



**Baay’s submissions dated 29 May 2015 in response to “*Consultation – Registered medical practitioners who provide cosmetic medical and surgical procedures*”**

It is our view at Baay that many of the questions in the consultation paper can only be fully addressed by considering a number of factors relating to consumers (in the current social and economic environment), which include:

- Human behaviour
- Health literacy
- The fact that cosmetic medicine is becoming increasingly popular and “normalised” with changes in consumer perceptions
- The media exposure in Australia which often focuses on American ideals of beauty and celebrity creating unrealistic expectations
- The rise of narcissistic behaviour driven by social media
- The rise of divorce rates as a social factor
- The rise of mental illnesses such as depression, anxiety, eating disorders and body dysmorphic disorders
- Job instability

- Technology
- Access to information
- Social media and reality television programs
- Changes in social dynamics
- The increase in males becoming more interested in cosmetic and surgical procedures
- Changes with women's roles in society
- Society's quest/emphasis on perfectionism, youth and instant gratification
- Aggressive marketing
- Easier access to financial loans/credit

## **Problem**

### **1. Do you agree with the nature and extent of the problem identified in this consultation paper, for consumers who seek cosmetic medical and surgical procedures provided by registered medical practitioners?**

Over the last 6 months Baay conducted its own research by way of a verbal survey on a sample size of 500 males and females of different demographics and "professional backgrounds" around Australia. Our research revealed the following:

- The issue/problem is potentially larger than what is raised in the Board's consultation paper.
- 70% of the people we surveyed had undergone a cosmetic medical and/or surgical procedure. 14% of these people had their cosmetic surgical procedure performed overseas in Thailand.
- The level of health literacy is poor (even with people who have university degrees).
- EVERY PERSON we spoke to had a different understanding of "cosmetic medicine" and what it meant to be an accredited medical practitioner.

- 82% of the people surveyed had conducted their research over the internet and relied primarily on forums and blogs.
- **None** of the 500 people we surveyed knew where to go to or what to do if they wanted to make a complaint about a medical practitioner.

**2. Is there other evidence to suggest that there is a problem with consumers making rushed decision to have cosmetic medical and surgical procedures provided by registered medical practitioners without adequate information?**

66% of the people we surveyed said they primarily relied on information provided by the medical practitioner (from the medical practitioner's website and their consultation), and even if they were still uncertain about the procedure they went ahead because of an inherent trust in the medical practitioner.

72% of the people we surveyed said as soon as they started to "seriously" consider having a procedure they wanted to have it straight away, even if they had only conducted minimal research.

84% said there was a lot of information on the internet but think the majority of the information is confusing and they didn't know how reliable it was.

We argue from our research that there is a problem with consumers making rushed decisions without adequate information, however a consumer's "rushed decision" is also based on a number of other factors - namely a person's ability and need to assess risk, their level of education, socialisation, their reason for having a cosmetic medical and or surgical procedure, their personality type,

their financial situation and the marketing approach of the clinic/medical practitioner.

**3. Is there other evidence that consumers cannot access reliable information or a relying on inaccurate information when making decisions about these procedures?**

It is our view that there are a number of websites, publications and social media platforms providing information, however the majority of these “information sites” are not independent and have some commercial bias. In addition, we submit the authors of the publications and founders of forums, blogs and websites, do not have the appropriate qualifications to provide the necessary independent, reliable, comprehensive information for consumers.

Many so called “information/advisory sites” have been founded by people who have undergone a number of surgical procedures and then hold themselves out to be an expert or a consultant. This is the basis/foundation of their claimed “expertise”. These sites also aggressively promote or market medical practitioners regardless of the quality of the medical practitioner.

There are a number of businesses in the cosmetic medicine field claiming they provide independent information. These people do not disclose the nature of their relationships with the medical practitioners they “refer” consumers to, yet they maintain and actively promote their businesses as being independent. Many obtain a “referral fee” or commission from these medical practitioners, so we are of the view this “revenue/fee structure” erodes independence.

Cosmetic Surgery magazines/publications essentially sell advertising space to medical practitioners and it is up to the

medical practitioner to submit their own content, so there is no independence with these publications. Editorials are thinly disguised marketing material.

We argue there is a lack of balanced analysis and independent research on medical practitioners, cosmetic medical products and medical and surgical procedures.

There needs to be a comprehensive information site which provides a proportionate view and addresses the seriousness of cosmetic medicine, the expectations of the consumer and the commercial interests of the medical practitioner.

#### **4. Is there evidence that inappropriate use of qualifications and titles by medical practitioners may be misleading for consumers?**

We have not seen any evidence of an inappropriate use of qualifications and titles, or intentional misleading by a medical practitioner. However our research showed that the majority of consumers (based on the research we conducted) do not understand what the qualifications and titles mean. For example 22% of the people we surveyed knew what the acronym FRACS stood for, but did not understand how a medical practitioner obtained this qualification. The remaining 78% did not check medical practitioner's qualifications as they assumed the medical practitioner was qualified to perform the cosmetic medical and or surgical procedure.

90% of the people we surveyed did not realise that a GP could undergo a "brief" training course on injectables and then call themselves a cosmetic doctor. These 90% assumed a cosmetic doctor had always practised "cosmetic medicine". When we questioned these people what they thought "cosmetic medicine" meant, there were a number of different answers and opinions.

67% of the people we surveyed knew there was a difference between a plastic surgeon and a general surgeon but were confused about what the differences were. 32% thought a cosmetic surgeon and plastic surgeon were the same type of surgeons with the same qualifications.

It appears from our research that a majority of people don't research or question a doctor's qualifications thoroughly, simply because we would submit there is an element of inherent trust with consumers regarding a medical practitioners qualifications and titles.

**5. Is there evidence that offers of finance for these products may act as an inducement for consumers to commit to a procedure before they have had adequate time to consider the risks.**

Financial institutions are recognising the growth in the cosmetic medicine field and are starting to offer more attractive and competitive interest rates to consumers who are considering undergoing a cosmetic medical and or surgical procedure. It's clearly in the financial interest of a medical practitioner to make the consumer aware of finance offers.

As cosmetic medical and or surgical procedures are generally elective, we suspect many consumers rely on finance to assist them to have their procedure. Whilst we are not aware of the exact figures as to how many people apply for finance to have a cosmetic medical or surgical procedure, public figures are available regarding people's household debt (which includes mortgages, credit cards, overdrafts and personal loans) in Australia. Under nominal gross domestic product, Australian Banks currently estimate household debt at 130% of GDP, which is the highest level on record. Based on this figure people are

relying on credit cards and personal loans to finance their “day to day” living expenses and household items (simply because they don’t have savings to fund these items) so it seems a reasonable assumption that there would be a high proportion of consumers who fund their cosmetic procedure using finance.

**Yes**, based on people’s reliance on finance, we would argue there is the potential for inducement to commit to a procedure, but whether the consumer has had time to consider the risks is dependant on the clinics’ processes i.e. does the clinic book the procedure before an application for finance is submitted; how is the finance marketed to the clients (is it actively encouraged/promoted by the clinic); what arrangement does the clinic have with the finance provider; how aggressive is the finance provider (what are the finance provider’s requirements in determining whether a consumer’s application will be approved; how quickly is a consumer’s application assessed and approved).

There are a number of cosmetic clinics in Australia advertising “financial offers/services” however there are certain requirements under the Corporations Law in Australia regarding offers of finance and it would be conducive for the Board to work with the regulator ASIC to ensure the consumer is being protected if it were to draft new guidelines regarding finance offers.

**6. Is there other evidence of disproportionate numbers of complaints or adverse events for consumers who have had these procedures?**

During the research we conducted, 80% of those surveyed said that if they had a complaint (depending on the nature of the complaint and the relationship they had with the medical practitioner) they generally wouldn’t go back to the medical practitioner and complain, however they would

inform their friends and family of their grievance and post it on social media, and then look around for another medical practitioner.

Without genuine statistics it is difficult to quantify if there are disproportionate numbers. 1 in 5 people we surveyed were unhappy with the outcome of their cosmetic treatment, however anecdotal evidence suggests this may have been due to unrealistic expectations. Unfortunately the media's depiction of models, actors and celebrities is creating a "fake reality" and ultimately unachievable results for consumers.

We would argue that the marketing approach of the majority of medical practitioners (i.e. the images used on their websites, brochures, newsletters and branding/logos), portray stereotypes of "beauty" and don't accurately reflect achievable results for a consumer. We submit there needs to be greater education for consumers by the medical practitioner in their marketing strategy and material (in the form of information - verbal, written and image focused) which assists the consumer to obtain a realistic expectation. This may assist over time with creating more realistic consumer expectations and reducing consumer complaints.

**7. Is there other evidence to identify the magnitude and significance of the problem associated with cosmetic medical and surgical procedures provided by registered medical practitioners?**

There is undoubtedly other evidence but it is not readily available to different stakeholders. Evidence could be obtained through a variety of avenues:

- via health insurance companies if they were willing to share complaints information (in accordance with their company policies and applicable Australian Laws i.e.



Privacy Laws etc.), with professional bodies/associations;

- by accessing records for legal proceedings (i.e. how many legal proceedings have been issued against medical practitioners);
- from complaints bodies;
- obtaining information from consumer surveys;
- obtaining information from medical professional surveys; (GP's; psychologists/psychiatrists); and
- media stories.

We would submit however media reporting can be biased and sensationalised so it is arguable the media is not an independent source.

The issue with trying to identify other evidentiary sources is that there is no national data on cosmetic medical treatments and procedures, so it would be an ad hoc process of identifying sources, accessing the information and record and data gathering.

**8. Is there other evidence that the current regulation of medical practitioners who provide cosmetic medical and surgical procedures is not adequately protecting the public and not providing clear guidance on the Board's expectations of practitioners?**

We can only comment on a general basis from the research we have gathered and the people we speak to about cosmetic medical and surgical procedures. It appears that the current regulation is not providing the appropriate safeguards for consumers. The evidence is based on direct consumer feedback however this "evidence" has not been tested. We cannot comment about whether the current regulation is providing clear guidance on the Board's expectations of practitioners, as this requires input from a medical practitioner.

## **Option one**

### **9. Does the Board's current code of conduct and the existing codes and guidelines of the professional bodies provide adequate guidance to medical practitioners providing cosmetic medical and surgical procedures?**

We submit the current code of conduct and the existing guidelines of the professional bodies could be more consistent on a national basis and be specifically tailored to the field of cosmetic medicine (applicable State and National legislation also needs to be addressed). It is Baay's view that the Board's current code of conduct is rather broad.

With new technology, cosmetic medicine continues to evolve rapidly and the code needs to take these changes into account and provide guidelines to effectively address this new environment. However as we are not medical practitioners at Baay we can only address this question from a limited perspective.

### **10. How effective are existing professional codes and guidelines in addressing the problem identified by the Board?**

Based on the research we conducted, the existing codes and guidelines could be more effective (this is presuming medical practitioners abide by new guidelines) if they were consistent on a national basis and reviewed more regularly. Obviously consideration would also need to be given as to how codes and guidelines comply with existing State and National legislation.

With new technology, cosmetic medicine continues to evolve rapidly and we would argue the law has not effectively addressed these changes. Consideration should be given to updating and evaluating existing professional codes and guidelines on a much more regular basis.

**11. Do you agree with the costs and benefits associated with retaining the status quo as identified by the Board?**

Option one may be “cost effective” from a monetary perspective but it isn’t the cheapest, because of the consequences, namely a consumer’s safety.

**12. Are there other costs and benefits associated with retaining the status quo that the Board has not identified?**

We have not considered enough independent information and do not have any medical expertise to answer this question.

**Option Two**

**13. Would consumer education material be effective in addressing the problem? If so, how could it be designed to ensure it is effective and kept up to date and relevant.**

A website providing unbiased, reliable/balanced comprehensive information written in plain English which provides clarity for a consumer would be a starting point to address some of the issues, however educational material can not stand by itself in isolation. It is just one component needed to address the problem.

A website would need to be designed and maintained by an independent stakeholder with input from professional bodies, medical practitioners and consumers (and other relevant stakeholders). Depending on the nature of the information on the website it would need to be constantly maintained, reviewed and updated to ensure the information is accurate.

**14. Who do you think is best placed to design consumer education material about cosmetic medical and surgical procedures provided by medical practitioners?**

An entity/organisation who is independent from the medical industry with no conflict of interest – perceived or otherwise.

The persons involved in designing consumer education material would need to have appropriate professional qualifications and understand risk, their interests must lay in protecting the consumer, they would require skills to translate medical terms into plain English language which is easily understood by the consumer, and they must be able to demonstrate their ongoing commitment to undergoing an adequate level of training (i.e. attending conferences, seminars etc. in the cosmetic medical field on an annual basis and liaising with the relevant professional bodies/associations) to ensure they can effectively continue to educate consumers.

**15. Who should pay for the development of consumer education material?**

The independent stakeholder should be responsible for payment (there may be potential government funding/assistance), so there can be no commercial bias and conflict of interest. Independence should be retained between the professional association/bodies, the medical

practitioners and the consumers (and other interested stakeholders).

**16. Are there any other costs and benefits associated with providing consumer education material that the Board has not identified?**

Potentially there may be other benefits, but the outcome of these would take time to recognise before there was any advantage/benefit gained. For instance if there was a reduction in consumer claims/complaints, there may commercial benefits to the medical practitioner with their insurance policies and their business practices.

**17. The Board seeks feedback on elements for potential inclusion:**

**17.1 Should there be a mandatory cooling off period for adults considering a cosmetic medical or surgical procedure (other than for minor procedures). If so, is seven days reasonable?**

We query whether a mandatory cooling off period would address any risk issues. From the research we have conducted it appears that once a person gets to the stage of having a consultation with a medical practitioner, they want to proceed with the cosmetic medical or surgical procedure ASAP. The only thing stopping (or would have stopped) a person from proceeding with the people we surveyed, was either the cost of the cosmetic medical or surgical procedure / their lack of financial resources. It is Baay's view that a 7 day cooling off period would be of little benefit to the consumer.

**17.2 Should there be a mandatory cooling off period for patients under the age of 18 who are considering a cosmetic medical or surgical procedure?**

Yes, 3 months is reasonable. There is a risk they may go overseas for their cosmetic medical or surgical procedure but Baay is of the view that this risk could be substantially mitigated by a number of means.

**17.3 Should medical practitioners be expected to assess patients for indications that the patient has significant underlying psychological problems, which may make them an unsuitable candidate for the procedure?**

We don't believe a medical practitioner should bear this onus of assessment, as most would not have specific qualifications to address this, however we are of the view that an experienced and diligent medical practitioner will be alert to signs that the patient may be an unsuitable candidate. A medical practitioner may with their own internal clinical practice policies recommend a referral to an independent psychiatrist and can ultimately refuse to treat a patient if they are not comfortable with the patient's mental state.

**17.4 Should medical practitioners be expected to refer these patients to an independent psychologist or psychiatrist for evaluation?**

There are a number of corporate organisations who make "psychological testing" mandatory before they offer employment. Baay believes it would provide some protection for the medical practitioner by having these guidelines. Ultimately its in the best interests of the medical practitioner (whilst still protecting the patient) to ensure the patient is psychologically sound, so it could be expected a credible medical practitioner would not object to having guidelines about referral to an independent psychologist or psychiatrist. These guidelines could protect the medical practitioner regarding complaints/legal proceedings at a later stage.

We remain sceptical that an independent psychological/psychiatrist assessment/evaluation could assist some patients for example, who present with BDD (Body Dysmorphic Disorder), because these patients do not know they have a distorted body image and research has shown that patients refuse to accept they have BDD, because of the nature of this disorder. So this guideline may do little to protect the consumer, because even if the consumer's "chosen" medical practitioner refused to perform the cosmetic medical or surgical procedure, the consumer would undoubtedly "shop around" to find another medical practitioner.

Ultimately we believe this guideline affords more protection to the medical practitioner, which minimises their risk, but we do not consider it would offer any significant benefit to a consumer in the form of protection/safety.

**17.5 Is it reasonable to expect that registered medical practitioners refer all patients under the age of 18 to an independent psychologist or psychiatrist for evaluation before a cosmetic medical or surgical procedure is performed, regardless of whether legislation exists (as it does in Queensland via the Public Health act 2005**

Yes, we believe it is reasonable and this would provide the medical practitioner with some protection if they were to be sued at a later stage. We reiterate the same comments we made in response to question 17.4 above.

**17.6 Should there be further restrictions for patients under the age of 18 who seek cosmetic medical and surgical procedures?**

We think a patient under 18 should be provided with an “independent comprehensive information pack” from the medical practitioner, which includes:

1. The nature of the procedure
2. What it entails
3. Risks/complications
4. Likely outcomes to be expected
5. Confirmation they have attended a psychiatric/psychological assessment/evaluation
6. Profile of the medical practitioner and his/her expectations
7. Acknowledgment that the medical practitioner has explained the procedure to them
8. Acknowledgment that they have read the pack and understood its contents (risks of procedure, likely outcomes etc.).

The patient and an appropriate guardian should both be required to sign a letter confirming their acknowledgment before the patient can proceed with the cosmetic medical or surgical procedure.

**17.6 Should a medical practitioner be expected to have a face-to-face consultation (in person, not by video conference or similar) with a patient before prescribing schedule 4 prescription only cosmetic injectables? If not, why?**

Yes, because even though with advances in technology a video conference is capable of imitating a “face-to-face consultation (with the exception of a physical examination), it is not appropriate in this circumstance, as a physical examination may be required.



**18. Are there other elements not included in the draft guidelines at Attachment B that could be included?**

The elements included are appropriate to the Board's role and jurisdiction.

**19. Do you agree with the costs and benefits associated with guidelines with explicit guidance (option 3) as identified with the Board?**

As there are no complaint statistics or data it is difficult to determine/evaluate the costs and benefits, however the proposed draft guidelines demonstrates a progressive step towards improving consumer protection. Consideration must however be given to capturing data on a national basis and determining appropriate and reliable measurements in order to assess the effectiveness of new guidelines.

**20. Are there other costs and benefits associated with guidelines with explicit guidance (option 3) that the Board has not identified?**

Please see our comments above in response to question 19.

**21. Would the benefits of guidelines with explicit (option 3) outweigh the costs, or vice versa?**

It is reasonable to assume the benefits would outweigh any "costs".

**Option four**

**22. Do you agree with the costs and benefits associated with guidelines with less explicit guidance (option 4) as identified with the Board?**

These costs and benefits appear to be reasonable assumptions.

**23. Are there other costs and benefits associated with guidelines with explicit guidance (option 3) that the Board has not identified?**

As there are no complaint statistics or data it is difficult to determine/evaluate the costs and benefits, but the costs and benefits appear to be reasonable assumptions.

**24. Would the benefits of guidelines with less explicit (option 4) outweigh the costs, or vice versa?**

It is reasonable to assume the benefits would outweigh any “costs”.

## **Consumer Scenarios**

**25. The Board seeks feedback on the cost estimates and assumptions underlying the consumer scenarios (Attachment c).**

These seem like reasonable cost estimates and assumptions however we do not have enough independent information about pricing, specific knowledge of medical practitioner’s clinical and business process (other than from what we are aware of in the industry) and we have not conducted any specific research on these consumers scenarios to make any significant comments. A medical practitioner will be in a much better position to provide constructive feedback and valuable input on these scenarios.

As a general comment, some of the considerations regarding costs and benefits will be:

- Will guidelines with explicit guidance (option 3) mean a change in clinical and business practices? If so, will there be a cost of changing practices? i.e. the cost of changing from current to new practice patterns.

-What is the extent and complexity of the change required to implement and enforce these new guidelines? Is there extra work and time involved; will a clinic require more staff? If so, will staff require training and experience in implementing change/technological change?

-Identifying the distributional impacts (i.e. who pays the costs and who receives the benefits) of guidelines with explicit guidance, on different stakeholders.

-In order to calculate the total impacts for each benefit and cost category (including the magnitude, timing, and distribution of benefits and costs), this step may include qualitative or quantitative description of difficult-to-value impacts.

-To compare total costs and benefits to estimate net costs or benefits to consumers as a whole, a discussion is required of the potential magnitude of effects that cannot be valued in monetary terms, namely consumer protection.

At Baay we believe the cost-effectiveness of implementing additional/new guidelines should be primarily assessed in consumer outcomes i.e. the protection and safety of the consumer.

## **Other Options**

### **26. Are there other options that the Board has not identified?**

The options identified are appropriate to the Board's role and jurisdiction.

## **Preferred Option**

### **27. Which Option do you think best addresses the problem of consumers making rushed decisions to have cosmetic procedures without adequate information?**

Baay considers it to be Option 3.

Submissions prepared on 29 May 2015 by:  
Melanie Thornton  
Founder of Baay-before & after you  
[www.baay.com.au](http://www.baay.com.au)