



Consultation paper

**Independent review
of the regulation of
health practitioners
in cosmetic surgery**

March 2022

**Commissioned by the Australian Health Practitioner
Regulation Agency (Ahpra) and the Medical Board of Australia**

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Overview

The purpose of this public consultation paper is to seek views and information from a range of stakeholders in relation to the Australian Health Practitioner Regulation Agency's (Ahpra) and the Medical Board of Australia's (the Medical Board) regulation of medical practitioners who perform cosmetic surgery in Australia.

This public consultation paper is part of an independent review commissioned by Ahpra and the Medical Board, which commenced in January 2022. It is a preliminary step in the review process and one of the ways to identify and understand issues relevant to the regulation of the cosmetic surgery sector.

The Medical Board in its [Guidelines for registered medical practitioners who perform cosmetic medical and surgical procedures](#) defines cosmetic surgery as operations which involve cutting beneath the skin to 'revise or change the appearance, colour, texture, structure or position of normal bodily features with the dominant purpose of achieving what the patient perceives to be a more desirable appearance or boosting the patient's self-esteem.'

This paper provides information about how to make a submission and a brief background in relation to cosmetic surgery in Australia. The paper also references media concerns that have been raised about the sector, outlines the general role of Ahpra and the Medical Board in the regulation of registered health practitioners and discusses the broader regulatory landscape of which Ahpra and the Medical Board are just one part.

The paper then identifies seven key areas of responsibility that Ahpra and the Medical Board potentially have in relation to regulating medical practitioners undertaking cosmetic surgery. It provides a brief explanation of the powers available to Ahpra and the Medical Board in these areas and asks a number of questions for each area of responsibility.

The paper also refers to a [survey](#) that is available for completion by consumers (or potential consumers) of cosmetic surgery.

The Review

[Announced on 30 November 2021](#), the independent review has been commissioned by Ahpra and the Medical Board. Within the context of the specific functions and responsibilities of Ahpra and the Medical Board, the review will include:

- examining patient safety issues in the cosmetic surgery sector, including how to strengthen risk-based regulation of practitioners in that sector
- ensuring the regulatory approach of Ahpra and the Medical Board keeps pace with changes in that sector
- making recommendations about actions that will better protect the public.

The Terms of Reference for the review are available on the [Ahpra website](#).

The review is being undertaken independently of Ahpra and the Medical Board, by Mr Andrew Brown.

Mr Brown has had 30 years' experience in the public sector, primarily in legal services, regulatory oversight and complaints management. He has extensive experience in public administration and designing and implementing effective and efficient regulatory and complaints management processes and is the former Health Ombudsman of Queensland.

Mr Brown is working with an expert panel that includes:

- Mr Alan Kirkland, CEO, CHOICE
- Conjoint Professor Anne Duggan, Chief Medical Officer, Australian Commission on Safety and Quality in Health Care, and
- Ms Richelle McCausland, National Health Practitioner Ombudsman.

How to make a submission

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

Submissions are now being sought from the public, health practitioners and organisations. The reviewer and panel want to hear from all stakeholders, including people who have had cosmetic surgery, consumer representative groups, health practitioners who have practised in the area of cosmetic surgery, professional bodies and agencies who operate within the broader regulatory framework. Information, experiences and ideas gained through this consultation process will be important to the review.

The closing date for submissions is 5:00pm AEST, 14 April 2022.

The review will report on its findings to Ahpra and the Medical Board by mid-2022.

Consultation questions and online consumer survey

Consultation questions

Specific consultation questions are included throughout the consultation paper and listed in full at Appendix 1.

Submissions can address some or all of these questions, and you can include any evidence or examples that you think are relevant.

Consumer survey

There is an online survey specifically for consumers, including those who have had cosmetic surgery or who may consider having a procedure. Members of the community are encouraged to participate. The consumer survey is anonymous and available at this [link](#). It should be noted that the survey is not an avenue for making a complaint about a practitioner (please see below for information about how to make a complaint).

Alternatively, consumers or potential consumers are welcome to answer the consultation questions in this paper and submit via the options below.

Submission address

You can submit your submission electronically to:

Mr Andrew Brown
Independent Reviewer
CSReview@ahpra.gov.au

If you are unable to provide your submission via email, please send your written submission to:

Mr Andrew Brown
Independent Reviewer
Independent review of the regulation of health practitioners in cosmetic surgery
c/o Ahpra
GPO Box 9958
Melbourne VIC 3001

Do you have a concern about a registered health practitioner providing cosmetic surgery or cosmetic procedures?

The independent review will examine Ahpra and the Medical Board's process for managing notifications (complaints)¹, however, it is not the role of the review to receive or consider new complaints or concerns that may be raised about a health practitioner.

Anyone with concerns about the care they have received from a registered health practitioner is encouraged to report this to Ahpra so the concerns can be considered. You can call 1300 419 495 or [lodge a notification online](#) via the Ahpra website.

In New South Wales concerns are managed by the [Health Care Complaints Commission](#) (HCCC) and/or the [Health Professional Councils Authority](#) and the 15 health professional councils. In Queensland, complaints are lodged to the [Office of the Health Ombudsman](#). Complaints in these states should be directed to these agencies.

Ahpra can also consider complaints about whether advertising of cosmetic surgery breaches the advertising requirements of the Health Practitioner Regulation National Law, as in force in each state and territory (the National Law).

Public safety is the number one priority for Ahpra and the National Boards, and all notifications and complaints are taken seriously.

Although the independent review cannot action complaints or concerns raised about specific practitioners, the independent review may provide identifying information it receives to the relevant authorities where a serious threat to the life, health or safety of any individual or to public safety has been raised.

Confidentiality and publication of submissions

At the end of the consultation period, submissions (other than those made in confidence) will be published on the Ahpra website to encourage discussion and inform the community and stakeholders.

The review will accept submissions made in confidence. These submissions will not be published on the website or elsewhere. Submissions may be confidential because they include personal experiences or other sensitive information. Any request for access to a confidential submission will be determined in accordance with the *Freedom of Information Act 1982 (Cth)*, which has provisions designed to protect personal information and information given in confidence. **Please let us know if you do not want us to publish your submission or want us to treat all or part of it as confidential.**

We will not place on the website, or make available to the public, submissions that contain offensive or defamatory comments or which are outside the scope of the subject of the consultation. Before publication, we may remove identifying information from submissions, including contact details.

The views expressed in the submissions are those of the individuals or organisations who submit them, and their publication does not imply any acceptance of, or agreement with, these views by the review.

Published submissions will include the names of the individuals and/or the organisations that made the submission, unless confidentiality is requested. If you do not wish for your name and/or organisation's name to be published, please use the words '**Confidential submission**' in the subject title when emailing your submission.

The Independent Reviewer and Expert Panel is being supported by a small project team within Ahpra. Individual submissions will only be accessible to the reviewer, Expert Panel and the project team supporting the review. However, if you do not wish your confidential submission to be accessible to the Ahpra project team, it can be sent to the independent office of the National Health Practitioner Ombudsman, at cosmeticsurgeryreview@nhpo.gov.au. The National Health Practitioner Ombudsman will provide these submissions directly to the reviewer and Expert Panel.

¹ When someone raises a complaint or concern with Ahpra, this is referred to as a '[notification](#)'. The terms 'notification', 'complaint' and 'concern' are all used in this paper.

Where to go for help

Discussions about cosmetic surgery procedures, including regulation of this sector, may be distressing for some individuals and families.

Support is available:

Beyond Blue: 1300 224 636

Lifeline: 131114

Registered health practitioners can access help and support through independent health advisory and support services:

- Medical practitioners www.drs4drs.com.au
- Nurses and midwives www.nmsupport.org.au
- Dental practitioners www.dpsupport.org.au

Health Ministers' review: 'Use of the title 'surgeon' by medical practitioners in the Health Practitioner Regulation National Law'

This independent review is separate from the national public consultation by Health Ministers about use of the title 'surgeon' by medical practitioners. The public consultation material, including FAQs, for the Health Ministers' review are available on the [Engage Victoria website](#). Submissions to that review are being accepted until 1 April 2022.

Note regarding stakeholder terminology

This consultation paper uses several terms interchangeably when referring to people who have received, are considering receiving, or know someone who has received, cosmetic surgery. For example, the terms 'patient', 'consumer', 'member of the public' and 'community member' are all used, depending on the context and how people may identify. Submissions from all stakeholders are welcome.

Independent review of the regulation of health practitioners in cosmetic surgery

Background

The Medical Board has defined 'cosmetic medical and surgical procedures' as operations and other procedures that 'revise or change the appearance, colour, texture, structure or position of normal bodily features with the dominant purpose of achieving what the patient perceives to be a more desirable appearance or boosting the patient's self-esteem.' 'Cosmetic surgery', which is the focus of this review, refers to operations that involve cutting beneath the skin. Examples include breast implants, abdominoplasty (tummy tuck), rhinoplasty (nose surgery), surgical face lifts and liposuction.²

Cosmetic surgery is different from most other surgery and medical procedures for a number of reasons. One of the key differences is that it is purely elective, with the consumer choosing to have surgery (sometimes major surgery) without any clinical or medical need.³

The consumer initiates a request for cosmetic surgery, often directly to the medical practitioner who will be providing the procedure. General practitioners (GPs) ordinarily play a central role in coordinating care and referral. However, with cosmetic surgery, no GP involvement or referral is required. The consumer often decides the specific procedure they want before choosing the doctor, in contrast to other areas of medicine where the doctor may recommend a procedure as part of a doctor-patient consultation.⁴

Unlike most other surgical procedures, the consumer pays the entire cost of cosmetic procedures, including the doctor's fees, hospital/clinic costs and, in most cases, post-operative care. Procedures are not covered by Medicare or private health insurance and cosmetic surgery cannot be performed in a public hospital.⁵ An exception is when there are complications or emergencies arising from cosmetic surgery, and a patient is admitted to a public hospital for treatment and/or revision surgery. These costs are borne by the public health system.⁶

The fact that the consumer is generally required to pay for cosmetic surgery has also created a market for financing products, including personal loans and buy-now-pay-later products.

Cosmetic surgery has become commercialised in a different way from most other medical services. Medical practitioners market and advertise their services, and themselves, directly to the consumer in a competitive, commercial market. This has led to new entrepreneurial, corporate business models emerging.⁷

The size of the cosmetic surgery sector in Australia is significant but difficult to accurately quantify for a range of reasons. As it is not covered by Medicare or private health insurance, funding data is not available and there is no central reporting of procedures. There are also a range of medical practitioners providing cosmetic surgery, including across several specialties and registration types,⁸ using a variety of titles and with varying levels of training and qualifications. These factors make it challenging for governments and regulators to accurately know the full size of the cosmetic surgery workforce.

Recent media reporting arising from an investigation by the Sydney Morning Herald, The Age and ABC's Four Corners program has focused attention on the alleged practices of a small number of specific medical practitioners working within the cosmetic surgery sector. These reports raised concerns about such issues as serious hygiene breaches, patient safety issues, poor patient care, unsatisfactory surgical

2 Medical Board of Australia, '[Guidelines for medical practitioners who provide cosmetic medical and surgical procedures](#)', Medical Board, 2016, accessed 11 February 2022.

3 While cosmetic surgery is undertaken when there is no clinical need, it should be noted that some surgical procedures within this class may be medically indicated and thus eligible for a Medicare rebate, for example, breast reduction and functional rhinoplasty (septoplasty). It should also be noted that reconstructive surgery differs from cosmetic surgery as, while it incorporates aesthetic techniques, it restores form and function as well as normality of appearance. Surgery done only for reconstructive purposes is not considered cosmetic surgery.

4 E Swanson, 'The Commercialization of Plastic Surgery', *Aesthetic Surgery Journal*, 2013, 33(7):1065–1068, <https://doi.org/10.1177/1090820X13500049>

5 See above.

6 Parliament of New South Wales, Committee on the Health Care Complaints Commission, 2018, '*Cosmetic Health Service Complaints in New South Wales*', Report 4/56, 86–87.

7 Swanson, 'The Commercialization of Plastic Surgery'; R Thiele, 'Ethical practice in plastic surgery', *Australasian Journal of Plastic Surgery*, 2019, 2(1):5–7, <https://doi.org/10.34239/ajops.v2i1.145>.

8 Under the National Law, National Boards can grant a number of different [types of registration](#) to an eligible practitioner. These include general, specialist, limited, provisional, non-practising and student registration.

outcomes and aggressive and inappropriate marketing techniques with a heavy reliance on social media.

While the reporting has highlighted issues in relation to the practice of a small number of medical practitioners, it also poses further questions and concerns about the broader cosmetic surgery sector that require attention including:

- differing standards of education, training and experience of medical practitioners who perform cosmetic surgery
- confusion for consumers about the titles that are used by medical practitioners (including cosmetic surgeon) and their scope of practice
- potential underreporting of safety issues in the sector
- the complex regulatory framework which exists between various state and national regulators and its overall responsiveness
- the role of social media and marketing tactics and their impact on patient choices.

In light of significant patient safety concerns that have been raised, Ahpra and the Medical Board commissioned this independent review.

Ahpra is involved in the regulation of [registered](#) health practitioners. The Medical Board regulates only registered medical practitioners. It should be noted therefore, that the scope of this review is limited to the regulation of registered medical practitioners. Further, as it was considered by Ahpra and the Medical Board that cosmetic surgical procedures pose the greatest risk, the review will focus on cosmetic surgery (as defined above) rather than all forms of cosmetic procedures.⁹

It is acknowledged there is a vast array of cosmetic procedures and treatments being undertaken in the community by a range of registered practitioners (including, for example, dentists and registered and enrolled nurses) and unregistered providers. Although not the focus of this review, it is noted that learnings from the review may have broader relevance and will be shared with the National Boards that regulate those professions. This review may also provide a foundation for more work to be undertaken in the cosmetic treatments space in relation to other health professions.

Finally, as will be discussed in more detail below, while Ahpra and the Medical Board have a critical role to play in the regulation of individual practitioners in the context of cosmetic surgery, they are part of a much broader regulatory system. Ahpra and the Medical Board's mandate and powers under the National Law are not limitless and other national and state-based agencies have important responsibilities in this space.

⁹ Some examples of cosmetic procedures not within the scope of this review include cosmetic injections (Botox, dermal fillers), laser skin treatments, dermabrasion and cryolipolysis (fat freezing).

The role of Ahpra and the Medical Board

Ahpra and the Medical Board are part of the National Registration and Accreditation Scheme (the National Scheme) which regulates health practitioners in 16 health professions. Ahpra works in partnership with the [15 National Boards](#). Specific roles, powers and responsibilities are set out in the National Law.

Ahpra has five core regulatory roles and these relate to:

1. Professional standards – providing policy advice to the National Boards.
2. Registration – managing registration and renewal processes to ensure only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered. This includes keeping a public national register.
3. Notifications – managing complaints and concerns raised about the health, performance and conduct of individual health practitioners on behalf of Boards (except where there are different arrangements in New South Wales and Queensland).¹⁰
4. Compliance – monitoring and auditing practitioners' compliance with Board requirements.
5. Accreditation – working with accreditation authorities and committees.

The role of the Medical Board is to:

- register medical practitioners and medical students
- develop standards, codes and guidelines for the medical profession (which apply in all states and territories)
- investigate notifications and complaints about medical practitioners
- where necessary, conduct panel hearings and refer serious matters to Tribunal hearings
- oversee the assessment of overseas trained practitioners who wish to practise in Australia
- approve accreditation standards and accredited courses of study.

As at December 2021, there were 132,368 registered medical practitioners in Australia (including those registered on the pandemic sub-register). Over 78,000 doctors have specialist registration across 23 specialties (some doctors have more than one specialty or field of specialty practice). There are 6,458 doctors with specialist registration in the specialty of surgery, including 523 specialist plastic surgeons. More information about the numbers of registered medical practitioners is available on the Medical Board's [Statistics page](#). These statistics do not include data about medical practitioners who use the title 'cosmetic surgeon.'

In New South Wales and Queensland, there are different arrangements in place for managing notifications and complaints about registered health practitioners in these states. In New South Wales, they are managed by the Health Care Complaints Commission (HCCC) and/or the Health Professional Councils Authority and the 15 health professional councils. In Queensland, they are managed by the Office of the Health Ombudsman (with the majority of notifications referred to Ahpra and the Boards following joint consideration).

Despite some difference in notification and complaint handling arrangements in some states, the standards, codes and guidelines issued by the Medical Board apply to medical practitioners nationally and underpin a national approach. Offences established under the National Law, including complaints about health practitioner advertising, are managed by Ahpra for all states and territories. Concerns about health systems or health service organisations are managed by health complaints organisations (also known as health complaints entities) in each state and territory.

There is more information about the management of notifications and complaints on the [Ahpra website](#).

¹⁰ As well as managing concerns about the conduct of registered health practitioners, Ahpra can also investigate and, where appropriate, prosecute some criminal offences, such as unlawful use of protected titles and unlawful advertising.

How is cosmetic surgery regulated in Australia?

Ahpra and the Medical Board are one part of a complex and multi-jurisdictional system that regulates cosmetic surgery in Australia. Some aspects of regulation in this space are national, while others are state and territory based.

Each regulator plays a different and important role in overseeing elements of the cosmetic surgery sector and protecting people from harm.

Regulation of individual health practitioners, including cosmetic surgeons

Ahpra and the Medical Board regulate individual medical practitioners registered under the National Registration and Accreditation Scheme.¹¹ Their roles include responding to complaints or concerns that indicate a registered health practitioner is behaving in unsafe or unprofessional ways.¹² The Medical Board has also issued a code of conduct and guidelines which set out expectations and standards for good practice that individual complaints and concerns are measured against.

'Protection of the public' is the paramount consideration¹³ when managing complaints and deciding the appropriate regulatory or disciplinary action to take. The role of Ahpra and the Medical Board is protective, not punitive or compensatory, which means it is outside their mandate to order compensation or other rectification.¹⁴

Each state and territory has an independent health complaints entity with powers to investigate complaints about health services and health professionals, which may include cosmetic surgery and cosmetic surgeons. Some health complaints entities may also use complaint resolution options which may include voluntary and informal dispute resolution processes and conciliation, which can work to achieve acceptable outcomes for all parties.¹⁵ The extent to which health complaints entities can receive complaints relating to cosmetic surgery and procedures may vary according to the legislation in each jurisdiction.¹⁶

Ahpra and the Medical Board work with health complaints entities to ensure the appropriate organisation deals with a concern about a registered medical practitioner through a legislated joint consideration process.¹⁷

State and territory laws and requirements in relation to cosmetic surgery

Some states and territories have placed restrictions or requirements on the provision of cosmetic surgery in their jurisdiction.¹⁸

For example, since 2008, Queensland has prohibited the performance of cosmetic procedures on children, unless it is in the 'best interests of the child'.¹⁹ Also in Queensland, regulations prescribe that certain surgical procedures such as breast augmentation or reduction, liposuction (specified volume), abdominoplasty and various implants, must be performed in certain facilities such as a day hospital.²⁰

New South Wales regulation requires that cosmetic surgery involving general or other defined anaesthesia and certain cosmetic surgery procedures (regardless of type of anaesthesia) such as breast augmentation, liposuction (specified volume) and abdominoplasty must be performed in private health facilities.²¹

11 For more information see Ahpra [What we do](#) and [National Boards](#)

12 The different arrangements for the management of complaints and concerns about registered practitioners apply in New South Wales and Queensland will be discussed later in this paper.

13 In 2019, Health Ministers issued '[Policy Direction 2019-01 – Paramourncy of public protection when administering the National Scheme](#)' to Ahpra and National Boards.

14 Ahpra and National Boards, '[Regulatory Guide](#)', Ahpra, 2021, accessed 16 February 2022.

15 For example, Victorian Health Complaints Commission <https://hcc.vic.gov.au/public/our-process>

16 For example, in Western Australia, the Health and Disability Services Complaints Office cannot accept a complaint if the treatment: was obtained predominantly for the improvement of the appearance of the individual; did not affect the functioning of the body; and/or did not correct a bodily dysfunction (see <https://www.hadsco.wa.gov.au/Complaints/Health-Services/Cosmetic-Treatment>).

17 Section 150 of the National Law.

18 Health Council, '[Use of the title 'surgeon' by medical practitioners in the Health Practitioner Regulation National Law – Consultation Regulation Impact Statement](#)', Department of Health, 2021, accessed 11 February 2022.

19 *Public Health Act 2005* (Qld) div 11 ch 5A.

20 *Private Health Facilities Regulation 2016* (Qld) reg 3(2).

21 *Private Health Facilities Regulation 2017* (NSW) regs 3–4.

In Victoria, surgical procedures involving general or high dose local anaesthesia and liposuction procedures involving removal of 200ml or more of lipoaspirate must be performed in a day procedure centre.²²

In addition, some states have provisions in state legislation relating to lotteries, which prohibit offering cosmetic surgical procedures as a prize or reward. For example, New South Wales includes in its definition of 'prohibited prizes' the 'provision of cosmetic surgery or other similar procedure the main purpose of which is to improve personal appearance or self-esteem.'²³

Regulation of private health facilities

Many of the private facilities where cosmetic surgery is performed are licensed by state and territory health authorities. State and territory licensing laws require these facilities to meet a range of standards, including infection control, resuscitation and other clinical infrastructure, and credentialing and scope of practice processes for clinical staff working in these facilities.

State and territory authorities are also responsible for compliance and enforcement of these licensing laws, including inspections and removal of licences for those found to be significantly breaching standards.

Private hospitals are also licensed in each state and territory.

National standards for accreditation of health facilities

The Australian Commission on Safety and Quality in Health Care (the Commission) leads and coordinates national improvements in healthcare safety and quality. Key functions of the Commission include developing national safety and quality standards, including the National Safety and Quality Health Service (NSQHS) and National Safety and Quality Primary and Community Healthcare (NSQPCH) Standards and implementing national model accreditation schemes, such as the Australian Health Service Safety and Quality Accreditation (AHSSQA) Scheme.

The primary aim of the NSQHS Standards is to protect the public from harm and to improve the quality of health service provision. The Commission expects that all services, including practices providing cosmetic surgery and cosmetic medicine, comply with either the NSQHS or NSQPCH Standards.

The AHSSQA Scheme provides for the national coordination of accreditation processes. The awarding of accreditation is intended to provide assurance to the community that an accredited health service organisation meets expected patient safety and quality standards and the necessary systems and processes are in place to reduce the risk of harm to patients.

All public and private hospitals and day procedure services are required to be accredited to the NSQHS Standards.

Regulation of medicines and medical devices

Cosmetic surgery usually involves medicines and, in some cases, medical devices that are regulated by the Therapeutic Goods Administration (TGA). The TGA is responsible for national regulation of the supply, manufacturing and advertising of therapeutic goods including prescription medicines and medical devices. Therapeutic goods must be included in the Australian Register of Therapeutic Goods (ARTG), or otherwise approved, before they can be supplied in Australia.

Medicines are classified into Schedules according to their level of regulatory control and how they are made available to the public (for example, Schedule 3 pharmacy only medicine, Schedule 4 prescription only medicine and Schedule 8 controlled drug). The Schedules are published in the Poisons Standard (also referred to as the Standard for the Uniform Scheduling of Medicines and Poisons (SUSMP)), and are given legal effect through state and territory legislation.²⁴ State and territory drugs and poisons legislation (or equivalent) sets out requirements relating to permits, possession, supply, storage and transport of scheduled medicines.

Medical devices are classified by the TGA according to the level of risk they pose; those classified as higher risk have more requirements and monitoring.

²² *Health Services (Health Service Establishments) Regulations 2013* (Vic) reg 6(c)(i) and (v).

²³ *Lotteries and Art Unions Act 1901* (NSW), see definition of 'prohibited prize' in section 2A.

²⁴ Therapeutic Goods Administration (TGA), '[Scheduling basics](#)', TGA, n.d., accessed 16 February 2022

The TGA monitors the safety of medicines and medical devices. The TGA receives adverse event reports associated with medicines and medical devices and reports these in online databases.²⁵

Advertising of therapeutic goods is subject to the requirements of the *Therapeutic Goods Act 1989* and the *Therapeutic Goods Regulations 1990*. For those therapeutic goods that can be advertised to the public, advertising must comply with the requirements of the TGA Act and the Therapeutic Goods advertising code. The TGA has the power to use a range of compliance and enforcement tools to address non-compliant advertising of therapeutic goods.²⁶

Other laws

There are a range of other Commonwealth and state and territory laws which have implications for aspects of the cosmetic surgery sector and provide protections for consumers.

The *Competition and Consumer Act 2010* (Cth) promotes competition and fair trading and consumer protection. In schedule 2 it sets out the Australian Consumer Law, which prohibits conduct that is misleading or deceptive. The Australian Consumer Law²⁷ includes, for example:

- core consumer protection provisions prohibiting misleading, deceptive or unconscionable conduct, and protecting consumers from unfair terms in standard form consumer contracts, and
- specific protections against certain defined 'unfair' practices, including particular instances of misleading or deceptive conduct.

The Australian Consumer Law is administered by the Australian Competition & Consumer Commission (ACCC) and the state and territory consumer protection agencies and enforced by all Australian courts and tribunals.²⁸ The ACCC's website provides information on who to contact for consumer help.²⁹

In addition, there are laws relating to negligence, civil liability and criminal law which apply to the cosmetic surgery sector.

All registered health practitioners and other health workers in Australia have a duty of care to avoid causing reasonably foreseeable harm. A breach of that duty may constitute negligence.

States and territories have civil liability legislation under which claims for compensation for loss or harm arising from the negligence of a health professional or other health worker may be made and assessed. In most jurisdictions, the legislation provides that a medical practitioner will not have been negligent if he or she performed a procedure, or provided a treatment, in accordance with what is widely held by a significant number of respected practitioners in the relevant field to be competent practice.³⁰

Criminal law may be used to hold health professionals accountable for criminal acts against their patients. They may also face criminal charges for negligent acts or omissions.

25 Therapeutic Goods Administration (TGA), '[Database of Adverse Event Notifications](#)', TGA, n.d., accessed 16 February 2022.

26 Therapeutic Goods Administration (TGA), '[Complying with advertising requirements](#)', TGA, n.d., accessed 16 February 2022.

27 Australian Consumer Law (ACL) [Australian Consumer Law: A Framework Overview](#), July 2013, accessed 23 February 2022.

28 Australian Consumer Law (ACL) [The Australian Consumer Law](#), n.d., accessed 23 February 2022.

29 Australian Competition & Consumer Commission (ACCC) '[Where to go for consumer help](#)', ACCC, n.d., accessed 22 February 2022.

30 See example *Civil Liability Act 2002* (NSW) s 50. See also *Wrongs Act 1958* (Vic) s 59(1).

Regulation of cosmetic surgery by Ahpra and the Medical Board

The National Law sets out the range of powers and responsibilities Ahpra and the National Boards have when regulating health practitioners.

This review focuses on the following seven (7) areas of responsibility under the National Law that Ahpra and the Medical Board have and the associated powers they may exercise in relation to the regulation of medical practitioners who undertake cosmetic surgery:

1. Codes and guidelines.
2. Management of notifications.
3. Advertising restrictions.
4. Title protections and endorsement for approved areas of practice.
5. Cooperation with other co-regulators.
6. Facilitating mandatory and voluntary notifications.
7. Information to consumers.

Each of the above powers and responsibilities are aligned to the review's [Terms of Reference \(TOR\)](#).

Table 1 below shows how each of Ahpra and the Medical Board's specific powers and responsibilities in relation to cosmetic surgery regulation relate to the scope and TOR for the review (noting that the fifth element of the TOR (patient safety risks) underpins all elements of the review).

Table 1

Ahpra/MBA's specific responsibility and powers under the National Law	Codes and guidelines	Management of Notifications	Advertising restrictions	Title protections and endorsement for approved areas of Practice	Cooperation with other regulators	Mandatory and voluntary reporting	Information to consumers
Terms of Reference	1a. Updates to codes of conduct and supporting guidance which aim to ensure that practitioners practise safely within the scope of their qualifications, training and experience	1b. The methodology for risk assessment of cosmetic surgery notifications 1c. the Ahpra investigation protocol	1d. The management of advertising offences	1e. Opportunities for changes, clarifications or further actions in relation to the current regulatory approach to protected titles.	2. The way Ahpra works with other system regulators to ensure clear roles and responsibilities and appropriate information flows in support of the broader regulatory framework which involves a range of state, territory and national regulators.	3. The best means available to strengthen the safety reporting culture within cosmetic surgery to address barriers to health professionals raising concerns when a practitioner has practised in ways that depart from accepted professional standards.	4. Strategies relevant to the role of Ahpra and National Boards as a regulator of the registered health professions, to reduce information asymmetry for consumers in order to inform safer choices and informed consent.
	5. Provide a contemporary view of current risks to patient safety in cosmetic surgery and how they should inform the work of Ahpra and relevant National Boards.						

Each of the seven powers and responsibilities in relation to the regulation of cosmetic surgery (cross-referenced to the TOR) form the seven pillars of the review. Each of these pillars are briefly described in their own section below. At the end of each section, the review poses specific questions for stakeholders' feedback. Stakeholders can provide additional comments relevant to the scope of the review.

1. Codes and Guidelines

TOR 1(a) Enquire and report on the regulatory role of Ahpra and relevant National Boards in cosmetic surgery with particular attention to its risk-based approach focusing on: updates to **codes of conduct and supporting guidance** which aim to ensure that practitioners practise safely within the scope of their qualifications, training and experience.

The Medical Board, with the support of Ahpra, is responsible for developing and approving codes and guidelines to provide appropriate guidance to registered medical practitioners.³¹ These codes and guidelines apply in all states and territories.

The Medical Board's **code of conduct**, [Good medical practice: a code of conduct for doctors in Australia](#), sets out the standards of professional conduct the Medical Board expects and is used by the Medical Board and other regulators to evaluate practitioners' conduct. Conduct that varies significantly from the code, particularly in serious and repeated cases, can have consequences for the practitioner's registration including in disciplinary matters before tribunals. The code seeks to help and support practitioners to deliver appropriate and effective services within an ethical framework. The code sets the Medical Board's expectations about practice generally but does not provide guidance about specific areas of practice such as cosmetic procedures.

The Medical Board also establishes **guidelines** that it or other bodies can refer to when determining whether a practitioner's conduct has met a required standard. While guidelines do not act as legally enforceable regulations, they are admissible in proceedings under the National Law or related law, as evidence of what constitutes professional conduct and practice.³² To support practitioner understanding and application of these professional standards, Ahpra also develops additional materials, for example, frequently asked questions, fact sheets and reflective practice tools.

In 2016, the Medical Board issued specific guidelines about cosmetic medical and surgical procedures; [Guidelines for registered medical practitioners who perform cosmetic medical and surgical procedures](#). Supporting material has also been published by the Medical Board, including related [FAQs](#) and an information sheet; [Cosmetic medical and surgical procedures – guidance on financing schemes](#). The Medical Board has advised that these guidelines are due for revision, therefore the review process will feed into any revision.

The Medical Board has also issued advertising guidelines. These will be dealt with below under the Advertising Restrictions section.

Consultation questions

1. Do the current *Guidelines for registered medical practitioners who perform cosmetic medical and surgical procedures* 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?
2. What changes are necessary and why? What additional areas should the guidelines address to achieve the above purpose?
3. Please provide any further comment in relation to the use of codes and guidelines relevant to the practice of cosmetic surgery.

³¹ Sections 25(c) and s35(c) of the National Law.

³² Section 41 of the National Law.

2. Management of notifications

TOR 1(b) and (c) Enquire and report on the regulatory role of Ahpra and relevant National Boards in cosmetic surgery with particular attention to its risk-based approach focusing on: the methodology for **risk assessment** of cosmetic surgery notifications and the Ahpra **investigation protocol**.

Ahpra and the Medical Board are responsible for receiving and managing notifications about the performance, conduct and health of registered medical practitioners.³³ A notification is made by a person who has a complaint or concern about a health practitioner. A consistent and robust approach to assessing and investigating cosmetic surgery notifications has the potential to enhance the protection of the public.

Ahpra and the Medical Board's management of notifications may include one or more of the following actions, determined on a case-by-case basis:

- a) assessing the notification to determine whether it is a matter that requires any regulatory action
- b) investigating a practitioner, or requiring a practitioner undergo a health or performance assessment
- c) taking immediate action in relation to a practitioner (on an interim basis) to protect the public or in the public interest, including suspending their registration
- d) cautioning a practitioner (which is a warning to a practitioner about their conduct or the way they practise)
- e) imposing conditions on a practitioner's registration (or accepting an undertaking) that requires the practitioner to do something or stop doing something
- f) referring the matter to the responsible tribunal if a practitioner's behaviour constitutes *professional misconduct*. Tribunals can take a range of actions, including cancelling a practitioner's registration.

As is mentioned above, in New South Wales, the above functions are undertaken by the Medical Council of New South Wales and the Health Care Complaints Commission (HCCC), and not Ahpra and the Medical Board. In Queensland, the Office of the Health Ombudsman is the single point of contact for all health service complaints and notifications in that state and may undertake most of the above functions themselves or refer a notification to Ahpra and the Medical Board to manage.

The majority of notifications made about cosmetic surgery are made by consumers and generally relate to concerns about the performance of the practitioner or consumer expectations not being met.

The review will examine cosmetic surgery notifications data more closely, but some common concerns raised by consumers include:

- a cosmetic procedure was poorly undertaken, or the results of having the procedure undertaken are not satisfactory to the patient
- the procedure resulted in the patient suffering a complication of the procedure
- the procedure was undertaken without the patient having given their informed consent, including having a full and proper understanding of the risks
- the patient suffered unexpected or atypical pain during, or after the procedure, or
- the follow up care after the procedure was not adequate.

When assessing a notification about a medical practitioner, Ahpra and the Medical Board use a risk-based assessment that considers the:

- specific concerns raised to assess if the knowledge, skill or judgement possessed, or care exercised by the practitioner is below a reasonable standard
- type of practice engaged in, including the inherent risk and the relevant standards or guidelines
- practice setting, including the vulnerability of patient group and whether the practitioner has access to professional peers and support, and
- practitioner themselves, including their regulatory history and the actions they have taken in response to the concern.

As has been stated above, Ahpra and the Medical Board can take disciplinary actions in relation to a registered medical practitioner who is found to be behaving in an unsafe or unprofessional way. However, it should be noted that when things go wrong for consumers, they may seek solutions that

³³ Part 8 of the National Law.

Ahpra and the Medical Board are not empowered to provide. There are limitations under the National Law on the powers of Ahpra and the Medical Board and the possible outcomes that the notifications process can deliver. For example, the Medical Board has no legal power to order that a practitioner pay compensation to a consumer or undertake additional work to address an unsatisfactory outcome. These solutions may be available through private litigation or some may be facilitated through state-based health complaints entities.³⁴

Consultation questions

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

³⁴ For example, in Victoria, the Health Complaints Commissioner's [resolution processes](#) can include possible outcomes as an apology, refund or access to treatment.

3. Advertising restrictions

TOR 1(d) Enquire and report on the regulatory role of Ahpra and relevant National Boards in cosmetic surgery with particular attention to its risk-based approach focusing on: the management of **advertising** offences.

Ahpra and the Medical Board have responsibilities in relation to the regulation of some aspects of advertising by medical practitioners. As cosmetic surgery is purely elective in nature, advertising may influence demand for procedures in addition to a consumer's choice of practitioner. Addressing advertising that is irresponsible, inappropriate or unlawful is an important aspect of cosmetic surgery regulation.

Any material advertising a regulated health service,³⁵ including practice and practitioner websites, must comply with the advertising provisions in the National Law. The National Law creates an offence to advertise in a manner that, among other things:³⁶

- is false, misleading, or deceptive
- creates an unreasonable expectation of beneficial treatment, or
- directly or indirectly encourages the indiscriminate or unnecessary use of regulated health services.

Ahpra acts on complaints received regarding advertising of health services and also proactively audits a sample of health practitioners' advertising each year.

Ahpra and the National Boards take a risk-based approach to advertising compliance and enforcement.³⁷ This means that different actions may be taken depending on the assessment of the risk and the response of the advertiser. Most cases start with Ahpra writing to the advertiser to let them know their advertising breaches the National Law, providing them with education resources, and requiring them to correct it within 30 days.

Breaches of the advertising requirements are prosecuted in the Local or Magistrates Court and can incur financial penalties of \$5,000 for each advertising offence for an individual and \$10,000 for a body corporate.³⁸

Ahpra and the National Boards have also developed guidance for practitioners outlining their obligations under the National Law regarding advertising of regulated health services they provide.

In 2020, the current [Guidelines for advertising a regulated health service](#) were issued and apply to all health practitioners and others advertising regulated health services and aim to ensure that advertised information about the services provided to consumers is accurate.³⁹ Supporting material for practitioners in relation to advertising is published on the [Ahpra website](#).

The National Law advertising requirements apply to cosmetic procedures provided by registered health practitioners. In addition, there are specific provisions in some state laws relating to the advertising of cosmetic surgical procedures, as well as provisions in consumer law and an advertising code issued by the TGA.

It is noted that social media is increasingly being used to advertise and promote cosmetic surgery procedures. Academic literature on social media advertising of cosmetic surgery is not extensive, but it confirms the widespread use of social media to advertise, especially in competitive markets, and that practitioners in this area are likely to be early adopters of technology.⁴⁰

35 A regulated health service is 'a service provided by, or usually provided by, a health practitioner (as defined in the National Law)', as per definition in the *Guidelines for advertising a regulated health service*.

36 Section 133 of the National Law.

37 Further information is available on the Ahpra [Advertising Hub](#).

38 In 2019, Health Ministers [announced](#) their intention to increase the maximum penalty for breaching advertising restrictions from \$5,000 for an individual and \$10,000 for a body corporate to \$60,000 for an individual and \$120,000 for a body corporate. This is subject to approval and passage of an Amendment Bill.

39 Pursuant to section 39 of the National Law

40 CK Wheeler, H Said, R Prucz, RJ Rodrich, DW Mathes, 'Social Media in Plastic Surgery Practices: Emerging Trends in North America', *Aesthetic Surgery Journal*, 2011, 31(4):435-441, <https://doi.org/10.1177/1090820X11407483>

Consultation questions

6. Is Ahpra and the Medical Board's current approach to regulating advertising in cosmetic surgery sufficient?
7. What should be improved and why and how?
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?
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?
10. Please provide any further relevant comment in relation to the regulation of advertising.

4. Title protection and endorsement for approved areas of practice

TOR 1(e) Enquire and report on the regulatory role of Ahpra and relevant National Boards in cosmetic surgery with particular attention to its risk-based approach focusing on: opportunities for changes, clarifications or further actions in relation to the current regulatory approach to **protected titles**.

Ahpra and the Medical Board are responsible for the regulation of specialist registration and endorsed practice areas. The appropriate use of these regulatory mechanisms has the potential to drive better clinical outcomes, improved patient safety and informed consumer choices.

The National Law is based on a title protection model which means that, with very few exceptions, it regulates what practitioners may call themselves, rather than specifying what they can and cannot do. Individuals who are not registered health practitioners or do not hold specialist registration or an endorsement to practise in a particular area of practice, must not 'hold themselves out' as having qualifications and skills that they do not have.⁴¹

A doctor must be registered with Ahpra and the Medical Board to use the protected title, 'medical practitioner.' To be granted general registration, a medical practitioner must have been awarded a primary degree in medicine and surgery and meet registration requirements including English language skills, recency of practice, professional indemnity insurance and continuing professional development.

All medical practitioners, regardless of their registration type, are expected to recognise and work within the limits of their competence and scope of practice and ensure they have the knowledge and skills to provide safe clinical care.

A range of 'specialist' titles are protected. In the medical profession, there are 86 specialist titles associated with 23 specialties and 64 fields of specialty practice. Specialist titles are approved by the Ministerial Council⁴² on recommendation by the Medical Board.⁴³ The entitlement to use specific medical specialist titles is gained through seeking specialist registration following completion of accredited specialist training. The fields of specialty practice and corresponding specialist titles are available on the Medical Board website.

In relation to surgical practice, practitioners who have undertaken surgical training accredited by the Australian Medical Council (AMC) are able to use one or more of the 11 specialist surgical titles approved by the Ministerial Council. These titles are reserved for use in 10 approved specialist fields.

Cosmetic surgery is not recognised as a medical specialty. It is not accredited by the AMC, and any available qualifications and training in cosmetic surgery are not approved by the Medical Board. Health Ministers have not approved the addition of 'cosmetic surgery' to the list of specialties, fields of specialty practice and related specialist titles.

The title 'surgeon' is a part of a number of specialist titles but there is no stand-alone title 'surgeon' that is protected by the National Law. The potential implication for this is that medical practitioners, no matter their level of surgical training, do not appear to be prohibited under the National Law from describing themselves as surgeons. This plays out in the cosmetic surgery space with some medical practitioners (without having undertaken AMC accredited surgical training) describing themselves as 'cosmetic surgeons'.⁴⁴ While the review will not be considering the question of whether the term 'surgeon' should be protected (for reasons discussed below), it will seek to clarify the existing law and how it operates in the cosmetic surgery space.

It should be noted that the question of whether the term 'surgeon' alone should be a protected title is currently under consideration by the Ministerial Council and currently subject to a regulation impact

41 Disciplinary action may be taken against a registered practitioner who knowingly or recklessly claims to hold specialist registration or be qualified to practise as a specialist health practitioner in a recognised specialty which the practitioner does not hold (Section 119 of National Law). A person may be prosecuted for an offence if they use a title, name, initial, symbol, word or description that indicates or could be reasonably understood to indicate, the person is a specialist or is authorised or qualified to practise in a recognised specialty (Section 118 of the National Law).

42 The Ministerial Council constitutes Commonwealth, state and territory health ministers, which oversees the National Registration and Accreditation Scheme.

43 Section 13 of the National Law.

44 It should be noted that some practitioners in other registered professions also use the term surgeon including 'dental surgeon' and 'podiatric surgeon'.

statement consultation process.⁴⁵ For this reason, any detailed consideration of this issue is outside the scope of the review. Also outside the review's scope is the question of whether cosmetic surgery should be established as a specialty with a specialist title, which would require approval by Health Ministers and, where necessary, legislative amendment.

In addition to specialist registration, the Medical Board may recommend that the Ministerial Council approve an area of practice in a health profession as being a specifically endorsed area of practice.⁴⁶ Once an area of practice is endorsed, the Medical Board may endorse the registration of a health practitioner as being qualified to practise in an approved area if the practitioner: holds an approved qualification; or another substantially equivalent qualification; and complies with an approved registration standard relevant to the endorsement.⁴⁷ Disciplinary action may be taken against a practitioner who claims to hold an endorsement that they do not in fact hold.⁴⁸

While the question of establishing cosmetic surgery as a specialty is out of scope, the review will examine whether the endorsement provisions in the National Law may be an appropriate mechanism to employ in this space. An endorsement of registration recognises that a person has an extended scope of practice in a particular area because they have an additional qualification that is approved by the National Board. Ahpra's [Endorsement of Registration Fact Sheet](#) provides further information on the endorsement process.

This approach requires the approval by the Medical Board of an accredited program(s) of study as providing qualifications for the endorsement⁴⁹ and the approval of the Ministerial Council of an area of practice for which the registration of a medical practitioner may be endorsed.⁵⁰ Further, a relevant registration standard would need to be developed and approved.⁵¹

Consultation questions

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)?
12. Would establishing an endorsement in relation to cosmetic surgery provide more clarity about the specific skills and qualifications of practitioners holding the endorsement?
13. What programs of study (existing or new) would provide appropriate qualifications?
14. Please provide any further relevant comment in relation to specialist title protection and endorsement for approved areas of practice relevant to cosmetic surgery.

45 Health Council, '[Use of the title 'surgeon' by medical practitioners in the Health Practitioner Regulation National Law – Consultation Regulation Impact Statement](#)'

46 Section 15 of the National Law.

47 Section 98(1) of the National Law.

48 Section 119 of the National Law.

49 Section 35(1) of the National Law.

50 Section 15 of the National Law.

51 Section 12(1)(b) of the National Law.

5. Cooperation with other regulators

TOR 2 Enquire and report on the way Ahpra works with **other system regulators** to ensure clear roles and responsibilities and appropriate information flows in support of the broader regulatory framework which involves a range of state, territory and national regulators.

For Ahpra and the Medical Board to be effective in their regulation of cosmetic surgery, it is essential that they work effectively with other key regulators. Effective and cooperative relationships enhance public safety by ensuring there are no gaps or uncertainty in relation to co-regulatory responsibilities.

As has been discussed above, Ahpra and the Medical Board are part of a larger complex system of national and state-based regulatory organisations with other agencies being responsible for such matters as the products that can be used in cosmetic surgical procedures (such as the type of implant for example), the premises at which a specific type of surgery can be performed, and the standards that are to be applied at those facilities.

For this reason, the responsibility for regulating the cosmetic surgery sector is dispersed between a number of bodies at both a national (for example, TGA) and state and territory level (for example, private hospital regulators and medicines and poisons regulators) often with some variation in laws, regulations and standards between jurisdictions.

As has also been noted above, even the system for receiving and managing complaints and notifications varies across a number of states (primarily New South Wales and Queensland, which have co-regulatory arrangements under the National Scheme). Health complaint entities in each state may also play a role in managing complaints about cosmetic surgery.

The power to cooperate with other regulators (including obtaining relevant information) currently exists under the National Law.

Under the National Law, Ahpra may exercise any of its functions in co-operation with, or with the assistance of, a participating jurisdiction or the Commonwealth.⁵² Ahpra may also ask an entity for information and use it to exercise its functions.⁵³ The same powers also apply to the Medical Board under the National Law.⁵⁴

The review will seek to ensure that Ahpra and the Medical Board identify the key regulatory agencies in the cosmetic surgery space, understand their role and responsibility and have in place processes that ensures the effective two-way flow of information and necessary referrals.

Consultation questions

15. Are there barriers to effective information flow and referral of matters between Ahpra and the Medical Board and other regulators?
16. If yes, what are the barriers, and what could be improved?
17. Do roles and responsibilities require clarification?
18. Please provide any further relevant comment about cooperating with other regulators.

⁵² Section 27(1) of the National Law.

⁵³ Section 27(2) of the National Law.

⁵⁴ Section 32 of the National Law.

6. Facilitating mandatory and voluntary notifications

TOR 3 Enquire and report on the best means available to strengthen the safety reporting culture within cosmetic surgery to address barriers to health professionals **raising concerns** when a practitioner has practised in ways that depart from accepted professional standards.

In order to fulfil their roles to protect the public, it is critical that Ahpra and the Medical Board are informed about concerns when a medical practitioner working in the area of cosmetic surgery has practised in a way that departs from accepted professional standards. In this sense, Ahpra and the Medical Board are very reliant on being told when there is a concern.

While this review focuses on Ahpra and the Medical Board's role and responsibilities, it should be noted that other patient safety frameworks also exist that provide additional important safeguards in the cosmetic surgery sector. For example, the National Safety and Quality Health Service Standards set nationally consistent standards on the level of care consumers can expect from health service organisations.⁵⁵ Health service providers are also required to have systems in place to confirm a health practitioner's credentials and regularly review their scope of clinical practice.⁵⁶

Fundamental to public safety is a strong reporting culture. This requires practitioners and others in the cosmetic surgery sector, as well as practitioners who may subsequently treat people who have experienced complications from cosmetic surgery, to make notifications to Ahpra when it is necessary or appropriate.

The National Law places an obligation on registered health practitioners, employers and health education providers to make a *mandatory notification* in some circumstances.⁵⁷ There are four concerns that may require a registered health practitioner, employer or education provider to make a mandatory notification (depending on the risk of harm to the public):

- impairment
- intoxication while practising
- significant departure from accepted professional standards, and
- sexual misconduct.

While it is not an offence under the National Law to fail to make a mandatory notification, Ahpra and the National Boards do have the power to take disciplinary action against a practitioner who fails to make a mandatory notification when required.⁵⁸ For example, a mandatory notification is required if a practitioner forms a reasonable belief that another registered health practitioner is practising in a way that significantly departs from accepted professional standards and placing the public at risk of harm.

Mandatory notifications help to protect the public by ensuring that Ahpra and the National Boards are alerted to any potential risks to the public.

Ahpra and the National Boards have published [Guidelines: Mandatory notifications about registered health practitioners](#) which explain the requirements of this aspect of the National Law and aim to support individuals to decide whether they need to make a mandatory notification.

In addition to the mandatory notification process, *voluntary notifications* may be made by anyone, including patients and members of the public. While a registered health practitioner may not be obliged to make a mandatory notification, the making of a voluntary notification also enhances public safety. Consumers play an important role in making voluntary notifications and questions in relation to this aspect are dealt with below (under 'Information to consumers').

The National Law provides protection from civil, criminal and administrative liability for people who make a notification in good faith.⁵⁹

55 Australian Commission on Safety and Quality in Health Care (ACSQHC), [The National Safety and Quality Health Service Standards](#), ACSQHC, n.d., accessed 16 February 2022.

56 Australian Commission on Safety and Quality in Health Care (ACSQHC), [Credentialing health practitioners and defining their scope of clinical practice: A guide for managers and practitioners](#), ACSQHC, 2015, accessed 16 February 2022.

57 Sections 141, 142 and 143 of the National Law.

58 Section 141(3) of the National Law.

59 Section 237 of the National Law.

Consultation questions

19. Do the Medical Board's current mandatory notifications guidelines adequately explain the mandatory reporting obligations?
20. Are there things that prevent health practitioners from making notifications? If so, what?
21. What could be improved to enhance the reporting of safety concerns in the cosmetic surgery sector?
22. Please provide any further relevant comment about facilitating notifications.

7. Information to consumers

TOR 4 Enquire and report on strategies relevant to the role of Ahpra and National Boards as a regulator of the registered health professions, to reduce information asymmetry for consumers in order to **inform safer choices and informed consent**.

Ensuring consumers have access to the right information to make informed decisions is key to promoting public safety.

When one party holds more information and knowledge about a subject matter than another, 'information asymmetry' occurs. Like many other areas of medical practice, information asymmetry (as between a medical practitioner and a patient) is prevalent in the cosmetic surgery sector.

Practitioners themselves have an important role in providing sufficient information to consumers to support them making safe choices and providing informed consent.

As discussed earlier in this paper, the National Law also enables the Medical Board to develop codes and guidelines which set out the standards of professional conduct the Boards expect. These mechanisms may enable the Medical Board to influence the information that practitioners must provide to consumers, for example, in relation to matters such as pre-operative information and consent.

Consultation questions

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?
24. If not, what improvements could be made?
25. Should codes or guidelines include a requirement for practitioners to explain to patients how to make a complaint if dissatisfied?

Ahpra and the National Boards have a responsibility to focus on public protection when exercising all their functions and responsibilities. The National Law does not impose any specific responsibility on Ahpra and the Medical Board to provide general information to consumers of medical and surgical services (including cosmetic surgery) and public health related education is generally the responsibility of other agencies. However, Ahpra and the Medical Board continue to play a role in providing information to consumers to enable consumers to make informed and safer choices when accessing practitioners and services.

From time to time, Ahpra undertakes public education campaigns. For example, in 2020, Ahpra launched an [education campaign](#) called 'Be safe first' to advise consumers of the risks associated with cosmetic procedures. The campaign included resources to help consumers know which kind of questions to ask before going ahead with a cosmetic procedure.

Another way that Ahpra and the National Boards provide information to the public is through publishing a national public register. The National Law requires that Ahpra and the National Boards publish a national public register of the names of all registered health practitioners, including listing all specialists.⁶⁰The register must also publish, among other things, the practitioner's qualifications relevant to their registration, as well as a practitioner's recognised specialty if they hold specialist registration, and details of their endorsement if they hold an endorsement on their registration (for example, in relation to an approved area of practice).

The national public register is the most accurate source of information for the public regarding a practitioner's name, registration type and qualifications, and where relevant, disciplinary matters, such as conditions on their practice.

As has been discussed above, one of the key roles of Ahpra and the National Board is to act on notifications that a registered health practitioner's performance is placing the public at risk, or a practitioner is practising their profession in an unsafe way. For this reason, Ahpra and the National Boards have a responsibility to ensure the public understands and has access to how to make a complaint about a registered health practitioner. Information is available from the homepage of the Ahpra website under [Concerns about practitioners](#).

⁶⁰ Section 222, 223 and 225 of the National Law.

Consultation questions

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?
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.

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.

Appendix 1: Consultation questions

1. Do the current *Guidelines for registered medical practitioners* who perform cosmetic medical and surgical procedures 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?
2. What changes are necessary and why? What additional areas should the guidelines address to achieve the above purpose?
3. Please provide any further comment in relation to the use of codes and guidelines relevant to the practice of cosmetic surgery.
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?
5. Please provide any further relevant comment in relation to the management of notifications about medical practitioners involved in cosmetic surgery.
6. Is Ahpra and the Medical Board's current approach to regulating advertising in cosmetic surgery sufficient?
7. What should be improved and why and how?
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?
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?
10. Please provide any further relevant comment in relation to the regulation of advertising.
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)?
12. Would establishing an endorsement in relation to cosmetic surgery provide more clarity about the specific skills and qualifications of practitioners holding the endorsement?
13. What programs of study (existing or new) would provide appropriate qualifications?
14. Please provide any further relevant comment in relation to specialist title protection and endorsement for approved areas of practice relevant to cosmetic surgery.
15. Are there barriers to effective information flow and referral of matters between Ahpra and the Medical Board and other regulators?
16. If yes, what are the barriers, and what could be improved?
17. Do roles and responsibilities require clarification?
18. Please provide any further relevant comment about cooperating with other regulators.
19. Do the Medical Board's current mandatory notifications [guidelines](#) adequately explain the mandatory reporting obligations?
20. Are there things that prevent health practitioners from making notifications? If so, what?
21. What could be improved to enhance the reporting of safety concerns in the cosmetic surgery sector?

22. Please provide any further relevant comment about facilitating notifications.
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?
24. If not, what improvements could be made?
25. Should codes or guidelines include a requirement for practitioners to explain to patients how to make a complaint if dissatisfied?
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?
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.
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.