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Committee on the Health Care Complaints Commission

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Cosmetic Health Service Complaints in New South Wales



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The motto of the coat of arms for the state of New South Wales is “Orta recens quam pura nites”. It is written in Latin and means “newly risen, how brightly you shine”.

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Membership

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Chair's Foreword

I am pleased to present the Committee's fourth report for the 56th Parliament, *Cosmetic health service complaints in New South Wales*.

The Committee commenced this inquiry because we were concerned about public safety, particularly in light of various cases relating to cosmetic health services that attracted media attention, including the tragic death of Ms Huang after a breast filler procedure.

The Health Care Complaints Commission (HCCC) had also warned the public about some of the risks associated with certain kinds of operators and services. In addition, the Minister for Health had requested a review of the existing regulatory framework for cosmetic procedures in New South Wales, to ensure it adequately protected the public. Against this backdrop, we wanted to examine whether the HCCC and other Government regulatory frameworks could improve outcomes for the public who use cosmetic health services.

The cosmetic health services industry is a growing industry with an increasing demand for services. This inquiry has demonstrated to the Committee that there are a number of complexities that make regulating this area very challenging. There are various State and Commonwealth agencies and entities which play an important role in regulation or complaint-handling. There are also a number of different State and Commonwealth laws which may be relevant, depending on the circumstances. Both registered and unregistered practitioners perform, or assist with, different kinds of procedures. In addition, there is no settled definition of what constitutes cosmetic health services.

The Committee is concerned that complaints about these services may be underreported for a variety of reasons. We are also concerned about the corporate model of practice versus the traditional medical model of patient care and, in particular, the profits before patients focus of some corporate providers. We heard from a wide range of stakeholders that there is a lack of public awareness about various issues associated with this industry.

The Committee has made 16 recommendations to address these and other issues of concern raised in this inquiry. Our recommendations are intended to ensure that:

- legislative and regulatory frameworks are strengthened to better protect the public from potential harm
- relevant and important information about the cosmetic health services industry is more accessible to the public so individuals can make informed decisions about procedures and practitioners and understand where and how to make a complaint if they are dissatisfied
- the HCCC's powers and functions are robust enough to adequately address the complexities associated with the cosmetic health services industry (and the health services industry more broadly) and assist patients in resolving their concerns.

The Committee's recommendations are not just focused on the HCCC. We found that collaboration between the HCCC and other State and Commonwealth agencies and entities is important to inform the public and protect them from cosmetic health service providers that

do not comply with the law or do not have satisfactory practices. Our recommendations will therefore involve work on the part of other NSW government agencies including NSW Health and NSW Fair Trading. We recognise that national cooperation and consistency on many of these issues is preferable. As such, we have recommended that the NSW Minister for Health raise certain issues of concern with the COAG Health Council with a view to achieving reforms that will apply across the country.

I acknowledge that there has already been a lot of work by State and Commonwealth governments, agencies and entities in recent times to improve the frameworks for regulating the cosmetic health services industry. There is also work that is still in progress. Our recommendations are intended to complement this work and address any further gaps that we have identified to ensure a robust regulatory framework in New South Wales.

While we have considered a range of different issues as part of this inquiry, we did not receive a great deal of evidence in relation to unregistered health practitioners who provide, or assist with, cosmetic health services. Unregistered cosmetic health service providers is an area that could be the topic of further consideration in the future.

I would like to thank everyone who provided evidence to the Committee, which has greatly assisted us in formulating our recommendations. I thank my fellow Committee Members from the Legislative Assembly and the Legislative Council for their interest in, and engagement with, the issues. Finally, I would like to thank the Committee secretariat for their work and support.

A handwritten signature in blue ink, consisting of a large, stylized 'A' followed by a horizontal line extending to the right.

Mr Adam Crouch MP
Chair

Summary

Background to the inquiry

On 13 February 2018, the Committee resolved to conduct this inquiry into cosmetic health service complaints in New South Wales in response to concerns raised by the Minister for Health, the Health Care Complaints Commission (HCCC), the media and the community. The Committee's concern was to investigate whether the HCCC and other Government regulatory frameworks could improve outcomes for the public who use cosmetic health services. The terms of reference for the inquiry are in [Appendix One](#).

A particular case that captured the Committee's attention was the tragic death of Ms Jean Huang following a breast filler procedure at the Medi Beauty Clinic in 2017. The persons who performed the procedure were allegedly not registered health practitioners in Australia and have been charged with manslaughter. The HCCC is separately investigating the matter.

The Committee has also followed matters relating to The Cosmetic Institute, which was investigated by the HCCC after two separate instances where women undergoing breast augmentation suffered cardiac arrest. A class action has also been commenced against The Cosmetic Institute alleging negligence during breast augmentation that left patients with life-threatening complications.

Prior to this inquiry, the HCCC issued public warnings in relation to the cosmetic health services industry. The NSW Minister for Health also:

- raised with the Council of Australian Governments (COAG) Health Council the issue of protecting the title 'cosmetic surgeon' nationally to restrict its use to appropriately educated, trained and experienced health practitioners
- introduced regulations to require certain cosmetic surgical procedures, such as breast augmentation, to be carried out in licensed private health facilities
- requested a review of cosmetic procedures to consider the adequacy of the existing regulatory framework to protect the public. The NSW Ministry of Health's report made nine recommendations which have been, or are in the process of being, implemented.

Complexities of the cosmetic health services industry

The Committee learnt that the cosmetic health services industry is dynamic and complex. There are a number of issues that present regulatory challenges, such as those outlined below.

No agreed definition of what constitutes cosmetic health services

While the Medical Board of Australia's definition of cosmetic medical and surgical procedures provides some guidance, there is no agreed definition of cosmetic health services or cosmetic procedures. The Committee believes that the lack of a clear definition presents regulatory difficulties. However, because new procedures are regularly being developed, the Committee acknowledges that any definition would need to adapt to this ever-changing environment.

Registered and unregistered practitioners perform cosmetic health services

Both registered and unregistered health practitioners provide cosmetic health services. Registered practitioners include doctors and nurses and unregistered practitioners could include beauty therapists. This presents challenges because patients do not always understand the distinction; there are differences in the applicable legislative, regulatory and complaint-handling frameworks; and there was a perception among some inquiry participants that there is a lack of sufficient oversight of unregistered practitioners.

The Committee mostly received evidence from, and about, registered practitioners. As such, the Committee has not made any particular findings or recommendations about unregistered practitioners. However, the Committee considers that the regulation of unregistered health practitioners could be the subject of a separate, dedicated inquiry in the future.

Licensed facilities versus unlicensed facilities

The public is also not always aware that some invasive cosmetic surgery procedures, such as breast augmentation, need to be performed in licensed private health facilities, which have more stringent standards with respect to the safety of the premises and patients and the standard of clinical care. Unlicensed facilities may still need to comply with other regulations such as in relation to local council requirements and public health. The Committee believes that raising public awareness about these differences is important.

Corporate model versus patient model

The Committee heard that the corporatisation of the cosmetic health services sector has caused some challenges. In particular, the Committee was very concerned to learn that some commercial operators put profits before patients which can conflict with patient interests. Others operate across borders which can cause difficulties for regulation and complaint-handling. Some offer low-cost options by using counterfeit products or employing inadequately qualified staff. This can put patients at risk. The Committee acknowledges that State and Commonwealth agencies are collaborating to address these risks. It is essential that this work is continued and that emerging risks are identified and addressed quickly.

In contrast, the Committee heard that under a medical or patient-centric model, the medical practitioner owes a duty of care to their patient, which requires them to consider the patient's best interests including, in some cases, advising them not to proceed with a procedure.

Under-reporting of complaints

The HCCC received 94 complaints about cosmetic services in 2016-17. While this was a small number relative to other complaints they received, the overall trend is an increase. In 2017, NSW Fair Trading received 287 complaints about beauty services. Several inquiry participants claimed there may be an under-reporting of complaints because people are not aware that they can complain, feel too embarrassed or believe it would be a waste of time. It is important that the public are made aware that they can complain about these services and are encouraged to do so. Any barriers to making a complaint should be identified and removed.

Demographics

The Committee heard from inquiry participants that people who opt for cosmetic procedures are mostly women, often young women and women between 35-55 years of age. However,

stakeholders also told the Committee that vulnerable patients from a financial, social and economic perspective are a target market and there has been an increase in men undergoing cosmetic procedures. The Committee also heard that some providers particularly target non-English speaking communities seeking these services by advertising in non-English forums and on social media. The Committee believes that raising public awareness about cosmetic health services should be primarily addressed to these and any other identified groups.

The Committee's finding regarding collaboration between State and Commonwealth Governments

The Committee heard that the legislative and regulatory frameworks in this area are very complex. There are a number of State and Commonwealth agencies and independent bodies that play a key role in regulation, complaint-handling and investigating complaints and offences. These include, but are not limited to, the HCCC, NSW Fair Trading, NSW Health, the Australian Health Practitioner Regulation Agency (AHPRA) and the Therapeutic Goods Administration (TGA).

The legislative framework is also diverse and deals with issues such as the regulation of registered health practitioners (such as doctors and nurses), unregistered practitioners who provide health services and beauty clinics that carry out procedures involving skin penetration. There are also laws to regulate products such as botulinum toxin (Botox) and dermal fillers and private health facilities where some cosmetic surgery is carried out. Many of these State or Commonwealth laws have recently been amended, or are in the process of being amended or reviewed, to strengthen the legislative framework for cosmetic health services.

Collaboration between agencies

The Committee heard that State and Commonwealth agencies are currently collaborating to address risks in this area and inform the public through intergovernmental forums, joint operations, policy development and public education. The Committee supports these efforts and is interested to monitor whether they have the desired impact.

Because of the complexity of the cosmetic health services industry, and the fact that some providers work across State and Commonwealth borders, the Committee finds that collaboration between the HCCC and other State and Commonwealth agencies and entities is important to inform the public and protect them from cosmetic health service providers that do not comply with the law or do not have satisfactory practices. The Committee considers that it is essential that this collaboration continues ([Finding 1](#)).

In particular, the Committee believes the following areas of collaboration are important:

- strong regulation and laws that focus on public safety and adapt as necessary to changes in the industry
- compliance and inspection work of Government
- public awareness
- consumer and patient complaints are acted upon.

The Committee's recommendations

The Committee has made 16 recommendations to address issues of concern that were identified in this inquiry. Not all of these recommendations are directed to the HCCC. This is because the issues of concern in the cosmetic health services industry require solutions that are broader than the HCCC's role.

The recommendations are intended to complement the work that has been done, and is in progress, at State and Commonwealth levels. The Committee believes that its recommendations will lead to a public that is better informed about cosmetic procedures; providers; risk; and options for seeking redress. The Committee's recommendations will ensure that the HCCC's powers and functions are robust enough to adequately address the challenges presented by this industry. The recommendations are also intended to further strengthen the legislative and regulatory frameworks to better protect the public.

Reviewing the powers and functions of the HCCC

The Committee has recommended a review of the HCCC's powers and functions, in response to stakeholder suggestions, to ensure the HCCC is able to sufficiently protect patients using health services and assist in resolving their concerns.

In particular, the review is to consider whether the powers of similar bodies in other jurisdictions would be appropriate in New South Wales, including:

- empowering the HCCC to issue public warnings about specific health service providers and health organisations, in addition to more general warnings
- authorising the HCCC to make prohibition orders against specific health organisations where they pose a serious risk to public health and safety
- broader search and entry powers for the HCCC, so it can investigate operators it has concerns about more effectively, and is less reliant on partnering with Commonwealth or State agencies to benefit from their broader, or different, powers (**Recommendation 1**).

The Committee did not receive much evidence about whether or not patients or practitioners are satisfied with the outcomes of the HCCC's complaint-handling, investigation and prosecution functions. This is not surprising given evidence in other areas of the report that complaints may be underreported. However, this will remain an area of interest to the Committee in the future.

'Cosmetic surgeon' and 'surgeon' – potentially misleading the public

The Committee heard from a number of stakeholders that use of the title 'cosmetic surgeon' can be misleading to patients by implying that the practitioner has additional qualifications, experience and training. In fact, the title 'cosmetic surgeon' is not a protected or restricted title nationally. At present, a range of different kinds of doctors may use this title such as general practitioners, general surgeons and plastic surgeons.

The Committee heard that defining the scope of practice of the title 'cosmetic surgeon' could assist the HCCC, the Nursing and Midwifery Council of NSW and the Medical Council of NSW in their complaint-handling and regulatory work.

The Committee has recommended that the NSW Minister for Health continues to raise the issue of protecting or restricting the title 'cosmetic surgeon' at a national level. Patients could then better inform themselves about whether their 'cosmetic surgeon' meets certain minimum criteria in terms of education, training and experience.

While the Committee prefers a national approach to this issue, if this cannot be achieved within a reasonable time, the Committee has recommended that the NSW Minister for Health consider whether to introduce legislation in the NSW Parliament to deal with this issue independently. In the Committee's view, it is essential that this title be clarified to better inform and protect the public.

The Committee also heard that the title 'surgeon' can be misleading to patients. While the Committee's consultation has been limited to its terms of reference, the Committee questions whether confusion about this title is only limited to cosmetic health services.

The Committee has therefore recommended that the NSW Minister for Health consider whether it would be in the public interest to support protections and restrictions on the use of the title 'surgeon', either at a national level or for doctors practising in New South Wales ([Recommendations 2 to 4](#)).

Informing the public

The Committee heard time and time again from inquiry participants that the public need to be better informed about various issues associated with cosmetic health services. The Committee was told that the public is confused about where and how to make a complaint and the complaints process. Some patients are reluctant to complain for various reasons. The public are also not well-informed about the range of health service providers, procedures and their associated risks, and differences between facilities. The Committee heard that advertising and the normalisation of cosmetic procedures have contributed to some of this lack of public awareness.

The Committee acknowledges the work of agencies and regulators so far to raise public awareness of these issues. However, because this was an issue that was raised by most inquiry participants, the Committee has made several recommendations.

In particular, the Committee has recommended that NSW Health and NSW Fair Trading take the lead in developing a targeted public education campaign to raise awareness about cosmetic health services. The HCCC should assist with this campaign, along with other relevant agencies. Various forms of advertising and media should be used, including social media. It is essential that the main demographics seeking these services are well-informed.

The Committee has also recommended that the Minister for Health pursues with the COAG Health Council the establishment of a national one-stop-shop website and advice service to assist individuals considering making complaints about cosmetic health services. The Committee also considers that it would be beneficial to include information and advice of a more general nature for those persons considering cosmetic procedures. If this cannot be agreed to at a national level, the Committee has recommended that the Minister for Health looks at the NSW Government establishing the service ([Recommendations 5 to 8](#)).

To better inform future policy, regulation and education programs relating to cosmetic health services, the Committee has recommended more research into the behaviours of, and influences on, consumers seeking the services. Inquiry participants provided some insight into

this area, such as the potential influence of the media on decisions about cosmetic procedures, especially social media, reality television and celebrities. However, the Committee believes more rigorous research in this area is needed ([Recommendation 9](#)).

Regulation of Laser and IPL devices for cosmetic purposes

The Committee learnt that there is no specific regulation of laser and IPL (Intense pulsed light) devices for cosmetic use in New South Wales. Some other states regulate this issue and proposed national guidelines have been issued. The Committee heard about patients who have suffered burns or other complications from the incorrect use of these devices. The Committee is concerned about this regulatory gap in New South Wales but would prefer a national regulatory approach so the Committee has recommended that this be pursued. However, if this cannot be achieved, the Minister for Health should consider whether to introduce legislation in New South Wales to provide minimum standards for cosmetic health service providers offering these services. Ensuring that operators have appropriate training and experience to use laser devices and IPL devices for cosmetic procedures will minimise patient complications ([Recommendations 10 and 11](#)).

Issues with therapeutic goods used for cosmetic purposes

The Committee heard of various issues associated with therapeutic goods used for cosmetic purposes such as botulinum toxin (Botox) and dermal fillers, for example:

- illegal importation of these products from overseas
- administration of Botox and dermal fillers by unregistered persons when they should be administered by a doctor, or a nurse under the supervision of a doctor
- tele-consulting, for example a nurse administers Botox or dermal fillers in one location and is supervised by a doctor from another location via Skype

The Committee acknowledges the work of State and Commonwealth agencies to identify and seize therapeutic goods which have been illegally imported. NSW Health is working on regulations to better manage therapeutic goods for cosmetic purposes. The Committee looks forward to an assessment of these changes to identify whether further initiatives are required.

The Committee notes concerns about the use of teleconsulting to consult on cosmetic procedures. We note that it is a service permitted under the Medical Board of Australia's guidelines and can play a beneficial role in other areas of health care such as reaching people in remote regions. The Committee is concerned that restrictions placed on this service could impact negatively on these communities.

The Committee is of the view that broader evaluation and consultation on the effectiveness of the current guidelines, beyond the scope of this inquiry, would be required before suggesting any changes to this particular practice in relation to cosmetic procedures.

Upselling and commissions

The Committee was surprised to hear that some corporate operators offer nurses or other employees incentives such as commissions to encourage them to sell patients other procedures or more of the same procedure. The Committee acknowledges the detrimental

impact such a model could have on patients who may be persuaded to have procedures that are not in their interest and unaware that financial incentives are behind these tactics.

The Committee has recommended consideration of whether individuals providing these services, or their employees, should be required to disclose any incentives, commissions or other payments they receive for upselling. This would provide more transparency for patients and give them the opportunity to reconsider a procedure ([Recommendation 12](#)).

Increasing the role of General Practitioners in assisting patients with decision-making

The Committee considers that General Practitioners (GP) can play an important role in providing independent advice to patients considering cosmetic procedures, particularly those that are invasive, as GPs are aware of a patient's broader medical history. The Committee has recommended that the NSW Minister for Health raise with the COAG Health Council whether patients seeking invasive cosmetic surgery be required to consult their GP. The Committee believes that national consultation on this issue will identify potential benefits and impacts. A national approach is also preferred to prevent patients from crossing borders to places with more relaxed standards. The Committee has also recommended that the New South Wales public education campaign about cosmetic health services ensures that patients be encouraged to seek advice from their GP ([Recommendations 13 and 14](#)).

Reviewing the current cooling off periods

The Committee learnt that Medical Board of Australia guidelines, which apply to doctors, set out cooling off periods for certain cosmetic health services. The Committee believes that cooling off periods are important after a patient had a consultation and been informed of the risks of a procedure. This gives the patient an opportunity to seek further advice or reconsider the procedure.

The current cooling off period for adult patients is seven days for major cosmetic procedures. There is no cooling off period for adult patients seeking minor cosmetic procedures. There are other specific cooling off periods for young people seeking major or minor procedures.

Given the concerns raised about cosmetic health service practices as part of this inquiry and in the media more broadly, the Committee has recommended a review of the current cooling off periods in the Medical Board of Australia guidelines to ensure they sufficiently protect consumers in New South Wales. The review will also consider whether it is appropriate to require cooling off periods for some cosmetic procedures provided by unregistered practitioners as the Committee is concerned that this may be a gap in regulation which could put the public at risk ([Recommendation 15](#)).

Revision surgery data collection

The Committee heard concerns about the costs to, and diversion of resources from, the public health care system when patients are admitted following cosmetic surgery complications. The Committee has recommended that the Minister for Health considers the feasibility of collecting data on cosmetic revision surgery in the public health system to guide future policy and decision-making. The data may also be valuable to the HCCC as adverse outcomes from cosmetic procedures will not always result in complaints to the HCCC ([Recommendation 16](#)).

Findings and Recommendations

Chapter Two – The current framework to protect the public

Finding 1 _____ 37

The Committee finds that collaboration between the Health Care Complaints Commission and other State and Commonwealth agencies and entities is important to inform the public and protect them from cosmetic health service providers that do not comply with the law or do not have satisfactory practices. It is essential that this collaboration continues.

Chapter Three – Reforming the HCCC's powers

Recommendation 1 _____ 43

The Committee recommends that the Minister for Health reviews the powers and functions of the Health Care Complaints Commission to ensure the Commission is able to sufficiently protect patients using health services. In particular, the Committee recommends the Commission should have the powers:

- a) to issue public warnings about specific health service providers and health organisations;
- b) to issue prohibition orders in relation to specific health organisations; and
- c) for search and entry to apply to all complaints and allow authorised persons to enter premises if the premises is a public place and the entry is made when the place is open to the public.

Chapter Four – Titles of medical practitioners

Recommendation 2 _____ 56

The Committee recommends that the Minister for Health continues to make representations to the COAG Health Council to protect or otherwise restrict the title 'cosmetic surgeon' at a national level under the Health Practitioner Regulation National Law.

Recommendation 3 _____ 56

The Committee recommends that, if the COAG Health Council does not protect or otherwise restrict the title 'cosmetic surgeon' within a reasonable timeframe, the Minister for Health considers whether separate legislation should be introduced in the NSW Parliament to place restrictions on the use of the title 'cosmetic surgeon' in relation to doctors practising in New South Wales.

Recommendation 4 _____ 56

The Committee recommends that the Minister for Health considers whether it is in the public interest to support protections and restrictions on the use of the title 'surgeon' either at a national level or for doctors practising in New South Wales.

Chapter Five – Informing the public

Recommendation 5 _____ 70

The Committee recommends that the Minister for Health and the Minister for Innovation and Better Regulation develop a targeted public education campaign to raise awareness about cosmetic health services, the risks involved in procedures and where to get relevant information.

Recommendation 6 _____ 70

The Committee recommends that the public awareness campaign use various forms of advertising, media (especially social media) and other resources to target the main demographics seeking cosmetic health services in terms of age, gender and cultural background.

Recommendation 7 _____ 71

The Committee recommends that the Minister for Health pursues with the COAG Health Council the establishment of a national one-stop shop website and advice service relating to cosmetic health services to:

- a) provide relevant information about procedures, practitioners and facilities to individuals seeking these services, and
- b) direct individuals who are dissatisfied with a service or provider to appropriate complaint pathways including, for New South Wales, the Health Care Complaints Commission, NSW Fair Trading and NSW Health.

Recommendation 8 _____ 71

The Committee recommends that, if the COAG Health Council does not agree to establishing a one-stop-shop website and advice service for cosmetic health services, the Minister for Health looks at the NSW Government establishing the service.

Recommendation 9 _____ 72

The Committee recommends that NSW Health research behaviours of, and influences on, consumers seeking cosmetic health services to inform future policy, regulation and education programs in this area. The Minister for Health could recommend to the COAG Health Council that it consider this as a priority for research funded through the National Health and Medical Research Council (NHMRC).

Chapter Six – Protecting the public

Recommendation 10 _____ 77

The Committee recommends that the Minister for Health pursues the issue of national regulation of the use of intense pulsed light devices and laser devices for cosmetic health service procedures with the COAG Health Council.

Recommendation 11 _____ 77

The Committee recommends that the Minister for Health examines whether legislation should be introduced in New South Wales to regulate the use of intense pulsed light devices and laser devices used for cosmetic health services.

Recommendation 12 _____ 82

The Committee recommends that the Minister for Health and the Minister for Innovation and Better Regulation consider whether individuals providing cosmetic health services, and employees of those persons, should be required to disclose any commissions, incentives or other payments they receive for encouraging patients to agree to procedures, more of the same procedure or additional procedures.

Recommendation 13 _____ 84

The Committee recommends that the Minister for Health raises with the COAG Health Council the issue of whether patients seeking invasive cosmetic surgery be required to consult their General Practitioner and pursue national consultation on this issue.

Recommendation 14 _____ 84

The Committee recommends that, as part of the New South Wales public education campaign about cosmetic health services, the Minister for Health encourages patients considering invasive cosmetic surgery to seek advice from a General Practitioner.

Recommendation 15 _____ 86

The Committee recommends that the Minister for Health and the Minister for Innovation and Better Regulation review whether the cooling off periods provided for in the Medical Board of Australia's *Guidelines for registered medical practitioners who perform cosmetic medical and surgical procedures*, 1 October 2016, are sufficient to protect consumers in New South Wales.

The Ministers should also consider whether it would be appropriate to require and regulate cooling off periods for some cosmetic health services provided by non-registered practitioners.

Recommendation 16 _____ 88

The Committee recommends that the Minister for Health considers the feasibility of collecting data on revision surgery in the public health system, to correct cosmetic health procedures, to inform future policy and decision-making in this area.

Chapter One – The Committee's interest in cosmetic health service complaints

- 1.1 The Committee's interest in cosmetic health service complaints in New South Wales arises from increasing community concerns about this issue, which have been highlighted by recent cases such as the tragic death of Jean Huang following a breast filler procedure.
- 1.2 The Health Care Complaints Commission (HCCC), NSW Minister for Health and NSW Health, among others, have recently taken action to warn and protect the public from cosmetic health service providers who cause harm or do not comply with the law.
- 1.3 Chapter Two highlights the complex issue of regulating cosmetic health services across State and Commonwealth Governments and between agencies.
- 1.4 The Committee was also interested to consider other difficulties including a perception that complaints are underreported, the imprecise definition of cosmetic health services and the emergence of some corporate entities that may prioritise profits over patient care.
- 1.5 Another complexity is the range of different practitioners performing cosmetic procedures including doctors, nurses and other unregistered persons such as beauty or cosmetic practitioners.
- 1.6 The Committee considered the demand for cosmetic services and the demographics of the market.
- 1.7 This chapter explores some of these issues in more detail as the context for the following chapters.

The definition of cosmetic health services

- 1.8 The Medical Board of Australia defines cosmetic medical and surgical procedures as operations and other procedures that revise or change the appearance, colour, texture, structure or position of normal bodily features. The primary purpose of these operations and procedures is to achieve what the patient perceives to be a more desirable appearance or boosting their self-esteem.
- 1.9 It separates these procedures from reconstructive surgery, which incorporates aesthetic techniques but restores form and function as well as normality of appearance.
- 1.10 Major cosmetic medical and surgical procedures, commonly referred to as cosmetic surgery, involve cutting beneath the skin. Examples include:
 - breast augmentation
 - breast reduction

- rhinoplasty
- surgical face lifts, and
- liposuction.

1.11 Minor, non-surgical cosmetic procedures do not involve cutting beneath the skin, but may involve piercing the skin. Examples include:

- non-surgical cosmetic varicose vein treatment
- laser skin treatments
- use of CO2 lasers to cut the skin
- mole removal for purposes of appearance
- laser hair removal
- dermabrasion
- chemical peels
- injections
- microsclerotherapy (injections to treat 'thread veins'), and
- hair replacement therapy.¹

1.12 This definition was used by a number of stakeholders, however, it does not appear to be an official definition for regulatory purposes. The NSW Government stated that, "'Cosmetic health services" is a broad term with no generally accepted meaning'.²

1.13 Similarly, the HCCC noted that the lack of a formal definition for services in this area caused some difficulties:

The first challenge in considering the nature and adequacy of the regulatory framework in this area is that the term "cosmetic services" has no clear definition. It is a term that can capture a wide range of services and procedures, with varying degrees of invasiveness and risk.³

1.14 For the purposes of this inquiry, the Committee has been guided by the Medical Board of Australia's definition of cosmetic medical and surgical procedures. However, the Committee used the phrase 'cosmetic health services' in the terms of reference for this inquiry because the HCCC deals with complaints relating to the delivery of health services. As such, the Committee's focus is primarily on

¹ Medical Board of Australia, [Guidelines for Registered Medical Practitioners who Perform Cosmetic Medical and Surgical Procedures](#), October 2016, p 2

² [Submission 20](#), NSW Government, p 1

³ [Submission 10](#), Health Care Complaints Commission, p 2

those cosmetic procedures that may be captured within the HCCC's jurisdiction rather than the cosmetic and beauty industry as a whole.

Difference between registered and unregistered health practitioners

1.15 Depending on the complexity of the procedure, cosmetic services may be provided by registered or unregistered health practitioners.

Registered health practitioners

1.16 Under the *Health Practitioner Regulation National Law (NSW)*, anyone describing themselves as a health professional from the list below must be registered. The professions or protected titles are:

- Aboriginal and Torres Strait Islander Health Practice
- Chinese Medicine
- Chiropractic
- Dental
- Medical
- Medical Radiation Practice
- Nursing and Midwifery
- Occupational Therapy
- Optometry
- Osteopathy
- Pharmacy
- Physiotherapy
- Podiatry
- Psychology.

1.17 The National Law also establishes National Boards for each of these health professions. These boards set a regulatory framework for the professional groups they regulate in addition to requirements in the National Law.⁴

1.18 It is an offence for someone to call themselves one of these professionals when they are not. It is also an offence for someone to pretend to be a registered practitioner when they are not, or use symbols or language that may lead a reasonable person to believe they are registered.⁵

⁴ [Submission 21](#), Australian Health Practitioner Regulation Agency, p 1

⁵ [Health Practitioner Regulation National Law \(NSW\), s116](#)

Unregistered health practitioners

- 1.19 Any health practitioner who is not required to be registered under the National Law, or who provides services that are unrelated to their registration, is an unregistered practitioner.
- 1.20 A code of conduct for unregistered health practitioners is currently in force under the *Public Health Regulation 2012* (NSW). The code sets out the minimum practice and ethical standards with which unregistered health service providers are required to comply. The code of conduct informs consumers what they can expect from practitioners and the mechanisms by which they may complain about the conduct of, or services provided by, an unregistered health service provider.
- 1.21 An example of an unregistered health practitioner offering cosmetic services includes a person working in a beauty salon which offers procedures that involve skin penetration such as hair removal (not laser hair removal), blackhead removal using a needle, micro-dermabrasion, cuticle cutting, and razor scraping.

Demand for cosmetic health services

- 1.22 Cosmetic health services are becoming more popular across Australia. The Australian Medical Association (AMA) reported that statistics from the Australasian College of Cosmetic Surgery (ACCS) showed that 'Australians have a bigger spend on cosmetic procedures per capita than the US'.⁶
- 1.23 The Royal Australasian College of Surgeons (RACS) also emphasised the growing prevalence of cosmetic procedures. They advised that:
- ... in 2017 ... one in ten Australians aim to have plastic surgery in the next three years with the "main procedures undertaken were facial contouring (37%); facial (31%) and breast/chest enhancement (27%)."⁷
- 1.24 The Australian Society of Plastic Surgeons (ASPS) noted that even without considering major surgical procedures, the cosmetic health services industry was generating significant income. They advised that the growth of this industry is unlikely to stop:
- Leaving aside surgical cosmetic health services, it is estimated that non-surgical cosmetic health services currently generate in excess of \$1bn in revenue each year for the Australian economy. This is now a significant industry that is expected to continue its recent high growth rate ...⁸
- 1.25 In a specific example of the demand for this industry and the potential for growth, Dr Scott Turner, Board representative, Australasian Society of Aesthetic Plastic Surgeons (ASAPS) reported that a company providing cosmetic health

⁶ [Submission 25](#), Australian Medical Association, p 1

⁷ [Submission 14](#), Royal Australasian College of Surgeons, p 2

⁸ [Submission 12](#), The Australian Society of Plastic Surgeons, p 2

services, including surgery, was listed in *BRW's* 20 fastest growing companies in Australia after 18 months.⁹

- 1.26 In addition to the reported figures, the AMA suggested that there might be an even greater demand for cosmetic services:

Australians are injecting \$350m worth of Botox, undergoing more than 8000 breast augmentation surgeries and 30,000 liposuction procedures per year. While these are the reported figures, the number of cosmetic procedures being performed in Australia could in fact be much higher.¹⁰

The establishment of corporate and low-cost entities

- 1.27 The growing popularity of cosmetic health procedures and the growing market for the sector has led a number of corporate entities to start offering these services. These practices often operate in a number of states and can be part of a franchise model. Dr Saxon Smith, Chair of the NSW Faculty, Australasian College of Dermatologists told the Committee that the cosmetic health industry has seen:

... the corporatisation in a lot of areas of cosmetic services. Therefore, these would, by definition, cross State boundaries. ... we have franchising processes and large corporate entities owning any clinic- and business-based operations around the country ...¹¹

- 1.28 In these corporate models, some practices are established with a qualified doctor or surgeon overseeing procedures, while they are actually performed by someone with less training. The Royal Australian College of General Practitioners (RACGS) explained:

Work is at times being done by people who are not adequately trained for what they do – this includes doctors, nurses and other non-registered “health practitioners”, who at times work beyond what might be expected of their skills and training.

...

In some cases much of the work is done by non-doctors under a vague supervisory role of a doctor associated with the clinic and issues can then arise as to who is really taking responsibility for the care delivered.¹²

- 1.29 The Committee heard the allegation that some of these businesses are more concerned with profits than with patient safety. They are able to make a lot of money in a short amount of time. As such, some businesses may be less careful about ensuring that their employees are acting professionally or taking appropriate action following adverse findings against them. Mr Tony Kofkin, Executive Director, Complaint Operations, HCCC observed:

⁹ Dr Scott Turner, Board representative, Australasian Society of Aesthetic Plastic Surgeons, [Transcript of evidence](#), 1 August 2018, p 14

¹⁰ [Submission 25](#), Australian Medical Association, p 2

¹¹ Dr Saxon Smith, Chair of the NSW Faculty, Australasian College of Dermatologists, [Transcript of evidence](#), 1 August 2018, p 15

¹² [Submission 23](#), Royal Australian College of General Practitioners, p 4

... what motivates these companies is money. There are companies ... who can make millions and millions and millions and millions of dollars very, very, very quickly, and for each time the commission or another health complaints entity investigates a practitioner, cancels their registration or there are interim conditions on their practice—in New South Wales there are 33,000 doctors—there is another one to take their place. There are issues in terms of how do we grapple with these organisations who are there just to make money extremely quickly and they do not really have the concerns of the consumer at heart in any way, shape or form?¹³

1.30 The dispersed franchise model can also make it difficult for patients to receive proper treatment should they suffer any adverse effects following cosmetic procedures. The HCCC noted that procedures can be performed 'in a commercial rather than clinical environment, often within business structures which do not have clinical governance practices embedded'.¹⁴

1.31 This concern was echoed by Dr Smith, Chair of the NSW Faculty, Australasian College of Dermatologists who told the Committee about a patient who was not happy with the service they received but was not given any support from the company involved:

I certainly have patients and clients who have come to my clinic having had misadventures and adverse outcomes from other facilities. They have gone back to those facilities to complain and ask for help to be told that the facility does not have responsibility for them because it is a corporate owned facility—it is a different beautician or nurse who has done the procedure. The particular scenario a week ago was a laser hair reduction procedure. ... The patient received significant burns on their arms. ... She went to the head office of the corporate entity which owned the overarching clinics but was told that this is a franchised operation so the overarching corporate entity has no responsibility either.¹⁵

1.32 A number of low-cost providers have also entered the market. These providers offer incentives and discounted procedures to encourage people to use them. However, the Committee heard that they are often making savings by using inferior products or not properly adhering to safety standards. The ACCS observed:

The rise of 'discount chain' practices offering significant discounts has been dramatic. Unfortunately, such practices may sacrifice patient safety and practice quality. There have been proven instances whereby some clinics and individuals have imported 'counterfeit' products to assist their low pricing.¹⁶

1.33 Many of the concerns around these business models related to how the person undergoing a procedure was being treated. While it was recognised that the cosmetic health services industry operated in a marketplace, those providing the services should still have a paramount consideration for the wellbeing of a client. For example, Ms Joanne Muller, Legal Member, Nursing and Midwifery Council of NSW argued:

¹³ Mr Tony Kofkin, Executive Director, Complaint Operations, Health Care Complaints Commission, [Transcript of evidence](#), 2 August 2018, p 51

¹⁴ [Submission 10](#), Health Care Complaints Commission, p 2

¹⁵ Dr Smith, [Transcript of evidence](#), 1 August 2018, p 17

¹⁶ [Submission 22](#), The Australasian College of Cosmetic Surgery, p 4

I guess if there was a clear line where you stop calling a person a customer and you started calling a client a patient, that might be of great assistance because it would change the focus very much from a business model to a healthcare model.¹⁷

- 1.34 Dr Michael Molton from The Cosmetic Physicians College of Australasia (CPCA) also noted that there is a 'fundamental difference between the commercial model and the medical model'. He noted that a patient under the medical model is a person to whom a medical practitioner owes a duty of care whereas if a person is a client 'you are going to sell that person everything you possibly can whether they need it or not, regardless of any other circumstances'.¹⁸

The demographics of consumers of cosmetic health services

- 1.35 The Committee heard that the target market for an overwhelming majority of cosmetic health services is women. A representative from the CPCA told the Committee that over 90 per cent of the patients seen at his practice are women. Of these women, '[t]he largest demographic would be ... between the ages of 35 and 55'.¹⁹

- 1.36 However, he also observed that the number of men who were visiting his practice was growing:

It is increasing with men. In my practice it is something like 7 per cent to 8 per cent men, whereas five years ago it was 3 per cent to 5 per cent.²⁰

- 1.37 Several stakeholders indicated that cosmetic procedures were becoming more popular with younger women. The reason for this was often considered to be increasingly unrealistic expectations on women's appearance and what was considered 'normal'. The Nursing and Midwifery Council of NSW highlighted research that found that increased exposure to media coverage of cosmetic procedures and celebrities led to greater interest and demand from young people. This coverage often does not adequately highlight any associated risks. They reflected:

Also of concern, is the number of younger people having cosmetic treatments and their vulnerability in being persuaded to have treatments ... research states "...that a wide range of influences, including media coverage of celebrities and their cosmetic interventions, reality TV programmes and the wider broadcasting of cosmetic procedures, alongside the increasing availability of and access to cosmetic interventions, are coming together to create a climate in which having a cosmetic procedure is increasingly regarded as normal and the associated risks are often underestimated. These factors also result in changing aspirations and ideals regarding body image, with some evidence that this results in greater salience for cosmetic intervention among the young".²¹

¹⁷ Ms Joanne Muller, Legal Member, Nursing and Midwifery Council of NSW, [Transcript of evidence](#), 2 August 2018, p 23

¹⁸ Dr Michael Molton, President, Cosmetic Physicians College of Australasia, [Transcript of evidence](#), 2 August 2018, p 2

¹⁹ Dr Molton, [Transcript of evidence](#), 2 August 2018, p 7

²⁰ Dr Molton, [Transcript of evidence](#), 2 August 2018, p 7

²¹ [Submission 16](#), Nursing and Midwifery Council of NSW, p 16

- 1.38 Similarly, Professor Mark Ashton, President, ASPS noted an increase in young people choosing cosmetic procedures due to its normalisation. He commented:

You only have to look at our news readers on our television who are giving us information which is meant to be factual, unbiased and is meant to be setting a role model, and every single newsreader, except one, has botox. So the image and the standards which we are presenting to our young female population to our young kids is that these people have botox: they have a certain look. We see kids as young as 17 or 18 coming in to have botox.²²

- 1.39 The Committee heard concerns that these younger women are often more vulnerable. Professor Ashton explained that it 'is the young 19-, 20- or 21-year-old kids, the young girls, who are the most vulnerable'.²³

- 1.40 Dr Scott Turner, Board Representative, ASAPS, said while he sees patients of all demographics, at least a third of those patients would be 'vulnerable patients from a financial, social and economic point of view'.²⁴ He explained that many clients who he sees for revision surgery after complications should not have been advised to have the procedures in the first place:

The vast majority of patients that we see are vulnerable people who do not have the capacity to understand these distinctions and that is what a lot of these budget clinics are preying on. Unless we set the standards above that so that people are forced to be aware and make educated decisions, if you allow it to be based on cost price, there are going to be a lot of people who are preyed upon. They are not even medical students. They are vulnerable people in difficult stages of their life who should not have these surgeries at all.²⁵

Qualifications and experience of some cosmetic health service providers

- 1.41 The variety of cosmetic health services and the increasing number of people who offer these services means there are differing levels of expertise in the area. As reported, cosmetic health services may be provided by registered health practitioners or unregistered health practitioners.

- 1.42 This has led to confusion amongst patients who can find it difficult to differentiate between what services can be provided by whom. ASAPS observed that:

The community has yet to reach an understanding of the distinction between a beauty treatment, for which there may need to be only minimal if any experience and qualification, and a medical treatment, for which the public will and should expect strong regulations about qualifications, experience and process.²⁶

- 1.43 The Australian College of Nursing outlined some of the risks involved when people offering cosmetic health services do not have sufficient training or

²² Professor Mark Ashton, President, Australian Society of Plastic Surgeons, [Transcript of evidence](#), 1 August 2018, p 10

²³ Professor Ashton, [Transcript of evidence](#), 1 August 2018, p 11

²⁴ Dr Turner, [Transcript of evidence](#), 1 August 2018, p 10

²⁵ Dr Turner, [Transcript of evidence](#), 1 August 2018, p 5

²⁶ [Submission 12](#), Australian Society of Plastic Surgeons, p 3

experience. These risks include both safety issues and also ensuring that clients are properly informed about procedures. They reported that:

Some [Australian College of Nursing] members have raised concerns about the employment of unregistered and untrained staff in cosmetic health care services or settings providing cosmetic treatments. The implications this may have for infection control, clinical information provision and the appropriateness of care pathways require thorough examination.²⁷

- 1.44 The Nursing and Midwifery Council of NSW also highlighted a situation where someone had their registration cancelled but continued to work as though they were a 'registered nurse'. They told the Committee:

The Council has also received a complaint about an individual who had his registration cancelled by a Tribunal and who was employed as a 'registered nurse' as he did not disclose that he was unregistered, and the clinic did not check whether he was on the register.²⁸

- 1.45 Even where registered medical practitioners are performing cosmetic health procedures, there are occasions when these practitioners may not be suitably trained or experienced for the procedures they are performing. RACS noted:

Due to the status quo there is the opportunity for under trained under qualified individuals to practice and call themselves cosmetic surgeons. As an example a cosmetic surgery clinic can call their medical specialists "Cosmetic surgeons", although they may be doctors of other medical specialties, we feel that this may be misleading to the consumer.²⁹

- 1.46 This can be the case, regardless of how serious the procedure might be. Major cosmetic procedures which involve cutting beneath the skin might be performed by someone who has little or no experience in the procedure. ASAPS emphasised that:

Currently in Australia there are no legal requirements for a medical practitioner to have adequate training or credentials to perform surgery to improve one's appearance. Many patients do not realise this. A Cosmetic Surgeon could have attended a weekend course hearing about how breast augmentations are done by a presenter and then on the Monday he or she is legally able to pick up a scalpel and perform this procedure on an unassuming patient.³⁰

- 1.47 This is in contrast to a specialist Plastic Surgeon who has a minimum of 10 - 12 years of postgraduate medical and surgical education, following a standard medical degree. This includes at least five years of focused specialist postgraduate training approved by the Australian Medical Council (AMC). The five year training is comprised of over 10,000 hours of training.³¹

²⁷ [Submission 5](#), Australian College of Nursing, p 4

²⁸ [Submission 16](#), Nursing and Midwifery Council NSW, p 17

²⁹ [Submission 14](#), Royal Australasian College of Surgeons, p 2

³⁰ [Submission 15](#), Australasian Society of Aesthetic Plastic Surgeons, p 6

³¹ [Submission 15](#), Australasian Society of Aesthetic Plastic Surgeons, p 5

- 1.48 The Committee also heard that some overseas-based practitioners are travelling to Australia to perform procedures and then leaving the country. In these situations, it can be difficult to ascertain whether they hold appropriate qualifications to perform the procedures in Australia, or whether they are using approved products. The ACCS advised:

We are seeing an increase in illegal overseas-based operators offering both surgery and medical procedures in Australia, with no signs of abatement. This has already occurred and shown graphically on television; unqualified persons performing eyelid surgery on patients in hotel rooms and in private apartments on the couch. The rise of 'fly in, fly out' overseas personnel with dubious qualifications, if any at all, is disturbing.³²

Recent cases in New South Wales

- 1.49 There have been a number of recent cases in New South Wales where people have suffered adverse outcomes following cosmetic health procedures.

The Cosmetic Institute

- 1.50 In 2015, a cosmetic surgery provider, The Cosmetic Institute (TCI), was investigated by the HCCC after two separate instances where women undergoing breast enlargement/augmentation suffered cardiac arrest during their procedure. TCI was a large clinic which offered breast enhancement surgery and had premises in Sydney and the Gold Coast.

- 1.51 The HCCC investigation found TCI appeared to be giving high doses of anaesthetic to patients without their consent and at doses above the accepted limit of safe dosage. It found the institute was a risk to public health and safety.³³

- 1.52 A nurse who formerly worked at TCI told the Committee that it was primarily set up as a business with the intention of making a significant profit. Ms Nicole Montgomery, Creative Director, Trusted Surgeons explained:

Everything was commercialised and driven to increase revenue. It was a business. The board of directors were four businessmen.³⁴

- 1.53 Ms Montgomery also expressed the opinion that many of the surgeons who were performing the breast enhancement procedures at TCI were not experienced in that field:

None of the surgeons I worked with were actually surgeons until closer to the end when we had a Fellow of the Royal Australasian College of Surgeons ... who was a cardiothoracic surgeon—so no experience in cosmetic surgery or training for that matter. The patients obviously believed that they were being looked after by somebody who was qualified and specialised in breast augmentation but postoperatively when something went wrong, which it did—most frequent were

³² [Submission 22](#), The Australasian College of Cosmetic Surgery, p 5

³³ R Armitage and S Scott, ABC News, '[Breast implant patients at The Cosmetic Institute knocked out without consent, report reveals](#),' 20 April 2016; ABC News, '[Woman suffers cardiac arrest during breast augmentation surgery at The Cosmetic Institute clinic](#)' (accessed 8 February 2018)

³⁴ Ms Nicole Montgomery, Creative Director, Trusted Surgeons, [Transcript of evidence](#), 1 August 2018, p 42

infections ...—they very quickly realised that it was not actually a surgeon and that this person did not have the scope of practice to resolve their issue.³⁵

- 1.54 In September 2017, a group of women lodged a class action against TCI alleging negligence during breast augmentation procedures that left them with life-threatening complications. They claim TCI lacked capacity to access medical assistance in emergencies and clinics didn't have adequate infection controls. They claim TCI breached its duty of care by utilising a 'one size fits all' approach to breast augmentations.³⁶

The death of Jean Huang

- 1.55 On 1 September 2017, Ms Jean Huang died in hospital after undergoing a breast filler procedure at the Medi Beauty Clinic in Chippendale on 30 August 2017. Ms Huang was the manager and co-owner of the clinic.
- 1.56 Ms Huang suffered cardiac arrest at the clinic after she was allegedly given anaesthetic and breast filler by Ms Jie Shao. It is alleged that Ms Shao, a Chinese national, was not registered to practice medicine in Australia. Another clinic employee, Ms Yueqiong Fu, had allegedly graduated from a nursing degree in Sydney but was not registered to practice.
- 1.57 Both Ms Shao and Ms Fu have been charged with manslaughter. The HCCC is also investigating the matter.³⁷

Action taken by the Minister for Health and the HCCC

- 1.58 Due to concerns in this area, both the Minister for Health and the HCCC have taken action to help protect the public in New South Wales. Some of these actions are described below but others are also discussed in more detail in chapter two.

Minister for Health

- 1.59 In June 2016, the NSW Government amended the *Private Health Facilities Regulation 2010* to ensure that certain cosmetic surgical procedures are carried out in licensed facilities.³⁸
- 1.60 In late 2017, the NSW Health Minister raised with the Council of Australian Governments (COAG) Health Council the issue of protecting the title 'cosmetic surgeon' at a national level.³⁹

³⁵ Ms Montgomery, [Transcript of evidence](#), 1 August 2018, p 40

³⁶ ABC News, [Women bring class action against Australia's largest cosmetic surgery provider](#), 15 September 2017.

³⁷ See for example, ABC News, [Call for tighter regulation at beauty salons offering cosmetic injections](#), 31 August 2017; ABC News, [Death of beauty clinic owner Jean Huang prompts review of industry laws](#), 2 September 2017; ABC News, [Botched breast surgery leads to manslaughter charges for Chinese tourist](#), 5 September 2017; and Sydney Morning Herald, [Jean Huang dies after breast procedure at Chippendale clinic The Medi Beauty](#), 1 September 2017; A Koubaradis, News.com.au, [Unqualified doctor bailed on manslaughter charge relating to botched breast surgery](#), 22 February 2018 (accessed 14 September 2018); SBS News, [Nurse wins bail bid over fatal breast op](#), 27 October 2017

³⁸ NSW Ministry of Health, [Cosmetic surgical procedures by registered medical practitioners](#) (accessed 4 September 2018)

- 1.61 The Minister for Health also requested a review of cosmetic procedures in September 2017 that aimed to consider whether the existing regulation of cosmetic procedures was appropriate to ensure the safety of consumers.
- 1.62 In April 2018, the Ministry for Health released the *Report on the Review of the Regulation of Cosmetic Procedures*. The report made nine recommendations which have been, or are in the process of being, implemented.

HCCC public warnings

- 1.63 The HCCC has also issued three public warnings in this area. In June 2016, a public warning was issued about cosmetic procedures performed by non-registered practitioners in residential premises and hotel rooms. The procedures were advertised through social media, particularly on “WeChat”, a Chinese social media app.
- 1.64 The procedures involved skin penetration and the administration of Schedule 4 prescription-only medication to ‘improve’ appearance. This included double eyelid suturing, nose bridge lifts, protein suture facelifts, and the administration of Botox, dermal fillers and glutathione skin whitening injections.
- 1.65 The HCCC identified that the procedures were illegal and posed a real risk to public health and safety. There was no validation of the practitioner’s qualifications and experience, and procedures were performed in facilities with little, if any, infection control measures.
- 1.66 The medications used were imported and not on the Australian Register of Therapeutic Goods. The import and supply of medication that is not on the register is unlawful and dangerous since there is no way of determining the efficacy and safety of the medicines.
- 1.67 The HCCC advised consumers that before undertaking cosmetic or medical procedures, they should consider the following factors:
- Is the practitioner appropriately qualified, experienced and accredited?
 - Is the facility appropriately equipped?
 - Am I appropriately informed?⁴⁰
- 1.68 The warning was the first one issued by the HCCC under section 94A (1) of the *Health Care Complaints Act 1993*. Previously the Commission could only issue a warning at the end of an investigation. Following changes to the Act in 2015, the Commission can now issue a public warning at any stage during an investigation.
- 1.69 On 28 September 2017 the HCCC issued a further public warning regarding unsafe and illegal practices in beauty and cosmetic clinics.

³⁹ NSW Health, [New laws on cosmetic procedures passed](#), (accessed 23 September 2018)

⁴⁰ Health Care Complaints Commission, [Public Warning: Cosmetic surgical and medical procedures performed by non-registered health practitioners](#), 30 June 2016

- 1.70 The HCCC raised concerns about risks to the health and safety of people receiving cosmetic procedures in cosmetic clinics, particularly the use of Schedule 4 drugs which require involvement by a registered medical practitioner. The warning advised that:

The Commission is also involved in joint operations with the NSW Ministry of Health's Pharmaceutical Regulatory Unit to inspect beauty/cosmetic clinics in a number of areas across Sydney to examine their operations and identify and address any areas of non-compliance...

The Commission has serious concerns that persons are carrying out medical-related procedures to 'improve' aesthetic appearance whilst not appropriately registered as a medical practitioner.⁴¹

- 1.71 The HCCC indicated that issues raised in related complaints include the use of inferior and illegal unregistered products and medication in cosmetic procedures, and the administration of medication by unregistered and unqualified persons without a prescription.
- 1.72 In April 2018, the HCCC also issued a public warning on unsafe practices involving subdermal implants for 'extreme' body modification purposes.
- 1.73 This warning noted the growing trend of consumers in New South Wales seeking a range of procedures to alter their appearance. It explained that the insertion of subdermal implants, such as silicone horns or snowflakes, involved surgery.
- 1.74 The HCCC highlighted the serious health risks of this surgery, including infection, which in serious cases can lead to fatal sepsis and nerve damage. The HCCC provided relevant questions for consumers to consider before choosing a practitioner to perform the procedure.⁴²

Underreporting of complaints

- 1.75 The HCCC reported that it had received 94 complaints about cosmetic services in 2016-17. The HCCC noted that while this was a small number relative to the other complaints they received (1.5 per cent), the overall trend is an increase in number.⁴³
- 1.76 The HCCC highlighted that these numbers should be regarded as indicative of the issues and overall trends rather than definitive. This is due to the diffuse nature of cosmetic services. They explained how certain complaints may not be captured as a cosmetic service:

For instance, if a complaint is made about anaesthetic during a cosmetic procedure, it may be classified as a complaint about anaethetisation in day surgery – rather than

⁴¹ Health Care Complaints Commission, [Public Warning: Unsafe and Illegal Practices at Beauty and Cosmetic Clinics](#), 28 September 2017.

⁴² Health Care Complaints Commission, [Public Warning: Unsafe Practices involving subdermal implants for 'extreme' body modification purposes](#), 16 April 2018.

⁴³ [Submission 10](#), Health Care Complaints Commission, p 7

as a complaint about a cosmetic procedure and this would not be captured in the data extracted for cosmetic services.⁴⁴

1.77 A number of other stakeholders also claimed that there may be an underreporting of complaints against cosmetic health services for various reasons.

1.78 Both the AMA and the College of Dermatologists referred to 'anecdotal evidence' that the number of people suffering adverse effects is greater than those that report to the HCCC or equivalent bodies.⁴⁵ The Australasian College of Dermatologists indicated that:

... College Fellows suggest that cosmetic services requiring post-procedure medical intervention are being performed at a rate much greater than would be implied by these statistics.⁴⁶

1.79 Other bodies that receive complaints also reported that the number of official complaints was relatively low. The Nursing and Midwifery Council of NSW argued that people were not sufficiently aware of the options available to them to make a complaint and that this probably led to a lower number of complaints than expected. They stated:

Although a relatively small number of complaints are received in relation to nurses working in the cosmetic industry, the Council has concerns that clients within the cosmetic industry who have experienced harm may be unaware of their rights. They also may not know who to report to about specific issues ie what may be reported to the health professional regulators, or to other regulators relevant to the industry such as Fair Trading and the Consumer Protection Act. For this reason, there may be significant underreporting of harms which are occurring ...⁴⁷

1.80 Other stakeholders highlighted that people who have received unsatisfactory treatment might be too embarrassed to report it. The ASPS noted:

The reticence of members of the public to make complaints about providers of poor or very poor quality cosmetic health services. ... We believe this is a gross underestimate of the legitimate dissatisfaction that the NSW public experiences annually with the providers of these services.⁴⁸

Committee comment

1.81 This chapter has outlined the various issues and concerns raised with the Committee by stakeholders which are relevant to many of the recommendations the Committee has made in chapters three to six of this report.

1.82 Chapter two considers the current framework to protect the public.

⁴⁴ [Submission 10](#), Health Care Complaints Commission, p 7

⁴⁵ [Submission 25](#), Australian Medical Association, p 3

⁴⁶ [Submission 9](#), The Australasian College of Dermatologists, p 4

⁴⁷ [Submission 16](#), Nursing and Midwifery Council of NSW, p 16

⁴⁸ [Submission 12](#), Australian Society of Plastic Surgeons, p 3

Chapter Two – The current framework to protect the public

- 2.1 The current framework to protect individuals using cosmetic health services is very complex. There are a number of State and Commonwealth agencies and independent bodies that play a key role in regulation, complaint-handling and investigating complaints or offences and prosecution or disciplinary actions.
- 2.2 The legislative framework is diverse and deals with issues such as the regulation of registered health practitioners (such as doctors and nurses), unregistered practitioners who provide health services and beauty clinics that carry out procedures involving skin penetration. There are also laws to regulate products such as botulinum toxin (Botox) and dermal fillers and private health facilities where invasive cosmetic procedures are carried out.
- 2.3 Because of this complexity, and the fact that some cosmetic health service providers work across state and national borders, the Committee heard that collaboration between government agencies and independent bodies is essential to protect the public against individuals who do not comply with the laws or risk patient safety.
- 2.4 This chapter highlights some of the main agencies involved in this area and relevant laws. In particular, it describes the Health Care Complaints Commission's (HCCC) role within that framework. It also examines the need for the agencies to collaborate in this regulatory environment.

Key State and Commonwealth agencies and organisations

- 2.5 There are a number of State and Commonwealth agencies and other entities regulating different aspects of the cosmetic health services sector. These include the HCCC, NSW Health, NSW Fair Trading, the Australian Health Practitioner Regulation Agency (AHPRA) and the Therapeutic Goods Administration (TGA). A description of their roles is outlined below.

Health Care Complaints Commission

- 2.6 The HCCC is an independent body established under the *Health Care Complaints Act 1993* which receives and assesses complaints relating to health service providers in New South Wales. It:
- resolves, or assists in resolving, complaints, and
 - investigates and prosecutes serious complaints that raise matters of public health and safety.⁴⁹

Persons or organisations that may be complained about

- 2.7 The HCCC deals with complaints relating to the delivery of health services by:

⁴⁹ [Submission 10](#), Health Care Complaints Commission, p 3

- Individual health practitioners (whether or not they are registered), and
- health organisations.⁵⁰

2.8 For example, in the cosmetic health services field, complaints could relate to registered practitioners such as doctors and nurses, unregistered practitioners such as beauty therapists and health organisations such as cosmetic clinics.

2.9 The term 'health service' includes a range of services such as medical, nursing, hospital or alternative health care.⁵¹

Persons or organisations that can make a complaint

2.10 The HCCC can receive complaints from any person, including the patient or a third party. The Commissioner can also commence an own-motion complaint.⁵²

Assessing complaints

2.11 When the HCCC receives a complaint, it assesses the complaint to determine whether it should be declined, investigated or referred to another person or body (such as another suitable regulatory or investigative body).⁵³

2.12 In relation to cosmetic and beauty clinics, the HCCC could refer matters to entities such as NSW Police, the NSW Ministry of Health, NSW Fair Trading, AHPRA, the TGA or the Australian Competition and Consumer Commission (ACCC).⁵⁴

2.13 The assessment process for registered practitioners considers care, treatment and conduct in relation to the guidelines and other standards that apply to each profession in addition to relevant legal responsibilities.⁵⁵

2.14 As part of the assessment process, the HCCC must consult with the relevant Professional Councils in New South Wales if the complaint is about a registered practitioner.⁵⁶ For example, if the complaint is about a doctor, the HCCC would consult with the Medical Council of NSW whereas if the complaint is about a nurse, the HCCC would consult with the Nursing and Midwifery Council of NSW. Further information on the role of the professional councils is provided later in this section.

2.15 For non-registered practitioners, the assessment process considers care, treatment and conduct with respect to the Code of Conduct for Unregistered Health Practitioners and associated legal obligations.⁵⁷ An example of another legal obligation of unregistered practitioners could be public health standards if the practitioner is performing procedures that penetrate the skin. As mentioned

⁵⁰ [Health Care Complaints Act 1993](#), ss 4, 7

⁵¹ [Submission 10](#), Health Care Complaints Commission, pp 3-4

⁵² [Submission 10](#), Health Care Complaints Commission, p 3

⁵³ [Submission 10](#), Health Care Complaints Commission, pp 4, 7

⁵⁴ [Submission 10](#), Health Care Complaints Commission, p 7

⁵⁵ [Submission 10](#), Health Care Complaints Commission, p 4

⁵⁶ [Submission 10](#), Health Care Complaints Commission, p 5

⁵⁷ [Submission 10](#), Health Care Complaints Commission, p 4

in chapter one, the Code is in the *Public Health Regulation 2012* and would apply to unregistered practitioners carrying out cosmetic health services. It specifies a number of standards such as:

- maintaining competence in the practitioner's field and not providing health care outside of their training and expertise
- understanding potential adverse interactions between treatments the practitioner provides and other medication the client is taking
- not financially exploiting clients
- not misinforming clients or misrepresenting anything in relation to the products or services the practitioner provides or his or her qualifications, training or professional associations.⁵⁸

2.16 At the conclusion of the HCCC assessment process, a matter could be:

- discontinued
- investigated
- referred to the Secretary of Health or another body or person
- if the organisation is a public health organisation, referred back to them for local resolution
- sent to the HCCC's resolution service.⁵⁹

Investigating complaints

2.17 In certain circumstances the HCCC must investigate a complaint, for example, where:

- the relevant Professional Council is of the opinion that the complaint should be investigated, or
- following assessment of the complaint by the HCCC, it appears that the complaint:
 - raises a significant issue relating to public health or safety
 - raises a significant question about the appropriate care or treatment of a patient by a health service provider
 - if substantiated, would provide grounds for disciplinary action against a practitioner or involve gross negligence
 - if substantiated, would result in the health practitioner being found guilty of an offence under the Division 1 or 3 of Part 7 of the *Public Health Act 2010*.⁶⁰

⁵⁸ [Submission 20](#), NSW Government, pp 7-8

⁵⁹ [Submission 10](#), Health Care Complaints Commission, pp 4-5

- 2.18 Where the HCCC has investigated a health organisation and does not intend to prosecute them, the HCCC can make recommendations or comments. This may occur where health care was below the standard required but the organisation has already taken action to remedy the issue. The Commission may make recommendations where system improvements are necessary.⁶¹

Registered practitioners

- 2.19 Where the HCCC finds a significant departure in clinical care and treatment and/or professional conduct on the part of a registered practitioner, the complaint can be referred to the Director of Proceedings who determines whether disciplinary action is appropriate. Prosecution can be before a Professional Standards Committee or the NSW Civil and Administrative Tribunal (NCAT).⁶²

- 2.20 Where the registered practitioner has been found to have delivered poor care or treatment but not to the extent to warrant prosecution and where there is no risk to public health and safety, the HCCC can refer the practitioner to the relevant Professional Council for management or to make comments.⁶³

Non-registered practitioners

- 2.21 In dealing with non-registered practitioners, the Commission can make:
- an interim or permanent prohibition order which prevents the person from providing health services, or a particular service, or places conditions on how they deliver those services for a certain timeframe⁶⁴
 - a public statement that identifies and gives warnings or information about an unregistered practitioner and their services.⁶⁵
- 2.22 The HCCC can make an interim prohibition order during an investigation where:
- the HCCC reasonably believes that the practitioner breached the code of conduct, and
 - the HCCC is of the view that the practitioner poses a serious risk to the health or safety of the public, and
 - the order is necessary to protect the public.⁶⁶
- 2.23 Permanent prohibition orders can be made at the end of an investigation. The principles are similar to interim prohibition orders. Conviction of a relevant offence can also lead to the making of such an order.⁶⁷

⁶⁰ [Submission 10](#), Health Care Complaints Commission, p 5

⁶¹ [Submission 10](#), Health Care Complaints Commission, p 6

⁶² [Submission 10](#), Health Care Complaints Commission, p 5

⁶³ [Submission 10](#), Health Care Complaints Commission, p 5

⁶⁴ [Submission 10](#), Health Care Complaints Commission, p 6

⁶⁵ [Submission 10](#), Health Care Complaints Commission, p 6

⁶⁶ [Submission 10](#), Health Care Complaints Commission, p 6

New South Wales Professional Councils

- 2.24 There are 14 Professional Councils, one for each registered area of practice, which co-regulate complaints with the HCCC in relation to registered practitioners. Examples of the professional councils include the Medical Council of NSW for doctors and the Nursing and Midwifery Council of NSW for nurses and midwives.⁶⁸
- 2.25 Some key differences in roles between the HCCC and the professional councils are:
- the HCCC assesses, investigates and prosecutes all complaints about New South Wales registered health practitioners
 - the professional councils have the ability to suspend or place conditions on a registered practitioner to protect public health and safety and in the public interest.⁶⁹
- 2.26 Although the HCCC assesses, investigates and prosecutes complaints, the professional councils can still receive complaints. They would notify the HCCC of the complaint. The HCCC would then assess the complaint.⁷⁰ Likewise, when the HCCC receives a complaint about a registered practitioner, they must notify the relevant professional council about it.⁷¹
- 2.27 As stated earlier, after a complaint is assessed by the HCCC, it must consult with the relevant professional council and the complaint must be investigated if either the HCCC or council believe it should be investigated.⁷² The HCCC can also decide to refer the practitioner to the relevant professional council.⁷³
- 2.28 The Committee heard from both the Medical Council of NSW and the Nursing and Midwifery Council of NSW about their co-regulatory roles alongside the HCCC.
- 2.29 The Nursing and Midwifery Council of NSW explained that a performance, health or minor conduct issue about a registered nurse may result in:
- referral to professional counselling
 - a performance interview
 - performance assessment

⁶⁷ [Submission 10](#), Health Care Complaints Commission, p 6

⁶⁸ [Submission 10](#), Health Care Complaints Commission, pp 11-12

⁶⁹ [Submission 10](#), Health Care Complaints Commission, pp 11-12

⁷⁰ [Submission 10](#), Health Care Complaints Commission, pp 11-12

⁷¹ [Submission 10](#), Health Care Complaints Commission, pp 11-12

⁷² [Submission 10](#), Health Care Complaints Commission, pp 11-12

⁷³ [Submission 10](#), Health Care Complaints Commission, p 5

- referral to a Performance Review Panel, if the nurse has shown unsatisfactory professional performance which requires conditions on their registration.⁷⁴

2.30 A Performance Review Panel can impose various conditions on registration including requiring supervision, education and further assessment to determine whether practice has improved.⁷⁵

2.31 The Nursing and Midwifery Council of NSW said it can also order an inspection of premises to ensure appropriate health standards and regulatory requirements are maintained and followed.⁷⁶

NSW Health

2.32 NSW Health administers the health legislation that regulates cosmetic health services and undertakes compliance activities and investigations.⁷⁷ In particular, this section highlights NSW Health's role in:

- regulating private health facilities
- administering public health legislation which is relevant to unregistered practitioners who offer cosmetic procedures
- the recent review into the regulation of cosmetic procedures.

2.33 NSW Health also has functions in relation to therapeutic goods used in cosmetic procedures. Some of NSW Health's activities in this area are highlighted in the sections on the TGA and collaboration with other agencies.

Private health facilities

2.34 The *Private Health Facilities Act 2007* and *Private Health Facilities Regulation 2017* regulate private hospitals in New South Wales. The legislation contains different classes of procedures that need to be performed in a licensed facility.⁷⁸ Examples include surgical (general), intensive care and maternity. One facility can be licensed in a number of different classes of procedures. It is an offence to operate a private health facility without a licence, with a penalty of up to \$550,000.⁷⁹

2.35 Requirements associated with each class of licence cover:

- safety of the premises and patients, and
- clinical care and standards.⁸⁰

⁷⁴ [Submission 16](#), Nursing and Midwifery Council of NSW, p 3

⁷⁵ [Submission 16](#), Nursing and Midwifery Council of NSW, p 3

⁷⁶ [Submission 16](#), Nursing and Midwifery Council of NSW, p 3

⁷⁷ [Submission 20](#), NSW Government, p 3

⁷⁸ [Submission 20](#), NSW Government, pp 3-4

⁷⁹ [Submission 20](#), NSW Government, p 4

⁸⁰ [Submission 20](#), NSW Government, pp 3-4

- 2.36 In June 2016, the NSW Government amended the *Private Health Facilities Regulation 2010* to add a cosmetic surgery class to the prescribed classes of health services. The Regulation requires that any facility undertaking certain cosmetic surgical procedures (except dental procedures) must be licensed. The same standards that applied to licensed private health facilities now apply to facilities that carry out prescribed cosmetic surgical procedures.⁸¹ The amendment deals with certain cosmetic surgery procedures that previously may have been performed in non-accredited or unlicensed facilities or day surgeries.⁸²
- 2.37 Examples of cosmetic procedures that would need to be performed in a licensed private health facility include:
- any cosmetic surgical procedure intended to alter or modify a person's appearance or body and that involves anaesthesia (including a Bier's Block)
 - abdominoplasty (tummy tuck)
 - brachioplasty (armlift)
 - breast augmentation or reduction
 - buttock augmentation, reduction or lift
 - rhinoplasty (nose job).⁸³
- 2.38 The NSW Government summarised how the regulatory framework operates with respect to cosmetic procedures:
- The class is therefore defined by reference to both the use of high levels of anaesthesia/more than conscious sedation, and to a specific list of procedures that are so inherently risky that they must be undertaken at licensed premises irrespective of the level of anaesthesia or sedation.⁸⁴
- 2.39 In May 2018, the NSW Parliament passed the *Health Legislation Amendment Bill (No 2) 2018*. The Bill amended the *Private Health Facilities Act 2007* so the regulations can prescribe certain services or treatments that must be performed at a private health facility with a relevant licence. It will be an offence for a person to perform a cosmetic service or treatment in contravention of the regulations. The maximum penalty will be \$55,000.⁸⁵
- 2.40 At the public hearing on 2 August 2018, the Committee heard that NSW Health is going through the process of identifying the procedures that will be specified in

⁸¹ NSW Ministry of Health, [Cosmetic surgical procedures by registered medical practitioners](#) (accessed 4 September 2018)

⁸² NSW Ministry of Health, [Cosmetic surgery](#) (accessed 4 September 2018)

⁸³ [Submission 20](#), NSW Government, pp 4-5

⁸⁴ [Submission 20](#), NSW Government, p 5

⁸⁵ [Health Legislation Amendment Bill \(No 2\) 2018, Sch 4](#)

the regulation but predict it will be at least the same procedures that are required to be performed in a licensed premises.⁸⁶

- 2.41 NSW Health is also keeping the definition of cosmetic surgical procedures in the private health facilities legislation under review. This is because the kinds of procedures and their associated risks may change and new procedures may be developed.⁸⁷

Inspections of licensed and unlicensed facilities where cosmetic health services are carried out

Licensed facilities

- 2.42 Under the private facilities legislation, there are 98 facilities that hold a cosmetic class licence. They all get inspected at least once per year.⁸⁸ There are two kinds of visits – announced and random, unannounced visits.⁸⁹
- 2.43 Annual inspections assess a facility's compliance with relevant licensing standards.⁹⁰ The main focus of an inspection is determined according to the risk rating of the facility having regard to various factors such as the type and complexity of procedures undertaken and the outcome of prior inspections.⁹¹
- 2.44 For a private hospital, an annual inspection would normally take a minimum of four hours but could be longer depending on the class and size of the facility and any particular issues that have been identified for assessment.⁹²

Unlicensed facilities

- 2.45 In the last 12 months, NSW Health has also commenced random and targeted inspections and investigations where there are concerns that cosmetic health service procedures are being carried out on unlicensed premises or prescription medicines are being supplied or stored unlawfully.⁹³ Inspections of unlicensed premises are not announced.⁹⁴
- 2.46 More detailed examples of visits to unlicensed clinics can be found later in this chapter, in relation to NSW Health's collaborative work with the HCCC.

⁸⁶ Dr Kerry Chant, Chief Health Officer and Deputy Secretary Population Health, NSW Health, [Transcript of evidence](#), 2 August 2018, p 37

⁸⁷ [Submission 20](#), NSW Government, p 5

⁸⁸ Ms Leanne O'Shannessy, Executive Director, Legal and Regulatory Services, NSW Health, [Transcript of evidence](#), 2 August 2018, p 43

⁸⁹ NSW Health, [Response to questions taken on notice at the public hearing](#), p 1

⁹⁰ NSW Health, [Response to questions taken on notice at the public hearing](#), p 1

⁹¹ NSW Health, [Response to questions taken on notice at the public hearing](#), p 2

⁹² NSW Health, [Response to questions taken on notice at the public hearing](#), p 2

⁹³ [Submission 20](#), NSW Government, p 3

⁹⁴ NSW Health, [Response to questions taken on notice at the public hearing](#), p 1

Public health legislation relevant to unregistered practitioners

2.47 The *Public Health Act 2010* and *Public Health Regulation 2012*, administered by NSW Health, are relevant to unregistered practitioners who carry out skin penetration procedures such as beauty or cosmetic procedures.⁹⁵

2.48 In particular, the legislation:

- sets out infection control standards for premises, for example ensuring that needles and sharp items that penetrate the skin are sterile and premises have a sharps container
- requires operators to be registered with the local council
- authorises environmental health officers to inspect premises.⁹⁶

2.49 These provisions do not apply to registered practitioners as they are subject to relevant infection control standards under the *Health Practitioner Regulation National Law*.⁹⁷

Review of cosmetic procedures

2.50 In September 2017, the NSW Minister for Health requested NSW Health to review the regulation of cosmetic procedures to ensure the framework adequately protected consumers.⁹⁸ NSW Health delivered its report in April 2018 which made nine recommendations that have been, or are in the process of being, implemented. Recommendations included:

- a new offence for medical practitioners providing certain services and treatments in an unlicensed facility, which has started to be implemented through the changes made to the *Private Health Facilities Act 2007* by the *Health Legislation Amendment Bill (No 2) 2018*, outlined above⁹⁹
- consultation with stakeholders about whether any non-surgical cosmetic procedures should take place in a licensed facility¹⁰⁰
- continuously reviewing the definition of cosmetic surgery to ensure it covers all of the procedures that it should¹⁰¹
- that the Minister raise the issue of protecting the title ‘cosmetic surgeon’ with the Council of Australian Governments (COAG) Health Council, which the Minister did in late 2017¹⁰²

⁹⁵ [Submission 20](#), NSW Government, pp 7-8; NSW Health, [Skin penetration industry](#) (accessed 18 September 2018)

⁹⁶ [Submission 20](#), NSW Government, pp 7-8; NSW Health, [Skin penetration industry](#) (accessed 18 September 2018); NSW Health, [Control of skin penetration procedures](#) (accessed 18 September 2018)

⁹⁷ [Submission 20](#), NSW Government, pp 7-8

⁹⁸ NSW Health, [Report on the review of the regulation of cosmetic procedures](#), p 7 (accessed 14 September 2018)

⁹⁹ NSW Health, [Report on the review of the regulation of cosmetic procedures](#), p 7 (accessed 14 September 2018)

¹⁰⁰ NSW Health, [Report on the review of the regulation of cosmetic procedures](#), p 7 (accessed 14 September 2018)

¹⁰¹ NSW Health, [Report on the review of the regulation of cosmetic procedures](#), p 7 (accessed 14 September 2018)

¹⁰² NSW Health, [New laws on cosmetic procedures passed](#), 23 May 2018 (accessed 19 September 2018); NSW Health, [Report on the review of the regulation of cosmetic procedures](#), p 7 (accessed 14 September 2018)

- additional regulation for extreme body modification procedures including informing clients about risks, measures taken to minimise risks and preventing these procedures being carried out on minors¹⁰³
- the Minister write to NSW Fair Trading to raise consumer protection in relation to cosmetic procedures¹⁰⁴
- creating a new subclass of medicines used in non-surgical procedures which would allow regulations to be made with rules relating to storage, use and administration of the medicines along with consumer protections. Implementation of this recommendation has commenced through changes made to the *Poisons and Therapeutic Goods Act 1996* by the *Health Legislation Amendment Bill (No 2) 2018*, which is discussed later in this chapter¹⁰⁵
- consultation with relevant stakeholders before the new regulatory rules are made¹⁰⁶
- increasing the penalties for breaches of the *Poisons and Therapeutic Goods Act and Regulation*.¹⁰⁷

NSW Fair Trading

- 2.51 NSW Fair Trading is a consumer protection agency that administers consumer protection legislation, including the Australian Consumer Law.¹⁰⁸ The Australian Consumer Law applies in all States and Territories. In New South Wales, it is incorporated into the *Fair Trading Act 1987* and enforced by NSW Fair Trading.¹⁰⁹
- 2.52 In 2017, NSW Fair Trading received 287 complaints about beauty services. The most common issue reported was dissatisfaction with the quality of services.¹¹⁰
- 2.53 NSW Fair Trading has recently received referrals from the HCCC and NSW Health about two cosmetic clinics and will consider:
- if there were any breaches of the *Fair Trading Act 1987*, and
 - appropriate compliance and enforcement action, if breaches of the legislation are established.¹¹¹
- 2.54 NSW Fair Trading has a range of civil enforcement options such as injunction, declaration, civil pecuniary penalty, compensation order, disqualification order and non-punitive order. The appropriate remedy will depend on the particular

¹⁰³ NSW Health, [Report on the review of the regulation of cosmetic procedures](#), p 12 (accessed 14 September 2018)

¹⁰⁴ NSW Health, [Report on the review of the regulation of cosmetic procedures](#), p 12 (accessed 14 September 2018)

¹⁰⁵ NSW Health, [Report on the review of the regulation of cosmetic procedures](#), p 14 (accessed 14 September 2018)

¹⁰⁶ NSW Health, [Report on the review of the regulation of cosmetic procedures](#), p 14 (accessed 14 September 2018)

¹⁰⁷ NSW Health, [New laws on cosmetic procedures passed](#), 23 May 2018 (accessed 19 September 2018); NSW Health, [Report on the review of the regulation of cosmetic procedures](#), p 14 (accessed 14 September 2018)

¹⁰⁸ [Submission 20](#), NSW Government, p 8

¹⁰⁹ [Submission 20](#), NSW Government, p 8

¹¹⁰ [Submission 20](#), NSW Government, p 8

¹¹¹ [Submission 20](#), NSW Government, p 9

case and the extent of the trader's conduct. In deciding whether to exercise enforcement powers, NSW Fair Trading considers matters such as:

- the severity of the breach and/or consumer detriment
- the cost benefit analysis of taking enforcement action and likelihood of a successful outcome
- whether the case relates to issues that would be better dealt with by a specialist regulator such as the HCCC.¹¹²

2.55 NSW Fair Trading's complaint handling processes aim to achieve a voluntary agreement between a customer and a business by informing them of their rights and responsibilities under relevant legislation.¹¹³ NSW Fair Trading also runs a Better Trader Program for businesses that receive six or more complaints within six months. The program promotes better business practices and consistent compliance by improving a business' understanding of their regulatory obligations.¹¹⁴

2.56 NSW Fair Trading informed the Committee that it is developing a campaign to raise community awareness about risks related to cosmetic procedures.¹¹⁵

Australian Health Practitioner Regulation Agency

2.57 AHPRA and 15 national boards regulate health practitioners in 16 professions through a national registration and accreditation scheme under the *Health Practitioner Regulation National Law*.¹¹⁶

2.58 Each national board establishes a framework for the health practitioners it regulates which is in addition to the requirements of the national law and can consist of standards, codes and guidelines. These generally require practitioners to work within their scope of practice based on their education, knowledge, competence and lawful authority.¹¹⁷

2.59 The national boards have developed some relevant guidelines in the area of cosmetic health services, such as the following:

- Medical Board of Australia, *Guidelines for registered medical practitioners who perform cosmetic medical and surgical procedures*
- Nursing and Midwifery Board, *Position statement on nurses and cosmetic procedures*

¹¹² [Submission 20](#), NSW Government, pp 8-9

¹¹³ [Submission 20](#), NSW Government, p 10

¹¹⁴ [Submission 20](#), NSW Government, p 10

¹¹⁵ [Submission 20](#), NSW Government, p 10

¹¹⁶ [Submission 21](#), AHPRA, p 2

¹¹⁷ [Submission 21](#), AHPRA, p 2

- Dental Board of Australia, *The use of botulinum toxin and dermal fillers by dentists*.¹¹⁸

2.60 For example, the *Guidelines for registered medical practitioners who perform cosmetic medical and surgical procedures* provide for the following, among other things:

- patients to be referred for psychological evaluation if there are indications they have significant underlying psychological issues that may make them an unsuitable candidate for a procedure
- a cooling off period of at least seven days between the patient giving informed consent and the procedure, apart from minor procedures that do not involve cutting beneath the skin
- that a medical practitioner decline to perform a procedure if they believe it is not in the patient's best interests
- that a medical practitioner will not provide or offer financial inducements such as commissions to agents to recruit patients
- that advertising content and patient information resources should not glamorise procedures, minimise their complexity, overstate results or imply that patients can achieve outcomes that are not realistic
- special responsibilities in relation to procedures for patients under 18 years such as assessing capacity to consent and a cooling off period of at least three months for major procedures.¹¹⁹

2.61 In New South Wales, if a registered health practitioner breaches a national board's code of conduct, it may result in the HCCC or a relevant New South Wales professional council taking action against them for professional misconduct or unprofessional conduct. In other states or territories, except Queensland, this responsibility lies with the national boards.¹²⁰

2.62 In New South Wales, AHPRA also receives and manages statutory offences under the national law.¹²¹ Examples of offences enforced by AHPRA include:

- Using a reserved professional title such as 'medical practitioner' or a specialist title, such as 'specialist plastic surgeon' unless the individual is properly qualified. The maximum penalty is \$30,000 for an individual or \$60,000 for a body corporate.
- Advertising health services in a way that is likely to be false, misleading or deceptive. The maximum penalty is \$5,000 for an individual or \$10,000 for a body corporate.¹²²

¹¹⁸ [Submission 21](#), AHPRA, p 2

¹¹⁹ Medical Board of Australia, [Guidelines for registered medical practitioners who perform cosmetic medical and surgical procedures](#), 1 October 2016

¹²⁰ [Submission 21](#), AHPRA, p 3

¹²¹ [Submission 21](#), AHPRA, p 2

- 2.63 The Committee heard from AHPRA that in May 2017, Health Ministers agreed that new multi-year custodial sentences, more significant fines and further prohibition powers are required for holding out, title protection and restrictive practice offences. The Committee was told that these reforms would be fast-tracked.¹²³
- 2.64 In August 2018, the COAG Health Council released a consultation paper, *Regulation of Australia's health professions: Keeping the National Law up to date and fit for purpose*. The paper seeks views on a number of potential reforms to the *Health Practitioner Regulation National Law* and is calling for submissions by 31 October 2018.¹²⁴
- 2.65 The paper notes that an amendment Bill is currently being drafted to progress the following changes to offences and penalties:
- double the monetary penalties for holding out, reserved practice and prohibition order offences to \$60,000 for an individual and \$120,000 for a body corporate
 - introduce a maximum custodial sentence of three years for holding out, reserved practice and prohibition order offences.¹²⁵
- 2.66 The consultation paper is also considering whether the current penalty for advertising offences of \$5,000 for an individual and \$10,000 for a body corporate is appropriate. The consultation process is looking at the following other options:
- increasing the penalties to \$60,000 for an individual and \$120,000 for a body corporate, in line with the proposed increases to the penalties for the holding out, reserved practice and prohibition order offences
 - increasing the penalties to an amount which better aligns with the penalties for advertising breaches under the Australian Consumer Law where the maximum penalty for false or misleading conduct or unconscionable conduct is \$220,000 for an individual and \$1.1 million for a corporation.¹²⁶
- 2.67 Examples of other issues the subject of the consultation process include the following:

¹²² [Submission 20](#), NSW Government, p 7

¹²³ Ms Kym Ayscough, Executive Director Regulatory Operations, Australian Health Practitioner Regulation Agency, [Transcript of evidence](#), 2 August 2018, p 29

¹²⁴ COAG Health Council, [Regulation of Australia's health professions: keeping the National Law up to date and fit for purpose](#), July 2018, p 5

¹²⁵ COAG Health Council, [Regulation of Australia's health professions: keeping the National Law up to date and fit for purpose](#), July 2018, p 57

¹²⁶ COAG Health Council, [Regulation of Australia's health professions: keeping the National Law up to date and fit for purpose](#), July 2018, p 63

- whether the use of the titles ‘cosmetic surgeon’ and ‘surgeon’ should be restricted so that only suitably trained and qualified practitioners can use those titles¹²⁷
- whether further information should be recorded on the public register such as additional names under which an individual practices and whether the range of information available on the register is sufficient for the different user groups¹²⁸
- whether the National Law should require reporting of professional negligence settlements and judgments to the National Boards¹²⁹
- whether AHPRA and/or the National Boards should be empowered to issue a public statement or warning in relation to risks to the public identified in the course of exercising statutory powers under the National Law.¹³⁰

Therapeutic Goods Administration

2.68 The TGA is part of the Australian Department of Health. It regulates the supply, import, export, manufacturing and advertising of therapeutic goods to ensure products available are safe and fit for their purpose.¹³¹ The TGA administers the *Therapeutic Goods Act 1989* (Cth) and associated regulations. However, this area of regulation involves compliance across multiple jurisdictions, as highlighted by the TGA:

While the TGA is responsible for import, export, manufacture and supply at the Federal level, states and territories are responsible for similar matters within their respective jurisdictions, as well as health professionals and practice.¹³²

2.69 For example, in New South Wales the *Poisons and Therapeutic Goods Act 1966* is also part of the regulatory regime.

2.70 Many products used in cosmetic procedures are regulated as therapeutic goods such as botulinum toxins which are classed as medicines and substances in dermal fillers which are treated as medical devices.¹³³

2.71 Regulation of therapeutic goods takes place via:

- pre-market assessment and ensuring therapeutic goods are entered on the Australian Register of Therapeutic Goods

¹²⁷ COAG Health Council, [Regulation of Australia's health professions: keeping the National Law up to date and fit for purpose](#), July 2018, p 59

¹²⁸ COAG Health Council, [Regulation of Australia's health professions: keeping the National Law up to date and fit for purpose](#), July 2018, pp 64-70

¹²⁹ COAG Health Council, [Regulation of Australia's health professions: keeping the National Law up to date and fit for purpose](#), July 2018, p 33

¹³⁰ COAG Health Council, [Regulation of Australia's health professions: keeping the National Law up to date and fit for purpose](#), July 2018, p 59

¹³¹ [Submission 7](#), Australian Department of Health, p 1

¹³² [Submission 7](#), Australian Department of Health, p 2

¹³³ [Submission 20](#), NSW Government, p 5

- post-market monitoring and enforcing standards
- licensing of Australian manufacturers and checking overseas manufacturers' compliance with the standards.¹³⁴

2.72 Key features of the regulatory regime include the following:

- Generally, prescription medicines and medical devices must be prescribed by medical practitioners. Some other health practitioners such as nurses may also lawfully prescribe these substances but only within their scope of professional practice.
- Medicines and medical devices should only be prescribed or supplied in a quantity, or for a reason, that accords with the relevant therapeutic standard of what is appropriate in the particular case.
- A medical practitioner can administer prescription medicines or medical devices or supervise another suitably trained health practitioner to administer them on their behalf.
- Medicines and medical devices must be registered on the Australian Register of Therapeutic Goods unless the TGA exempts or approves their use as an unregistered good. It is an offence to supply unregistered medicines.
- The TGA approves the labelling and packaging of registered medicines and medical devices for marketing in compliance with the Poisons Standard in the case of medicines. NSW Health then enforces the labelling and packaging requirements of goods to be supplied.¹³⁵

2.73 In May 2018, the NSW Parliament passed the *Health Legislation Amendment Bill (No 2) 2018*. That Bill amended the *Poisons and Therapeutic Goods Act 1966* to set up a framework for the Minister to create regulations which prescribe requirements relating to the possession, manufacture, supply, use, prescription, administration, storage and disposal of substances or goods that may be used for cosmetic and other purposes.

2.74 This is in response to recommendation seven of NSW Health's *Report on the review of the regulation of cosmetic procedures*. NSW Health recommended these changes based on a number of investigations by the Pharmaceutical Regulatory Unit which raised concerns about whether medical practitioners who prescribe these medicines in cosmetic procedures have appropriate oversight of them. NSW Health was also concerned about certain cosmetic clinics that were in breach of the legislation by importing medicines from overseas.¹³⁶

2.75 For a category one offence, the maximum penalty will be \$110,000 for a body corporate and \$22,000 and/or up to six months imprisonment for an individual.¹³⁷ At the public hearing on 2 August 2018, the Committee heard that

¹³⁴ [Submission 7](#), Australian Department of Health, p 1

¹³⁵ [Submission 20](#), NSW Government, p 6

¹³⁶ NSW Health, [Report on the review of the regulation of cosmetic procedures](#), April 2018, pp 12-14

¹³⁷ [Health Legislation Amendment Bill \(No 2\) 2018, Sch 3](#)

NSW Health would be commencing public consultation about these regulatory amendments soon.¹³⁸

The general criminal law

2.76 Apart from some of the more targeted health-related laws that apply to cosmetic health services, in extreme cases, practitioners who are alleged to have done the wrong thing may also be charged with more general offences under the criminal law. For example, the breast filler procedure that led to the death of Jean Huang resulted in manslaughter charges for the persons who allegedly performed the procedure. The media reported that the accused persons were:

- a doctor who was qualified in China but had no Australian qualifications or registration, and
- a nurse who had graduated from a nursing degree in Sydney but was not registered to practice.¹³⁹

Collaboration between agencies and regulators

2.77 A number of different stakeholders spoke of the need for collaboration between different agencies and regulators to ensure cosmetic health service providers comply with the law and to better protect and inform the public.¹⁴⁰

2.78 Ms Sue Dawson, the HCCC Commissioner, spoke of the importance of co-ordination to effectively tackle these issues:

Success will rely on the judicious and effective use of the opportunities and powers that rest with a range of different regulatory and non-regulatory bodies.¹⁴¹

2.79 The NSW Government explained that a coordinated approach is essential in this area as the nature of cosmetic health services involves a range of issues such as conduct of practitioners, use of prescription medicine, importation of medicines and claims about the success of treatment.¹⁴²

2.80 The Australian Medical Association NSW (AMA NSW) recommended collaboration to remove gaps in regulation¹⁴³ and the Office of the Health Complaints Commissioner Victoria said the benefits of different health complaints entities working together are 'significant'.¹⁴⁴

¹³⁸ Dr Chant, [Transcript of evidence](#), 2 August 2018, p 37

¹³⁹ A Koubaradis, News.com.au, [Unqualified doctor bailed on manslaughter charge relating to botched breast surgery](#), 22 February 2018 (accessed 14 September 2018); SBS News, [Nurse wins bail bid over fatal breast op](#), 27 October 2017

¹⁴⁰ See for example, Ms Sue Dawson, Commissioner, Health Care Complaints Commission, [Transcript of evidence](#), 2 August 2018, p 48; [Submission 4](#), Australasian College of Aesthetic Medicine, p 3; [Submission 17](#), Office of the Health Complaints Commissioner Victoria, p 1; [Submission 25](#), Australian Medical Association NSW, p 4; [Submission 3](#), Australian and New Zealand College of Anaesthetists, p 4; [Submission 7](#), Australian Department of Health, p 3; [Submission 20](#), NSW Government, p 2; and [Submission 21](#), AHPRA, p 1

¹⁴¹ Ms Dawson, [Transcript of evidence](#), 2 August 2018, p 48

¹⁴² [Submission 20](#), NSW Government, p 2

¹⁴³ [Submission 25](#), Australian Medical Association (NSW), p 4

¹⁴⁴ [Submission 17](#), Office of the Health Complaints Commissioner Victoria, p 1

- 2.81 The HCCC emphasised that cosmetic health services are now more in the nature of commercial businesses rather than traditional health service providers. Because of this, the HCCC suggested that the approach to disrupt unsafe providers and clinics needs to span health, business and consumer regulation.¹⁴⁵
- 2.82 Both the Office of the Health Complaints Commissioner Victoria and the HCCC explained that collaboration between regulators is also essential as some providers operate across borders.¹⁴⁶ Mr Tony Kofkin, Executive Director, Complaint Operations, HCCC, described a scenario involving complex jurisdictional issues:
- You could have an organisation which could be based in the US or in South Africa and you could have medical practitioners who are carrying out Skype consultations overseas, and then you could have pharmacies who are filling prescriptions, for example in Victoria, and then the patients who are receiving the so-called care and treatment are in New South Wales. So you have scenarios crossing State, national and international borders.¹⁴⁷
- 2.83 The Australian and New Zealand College of Anaesthetists (ANZCA) also raised concerns about the limited opportunities the HCCC seems to have in acting in relation to unregistered practitioners operating in the cosmetic health service industry. They suggested the HCCC partner with industry bodies and training providers to try to incorporate these practitioners into ‘a more rigorous quality and safety framework’.¹⁴⁸
- 2.84 Other stakeholders had particular suggestions for who the HCCC should collaborate with. For example, the Australasian College of Aesthetic Medicine (ACAM) proposed that its Drugs and Poisons Regulation Branch works with the HCCC and AHPRA to investigate the illegal supply of scheduled drugs by registered and unregistered practitioners.¹⁴⁹

Current examples of collaboration

- 2.85 The Committee heard that the HCCC and other relevant state and Commonwealth agencies are currently working together in a range of ways to identify emerging risks in the cosmetic health services industry, investigate operators who may not be complying with the law and pursue policy development and public education initiatives. Some key collaborations are highlighted below.

Intergovernmental forums

- 2.86 The NSW Ministry of Health chairs a NSW Regulators Forum which was established in 2017 and focuses on strengthening policy and operational capabilities between different areas of health regulation including:

¹⁴⁵ [Submission 10](#), Health Care Complaints Commission, p 15

¹⁴⁶ [Submission 17](#), Office of the Health Complaints Commissioner Victoria, p 1; Mr Kofkin, [Transcript of evidence](#), 2 August 2018, p 51

¹⁴⁷ Mr Kofkin, [Transcript of evidence](#), 1 August 2018, p 51

¹⁴⁸ [Submission 3](#), Australian and New Zealand College of Anaesthetists, p 4

¹⁴⁹ [Submission 4](#), Australasian College of Aesthetic Medicine, pp 3-4

- the HCCC
 - relevant divisions of the NSW Ministry of Health such as the Pharmaceutical Regulatory Unit; Health Protection; Regulation and Compliance
 - Health Professional Councils Authority
 - Medical Council of NSW
 - Dental Council of NSW.¹⁵⁰
- 2.87 Members of the forum discuss emerging risks to public health and safety and consider the relevant roles, responsibilities and powers to deal with these concerns.¹⁵¹
- 2.88 At the national level, a Consumer Health Regulators Group was also formed in April 2017 which brings together regulators from across Australia with an interest in consumer health.¹⁵² Members of the group include:
- Australian Competition and Consumer Commission
 - AHPRA
 - TGA
 - Private Health Insurance Ombudsman
 - HCCC
 - Other state health complaint bodies.¹⁵³
- 2.89 The group meets quarterly or as often as required. Members share information about emerging risks to cosmetic health consumers and work together to establish more collaborative arrangements for dealing with those risks.¹⁵⁴
- 2.90 The TGA provided an example of inter-jurisdictional collaboration facilitated under this group.¹⁵⁵ In response to concerns raised about unsafe and illegal practices within some beauty and cosmetic clinics in New South Wales, the TGA developed the Cosmetic Industry Regulatory Compliance Plan 2017-18. It targets unapproved, unregistered and counterfeit therapeutic goods used in the cosmetic industry and has been provided to the HCCC and NSW Health for their input.¹⁵⁶ The TGA provided the Committee with examples of its activities:

¹⁵⁰ [Submission 10](#), Health Care Complaints Commission, p 15

¹⁵¹ [Submission 20](#), NSW Government, p 10

¹⁵² [Submission 10](#), Health Care Complaints Commission, p 15

¹⁵³ [Submission 10](#), Health Care Complaints Commission, p 15

¹⁵⁴ [Submission 7](#), Australian Department of Health, p 3; [Submission 10](#), Health Care Complaints Commission, p 15

¹⁵⁵ [Submission 7](#), Australian Department of Health, p 3

¹⁵⁶ [Submission 7](#), Australian Department of Health, pp 3-4

- One hundred and sixty six letters and fact sheets have been sent to advertisers of Botox products that have been the subject of advertising complaints
- The Therapeutic Goods Priority Target Profile provided to Australian Border Force has been updated to include relevant products
- Legislative changes are underway to clarify that information provided with dermal fillers, including labels, must comply with the Poisons Standard.¹⁵⁷

2.91 Educational activities such as consumer factsheets and social media posts accompany these initiatives.¹⁵⁸

2.92 NSW Health, the HCCC, TGA and AHPRA met at the beginning of 2018 to consider how they could better work together. The agencies agreed that the following would be useful:

- formal engagement and collaboration between agencies
- coordinating activities in particular investigations
- identifying emerging issues that need a regulatory response
- creating tools for data and intelligence sharing.¹⁵⁹

Joint operations

2.93 In the past 12 months, NSW Health has carried out random and targeted inspections and investigations of health clinics where there is a suspicion the facility is carrying out procedures on unlicensed premises or unlawfully supplying or holding prescription drugs.¹⁶⁰ A number of these activities have been undertaken jointly with the HCCC with a view to:

- better understanding the business models of these clinics
- identifying the nature and extent of the risks posed
- determining the most appropriate regulatory response.¹⁶¹

2.94 These visits have uncovered issues with imported botulinum toxin, dermal fillers, local anaesthetics and other prescription medicines not listed on the Australian Register of Therapeutic Goods. Problems with record keeping and supervision by medical practitioners were also identified.¹⁶²

2.95 Action taken as a result of these activities has included:

¹⁵⁷ [Submission 7](#), Australian Department of Health, pp 3-4

¹⁵⁸ [Submission 7](#), Australian Department of Health, p 4

¹⁵⁹ [Submission 20](#), NSW Government, p 11

¹⁶⁰ [Submission 20](#), NSW Government, p 3

¹⁶¹ [Submission 10](#), Health Care Complaints Commission, pp [3](#), [14](#)

¹⁶² [Submission 20](#), NSW Government, p 3

- referral of medical practitioners and registered nurses to New South Wales professional councils
 - referral of possible breaches of the Health Practitioner Regulation National Law to AHPRA
 - confiscation of illegal medicines
 - public warnings by the HCCC.¹⁶³
- 2.96 The HCCC and NSW Health have also referred concerns relating to two cosmetic clinics to NSW Fair Trading in 2017 and 2018. NSW Fair Trading is considering whether there are any breaches of the *Fair Trading Act 1987*.¹⁶⁴
- 2.97 In addition, the HCCC highlighted that it often refers matters to AHPRA. Where both organisations are involved in responding to a complaint, the entities may carry out joint inspection and investigation visits.¹⁶⁵
- 2.98 AHPRA identified that it has worked collaboratively with other co-regulators and agencies in New South Wales to carry out search warrants and ensure appropriate regulatory force is used to deal with serious risks to the public.¹⁶⁶
- 2.99 Similarly, the TGA has carried out 10 regulatory visits in New South Wales with Australian Border Force and other authorities including the police.¹⁶⁷
- 2.100 The TGA is working with Border Force to intercept products that are not appropriately approved as medicines.¹⁶⁸ The TGA, in conjunction with Border Force, has destroyed 689 items that have arrived in Australia in mail and courier services.¹⁶⁹
- 2.101 Below is a case study of the HCCC working collaboratively with other agencies to investigate a beauty clinic that was the subject of a number of complaints.

¹⁶³ [Submission 20](#), NSW Government, p 3

¹⁶⁴ [Submission 20](#), NSW Government, p 9

¹⁶⁵ [Submission 10](#), Health Care Complaints Commission, p 15

¹⁶⁶ [Submission 21](#), AHPRA, p 1

¹⁶⁷ Professor John Skerritt, Deputy Secretary, Australian Department of Health, [Transcript of evidence](#), 2 August 2018, p 32

¹⁶⁸ Professor Skerritt, [Transcript of evidence](#), 2 August 2018, p 32

¹⁶⁹ Professor Skerritt, [Transcript of evidence](#), 2 August 2018, p 32

Case study – HCCC collaborating with other agencies

The HCCC received a number of complaints about a doctor not registered in Australia who was performing cosmetic procedures at a beauty clinic. The HCCC commenced an investigation with the Pharmaceutical Regulatory Unit and the Public Health Unit of the NSW Ministry of Health.*

Inspections of the clinic identified a number of products not on the Australian Register of Therapeutic Goods such as hyaluronic acid injections.*

The investigation found that the clinic:

- was carrying out skin penetration procedures but was not registered in accordance with the *Public Health Act 2010* (NSW)
- had very unsatisfactory infection control such as reusable articles for penetrating the skin that were not sterilised.*

The investigation concluded that:

- the clinic was not adequately managed and did not have good arrangements for operational accountability
- the clinic did not understand its regulatory responsibilities and consequently operated without appropriate registration and inadequate infection control procedures
- the non-registered goods were reportedly at the clinic without the knowledge of the owner.*

The HCCC made a number of recommendations to the clinic with the aim of getting the clinic to fully comply with its legislative obligations. The clinic was required to provide evidence of:

- the establishment of protocols ensuring only registered products would be used and only registered Australian practitioners would be responsible for ordering and prescribing them
- staff training in infection control procedures.*

The clinic provided documents to confirm that these recommendations were implemented. The HCCC continues to work with the Pharmaceutical Regulatory Unit and the Public Health Unit to monitor compliance.*

* [Submission 10](#), Health Care Complaints Commission, p 25

Policy development and public education

- 2.102 The HCCC highlighted policy development as another area in which it collaborates with other agencies. For example, issues raised in the HCCC's complaints and investigations in 2015 informed the development of the *Private Health Facilities*

Amendment (Cosmetic Surgery) Regulation 2016. This extended private health facilities regulation to specific cosmetic procedures.¹⁷⁰

- 2.103 Ms Rose Webb, Commissioner, NSW Fair Trading, also noted that she received useful input from NSW Health and the HCCC in relation to NSW Fair Trading's campaign to inform the community about the cosmetic health services industry.¹⁷¹

Committee comment

- 2.104 The Committee acknowledges that the regulation of cosmetic health services and associated complaints is a very challenging area involving a number of State and Commonwealth laws and entities.
- 2.105 The Committee also acknowledges the individual and collective efforts of State and Commonwealth entities to protect the public from operators who cause harm. The Committee supports the outcomes from the recent review by NSW Health into the regulation of cosmetic procedures and other proposed reforms and initiatives to address this issue.
- 2.106 The Committee is interested to monitor whether these collaborative efforts and reforms have the desired impact or whether further initiatives are required.
- 2.107 In the Committee's view, it is essential that agencies and entities continue to work together to ensure that the public is adequately informed about cosmetic health services and sufficiently protected from operators who may not comply with the law or have unsatisfactory practices.
- 2.108 The Committee also notes that a particular difficulty in this area of regulation is locating those individuals who should be registered but are not (such as overseas doctors who are not registered in Australia) or who are not otherwise complying with the relevant laws (such as unregistered persons who are illegally administering botulinum toxin or premises that do not comply with private facilities laws). This is an area of concern for the Committee. The various reforms and strategies identified in this chapter are assisting in addressing this issue and continued government focus is required to ensure compliance work is maintained and funded.
- 2.109 In the Committee's review of the HCCC's Annual Report 2016/17, the Committee also recommended that the HCCC develops new initiatives to identify, target and engage with membership-based organisations for unregistered health practitioners.¹⁷² This recommendation would apply to unregistered health practitioners more generally, not just those working in the cosmetic health services industry. However, it will assist in ensuring that any accreditation or other standards of such organisations meet the HCCC's expectations and the Code of Conduct for Unregistered Practitioners. It may also help to minimise future complaints and improve health care services for patients.

¹⁷⁰ [Submission 10](#), Health Care Complaints Commission, p 14

¹⁷¹ Ms Rose Webb, Commissioner, NSW Fair Trading, [Transcript of evidence](#), 2 August 2018, p 38

¹⁷² Committee on the Health Care Complaints Commission, [Review of the HCCC's Annual Report 2016/17](#), October 2018

- 2.110 The Committee has recommended some further reforms in chapters three to six of this report to complement the current work of State and Commonwealth agencies and entities.
- 2.111 In the cosmetic health services industry, the following four key planks of Government activity need intra-state agencies to collaborate as well as Commonwealth and State Governments to collaborate:
- strong regulation and laws that focus on public safety and adapt as necessary to changes in the industry
 - compliance and inspection work of Government
 - improved public awareness
 - that consumer and patient complaints are acted upon.
- 2.112 In relation to the case study highlighted in this chapter, the Committee acknowledges the importance of managing any expectations of complainants against broader public health outcomes. For example, complainants may want compensation, disciplinary or prosecution action or that premises be closed down. These outcomes will not always be available through the HCCC or other processes. In some cases, it may be appropriate for a clinic to continue operating if it can demonstrate to the HCCC or other regulatory bodies that it is no longer a risk to public safety.

Finding 1

The Committee finds that collaboration between the Health Care Complaints Commission and other State and Commonwealth agencies and entities is important to inform the public and protect them from cosmetic health service providers that do not comply with the law or do not have satisfactory practices. It is essential that this collaboration continues.

Chapter Three – Reforming the HCCC's powers

- 3.1 This chapter considers stakeholder views about whether the powers of the Health Care Complaints Commission (HCCC) are sufficient to deal with complaints about cosmetic health service providers. It also highlights that some complainants may not be satisfied with the type of outcomes possible from HCCC investigations. Finally, the chapter details concerns about unregistered health practitioners operating in this area.

The powers of the HCCC

- 3.2 The HCCC is an independent body which receives and assesses complaints relating to health service providers in New South Wales. It can resolve, or assist in the resolution of, complaints and, in serious cases, can investigate complaints and prosecute practitioners.
- 3.3 When complaints are made about registered practitioners, the HCCC must consult with the relevant New South Wales professional council after they have assessed the complaint but before making a determination. For non-registered practitioners, the HCCC has full jurisdiction and determination over complaints.
- 3.4 Several stakeholders made recommendations to change the procedures of the HCCC or to increase its powers to improve its capacity to act against cosmetic health service providers and to better protect the public.

Should the HCCC have greater powers?

- 3.5 A common issue that was raised was that the HCCC 'does not currently have adequate powers to enforce and police issues in the cosmetic health sector'.¹⁷³
- 3.6 As a result, several stakeholders recommended that the HCCC be given greater powers to investigate complaints and issue penalties to health service providers who do not comply with the relevant requirements. The Australian and New Zealand College of Anaesthetists (ANZCA) argued that the HCCC could be given greater powers related to practitioners' accreditation and licensing. They were concerned that without these powers, practitioners did not always take appropriate action following recommendations made by the HCCC. They noted:

There is, however, a clear discrepancy between complaint enquiry recommendations and health service implementation with only 34.8% of health services found to have followed through on the requested improvement. By increasing HCCC's regulatory power, recommendations could be tied to accreditation and licencing, such as those in place with the Australian Health Safety and Quality Accreditation Scheme or private health insurers. Any facility undertaking cosmetic health services should undergo regular assessment by an external auditing authority.¹⁷⁴

¹⁷³ [Submission 9](#), The Australasian College of Dermatologists, p 4

¹⁷⁴ [Submission 3](#), Australian and New Zealand College of Anaesthetists, p 3

- 3.7 NSW Government responsibilities for implementation of the Australian Health Safety and Quality Accreditation Scheme fall within the NSW Health portfolio, not the HCCC's jurisdiction.¹⁷⁵
- 3.8 Some stakeholders suggested there were insufficient penalties when the HCCC made critical findings. The Australasian College of Cosmetic Surgery (ACCS) highlighted that 'there is a perception that there is no ongoing penalty if caught operating illegally'.¹⁷⁶
- 3.9 Similarly, the Australian Society of Plastic Surgeons (ASPS) indicated that:
- [Greater powers] will serve to minimise criticism that the Commissioner lacks teeth to effectively deal with the systemic problems that are emerging in the cosmetic health services industry. Simply put the commission needs harsher penalties and these need to be enforced.¹⁷⁷
- 3.10 Trusted Surgeons also suggested the HCCC needs to be empowered to issue monetary fines and the Australasian College of Aesthetic Medicine (ACAM) proposed that criminal convictions should be an option in this area.¹⁷⁸
- 3.11 The HCCC does not have the capacity to impose penalties on health service providers or organisations in the traditional sense. For example, unlike some agencies or entities, the HCCC cannot directly issue penalty notices. The HCCC also cannot prosecute health service providers or organisations in criminal proceedings which could lead to a jail term if the person or organisation is found guilty. However, the HCCC does have the power to refer matters to other bodies, such as NSW Police, if the HCCC considered there was a matter that may warrant a criminal investigation.¹⁷⁹

What information should the HCCC provide during an investigation?

- 3.12 Another suggestion was that the HCCC make more information available during the course of an investigation and better disseminate any outcomes. While the work of the HCCC was respected and most stakeholders within the health community understood its role in the handling of complaints, it was argued that more could be done to publicise the HCCC.
- 3.13 The nature of the HCCC's investigations and the fact that many complaints are referred to other bodies means that it can be difficult for operators within the health community or the general public to see what action is being taken. The ANZCA stated that it would be beneficial if more information about a complaint was made available as it progressed. This would better inform the public about the work of the HCCC and also some of the risks involved in the cosmetic health services industry. They submitted:

¹⁷⁵ NSW Health, [Information bulletin – Implementation of the Australian Health Service Safety and Quality Accreditation Scheme](#) (accessed 10 October 2018)

¹⁷⁶ [Submission 22](#), The Australasian College of Cosmetic Surgery, p 5

¹⁷⁷ [Submission 12](#), Australian Society of Plastic Surgeons, p 5

¹⁷⁸ [Submission 19](#), Trusted Surgeons, p 16; [Submission 4](#), The Australasian College of Aesthetic Medicine, p 3

¹⁷⁹ [Health Care Complaints Act 1993, s99B](#)

... the Commission's annual report (2016-17) details very few cosmetic health service complaints that have brought about decisive action. Of note, only one complaint resulted in a public warning. The Commission could widen communication of investigations and results - including to the general community, industry, accrediting and regulatory bodies - to further enhance complaint process feedback.¹⁸⁰

- 3.14 Similarly, the ACCS noted that this approach was used in other areas with complaint handling processes. They argued that:

While the College appreciates all persons are entitled to due process and the justice system can be slow, there is very little information in the public domain about the prosecutorial processes underway in these and other cases. Regulatory agencies in other sectors often release enforcement actions underway, especially where a strong prima facie case exists. A case for such a change in the way the HCCC operates is justified, given that its work, tragically, touches matters of life and death.¹⁸¹

- 3.15 Chapter five discusses the general public's lack of awareness about the options available for complaints and makes recommendations to improve the situation.

Other jurisdictions

- 3.16 The Committee heard about independent regulators in other jurisdictions and how their powers differed from those of the HCCC.

Entry and search powers

- 3.17 Under the *Health Care Complaints Act 1993*, the HCCC has powers of entry, search and seizure. These powers are only able to be exercised when a complaint is in investigation and only with consent or under the authority of a search warrant.
- 3.18 The HCCC told the Committee that it also currently works with the Pharmaceutical Regulation Unit (PRU) (part of NSW Health) to conduct joint inspections of beauty and cosmetic clinics. The PRU has broader powers to search premises and seize goods under the *NSW Poison and Therapeutic Goods Act 1966*. When conducting joint inspections, HCCC staff carry out investigative actions jointly under the authority of the PRU. The Commission reported that this allows them 'to participate in fact finding inspections which would otherwise not be possible as its own powers of entry require a matter to already be in investigation.'¹⁸² As such, the HCCC cannot exercise powers of this kind when it is assessing a complaint.
- 3.19 The HCCC told the Committee that the Queensland Health Ombudsman has broader search and entry powers. Authorised officers of the Queensland Health Ombudsman have a general power of entry which apart from consent and search warrant, also allows authorised persons to enter a premises if 'it is a public place and the entry is made when the place is open to the public'.¹⁸³ Furthermore,

¹⁸⁰ [Submission 3](#), Australian and New Zealand College of Anaesthetists, p 3

¹⁸¹ [Submission 22](#), The Australasian College of Cosmetic Surgery, p 4

¹⁸² [Submission 10](#), Health Care Complaints Commission, p 16

¹⁸³ [Health Ombudsman Act 2013 \(Qld\), s197](#)

unlike in New South Wales, the search and entry powers apply to all complaints and are not limited to only those under investigation.¹⁸⁴

Public health warnings

- 3.20 Under section 94A of the *Health Care Complaints Act 1993*, the HCCC may issue a public warning if following or during an investigation, it 'is of the view that a particular treatment or health service poses a risk to public health or safety'. The warning can identify and give information about a treatment or health service but a public warning may not be issued about a specific named health facility or individual registered provider.
- 3.21 In Victoria, the Health Care Complaints Commissioner can issue a public warning which names a specific health service provider. Under the Victorian *Health Care Complaints Act 2016*, the Commissioner may publish a statement setting out the name of a health service provider if they reasonably believe a person is likely to suffer a detriment as a result of the provision of the health service by the provider. The Commission may also publish a statement setting out the name of a health service provider if:
- it reasonably believes there has been a contravention of a code of conduct applying to the general health service provided, and
 - it is satisfied that it is necessary to make the order to avoid a serious risk to the health, safety or welfare of the public.¹⁸⁵
- 3.22 The Australian Lawyers Alliance supported expanding the HCCC's powers so that a public health warning may be issued about a specific individual registered practitioner or health facility 'to enhance public safety'.¹⁸⁶

Interim and permanent prohibition orders against non-registered practitioners

- 3.23 Under the *Health Care Complaints Act 1993*, the HCCC has the power to make interim and permanent prohibition orders. These orders can be made against individual non-registered practitioners. They cannot be issued in regard to health organisations of any kind (whether or not they are operated by registered or unregistered practitioners or are licensed private health facilities or other facilities).¹⁸⁷
- 3.24 In Victoria, the HCCC has stronger powers – they can make interim and permanent prohibition orders against individual non-registered practitioners or a health organisation that is operated by an unregistered practitioner.¹⁸⁸ For example, an interim prohibition order was issued against Sparadise Medical and

¹⁸⁴ [Submission 10](#), Health Care Complaints Commission, p 16

¹⁸⁵ [Submission 10](#), Health Care Complaints Commission, pp 16-17

¹⁸⁶ Ms Ngaire Watson, Australian Lawyers Alliance, [Transcript of evidence](#), 1 August 2018, p 27

¹⁸⁷ [Health Care Complaints Act 1993, s41AA](#) and [s41A](#)

¹⁸⁸ [Health Complaints Act 2016](#) (Vic), [s90](#) and [s95](#)

Cosmetic Clinic which prevents them from providing any cosmetic surgical and medical procedures or administering any Schedule 4 drugs for cosmetic use.¹⁸⁹

- 3.25 The Australian Lawyers Alliance also called for the HCCC's powers to be expanded to make interim and permanent prohibition orders against a health facility and individual non-registered practitioners, as is the case in Victoria, for public safety reasons.¹⁹⁰

Committee comment

- 3.26 The Committee notes the work of the HCCC in protecting public health and safety in the cosmetic health services industry. The Commissioner is aware of the various and emerging issues and the HCCC is taking action to ensure that it remains well placed to resolve complaints in this area. The Committee acknowledges that the HCCC has been able to use its new powers under s94A to issue warnings as part of an ongoing investigation.
- 3.27 The Committee also notes the concerns of stakeholders that the cosmetic health sector is a growing industry which attracts some practitioners who do not follow the law or have unsatisfactory processes or procedures. The Committee considers that it is timely for the powers and functions of the HCCC to be reviewed to ensure it is able to sufficiently protect patients using health services and assist in resolving their concerns. In particular, the review should consider whether the powers of similar bodies in other jurisdictions would be appropriate in New South Wales.
- 3.28 The review should also consider whether changing any of the HCCC's powers and functions to address the issues identified in this inquiry would have any adverse consequences for other areas of health services regulation, beyond the cosmetic health services industry.
- 3.29 The Committee notes, for example, that if the HCCC had powers to issue public warnings about specific health service providers and health organisations it may have been able to name some of the providers or organisations about which it had concern. This would provide the public with timely information upon which to make decisions about cosmetic service providers. Giving the HCCC the power to issue prohibition orders against specific corporate operators that pose a serious risk to the health and safety of the public could also assist in protecting the public from potential harm.
- 3.30 If the HCCC had broader search and entry powers, it could potentially investigate corporate operators that it has concerns about more effectively, with less reliance on collaborating with other Commonwealth or State agencies to obtain the benefit of their broader, or different, powers.
- 3.31 The Committee recognises the comments of some stakeholders in this area that the powers of the HCCC can sometimes be perceived to be ineffective. This

¹⁸⁹ Victorian Health Care Complaints Commissioner, [Prohibition Orders, Sparadise Medical and Cosmetic Clinic Pty Ltd](#), 28 February 2018, viewed 7 November 2018

¹⁹⁰ Ms Watson, [Transcript of evidence](#), 1 August 2018, p 27

review would be an opportunity to test these perceptions and to strengthen the powers if necessary.

- 3.32 As discussed earlier in chapters one and two, laws and penalties in other areas of cosmetic health service regulation are also in the process of being strengthened. Here the Committee's focus is on the HCCC, but the Committee acknowledges that all of these changes are important.

Recommendation 1

The Committee recommends that the Minister for Health reviews the powers and functions of the Health Care Complaints Commission to ensure the Commission is able to sufficiently protect patients using health services. In particular, the Committee recommends the Commission should have the powers:

- a) to issue public warnings about specific health service providers and health organisations;**
- b) to issue prohibition orders in relation to specific health organisations; and**
- c) for search and entry to apply to all complaints and allow authorised persons to enter premises if the premises is a public place and the entry is made when the place is open to the public.**

Adequacy of outcomes for complainants

- 3.33 Apart from suggestions about raising awareness of complaint processes, which is discussed further in chapter five, the Committee did not receive much specific evidence about whether or not patients and health service providers that have been through the HCCC's assessment, resolution, investigation or other processes are generally satisfied with the outcome.

- 3.34 However, ASPS spoke of its members' experiences with the HCCC:

ASPS members report varying experiences with the HCCC. All support the intent underpinning the organisation. Members praise the timeliness of complaints management with comments suggesting that complaints are regularly investigated and resolved rapidly. This is clearly positive for patients and health practitioners and serves to generate confidence in the HCCC as a competent, responsive and trustworthy organisation.¹⁹¹

- 3.35 The Committee also heard from Trusted Surgeons about their experience with patients who had previously complained to the HCCC. They said patients came to their organisation because they were not satisfied with the response from the HCCC. Trusted Surgeons suggested several improvements to the HCCC's processes, for example:

- That the HCCC carry out more face-to-face interviews and on-site visits when dealing with complaints rather than emailing back and forward. Trusted

¹⁹¹ [Submission 12](#), Australian Society of Plastic Surgeons, p 5

Surgeons said patients can feel that this kind of response is not adequate as correspondence is often written or checked by a solicitor.¹⁹²

- That the HCCC be empowered to require a surgeon to pay for the patient to have rectification surgery with another surgeon in appropriate cases. Trusted Surgeons explained that, in their experience, most patients do not want revision surgery with the same surgeon.¹⁹³

3.36 Following an investigation into a registered health provider, the HCCC may refer the complaint to the Director of Proceedings if they establish that there has been a significant departure in clinical care and treatment and/or professional conduct. The Director of Proceedings determines whether disciplinary action is warranted and if so whether the prosecution should be before a Professional Standards Committee or the NSW Civil and Administrative Tribunal (NCAT). Professional Standards Committees are established by the relevant New South Wales professional council and comprise four members, one of whom must be legally qualified.

3.37 The Committee heard that some complainants are not satisfied with this form of resolution and can seek compensation for negligence and damages. Ms Ngaire Watson, Spokesperson, Australian Lawyers Alliance, explained that she has clients who have been to the HCCC but are unhappy with their findings and want to take a practitioner or operator to court. She reported:

... I have seen many occasions where people have gone to the HCCC and there has been no finding of any particular problem. A fairly short report gets produced—and I have read many of them—which does not really enlighten the person particularly and we have gone on to successfully litigate because it has been quite apparent that there has been a problem in the treatment provided.¹⁹⁴

3.38 When this discrepancy was put to the Commissioner, she noted that the role of the HCCC is to resolve complaints and that the *Health Care Complaints Act 1993* provides for disciplinary action against practitioners. She argued the HCCC is successfully carrying out these functions:

I think things to be observed are that the purpose of a civil claim of the kind that may have been referred to by the legal practitioners involved is completely different from the purpose of a disciplinary action under the Health Care Complaints Act. So you cannot compare the two. Quite separate from that, the question of time frames is one that goes to the fact that the outcomes that we get from our prosecutions are astoundingly positive and highly successful, and that reflects on the great quality of the investigations that are undertaken.¹⁹⁵

3.39 Mr Tony Kofkin, Executive Director, Complaint Operations at the HCCC said it is unfair to compare the thresholds and standards of proof under the *Health*

¹⁹² [Submission 19](#), Trusted Surgeons, p 13

¹⁹³ [Submission 19](#), Trusted Surgeons, p 16

¹⁹⁴ Ms Watson, [Transcript of evidence](#), 1 August 2018, p 30

¹⁹⁵ Ms Dawson, [Transcript of evidence](#), 2 August 2018, p 55

Practitioner Regulation National Law with negligence cases as there is a distinct difference between the two.¹⁹⁶

- 3.40 The Commissioner also highlighted that the likelihood of success of a prosecution 'is not the definitive item' that the Director of Proceedings considers when determining whether to commence a prosecution by the HCCC.¹⁹⁷ The *Health Care Complaints Act 1993* provides that the Director of Proceedings is to take into account the following matters in making their decision:
- protection of the health and safety of the public
 - the seriousness of the alleged conduct
 - the likelihood of proving the alleged conduct, and
 - submissions made by the health practitioner under section 40 of that Act.¹⁹⁸

Committee comment

- 3.41 The Committee notes that it has not received as much evidence as it would have liked about whether or not patients and practitioners are satisfied with the outcomes of the HCCC's complaint-handling, investigation and prosecution functions. To some extent, this is not surprising given evidence in other areas of the report that cosmetic health service complaints may be underreported and patients may feel embarrassed about raising their concerns.
- 3.42 The Committee therefore does not consider that it has sufficient feedback to recommend any specific changes to the HCCC's functions and process in relation to the potential outcomes of complaints. However, it will remain an area of interest to the Committee in the future.
- 3.43 The Committee also acknowledges the different purposes, outcomes and limitations of the HCCC's investigation and prosecution functions versus medical negligence claims in the civil courts, particularly in relation to the threshold requirements, standards of proof and considerations relevant to commencing proceedings. The Committee accepts that the two are not linked. Success in civil litigation for negligence is not an indicator that the HCCC is not fulfilling its functions.
- 3.44 The Committee notes that the HCCC complaints process and medical negligence claims are not the only ways in which health service providers or organisations can be pursued if they have acted unprofessionally or unlawfully. For example, as outlined in chapter two, the broader Commonwealth and New South Wales regulatory framework contains offences for various kinds of conduct related to the health industry.

¹⁹⁶ Mr Kofkin, [Transcript of evidence](#), 2 August 2018, p 55

¹⁹⁷ Ms Dawson, [Transcript of evidence](#), 2 August 2018, p 56

¹⁹⁸ [Health Care Complaints Act 1993 s90C](#)

Unregistered practitioners in the cosmetic health services industry

- 3.45 The majority of the evidence to the inquiry has been around registered practitioners in the cosmetic health services industry, primarily doctors, nurses and surgeons. However, the Committee and others have concerns about unregistered practitioners.
- 3.46 A common view was that there was insufficient regulation of unregistered health practitioners. ACAM stated that 'one concern is that HCCC in New South Wales has no jurisdiction over people who are not doctors or nurses'.¹⁹⁹
- 3.47 As has been stated in the previous chapter, this is not the case as the HCCC may assess complaints against unregistered practitioners with regard to the Code of Conduct for Unregistered Health Practitioners and their legal obligations. It also has full jurisdiction and determination over such complaints and may make a prohibition order preventing the practitioner from providing health services (or a specific health service) or placing conditions on the provision of those services for a period of time.
- 3.48 Nevertheless, even where people were aware of the powers of the HCCC with regard to unregistered health practitioners, there were doubts about their effectiveness. ACCS observed that:
- Further, there is a perception that there is no ongoing penalty if caught operating illegally. Related to this is the appearance that there is a degree of immunity against illegal practice for those who are not medically qualified.²⁰⁰
- 3.49 The Medical Council of NSW recognised that unregistered practitioners providing cosmetic health services were a challenge for the HCCC. They indicated that while the powers of the HCCC were significant, there could be difficulties when complaints were made against unregistered practitioners. They noted that, 'some practitioners providing cosmetic health services are not registered health practitioners and are therefore less easily identified for the purpose of investigation'.²⁰¹
- 3.50 The Australasian College of Dermatologists highlighted the lack of professional standards bodies for unregistered health practitioners as a particular challenge. They argued that not having these alternative options for complaint resolution makes it harder for the HCCC to properly oversee these practitioners and ensure that problems are not emerging. They stated that:
- While the most severe outcome of criminal prosecution applies to both registered and non-registered practitioners, it is the lack of a professional standards body or an accreditation process for non-registered practitioners which is of concern. There is no mechanism for professional counselling or performance management or other remediation action, which may act to prevent minor incidents escalating to a major threat to patient or public safety.²⁰²

¹⁹⁹ [Submission 4](#), Australasian College of Aesthetic Medicine, p 3

²⁰⁰ [Submission 22](#), The Australasian College of Cosmetic Surgery, p 5

²⁰¹ [Submission 13](#), Medical Council of NSW, p 3

²⁰² [Submission 9](#), The Australasian College of Dermatologists, p 3

- 3.51 An additional benefit of professional standard bodies was the ongoing requirement to develop relevant skills and knowledge in order to maintain registration. The Australasian College of Dermatologists claimed that it was unclear how well known the Code of Conduct is. They observed:

... medical, dental and nursing practitioners must not only demonstrate the skills and expertise required to gain qualifications throughout the course of their undergraduate education and post-graduate training where required, but must also undertake continuing professional development to maintain AHPRA registration. ... the increasingly risky and technologically-driven cosmetic procedures being performed by non-registered practitioners strongly suggests that more stringent or rigorous oversight is needed for this group of professionals. It is questionable whether the majority of non-registered practitioners would even be aware of the existing Code of Conduct.²⁰³

- 3.52 The Nursing and Midwifery Council of NSW agreed that the fact that it was unable to work with the HCCC in matters concerning unregistered health practitioners meant that there was insufficient regulation. They indicated that:

The National Board is responsible for prosecuting matters in relation to the inappropriate use of a protected title but otherwise not able to deal with unregistered health providers. ... The Council has concerns the HCCC may not have the range of powers to deal with the range of different complaints that are received about people who provide cosmetic services.²⁰⁴

- 3.53 There were also arguments for increasing the powers of the HCCC to act when complaints against unregistered practitioners are upheld. The Australian Society of Anaesthetists recommended that, '[s]hould a complaint be substantiated against non-registered health practitioners, the remedial actions of the HCCC ... should be enhanced'.²⁰⁵ ACAM also suggested 'monetary fines ... along with criminal convictions'.²⁰⁶

Committee comment

- 3.54 The Committee notes the concerns of stakeholders about the growing number of unregistered health practitioners operating in the cosmetic health services industry and the perceived lack of oversight. The HCCC does have significant powers to act against unregistered health practitioners. However, it is clear that these powers are not well known and there is a perception among the wider health community that they are not used as often as they could be.
- 3.55 This inquiry focused on cosmetic health services and while we received evidence about unregistered practitioners, it was not sufficient to make any particular findings or recommendations.
- 3.56 The Committee considers that this is a live issue and has the potential to remain in the public interest if the number of unregistered health practitioners continues to grow across various health sectors. As such, the regulation of unregistered

²⁰³ [Submission 9](#), The Australasian College of Dermatologists, pp 3-4

²⁰⁴ [Submission 16](#), Nursing and Midwifery Council of NSW, pp 4-5

²⁰⁵ [Submission 24](#), The Australian Society of Anaesthetists, p 2

²⁰⁶ [Submission 4](#), Australasian College of Aesthetic Medicine, p 3

health practitioners could be the subject of a separate, dedicated inquiry in the future. A wider inquiry could consider unregistered practitioners across all disciplines and the role of the HCCC and Fair Trading, amongst other relevant bodies.

- 3.57 The other government agencies collaborating with the HCCC have potentially a greater role in regulation of premises, medicines and medical devices rather than consumer complaints. Monitoring trends and the regulatory framework is a whole of government responsibility, as is compliance monitoring.
- 3.58 In the Committee's review of the HCCC's Annual Report 2016-17, the Committee recommended that the HCCC develops new initiatives to identify, target and engage with membership-based organisations for unregistered health practitioners as part of its outreach program.²⁰⁷ This recommendation aims to assist in ensuring that any accreditation or other standards of such organisations meet the HCCC's expectations and the Code of Conduct for Unregistered Practitioners.
- 3.59 Elsewhere in this report, the awareness and education campaign is recommended to protect the public and to let them know that complaints about cosmetic health services can be made.

²⁰⁷ Committee on the Health Care Complaints Commission, [Review of the HCCC's Annual Report 2016/17](#), October 2018

Chapter Four – Titles of medical practitioners

- 4.1 This chapter considers evidence from stakeholders that there is confusion and misconception in the community about the titles 'cosmetic surgeon' and 'surgeon'. The Committee heard that these titles are potentially misleading consumers and patients about the level of training, qualifications, experience and accreditation of the doctors/practitioners they are seeing. In particular, these titles can give a false impression that a doctor has specialist training in surgery.

Specialist titles

- 4.2 Under the National Law, the Council of Australian Governments (COAG) Health Council approves medical specialties and specialist titles used by doctors based on the recommendation of the Medical Board of Australia.²⁰⁸

- 4.3 The COAG Health Council explains the rationale behind specialist registration is to inform the public about a practitioner's level of expertise:

If a medical practitioner does not hold specialist registration, it does not mean they are not qualified or not able to perform any services within that specialty. For example, while not all medical practitioners have specialist registration in the field of surgery, many medical practitioners will undertake surgical procedures during their career. Rather, specialist registration recognises that a practitioner has met additional training and qualification requirements and is a specialist in a particular area. Restricting the use of specialist titles therefore helps the public to have confidence in the expertise of specialist practitioners.²⁰⁹

- 4.4 Specialist registration also allows for the scope of practice in each speciality to be defined quite clearly.²¹⁰

- 4.5 The following specialist titles have been approved in the surgery field:

- Specialist surgeon
- Specialist cardio-thoracic surgeon
- Specialist general surgeon
- Specialist neurosurgeon
- Specialist orthopaedic surgeon
- Specialist otolaryngologist – head and neck surgeon
- Specialist oral and maxillofacial surgeon

²⁰⁸ [Health Practitioner Regulation National Law \(NSW\) s13](#)

²⁰⁹ COAG Health Council, [Regulation of Australia's health professions: keeping the national law up to date and fit for purpose](#), July 2018, pp 58-59, viewed 7 November 2018

²¹⁰ Ms Dawson, [Transcript of evidence](#), 2 August 2018, p 49

- Specialist paediatric surgeon
 - Specialist plastic surgeon
 - Specialist urologist
 - Specialist vascular surgeon.²¹¹
- 4.6 There are minimum requirements for doctors to become registered in a specialist field, these include:
- being qualified for registration in the specialty
 - completing any periods of supervised practice required
 - completing any examinations or other assessments required.²¹²
- 4.7 It is an offence for a doctor to hold themselves out as a specialist when they are not, use titles reserved for recognised specialists, or falsely claim to be qualified to practice in a particular speciality.²¹³
- 4.8 There is no recognised medical specialty or specialist field of cosmetic surgery and no protected title relating to cosmetic surgeon. This means that the Medical Board of Australia does not set minimum qualification requirements for those practitioners currently using the title 'cosmetic surgeon'.²¹⁴
- 4.9 While there are specialist fields approved by the COAG Health Council in the surgery field, some medical practitioners currently use the title 'surgeon' without being registered in a specialist surgery field.²¹⁵ The title 'surgeon' on its own is not a specialist title and is not a restricted title.²¹⁶

Different kinds of doctors using the title 'cosmetic surgeon'

- 4.10 The Committee heard concerns from various inquiry participants that, at present, any doctor can call themselves a 'cosmetic surgeon'. For example, the Committee learned that this can range from doctors who are trained in other areas such as General Practitioners, Cardio-thoracic surgeons or Anaesthetists who are now working as a cosmetic surgeon or have an interest in this area. Doctors describing themselves as cosmetic surgeons might also be specialist general surgeons.²¹⁷

²¹¹ Medical Board of Australia, [List of specialties, fields of specialty practice and related specialist titles](#), 1 June 2018, p 4 (accessed 4 October 2018)

²¹² [Health Practitioner Regulation National Law \(NSW\) Part 7, Division 2](#)

²¹³ COAG Health Council, [Regulation of Australia's health professions: keeping the national law up to date and fit for purpose](#), July 2018, p 58

²¹⁴ COAG Health Council, [Regulation of Australia's health professions: keeping the national law up to date and fit for purpose](#), July 2018, p 58

²¹⁵ COAG Health Council, [Regulation of Australia's health professions: keeping the national law up to date and fit for purpose](#), July 2018, p 59

²¹⁶ Medical Board of Australia, [List of specialties, fields of specialty practice and related specialist titles](#), 1 June 2018 (accessed 4 October 2018)

²¹⁷ See for example, Professor Ashton, [Transcript of evidence](#), 1 August 2018, p 4; Dr Gazi Hussain, Vice President, Australian Society of Plastic Surgeons, [Transcript of evidence](#), 1 August 2018, p 4; Dr Pouria Moradi, NSW State

- 4.11 The Committee heard from different colleges and associations about their specific training programs. The Royal Australasian College of Surgeons (RACS) explained that the Australian Society of Plastic Surgeons (ASPS) partners with RACS to provide a training program for doctors to become a recognised specialist plastic surgeon which is accredited by the Australian Medical Council (AMC).²¹⁸ The Council ensures that standards of education, training and assessment of the medical profession promote and protect the health of the community.²¹⁹ ASPS described the extent of their members' training:

By the time they are accredited, registered plastic and reconstructive surgeons have undertaken a minimum of 12 years medical and surgical education, including at least five years of specialist postgraduate training.²²⁰

- 4.12 Plastic surgery covers a broad scope from procedures to improve aesthetic appearance such as rhinoplasty (nose job), breast augmentation or reduction and liposuction; to reconstructive surgery such as trauma burns and cleft palates.²²¹

- 4.13 Dr Ronald Bezic, Councillor of The Australasian College of Cosmetic Surgery (ACCS) also highlighted the requirements to become a fellow of its College:

To become a surgical fellow of the college a person must complete a medical degree of Bachelor of Medicine and Bachelor of Surgery at an Australian university, which takes at least six years of full-time study; undertake a minimum of five years general surgical training and be considered surgically competent; undertake a further two years specialist cosmetic surgical training; satisfactorily sit three separate examinations at this point; produce and have published a clinical research paper or review article; and be registered with the Medical Board of Australia.²²²

- 4.14 On the other hand, it was suggested by some participants that other doctors call themselves cosmetic surgeons without completing any training in the field of surgery or cosmetic medicine.²²³ Professor Mark Ashton, President, ASPS described one scenario:

...they get a basic medical degree, which may or may not have involved any surgical training at all, they have had no hands-on experience, they then can go and do a one- or two-week course and can walk out and call themselves a cosmetic surgeon.²²⁴

Committee Plastics Representative, Royal Australasian College of Surgeons, [Transcript of evidence](#), 1 August 2018, p 12; Ms Montgomery, [Transcript of evidence](#), 1 August 2018, p 40

²¹⁸ [Submission 14](#), Royal Australasian College of Surgeons, pp 1-2

²¹⁹ [Australian Medical Council](#), viewed 17 October 2018

²²⁰ [Submission 14](#), Royal Australasian College of Surgeons, pp 1-2

²²¹ Royal Australasian College of Surgeons, [Plastic and Reconstructive Surgery](#) (accessed 19 September 2018)

²²² Dr Ronald Bezic, Councillor, The Australasian College of Cosmetic Surgery, [Transcript of evidence](#), 2 August 2018, p 9

²²³ See for example, Dr Bezic, [Transcript of evidence](#), 2 August 2018, p 9; Professor Ashton, [Transcript of evidence](#), 1 August 2018, p 2

²²⁴ Professor Ashton, [Transcript of evidence](#), 1 August 2018, p 2

Restricting the titles 'cosmetic surgeon' and 'surgeon'

4.15 There were calls from several stakeholders for the titles 'cosmetic surgeon' and 'surgeon' to be banned or restricted so the public are not misled by the title.

4.16 For example, the Australasian Society of Aesthetic Plastic Surgeons (ASAPS) said the public were confused about some of the different titles:

The titles "Surgeon", "Surgery", "Plastic" and "Cosmetic" are currently misunderstood by the public and murky guidelines and enforcement make this even more difficult for patients.²²⁵

4.17 ASAPS further highlighted that their members often see patients who have had cosmetic surgery complications who were confused about their surgeon's qualifications. In its view, this confusion extends to cosmetic medical procedures more generally, whether or not they are surgical.²²⁶ Similarly, ASPS said the public are confused about which type of practitioner can best meet their cosmetic health service needs.²²⁷

4.18 Dr Ken Loi, NSW State Committee Chair, RACS, highlighted that the use of the term 'cosmetic surgeon' can create perceptions in the minds of patients. He said titles such as 'cosmetic consultant' or 'practitioner' do not have the same impact as 'cosmetic surgeon':

...because the moment you mention surgery your mindset is already having surgery. But being a consultant or a practitioner you are not necessarily having surgery by a surgeon.²²⁸

4.19 Professor Mark Ashton, President, ASPS, spoke of the potential benefits of removing the term 'cosmetic surgeon':

Talking about a public being educated and informed consent, that person is then required to say, "I am a general practitioner who has an interest in breast augmentation," or "I am an anaesthetist who has an interest in liposuction." The patient is then going to say, "Hang on, I thought you were a surgeon." So it encourages a second question, which means that the patient then seeks out the training and credentialing of that particular individual to be able to do that procedure safely and manage any risk or any complications that may occur. So by removing the term "cosmetic surgeon" you are encouraging a much more transparent and a much more informed process of consent.²²⁹

4.20 Ms Sue Dawson, Commissioner, HCCC, also acknowledged that defining the scope of practice of a 'cosmetic surgeon' could assist the HCCC with its work:

...an important part of moving towards specialties and, potentially, protection of title on the back of a specialty really turns on the question of defining quite sharply the

²²⁵ [Submission 15](#), Australasian Society of Aesthetic Plastic Surgeons, p 5

²²⁶ [Submission 15](#), Australasian Society of Aesthetic Plastic Surgeons, pp 2-3

²²⁷ [Submission 12](#), Australian Society of Plastic Surgeons, pp 1-2

²²⁸ Dr Ken Loi, NSW State Committee Chair, Royal Australasian College of Surgeons, [Transcript of evidence](#), 1 August 2018, p 12

²²⁹ Professor Ashton, [Transcript of evidence](#), 1 August 2018, p 4

scope of practice in that specialty. Anything that helps a regulator or a complaints manager to be clear about the scope of practice, and therefore identify circumstances where there have been actions taken that may be outside that scope of practice, is of assistance.²³⁰

- 4.21 Likewise, Ms Joanne Muller, Legal Member, Nursing and Midwifery Council of NSW, indicated that defining the scope of practice of a 'cosmetic surgeon' could also assist the Medical Council of NSW and the Nursing and Midwifery Council of NSW in their regulatory roles:

The national law is based on scope of practice and a person is allowed to determine their scope of practice but if there was some accreditation put in place around these cosmetic procedures that was able to be accessed on the internet by members of the public, that would also assist in providing a firm foundation for regulatory action to be taken by regulators such as the Medical Council and the Nursing and Midwifery Council.²³¹

- 4.22 Some participants described how the titles 'surgeon' or 'cosmetic surgeon' could be restricted. For example, Trusted Surgeons suggested particular restrictions on the use of the title 'surgeon':

A doctor should only be called a surgeon if they are a Fellow of the Royal Australian College of Surgeons and only in the field that they are listed for.²³²

- 4.23 Dr Ronald Bezic, Councillor, ACCS suggested that various kinds of appropriately trained practitioners could potentially use the term 'cosmetic surgeon' through an accreditation framework:

... If surgeons of various backgrounds, be they from us, be they general surgeons, plastic surgeons, or ear, nose and throat surgeons have met the threshold criteria they can use the term. Other people below that criteria who have had minimal training should not be able to use that term.²³³

- 4.24 There was concern expressed about the implications that protecting the title 'surgeon' would have for other specialty fields of practice. RACS acknowledged this in its submission:

In our view surgical operations should only be performed by practitioners who are registered surgical specialists. Although this has value, implementation would have unintended far reaching implications for other professionals, both inside and outside of the health sphere, due to other areas that use the term "surgeon" e.g. dental surgeons, ophthalmologists and tree surgeons.²³⁴

²³⁰ Ms Dawson, [Transcript of evidence](#), 2 August 2018, p 49

²³¹ Ms Muller, [Transcript of evidence](#), 2 August 2018, p 21

²³² [Submission 19](#), Trusted Surgeons, p 1

²³³ Dr Bezic, [Transcript of evidence](#), 2 August 2018, p 15

²³⁴ [Submission 14](#), Royal Australasian College of Surgeons, p 1

Support for a review of the titles 'cosmetic surgeon' and 'surgeon' beyond this inquiry

4.25 NSW Health's *Report on the review of the regulation of cosmetic procedures* of April 2018 recommended that the Minister raise the issue of protecting the title 'cosmetic surgeon' with the COAG Health Council.²³⁵ The report found that the use of the title 'cosmetic surgeon' could imply that a medical practitioner has specialised training and registration, which could be misleading to patients.²³⁶

4.26 However, the report did not support restrictions on the use of the title 'surgeon' to only those medical practitioners with specialist registration in a surgical field:

There are a range of practitioners who use, and have done so historically, the title surgeon. Further, a range of medical practitioners, such as general practitioners, perform surgery within their accepted scope of practice.²³⁷

4.27 The NSW Minister for Health raised the issue of protecting the title 'cosmetic surgeon' with the COAG Health Council in November 2017.²³⁸

4.28 Ms Kym Ayscough, Executive Director Regulatory Operations, Australian Health Practitioner Regulation Agency (AHPRA), stated at the hearing that issues surrounding protected and restricted titles are currently in discussion for potential expansion to include 'surgeon' and 'cosmetic surgeon':

The way that the protection of title works under the legislation is that practitioners may be registered in a general registration category or hold specialist registration. In medical registration there are 23 fields of specialty practice, one of which is surgery, and associated with that field of specialty practice there are a number of restricted or protected titles. However, amongst those protected titles you will not find the title simply "surgeon" or "cosmetic surgeon". We are aware that government policy officers across the country have been meeting together to discuss the potential for expanding the list of protected titles including "surgeon" and "cosmetic surgeon". Those discussions are progressing and we also understand that there is a consultation paper likely to be released fairly soon which will invite comment about the potential for restricting those titles.²³⁹

4.29 The COAG Health Council consultation paper, *Regulation of Australia's health professions: keeping the National Law up to date and fit for purpose*, was released after the hearings. The paper calls for submissions in relation to a number of different issues including whether the National Law should be

²³⁵ NSW Health, [Report on the Review of the Regulation of Cosmetic Procedures](#), April 2018, p 9 (accessed 19 September 2018)

²³⁶ NSW Health, [Report on the Review of the Regulation of Cosmetic Procedures](#), April 2018, p 9 (accessed 19 September 2018)

²³⁷ NSW Health, [Report on the Review of the Regulation of Cosmetic Procedures](#), April 2018, p 8 (accessed 19 September 2018)

²³⁸ Dr Chant, [Transcript of evidence](#), 2 August 2018, p 37

²³⁹ Ms Ayscough, [Transcript of evidence](#), 2 August 2018, p 30

amended to restrict the titles 'cosmetic surgeon' and 'surgeon' and, if so, which practitioners should be able to use these titles.²⁴⁰

4.30 The Consultation Paper notes that restricting the title 'cosmetic surgeon' may better inform patients about the qualifications of doctors performing these procedures. The Consultation Paper also states that the use of the title 'surgeon' by practitioners who do not hold specialist registration has been argued by some to be misleading.²⁴¹

4.31 However, the Consultation Paper highlights that particular care should be taken with respect to any changes to the title 'surgeon':

...many medical practitioners will carry out surgical procedures during their careers. In addition, there are a range of other occupations who use, and have done so historically, the title surgeon, such as podiatric surgeons (and it is noted that podiatric surgery is a podiatric specialty), dental surgeons, veterinarian surgeons and tree surgeons. It is also noted that many General Practitioners (GPs) refer to their premises as 'GP surgeries' or 'doctor's surgeries'. While it is important that titles are not used in a way that can mislead the public, care also needs to be taken to ensure that title restrictions do not unnecessarily limit commonly used terms.²⁴²

Committee comment

4.32 The Committee agrees that the title 'cosmetic surgeon' can be misleading to the public. In particular, the Committee is concerned that the term implies that cosmetic surgeons have additional qualifications, training and experience equivalent to accredited specialists when this is clearly not the case.

4.33 The Committee agrees with stakeholders that defining the scope of practice of areas of specialty could assist the HCCC, the Nursing and Midwifery Council of NSW and the Medical Council of NSW in their complaint-handling and regulatory work.

4.34 The Committee considers the title 'cosmetic surgeon' should be restricted or protected so that patients know that their 'cosmetic surgeon' meets the minimum criteria in terms of education, training and experience.

4.35 The Committee is not in a position to determine or recommend which practitioner should be able to use the title 'cosmetic surgeon' and defers this to the COAG Health Council processes.

4.36 Given that practitioners providing cosmetic health services can work across borders, the Committee prefers a national approach to this issue and therefore suggests that the NSW Minister for Health continues to make representations to the COAG Health Council about protecting or restricting the title 'cosmetic surgeon.'

²⁴⁰ COAG Health Council, [Regulation of Australia's health professions: keeping the national law up to date and fit for purpose](#), July 2018, p 59

²⁴¹ COAG Health Council, [Regulation of Australia's health professions: keeping the national law up to date and fit for purpose](#), July 2018, p 59

²⁴² COAG Health Council, [Regulation of Australia's health professions: keeping the national law up to date and fit for purpose](#), July 2018, p 59

- 4.37 However, the Committee acknowledges that sometimes it is not possible to come to a national agreement on a particular issue. As such, if national agreement cannot be reached within a reasonable period of time, the Committee suggests that this issue is important enough that the NSW Minister for Health should consider whether to introduce legislation in the NSW Parliament to deal with this issue independently.
- 4.38 The Committee also heard that the title 'surgeon' can be misleading to patients by implying that a doctor has specialist surgical registration or other specific training, qualifications or experience.
- 4.39 The Committee acknowledges that this inquiry has looked at cosmetic surgery. The Committee's consultation has been limited to its terms of reference. The Committee also recognises that there could be some unintended consequences which flow from restricting or protecting the title 'surgeon'. However, the Committee is concerned that the public appear to be misled about this title and the Committee believes this confusion is not limited to cosmetic health services.
- 4.40 The Committee therefore recommends that the Minister for Health consider whether it would be in the public interest to support protections and restrictions on the use of the title 'surgeon' in line with the COAG Health Council consultation process.

Recommendation 2

The Committee recommends that the Minister for Health continues to make representations to the COAG Health Council to protect or otherwise restrict the title 'cosmetic surgeon' at a national level under the Health Practitioner Regulation National Law.

Recommendation 3

The Committee recommends that, if the COAG Health Council does not protect or otherwise restrict the title 'cosmetic surgeon' within a reasonable timeframe, the Minister for Health considers whether separate legislation should be introduced in the NSW Parliament to place restrictions on the use of the title 'cosmetic surgeon' in relation to doctors practising in New South Wales.

Recommendation 4

The Committee recommends that the Minister for Health considers whether it is in the public interest to support protections and restrictions on the use of the title 'surgeon' either at a national level or for doctors practising in New South Wales.

Chapter Five – Informing the public

- 5.1 This chapter considers evidence the Committee received from a diverse range of stakeholders that the public is not sufficiently aware or informed about the cosmetic health services sector.
- 5.2 The Committee heard that the public needs to be better educated about the range of cosmetic procedures including their potential risks and the different kinds of practitioners working in this area.
- 5.3 Stakeholders suggested that the public is not well-informed about where and how to make a complaint and that some members of the public are also reluctant or hesitant to complain for various reasons.
- 5.4 The Committee acknowledges the work of agencies and regulators to better inform the public about cosmetic health services. The Committee canvasses suggestions for further initiatives to raise public awareness and to ensure that any education activities are targeted to the main demographics seeking these services.

Public awareness of cosmetic health services

- 5.5 The Committee heard from stakeholders that there is a general lack of public awareness surrounding the cosmetic service industry, and it is important that patients are educated about procedures, risks, training and qualifications of service providers and licensed facilities to enable them to make informed decisions.

Normalisation of procedures

- 5.6 Dr Saxon Smith, Chair of the NSW Faculty, Australasian College of Dermatologists, stated at the hearing that cosmetic procedures have become part of the norm and it has altered public perception of the risks involved:

...[W]e have this advent where there is almost a normalisation of the process to go and have cosmetic based procedures ranging from things on the lower risk scale, such as laser hair reduction, through to the significant risk scale of breast augmentation and the like. This is a broad scope and it is a challenge for you as a committee, I recognise. But the normalisation of cosmetic procedures means that people do not realise that all of those procedures, from go to whoa, constitute a procedure. There are risks; there are adverse outcomes that can occur. It is important to have appropriately trained providers of those services. I think it is really important from a government point of view to raise awareness so that people have a consciousness around needing to ask for qualifications from who they are seeing and about the systems that they are using and being able to accept that they can say no, and not be talked into extra things that they do not need.²⁴³

²⁴³ Dr Smith, [Transcript of evidence](#), 1 August 2018, p 18

- 5.7 The Australasian College of Dermatologists made similar comments that there 'is an enduring public opinion that all cosmetic procedures are safe, regardless of the operator'.²⁴⁴

Advertising

- 5.8 The way in which some cosmetic health services are advertised or promoted was raised as a particular concern for some stakeholders because the risks of procedures may not be evident.

- 5.9 For example, Mr Terence Stern, Principal, Stern Law, Law Society of New South Wales, stated that misrepresentation in advertising is an issue in the cosmetic service industry, and the 'target audience' are only shown the positive outcomes:

...[A]dvertising and dishonest advertising is a real significant issue. It is absolutely prevalent. People do believe that there is minimal risk in these procedures and that at a drop of hat they can alter their appearances and go on with their lives happily ever after. The before and after photos that the surgeons do at the roadshows really lead people along the path to surgery. The horror stories are rarely publicly advertised or becomes publicly known.²⁴⁵

- 5.10 The NSW Government echoed this concern with the way in which cosmetic service providers advertise their services and downplay the risks involved:

Cosmetic health services can be advertised in ways that overemphasise the efficacy of treatments while downplaying the risks associated with the treatment. This has led to NSW Health having concerns about a lack of understanding across the community of the risks associated with some cosmetic procedures.²⁴⁶

- 5.11 The Australasian Society of Aesthetic Plastic Surgeons (ASAPS) argued that the problem is not just the lack of information available to the public, but also the quality of the information:

We see one of the greatest risks to patients is that they are unable to identify a reliable and trustworthy source of information. There is a lot of information available but too much is self-serving and designed to attract patients and not educate them.²⁴⁷

- 5.12 The Medical Board of Australia has guidelines for registered medical practitioners who perform cosmetic procedures that prohibits medical practitioners from advertising that is misleading:

Advertising content and patient information material should not glamorise procedures, minimise the complexity of a procedure, overstate results or imply patients can achieve outcomes that are not realistic.²⁴⁸

²⁴⁴ [Submission 9](#), The Australasian College of Dermatologists, p 6

²⁴⁵ Mr Terence Stern, Principal, Stern Law, Law Society of New South Wales, [Transcript of evidence](#), 1 August 2018, p 29

²⁴⁶ [Submission 20](#), NSW Government, p 2

²⁴⁷ [Submission 15](#), Australasian Society of Aesthetic Plastic Surgeons, p 2

²⁴⁸ Medical Board of Australia, [Guidelines for registered medical practitioners who perform cosmetic medical and surgical procedures](#) clause 10.2 (accessed 27 September 2018)

- 5.13 The Australian Competition and Consumer Commission's (ACCC) website states that a business is not allowed to create a false impression and this applies to product packaging, information provided face-to-face or online, and testimonials on websites and social media pages:

It makes no difference whether the business intended to mislead you or not. If the overall impression left by a business's advertisement, promotion, quotation, statement or other representation creates a misleading impression in your mind—such as to the price, value or the quality of any goods and services—then the behaviour is likely to breach the law.²⁴⁹

- 5.14 The Council of Australian Government (COAG) Health Council's consultation paper, *Regulation of Australia's health professions: keeping the National Law up to date and fit-for-purpose*, is considering whether to increase penalties for misleading advertising. Section 133 of the National Law prohibits false, misleading or deceptive advertising; gift offers or discounts without the terms set out; use of testimonials; and advertising that creates unreasonable expectations.²⁵⁰ The three main options for reform that are put forward in the paper are:

Option 1: Status quo – the maximum penalties for breaching advertising provisions would remain at \$5,000 for an individual and \$10,000 for a body corporate.

Option 2: Increase the penalties for breaching advertising provisions to \$60,000 for an individual and \$120,000 for a body corporate in line with the proposed increased penalties for other offences that will be introduced with the Tranche 1A amendments.

Option 3: Increase the penalties for breaching advertising provisions by another amount to more closely align with advertising breaches under the Australian Consumer Law.²⁵¹

- 5.15 The Consultation Paper notes that under the Australian Consumer law, the maximum penalty for false or misleading conduct or unconscionable conduct is \$220,000 for an individual and \$1.1 million for a corporation.²⁵²

Cosmetic health services and practitioners qualifications

- 5.16 The Committee heard that there is a lack of public understanding regarding different cosmetic health service providers and the procedures they are legally qualified to provide. As highlighted in chapter one, cosmetic health services could be provided by registered health practitioners such as doctors and nurses or unregistered practitioners such as beauty therapists. Registered practitioners also have a scope of practice attached to their registration.

²⁴⁹ Australian Competition and Consumer Commission, [False and misleading claims](#) (accessed 3 October 2018)

²⁵⁰ COAG Health Council, COAG Health Council, [Regulation of Australia's health professions: keeping the national law up to date and fit for purpose](#), July 2018, p 63 (accessed 27 September 2018)

²⁵¹ COAG Health Council, COAG Health Council, [Regulation of Australia's health professions: keeping the national law up to date and fit for purpose](#), July 2018, p 63 (accessed 27 September 2018)

²⁵² COAG Health Council, COAG Health Council, [Regulation of Australia's health professions: keeping the national law up to date and fit for purpose](#), July 2018, p 63 (accessed 27 September 2018)

- 5.17 The Royal Australian College of General Practitioners (RACGP) suggested that the public is confused about the level of expertise of practitioners working in cosmetic health services:

...the public seem quite unaware of the expertise or non-expertise of the 'cosmetic practitioner' they are seeing, ie a person attends a cosmetic clinic and may be treated by a doctor or nurse or non-registered practitioner and may not be aware of the difference.²⁵³

- 5.18 Dr Jennifer Kendrick, Chair, Performance Committee, Medical Council of NSW outlined similar concerns:

I think there is a lot of misinformation in the public about the difference between people undertaking different sorts of cosmetic work and the different titles that are used. What is a cosmetic physician? What is a cosmetic surgeon? What is a cosmetic doctor? What is the difference between those and a plastic surgeon? I think the roles that people are undertaking need to be much better defined, and the public needs to understand what those roles are. I think it would be helpful to have some sort of website where people can access information that could be promoted publicly that there is such a resource there for them to get that sort of information.²⁵⁴

- 5.19 As previously discussed in chapter four, a particular issue that has come up in this inquiry is public confusion around the titles 'cosmetic surgeon' and 'surgeon' and the qualifications, training and experience associated with these titles.

Making complaints and underreporting of complaints

- 5.20 The Committee heard from some inquiry participants about a lack of public awareness of complaint-making processes for cosmetic health services.
- 5.21 As outlined in chapter two, the current framework to protect individuals using cosmetic health services is complex as is the framework for making complaints to the relevant Government agency. There are a number of different State and Commonwealth agencies and other entities regulating different aspects of the cosmetic health services sector. These include the HCCC, NSW Health, NSW Fair Trading, Australian Health Practitioner Regulation Agency (AHPRA) and the Therapeutic Goods Administration (TGA).
- 5.22 Dr Kerry Chant, Chief Health Officer and Deputy Secretary Population Health from NSW Health, acknowledged that the regulatory environment in this area is 'quite challenging' and said she could imagine why people may be confused.²⁵⁵
- 5.23 The Australian College of Nursing also noted that the roles of agencies could be made clearer to the public:

²⁵³ [Submission 23](#), The Royal Australian College of General Practitioners, p 3

²⁵⁴ Dr Jennifer Kendrick, Chair, Performance Committee, Medical Council of New South Wales, [Transcript of evidence](#), 2 August 2018, p 20

²⁵⁵ Dr Chant, [Transcript of evidence](#), 2 August 2018, p 40

It appears that the function and role differences of the various agencies are not explained at an easily accessible single online access point to guide the public in making complaints relating to cosmetic services.²⁵⁶

- 5.24 A member of the Cosmetic Physicians College of Australasia (CPCA) described the public's lack of awareness about what kind of complaints they can make:

Members of the public are not fully aware of the regulations and complain about some things that are not valid and fail to know that other things that are done to them are actually in breach of the regulations.²⁵⁷

- 5.25 Trusted Surgeons raised similar concerns about patients' lack of awareness about complaint processes:

Patients don't understand the complaints process. They don't know where to complain (there is no mandatory display of the complaints process in an unregulated clinic as there is in a fully licenced hospital).²⁵⁸

- 5.26 The Committee also heard that information on how to make a complaint may not be easily accessible or clear to the general public, particularly those from non-English speaking backgrounds, with language barriers contributing to complaints being underreported.²⁵⁹

- 5.27 However, the Committee learned that NSW Fair Trading has been developing ways to interact through social media in other languages and direct people to the right sources. Ms Webb, NSW Fair Trading stated at the hearing:

We are having a look at what we can do to look at social media in other languages where people may post concerns that they have had about a practitioner, not realising that they should come to somewhere like Fair Trading. We are just starting to do a little bit of proactive searching out to get some more intelligence about what is going on through potentially language social media sites that may raise some sorts of issues like this.²⁶⁰

Making anonymous complaints

- 5.28 While anonymous complaints can be made to the HCCC, the Committee heard that there is a lack of awareness of these processes.

- 5.29 Dr Gazi Hussain, Vice President, Australian Society of Plastic Surgeons (ASPS), supported raising public awareness of the HCCC and noted that he was not sure about the ability to make anonymous complaints to the HCCC:

A lot of patients might say, "I've had a poor outcome but I really don't want my breasts flashed across everyone's newspaper saying that I had a problem." Sometimes these patients may want to have the ability to make a complaint anonymously. There is also the issue around doctors and surgeons where we see patients who have had complications. The patient may not want to make a

²⁵⁶ [Submission 5](#), Australian College of Nursing, p 3

²⁵⁷ [Submission 6](#), Cosmetic Physicians College of Australia, p 9

²⁵⁸ [Submission 19](#), Trusted Surgeons, p 1

²⁵⁹ Dr Chant, [Transcript of evidence](#), 2 August 2018, p 40

²⁶⁰ Ms Webb, [Transcript of evidence](#), 2 August 2018, p 40

complaint but we would like to see a facility whereby a surgeon or a doctor treating a complication has an ability to raise this with an organisation...²⁶¹

5.30 The Committee also heard anecdotally from Dr Pouria Moradi, NSW State Committee Plastics Representative, Royal Australasian College of Surgeons (RACS), that he felt he could not make a complaint about a practitioner on behalf of a patient without their consent even though the revision surgery was transferred to his care:

I have a patient who is under my care ... who has had a cosmetic procedure by someone on this street who is a cosmetic doctor. The care has been transferred to the public sector. So now it is my problem as the consultant surgeon. The patient ... does not want any complaints made about this practitioner. I feel that it is my role as a visiting medical officer at this hospital, who is now dealing with this complication, to make a complaint, but I do not have informed consent from this patient to make a complaint. So the audit process has broken down because we cannot make the complaint because my patient will not be very happy with me if I did make the complaint without her consent.²⁶²

5.31 The HCCC's website contains information about the complaint process, such as:

- the HCCC is obliged by law to notify a health service provider about the nature of the complaint against them and the identity of the person who made the complaint
- where a complaint is made on behalf of someone else, the HCCC will generally seek the person's consent before continuing with the complaint
- with respect to complaints about the treatment of patients, the HCCC will usually be unable to take action without revealing the patient's identity and the complaint details so the health service provider can properly respond to the complaint.²⁶³

5.32 Ms Sue Dawson, Commissioner, HCCC, spoke about anonymous complaints at the hearing:

Basically, we can receive an anonymous complaint. We can also receive a complaint where the complainant identifies themselves to the commission but wishes not to have their identity notified to the practitioner. Broadly speaking, the question becomes: do we have sufficient information that can be de-identified to enable us to progress the complaint without the practitioner discerning who the patient was, by default? That is obviously a live issue. The second question is that those complaints can be useful because, even if we are not at liberty to release the identity of that particular complainant you may well have other complaints about that practitioner. You can have this knowledge about this complaint in the background as a piece of information that sits as context for other investigative or assessment work.²⁶⁴

²⁶¹ Dr Hussain, [Transcript of evidence](#), 1 August 2018, p 4

²⁶² Dr Moradi, [Transcript of evidence](#), 1 August 2018, p 5

²⁶³ HCCC website, [Your privacy](#) (accessed 31 October 2018)

²⁶⁴ Ms Dawson, [Transcript of evidence](#), 2 August 2018, p 53

- 5.33 Mr Tony Kofkin, Executive Director, Complaint Operations, HCCC acknowledged that anonymous complaints have limitations, but can also help build a profile on emerging issues:

It is very difficult for us to progress a complaint if we do not know the details of the patient because we need to offer procedural fairness and natural justice and we need to obtain a response and the records. It is very difficult to do that if we do not know the identity of the patient. But we can still record the complaint, and we can still do whatever we can to try and obtain details and build up a picture, because each time the commission assesses a complaint we always look at the cases prior to that. We always look at the previous complaints to see if there is anything of a similar nature.²⁶⁵

- 5.34 Similarly Dr Kerry Chant, Chief Health Officer and Deputy Secretary Population Health, NSW Health, stated that although there may be some limitations to patients making anonymous complaints, it is an avenue to consider:

Some of the ways in which we potentially consider making it easier to complain is through accepting anonymous complaints, and although that limits what we can actually do, sometimes that can give us actionable intelligence or a pattern of behaviour. We can also highlight the role of consumer groups and point people towards advocacy groups that potentially have the skills in terms of knowing how to navigate the complaints system and support people through that.²⁶⁶

Reluctance to make a complaint

- 5.35 The Committee also heard from some stakeholders that certain patients are reluctant or hesitant to make a complaint.

- 5.36 For example, ASAPS explained that patients may not feel comfortable making complaints and are embarrassed for undergoing the procedure or for choosing the wrong provider, and many may believe that they are to blame:

Many of the patients that our members encounter are embarrassed and feel responsible in a large part for their own dilemma because they felt they should have known or chosen better. On top of this the decision to undertake a cosmetic procedure is very personal and there are many who will judge individuals simply on the basis that they have sought this type of treatment. Most patients will not step up and complain because of these complex self-recriminations.²⁶⁷

- 5.37 The Committee heard from ASPs that younger patients and patients from non-English speaking communities can be less likely to make a complaint:

In our experience a significant proportion of patients of poor cosmetic health services at least partially blame themselves when things go wrong, and therefore are unwilling to make a public complaint. This is particularly true of younger patients and patients from non-English speaking communities who are often aware they have taken a risk by paying a lower cost for a less than fully qualified practitioner.²⁶⁸

²⁶⁵ Mr Kofkin, [Transcript of evidence](#), 2 August 2018, p 53

²⁶⁶ Dr Chant, [Transcript of evidence](#), 2 August 2018, p 40

²⁶⁷ [Submission 15](#), Australasian Society of Aesthetic Plastic Surgeons, p 2

²⁶⁸ [Submission 12](#), Australian Society of Plastic Surgeons, p 4

- 5.38 Trusted Surgeons also said that patients who make complaints do not trust that their complaints will be taken seriously:

If patients do complain, there is a perception that they are wasting their time. This leads to increasingly patients not complaining as they see posts in private groups saying that it's not worth it.²⁶⁹

Improving public awareness

- 5.39 Various stakeholders have suggested that the NSW Government is best placed to educate the public with an awareness campaign relating to cosmetic health services. The Australasian College of Dermatologists spoke of the benefits of this:

A NSW Government-led targeted education campaign to raise awareness of these issues will lead to more empowered consumers who are able to make better cosmetic health choices, in turn improving outcomes.²⁷⁰

- 5.40 At the public hearing, Dr Saxon Smith, Councillor, Australian Medical Association (AMA), highlighted a particular public education campaign by the Cancer Institute NSW that was successful:

... we have excellent resources within New South Wales and within the New South Wales Government. The Cancer Institute NSW have had a very successful campaign using social media for the skin cancer awareness campaign called Pretty Shady where they used social media targeting 18-to 30-year-olds in particular, and we know this is a key segment of the market. They went into the place where they interact with news and media. They do not buy a newspaper. They do not listen to the radio. They have got Spotify. They have their apps and they digest things in a different way, but they are on social media a lot and Pretty Shady was a very successful campaign for skin cancer awareness. That is something you could build upon and leverage off already existing experience with the New South Wales Government and within the framework around New South Wales.²⁷¹

- 5.41 The Committee is also aware of a non-government public awareness campaign and website about cosmetic surgery by The British Association of Plastic, Reconstructive and Aesthetic Surgeons in the UK, which is described in the case study below.

²⁶⁹ [Submission 19](#), Trusted Surgeons, p 1

²⁷⁰ [Submission 9](#), The Australasian College of Dermatologists, p 7

²⁷¹ Dr Smith, [Transcript of evidence](#), 1 August 2018, p 22

Case study – Think over before you make over public awareness campaign

The British Association of Plastic, Reconstructive and Aesthetic Surgeons in the UK is a democratic, membership-based organisation for plastic, reconstructive and aesthetic surgeons. It aims to raise awareness of the breadth of plastic surgery, promote innovation in teaching, learning and research and increase understanding of the profession.

The Association carried out a major national study in the UK of attitudes to cosmetic surgery and approaches to cosmetic surgery, which found:

- 24% of respondents do not check their surgeon's credentials
- 21% aren't aware of the risks of the procedure
- 22% aren't clear on the potential outcomes of the procedure
- 53% say keeping costs down is a major consideration.

The Association is running the 'Think over before you make over' campaign to address the lack of consumer awareness about how to choose safe and appropriate cosmetic surgery. The Association's website contains a range of information for patients such as detailed patient information guides about common procedures such as breast augmentation and use of botulinum toxin or dermal fillers. It also contains information to consider before committing to a procedure, frequently asked questions and questions to ask the surgeon.

The Association encourages patients to share the campaign materials with their friends and family. It also encourages surgeons, clinics or businesses to support the campaign and to show their support by displaying the campaign logo on their websites.*

* [British Association of Plastic, Reconstructive and Aesthetic Surgeons](#) (accessed 14 October 2018)

- 5.42 Other stakeholders spoke about raising awareness of the agencies involved in regulation or complaint handling. In particular, The Australian College of Nursing suggested consumer guidance as to which organisations to approach about different types of cosmetic services.²⁷² Similarly, Dr Saxon Smith, Councillor, AMA, proposed raising awareness of the HCCC:

...[I]t is important to empower the community to know that there is that process to go to the HCCC. At the moment all too often patients think, "I knew I shouldn't have gone there" and they accept that it is their fault for having gone somewhere they knew they should not have gone to, therefore it perpetuates because nothing gets done about it.²⁷³

²⁷² [Submission 5](#), Australian College of Nursing, p 3

²⁷³ Dr Smith, [Transcript of evidence](#), 1 August 2018, p 22

- 5.43 Some inquiry participants described the benefits of a government-run or non-biased service which provides patients with relevant information about cosmetic health services and the complaints processes.
- 5.44 In particular, Trusted Surgeons said that there is 'no government funded initiative to provide non-biased health promotion that facilitates patients doing their research.'²⁷⁴
- 5.45 ASAPS said setting up a government run advisory service relating to cosmetic health services 'could be seen as an unbiased, reliable and trustworthy source of information about practitioners, regulations and minimum standards for training and facilities.'²⁷⁵
- 5.46 ASPS also suggested a national Cosmetic Treatments Advice Service, which is described below.

Case study – Cosmetic Treatments Advice Service

The Australian Society of Plastic Surgeons recommends that the NSW Government work with the Commonwealth and State Governments to establish a Cosmetic Treatments Advice Service that would apply nationally and include all categories of cosmetic health services.

They suggest that such a service could provide:

- advice and information about cosmetic health services through a dedicated website and phone and other contact points
- assistance to patients with respect to the appropriate level of qualifications cosmetic health service providers should hold and standards they should meet
- clear pathways for patients who have concerns about their treatment or advice given to them.

The Australian Society of Plastic Surgeons outlined the importance of this kind of initiative:

... a critical complement to a more effective health care complaints system will be the creation of an independent, appropriately trained, highly reliable, readily trustworthy information source.

In our view it is vitally important that the public is capable of identifying that trustworthy source of basic information before pathways to complaint will be widely accepted and used.*

* [Submission 12](#), Australian Society of Plastic Surgeons, p 4

²⁷⁴ [Submission 19](#), Trusted Surgeons, p 1

²⁷⁵ [Submission 15](#), Australasian Society of Aesthetic Plastic Surgeons, p 2

Work of agencies and regulators

5.47 Agencies and regulators have been working towards educating the public about cosmetic health services such as through media opportunities or other online platforms.

5.48 In particular, Dr Chant stated that NSW Health has been engaging with the community through the media to inform the public of the risks surrounding cosmetic procedures:

NSW Health has taken opportunities through the media to inform the community of the risks associated with cosmetic procedures and to provide advice to consumers of cosmetic health services. In particular, we have referred consumers to the advice and public warnings issued by the HCCC. I acknowledge that ongoing engagement with consumers and the health profession is required.²⁷⁶

5.49 As outlined in chapter one, the HCCC has been raising public awareness through its various public warnings in relation to:

- cosmetic procedures performed by non-registered practitioners in residential premises and hotel rooms
- unsafe and illegal practices in beauty and cosmetic clinics, and
- unsafe practices involving subdermal implants for 'extreme' body modification purposes.

5.50 The Committee was informed that NSW Fair Trading is developing an awareness raising campaign to inform the community about cosmetic procedures and the associated risks:

NSW Fair Trading is developing an awareness raising campaign to inform the community about the risks associated with unsafe or illegal cosmetic procedures. This will build on existing efforts it makes though [sic] use of factsheets, social media campaigns and other online publications available on its website. These materials advise consumers about their rights under the ACL and aim to raise community awareness of false or misleading advertising about beauty products and services.²⁷⁷

5.51 Ms Rose Webb, Commissioner, NSW Fair Trading, spoke of the agency's other work:

NSW Fair Trading is actively helping consumers seek redress and also to educate the community so that consumers can make informed choices and businesses understand their obligations.²⁷⁸

5.52 Ms Sue Dawson, the HCCC Commissioner said the HCCC is working with NSW Fair Trading 'in terms of informing consumers about the responsibilities of businesses and that their consumer rights are really important.'²⁷⁹

²⁷⁶ Dr Chant, [Transcript of evidence](#), 2 August 2018, pp 37-38

²⁷⁷ [Submission 20](#), NSW Government, p 10

²⁷⁸ Ms Webb, [Transcript of evidence](#), 2 August 2018, p 38

²⁷⁹ Ms Dawson, [Transcript of evidence](#), 2 August 2018, p 52

Others who might assist in raising public awareness

- 5.53 The HCCC also noted that health practitioners are well placed to educate the public:

Quite aside from the question of what you educate about, there are some people who are really, really well placed to participate in both framing and delivering that education, and that goes to the role of the colleges, the role of the boards, the role of providers themselves—what responsibilities should they be obliged to have? Then there are some quite simple things like signage and so on and patient information at the point of service delivery. All of that goes to who should be producing and delivering this information and how can we make sure that it is reliable and an individual consumer can be confident that they are getting the right information?²⁸⁰

- 5.54 The AMA noted that partnered education campaigns are an effective method to reach the broader community.

The AMA does run some small-scale public awareness campaigns on various issues. We have to remember that our remit is wide. If we consider all public health issues, there would be a new issue every day, but we have found that those tend to have better reach and are more effective when in partnership.²⁸¹

Targeted campaign

- 5.55 As highlighted in chapter one, the Committee heard from inquiry participants that people who opt for cosmetic procedures are mostly women, often young women and women between 35-55 years of age. However, stakeholders also told the Committee that vulnerable patients from a financial, social and economic perspective are a target market and that there has been an increase in men undergoing cosmetic procedures.

- 5.56 The Committee learned that the cosmetic service industry has been marketed on social media for people from non-English speaking communities. For example, ASPS highlighted that some providers advertise their products and services in non-English forums on social media:

Non-English speaking communities are particularly vulnerable to abuse by practitioners, such as individuals operating out of residential apartments, or injecting materials illegally imported from overseas. These services are marketed through non-English forums and social media, and so are hard to detect. Once discovered by authorities, in our experience the services and practitioner simply move to another location using a different alias. Most of these patients using such services are unaware of the regulations or are happy to have 'black market treatments'.²⁸²

- 5.57 ACCS said some practitioners with no qualifications or limited qualifications advertise in foreign language publications or online and that 'this can be extremely difficult to detect and monitor due to issues of translation'.²⁸³

²⁸⁰ Ms Dawson, [Transcript of evidence](#), 2 August 2018, p 52

²⁸¹ Dr Danielle McMullen, Vice President, Australian Medical Association, [Transcript of evidence](#), 1 August 2018, p 24

²⁸² [Submission 12](#), Australian Society of Plastic Surgeons, p 3

²⁸³ [Submission 22](#), The Australasian College of Cosmetic Surgery, p 3

5.58 Dr Ron Bezic, Councillor, ACCS, expressed similar concerns:

A lot of them are operating in ethnic groups that often advertise on foreign language platforms such as Weibo and WeChat which are hard for the regulators to keep track of. The industry is growing and there is a black market that we do not even know about. ...

...

If I could name them—Chinese, Korean and some Arabic communities.²⁸⁴

5.59 Ms Webb stated that NSW Fair Trading has focused on including non-English speakers in its education campaign.²⁸⁵

AHPRA registration anomalies

5.60 The Committee heard from Ms Nicole Montgomery, Creative Director, Trusted Surgeons that that some practitioners have common names and others may be operating under aliases, which makes it difficult for patients to choose the right service provider. Ms Montgomery also suggested that pictures of practitioners on AHPRA's website would also help patients make better decisions:

In the public it is often mentioned to search for the person to find out whether or not they are qualified, to do your homework, but you cannot find these people. Something my colleague mentioned to me that is actually a good idea is to have the photograph of the practitioner on AHPRA. For instance, if you are talking about an Asian person with either the name Lee or Chang then you might have 20 doctors with that same name. We also had a doctor who came from another State so you could not even find him in Sydney, it was nearly impossible. That is provided you have a patient with the know-how to navigate and get to AHPRA. If they did, I myself cannot find half the surgeons because they are not trading. Actually we had three—I lied—surgeons who used different names to their registered name on AHPRA, which makes it extremely difficult. That is just one way that AHPRA on a federal level could help improve by helping patients to find surgeons who are actually qualified or even just what their qualifications are.²⁸⁶

5.61 The consultation paper by the COAG Health Council, *Regulation of Australia's health professions: keeping the National Law up to date and fit for purpose*, is considering possible reforms to the public national register which contains names and other details of registered health practitioners. In particular, the paper is looking at:

- whether further information should be recorded on the register, such as additional names under which an individual practices or aliases, and
- whether the range of information available on the register is sufficient for different user groups.²⁸⁷

²⁸⁴ Dr Bezic, [Transcript of evidence](#), 2 August 2018, p 16

²⁸⁵ Ms Webb, [Transcript of evidence](#), 2 August 2018, p 38

²⁸⁶ Ms Montgomery, [Transcript of evidence](#), 1 August 2018, p 40

²⁸⁷ COAG Health Council, [Regulation of Australia's health professions: keeping the National Law up to date and fit for purpose](#), 2018, pp 64-71

Committee comment

- 5.62 The message from inquiry participants is clear that the public needs to be better informed about various issues associated with cosmetic health services including procedures and their associated risks, the range of providers and differences between facilities. Where patients are dissatisfied with a service, they need to know where to go to make a complaint and what the complaint processes are.
- 5.63 The Committee acknowledges the work of agencies and regulators so far to raise public awareness of these issues. However, because this was an issue that was raised time and time again by inquiry participants, the Committee recommends that the work of raising public awareness must be continued and further developed to ensure the concerns raised in this chapter adequately reach the target markets for cosmetic procedures.
- 5.64 In the Committee's view, NSW Health and NSW Fair Trading should lead a public education campaign about cosmetic health services with input and assistance from the HCCC and other relevant Commonwealth agencies or non-government organisations. The Committee suggests that the public awareness campaign use various forms of advertising and media, including social media, to adequately reach the main demographics seeking these services.
- 5.65 To ensure that the public has a trustworthy, easy-to-locate source of information about cosmetic health services and the associated complaints processes, the Committee recommends that the Minister for Health pursue with the COAG Health Council a national one-stop shop website and advice service. This should include relevant information about procedures, practitioner qualifications, standards, and facility requirements. It is also important that individuals who are dissatisfied with a service or provider are directed to the appropriate complaint pathways, including the HCCC, NSW Fair Trading and NSW Health.
- 5.66 If the COAG Health Council does not agree to establishing a service of this kind, the Committee recommends that the Minister for Health looks at the NSW Government establishing the service.
- 5.67 The Committee looks forward to the outcomes of the COAG Health Council consultation process. The Committee would support appropriate reforms to the national public register for registered health practitioners if those reforms make the register more user-friendly and assist the public in making more informed decisions.

Recommendation 5

The Committee recommends that the Minister for Health and the Minister for Innovation and Better Regulation develop a targeted public education campaign to raise awareness about cosmetic health services, the risks involved in procedures and where to get relevant information.

Recommendation 6

The Committee recommends that the public awareness campaign use various forms of advertising, media (especially social media) and other resources to

target the main demographics seeking cosmetic health services in terms of age, gender and cultural background.

Recommendation 7

The Committee recommends that the Minister for Health pursues with the COAG Health Council the establishment of a national one-stop shop website and advice service relating to cosmetic health services to:

- a) provide relevant information about procedures, practitioners and facilities to individuals seeking these services, and**
- b) direct individuals who are dissatisfied with a service or provider to appropriate complaint pathways including, for New South Wales, the Health Care Complaints Commission, NSW Fair Trading and NSW Health.**

Recommendation 8

The Committee recommends that, if the COAG Health Council does not agree to establishing a one-stop-shop website and advice service for cosmetic health services, the Minister for Health looks at the NSW Government establishing the service.

Research for future policy and education programs

5.68 As previously discussed in chapter one and earlier in this chapter, the Committee has heard from stakeholders that the following factors may influence patient decision-making about cosmetic procedures:

- the growth of the cosmetic health services industry, leading to increased availability and access to services
- advertising of cosmetic procedures, which can sometimes glamorise outcomes and downplay potential risks
- normalisation of cosmetic procedures through the media generally, but in particular, social media, celebrities and reality television.

5.69 Chapter one also highlighted evidence that:

- a small subset of patients seeking cosmetic procedures have psychological disorders such as depression or body dysmorphic disorder
- some individuals in difficult or vulnerable situations may seek out cosmetic procedures to help make themselves feel better.

Committee comment

5.70 Inquiry participants provided the Committee with useful evidence about the behaviours of, and influences on, consumers seeking cosmetic health services. However, the Committee recommends that NSW Health further research these issues.

- 5.71 In the Committee's view, analysis of some of the broader motivations of patients seeking cosmetic health services, particularly more invasive procedures, could inform future regulation and policy in this area and better target education programs to cosmetic health service practitioners and the main demographics seeking these services.
- 5.72 The Committee also believes that the Minister for Health could recommend to the COAG Health Council that it consider this as a priority for research funded through the National Health and Medical Research Council (NHMRC). National agreement to research these issues could assist in delivering policy and regulatory solutions, and informing education programs, which are consistent across the States and Territories.

Recommendation 9

The Committee recommends that NSW Health research behaviours of, and influences on, consumers seeking cosmetic health services to inform future policy, regulation and education programs in this area. The Minister for Health could recommend to the COAG Health Council that it consider this as a priority for research funded through the National Health and Medical Research Council (NHMRC).

Chapter Six – Protecting the public

- 6.1 This chapter considers possible initiatives to further protect the public against unsafe or illegal cosmetic health service providers.
- 6.2 In particular, the Committee looks at the lack of regulation in New South Wales for laser and Intense pulsed light (IPL) devices used in cosmetic procedures and concerns associated with botulinum toxin (Botox) and dermal fillers.
- 6.3 The Committee also reviews the practice of some cosmetic clinics to provide a commission or incentives to their nurses or other employees to upsell to patients.
- 6.4 Other matters the Committee covers include whether General Practitioners should have a greater role in advising clients in this area, whether the current cooling off periods for cosmetic procedures are adequate and the impact of revision surgery in public hospitals.

Laser and IPL

- 6.5 The use of lasers and IPL treatments was raised in several submissions.²⁸⁸ Laser and IPL devices can be used for cosmetic services such as the removal of hair, tattoos, lesions and pigmentation along with targeting acne and scars and for skin rejuvenation and resurfacing.
- 6.6 Regulation of the laser treatment industry is undertaken by individual states and territories. Currently only Tasmania, Queensland and Western Australia have regulations in place.

Tasmania

- 6.7 Tasmania requires non-medical practitioners operating lasers and IPL for cosmetic use to be licenced. All users, both medical and non-medical practitioners, must have undertaken training on the devices they wish to operate and demonstrate they have relevant knowledge of skin biology and equipment safety.
- 6.8 The Tasmanian Department of Health and Human Services also advise that:
- non-medical operators of lasers and IPLs must have a documented relationship with a registered medical practitioner who can assess skin lesions with malignant potential, and manage adverse outcomes
 - regulation requires the rooms where lasers and IPLs are used to be registered, with conditions designed to ensure the client, the operator and

²⁸⁸ [Submission 2](#), Dr Larissa Miller; [Submission 4](#), Australasian College of Aesthetic Medicine; [Submission 5](#), Australian College of Nursing; [Submission 6](#), Cosmetic Physicians College of Australasia; and [Submission 9](#), The Australasian College of Dermatologists

the public are protected from the potential optical hazards caused by lasers and IPLs.²⁸⁹

Queensland

- 6.9 In Queensland, the *Radiation Safety Act 1999* requires all individuals operating a laser for cosmetic services to possess a 'use licence'. This licence is issued to an individual and not a corporation.
- 6.10 To protect client safety, licensees are required to follow the written advice of a 'knowledgeable medical practitioner' who must be registered with Australian Health Practitioner Regulation Agency (AHPRA). The medical practitioner must be familiar with the biological effects of the radiation from the laser apparatus used for the cosmetic procedure. For all procedures other than hair removal, the medical practitioner must provide written advice that specifically refers to the type of cosmetic procedure the client is seeking.
- 6.11 Prior to the removal or reduction of a superficial pigmented lesion, a medical consultation is required.²⁹⁰
- 6.12 To own laser equipment for cosmetic services, a separate licence is required which may be held by an individual or business. Conditions of this licence include:
- having a Radiation Safety and Protection Plan
 - appointing a Radiation Safety Officer
 - obtaining an Approval to Acquire, which is the means by which radiation sources are controlled and registered in Queensland, including whether they are entering or leaving the State or being disposed of.²⁹¹

Western Australia

- 6.13 Like Queensland, Western Australia does not regulate the use of IPL machines, but does have requirements for the use of lasers for cosmetic use.
- 6.14 Non-medical practitioners who wish to use lasers for cosmetic purposes may do so with a current 'exemption from' certificate and licence. To qualify, the applicant must be an enrolled nurse, a registered nurse or hold a diploma or certificate IV (or equivalent) in beauty therapy. Applicants must have attended a recognised safety course and completed a minimum number of hours of training under the immediate supervision of a person with a licence to use lasers. Further requirements are in place for people wishing to use lasers for tattoo removal.²⁹²

²⁸⁹ Tasmanian Government Department of Health and Human Services, [Shedding light on lasers](#) (accessed 28 August 2018)

²⁹⁰ Queensland Department of Health, [Information about Applying for a Licence to Use Laser Apparatus for Cosmetic Purposes](#)

²⁹¹ Queensland Government Department of Health, [Application for approval to acquire radiation apparatus](#); Queensland Government Department of Health, [Apply for a radiation possession licence](#)

²⁹² Government of Western Australia Radiation Council, [Fact Sheet for cosmetic use of lasers](#), August 2018 (accessed 29 August 2018)

New South Wales

- 6.15 In New South Wales and all other states and territories there are no minimum requirements to own or operate laser and IPL machines. Dr Saxon Smith, Chair of the NSW Faculty, Australasian College of Dermatologists, described the current situation in New South Wales:

At this point in time in New South Wales potentially anyone could buy a laser and start using it for whatever reason.²⁹³

- 6.16 Dr Smith assumes suppliers provide training on the use of laser machines, however, he cautioned the Committee about continuing with this approach. He suggested that New South Wales should have a regulation framework that ‘is clear and reproducible and reliable’ to ensure the safety of the public.²⁹⁴

- 6.17 Inquiry participants raised concerns about the risk of serious burns, scarring and disfigurement due to incorrect use of equipment and poorly trained operators.²⁹⁵ Dr Smith gave a recent example of a patient he saw who had significant burns on her arms following a laser hair reduction treatment²⁹⁶ while the Australasian College of Dermatologists said dermatologists regularly see patients who require treatment for laser burns.²⁹⁷ The Australian College of Nursing also noted that laser treatment included a risk of removing or masking signs of skin cancer or hormone conditions.²⁹⁸

- 6.18 With an inconsistency in state and territory requirements for owning and operating laser devices, the Committee questioned Dr Smith about whether national consistency would be desirable. Dr Smith supported a national framework and highlighted why it would be useful:

National frameworks are important because we are talking about the mobility of a population. People will seek services where they want, particularly in the cosmetic setting. Furthermore, we are talking about the corporatisation in a lot of areas of cosmetic services. Therefore, these would, by definition, cross State boundaries. When we have franchising processes and large corporate entities owning any clinic- and business-based operations around the country, we need a national framework.²⁹⁹

Progress at the Commonwealth level

- 6.19 In 2015, the Australian Radiation Protection and Nuclear Safety Agency prepared a Consultation Regulatory Impact Statement to consider regulating requirements for the use of lasers and intense pulsed light (IPLs) sources for cosmetic or beauty therapy. It sought public consultation on three proposed models for promoting safety in the industry:

²⁹³ Dr Smith, [Transcript of evidence](#), 1 August 2018, p 15

²⁹⁴ Dr Smith, [Transcript of evidence](#), 1 August 2018, pp 16-17

²⁹⁵ Dr Molton, [Transcript of evidence](#), 2 August 2018, p 1

²⁹⁶ Dr Smith, [Transcript of evidence](#), 1 August 2018, p 17

²⁹⁷ [Submission 9](#), The Australasian College of Dermatologists, p 5

²⁹⁸ [Submission 5](#), Australian College of Nursing, p 4

²⁹⁹ Dr Smith, [Transcript of evidence](#), 1 August 2018, p 15

- educational awareness
 - self-regulation/accreditation by the industry
 - licensing /registration of service providers.³⁰⁰
- 6.20 The report, released in March 2017, recommended that national guidelines for the use of lasers and IPL devices in the cosmetic and beauty industry be promoted.³⁰¹
- 6.21 The report noted that detailed analysis of the 241 submissions received did not provide any significant additional quantitative information regarding implementation of one or more of the options considered. However, it highlighted an industry wide preference for some degree of oversight for reasons of public safety and positive health outcomes.³⁰²
- 6.22 The agency therefore concluded that there was insufficient information to go ahead with a Decision Regulatory Impact Statement on the options presented:
- Instead, it was decided that a nationally uniform approach could be promoted by the development of guidance material for the use of lasers and IPL devices in the industry. The guidance material would provide a common framework for terminology, education, training, equipment, patient care and injury reporting that would be accessible to the Australian public and which could be promoted by all States and Territories.³⁰³
- 6.23 A draft advice document presenting information via questions and answers on *Lasers, intense pulsed light (IPL) devices and light-emitting diode (LED) phototherapy for cosmetic treatments and beauty therapy* was released for public view and inviting submissions in August 2018.³⁰⁴

Committee comment

- 6.24 The Committee appreciates that the proposed national guidelines are a step in the right direction for safer use of lasers and IPL devices in the industry. However, there is still inconsistent regulation across the states and territories and a regulatory gap remains in New South Wales. This is not ideal given that cosmetic health service providers can operate across borders.
- 6.25 As such, the Committee supports a standardised national regulatory approach. If this is unable to be established the Committee suggests that New South Wales introduce minimum standards for cosmetic health service providers offering laser

³⁰⁰ ARPANSA, [Analysis of Public Submissions: Consultation Regulatory Impact Statement in the use of Intense Pulsed Light \(IPLs\) Sources and Lasers for Cosmetic or Beauty Therapy](#), p 3

³⁰¹ ARPANSA, [Analysis of Public Submissions: Consultation Regulatory Impact Statement in the use of Intense Pulsed Light \(IPLs\) Sources and Lasers for Cosmetic or Beauty Therapy](#), p 17

³⁰² ARPANSA, [Analysis of Public Submissions: Consultation Regulatory Impact Statement in the use of Intense Pulsed Light \(IPLs\) Sources and Lasers for Cosmetic or Beauty Therapy](#), p 16

³⁰³ ARPANSA, [Analysis of Public Submissions: Consultation Regulatory Impact Statement in the use of Intense Pulsed Light \(IPLs\) Sources and Lasers for Cosmetic or Beauty Therapy](#), p ii

³⁰⁴ ARPANSA, [Advice for cosmetic treatments and beauty therapy using lasers, intense pulsed light \(IPL\) devices and high-powered light-emitting diodes \(LEDs\)](#)

and IPL services to help protect the public. The Committee suggests the Minister for Health assess appropriate regulatory models from experience in Tasmania, Western Australia or Queensland.

Recommendation 10

The Committee recommends that the Minister for Health pursues the issue of national regulation of the use of intense pulsed light devices and laser devices for cosmetic health service procedures with the COAG Health Council.

Recommendation 11

The Committee recommends that the Minister for Health examines whether legislation should be introduced in New South Wales to regulate the use of intense pulsed light devices and laser devices used for cosmetic health services.

Botulinum toxin (Botox) and dermal fillers

- 6.26 Botulinum toxin, commonly referred to as 'Botox' is a toxin which has the ability to reduce muscle activity and has been used for many years to treat conditions such as muscle spasms or jaw clenching. More recently it has been approved for use to temporarily relax muscles in the face, resulting in a reduction of wrinkles such as frown lines.
- 6.27 Dermal fillers are comprised of products such as hyaluronic acid, collagen and other materials which are injected under the skin to fill out an area. This may be to fill in a facial wrinkle or to add volume into lips or cheeks. It can also be used to contour or smooth facial features such as the nose or jawline.
- 6.28 Botulinum and dermal fillers are classified as Schedule 4 medication³⁰⁵ under the Poisons Standards. This category requires that it be obtained via prescription only and must be administered by a doctor or dentist. Alternatively, they can be administered by a nurse under the doctor's direction or supervision.³⁰⁶
- 6.29 For a medicine or product to be legally available in Australia it must be evaluated and if approved, placed on the Australian Register of Therapeutic Goods.³⁰⁷ Risks can present with the illegal importation of products from overseas. These materials fall outside of Australian Standards and there is no way to be certain of what the products contain. The Committee heard that the Australian Department of Health is working with Australian Border Force to intercept illegally imported products.³⁰⁸
- 6.30 Similar to the operation of laser and IPL devices, lack of experience by the person performing the procedure poses another potential risk to clients. Mr Bruce Battye, Deputy Chief Pharmacist and Director Pharmaceutical, Regulatory Unit, NSW Health presented the example of an undercover agent who attended a clinic

³⁰⁵ [Poisons Standard October 2018 \(Cth\), Part 4](#); Australian Government Department of Health Therapeutic Goods Administration, [Scheduling basics](#) (accessed 4 September 2018)

³⁰⁶ Dr Smith, [Transcript of evidence](#), 1 August 2018, p 15

³⁰⁷ Professor Skerritt, [Transcript of evidence](#), 2 August 2018, p 32

³⁰⁸ Professor Skerritt, [Transcript of evidence](#), 2 August 2018, p 32

under the guise of seeking facial fillers. He told of the officer's experience following a very brief Skype consultation with a doctor:

That doctor instructed the nurse to administer a dermal filler to my officer via a fine cannula. The nurse said, "I have not done this before, doctor." He said, "No, you can do this. I went to a conference a couple of weekends ago. You can do this. You just do this and that." She said, "Okay, I will do that." She obviously had not tried this before, but she was going to carry this out on my officer.³⁰⁹

- 6.31 The Committee also heard of patients suffering blindness following injection of fillers into their face.³¹⁰ Dr Douglas Grose, Immediate Past President of the Cosmetic Physicians College of Australia (CPCA) explained the risks of this kind of practice:

The anxiety is that depending on what part of the face you are treating there is a possibility of intra-arterial injection of the substance, which can then move up into the retinal artery and affect the circulation to the eye.³¹¹

- 6.32 As noted above, both botulinum toxin and fillers are required to be prescribed by a doctor or dentist via consultation. They are to be administered by that prescribing doctor or dentist or a nurse under supervision. The Committee heard evidence that in many cases doctors did not consult with or prescribe the product to clients in person, or did so via a remote videoconference consultation.³¹²
- 6.33 The Medical Board of Australia has produced guidelines for registered medical practitioners to conduct technology-based patient consultations. The guidelines state the doctor must be aware of the patient's current and past medical conditions, make appropriate arrangements to follow the progress of the patient and keep appropriate records of the consultation.³¹³
- 6.34 While it is practical for doctors and specialists to liaise with patients in remote areas, the Committee heard that videoconferencing options such as Skype are being used by cosmetic service providers for doctors to remotely consult with patients.³¹⁴
- 6.35 Some witnesses proposed that a face-to-face rather than videoconference consultation was best practice for patient care and obtaining good results.
- 6.36 Dr Smith felt that a consultation carried out via teleconferencing lost the ability to see a '3D picture' of a patient which is so vital in cosmetic services.³¹⁵
- 6.37 Dr Michael Molton, President, CPCA addressed a question from the Committee on the importance of face-to-face consultations to assess the psychological

³⁰⁹ Mr Bruce Battye, Deputy Chief Pharmacist and Director, Pharmaceutical Regulatory Unit, NSW Health, [Transcript of evidence](#), 2 August 2018, p 44

³¹⁰ Dr Moradi, [Transcript of evidence](#), 1 August 2018, p 8

³¹¹ Dr Grose, [Transcript of evidence](#), 2 August 2018, p 4

³¹² Mr Battye, [Transcript of evidence](#), 2 August 2018, p 44

³¹³ Medical Board of Australia, [Guidelines: Technology-based patient consultations](#), 16 January 2012

³¹⁴ Mr Kofkin, [Transcript of evidence](#), 2 August 2018, p 51

³¹⁵ Dr Smith, [Transcript of evidence](#), 1 August 2018, p 16

health and suitability of potential patients to undertake a procedure. He told the Committee:

Patient safety does not just involve performing a procedure; patient safety involves the appropriate evaluation and assessment and candidacy of a particular patient. You raise a very important point, because a number of patients that I see—that we see—are vulnerable. They are not informed. Many of them are young; they bow to peer pressure. None of those things can be fleshed out by a teleconference consultation. As a medical practitioner, what you are trained in is to identify a number of features about the patient, silently, from the moment that the patient walks through the door of your medical practice. One looks at the way the patient is dressed, the demeanour and the affect—in other words, how they appear to be in terms of their mood and so forth. There is a process that goes on in the medical examination that involves integration into that consultation process before you even shake hands with the patient. You cannot do that in a teleconference. You cannot get that feel about someone's psychological presentation via Skype.³¹⁶

6.38 As mentioned in chapter two, NSW Parliament passed the *Health Legislation Amendment Bill (No 2)* to authorise the creation of regulations around the manufacture, possession, prescription, supply, storage, use and disposal of medical and therapeutic goods used for cosmetic services. This was in response to a report by NSW Health in April 2018 raising concerns about the level of oversight by medical practitioners of medicines used in cosmetic procedures such as botulinum toxin and injectable hyaluronic acid dermal fillers.³¹⁷ The report also noted concerns that certain cosmetic clinics were in breach of the law by importing these medicines from overseas.³¹⁸

6.39 NSW Health suggested stronger regulation of medicines used in cosmetic procedures:

Stronger regulation will better ensure that medical practitioners who prescribe these medicines have appropriate oversight over the receipt, storage, access, use and administration of these medicines at cosmetic clinics and that appropriate action can be taken against persons who breach the Poisons and Therapeutic Goods Act and Regulations.³¹⁹

6.40 NSW Health will consult with stakeholders in relation to the detail of the proposed regulations but suggested they could include the following kinds of matters:

- requiring that a medical practitioner or dentist who prescribes botulinum toxin and injectable hyaluronic acid dermal fillers must directly consult with the patient
- providing that these medicines can only be accessed at premises where a medical practitioner is present during operating hours

³¹⁶ Dr Molton, [Transcript of evidence](#), 2 August 2018, pp 2-3

³¹⁷ NSW Health, [Report on the Review of the Regulation of Cosmetic Procedures](#), April 2018, p 13

³¹⁸ NSW Health, [Report on the Review of the Regulation of Cosmetic Procedures](#), April 2018, p 13

³¹⁹ NSW Health, [Report on the Review of the Regulation of Cosmetic Procedures](#), April 2018, p 13

- placing limits on who may administer the medicines in the course of providing a service (for example, only a registered health practitioner).³²⁰

6.41 Penalties of up to \$110,000 for a body corporate and \$22,000 and/or six months imprisonment for an individual will apply.³²¹

Committee comment

6.42 The Committee supports the work by NSW Health to create regulations to better manage therapeutic goods for cosmetic purposes. We look forward to NSW Health's assessment of the effectiveness of these changes and whether further initiatives are required. The Committee also supports the collaborative work of different agencies to intercept illegal products as they enter Australia.

6.43 The Committee acknowledges concerns about teleconference consultations and oversight of the administration of cosmetic procedures. We note that it is a service permitted under the Medical Board of Australia's guidelines and can play a beneficial role in other areas of health care such as reaching people in remote regions. The Committee is concerned that restrictions placed on this service could impact negatively on these communities.

6.44 The Committee is of the view that broader evaluation and consultation on the effectiveness of the current guidelines, beyond the scope of this inquiry, would be required before suggesting any changes to this particular practice in relation to cosmetic procedures.

Upselling products and procedures

6.45 The Committee learned that there are some cosmetic health service providers that operate on commission structured remuneration to upsell products and procedures to patients. The Committee heard that this practice can extend to employees such as registered nurses,³²² enrolled nurses,³²³ consultants and front of house staff.³²⁴

6.46 Dr Saxon Smith, Chair of the NSW Faculty, Australasian College of Dermatologists, described the kinds of incentivised contracts used by some corporate entities in the cosmetic health services sector and said they are not in the interests of patients or the public:

It is like a "would you like fries with that" scenario, where the employee is paid more if they can talk them into having other procedures or having more of the same procedure, such as fillers. Having more filler injected makes more money for the corporate entity.³²⁵

6.47 Ms Robin Curran, Member, Australian College of Nursing, stated at the hearing that remuneration structures of this kind can lead to coercion of employees.

³²⁰ NSW Health, [Report on the Review of the Regulation of Cosmetic Procedures](#), April 2018, p 13

³²¹ [Poisons and Therapeutic Goods Act 1966](#), s18D (2)(a)

³²² Ms Robin Curran, Member, Australian College of Nursing, [Transcript of evidence](#), 1 August 2018, p 39

³²³ Ms Robin Curran, Member, Australian College of Nursing, [Transcript of evidence](#), 1 August 2018, pp 38-39

³²⁴ Ms Montgomery, [Transcript of evidence](#), 1 August 2018, p 41

³²⁵ Dr Smith, [Transcript of evidence](#), 1 August 2018, p 18

With regard to coercion, one of the things I would like to say is that in some of the commercial organisations the nurses are on commission only ... There are commission structures, hence the reason for coercion ... in private practices in commercial entities.

... Working in shopping centres, in the medi-clinics throughout Australia—there are about 3,500 of them. Registered nurses and, in some cases, enrolled nurses will be taken on board for 12 months. They have varying structures so they can have structure where they earn to pay out their training. They work for a very low minimal hourly rate. So the legislative rates for nurses within registered organisations—hospitals—do not necessarily apply to commercial entities. You will see nurses working for a minimal hourly rate. They will be paying back their training over 12 months and they will be on a commission structure.³²⁶

- 6.48 Dr Douglas Grose, Immediate Past President of The CPCA, suggested that commission-based remuneration may be detrimental to patients:

One of the most important characteristics that we seek in doctors working in this area is their ability to understand when a treatment is not advised and they should advise the patient not to be treated. Anybody who receives remuneration based on commission is under immediate financial pressure to perform treatments which may or may not be of benefit to the patient. So I think it is very important to understand that cosmetic medicine is medicine, it is not surgery, and that it must be based on the medical model not on the commerce model, which is currently what is happening.³²⁷

- 6.49 Dr Grose's colleague, Dr Michael Molton, President of The CPCA also highlighted concerns with commercial versus patient models of care:

... there is a big difference between someone who is a client and someone who is a patient. A client—that is, you are going to sell that person everything you possibly can whether they need it or not, regardless of any other circumstances. A patient, under the medical model, as Dr Grose outlines, describes a person to whom the medical practitioner owes a duty of care. That is the fundamental difference between the commercial model and the medical model.³²⁸

- 6.50 NSW Fair Trading noted that it received 14 complaints relating to high pressure sales tactics or upselling of products and procedures:

Fair Trading's complaint handling service mediated the complaints with the trader and consumer. None of these complaints were formally escalated for further investigation by Fair Trading.³²⁹

- 6.51 The Medical Board of Australia's *Guidelines for registered medical practitioners who perform cosmetic medical and surgical procedures*, apply to medical practitioners registered under the National Law who provide cosmetic medical and surgical procedures. The guidelines prohibit certain practices such as:

³²⁶ Ms Curran, [Transcript of evidence](#), 1 August 2018, pp 38-39

³²⁷ Dr Grose, [Transcript of evidence](#), 2 August 2018, p 2

³²⁸ Dr Molton, [Transcript of evidence](#), 2 August 2018, p 2

³²⁹ NSW Fair Trading, [Responses to questions taken on notice at the public hearing](#), 20 August 2018, p 1

- offering to provide financial inducements such as a commission to agents for recruitment of patients
- offering patients additional products or services that could act as an incentive to treatment.

6.52 The guidelines also require medical practitioners to ensure they do not have a financial conflict of interest that may influence their advice to patients.³³⁰

Committee comment

6.53 The Committee is concerned by the evidence of incentives or other commission-based structures for employees of some cosmetic health service organisations. In particular, the Committee acknowledges the detrimental impact such a model could have on patients who may be persuaded to have procedures that are not in their interest and unaware that financial incentives are behind these tactics.

6.54 The Committee also notes that the Medical Board of Australia's relevant guidelines restrict medical practitioners from engaging in certain inappropriate financial arrangements. However, the Committee notes that commercial cosmetic health service entities may not always be owned or operated by registered medical practitioners. They may be owned by unregistered practitioners or business people/investors.

6.55 The Committee therefore recommends that the Minister for Health and the Minister for Innovation and Better Regulation consider whether individuals providing these services, or their employees, should be required to disclose any incentives, commissions or other payments they receive for encouraging patients to undergo procedures, more of the same procedure or additional procedures. In the Committee's view, this would provide more transparency for patients and give them the opportunity to reconsider whether to go ahead with a procedure.

Recommendation 12

The Committee recommends that the Minister for Health and the Minister for Innovation and Better Regulation consider whether individuals providing cosmetic health services, and employees of those persons, should be required to disclose any commissions, incentives or other payments they receive for encouraging patients to agree to procedures, more of the same procedure or additional procedures.

The role of General Practitioners

6.56 Dr Scott Turner, Australasian Society of Aesthetic Plastic Surgeons (ASAPS) suggested that the cosmetic health services area needs more regulation because the model is direct to consumer, meaning patients may not have their General Practitioner (GP) involved to provide independent advice to a patient.³³¹

³³⁰ Medical Board of Australia, [Guidelines for registered medical practitioners who perform cosmetic medical and surgical procedures](#), 1 October 2016, pp 2, 6

³³¹ Dr Turner, [Transcript of evidence](#), 1 August 2018, p 5

- 6.57 Consumers seeking elective surgery for cosmetic reasons will usually approach the provider directly with their treatment being outside the coverage of the Medicare and private health insurance systems.
- 6.58 As a referral is not required to meet with a cosmetic service provider, prior consultation with a GP may not take place.
- 6.59 Many witnesses at the public hearings supported a role for GPs in advising patients.³³² Dr Kerry Chant, Chief Health Officer and Deputy Secretary Population Health, Ministry of Health told the Committee:
- I would welcome any stronger involvement of GPs in terms of providing an independent perspective. I think that a GP can also understand the broader context for the patient. I think they can provide useful input.... Personally, I believe, and certainly any message I have given, I have encouraged people to consider talking to their GP first.³³³
- 6.60 In terms of whether it should be a requirement for patients seeking cosmetic surgery to firstly consult with their GP, Dr Chant suggested that it would be useful to consult with organisations such as the Royal Australian College of General Practitioners (RACGP) to identify the potential role of GPs and the impacts it may have.³³⁴
- 6.61 Dr Danielle McMullen, Vice President, AMA NSW, highlighted how GPs currently assist their patients:
- We encourage people to come and see us as GPs to talk about all aspects of their health care and having a strong regulatory framework in place so that we know we can trust where we are either referring them on to or encouraging them to seek help, as you said, that information base about what questions to ask, what regulations exist, what is the difference between having your laser done by a dermatologist versus having it done by a beautician.³³⁵
- 6.62 The Medical Board of Australia's *Guidelines for registered medical practitioners who perform cosmetic medical and surgical procedures* suggests GP involvement in assisting patients seeking cosmetic procedures in certain circumstances. For example if there are indications that a patient has significant underlying psychological problems which may make them an unsuitable candidate for a procedure, the guidelines suggest the patient should be referred to an independent psychologist, psychiatrist or GP.³³⁶

³³² Dr Turner, [Transcript of evidence](#), 1 August 2018, pp 5, 12; Dr McMullen, [Transcript of evidence](#), 1 August 2018, p 20; Ms Watson, [Transcript of evidence](#), 1 August 2018, p 31; Ms Webb, [Transcript of evidence](#), 2 August 2018, p 42; and Dr Chant, [Transcript of evidence](#), 2 August 2018, p 44

³³³ Dr Chant, [Transcript of evidence](#), 2 August 2018, p 44

³³⁴ Dr Chant, [Transcript of evidence](#), 2 August 2018, p 44

³³⁵ Dr McMullen, [Transcript of evidence](#), 1 August 2018, p 20

³³⁶ Medical Board of Australia, [Guidelines for registered medical practitioners who perform cosmetic medical and surgical procedures](#), 1 October 2016, clause 2.4

- 6.63 NSW Fair Trading's brochure for patients considering cosmetic surgery also suggests seeking advice from a GP on health or infection risks before deciding to go ahead with a procedure.³³⁷

Committee comment

- 6.64 The Committee considers that GPs can play a valuable role in providing independent advice to patients considering cosmetic procedures. Their knowledge of a patient's broader medical history can help assist patients, particularly vulnerable ones.
- 6.65 There is scope to further investigate whether it would be in the public interest to require patients seeking invasive cosmetic health procedures to consult their GP for advice.
- 6.66 However, the Committee has concerns that if changes are only made in New South Wales, it may encourage some patients to seek services in other States or Territories that have lower threshold requirements. Therefore the Committee recommends that the Minister for Health raises this issue with the Council of Australian Governments (COAG) Health Council to pursue a national approach.
- 6.67 The Committee agrees with Dr Chant that broader consultation is warranted to identify potential benefits and impacts. As such, we suggest national consultation on this issue and an education campaign to encourage patients considering invasive cosmetic procedures to seek advice from their GP.

Recommendation 13

The Committee recommends that the Minister for Health raises with the COAG Health Council the issue of whether patients seeking invasive cosmetic surgery be required to consult their General Practitioner and pursue national consultation on this issue.

Recommendation 14

The Committee recommends that, as part of the New South Wales public education campaign about cosmetic health services, the Minister for Health encourages patients considering invasive cosmetic surgery to seek advice from a General Practitioner.

Cooling off period

- 6.68 As mentioned above, the Medical Board of Australia has produced *Guidelines for registered medical practitioners who perform cosmetic medical and surgical procedures*.³³⁸ These guidelines apply to cosmetic procedures and not reconstructive surgery.

³³⁷ Fair Trading, [Know your consumer rights before you consider a beauty treatment or cosmetic procedure](#), July 2018

³³⁸ Medical Board of Australia, [Guidelines for registered medical practitioners who perform cosmetic medical and surgical procedures](#)

- 6.69 The guidelines require that potential patients are given a cooling off period before consenting to a procedure:

Other than for minor procedures that do not involve cutting beneath the skin, there should be a cooling off period of at least seven days between the patient giving informed consent and the procedure. The duration of the cooling off period should take into consideration the nature of the procedure and the associated risks.³³⁹

- 6.70 Following the cooling off period, the guidelines recommend informed consent should be re-confirmed on the day of the procedure³⁴⁰ and any necessary financial deposit not be required until the cooling off period has expired.³⁴¹

- 6.71 For patients under the age of 18 years, a minimum seven day cooling off period between informed consent and the procedure taking place is required for minor procedures such as laser hair removal, chemical peels and injections. For major procedures, such as breast augmentation or liposuction, a minimum cooling off period of three months is required.³⁴² The patient should also be encouraged to discuss their reasons for wanting the procedure with their GP during the cooling off period.³⁴³

- 6.72 Several stakeholders highlighted the importance of a cooling off period for cosmetic procedures. The NSW Ministry of Health supported having it for major procedures³⁴⁴ and the Health Care Complaints Commissioner noted the value it served for vulnerable patients.³⁴⁵

- 6.73 During the public hearing, Mr Terence Stern of the Law Society of New South Wales told the Committee that a cooling off period should be a part of the consultation process:

We take the view that in any significant elective or cosmetic procedure there needs to be on a mandatory basis counselling and real risk warnings in plain English on every occasion and cooling-off periods.³⁴⁶

Committee comment

- 6.74 The Committee acknowledges the importance of cooling off periods for cosmetic procedures after the patient has had a consultation and been informed of the risks of the procedure. In the Committee's view, allowing for cooling off periods can be an important aspect of seeking informed consent from a patient as it gives

³³⁹ Medical Board of Australia, [Guidelines for registered medical practitioners who perform cosmetic medical and surgical procedures](#), section 2.5, p 3

³⁴⁰ Medical Board of Australia, [Guidelines for registered medical practitioners who perform cosmetic medical and surgical procedures](#), section 4.3, p 4

³⁴¹ Medical Board of Australia, [Guidelines for registered medical practitioners who perform cosmetic medical and surgical procedures](#), section 12.2, p 6

³⁴² Medical Board of Australia, [Guidelines for registered medical practitioners who perform cosmetic medical and surgical procedures](#), section 3.6, p 4

³⁴³ Medical Board of Australia, [Guidelines for registered medical practitioners who perform cosmetic medical and surgical procedures](#), section 3.7, p 4

³⁴⁴ Dr Chant, [Transcript of evidence](#), 2 August 2018, pp 40, 47

³⁴⁵ Ms Dawson, [Transcript of evidence](#), 2 August 2018, pp 49, 52

³⁴⁶ Mr Stern, [Transcript of evidence](#), 1 August 2018, p 29

patients an opportunity to seek further advice or reconsider whether they want to have a procedure.

- 6.75 Given the concerns raised about cosmetic health service practices as part of this inquiry and in the media more broadly, the Committee considers that it would be worthwhile to review the current cooling off periods to ensure they sufficiently protect New South Wales consumers.
- 6.76 For example, the Committee notes that the cooling off periods provided for in the Medical Board of Australia's guidelines do not extend to adults seeking minor cosmetic procedures. The review could consider whether any minor cosmetic procedures should have a cooling off period. It should also consider whether the cooling off periods provide sufficient time for patients to seek further advice, if desired, or to reconsider their decision.
- 6.77 The Committee encourages any identified gaps or areas of improvement in relation to cooling off periods in the Medical Board of Australia's guidelines be raised by the Minister for Health at a national level. It would be beneficial for any issues and changes to be addressed by the COAG Health Council to ensure national consistency. Failing this, the Minister could consider changes specific to New South Wales.
- 6.78 The Committee notes the guidelines apply to registered medical practitioners and queries whether there is a gap in regulation for unregistered persons who are assisting in procedures or performing minor procedures. This is an area that the Minister for Innovation and Better Regulation and the Minister for Health could consider collaboratively.

Recommendation 15

The Committee recommends that the Minister for Health and the Minister for Innovation and Better Regulation review whether the cooling off periods provided for in the Medical Board of Australia's *Guidelines for registered medical practitioners who perform cosmetic medical and surgical procedures*, 1 October 2016, are sufficient to protect consumers in New South Wales.

The Ministers should also consider whether it would be appropriate to require and regulate cooling off periods for some cosmetic health services provided by non-registered practitioners.

Revision surgery in public hospitals

- 6.79 Due to complications and emergencies following cosmetic surgery, some patients will be admitted into the public health care system and hospitals. The Committee heard from doctors who treat patients with adverse outcomes in their work.
- 6.80 Dr Pouria Moradi, NSW State Committee Plastics Representative, Royal Australasian College of Surgeons (RACS), described people who have presented at hospitals with life-threatening conditions following cosmetic surgery procedures:

If you work at a major teaching hospital, which some plastic surgeons do, you are going to see all these complications, whether it be from overseas tourism, whether it

is going to be from other plastic surgeons, whether it is going to be from non-AMC accredited practitioners.³⁴⁷

- 6.81 Dr Moradi also spoke to seeing complications arising from operations that took place at The Cosmetic Institute facility and said that patients attended hospital with serious conditions resulting from 'incorrect techniques in overdosing of local anaesthetic because they could not do proper full anaesthetics'.³⁴⁸
- 6.82 Professor Ashton shared his experience of seeing patients sent to public hospitals for treatment following complications from cosmetic surgery. He also noted the effect it had on stretching public hospital resources.³⁴⁹
- 6.83 The extra burden placed on the public health system and cost to taxpayers to address complications following cosmetic surgery was raised in the submission from the Australian and New Zealand College of Anaesthetists (ANZCA):

In addition to the potential for tragic death and ongoing psychological impact to patients, complications arising from cosmetic surgeries impose a huge financial burden on Australia's public health system. Scant data presently exist on the size of this cost, however some recent research has attempted to address this issue. One study considered the cost of complications from cosmetic breast surgery and found that from 2000 to 2014 the cost of complications was \$10 million in surgical fees alone. As noted, given this figure is based only on the surgeon and surgical assistant fees for one type of cosmetic surgery, the total burden of complications on the Australian health system from all cosmetic surgeries must be significant.³⁵⁰

Committee comment

- 6.1 While the Committee assumes most revision work takes place with the treating doctor privately, as noted above there is a lack of data on the number of patients being treated in the public health care system for post-cosmetic surgery complications.
- 6.2 The Committee notes the concerns on the costs to, and diversion of resources from, the public health care system for revision surgery following cosmetic surgery complications.
- 6.3 In the Committee's view, the collection of data about revision surgeries in the public health system could be analysed to assist with future policies and decision-making.
- 6.4 The data may also be valuable to the HCCC to better understand the scope of the issue beyond the complaints and other intelligence it receives. This is because adverse outcomes from cosmetic procedures will not always result in complaints to the HCCC.

³⁴⁷ Dr Moradi, [Transcript of evidence](#), 1 August 2018, p 8

³⁴⁸ Dr Moradi, [Transcript of evidence](#), 1 August 2018, p 13

³⁴⁹ Professor Ashton, [Transcript of evidence](#), 1 August 2018, p 8

³⁵⁰ [Submission 3](#), The Australian and New Zealand College of Anaesthetists, p 2

Recommendation 16

The Committee recommends that the Minister for Health considers the feasibility of collecting data on revision surgery in the public health system, to correct cosmetic health procedures, to inform future policy and decision-making in this area.

Appendix One – Terms of Reference

That the Committee on the Health Care Complaints Commission inquire into and report on the regulatory framework for complaints concerning cosmetic health service providers in New South Wales, with particular reference to:

- a. The roles and responsibilities of the Health Care Complaints Commission relative to the roles and responsibilities of Commonwealth and other state regulatory agencies;
- b. The adequacy of the powers and functions of the Health Care Complaints Commission to improve outcomes for the public in the cosmetic health services sector;
- c. The opportunities for collaborations with other agencies, organisations and levels of Government to improve outcomes for the public in the cosmetic health services sector; and
- d. Any other related matters.

Appendix Two – Submissions

1	Dr Michael Molton
2	Dr Larissa Miller
3	Australian and New Zealand College of Anaesthetists
4	Australasian College of Aesthetic Medicine (ACAM)
5	Australian College of Nursing (ACN)
6	Cosmetic Physicians College of Australasia Ltd
7	Australian Department of Health
8	Confidential
9	The Australasian College of Dermatologists
10	Health Care Complaints Commission
11	The Royal Australian and New Zealand College of Ophthalmologists (RANZCO)
12	Australian Society of Plastic Surgeons
13	Medical Council of NSW
14	Royal Australasian College of Surgeons
15	Australasian Society of Aesthetic Plastic Surgeons
16	Nursing and Midwifery Council of NSW
17	Office of the Health Complaints Commissioner, Victoria
18	Confidential
19	Trusted Surgeons
20	NSW Government
21	Australian Health Practitioner Regulation Agency
22	The Australasian College of Cosmetic Surgery
23	The Royal Australian College of General Practitioners NSW & ACT
24	Australian Society of Anaesthetists
25	Australian Medical Association NSW

Appendix Three – List of Witnesses

1 August 2018

Macquarie Room, Parliament House

Witness	Organisation
Dr Scott Turner Board Representative	Australasian Society of Aesthetic Plastic Surgeons
Professor Mark Ashton President Dr Gazi Hussain Vice President	Australian Society of Plastic Surgeons
Dr Ken Loi NSW State Committee Chair Dr Pouria Moradi NSW State Committee Plastics Representative	Royal Australasian College of Surgeons
Dr Saxon Smith Chair of the NSW Faculty	The Australasian College of Dermatologists
Dr Danielle McMullen Vice President Dr Saxon Smith Councillor	Australian Medical Association (NSW)
Mr Bill Madden Spokesperson Ms Ngaire Watson Spokesperson	Australian Lawyers Alliance
Mr Terence Stern Principal, Stern Law	Law Society of NSW

Ms Marina Buchanan-Grey Head of Professional Division	Australian College of Nursing
Ms Robin Curran Member	
Ms Nicole Montgomery Creative Director	Trusted Surgeons

2 August 2018
Preston-Stanley Room, Parliament House

Witness	Organisation
Dr Michael Molton President Dr Douglas Grose Immediate Past President	Cosmetic Physicians College of Australasia Ltd
Dr Ronald Bezic President Dr Ronald Feiner Councillor	The Australasian College of Cosmetic Surgery
Ms Joanne Muller Legal Member	Nursing and Midwifery Council of NSW
Ms Jennifer Kendrick Chair, Performance Committee	Medical Council of NSW
Ms Kym Ayscough Executive Director Regulatory Operations Mr Jamie Orchard National Director Legal Services	Australian Health Practitioner Regulation Agency
Mr John Skerritt Deputy Secretary Ms Tracey Duffy Acting First Assistant Secretary	Australian Department of Health
Dr Kerry Chant Chief Health Officer and Deputy Secretary Population Health Ms Leanne O'Shannessy Executive Director Legal and Regulatory Services	NSW Health

<p>Mr Bruce Battye Deputy Chief Pharmacist and Director Pharmaceutical Regulatory Unit</p>
<p>Ms Rose Webb Commissioner NSW Fair Trading</p> <p>Ms Valerie Griswold Executive Director NSW Fair Trading Specialist Services</p> <p>Mr Marcel Savary Director Regulatory Policy</p>
<p>Ms Sue Dawson Commissioner Health Care Complaints Commission</p> <p>Mr Tony Kofkin Executive Director Complaint Operations</p>

Appendix Four – Extracts from Minutes

MINUTES OF MEETING No 9

Tuesday 13 February 2018
Room 1254, Parliament House

Members present

Mr Crouch MP (Chair), Mr Taylor (Deputy Chair), Mr Amato, Mr Evans, Mr Pearson, Mr Secord, Ms Washington

Officers in attendance

Elaine Schofield, Ben Foxe, Kieran Lewis

The Chair opened the meeting at 12.17pm.

1. Minutes of meeting No 8

Resolved, on the motion of Mr Amato, seconded by Mr Secord:

That the minutes of Meeting No 8 held on 10 October 2017 be confirmed.

2. Committee membership

The Chair welcomed Mr Evans to the Committee and noted that Mr Evans had replaced Ms Hodgkinson. The Chair noted his thanks for Ms Hodgkinson's service to the Committee.

3. ***

4. ***

5. Potential new inquiry

The Chair spoke to the following draft terms of reference previously circulated for a new inquiry into cosmetic health service complaints in New South Wales:

That the Committee on the Health Care Complaints Commission inquire into and report on the regulatory framework for complaints concerning cosmetic health service providers in New South Wales, with particular reference to:

- a) The roles and responsibilities of the Health Care Complaints Commission relative to the roles and responsibilities of Commonwealth and other state regulatory agencies;
- b) The adequacy of the powers and functions of the Health Care Complaints Commission to improve outcomes for the public in the cosmetic health services sector;
- c) The opportunities for collaboration with other agencies, organisations and levels of Government to improve outcomes for the public in the cosmetic health services sector; and

- d) Any other related matters.

Discussion ensued.

Resolved, on the motion of Mr Secord, seconded by Mr Amato:

That the Committee conduct an inquiry in accordance with the draft terms of reference.

Resolved, on the motion of Mr Pearson, seconded by Mr Taylor:

That the Committee call for submissions to be received by 6 April 2018 and email the list of stakeholders; and that the Chair issue a media release announcing the inquiry and publish details of the inquiry on the Committee's webpage and social media accounts.

Additional stakeholders were added to the list at the suggestion of members. The Chair asked members to email any additional stakeholders to the Committee staff.

The Committee agreed to include text on the inquiry page advising that the Committee cannot re-investigate individual complaints.

6. Next meeting

The Chair closed the meeting at 12.26pm.

The next meeting will be held at 8:50 am on 12 March 2018.

MINUTES OF MEETING No 10

Monday 12 March 2018

Jubilee Room, Parliament House

Members present

Mr Crouch MP (Chair), Mr Taylor (Deputy Chair), Mr Evans, Mr Pearson, Mr Secord, Ms Washington

Apologies

Mr Amato

Officers in attendance

Jonathan Elliott, Jessica Falvey, Kieran Lewis, Millie Yeoh

The Chair opened the meeting at 8.52am.

1. Minutes of meeting No 9

Resolved, on the motion of Mr Taylor, seconded by Ms Washington:

That the minutes of Meeting No 9 held on 13 February 2018 be confirmed.

2. Inquiry into cosmetic health service complaints in NSW

The Chair provided the Committee with an update on the progress of the Inquiry into cosmetic health service complaints in New South Wales.

3. ***

4. Next meeting

The Chair closed the meeting at 11.00am. The next meeting will be held on a date to be determined.

MINUTES OF MEETING No 11

Tuesday 15 May 2018

Room 1254, Parliament House

Members present

Mr Crouch (Chair), Mr Taylor (Deputy Chair), Mr Evans, Mr Amato, Mr Secord, Ms Washington, Mr Pearson

Officers in attendance

Elaine Schofield, Jessica Falvey, Kieran Lewis, Abigail Turingan

The Chair opened the meeting at 1.30pm.

1. ***

2. Minutes of meeting No 10

Resolved, on the motion of Mr Evans, seconded by Ms Washington:

That the minutes of Meeting No 10 held on 12 March 2018 be confirmed.

3. ***

4. Inquiry into cosmetic health service complaints in NSW

4.1 Responses received to invitations to make a submission

Resolved, on the motion of Mr Amato, seconded by Mr Pearson:

That the correspondence from the Department of Health and Human Services Victoria and the Department of Health Queensland be noted.

4.2 NSW Ministry of Health – Report on the review of the regulation of cosmetic procedures, April 2018

Resolved on the motion of Mr Evans, seconded by Mr Secord:

That the correspondence from the NSW Ministry of Health and the *Report on the review of the regulation of cosmetic procedures* dated April 2018 be noted.

4.3 Publication of submissions

Resolved on the motion of Mr Taylor, seconded by Mr Pearson:

That submissions 2-3, 5, 7, 10-16 and 20-25 be received by the Committee and published in full.

That submissions 1, 4, 6, 9, 17 and 19 be received by the Committee and published in part.

That submissions 8 and 18 be received by the Committee and remain confidential.

4.4 Public hearings

Resolved on the motion of Mr Amato, seconded by Mr Pearson:

That the Committee conduct public hearings for the Inquiry into cosmetic health service complaints in NSW on Wednesday 1 August 2018 and Thursday 2 August 2018.

The Committee considered the Chair's proposed list of witnesses to appear at the public hearings.

Mr Secord proposed inviting The Cosmetic Institute to appear at a public hearing. Discussion ensued.

The Chair proposed that the Committee seek advice from the Clerk of the Legislative Assembly about inviting The Cosmetic Institute to appear at a public hearing for the Committee to consider further at a later date.

Ms Washington proposed inviting the NSW Law Society and the Australian Lawyers Alliance to appear at a public hearing.

Resolved on the motion of Mr Secord, seconded by Ms Washington:

That the Committee invites the following witnesses to appear at the public hearings for the Inquiry into cosmetic health service complaints in NSW:

- Australian College of Nursing
- Cosmetic Physicians College of Australasia
- Australian Department of Health
- The Australian College of Dermatologists
- Health Care Complaints Commission
- Australian Society of Plastic Surgeons
- Medical Council of NSW

- Royal Australasian College of Surgeons
- Australasian Society of Aesthetic Plastic Surgeons
- Nursing and Midwifery Council of NSW
- Trusted Surgeons
- NSW Government
- Australian Health Practitioner Regulation Agency
- The Australasian College of Cosmetic Surgery
- Australian Medical Association NSW
- NSW Law Society
- Australian Lawyers Alliance.

5. Next meeting

The Chair closed the meeting at 1.43pm. The next meeting will be held on a date to be determined.

MINUTES OF MEETING No 12

Wednesday 20 June 2018
Room 1254, Parliament House

Members present

Mr Crouch (Chair), Mr Taylor (Deputy Chair), Mr Evans, Mr Amato, Mr Secord, Ms Washington, Mr Pearson

Officers in attendance

Elaine Schofield, Kieran Lewis, Leon Last

The Chair opened the meeting at 10am.

1. Minutes of meeting No 11

Resolved, on the motion of Mr Amato, seconded by Mr Secord:

That the minutes of Meeting No 11 held on 15 May 2018 be confirmed.

2. Inquiry into cosmetic health service complaints in NSW

2.1 Consideration of witnesses

Resolved, on the motion of Mr Secord, seconded by Mr Evans:

That the Committee invites The Cosmetic Institute to appear at a public hearing for the Inquiry into cosmetic health service complaints in New South Wales.

2.2 Inquiry correspondence

Resolved on the motion of Mr Taylor, seconded by Mr Amato:

That the Committee notes the correspondence from Dr Ken Harvey of Monash University, dated 9 May 2018.

3. ***

Next meeting

The Chair closed the meeting at 10.03am.

The next meeting will be held on Wednesday 1 August 2018 at Parliament House.

MINUTES OF MEETING No 13

Wednesday 1 August 2018

Macquarie Room, Parliament House

Members present

Mr Crouch MP (Chair), Mr Taylor (Deputy Chair), Mr Amato, Mr Evans, Mr Pearson, Mr Secord, Ms Washington

Officers in attendance

Elaine Schofield, Jessica Falvey, Leon Last, Jennifer Gallagher, Abigail Turingan

The Chair opened the meeting at 9:34 am.

1 Minutes of meeting no 12

Resolved, on the motion of Mr Amato, seconded by Ms Washington:

That the minutes of meeting no 12 held on 20 June 2018 be confirmed.

2 ***

3 Inquiry into cosmetic health service complaints in NSW

3.1 Witnesses

Resolved, on the motion of Mr Amato, seconded by Mr Secord:

That the Committee invites the following witnesses to give evidence in relation to the Inquiry into cosmetic health service complaints in NSW on Wednesday 1 August 2018:

- Dr Scott Turner, Board Representative, Australasian Society of Aesthetic Plastic Surgeons
- Professor Mark Ashton, President, Australian Society of Plastic Surgeons
- Dr Gazi Hussain, Vice President, Australian Society of Plastic Surgeons
- Dr Ken Loi, NSW State Committee Chair, Royal Australasian College of Surgeons
- Dr Pouria Moradi, NSW State Committee Plastics Representative, Royal Australasian College of Surgeons
- A/Professor Saxon Smith, Chair of the NSW Faculty, The Australasian College of Dermatologists and Councillor, Australian Medical Association (NSW)
- Dr Danielle McMullen, Vice President, Australian Medical Association (NSW)
- Mr Terence Stern, Principal, Stern Law, Law Society of NSW
- Ms Ngaire Watson, Spokesperson, Australian Lawyers Alliance
- Mr Bill Madden, Spokesperson, Australian Lawyers Alliance
- Ms Marina Buchanan-Grey, Executive Director, Professional Division, Australian College of Nursing
- Ms Robin Curran, Member, Australian College of Nursing
- Ms Nicole Montgomery, Founder, Trusted Surgeons

Resolved, on the motion of Mr Amato, seconded by Mr Secord:

That the Committee invites the following witnesses to give evidence in relation to the Inquiry into cosmetic health service complaints in NSW on Thursday 2 August 2018:

- Dr Michael Molton, President, Cosmetic Physicians College of Australasia Ltd
- Dr Douglas Grose, Immediate Past President, Cosmetic Physicians College of Australasia Ltd
- Dr Ron Bezic, President, The Australasian College of Cosmetic Surgery
- Dr Ron Feiner, Councillor, The Australasian College of Cosmetic Surgery
- Dr Jennifer Kendrick, Chair, Performance Committee, Medical Council of NSW
- Ms Joanne Muller, Legal Member, Nursing and Midwifery Council of NSW
- Ms Kym Ayscough, Executive Director Regulatory Operations, Australian Health Practitioner Regulation Agency
- Mr Jamie Orchard, National Director Legal Services, Australian Health Practitioner Regulation Agency
- Adj Professor John Skerritt, Deputy Secretary, Australian Department of Health
- Ms Tracey Duffy, A/ First Assistant Secretary, Australian Department of Health
- Dr Kerry Chant, Chief Health Officer and Deputy Secretary, Population Health, NSW Ministry of Health
- Ms Leanne O'Shannessy, Executive Director, Legal and Regulatory Services, NSW Ministry of Health
- Mr Bruce Battye, Deputy Chief Pharmacist and Director Pharmaceutical Regulatory Unit, NSW Ministry of Health
- Ms Rose Webb, Commissioner, NSW Fair Trading

- Ms Valerie Griswold, Executive Director, NSW Fair Trading Specialist Services
- Mr Marcel Savary, Director, Regulatory Policy, NSW Fair Trading
- Ms Sue Dawson, Commissioner, Health Care Complaints Commission
- Mr Tony Kofkin, Executive Director, Complaint Operations, Health Care Complaints Commission

3.2 Media

Resolved, on the motion of Mr Pearson, seconded by Mr Secord:

That the Committee authorises the audio-visual recording, photography and broadcasting of the public hearings on Wednesday 1 August 2018 and Thursday 2 August 2018 in accordance with the NSW Legislative Assembly's guidelines for coverage of proceedings for parliamentary committees administered by the Legislative Assembly.

3.3 Answers to questions on notice

Resolved, on the motion of Mr Evans, seconded by Mr Taylor:

That witnesses be requested to return answers to questions taken on notice at the public hearings on 1 and 2 August 2018 within two weeks of the date on which the questions are forwarded to the witness, and that once received, answers be published on the Committee's website.

3.4 Correspondence with The Cosmetic Institute

Resolved, on the motion of Mr Taylor, seconded by Mr Evans:

That the Committee notes the following correspondence sent and received:

Correspondence sent:

- Letter from the Chair to Mr Babak Moini of The Cosmetic Institute, dated 6 July 2018
- Letter from the Chair to Mr Alistair Champion of The Cosmetic Institute, dated 6 July 2018
- Letter from the Chair to Dr Tom Wenkart and Mr David Wenkart of Macquarie Health Corporation, dated 6 July 2018

Correspondence received:

- Email from Mr Babak Moini of The Cosmetic Institute to the Committee, dated 11 July 2018
- Email from Mr Alistair Champion of The Cosmetic Institute to the Committee, dated 11 July 2018
- Letter from Dr Thomas Wenkart of Macquarie Health Corporation to the Chair, dated 16 July 2018
- Email from Ms Danielle Hunt, on behalf of Dr Eddy Dona, plastic surgeon, dated 25 July 2018

3.5 Public Hearing

The public hearing commenced at 9:44 am. Witnesses and the public were admitted. The Chair welcomed the witnesses and the gallery.

The following witness representing the **Australasian Society of Aesthetic Plastic Surgeons** was called:

- Scott Turner, Board Representative, sworn and examined

The following witnesses representing the **Australian Society of Plastic Surgeons** were called:

- Professor Mark Ashton, President, sworn and examined
- Dr Gazi Hussain, Vice President, affirmed and examined

The following witnesses representing the **Royal Australasian College of Surgeons** were called:

- Dr Ken Loi, NSW State Committee Chair, sworn and examined
- Dr Pouria Moradi, NSW State Committee Plastics Representative, affirmed and examined

Evidence concluded, the witnesses withdrew.

The following witness representing **The Australasian College of Dermatologists** was called:

- A/Professor Saxon Smith, Chair of the NSW Faculty, affirmed and examined

The following witnesses representing the **Australian Medical Association (NSW)** were called:

- A/Professor Saxon Smith, Councillor, on former oath
- Dr Danielle McMullen, Vice President, affirmed and examined

Evidence concluded, the witnesses withdrew.

The following witnesses representing the **Australian Lawyers Alliance** were called:

- Mr Bill Madden, Spokesperson, sworn and examined
- Ms Ngaire Watson, Spokesperson, affirmed and examined

The following witness representing the **Law Society of NSW** was called:

- Mr Terence Stern, Principal, Stern Law, affirmed and examined

Evidence concluded, the witnesses withdrew.

The following witnesses representing the **Australian College of Nursing** were called:

- Ms Marina Buchanan-Grey, Executive Director, Professional Division, sworn and examined
- Ms Robin Curran, Member, sworn and examined

Evidence concluded, the witnesses withdrew.

3.6 Deliberative meeting

The Committee went into private session at 3 pm. Witnesses and the public gallery withdrew.

Resolved, on the motion of Mr Taylor, seconded by Mr Pearson:

That the Committee take evidence from [name suppressed] in camera.

3.7 Public hearing

The witnesses and public gallery were readmitted and the hearing recommenced at 3:03 pm.

The following witness representing **Trusted Surgeons** was called:

Ms Nicole Montgomery, Creative Director, affirmed and examined

3.8 In camera evidence

The Committee commenced in camera evidence at 3:40 pm. The public gallery withdrew.

Evidence concluded, the witnesses withdrew. The hearing concluded at 4:24 pm.

4 Post-hearing deliberative meeting

4.1 Transcript of evidence

Resolved, on the motion of Mr Amato, seconded by Mr Taylor:

That the corrected transcript of evidence given in public on Wednesday 1 August 2018 be authorised for publication and uploaded on the Committee's website.

4.2 Acceptance of tendered documents

Resolved, on the motion of Mr Amato, seconded by Ms Washington:

That the Committee accepts cosmetic surgery photos tendered by Dr Gazi Hussain.

4.3 General Business

The Committee agreed that the secretariat would follow up with Dr Eddy Dona for a response to the invitation to appear as a witness.

The Committee agreed to commence the next hearing at the earlier time of 9:30 am.

4.4 Next meeting

The Chair closed the meeting at 4.29 pm. The next meeting will be held on Thursday 2 August 2018 at 9:30 am, Preston Stanley Room, NSW Parliament House.

MINUTES OF MEETING No 14

Thursday 2 August 2018

Preston Stanley Room, Parliament House

Members present

Mr Crouch MP (Chair), Mr Taylor (Deputy Chair), Mr Amato, Mr Evans, Mr Pearson, Mr Secord, Ms Washington

Officers in attendance

Elaine Schofield, Jessica Falvey, Leon Last, Jennifer Gallagher, Abigail Turingan

Inquiry into cosmetic health service complaints in NSW

1. Public hearing

The public hearing commenced at 9.32am. Witnesses and the public were admitted. The Chair welcomed the witnesses and the gallery.

The following witnesses representing the **Cosmetic Physicians College of Australasia Ltd** were called:

- Dr Michael Molton, President, affirmed and examined
- Dr Douglas Grose, Immediate Past President, sworn and examined

Evidence concluded, the witnesses withdrew.

The following witnesses representing **The Australasian College of Cosmetic Surgery** were called:

- Dr Ronald Bezic, President, sworn and examined
- Dr Ronald Feiner, Councillor, affirmed and examined

Evidence concluded, the witnesses withdrew.

The following witness representing the **Medical Council of NSW** was called:

- Dr Jennifer Kendrick, Chair, Performance Committee, sworn and examined

The following witness representing the **Nursing and Midwifery Council of NSW** was called:

- Ms Joanne Muller, Legal Member, sworn and examined

Evidence concluded, the witnesses withdrew.

The following witnesses representing the **Australian Health Practitioner Regulation Agency** were called:

- Ms Kym Ayscough, Executive Director Regulatory Operations, affirmed and examined
- Mr Jamie Orchard, National Director Legal Services, affirmed and examined

The following witnesses representing the **Australian Department of Health** were called:

- Adj Professor John Skerritt, Deputy Secretary, affirmed and examined
- Ms Tracey Duffy, A/ First Assistant Secretary, sworn and examined

Evidence concluded, the witnesses withdrew.

The following witnesses representing the **NSW Ministry of Health** were called:

- Dr Kerry Chant, Chief Health Officer and Deputy Secretary, Population Health, affirmed and examined
- Ms Leanne O'Shannessy, Executive Director, Legal and Regulatory Services, sworn and examined
- Mr Bruce Battye, Deputy Chief Pharmacist and Director Pharmaceutical Regulatory Unit, sworn and examined

The following witnesses representing **NSW Fair Trading** were called:

- Ms Rose Webb, Commissioner, affirmed and examined
- Ms Valerie Griswold, Executive Director, NSW Fair Trading Specialist Services, affirmed and examined
- Mr Marcel Savary, Director, Regulatory Policy, affirmed and examined

Evidence concluded, the witnesses withdrew.

The following witnesses representing the **Health Care Complaints Commission** were called:

- Ms Sue Dawson, Commissioner, affirmed and examined
- Mr Tony Kofkin, Executive Director, Complaint Operations, sworn and examined

Evidence concluded, the witnesses withdrew. The hearing concluded at 3.34pm.

2. Post-hearing deliberative meeting

2.1 Transcript of evidence

Resolved, on the motion of Mr Secord, seconded by Mr Evans:

That the corrected transcript of evidence given on Thursday 2 August 2018 be authorised for publication and uploaded on the Committee's website.

2.2 Acceptance and publication of tendered documents

Resolved, on the motion of Mr Taylor, seconded by Ms Washington:

That the Committee accepts the following documents tendered during the public hearing and publishes appropriate documents:

- Documents entitled, *Risk of cosmetic procedures and regulation*; and *Cosmetic health services: key aspects of NSW regulation in health portfolio* tendered by NSW Health
- Bundle of fact sheets relating to beauty and cosmetic procedure services tendered by NSW Fair Trading
- Bundle of documents tendered by The Australasian College of Cosmetic Surgery.

2.3 Next meeting

The Chair closed the meeting at 3.39pm. The next meeting will be held on a date to be confirmed.

MINUTES OF MEETING No 15

Thursday 25 October 2018
Room 1043, Parliament House

Members present

Mr Crouch (Chair), Mr Griffin (Deputy Chair), Mr Amato, Mr Evans, Mr Pearson, Ms Washington, Mr Secord

Officers in attendance

Elaine Schofield, Jessica Falvey, Kieran Lewis, Jennifer Gallagher

The Chair opened the meeting at 4:07 pm.

1 Minutes of meetings no 13 and 14

Resolved, on the motion of Mr Secord, seconded by Mr Griffin:

That the minutes of meeting no 13 held on 1 August 2018 and meeting no 14 held on 2 August 2018 be confirmed.

2 ***

3 ***

4 ***

5 ***

6 Inquiry into cosmetic health service complaints in NSW

6.1 Update on Chair's draft report

The Chair advised that he was reviewing the draft report and that it would be circulated to members shortly.

6.2 Inquiry correspondence

Resolved, on the motion of Ms Washington, seconded by Mr Griffin:

That the Committee notes the correspondence from: Dr Neal Hamilton, Concept Cosmetic Medicine; and Ms Kerrie Chambers and Mr Alexander Georgeopoulos, HWL Ebsworth Lawyers on behalf of Dr Eddy Dona.

6.3 Consideration of tendered documents

Resolved, on the motion of Mr Secord, seconded by Mr Evans:

That the Committee publish the document entitled 'The Australasian College of Cosmetic Surgery, *Proposal to reduce confusion and enhance safety for patients seeking cosmetic surgery in Australia*, including appendices A to D.'

Resolved, on the motion of Mr Griffin, seconded by Mr Pearson:

That the Committee not publish the following documents because they are already publicly available:

- Media reports about The Cosmetic Institute
- Opening statement for public hearing
- The Australasian College of Cosmetic Surgery submission and attachments.

Resolved, on the motion of Mr Amato, seconded by Mr Griffin:

That the Committee keep confidential certain documents relating to cosmetic surgery.

7 *******

8 **Next meeting**

The Chair closed the meeting at 4:16 pm. The next meeting will be held on Friday 16 November 2018 at 9:00 am Room 1043, Parliament House.

MINUTES OF MEETING No 16

Friday 16 November 2018
Room 1043, Parliament House

Members present

Mr Crouch (Chair), Mr Griffin (Deputy Chair), Mr Amato (via teleconference), Mr Evans, Mr Pearson, Mr Secord

Officers in attendance

Elaine Schofield, Jessica Falvey, Kieran Lewis, Leon Last, Jennifer Gallagher, Abigail Turingan

The Chair opened the meeting at 9:05 am.

1 **Apologies**

An apology was received from Ms Washington.

2 **Minutes of meetings no 15**

Resolved, on the motion of Mr Griffin, seconded by Mr Amato:

That the minutes of meeting no 15 held on 25 October 2018 be confirmed.

3 ********

4 **Inquiry into cosmetic health service complaints in NSW**

4.1 **Consideration of Chair's draft report**

Resolved, on the motion of Mr Evans, seconded by Mr Secord:

That the Committee consider the Chair's draft report on cosmetic health service complaints in NSW *in globo*.

Resolved, on the motion of Mr Amato, seconded by Mr Pearson:

1. That the draft report be the report of the Committee, and that it be signed by the Chair and presented to the House.
2. That the Chair and committee staff be permitted to correct stylistic, typographical and grammatical errors.
3. That, once tabled, the report be posted on the Committee's website.

The Chair closed the meeting at 9:10 am.

Appendix Five – Glossary

AHPRA	Australian Health Practitioner Regulation Agency
AMA	Australian Medical Association
AMA (NSW)	Australian Medical Association, New South Wales
AMC	Australian Medical Council
ASPS	Australian Society of Plastic Surgeons
COAG	Council of Australian Governments
GP	General Practitioner
HCCC	Health Care Complaints Commission
RACS	Royal Australasian College of Surgeons
TCI	The Cosmetic Institute
TGA	Therapeutic Goods Administration