

## Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022

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**Submitter Recommendations:**



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The Australasian Society of Aesthetic Plastic Surgery (ASAPS) acknowledges the Queensland Minister of Health and the Department of Health, Queensland for its important role to improve the safety of patients, and for the opportunity to provide its response to the proposed **2022 Bill for an Act to amend the Health Ombudsman Act 2013 and the Health Practitioner Regulation National Law Act 2009 for particular purposes**. ASAPS has extensive expertise in the practice of Cosmetic Surgery.

For the purpose of this submission we will comment on the impact the proposed changes will have on patient safety in cosmetic surgery.

### About ASAPS

The Australasian Society of Aesthetic Plastic Surgeons<sup>1</sup> (ASAPS) is a member-based professional organisation made up of over 300 registered specialists in the recognised medical speciality of Plastic Surgery who specialise in Cosmetic Surgery and use the title Specialist Plastic Surgeon. Many ASAPS members have distinguished themselves in the field of Cosmetic Surgery through research, innovation, teaching and professional leadership, and are regarded as global leaders in Cosmetic Surgery.

All ASAPS members are Registered as Specialist Plastic Surgeons by the Australian Health Practitioner Regulation Agency (AHPRA) and the Medical Council of New Zealand (MCNZ) following successful completion of Australian Medical Council (AMC) accredited plastic surgical training delivered by the Royal Australasian College of Surgeons (RACS). Since its inception in 1978, ASAPS has taken the lead in raising the standards of Cosmetic Surgery and patient safety by providing Cosmetic Surgery education to Specialist Plastic Surgeons. ASAPS members practice across Australia and New Zealand and through this large 300+ nationwide member network, ASAPS is ideally positioned to comment on patient safety issues.

ASAPS is well aware of patient harm in cosmetic surgery due to poor professional standards, putting profits before patients, non-compliance with the National Law and breaches of advertising guidelines. Our nationwide network of members, most of whom have treated patients with bad outcomes in cosmetic surgery, keep us updated. Encountering patient safety breaches 'first-hand' is confronting and offers unparalleled awareness, insights, and perspectives into this complex problem. ASAPS' submission draws upon those insights and perspectives with the sole aim to improve patient safety in cosmetic surgery. The current deplorable situation has existed for far too many years and needs to be addressed as soon as possible.

### The current problem:

**At present, when a medical practitioner who is not a registered surgeon uses the title 'cosmetic surgeon', it implies to the patient and is commonly understood that this practitioner is a specialist surgeon. This reckless or deliberate misleading of patients by false and misleading advertising is the priority regulatory failure that this 2022 Bill for an Act to amend the Health Ombudsman Act 2013 and the Health Practitioner Regulation National Law Act 2009 for particular purposes (The Bill ) must address.**

The impact of this deception is verified by consumer research showing that 81% of Australians believe that when a practitioner uses the title 'cosmetic surgeon' the practitioner is a 'registered specialist' in cosmetic surgery. This is doubly deceptive as the practitioner may not be a registered specialist and secondly, cosmetic surgery is not a recognised specialty. Misleading and confusing titles, and a lack of transparency

about a practitioner's AHPRA recognised training, means that patients are not making their choices about procedures and medical practitioners in an informed way.

Viewers who watched the unprecedented scale of patient harm in cosmetic surgery unfold on the ABC Four Corners exposé on Dr Lanzer and Associates may have felt that they were watching a documentary on the horrors of surgery in a third world country, not Australia.

The standard of surgery and standard of patient safety that was exhibited in that program, and in countless other media articles, is not an acceptable standard in Australia nor anywhere in the world. And nor should it be. There are moments like this that are so wrong, that we need to do more than just speak up, we need to act now to protect patients.

In March 2022, Maddens Lawyers commenced a class action in the Victorian Supreme Court against Dermatology and Cosmetic Surgery Services Pty Ltd (DCSS) and the following doctors (defendants): Dr Daniel Lanzer, Dr Daniel Aronov, Dr Daniel Darbyshire and Dr Alireza Fallahi (Dr Ali).

The class action has been commenced on behalf of hundreds of patients who have suffered loss or damage because of cosmetic surgery being performed at DCSS or by one or more of the defendants. It is also alleged that cosmetic surgeries were not undertaken with an appropriate level of care and skill by DCSS and that patients have reported devastating experiences and outcomes in connection with cosmetic surgery procedures such as:

- inadequate pre-surgery consultations
- botched results
- a lack or complete absence of after-care
- psychological trauma
- lasting physical deformities
- nerve pain
- numbness.

There range of procedures patients had undertaken include:

- liposuction (including '360 lipo' and 'mega lipo')
- otoplasty
- face lifts
- tummy tucks
- Brazilian Butt Lifts (BBL's)
- treatments for lipoedema
- breast augmentation
- liposculpture.

To this end, we note the well-publicised class action commenced by Turner Freeman Lawyers against The Cosmetic Institute in the NSW Supreme court for patients complaining of having suffered from major intra-operative and post-operative complications following breast augmentation surgery at The Cosmetic Institute's clinics. These complications include heart issues, seizure activity post-operatively, pneumothorax (punctured lungs) and deficient surgical results causing pain and deformity.

Yes, practitioners who are not registered surgeons who use the title 'cosmetic surgeon' bear primary responsibility for patient harm. AHPRA's tone deaf policy towards title abuse by practitioners who are not registered surgeons, and its lack of proactive and preventative enforcement deserves a share of the blame.

ASAPS strongly recommends that the **2022 Bill for an Act to amend the Health Ombudsman Act 2013 and the Health Practitioner Regulation National Law Act 2009 for particular purposes (The Bill)** adopt the following package of inter-related reform principles to ensure patient protection is never compromised:

- A practitioner who has only general registration (all registered medical practitioners) must use the title 'Medical Practitioner';
- Only a practitioner who is registered in a recognised specialty can use the protected title of that specialty. For example, a dermatologist who is registered as a specialist in dermatology should use the title 'Specialist Dermatologist'. If they choose not to, they must use the title 'Medical Practitioner';
- All practitioners to be prohibited from using any title that falls outside the regulated list of protected titles; and
- All practitioners must declare their registration status and official approved title as a key component of informed patient consent to prevent poor patient outcomes and harm in a manner similar to the Australian Open Disclosure Framework of the Australian Commission for Safety and Quality in Health Care.
- ASAPS accepts that the use of the title 'surgeon' is currently under consideration by the Ministerial Council. **Because of the concerns in this space, there is already an external inquiry underway. It would be appropriate to postpone this amendment bill until the findings of the inquiry are known. Otherwise, you are looking at changing the law before understanding what needs to be changed.**
- Testimonials: Soliciting and influencing reviews and testimonials leaves room for manipulation, deception, coercion, false advertising, and can be misused as a tool to put profits before patients.

It's already widely known that doctors are already breaching testimonial laws and abusing these guidelines as it is, with no enforcement. If they are already breaking the law, and then the law is weakened, what does this invite?

The current AHPRA guidelines allow patient reviews to be posted on 3<sup>rd</sup> party sites like Google, RealSelf.com to name a few. These reviews can be traced back to source and offer a degree of authenticity and protect practitioners from malicious reviews. The current regime prevents practitioners to market the reviews. With the cosmetic surgery industry driven by influencers, false and misleading advertising, and the use of fake and fabricated titles the focus should be to clear the muddy waters and not muddy them even more. Allowing testimonials at this stage when there are so many patient safety concerns in this space will not be in the best interest of patients. There is a role for testimonials in the future but that should be considered and introduced after extensive stakeholder and consumer group consultations.

- Penalties : Increasing penalties does not deter those who want to do the wrong thing. This proposed Bill should seriously consider how increasing penalties will improve patient safety. The current penalties did not prevent extensive patient harm (mostly women) as depicted in the extensive media reports of Dr Lanzer, Dr Aronov and associates. It was the investigative journalism that highlighted poor professional standards and patient harm. The National Law is explicit enough to ensure patient protection, **provided AHPRA enforce it in a proactive and preventative manner.**

This bill is missing so many opportunities to do good and make desperately needed meaningful change to protect patients. No patient should ever be forced to say after the event – 'if I'd known the doctor's real qualifications, registration status and skills I would never have agreed to the procedure'.

**For further information**

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7 June 2022

Dear Chair

I am writing to raise urgent concerns around the Health and Environment Committee's Inquiry into the Health Practitioner Regulation Law and other Legislation Amendment Bill 2022, which has proposed removal of the current ban on testimonials in medical advertising.

The Australasian Society of Aesthetic Plastic Surgeons (ASAPS) is a not-for-profit, member-based organisation that has been in existence for over 40 years and represents over 300 Specialist Plastic Surgeons practising in Australia and New Zealand.

ASAPS members are frequently called upon to treat avoidable life-threatening complications and sub-standard aesthetic results following cosmetic surgery, and therefore offer a unique perspective on opportunities for better regulation of the sector.

We consider that any weakening of restrictions around testimonials in advertising will contribute to a culture of misinformation and deceit that is already plaguing the poorly regulated cosmetic surgery sector and contributing to patient harm.

Every year thousands of (mostly) Australian women who seek cosmetic surgery risk their lives and livelihood at the hands of practitioners who are not registered surgeons but advertise using the title 'cosmetic surgeon' and whose standards of safety and hygiene fall short of the established and widely accepted Australian standard.

Multiple, deeply-concerning cases of malpractice by so-called 'cosmetic surgeons' have been uncovered by the media in recent months. We are aware of at least four patient deaths following cosmetic surgery procedures, as well as life threatening complications such as punctured lungs, seizure activity, cardiac arrest, overdosing of local anaesthesia and excessive bleeding.

We are extremely concerned by the timing of this possibly significant change to the legislation. We feel it is premature to make any changes to the current advertising restrictions while the Australian Healthcare Practitioner Regulation Association (AHPRA) is conducting a lengthy review into the regulation and standards of health practitioners in cosmetic surgery.

APHRA's Review incorporates 'Advertising restrictions' in its Terms of Reference, paying particular attention to the management of advertising offences; and 'Information to consumers' examining the role of APHRA and National Boards (as regulators) to reduce asymmetry information to inform safer choices and informed consent for all consumers.

In a landscape that is rife with misinformation, which comes at a great cost not only to consumers but also society, we strongly urge the Health and Environment Committee to consider the serious safety risks of adding additional loopholes for unscrupulous operators.

Testimonials saturate social media as well as traditional online sources, with the former often the preferred and only source utilised by members of the community, particularly young women. Many of these are managed by doctors thereby skewing the content. The use of 'influencers' to promote procedures presents another very problematic reality if the ban is lifted on testimonials in medical advertising. Influencers are typically paid for endorsement sans the obligation to obviously disclose this nor be held to account.

The Australasian Society of Aesthetic Plastic Surgeons believes any changes to existing legislation during the AHPRA review would be in haste and could worsen systemic problems in the cosmetic surgery industry.

We ask that you please reassess the timing of your possible amendments in consideration of the status of current regulatory and community matters.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R Sheen', with a stylized, flowing script.

Dr Robert Sheen MBBS MS MBA FRACS  
President, Australasian Society of Aesthetic Plastic Surgeons