

**Submission
No 5**

COSMETIC HEALTH SERVICE COMPLAINTS IN NEW SOUTH WALES

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Australian College of Nursing

Australian College of Nursing (ACN) submission to the Committee on the Health Care Complaints Commission *Inquiry into cosmetic health services complaints in New South Wales*

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Response to Inquiry Terms of Reference

General comment

ACN has established the Cosmetic Nurses Community of Interest (CoI) to provide a professional forum for members working in the area of cosmetic procedures to engage on matters of interest in the sector including current news and trends, research findings, best practice and major policy developments. Nurses registered with the Nursing and Midwifery Board of Australia (NMBA) working in the area of cosmetic procedures can be Enrolled Nurses (EN), Registered Nurses (RN) or Nurse Practitioners (NPs). Nurses working in the area of cosmetic procedures are obliged to have knowledge of and comply with NMBA regulatory requirements and any relevant state and territory legislation including drugs and poisons legislation (however titled).¹ These regulatory requirements include, but are not limited to:

- Registered nurse standards for practice
- Code of conduct for nurses
- Professional boundaries for nurses
- Code of ethics for nurses
- Guidelines for advertising regulated health services
- National framework for the development of decision-making tools for nursing and midwifery practice.²

Along with other professional standards, all registered health practitioners in Australia are governed by the Health Practitioner Regulation National Law (the National Law), as in force in each state and territory, and effectively must comply with mandatory reporting and other requirements.³ Requirements for mandatory notifications are a key public protection policy. The National Law requires practitioners to notify the Australian Health Practitioner Regulation Agency (AHPRA) if *'they believe that another practitioner has behaved in a way which presents a serious risk to the public. The requirements focus on serious instances of substandard practice or conduct by practitioners, or serious cases of impairment, that could place members of the public at risk. For students, the requirements focus on serious cases of impairment of students'*.⁴

The national regulatory framework in place to govern health practitioners extends in all its aspects to nurses and medical practitioners working in the area of cosmetic procedures. Not covered by these regulatory protections is the practice or activity of unlicensed workers in the sector. ACN stresses that there are no circumstances or practice settings within which nurses are exempt from complying with the National Law and professional standards set by the NMBA. While National Law provides a level of public protection, some trends in the cosmetic health services sector indicate the need for strengthening of industry regulation. ACN recommends the fostering of strong linkages between the nursing profession and the Health Care Complaints Commission to:

- Develop strategies to ensure the fulfillment of regulatory obligations of registered health practitioners in the cosmetic health services sector.
- Ensure service providers meet licensing and regulatory requirements and provide appropriate governance, including supervision, to nurses and other registered health practitioners employed in the sector.

¹ Nursing and Midwifery Board of Australia [NMBA], 'Position Statement - Nurses and Cosmetic Procedures' (2016)

<<http://www.nursingmidwiferyboard.gov.au/Codes-Guidelines-Statements/Position-Statements/nurses-and-cosmetic-procedures.aspx>>.

² Ibid.

³ Australian Health Practitioner Regulation Agency, 'National Board Guidelines for Registered Health Practitioners Guidelines for Mandatory Notifications' (2016). <<http://www.nursingmidwiferyboard.gov.au/Codes-Guidelines-Statements/Codes-Guidelines/Guidelines-for-mandatory-notifications.aspx>>.

⁴ Ibid.

- To identify existing and emerging risks to public health and to seek protections and continuous improvement including:
 - The licensing of unlicensed health workers (however titled) who support the delivery of health care in cosmetic health services.
 - Further examination of the introduction of national regulations to promote consistency in the use of Lasers and Intense Pulsed Light (IPL) sources as therapies for cosmetic purposes, including the licensing of operators, requirements for supervision by registered health practitioners and minimum training and credentialing requirements for operators.
 - Advocating for the introduction of nationally consistent minimum education and supervisory requirements for the operation of Lasers and Intense Pulsed Light (IPL) sources for cosmetic purposes.

a) The roles and responsibilities of the Health Care Complaints Commission relative to the roles and responsibilities of Commonwealth and other state regulatory agencies.

There are many agencies that deal with health complaints and the boundaries for making a complaint in NSW between different types of cosmetic treatment services (including beauty services) and regulatory agencies may not always be clear to the public. 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. For example, roles differences between the Australian Health Practitioner Regulation Agency (AHPRA), the Medical Council of New South Wales, NSW Fair Trade, Ombudsman New South Wales, The Australian Competition and Consumer Commission (ACCC) and the HCCC. Consumer guidance as to which organisation to approach about the various cosmetic services in the sector may support consumer access to protection services.

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.

The capacity of the HCCC to fulfil its obligations is paramount to improving consumer safety, quality and outcomes in the sector. Advice to ACN states that there have been occasions when the HCCC response times have been too slow in addressing serious complaints by consumers harmed by cosmetic procedures. If this is the case, HCCC response times may delay redress for affected consumers and may unnecessarily expose other consumers to risk of harm. Rapid HCCC response times to concerning complaints may prevent more serious or catastrophic events in the future. The occurrence of a profound consumer injury or death should not be the only triggers for rapid HCCC investigations. Given the many concerns about the regulation of the industry, it is essential that the HCCC's powers and reach are optimised, including through adequate resourcing.

As licensing requirements for certain cosmetic surgical procedures in NSW have only been introduced relatively recently, feedback to ACN suggests that regulation needs to catch up with sector developments. ACN members report that there is low level of public awareness of the required standards within cosmetic health services. As a result, some consumers may not recognise unscrupulous practices and be aware of their rights to pursue complaints and redress. To counter this, the visibility and access points of the HCCC within the sector should be reviewed for potential improvements. Robust requirements for and monitoring of the provision of consumer rights information in all cosmetic health service settings needs consideration to ensure consumers can easily and readily access information such as brochures and frequently asked questions on how to protect their rights within the 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.

Under the Private Health Facilities Act and Regulation, NSW licensing laws now require facilities undertaking certain cosmetic surgical procedures to engage with the National Safety and Quality Health Service Standards (NSQHS Standards)⁵. ACN is advised that the extent to which facilities are complying with licencing requirements across the

⁵ NSW Government Health, 'Licensing of private health facilities', (2018)
<http://www.health.nsw.gov.au/Hospitals/privatehealth/Pages/licensing-of-private-health-facilities.aspx>

sector is unclear. As noted above, the full and immediate application of the law is paramount to improving safety, quality and outcomes for the public in the sector. ACN is advised that ISO 9001 2015 Standard can apply in the cosmetic health service sector and may provide an option for additional public protection assurances through inter-agency collaboration if widely adopted.

Engagement and collaboration with the Nursing and Midwifery Board of Australia (NMBA) is an important opportunity for improving outcomes for the public in the cosmetic health sector. While the context and scope of professional nursing practice varies across the sector, national standards apply to all practice settings and provide a framework and guidance for health service provision. Certification and auditing agencies should have collaborative arrangements in place with the NMBA to ensure the application of NMBA professional standards, codes, guidelines and policies. Detailed appreciation of professional registration and practice standards is essential in assessing compliance with professional nursing standards and safe service provision. Key areas of understanding include (but not limited to) requirements for supervision, responsibility for practice and accountability for delegation of care.

While nursing is nationally regulated, nursing scope of practice is governed by national as well as state/territory legislation and is heavily influenced by jurisdictional service arrangements and organisational context, policies and models of care. Collaboration with the NSW Chief Nursing and Midwifery Office is important in developing linkages with the nursing regulatory bodies, NSW Government, Ministry of Health and nursing education providers and professional bodies.

d) Any other related matters.

ACN member feedback suggests it is timely to consider the regulation of any beauty or cosmetic therapy service providing laser, injectable or other invasive procedures, through licensing laws. This should include the requirement that all injectable products and therapies are approved through the Therapeutic Goods Administration (TGA). ACN members have reported that currently the provision of laser treatments is a poorly supervised practice in NSW requiring regulation. Highlighted is the incorrect use of Lasers or IPLs by untrained or inexperienced operators that can result in significant adverse outcomes including burning, scarring and/or the removal or masking of symptoms of skin cancer or hormone conditions. This perception aligns with some reported findings on the use of IPLs and Lasers for cosmetic or beauty therapy.⁶

Some ACN 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. Feedback also suggests that there may be circumstances where inexperienced ENs and RNs are employed in facilities without basic service orientations and other appropriate clinical governance structures in place including policies and procedures to support their safe and legal practice.

⁶ S. Newberry D. Urban, C. Lawrence, J. Javorniszky, A. Lynam, S. Critchley, B. Cassels, 'Analysis of Public Submissions Consultation Regulatory Impact Statement in the use of Intense Pulsed Light (IPLs) Sources and Lasers for Cosmetic or Beauty Therapy, Technical Report 177, March 2017' (2017) <<https://www.arpana.gov.au/sites/g/files/net3086/f/tr177.pdf>>. and Australian Government and Australian Radiation Protection and Nuclear Safety Agency, 'Regulatory Impact Statement Intense Pulsed Light Sources (IPLs) and Lasers for Cosmetic or Beauty Therapy Consultation Draft May 2015' (2015) https://www.arpana.gov.au/sites/g/files/net3086/f/legacy/pubs/comment/IPL_ConsultationRIS.pdf