'accepted professional standards' could be made clearer in the guidelines or supplementary material.

20. Are there things that prevent health practitioners from making notifications? If so, what?

There are barriers to all health practitioners making notifications and these exist across all specialities and professions, not only health practitioners involved in cosmetic surgeries.

These include:

- Lack of clarity as to what constitutes accepted professional standards and a significant departure from those standards.
- Lack of understanding about mandatory notification obligations and the process, including what occurs with the notification after the notifier makes it and how much information (including the identity of the notifier) will be made apparent to the practitioner/health facility.
- Fear that reporting colleagues including supervisors and people in the same team, may have an impact on the health practitioner's job and working relationships.

21. What could be improved to enhance the reporting of safety concerns in the cosmetic surgery sector?

Most mandatory notifications to Ahpra relate to a significant departure from professional standard (Ahpra's Annual Report 2021). However, Avant's own [research](#) conducted in 2020 shows a lower level of understanding of reporting a departure from professional standards (compared with other notifiable conduct). Ahpra took regulatory action in just over 30% of mandatory notifications, which suggests that there is a level of reporting that is not necessary and that further education and clarification in this area would be useful.

22. Please provide any further relevant comment about facilitating notifications

Mandatory notifications are made after notifiable conduct has occurred and the public is at a risk of harm. The focus should be on preventing harm in the first place. This should be done through system-wide changes involving multiple parties at the regulatory, legislative and industry levels.

Information to consumers

23. Do the Medical Board's current codes and guidelines adequately describe the obligations of practitioners who perform cosmetic surgery to provide sufficient information to consumers and obtain informed consent?

The information regarding consent in both the Code of Conduct (section 4.5) and the Cosmetic Guidelines (section 4) clearly sets out the obligations on practitioners. There could be a greater awareness of and adherence to these requirements by practitioners.

24. If not, what improvements could be made?

Practitioners and consumers would benefit from an information and education campaign. Social media itself could be used as a medium to increase awareness, given the prevalence of social media activity in this space.

We consider that practitioners and consumers/patients would benefit from consistent information. This could be provided in nationally consistent information sheets provided to patients before undertaking cosmetic procedures.

Ahpra's [webpage for cosmetic surgery and procedures](#) could be a starting point for this information. It is a good resource for patients and should be more widely promoted. This could be part of a broader public education and information campaign.

Our view is that patients considering cosmetic procedures will rely on a range of information but will be most influenced by advertising and online and social media. It is unclear whether consumers themselves are aware of and refer to current codes and guidelines.

The Guidelines could require practitioners to direct patients to Ahpra's webpage resources, or other nationally consistent patient resources. The resource page should also refer to the Guidelines to increase patient awareness of the requirements for practitioners. However, we see that the role of the codes and guidelines is to set out the expectations of and for the profession and while these can be referred to in patient materials, they should not be used as the main source of communication with patients about cosmetic surgery. See our responses below to questions 26 onwards regarding "Information to consumers".

25. Should codes or guidelines include a requirement for practitioners to explain to patients how to make a complaint if dissatisfied?

The Cosmetic Guidelines (section 4.1, last bullet point) already include a requirement for practitioners to explain and provide written information to patients about "the complaints process and how to access it".

The focus should be on preventing harm in the first place. This should be done through system-wide changes involving multiple parties at the regulatory, legislative and industry levels.

26. In the context of cosmetic surgery, does the Ahpra website and public register of practitioners provide sufficient information about medical practitioners to inform consumer choices?

Yes.

However, patients considering cosmetic procedures will rely on a range of information but will be most influenced by advertising and online and social media. Patients or potential patients may not routinely consult the public register of practitioners, but the information on the register allows the public, as well as others, to check if a practitioner is qualified and fit to practise in a competent and professional manner.

27. If not, what more could/should Ahpra and the Medical Board do to inform consumer choices?

28. Is the notification and complaints process understood by consumers?

29. If not, what more could/should Ahpra and the Medical Board do to improve consumer understanding?
30. Please provide any further relevant comment about the provision of information to consumers.
Increasing awareness through a public education campaign is important and we support this. Any public information campaign should be accompanied by a nationally consistent legislative and regulatory framework for cosmetic surgery, AMC-accredited standards for training, education and professional development and enhancements to the Medical Board's cosmetic guidelines.

Further comment or suggestions

31. If you have any further comment relevant to Ahpra's and the Medical Board's regulation of cosmetic surgery including and/or suggestions for enhancements not mentioned in response to the above questions, please provide it here.
<p>We agree that there needs to be better regulation in the area of cosmetic medical and surgical treatment. There are challenges across the cosmetic surgery industry that remain, despite reviews and regulatory and legislative changes that have taken place over the last two decades.</p> <p>Not all practitioners in this industry are practising in a way that causes harm to patients. Many practitioners provide appropriate care to patients who are satisfied with the outcomes.</p> <p>While the content and awareness of guidelines could be improved, solving the problems requires a system-wide approach and should be done on a national basis. It is broader than regulating the conduct of individual practitioners.</p> <p>Multiple levels are involved: regulators, state and territory governments, the federal government, the cosmetic surgery industry, the medical profession and healthcare system, and society generally.</p> <p>Legislation regulating the conduct of cosmetic surgery should be reviewed and should be nationally consistent.</p> <p>Broader societal issues relevant to the operation of the cosmetic surgery industry, including body image and the role of advertising and online and social media in driving patient demand and choice, should also be addressed.</p> <p>Avant would welcome the opportunity to comment on any revised versions of the guidelines and any communications to or material for practitioners.</p>

About Avant

Avant is Australia's largest medical defence organisation, providing professional indemnity insurance and legal advice and assistance to more than 78,000 healthcare practitioners and students around Australia. Avant provides assistance and advice to members involved with complaints and notifications to Ahpra and

the Medical Board of Australia, as well as to regulators in the co-regulatory jurisdictions, and to Health Complaints Entities (HCEs). Avant provides insurance to medical practitioners and practices involved in cosmetic medical and surgical practice.