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	[redacted]
Organisation (if applicable)	Office of the Health Ombudsman (OHO), Queensland
Email address	[redacted]

Your responses to the consultation questions

Codes and Guidelines

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?

The OHO supports the regulatory system currently in place, however, believes that changes are required to protect the community from risk and harm associated with the provision of cosmetic surgery.

This area is distinctly different from most other forms of medical practice, where the practitioners are reliant on the consumer self-referring and self-funding. As a result of this significant structural difference, safeguards need to be in place to ensure that:

1. Consumers are protected from harm
2. Services are provided in a safe and appropriate manner
3. Consumers are informed and take a pro-active role in the consent process.

The current code and guidelines developed and endorsed by the Medical Board of Australia and associated professional colleges provide a professional framework for the provision of cosmetic surgery within Australia. However, emerging trends within the cosmetic / aesthetic surgery area often outpace the guidelines. This may result in the advertising and provision of services (including new and emerging procedures) that may not be provided in a patient safety focussed manner.

The code and guidelines also need to reinforce that consumers need to be protected from all harm, which includes physical, psychological, and financial harm.

2. What changes are necessary and why? What additional areas should the guidelines address to achieve the above purpose?

The guidelines provide a basis for the provision of safe, patient centred care, however the OHO believes that the following areas need reinforcement to reduce the risk of harm to consumers:

1) Practitioner to disclose their scope of practice to the consumer (including qualifications, training, and experience)
2) Facility accreditation. Publication of accreditation results against the National Safety and Quality Standards including any deficiencies. These should be disclosed to patients/consumers as well as regulatory bodies such as Ahpra and the OHO.
3) Patient Engagement / Informed Consent must be presented in a way that the consumer is able to read, understand, and use the healthcare information in order to make appropriate health decisions and follow instructions for treatment
4) Social media posts by the practitioner / healthcare. Posts must be realistic, informative (not entertaining), provide a balanced view of the procedure, and must not target those under the age of 18 (i.e. 32% of Tic Tok users are under the age of 19 https://backlinko.com/tiktok-users), so the use of Tic Tok to promote cosmetic surgery is questionable.
5) Informed consent should be required to contain statistics on the individual practitioner and be compared to published data. Information to include the success rate and the failure/adverse event rate experienced by consumers for the requested procedure.

6) Financial consent to reduce the risk of exploitation, with the consent process to include expected price ranges for procedures, as well as any potential additional costs to the consumer if the procedure does not go as planned.

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

N/A

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?

OHO regularly receives complaints from Queensland consumers who are unhappy about the process or outcome of their cosmetic surgery procedures. A number of these are not related to medical practitioners and involved persons working within the unregistered space, such as beauty practitioners injecting botulinum toxin and fillers.

It is suggested that a change in the risk assessment process may be warranted signalling that risk is raised when there have been more than two adverse outcome complaints for a practitioner. Additionally, consideration should be given to setting a standard for how many cosmetic procedures a surgeon can undertake on a single patient.

The OHO manages complaints about unregistered practitioners performing cosmetic procedures which would normally be performed by a registered practitioner and may result in the issuing of prohibition orders to address health and safety/public interest factors. These matters may also be also referred to Ahpra's criminal offences unit regarding holding out offences. Consideration should be made regarding whether Ahpra's management of these referred matters is effective or whether they require review.

Included in the OHO's complaint management process is the option for parties to agree to participate in a resolution process. Amongst other things, the resolution process can facilitate discussions about explore compensation, a refund or fee waivers. Compensation is limited to out-of-pocket expenses and/or corrective treatment costs. Both parties must agree on the compensation, refunds, or fee waiver.

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

OHO regularly receives complaints from Queensland consumers who are unhappy about the process or outcome of their cosmetic surgery procedures. These complaints rarely meet the threshold of professional misconduct and are routinely referred to Ahpra and the National Boards to manage as complaints about unsatisfactory professional performance under the National Law.

Therefore, while OHO can provide further detail on such complaints including volume and key themes, it is assumed that Ahpra will also hold this relevant information. Ahpra will also be well placed to provide further detail on the outcome of these complaints, including the extent to which they are driven by a lack of skill by the practitioner, a mismatch of consumer expectations with potential outcomes, or other factors.

As identified in Q4. the OHO complaints management process allows for compensation, a refund or fee waivers. However, both parties must agree on the compensation, refunds, or fee waiver. Whilst these services are available via resolution processes, most often the primary concern relates to the professional performance of the practitioner in undertaking the cosmetic procedures, which are routinely dealt with by Ahpra and the National Boards.

Advertising restrictions

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

The OHO believes that the current approach to regulating advertising in cosmetic surgery does not currently meet the needs of the community. The current process of awaiting notification from consumer complaints or the use of a random sample does not describe a robust proactive regulatory approach.

Several practitioners / practices appear to use images that are could be described as risqué and "soft porn" with consumers pictured in very provocative poses which would not appear to meet the current advertising guidelines

7. What should be improved and why and how?

Ahpra and the Medical Board should have an audit process that is evidence based and utilises information that is in the public domain. The use of google analytics (or similar) can identify the most visited cosmetic surgery sites within Australia and will help with the identification of traditional advertising that may not comply with the advertising guidelines. With other forms of advertising, such as social media (Facebook, Instagram, Tic Tok) large numbers of followers or "views" may identify content that glamourises cosmetic surgery procedures and may not comply with the advertising guidelines.

The OHO has concerns about the use of private groups within social media platforms, and on advertising webpages that may be utilised by practitioners to circumvent the advertising guidelines. These areas should also be audited as part of the regulatory process.

The OHO believes that, as a deterrent, Ahpra and the Medical Board should consider publishing/advertising corrective actions required to be undertaken by registrants and healthcare providers.

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 current Guidelines for advertising a regulated health service do not adequately address the risks in relation to advertising of cosmetic surgery. The Cosmetic surgery industry relies intensively on advertising to attract potential customers and while the advertising guidelines need to be principle based, they also need to clearly identify what can and cannot occur.

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?

Yes - The auditing of social media posts needs to be included in the risk-based audit of advertising undertaken against the advertising guidelines. These audits would need to review the role of influencers and paid posts within the practitioner / healthcare provider's social media feeds. All corrective actions required to be undertaken by registrants and healthcare providers should be published on the Ahpra website (same as Q7)

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

N/A

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)?

The OHO believes that the introduction of an endorsement in relation to the practice of cosmetic surgery would only partially address the relevant issues of concern in the sector. This would be through the application of:

- Approved standards-based education, training, and assessment of practitioners entering the cosmetic surgery field
- Standardised audit and CPD requirements as identified by RACS
- Improved provision of patient information and informed consent processes

The OHO has identified no issues or concerns with the following website but is utilising it as an example of how an endorsement in relation to cosmetic surgery can be circumvented. The following website identifies a practitioner who is a general practitioner who provides cosmetic surgery services.

[redacted]

Changes to endorsements will need to be supported by a comprehensive education program for consumers, including information on how to choose a surgeon, informed consent, how to make a complaint about your surgeon and identify adverse events and poor outcomes.

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

The OHO is supportive of the introduction of an endorsement to designate cosmetic surgery as a specialist surgical title, and the associated requirements for surgeons to undertake approved and accredited training, evaluation, and endorsement in this area of surgery. This change will bring the Australian regulatory requirements into alignment with those already in place within the United Kingdom.

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

Within Australia, the only program of study in place is the five-year Surgical Education and Training Program, administered by the Australian Society of Plastic Surgeons (ASPS) on behalf of RACS.

Within the UK there is a similar training pathway through the British Association of Plastic, Reconstructive and Aesthetic Surgeons (BAPRAS).

The main difference between the cosmetic and plastic surgery professions is the reason as to why patients are requesting / requiring the procedure to be performed. Cosmetic Surgery is undertaken to enhance appearance, whilst plastic surgery is undertaken to correct a defect and to restore a normal function and appearance, and hence there is no difference between the training requirements.

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

OHO is supportive of further steps that may be taken to restrict or regulate the use of the title 'surgeon', such that consumers would gain further information and clarity to make informed decisions about their care.

Our preferred option is that only medical practitioners are entitled to use one of the 11 specialist surgical titles (associated with the 10 surgical specialties) approved by the Ministerial Council allowed to refer to themselves as surgeons, with associated requirements for training, CPD, governance and auditing determined by the Royal Australian College of Surgeons (RACS).

This will facilitate consumers identifying that they are receiving safe and effective care from a practitioner who is required to undertake a level of training, education, and auditing on the services they are providing when compared to other practitioners.

The restriction needs to be supported by a comprehensive education campaign to improve consumer engagement and to further reduce risk and harm associated with the provision of cosmetic surgery services, including medical tourism.

As identified in Q12, the OHO is also supportive of relevant action to make cosmetic surgery a specialist surgical title with the ability to allow surgeons to undertake structured training, evaluation, and endorsement in this area of surgery.

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?

In Queensland, the OHO and Ahpra work together to oversee and regulate registered health practitioners in relation to matters concerning their health, conduct and performance. The OHO and Ahpra work together under the *Health Practitioner Regulation National Law (Queensland) 2009* (the National Law).

Mechanisms supporting information flow have improved over recent years, and the within the co-regulatory system, legislative powers facilitate this flow. Sharing of information between the state-based regulators in Queensland (OHO) and New South Wales (NSW Health Care Complaints Commission) is also very good and supported by legislative powers.

Since the commencement of the QLD joint consideration process with OHO and Ahpra on 6 December 2022, information flow has been refined and with the provision of early clinical screening being provided by Ahpra on performance matters. This has further supported robust decision-making in relation to which matters are suitable for the OHO

to retain for the purpose of local resolution (acknowledgement / apology / refund) v which matters are suitable for referral to Ahpra for the Board to manage.

The main area of concern is the state-based difference between legislative requirements for the provision of cosmetic surgery, in particular age restrictions (<18 years) and facility requirements for where the procedures can be performed.

16. If yes, what are the barriers, and what could be improved?

State-based legislative differences need to be removed to ensure that the provision of cosmetic surgery services is standardised throughout Australia.

Apart from this concern, the OHO's experience is that we have not identified any further barriers within the regulatory system.

17. Do roles and responsibilities require clarification?

The experience of the OHO is that the roles and responsibilities do not require clarification.

18. Please provide any further relevant comment about cooperating with other regulators.

N/A

Facilitating mandatory and voluntary notifications

19. Do the Medical Board's current mandatory notifications guidelines adequately explain the mandatory reporting obligations?

Mandatory reporting requirements are currently contained within section 140 of the Health Practitioner Regulation National Law. Parts A, B and C are self-explanatory and consistent across professions, whereas in part D the wording identifies that "*placed the public at risk of harm because the practitioner has practised the profession in a way that constitutes a* ***significant departure from accepted professional standards***".

Within Australia, who sets the professional standards and what are the accepted professional standards? Within England, the Royal College of Surgeons in England set the professional standards for Cosmetic surgery. But there are no equivalent standards here.

Without professional standards being clearly defined, it is unclear how other practitioners would know what to report under part D?

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

The main barrier to the reporting of mandatory notifications by other healthcare practitioners is a lack of understanding of professional standards that apply to cosmetic surgery. As identified in Q19, how do health practitioners identify substandard service or services that are a significant departure from accepted professional standards, when there are no accepted professional standards

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

The OHO suggests that the following areas could be improved to enhance the reporting of safety concerns:

1) Professional Standards. As identified in Q13 the practice of cosmetic surgery and plastic and reconstructive surgery are very similar and the professional standards for plastic surgeons should be applied. The main area of difference is around informed consent where financial risk needs to be included in any discussions.
2) Engagement with the multidisciplinary team, in particular the lead healthcare provider (General Practitioner). As identified in Q31, engagement with the multidisciplinary team will reduce the poor outcomes or adverse events experienced by the consumer

22. Please provide any further relevant comment about facilitating notifications

N/A

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 OHO understands that the current codes and guidelines do describe the obligations of practitioners who perform cosmetic surgery to provide sufficient information to consumers and obtain informed consent but believes that clarification is required in identified areas to protect the community from risk and harm associated with the provision of cosmetic surgery.

All information needs to be presented in a way that the consumer can read, understand, and use the healthcare information to make appropriate health decisions and follow instructions for treatment. The areas that require clarification are financial, physical, and psychological risks, surgical success and failure rates, surgical audit information, facility accreditation results and minimum education and training requirements the medical practitioner is required to meet.

24. If not, what improvements could be made?

Improvements to the information and informed consent processes need to include:

1) All consent / information needs to be presented in a way that the consumer is able to read, understand, and use the healthcare information in order to make appropriate health decisions and follow instructions for treatment
2) Open disclosure of adverse events experienced by the practitioner's patients, including failure rates and complaints,
3) Surgical audit results (including infection control),
4) Accreditation assessment results and recommendations / corrective actions,
5) Information about the costs of the procedure, including direct and indirect costs, what happens if there is a complication / issue, and
6) Identification of the training and education the practitioner is required to do to undertake/maintain their competency in the identified procedures.

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

Yes – practitioners need to provide information to the consumer on how to make a complaint both verbally and in writing that is appropriately worded and designed.

OHO regularly receives complaints from Queensland consumers who are unhappy about the process or outcome of their cosmetic surgery procedures. The OHO has also identified that consumers are not aware of the specific skill set that their 'cosmetic surgeon' has. OHO has not seen evidence to suggest that consumers understand that the person they have selected to carry out their procedure may have no specific training in this procedure.

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?

No - The current Ahpra public register of practitioners identifies if the practitioner is a registered medical practitioner (and associated approved speciality) but does not address any identified cosmetic surgery endorsements or regulatory issues. This is because the register does not identify if the practitioner is approved or endorsed to provide cosmetic surgery or has concerns that are currently being followed up by a regulator.

Within other jurisdictions (United Kingdom) there is a requirement for a register of practitioners undertaking major cosmetic surgery procedures and legislation has recently been introduced requiring a register of practitioners undertaking minor cosmetic surgery procedures. This facilitates the sharing of information about the practitioner's skills, training, and experience.

Ahpra and the Medical Board should also publish/advertise the regulatory actions required to be undertaken by practitioners on the public register, including undertakings by healthcare providers on their behalf.

The OHO has also identified an issue with the listing of other health practitioners on the Ahpra website. For Nurse Practitioners, the Ahpra register identifies that they are a Nurse Practitioner, but not what area of speciality they are working in. For example (and the OHO does not identify any issues or concerns with the following practitioner) registration [redacted] is listed as a Nurse Practitioner in aesthetics [redacted]

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

Within the current regulatory framework, the practitioner's qualifications (including a plain English translation) should be located higher on the individual practitioner's registration details to assist patient choice.

The OHO believes a health literacy campaign around cosmetic surgery should be developed and implemented to assist consumers in making appropriate choices concerning cosmetic surgery and healthcare in general.

The OHO does not support a rating or similar system managed by Ahpra or other organisations associated with regulatory bodies, as this would influence the regulatory actions of Ahpra and the Medical Board.

The OHO supports the mandatory publication of accreditation assessment results and resultant corrective actions required to be undertaken on a centralised webpage as well as on the individual practitioner's / practices' webpages. This information needs to be provided to assist the consumer in making an informed choice about cosmetic surgery providers.

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

The OHO has observed that there seems to be a lack of understanding among consumers about complaint processes including State by State variations. The OHO has also identified that consumers are not aware of the specific skill set that their 'cosmetic surgeon' has. OHO has not seen evidence to suggest that consumers understand that the person they have selected to carry out their procedure may have no specific training in this procedure.

This suggests that the consumers understanding of the complaints and notifications process is not well understood by the consumer.

29. If not, what more could/should Ahpra and the Medical Board do to improve consumer understanding?

Changes to the National Law need to be supported with a comprehensive education campaign to improve consumer engagement and reduce risk and harm associated with the provision of cosmetic surgery services.

Health literacy is a significant factor within the healthcare provision. An education campaign must be implemented as a supporting process; however, this needs to be carefully designed to ensure that there is no increased uptake of surgery within the lower socioeconomic / health literacy consumer groups due to poor understanding of the health messaging.

30. Please provide any further relevant comment about the provision of information to consumers.

The OHO believes that any information provided to consumers needs to be presented in a manner that is easy to understand by all consumers. If the consumer does not understand the information, the practitioner needs to implement processes such as identifying appropriate support and assistance to ensure that the consumer undertakes a fully informed consent process.

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.

The OHO is concerned that most cosmetic surgery services occur outside of the consumer's normal healthcare environment (i.e. there is no requirement for the cosmetic surgery provider to engage with the consumer's regular G.P and the multidisciplinary team). This may lead to poor outcomes or an increase in adverse events experienced by the consumer.

Within the current guidelines there is a requirement for the medical practitioner to refer the patient "*for evaluation to a psychologist, psychiatrist or general practitioner, who works independently of the medical practitioner who will perform the procedure, if there are indications that the patient has significant underlying psychological problems which may make them an unsuitable candidate for the procedure*". In addition to this there should also be a requirement for the medical practitioner to liaise with the patient's GP for all cases prior to, and after the procedure is performed. This will reduce the risk of patient harm as the medical practitioner will not be "working in a vacuum".

Furthermore, it is recommended that prior to any significant cosmetic surgery it should be mandatory for a patient to see a psychologist – currently it is only necessary if there is an underlying psychological problem

The current guidelines should also include guidelines regarding cooling off periods as having a 7 day cooling off period for those patients under 18 may be inappropriate and be extended.