



Terms of reference

Why this review?

Cosmetic surgery has rapidly grown as a multi-million dollar entrepreneurial industry. Its rapid growth has highlighted practices and methods of promotion by some registered health practitioners which raise both ethical dilemmas and significant patient safety concerns.

Regulation of cosmetic surgery is multifaceted, involving multiple state, territory and national regulators. Effective regulation requires clarity of roles and responsibilities and efficient information sharing.

Who regulates cosmetic surgery?

Ahpra and the Medical Board of Australia (MBA) are just one part of a complex system that regulates cosmetic surgery in Australia.

This type of surgery is generally required to be performed in private facilities which are licensed by State and Territory health authorities. State licensing laws require a comprehensive set of standards to be met, including proper infection control, appropriate resuscitation and other clinical infrastructure, and robust credentialing and scope of practice processes for medical practitioners and other clinical staff working in these facilities. State and territory authorities are responsible for compliance and enforcement of these licensing laws, including regular inspections and removal of licences for those found to be significantly breaching standards.

The Australian Commission for Safety and Quality in Health Care also plays a key national leadership role in developing national standards for accreditation of health facilities, and this forms an important part of the assurance processes to inform consumers whether a facility is appropriately equipped and operating to safely provide health services.

State and Commonwealth consumer law also has a part to play in providing a legal framework for the provision of cosmetic procedures, and the advertising thereof.

In NSW, health professional disciplinary regulation including of doctors, nurses and other involved in cosmetic surgery, are the responsibility of NSW State health professional councils and the NSW Health Care Complaints Commission, not Ahpra or National Boards.

Who can call themselves a cosmetic surgeon?

Some cosmetic surgical procedures are undertaken by medical practitioners who have completed advanced specialist surgical or medical training. Whilst professional codes of conduct set out expectations that practitioners will only practise within the limits of their education, training and competence, current regulatory provisions do not expressly prevent any registered medical practitioner from calling themselves a "cosmetic surgeon". This may convey the impression that they are specifically qualified or specialised in the area.

Traditionally, Ahpra has not considered the use of the term 'cosmetic surgeon' by, or about, a registered medical practitioner to be a title protection breach because there is no recognised medical specialty or specialty field of 'cosmetic surgery' or protected title relating to 'cosmetic surgery'. The title 'surgeon' is not currently protected. Ministers have announced their intention to consult on protecting the title of 'surgeon' and the consultation is expected to commence by early 2022. Protection of title in this way would require amendment to the National Law and the consultation has been welcomed by National Boards and Ahpra. This review may assist in informing that consultation.

When can Ahpra and the Medical Board of Australia act?

Where a cosmetic surgeon's performance is placing the public at risk or a practitioner is practising their profession in an unsafe way, the MBA and Ahpra expect concerns of other registered practitioners to be raised in accordance with their mandatory reporting obligations, through the notifications process. However, it appears that there is a weak reporting and safety culture in many areas of cosmetic surgery and patient safety concerns are not being notified in a timely way as required by doctors, nurses or other health professionals who become aware of these practices.

Social media is increasingly being used to advertise and promote cosmetic medical and surgical procedures. This often focuses on the benefits for the consumer, downplaying or not mentioning the risks. Factual, easily understood information for consumers contemplating cosmetic medical or surgical procedures may not be readily available and there is significant information asymmetry for consumers. There is also an additional challenge where individuals who are committed to having cosmetic surgery do not want to learn about the risks, focusing on the benefits alone.

Ahpra considers any complaints about whether advertising of cosmetic surgery/cosmetic surgeons breaches the advertising requirements of the National Law e.g. misleading and deceptive claims about clinical outcomes unsupported by acceptable evidence. However, the explosion in social media raises new challenges for the regulatory response of Ahpra in this area.

Ahpra and relevant National Boards have done substantial work on the regulation of cosmetic surgery and procedures over a number of years which may assist the Review.

Ahpra and National Boards aim to ensure high quality and safe care with safe products, skilled practitioners and responsible providers, an informed and empowered public to ensure people get accurate advice and accessible redress and resolution in cases when things go wrong.

Purpose

To review the existing regulation and regulatory practices in use by Ahpra and the relevant National Boards to ensure they have kept pace with rapid changes in the cosmetic surgery industry and to make recommendations for any required changes.

This will be undertaken with reference to:

- i. the National Registration and Accreditation Scheme's statutory objective to provide for the protection of the public, and
- ii. the specific responsibilities of Ahpra and the national boards' specific responsibilities within the broader regulatory framework in which cosmetic surgery occurs.

Scope

The review will inquire and report on:

1. The regulatory role of Ahpra and relevant National Boards in cosmetic surgery with particular attention to its risk-based approach focusing on:
 - a. 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;
 - b. the methodology for risk assessment of cosmetic surgery notifications;
 - c. the Ahpra investigation protocol;
 - d. the management of advertising offences, and;
 - e. 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.

Continued on next page

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.

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

The primary focus will be on cosmetic surgery because that poses the greatest risk. However, it is recognised that the recommendations of this review may have relevance for the work of Ahpra and relevant National Boards in the cosmetics sector more widely.

Reviewer

- **Mr Andrew Brown (former Queensland Health Ombudsman)**

Expert Panel

- Mr Alan Kirkland – CEO, Choice
- Conjoint Professor Anne Duggan – CMO, Australian Commission on Safety and Quality in Health Care
- Ms Richelle McCausland – National Health Practitioner Ombudsman

Advisory Group

An Advisory Group will be appointed and convened at key points to encompass people with lived experience of undertaking cosmetic surgery; relevant clinical and surgical expertise; jurisdictional health authorities; expertise in digital communications and social media, and nominees of relevant National Boards.

Key Definitions

Cosmetic medical and surgical procedures are 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.

Major cosmetic medical and surgical procedures ('cosmetic surgery') involve cutting beneath the skin. Examples include; breast augmentation, breast reduction, rhinoplasty, surgical face lifts and liposuction.

Minor (non-surgical) cosmetic medical procedures do not involve cutting beneath the skin, but may involve piercing the skin. Examples include: non-surgical cosmetic varicose vein treatment, laser skin treatments, use of CO2 lasers to cut the skin, mole removal for purposes of appearance, laser hair removal, dermabrasion, chemical peels, injections, microsclerotherapy and hair replacement therapy.