MDO Experience: Claims in Australia

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1 in 3

bariatric surgeons have a claim or complaint

Note: Includes civil compensation claim and non-civil complaints.

Civil claim frequency and average size

- The civil claim frequency for bariatric surgeons have more than doubled since 2017, driven by both bariatric surgery and other types of general surgery.

- Average finalised civil claim sizes for bariatric surgeries in 2023 were almost 7 times compared to 2017 levels.

- The increasing trends in claim frequency and average claim size for bariatric surgeries put upward pressure on premiums for bariatric surgeons.

Bariatric surgeries and medico-legal risk

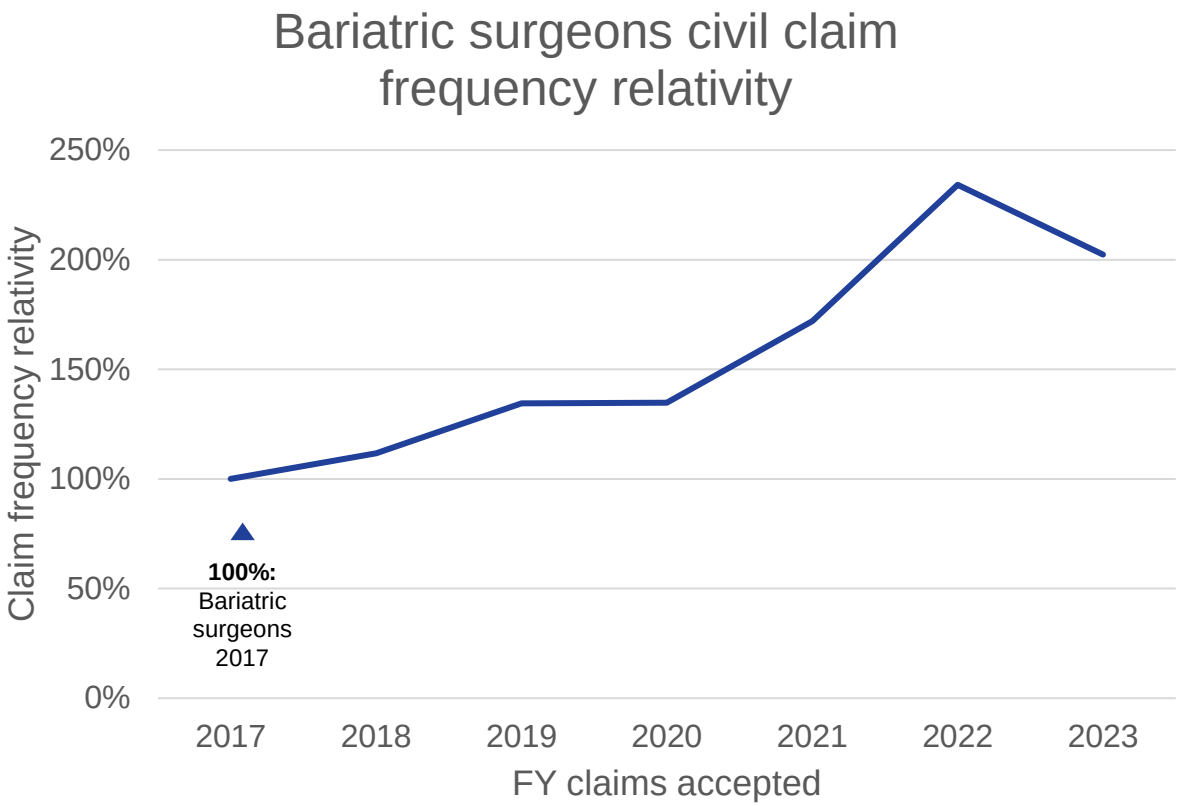
- Both AIHW and bariatric registry data show increasing volume and share of gastric bypass over time.

- This increased exposure will continue to place upward pressure on civil claim frequency as gastric bypass has higher civil claims risk compared to sleeve gastrectomy (280% higher on adjusted basis).

- Around one third of bariatric surgery claims involve revision bariatric surgery. Revision bariatric surgery has higher claims risk compared to primary bariatric surgery (120% higher on adjusted basis).

- While intra-operative risks are the most common allegation in bariatric surgery claims, it is post-operative risks that are more often found below standard of care and could be an area for risk improvement.

Civil claims increasing

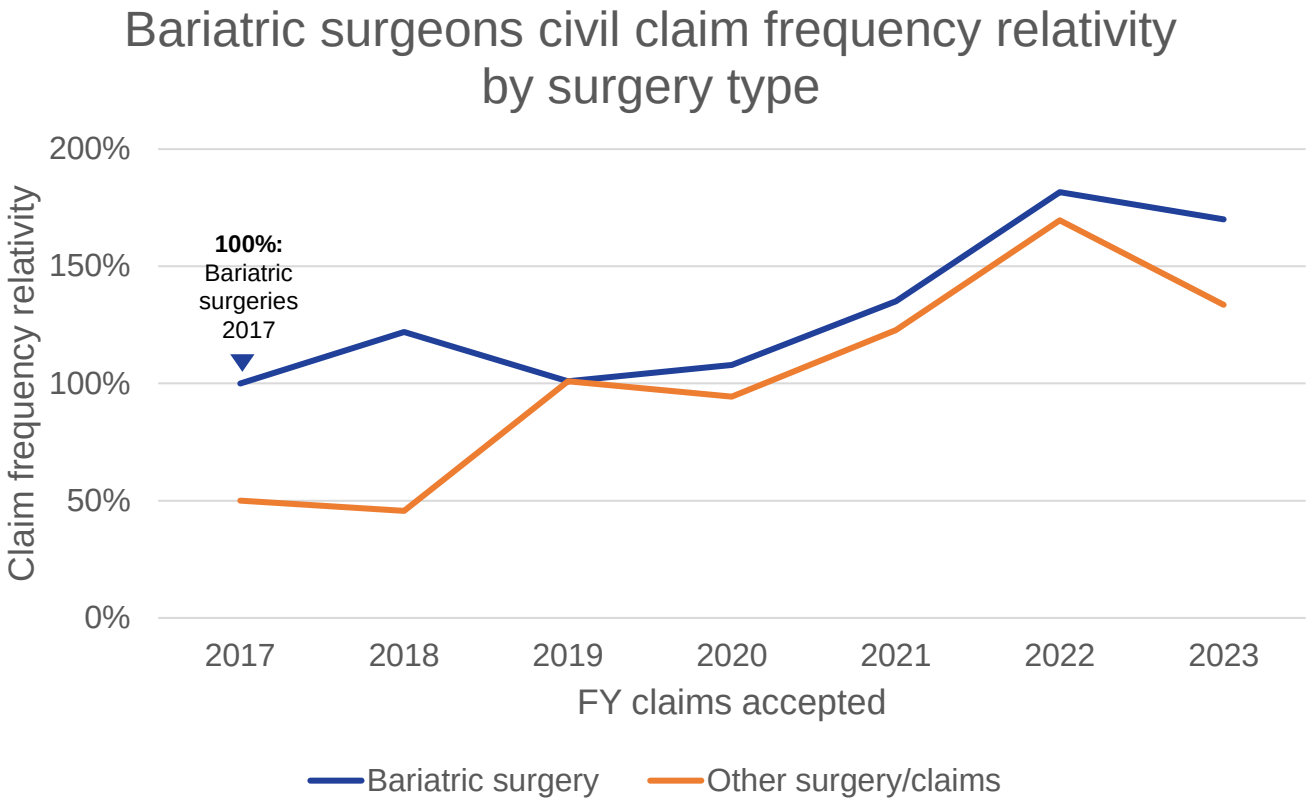


Increased pressure on future premiums

- The civil claim frequency for bariatric surgeons have more than doubled since 2017.
- This chart tracks the claims experience of surgeons who have ever been in the bariatric surgeon category of practice.

Source: Coded civil claims for bariatric surgeons accepted in 7 years to June 2023.

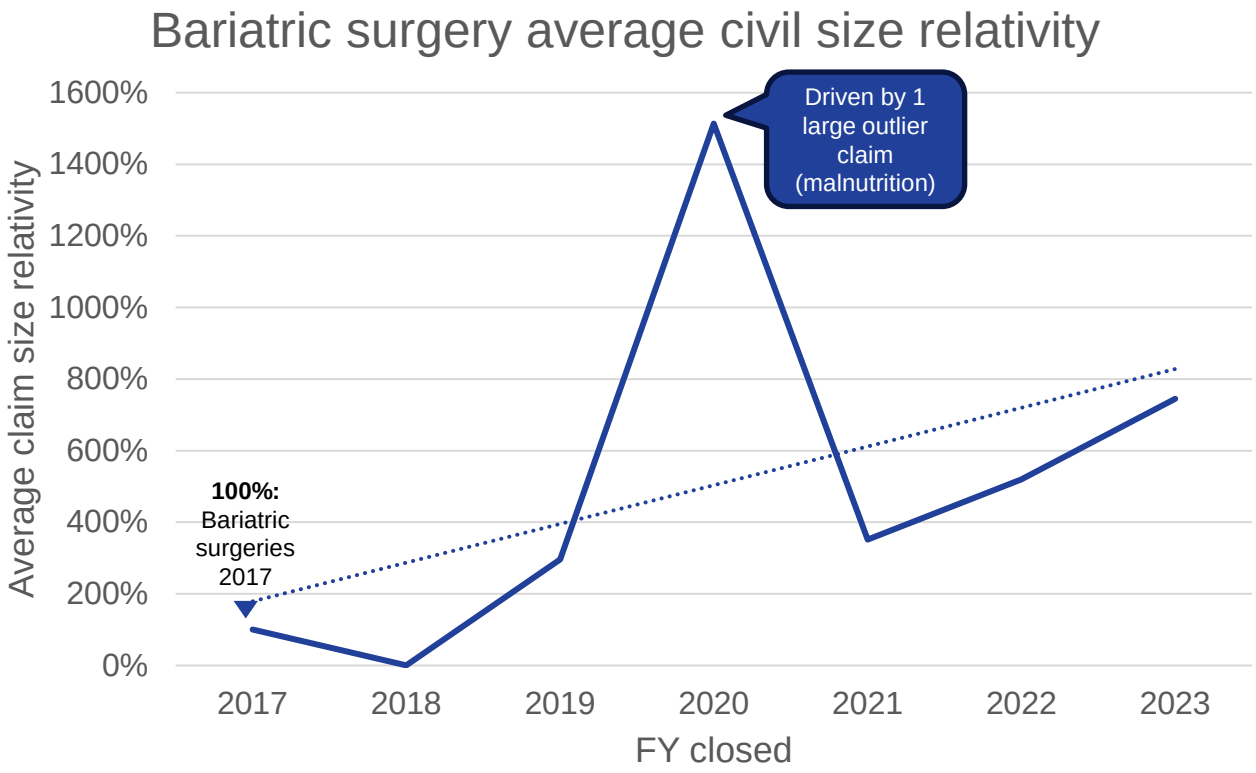
Bariatric surgeons have increasing claims in both bariatric and other surgeries



- For bariatric surgeons, the increasing claim frequency is driven by both bariatric surgery and other general surgery (e.g. hernia repair, cholecystectomy).
- This indicates that the higher claims risk for bariatric surgeons is not limited to bariatric surgeries but also other areas of general surgery and practice.

Source: Coded civil claims for bariatric surgeons accepted in 7 years to June 2023.

Average finalised civil claim sizes for bariatric surgeries have increased

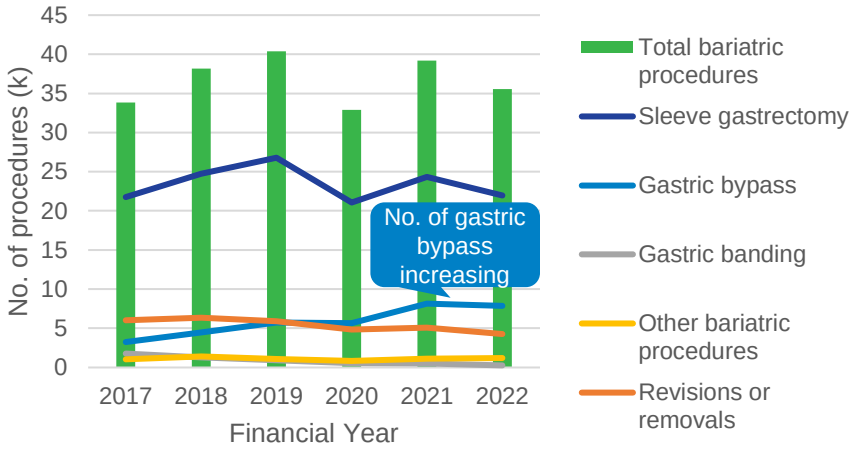


- Average finalised civil claim sizes for bariatric surgeries in 2023 were almost 7 times compared to 2017 levels. This increase puts upward pressure on future premiums.

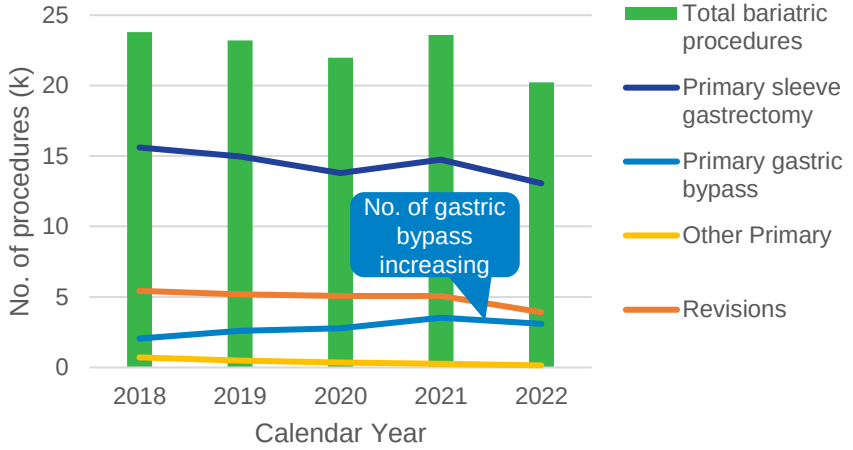
Source: Coded civil claims for bariatric surgeons closed in 7 years to June 2023, bariatric procedures only.

Market data shows volume and share of gastric bypass are increasing

AIHW
Volume of bariatric procedures



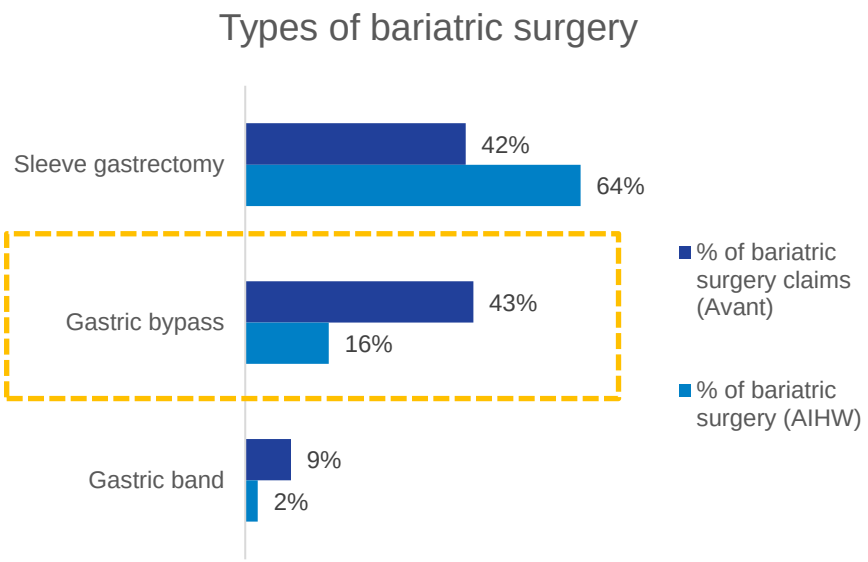
Bariatric surgery registry
Volume of bariatric procedures



- **Gastric bypass** has been increasing in volume and in share of bariatric surgeries.
  - **AIHW:** 10% to 22% (2017 to 2022)
  - **Bariatric surgery registry:** 11% to 19% (2018 to 2022)
- **Sleeve gastrectomy** has remained largely stable in volume but decreasing in share.
- **Gastric banding** is decreasing in volume and share.

Source: AIHW procedures data cube, includes both public and private hospital. Bariatric surgery registry 2022 Annual Report.

Gastric bypass has higher claims risk compared to other bariatric surgeries



- As gastric bypass account for a smaller share of bariatric surgeries performed annually, claim frequency for gastric bypass is almost 280% higher than sleeve gastrectomy.
- The increasing volume of gastric bypasses performed annually in the market will continue to place upward pressure on civil claims frequency.

Source: Coded civil claims for bariatric surgeons accepted in 7 years to June 2023, bariatric procedures only.

Revision bariatric surgery has higher claims risk

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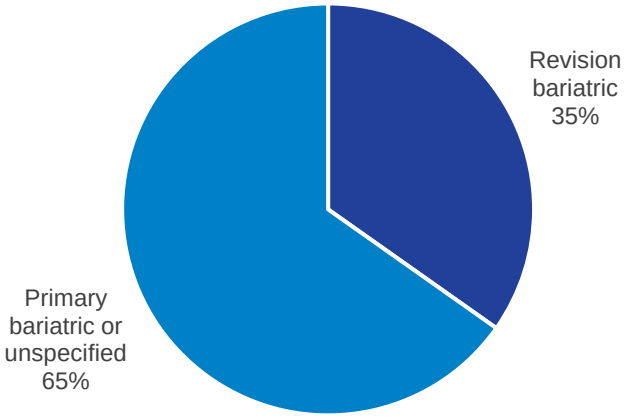
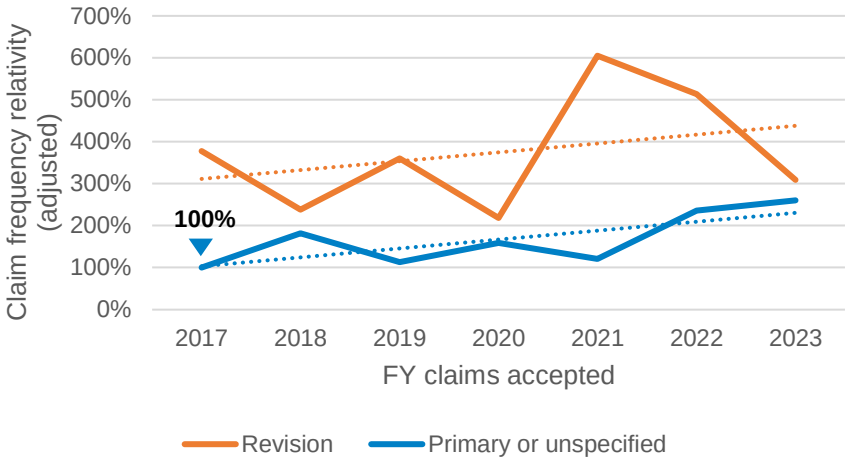
Revision bariatric surgeries in civil claims



Bariatric surgery claim frequency relativity (adjusted for mix of surgery)

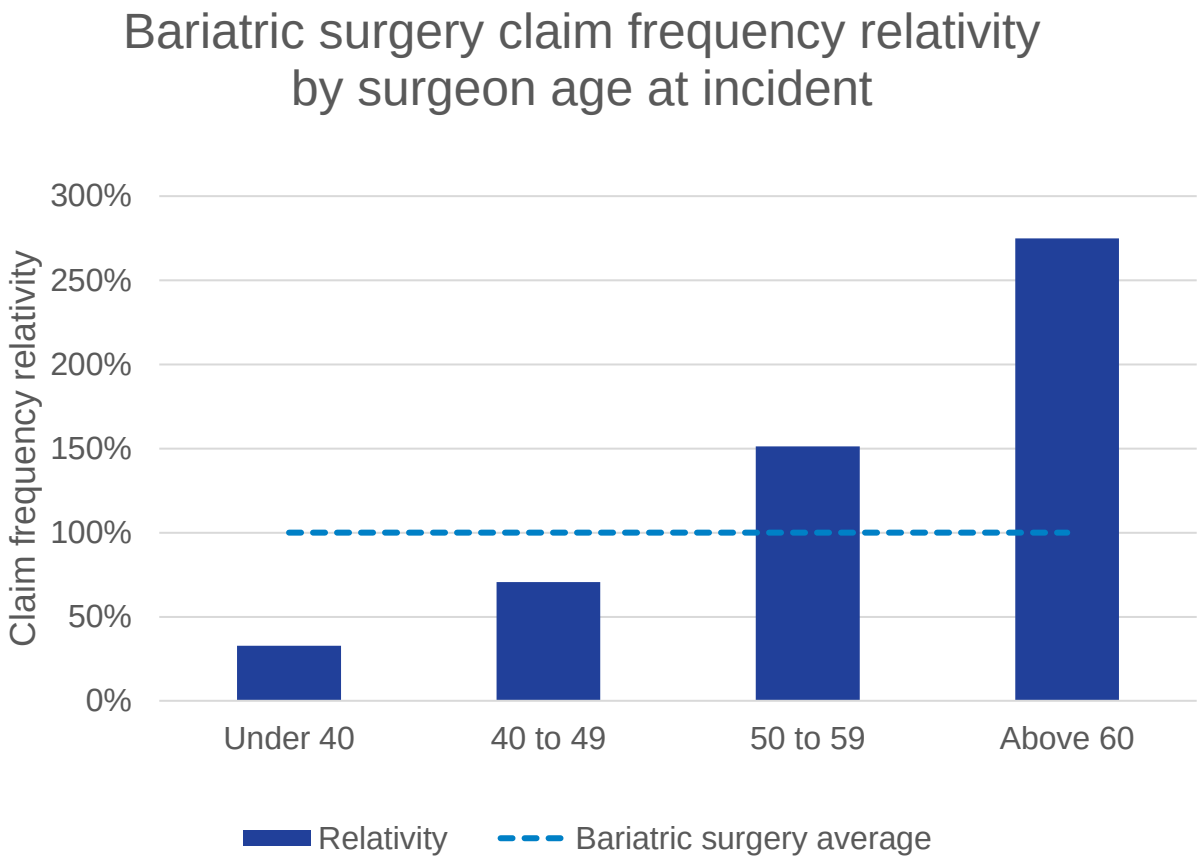


- Around one third of bariatric surgery claims involve a revision bariatric surgery.
- Many of these involve removal or revision of gastric band and conversion into sleeve gastrectomy or gastric bypass.

- After adjusting for mix of revision vs primary surgeries, revision bariatric surgery is almost 120% higher than primary bariatric surgery.

Source: Coded civil claims for bariatric surgeons accepted in 7 years to June 2023, bariatric procedures only.

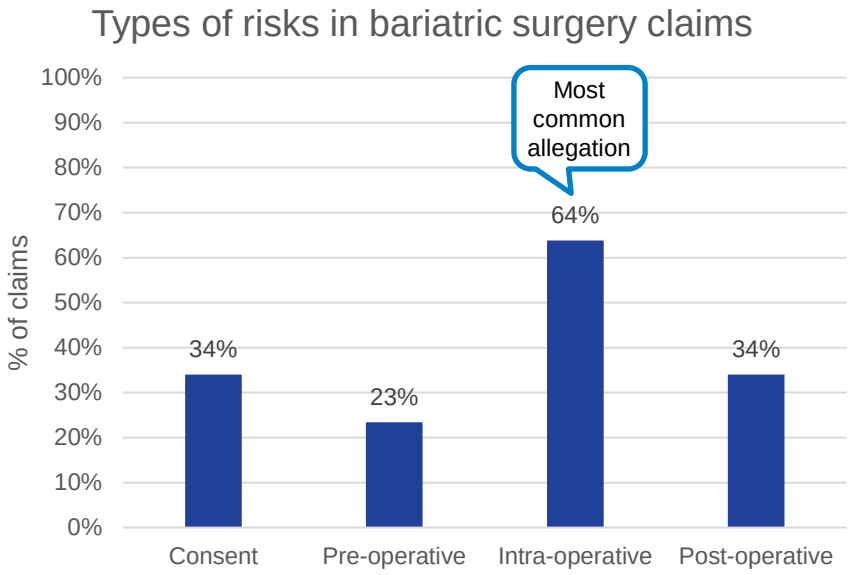
Bariatric surgery claim frequency increases with age and workload

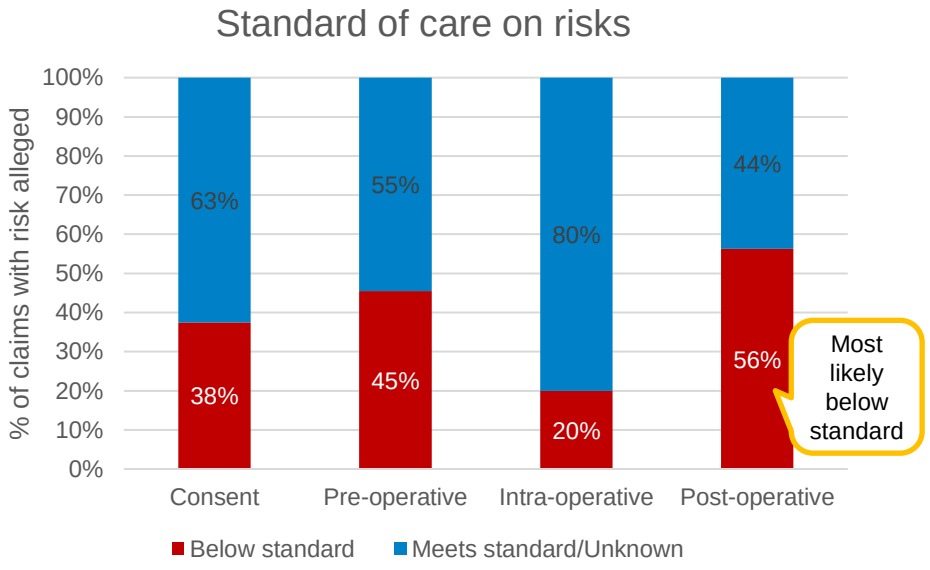


- Bariatric surgery claim frequency increases with age. This is reflective of increased workload as surgeons become more experienced.

Source: Coded civil claims for bariatric surgeons accepted in 7 years to June 2023, bariatric procedures only.

Post operative management is where civil claims often fall below standard





- Intra-operative risks are alleged in 64% of bariatric surgery claims, followed by post-operative risks (34%) and consent risks (34%).
- Intra-operative risks are often alleged in conjunction with pre-operative risks such as consent.

- Over half of claims with post-operative risks are below standard of care, which could be an area for risk improvement.
- While intra-operative risks are the most common allegation, only 20% of these claims are below standard on intra-operative risks.

Source: Coded civil claims for bariatric surgeons closed in 7.5 years to Jan 2024, bariatric procedures only.
Note: Each bariatric surgery claim could have one or more allegations from any stage of patient care (pre-operative, intra-operative and post-operative).

Medico-legal risks in bariatric surgeries

Pre-operative and consent

- Consent and failure to discuss specific risks (e.g. anastomosis leaks, stricture, obstruction, malnutrition)
- Written consent information needs to be accompanied by verbal discussion and records, and allow adequate time between consent discussion and surgery
- Selection of surgery given patient history and desired outcomes

Intra-operative

- Poor surgical skill and competence
- Delay or failure to diagnose complications intra-operatively

Post-operative

- Delay in diagnosing complications when pain or other symptoms are reported:
  - Delay in taking appropriate investigations or action when patient deteriorates
  - Premature discharge or inadequate monitoring
  - Failure to refer or communicate with other specialists to diagnose complications from surgical or non-surgical causes (e.g. nutritional deficiencies)
- Delay in performing exploratory, repair or revision surgery
- Failure to arrange post-operative reviews, including inadequate systems for follow up or inadequate handover to another specialist to review if not available
- Relying on patients to arrange follow up or further investigations; Thiamine

Premium Support Scheme

The Premium Support Scheme (PSS) is an Australian Government scheme that helps you with the costs of your medical indemnity insurance. If you are eligible (your indemnity cost is >7.5% of your billings) this could mean significant reductions in your practitioner indemnity insurance premium charged by Avant.

Policy period	2021-22	2022-23	Comments
Billings	$1,000,000	$1,000,000	Billings unchanged
Indemnity cost	$100,000	**$130,000**	**30% increase in cost**
PSS applies to Indemnity cost >7.5% of billings	$75,000	$75,000	PSS applies above 7.5% threshold*
60% rebate on indemnity cost above above $75k	$15,000 (60% of $25,000)	$33,000 (60% of $55,000)	60% rebated on indemnity cost above 7.5%
Net indemnity cost post PSS	**$85,000**	**$97,000**	**PSS can limit impact of increases, in this instance a $30,000 increase, is reduced to $12,000.**

* PSS not applicable on risk surcharge portion of a premium.

Visit www.avant.org.au/pss or call us on 1800 128 268 to opt-in.

Potential actions to manage risk

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- Access education resources (e.g. Communication & Consent)
- Review post-operative systems for monitoring, handover and follow up
- Take advantage of free pro-active practice assessment
- Consider amount of complex surgery or revision work undertaken

Training and peer support

Qualifications and training: to support appropriate scope of practice

Younger fellows: experience and skills match the complexity of the surgery
Experienced fellows: keep up to date with best practice and surgical skills

If in group: attend regular M&M and MAC and confer with peer pre-operatively

If solo: seek out peers pre-operatively and to reflect on outcomes and complex cases

Mentoring programs: ANZMOSS sets up a framework for members to support each other in reducing risk of claims e.g. peers act as sounding board for complex procedures (revision) and patient selection.

Important notices

General disclaimer

The information in this presentation is general information relating to legal and/or clinical issues within Australia (unless otherwise stated). It is not intended to be legal advice and should not be considered as a substitute for obtaining personal legal or other professional advice or proper clinical decision-making having regard to the particular circumstances of the situation.

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