Response Template – Organisations and Individual Practitioners

Consultation Regulation Impact Statement: Use of the title ‘surgeon’ by medical practitioners

OFFICIAL

This response template is for completion only by organisations and individual practitioners. Individual members of the public wishing to contribute a response must use this survey link https://au.questionpro.com/t/ARncFZRpW4 to ensure that the privacy and anonymity of consumer respondents is protected.

The Consultation Regulation Impact Statement (RIS) on medical practitioners’ use of the title ‘surgeon’ under the Health Practitioner Regulation National Law proposes various policy and legislative options to address potential issues identified with the current regulatory framework enabling use of the title.

A series of questions are included in the Consultation RIS for stakeholder response. Participants should note that it may not be possible or necessary to respond to every question provided.

For any questions regarding the Consultation RIS, please contact the NRAS Review Implementation Project Team at NRAS.Consultation@health.vic.gov.au.

Direct submissions privacy collection notice (workforce entities, other organisations and individual practitioners)

Participation in this consultation is voluntary and by providing your responses, you/your organisation will be taken to have provided consent for collection and use of the information provided. You/your organisation will also have the option of requesting that your submission remains anonymous.

The Department of Health (department) is committed to protecting your privacy. The department collects and handles the information you/your organisation provide/s in this consultation as part of a Consultation Regulation Impact Statement (RIS) process it is managing on behalf of all Australian health departments and the Australian Health Practitioner Regulation Agency (Ahpra).

When making a submission, you/your organisation will be asked to provide information about patients’ consumption of cosmetic surgical procedures. This information is not intended to compromise patient anonymity and will be used to better understand general social trends in patient access to cosmetic surgical procedures and patient outcomes.

Your/your organisation’s feedback, including qualitative and quantitative data provided, will inform government decisions about regulation of the title ‘surgeon’ under the Health Practitioner Regulation National Law and contribute to the development of a Decision RIS for public release. It may, for example, lead to changes in the law that restrict which medical practitioners will be entitled to use that title.

The consultation requests information relating to cosmetic and/or other surgery and does not ask organisations to provide any identifying information about patients, practitioners or facilities. You/organisations are asked not to include such information in your/their answers.

Respondents should not include any identifying information such as information about patients, medical practitioners or facilities in responses, as reservations or concerns about the treatment patients may have received from a particular medical practitioner, or about a medical practitioner’s conduct should be reported directly in a notification to Ahpra, or a health complaints commission or similar entity in the relevant state or territory.

Your/your organisation’s feedback will be collected, analysed and interpreted by the National Registration and Accreditation Scheme Review Implementation Project Team (NRAS project team) on behalf of health ministers. It may also be disclosed to health ministers and the health departments of other states and territories for this purpose.

The NRAS project team will not publish an organisation’s submission if that organisation requests that it remains anonymous but it may publish anonymised information provided by organisations in the Decision RIS. Your organisation may be identified in the Decision RIS, unless your organisation advises it wishes to remain anonymous. Where your organisation does not request to remain anonymous, your organisation’s submission may be published by health ministers. Your feedback may be shared with other government entities, both in Victoria and other Australian jurisdictions.

Completion of submissions by organisations is voluntary. There are no consequences for non-completion or for providing submissions which address all or some of the questions presented.

For more information on the department’s privacy collection practices, please refer to the department’s privacy policy or visit our website on https://www.health.vic.gov.au/privacy.

The NRAS project team supervising the consultation can be contacted by emailing NRAS.Consultation@health.vic.gov.au or you may contact the department’s Information Sharing and Privacy team by emailing privacy@health.vic.gov.au. You can request that changes be made to information you have been provided by contacting us using the above details.

Required fields	Required organisational responses
Organisation/Practitioner Name	Avant Mutual
Would you/your organisation like to remain anonymous in the Decision RIS for public release in the event data from the below responses is included? (Delete whichever is not applicable)	No
Do you/does your organisation consent for its submission to be published online on release of the Decision RIS? (Delete whichever is not applicable)	Yes
Do you/does your organisation consent for collection and use of the information provided in this submission? (Delete whichever is not applicable)	I agree

Consultation RIS organisational responses

Avant general comments

Avant is Australia's largest medical defence organisation, providing professional indemnity insurance and legal advice and assistance to more than 78,000 healthcare practitioners and students around Australia. Avant provides assistance and advice to members involved with complaints and notifications to Ahpra and the Medical Board of Australia, as well as to regulators in the co-regulatory jurisdictions, and to Health Complaints Entities (HCEs). Avant provides insurance to medical practitioners and practices involved in cosmetic medical and surgical practice.

Key points:

We agree with the characterisation in the RIS of the cosmetic surgery industry and the problems that it raises.

We agree that there needs to be better regulation in the area of cosmetic surgery. The industry still has problems despite reviews and regulatory and legislative changes that have taken place over the last two decades.

Not all practitioners in this industry are practising in a way that causes harm to patients. Many practitioners provide appropriate care to patients who are satisfied with the outcomes.

Solving the problems requires a system-wide approach and should be done on a national basis: it is broader than title protection or regulating the conduct of individual practitioners.

Multiple levels are involved: regulators, state and territory governments, the federal government, the cosmetic surgery industry, the medical profession and healthcare system, and society generally.

Broader societal issues relevant to the operation of the cosmetic surgery industry, including body image, should also be addressed.

We support:

- AMC-accredited training, education and professional development programs and minimum standards for practitioners involved in cosmetic surgery practice. The AMC and the Medical Board of Australia are best placed to determine this.
- Nationally consistent legislation regulating the conduct of cosmetic surgery in licensed facilities, including requirements for anaesthesia.
- Greater awareness of and adherence to the Medical Board of Australia Guidelines for registered medical practitioners who perform cosmetic medical and surgical procedures.
- A public education and information campaign.
- Addressing the role of advertising and online and social media in driving patient demand and choice.

We do not support:

- Increased provider liability for non-economic loss damages. This is unlikely to be an effective deterrent. The focus should be on preventing harm in the first place.

We do not have a preference between title protection and endorsement as to which is the appropriate model under the National Law for regulating the practice of cosmetic surgery. AMC-accredited training is relevant to both models.

Consultation RIS questions	Organisational responses
Title protection and its functions	
1.1 What level of qualifications and training would you generally have expected a practitioner using the title 'surgeon' to have?	Avant acknowledges that the use of the term 'surgeon' is confusing for the consumer particularly in the context of cosmetic practice, and that there is an assumption by the public that practitioners using the term 'surgeon' have certain qualifications and training. As a medical indemnity insurer, Avant relies on the accreditation and standards for medical education and training set by the Australian Medical Council (AMC). As outlined on the AMC's website, the AMC's purpose is to ensure that standards of education, training and assessment of the medical profession promote and protect the health of the Australian community. It is the entity that develops comprehensive standards for medical education and training in many phases of medical education, including accreditation and monitoring of all specialist medical training and also programs for endorsement of registration. The MBA registers doctors on the basis of qualifications or endorsements as approved by the AMC. We also rely on the requirements determined by the regulators and colleges that must be fulfilled for practitioners to be able to use the specialist titles protected under the National Law. We therefore support AMC-accredited training, education and professional development programs and standards for practitioners involved in all areas of practice including cosmetic surgery practice.

Consultation RIS questions	Organisational responses
	It is up to the Medical Board of Australia and the AMC to determine the minimum skills, training and standards required for, and the nature of the procedures that fall within the scope of, cosmetic surgery practice. This is relevant whether the model adopted under the National Law to regulate cosmetic surgery practice is that of title protection or endorsement of registration.
1.2 Prior to reading this RIS did you believe that cosmetic surgery is regulated in the same way as other surgery?	No response provided
1.3 Does current regulation help you understand the differences between the regulation of cosmetic and other surgery?	See below our response to question 3.1.
1.4 Do you think the risks, potential harms or level of adverse outcomes associated with cosmetic surgery are higher than for other areas of medical practice? If so, what is the basis for this view?	The risks of patients being dissatisfied with the outcome of cosmetic surgery are higher compared to some other surgeries. This is driven by different patient cohorts with different expectations, as well as the elective nature of much of the surgery. Lack of consistency in state and territory legislation relating to private health facility licensing and prescribed cosmetic surgical procedures also potentially presents a higher risk of adverse outcomes in some jurisdictions.
Cosmetic surgery is not a recognised specialty under the National Law	
2.1 Prior to reading this RIS were you aware of the different training regimen for specialist surgeons as opposed to 'cosmetic surgeons'?	No response provided
2.2 If you were unaware of this difference and have engaged a cosmetic surgical practitioner, would this knowledge have influenced your choice of practitioner? If you have not engaged a cosmetic surgical practitioner, would this knowledge impact your choice?	No response provided
Other elements in the regulatory framework for the performance of surgical procedures	

Consultation RIS questions	Organisational responses
3.1 Are current guidelines, laws and regulations effectively deterring patient harm that may arise from practitioners performing cosmetic surgical procedures outside their level of competency?	The current regulatory framework for cosmetic surgery should be changed in the following areas: 1. Lack of consistency in state and territory legislation relating to private health facility licensing and prescribed cosmetic surgical procedures means that some jurisdictions have less stringent requirements. This leaves open the opportunity for patients and/or doctors to travel across borders to take advantage of more lenient regulatory environments. For example, in Victoria, all surgery must be conducted in a licensed facility, whereas in Queensland and New South Wales, only certain procedures are required to be conducted in a licensed facility. There are differences in the nature and type of procedures that can be performed (eg liposuction involving specified volumes of fluid). There are also differences in the definitions of anaesthesia that must be performed in a licensed facility. For example, the Victorian legislation refers to "anaesthesia" generally, whereas the South Australian legislation refers to different types of anaesthesia. We strongly support national consistency in the regulatory framework, and we support the performance of cosmetic surgical procedures in licensed facilities. All anaesthesia, sedation and analgesia for cosmetic surgery should be provided in accordance with ANZCA guidelines and position statements, particularly PG09(G). We would appreciate the opportunity to work with governments on a nationally consistent legislative framework for cosmetic surgery. 2. There needs to be greater awareness of and adherence to the Medical Board of Australia Guidelines for registered medical practitioners who perform cosmetic medical and surgical procedures (the "MBA cosmetic guidelines"), particularly in relation to: • the requirement for independent psychological evaluation and counselling for patients before major procedures if there are indications that the patient has significant underlying psychological problems which may make them an unsuitable candidate for the procedure (clause 2.4). • the requirements for the treating practitioner's involvement in post-procedure care (section 5). The guidelines could be strengthened by requiring longer cooling off periods for major procedures where the patient is over 18 years of age. We note that the independent review commissioned by Ahpra into the regulation of medical practitioners who perform cosmetic surgery also seeks feedback on the current codes and guidelines. Our response to that review will have more detail of our views in that regard. The recommendations of the review and the recommendations following this consultation should be considered together. 3. As noted in the answer to question 1.1 above, we support AMC-accredited training, education and professional development programs and minimum standards for practitioners involved in cosmetic surgery practice. Under the National Law, there are three potential legislative models for regulating cosmetic surgery: (1) title protection under Part 7 Division 10,

Consultation RIS questions	Organisational responses
	(2) endorsement under Part 7 Division 8 (specifically section 98) and (3) restricting scope of practice under sections 121 to 123. We do not have a preference between title protection and endorsement as to which is the most appropriate model for regulating the practice of cosmetic surgery under the National Law. AMC-accreditation and minimum standards is relevant to whichever model is adopted. Note: See also our response on 4.10 below for Avant's view on enhancing the advertising provisions in the National Law.
3.2 Prior to reading this RIS were you aware of Ahpra's register of practitioners, and if so, have you found its information useful to help you make informed decisions about choosing a proceduralist? What additional information do you think it should include?	Avant is aware of and regularly refers to Ahpra's register of practitioners in its work as a medical indemnity insurer. Our view is that patients considering cosmetic procedures will rely on a range of information but will be most influenced by advertising and online and social media.
Public harm and risks that arise from the current regulatory regime	
4.1 Have you experienced difficulty getting cosmetic surgical practitioners to explain professional title, the risks and rewards of surgery, and their capacity to perform a given procedure? Was this more difficult than with other surgical practitioners?	No response provided
4.2 Do you have any evidence of harms or complications resulting from procedures performed by practitioners who do not have advanced surgical training, or who are practising outside their scope of competence? Can these harms and complications be quantified?	No response provided
4.3 Do you have any evidence of harms arising from cosmetic surgeries that are the result of unethical or substandard	No response provided

Consultation RIS questions	Organisational responses
practices or unethical conduct?	
4.4 Can you provide information about the relationship between corporatisation and cosmetic surgery? If a relationship exists, is this more common in cosmetic surgery than in other surgical fields?	No response provided
4.5 If corporatisation is more common in cosmetic surgery, is this is having any discernible effects on patient risk and harm?	No response provided
4.6 Can you provide evidence to show that financial incentives are attracting medical practitioners to the field of cosmetic surgery? If financial incentives exist, is this leading to greater risk and harm to patients?	No response provided
4.7 Please provide any evidence you have about the volume of patients accessing cosmetic surgical procedures.	No response provided
4.8 Can you provide evidence that demonstrates any broader costs of post-operative outcomes of cosmetic surgeries on the health system and the broader economy? This includes any data that quantifies the cost to the public health system of revision surgeries for consumers who have suffered poor outcomes from cosmetic procedures.	No response provided
4.9 Are you aware of adverse impacts to cosmetic surgery patients due to there being no requirements to involve a	In general Avant supports the ongoing role of general practitioners in coordinating their patients' healthcare. However, Avant's view is that it is difficult if not impossible to determine whether the absence of GP referrals for cosmetic surgery is having material

Consultation RIS questions	Organisational responses
GP in referrals? Does this have material effects on the quality of care being provided by cosmetic surgical proceduralists? If so, how this might reasonably be demonstrated?	effects on patients or the quality of care being provided by cosmetic practitioners. We do, however, strongly support the role of independent psychiatrists/psychologists in assessing and counselling patients considering cosmetic surgery procedures if there are indications that the patient has significant underlying psychological problems which may make them an unsuitable candidate for the procedure, as currently outlined in the MBA cosmetic guidelines.
4.10 Can you provide any evidence demonstrating the effectiveness or ineffectiveness of the National Law's advertising provisions, particularly in relation to the cosmetic surgery industry?	Based on our experience of assisting members, we understand that cosmetic practice is very competitive, and many practitioners rely on advertising to engage with current and potential patients. Overall, the advertising requirements for medical practitioners are confusing, and are of variable effectiveness in regulating practitioners' conduct. The main sources of advertising obligations with which we assist members are: 1. Section 133 of the National Law which prohibits, among other things, misleading and deceptive conduct in advertising health services and the use of testimonials. 2. Sections 113 to 119 of the National Law which contain the title protections and prohibit practitioners from claiming they have specialist qualifications when they do not. 3. The Australian Consumer Law which, among other things, prevents misleading and deceptive conduct. In our experience many practitioners misunderstand or are unaware that they are obliged to comply with advertising obligations contained in the National Law and that there are statutory advertising offences for which they can be prosecuted. It is also our experience that many practitioners are unaware that they must comply with the Australian Consumer Law in addition to the National Law in their advertising. The application of all of these provisions is nuanced. The current version of Ahpra's advertising guidelines goes some way to providing examples and explaining this; however, advertising requirements remain confusing to practitioners as well as to patients. In any event, as cosmetic surgery may be regarded as a commercial rather than a therapeutic product, Avant believes that the Australian Competition and Consumer Commission (ACCC) may be better placed to regulate advertising in this industry. While Ahpra's advertising guidelines and approach are generally reasonable (subject to our comments above), it is not clear to us whether Ahpra is adequately resourced to properly monitor and regulate advertising in this industry. The consultation on the tranche two reforms of the National Law arising from the 2014 review of the National Registration and Accreditation Scheme sought input on the possibility of removing the prohibition on testimonials. While we do not have a position on whether the prohibition should be removed, removing the prohibition on testimonials is likely to have a significant impact on advertising in this area.

Consultation RIS questions	Organisational responses
4.11 Can you provide any information about whether Ahpra's public register of practitioners helps to address any identified cosmetic surgery regulatory issues?	See above our response to question 3.2.
Available data: quantitative and qualitative	
5.1 Are the issues relating to title restriction accurately outlined in this RIS?	Yes
5.2 How do you currently satisfy yourself that your practitioner is qualified to perform their desired surgery, cosmetic or otherwise? How did you satisfy yourself that a practitioner was qualified prior to reading this RIS?	No response provided
5.3 Does this RIS accurately describe surgical procedures (cosmetic or otherwise) performed by practitioners, the types of specialists and other registered practitioners that perform them and the accepted parameters of practice for these practitioners?	Yes
Options and cost-benefit analyses	
6.1 Do you support maintaining the status quo (Option 1)? Please explain why.	No. The current regulatory system does not appear to be working optimally to protect patients from harm. Nevertheless, it is important to note that it is not all practitioners in this industry who are practising in a way that causes harm to patients. Many practitioners provide appropriate care to patients who are satisfied with the outcomes.
6.2 Do you support implementing alternatives such as Options 2.1 or 2.2 to amending the National Law? Do you support implementing one or both? Please explain why. If this option is preferred, what reforms or initiatives would be	Option 2.1 Public information campaign Increasing awareness through a public education campaign is important and we support this. Any public information campaign should be accompanied by a nationally consistent legislative and regulatory framework for cosmetic surgery, AMC-accredited standards for training, education and professional development, and enhancements to the MBA cosmetic guidelines, as outlined in answer to question 3.1 above.

Consultation RIS questions	Organisational responses
required to realise either or both sub-option/s?	**Option 2.2 Increasing provider liability for non-economic damages** We do not support increased non-economic loss damages in this area. Any damage should be assessed in line with existing statutory and common law requirements on a case by case basis taking into account the injuries incurred by the patient with a view to placing the patient back in the position they would have been but for the surgery. Avant is strongly of the view that the focus needs to be on preventing harm occurring in the first place. The current court and civil compensation framework ensures that patients are appropriately compensated for any injuries sustained as a result of the surgery. Increasing opportunities to redress harm through providing increased non-economic loss damage is reactive and will not prevent the harm from occurring. It risks adding cost to the system via the potential for more litigation and increased medical indemnity insurance costs. We do not agree that increasing provider liability for non-economic loss damages will act as an adequate deterrent, given that awards of non-economic loss damages are generally covered by insurance.
6.3 Do you support strengthening existing mechanisms in the National Scheme (Option 3)? Please explain why.	Yes. Avant supports enhancing the regulatory framework for cosmetic surgery as noted in answer to question 3.1 above. This includes national consistency, greater awareness of and adherence to MBA cosmetic guidelines to better educate and safeguard patients, and AMC-accredited training, education and professional development programs for practitioners involved in cosmetic surgery. It also includes addressing the role of advertising and online and social media in driving patient demand and choice.
6.4 Do you support restricting the title 'surgeon' under the National Law (Option 4)? Please explain why. If option 4 is preferred, which medical practitioners should be eligible to use the title 'surgeon', and why should option 4.1 or 4.2 be preferred?	Avant's view is that while the use of 'surgeon' is causing confusion, the title "surgeon" is too broad and if protected will have impacts on other specialities within the medical profession. Another option for consideration is protecting the title "specialist cosmetic surgeon", which would be consistent with the current model for other specialty title protection under the National Law. This should be accompanied by minimum standards accredited by the AMC for training and scope of practice. However, we also believe that addressing this issue alone will not change the risk landscape significantly. Economic factors are likely to continue to drive consumers to seek out lower cost providers, either in Australia or overseas. Regulatory change and consumer education and safeguards are key to addressing this. The consequence if left unchanged is the ongoing and potential increasing cost of revision surgery to the public health system and dissatisfaction on the part of patients.
6.5 Will restricting the title 'surgeon' prevent medical practitioners who cannot use that title from using other titles that imply they are expert providers of cosmetic surgical services?	Yes it could do so, because of the consequences of the advertising and title protection provisions of the National Law and the consumer protection provisions of the Australian Consumer Law. However, given cosmetic surgery may be regarded as a commercial rather than a therapeutic product it is possible that patients may elect to undergo procedures from practitioners without a 'surgeon' title if the cost difference is significant. This is why regulating the conduct of cosmetic surgery in licensed facilities, including

Consultation RIS questions	Organisational responses
	requirements for anaesthesia, is important to ensure quality of care regardless of the cost of surgery.
6.6 What other impacts will restricting the title 'surgeon' have on surgical specialists and other medical practitioners, including those who obtained their qualifications overseas?	This potentially impacts for example, general practitioners working as surgical assistants, obstetricians and gynaecologists, dermatologists and ophthalmologists, as well as practitioners who obtained their qualifications overseas.
6.7 Is it likely that cosmetic surgery consumption patterns will change because of title restriction (whether option 4.1 or 4.2)? In what way? Will they be changed by options 2 and 3? In what way?	Avant's view is that while use of the title 'surgeon' is causing confusion, addressing this issue alone is unlikely to change the risk landscape significantly. Economic factors are likely to continue to drive consumers to seek out lower cost providers, either in Australia or overseas. Regulatory change and consumer education and safeguards are key to addressing this. The consequence if left unchanged is the ongoing cost of revision surgery to the public health system.
6.8 Is the regulatory burden estimate provided in this RIS realistic? How likely is it that medical practitioners would embark on advanced studies solely in order to call themselves a 'surgeon'? Do you expect option 4.1 or 4.2 to heighten demand for advanced surgical qualifications? If so by what number? What evidence do you have to support this view?	
6.9 Should any options be implemented alongside other options, as a package? If so, please explain why this would be ideal and how any potential impediments might be overcome?	Solving the problems outlined in the RIS requires a system-wide approach and should be done on a national basis: it is broader than title protection or regulating the conduct of individual practitioners. Multiple levels are involved: regulators, state and territory governments, the federal government, the cosmetic surgery industry, the medical profession and healthcare system, and society generally. Broader societal issues relevant to the operation of the cosmetic surgery industry, including body image, should also be addressed. In summary, we support: • AMC-accredited training, education and professional development programs and minimum standards for practitioners involved in

Consultation RIS questions	Organisational responses
	cosmetic surgery practice. The AMC and the Medical Board of Australia are best placed to determine this. • Nationally consistent legislation regulating the conduct of cosmetic surgery in licensed facilities, including requirements for anaesthesia. • Greater awareness of and adherence to the Medical Board of Australia Guidelines for registered medical practitioners who perform cosmetic medical and surgical procedures. • A public education and information campaign. • Addressing the role of advertising and online and social media in driving patient demand and choice.
6.10 Should Australian lawmakers be mindful of the potential for regulatory change in Australia to shift cosmetic surgery consumption to other jurisdictions abroad? What would the impacts be?	Yes. We are concerned that the other potential consequence of tighter regulation in Australia is that it will lead to people travelling overseas for surgery. This could result in an increase in the need for revision surgery in Australia adding cost to the public system in particular.
6.11 Are you concerned that a particular option might have serious, adverse and possibly unanticipated effects? Please state which option/s and unanticipated effects, and why you hold these concerns.	See above in answer to question 6.10.
Additional comments	
Please include any additional comments or identified risks that you believe should be considered by health ministers.	

To receive this document in another format, phone (03) 9500 4392, using the National Relay Service 13 36 77 if required, or email the NRAS Review Implementation Project Team, <NRAS.Consultation@health.vic.gov.au>.

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