



Insurance Council
of Australia

30 March 2022

The Manager
NRAS Review Implementation Project Team
Department of Health Victoria
50 Lonsdale Street
Melbourne NSW 3000

By email: NRAS.Consultation@health.vic.gov.au

Dear Sir or Madam,

Consultation on regulation of cosmetic surgery

The Insurance Council of Australia (**Insurance Council**) welcomes the opportunity to provide comment on the *Consultation Regulation Impact Statement: Use of the title 'surgeon' by medical practitioners in the Health Practitioner Regulation National Law, December 2021 (RIS)*. The consultation is of particular interest to those of our members who provide healthcare insurance to medical practitioners.¹ We note that the reforms stem from the Health Ministers' commitment to national consultation on changing the National Law to protect the title of "surgeon".

The Insurance Council understands that the underlying harm which the consultation seeks to remedy, or its "rationale" is:

"A wide variety of harms have been caused by poor cosmetic surgery and post-surgery practices, in cases where practitioners have performed cosmetic surgery outside their competence. This RIS will present evidence ... of practitioners performing procedures such as laser lipolysis, liposuction, abdominoplasty and breast augmentation without adequate:

- *training*
- *pre-surgical assessment*
- *pre-surgical informed consent*
- *sedation*

resulting in such adverse outcomes as:

- *cyanosis (deoxygenation of the skin)*
- *split wounds*
- *fevers and infections*
- *excruciating pain*

¹ The Insurance Council is the representative body of the general insurance industry in Australia and represents approximately 95% of private sector general insurers. As a foundational component of the Australian economy the general insurance industry employs approximately 60,000 people, generates gross written premium of \$59.2 billion per annum and on average pays out \$148.7 million in claims each working day (\$38.8 billion per year).

- *haemorrhage*
- *excessive tissue trauma*
- *scarring*
- *local anaesthetic toxicity*
- *sepsis*
- *pneumothorax (collapsed lung)*
- *central nervous depression*
- *cardiac arrest*
- *death.*²

The “*Problem Statement*”, which is said to give rise to the underlying harm, is “*use of the title ‘surgeon’ by medical practitioners in the National Law*”.³ As explained in the RIS the term “surgeon” on its own is not regulated and:

“All medical practitioners registered under the National Registration and Accreditation Scheme (National Scheme) may use the title ‘surgeon’ in their practice regardless of whether they have obtained entry-level surgical training or advanced surgical qualifications.”⁴

The options put forward to redress the harm are:

- ***“maintaining the status quo with existing regulatory and other tools, with no legislative action or other options undertaken***
- ***Reform options other than amending the National Law to help patients and consumers to make informed choices about undergoing surgical procedures and with which practitioners, regulators may consider options that incentivise practitioners to perform within the bounds of their competency, training and expertise, as well as:***
 - *major public information campaigns*
 - *increased provider liability for non-economic damages*
- ***strengthening the existing regulatory framework with little or no legislative change***
- ***restricting the title ‘surgeon’ under the National Law, either to:***
 - *the 10 surgical specialty fields of practice approved by the Ministerial Council, or*
 - *specialist medical practitioners with significant surgical training.”⁵*

In the Insurance Council’s view, the “*Problem Statement*” is misconceived, and therefore the options put forward in isolation are unlikely to redress the underlying problem.

² Pages 10-11, *Consultation Regulation Impact Statement: Use of the title ‘surgeon’ by medical practitioners in the Health Practitioner Regulation National Law, December 2021*

³ Page 22, *Ibid*

⁴ Page 22, *Ibid*

⁵ Pages 14-15, *Ibid*

The enumerated patient harm is primarily caused by the person performing the cosmetic procedure not having the necessary skills and expertise to safely undertake that procedure and/or provide adequate post-operative care, rather than through the use of the title “surgeon” by the person performing the procedure. We note, as observed in the RIS, that all surgical procedures have an element of risk. In fact, the RIS specifically acknowledges that the “failure to meet a consumer’s expectations for a cosmetic surgical procedure may not be attributable to failing of or lack of clinical skill”.⁶ Of the 94 surgical specialists the Queensland Health Quality and Complaints Commission received complaints about, around 90% were plastic surgery specialists or general and plastic surgery specialists.⁷ The issue isn’t with the use of the word “surgeon” by these specialists. The more pertinent question is how and why these specialists are failing their obligations to their patients. Solutions should then be more closely targeted to the articulated problem.

In this context, we welcome a broader examination by the Government of what actions will better protect patients undergoing cosmetic surgery such as that commenced by the Australian Health Practitioner Regulation Agency (Ahpra) and the Medical Board of Australia. We suggest that the Health Ministers’ commitment to changing the National Law to protect the title of “surgeon” should be examined in light of the findings from the broader review by Ahpra and the Medical Board of Australia, consultation on which is due by 14 April 2022.

The industry is also concerned about possible changes to civil liability, which might alter standards of care or scope to sue for damages for pain and suffering, whether in cosmetic surgery or more broadly. There is, at present, no evidence of inadequate compensation options available to patients who suffer poor cosmetic surgery outcomes to support a law change. Further, any changes may have significant, unintended impacts on other areas of healthcare practice and possibly across other sectors. We therefore encourage the Victorian and other state governments and the Commonwealth to engage closely with medical indemnity insurers on these issues.

We trust that these observations are of assistance. If you have any questions or comments in relation to our submission please contact Aparna Reddy, General Manager, Policy – Regulatory Affairs, on telephone: 0421 183 783 or email: areddy@insurancecouncil.com.au.

Yours sincerely



Andrew Hall

Executive Director and CEO

⁶ Page 53, *Ibid*

⁷ *Ibid*