



Submission to the independent review of the regulation of health practitioners in cosmetic surgery

14 April 2022

About

The Darbon Institute advocates for everyone's right to bodily integrity and autonomy, and educates the public, medical profession, and government about the harms of non-consensual, medically deferrable genital cutting and other such alterations of sex characteristics so that these practices come to an end.

Introduction

The Darbon Institute welcomes the opportunity to contribute to the independent review of the regulation of health practitioners in cosmetic surgery. The review is timely given that, as the Australian Health Practitioner Regulation Agency is aware, last December a two-year old boy died, and his several-month-old brother was left fighting for his life, following complications related to cosmetic circumcision procedures performed by a General Practitioner in Perth.¹ While deaths related to circumcision procedures are rare, serious complications arising from circumcision procedures are relatively common, and any fatalities are totally unacceptable given cosmetic circumcision is unnecessary and deferrable.

There are many complications of circumcision,² including scarring, blood loss, infection, buried penis,³ penile adhesions⁴ and skin bridges,⁵ urethral fistula (holes in the tube urine comes out of),⁶ meatal stenosis (a narrowing of the urethra that results in a narrow, high velocity stream of urine),⁷ kidney failure,⁸ penile disfigurement and amputation, gangrene, psychological trauma,⁹ and death.¹⁰ Most complications occur at the hands of those who are neither urologists nor surgeons.¹¹

The foreskin has many important protective and sexual functions that are removed by circumcision, some of which include:

- **Sensitivity.** The foreskin is the most sensitive part of the penis,¹² and contains an abundance of specialised receptors that sense fine touch.¹³ Circumcision reduces penile sensitivity.
- **Adequate skin coverage.** The removal of too much tissue during circumcision can result in painful, curved, and shorter erections.¹⁴

¹ Aja Styles, 'Shocking and tragic: Perth toddler dead, baby brother in hospital following circumcisions' (9 December 2021) WA Today <<https://www.watoday.com.au/national/western-australia/tragic-case-perth-toddler-dead-baby-brother-in-intensive-care-after-circumcisions-20211209-p59g9x.html>>

² George W Kaplan, 'Complications of circumcision', 1983 10(3) *Urologic Clinics of North America* 10 (3): 543–549.

³ Serkan Yildirim, Tayfun Aköz and Mithat Akan, 'A rare complication of circumcision: concealed penis,' (2000) 106(7) *Plastic and Reconstructive Surgery* 1662–1663.

⁴ Lee E Ponsky et al, 'Penile adhesions after neonatal circumcision', (2000) 164(2) *The Journal of Urology* 495–496.

⁵ Warren Snodgrass, 'Extensive skin bridging with glans epithelium replacement by penile shaft skin following newborn circumcision' (2006) 2(6) *Journal of Pediatric Urology* 555–558.

⁶ Ahmet Ali Sancaktutar et al, 'Multiple circumferential urethrocutaneous fistulae as a rare complication of circumcision and review of literature', (2011) 77(3) *Urology* 728–729; John T Lackey, et al, 'Urethral fistula following circumcision', (1968) 206(10) *Journal of the American Medical Association* 2318.

⁷ Robert Van Howe, 'Incidence of meatal stenosis following neonatal circumcision in a primary care setting', (2006) 45(1) *Clinical Pediatrics* 49–54.

⁸ Meena Kalyanaraman et al, 'Urosepsis and postrenal acute renal failure in a neonate following circumcision with a Plastibell device', (2015) 58(4) *Korean Journal of Pediatrics* 154–157.

⁹ Samuel Ramos and Gregory J Boyle, 2000. 'Ritual and medical circumcision among Filipino boys: evidence of post-traumatic stress disorder', (2000) *Humanities & Social Science Papers* Paper 114.

¹⁰ James L Snyder, 'Chapter 8 Complications of Circumcision: A Urologist's Perspective' in G.C. Denniston et al. (eds) *Genital Autonomy*, (Springer Science 2010)

¹¹ Op. cit. 2.

¹² Morris L Sorrells et al, 'Fine-touch pressure thresholds in the adult penis', (2007) 99 *British Journal of Urology International* 846–889.

¹³ Robert M Moldwin and Elso Valderrama, 'Immunochemical analysis of nerve distribution patterns within prepuccial tissue', (1989) 141(4) *Journal of Urology* Part 2, 499A.

¹⁴ John Van Duyn and William S Warr, 'Excessive penile skin loss from circumcision', (1962) 51 *Journal of the Medical Association of Georgia* 394–396.

- **Physical protection.** The outer foreskin protects the head of the penis and the inner foreskin from chaffing and infection.¹⁵
- **Immune response to infection.** The inner foreskin is a mucous membrane that contains immune cells and produces antimicrobial substances that fight infection. An intact genital mucosa may be needed for future vaccines developed against sexually transmissible infections to be effective.¹⁶

Despite clear evidence of harm and the procedure almost never being medically indicated, legal ambiguity and a lack of regulatory oversight has resulted in a situation where every year 10–20% of young boys in Australia are strapped to plastic boards to have the most sensitive part of their penis amputated.¹⁷ Circumcision procedures are mostly performed by General Practitioners, and mostly occur in dozens of private circumcision clinics throughout Australia. The entire business model of these dedicated circumcision clinics relies on profiting from circumcision procedures that are mostly performed for cosmetic reasons on minors too young to provide consent.

Greater regulatory oversight of circumcision providers is urgently needed, given:

- Circumcision is an invasive, irreversible procedure that removes the foreskin and its important protective and sexual functions,¹⁸ carries the risk of serious complications, can result in psychological harm, and always results in physical harm.¹⁹
- Circumcision providers often downplay complications of circumcision procedures and fail to explain the functions of the foreskin that are lost when it is excised, i.e., informed consent is not being obtained due to inadequate information (see answer to Question 1).
- Informed consent arguably cannot be obtained in cases where health practitioners are performing *cosmetic* circumcision procedures on minors too young to provide their own informed consent (which is the case for most circumcisions in Australia). This is because parental consent is arguably not valid for performing medically unnecessary/deferable cosmetic procedures on minors, leaving health practitioners liable to criminal prosecution.²⁰
- Some medical practitioners are incorrectly or even fraudulently claiming Medicare benefits intended only for *therapeutic* circumcision of the penis, and concerns have been raised some may even be surgically excising the foreskins of girls, which is considered a form of female genital mutilation that is criminalised in all Australian jurisdictions.²¹

With this as our context, The Darbon Institute is pleased to provide the following responses to select questions from the consultation paper.

¹⁵ Christopher J Cold and John R Taylor, 'The prepuce', (1999) 83(1) *British Journal of Urology* 34–44.

¹⁶ Akiko Iwasaki, 'Antiviral immune responses in the genital tract: clues for vaccines', (2010) 10(10) *Nature Reviews Immunology* 699–711.

¹⁷ The Royal Australasian College of Physicians, *Circumcision of infant males* (Report, September 2010)

¹⁸ Morten Frisch et al, 'Cultural bias in the AAP's 2012 technical report and policy statement on male circumcision' (2013) 131(4) *Pediatrics* 796–800.

¹⁹ Gregory J Boyle et al, 'Male circumcision: pain, trauma, and psychosexual sequelae', (2002) 7(3) *Journal of Health Psychology* 329–343.

²⁰ Queensland Law Reform Commission, *Circumcision of infant males: Research paper* (Report, December 1993) 39; Tasmania Law Reform Institute, *Non-therapeutic male circumcision Final Report No 17* (Report, August 2012); Secretary of the Department of Health and Community Services v JWB and SMB (1992) 175 CLR 218, 250 (Mason CJ, Dawson, Toohey, and Gaudron JJ).

²¹ The Darbon Institute, *Position statement: Medicare rebates for circumcision* (Report, October 2021)

Responses to select consultation paper questions

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?

In relation to cosmetic circumcision procedures, the *Guidelines for registered medical practitioners who perform cosmetic medical and surgical procedures* (the Guidelines) do not adequately support safe practice that is within a practitioner’s scope, qualifications, training, and experience.

The Guidelines state that “The Board expects that medical practitioners are familiar with relevant legislation of the jurisdiction in relation to restrictions on cosmetic surgery for patients under the age of 18.”²² Yet circumcision providers continue to perform cosmetic circumcision procedures on children despite these unnecessary procedures causing bodily injury and leaving practitioners open to criminal liability.²³

Section 4.1 of the Guidelines state, “The medical practitioner who will perform the procedure must provide the patient with enough information for them to make an informed decision about whether to have the procedure.”²⁴ A long list follows of what that information must include, but absent is information about any loss of function that is expected to occur because of the procedure. This is significant in the case of procedures that involve the amputation of healthy tissue, such as circumcision of the penis, as informed consent cannot be obtained unless patients understand the functions of the tissue that will be lost when it is excised.²⁵ Moreover, many who undergo cosmetic circumcision procedures are minors too young to provide informed consent because they are too young to understand the procedure and its implications. **The Guidelines should make it clear that information about any possible loss or reduction of function associated with a procedure must be provided to obtain informed consent.**

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

The Guidelines define “major cosmetic medical and surgical procedures” as procedures that “involve cutting beneath the skin”.²⁶ Despite the common misconception that circumcision of the penis is ‘just a little snip’, there are multiple different circumcision procedures involving various clamps and surgical equipment, all involve cutting beneath the skin, and all carry significant

²² Medical Board of Australia, *Guidelines for registered medical practitioners who perform cosmetic medical and surgical procedures* (Report, October 2016) 3.

²³ Op cit 20.

²⁴ Op. cit. 22 p.4.

²⁵ Brain Earp, ‘Do the benefits of male circumcision outweigh the risks? A critique of the proposed CDC guidelines’, (2015) 3(18) *Frontiers in Pediatrics* 1–6.

²⁶ Op. cit. 22 p.4.

risks of complications. Circumcision of the penis is therefore a major cosmetic and surgical procedure.

Section 3.4 of the Guidelines states that “Before any major procedure, all patients under the age of 18 must be referred for evaluation to a psychologist, psychiatrist or general practitioner, who works independently of the medical practitioner who will perform the procedure, to identify any significant underlying psychological problems which may make them an unsuitable candidate for the procedure.”²⁷ This does not occur in most cases of circumcision because the procedure is mostly performed at the behest of parents on infants and children too young to comprehend what is happening or provide their own informed consent. **The Guidelines should make it clear that medically deferrable procedures should not be performed on minors until such time as they are Gillick competent and able to consent to the procedure themselves.**

Section 8.1 of the Guidelines states that “Procedures should only be provided if the medical practitioner has the appropriate training, expertise, and experience to perform the procedure and deal with all routine aspects of care and any likely complications.”²⁸ The Darbon Institute does not believe General Practitioners have the appropriate training, expertise, and experience to perform circumcision of the penis and deal with all routine aspects of care and any likely complications. **It should not be within the scope of practice for any medical practitioner, other than registered Fellows of the Royal Australasian College of Surgeons (FRACS), to perform circumcision of the penis,** which is a major cosmetic procedure that should only be performed by a qualified surgeon.

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?

Notifiable concerns have a specific meaning under the National Law. There are four concerns that may trigger a mandatory notification, depending on the risk of harm to the public: 1) impairment, 2) intoxication while practising, 3) significant departure from accepted professional standards, and 4) sexual misconduct.²⁹

All medical practitioners who perform cosmetic circumcision procedures on non-Gillick competent minors are significantly departing from accepted professional standards, because these procedures contradict the Hippocratic oath (*Primum non nocere*: First, do no harm),³⁰ breach human rights,³¹ and because the way they are most often performed is not supported by the Royal Australasian College of Physicians.³²

²⁷ Op. cit. 22 p.3.

²⁸ Op. cit. 22 p.5.

²⁹ AHPRA, *Guidelines: Mandatory notifications about registered health practitioners* (March 2020) 2.

³⁰ Op. cit. 18.

³¹ Jonathan Meddings and Travis Wisdom, *Genital Autonomy* (Report, February 2017) Rationalist Society of Australia.

³² Op. cit. 17.

Moreover, all the above mandatory notifications relate to general fitness to practice, yet one's ability to safely practice should also be defined by their demonstrated track record. **Major complications resulting from cosmetic surgical procedures should be within the scope of mandatory notifications and centrally recorded.** This will help to identify practitioners that are consistently posing an unacceptable risk to public safety and enable appropriate actions to be taken. For example, it would be beneficial to know how many severe bleeding episodes result from the 16,000 – 32,000 newborn circumcisions performed in Australia each year, because screening for haemophilia prior to circumcision is not routine and to our knowledge rarely occurs, yet failure to do so can result in severe blood loss and even death.

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

The current regulatory approach rests on industry self-regulation and a complaints-based mechanism for reporting advertising breaches. There are inherent limitations to industry self-regulation and complaints-based mechanisms.

The AHPRA and National Boards' *Guidelines for advertising a regulated health service* state that advertisers must comply with the advertising requirements under section 133 of the National Law, and other codes and guidelines published by the National Boards for their profession. Advertising must not:

- be false, misleading, or deceptive, or likely to be misleading or deceptive;
- offer a gift, discount or other inducement, unless the terms and conditions of the offer are also stated;
- use testimonials or purported testimonials about the service or business;
- create an unreasonable expectation of beneficial treatment; or
- directly or indirectly encourage the indiscriminate or unnecessary use of regulated health services.³³

The Darbon Institute is aware of several successful complaints lodged against circumcision providers for breaching advertising requirements. However, it would appear many of these same circumcision providers have failed to amend their advertising following AHPRA's interventions.

Self-regulation has failed. People's health is at stake. A more proactive approach to regulating advertising of major cosmetic and surgical procedures, including circumcision procedures, is necessary, appropriate, and proportionate to the risks involved.

³³ AHPRA and the National Boards, *Guidelines for advertising a regulated health service* (December 2020) 4.

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 significant number of advertising breaches committed by circumcision providers indicates there is a clear need to improve the regulation of advertising related to circumcision. These breaches occur even though in many clinics circumcision is often the sole procedure performed, and despite a positive obligation imposed on medical practitioners to understand their advertising requirements.³⁴ A more proactive approach by AHPRA to enforcing advertising standards will improve public safety.

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)?

In addition to lacking an appropriate level of surgical skills and qualifications, many health practitioners performing circumcisions of the penis are incorrectly and even fraudulently claiming the Medicare rebate intended only for therapeutic procedures.³⁵ Taken together, this indicates that a greater level of regulatory oversight of circumcision providers, and an endorsement in relation to the practice of cosmetic surgery, is urgently needed. Such an endorsement should consider whether one is qualified to perform minor or major cosmetic and surgical procedures. In the case of major cosmetic and surgical procedures such as circumcision of the penis, registration as Fellows of the Royal Australasian College of Surgeons is recommended to ensure that practitioners have the professional competency and surgical skill required to minimise and adequately respond to surgical and post-surgical complications.

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 Darbon Institute supports establishing an endorsement in relation to cosmetic surgery and specialist title protection in relation to “cosmetic surgeon”. Circumcision procedures are a type of major cosmetic surgery, so to improve patient safety they should only be performed by medical practitioners qualified to undertake major cosmetic surgery (see answer to Question 11). This will reduce the risk of infant and child mortality associated with circumcision of the penis, which occurred as recently as December when a Perth boy died following complications from a circumcision procedure performed by a General Practitioner.

³⁴ Op. cit. 33 p.16.

³⁵ Op. cit. 21.

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

Many complications of circumcision are missed because infants cannot complain, and because most parents cannot identify them. Improved consumer information for parents and mandatory follow-up post-circumcision would help identify post-surgical complications and improve reporting. (See also answer to Question 4).

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

The Darbon Institute supports a requirement for practitioners to explain – to patients, or those consenting to a procedure on another’s behalf as occurs in the case of parents consenting to the cosmetic circumcision of their young boys – how to make a complaint if dissatisfied.

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

Many consumers are simply unaware that AHPRA exists. Many also lack the literacy and health literacy required to understand, or lack the time to engage with, complicated complaints-based mechanisms. In addition, consumers are not qualified to determine if a health practitioner has performed their duties/service to a sufficient standard and are understandably intimidated by the notion of challenging a health practitioner, viewed by many as inherently credible by virtue of their profession.

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

The Darbon Institute is a registered charity and operates an education program that informs the public about the harms of circumcision. We would welcome the opportunity to discuss how a new project, which involves sourcing real stories of circumcision harms, presents an opportunity to advise consumers of their rights and complaints mechanisms following adverse events related to circumcision procedures.

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

It should be a requirement for all circumcision providers to advise consumers of the functions and benefits of the foreskin that are lost by its removal, complications and risks involved in the procedure, and their rights and complaints mechanisms. We would welcome the opportunity to discuss the development of a standard information sheet for consumers.