

Submission by the Australian Nursing and Midwifery Federation

Response to the Independent review of the regulation of health practitioners in cosmetic surgery

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Nursing &
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Federation



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Introduction

The Australian Nursing and Midwifery Federation (ANMF) is Australia's largest national union and professional nursing and midwifery organisation. In collaboration with the ANMF's eight state and territory branches, we represent the professional, industrial and political interests of more than 310,000 nurses, midwives and carers across the country.

Our members work in the public and private health, aged care and disability sectors across a wide variety of urban, rural and remote locations. We work with them to improve their ability to deliver safe and best practice care in each and every one of these settings, fulfil their professional goals and achieve a healthy work/life balance.

Our strong and growing membership and integrated role as both a professional and industrial organisation provide us with a complete understanding of all aspects of the nursing and midwifery professions and see us uniquely placed to defend and advance our professions.

Through our work with members we aim to strengthen the contribution of nursing and midwifery to improving Australia's health and aged care systems, and the health of our national and global communities.

The ANMF welcomes the opportunity to provide feedback to the Independent review of the regulation of health practitioners in cosmetic surgery commissioned by the Australian Health Practitioner Regulation Agency (Ahpra) and the Medical Board of Australia. The ANMF notes that *the scope of this review is limited to the regulation of registered medical practitioners* but also notes that *learnings from the review may have broader relevance and will be shared with the National Boards that regulate those professions*. The ANMF has chosen not to reply directly to the consultation questions as they are focused specifically on the medical profession, however will outline issues relevant to the role of registered and enrolled nurses working in cosmetic practice, for the review to consider.



It is estimated that each year people in Australia spend over \$1 billion on cosmetic procedures. According to the Cosmetic Physicians College of Australia, people in Australia spend more on cosmetic procedures per capita than any other country, and demand continues to grow.¹ Whilst there is no formal data to indicate how many nurses are working in the cosmetic area, O'Keefe et al suggest that throughout Australia, nurses are the cornerstone of many practices within the private hospital and community cosmetic medicine setting as they perform the majority of the non-surgical cosmetic procedures.²

Like all registered and enrolled nurses, those employed in cosmetic practice must work in accordance with the Nursing and Midwifery Board of Australia's (NMBA) registration standards, codes, guidelines and policies of the profession. It is essential that nurses and midwives understand and uphold the relevant state and territory legislation and regulation that underpins nursing practice. This includes the use of drugs and poisons. The NMBA's *Position statement on nurses and cosmetic procedures* addresses both registered nurses and enrolled nurses working in this growing area of practice and covers minor (non-surgical) cosmetic medical procedures ('cosmetic medical procedures'). The NMBA acknowledges that:

Nurses working in the area of cosmetic medical procedures must know and comply with organisational requirements and relevant state, territory and Commonwealth requirements as jurisdictional differences are common. This includes:

- *drugs and poisons legislation (however titled) regarding possessing, using, obtaining, selling, storing, prescribing, administering and supplying scheduled medicines. This includes Botulinum toxin type A (commonly called Botox) and dermal fillers.*
- *the preparation and administration of platelet enriched plasma and other blood products*

¹ O'Keefe, Elissa J, and Robin Curran. "Nursing and People with Cosmetic and Related Concerns." In *Nursing in Australia*, 213-20: Routledge, 2020.

² O'Keefe, Elissa J, and Robin Curran. "Nursing and People with Cosmetic and Related Concerns." Chap. 21 In *Nursing in Australia*, edited by N Wilson, P Lewis, L Hunt and L Whitehead, 213-20: Routledge, 2020.

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- *infection prevention and control, and*
- *organisational policies, protocols and guidelines.*³

The NMBA recommends in their position statement that nurses working in the area of cosmetic medical procedures should be aware of the Medical Board of Australia's, *Guidelines for registered medical practitioners who perform cosmetic medical and surgical procedures* (MBA Guidelines). It is the NMBA's view that the MBA Guidelines provide nurses with an evidence-based framework, outlining the conduct and practice expectations of the medical practitioner and the impact this may have on their practice.⁴ This approach is supported by the ANMF.

The MBA Guidelines should also direct medical practitioners to be aware of the NMBA *Position statement on nurses and cosmetic procedures*. In addition, both the guidelines and the position statement should detail the regulatory requirements of health practitioners in cosmetic practice and their obligations under Section 136 of the *Health Practitioner Regulation National Law Act 2009* (the National Law). This provision makes it an offence to direct or incite unprofessional conduct or professional misconduct. It states that:

*A person must not direct or incite a registered health practitioner to do anything, in the course of the practitioner's practice of the health profession, that amounts to unprofessional conduct or professional misconduct.*⁵

This offence carries a maximum penalty of \$30,000 in the case of an individual and \$60,000 in the case of a body corporate.⁶

Although this provision has not been utilised in relation to nurses, prosecution under this provision could be a useful deterrent for providers who require registered and enrolled nurses to work outside their scope of practice in ways that would constitute unprofessional conduct or professional misconduct. This situation may arise when there is: inadequate numbers of registered and enrolled nurses available to ensure safe, quality care is provided; an inherent power imbalance between the employer and the nurse; care delivery motivated by profit rather than evidence-based best practice.

³ Nurses and Midwifery Board of Australia. "Position Statement on Nurses and Cosmetic Procedures." (Reviewed 2022). <https://www.nursingmidwiferyboard.gov.au/codes-guidelines-statements/position-statements/nurses-and-cosmetic-procedures.aspx>.

⁴ Ibid.

⁵ Health Practitioner Regulation National Law Act 2009 <https://www.legislation.qld.gov.au/view/html/inforce/current/act-2009-045>.

⁶ Ibid.



The ANMF recommends that an overview of Section 136 of the National Law be included in the revised version of the MBA Guidelines, referred to in the MBA Frequently Asked Questions (FAQs) that accompany the guidelines, and also provided in the NMBA *Position statement on nurses and cosmetic medical procedures*.

The ANMF notes that the MBA FAQs include the question: *Do the Guidelines apply to nurses and beauty therapists who provide cosmetic procedures?* The response states: ‘No. The Medical Board only regulates medical practitioners’. As the NMBA position statement indicates that nurses should not only be familiar with the MBA guidelines but should use them as the evidence-base to determine the expected conduct and practice of their medical practitioner colleagues, the response to this FAQ is confusing for nurses. The FAQs should be amended to highlight the NMBA requirement for nurses working in cosmetic practice to be aware of the MBA Guidelines.

Issues

ANMF members have raised a number of issues they face in cosmetic practice when providing care for people undergoing cosmetic medical and surgical procedures. These issues pertain to legal and ethical responsibilities, professional regulation, scope of practice and the inherent power relationship between health practitioners and employers and employees in private services.

[Professional regulation](#)

The NMBA provides guidance for nurses working in all contexts of practice including cosmetic nursing practice through their Professional Practice Framework. However, the ANMF has identified several issues that require clarification in the revised NMBA *Position statement on nurses and cosmetic procedures*. These include: the need for further clarification of the definition of high-risk injections; the rationale for the additional requirements for enrolled nurses, both in terms of supervision and if they should cease employment in cosmetic practice and later seek to return; and the need to reinforce both the nurse’s obligation for mandatory notification and the employer’s responsibility not to direct or incite nurses to do anything that may constitute unprofessional conduct or professional misconduct. The ANMF has met with the NMBA to highlight these issues.



Notifications

In addition to the NMBA requirement for nurses to be aware of the MBA Guidelines, registered nurses have a mandatory obligation to report *notifiable conduct of health professionals*⁷ and *incidents of unethical behaviour immediately to the person in authority and, where appropriate, explore ways to prevent recurrence*.⁸ This places a heavy burden on nurses employed by, and witness to the practice of, those medical practitioners who are engaging in unsafe or unethical behaviour. This also poses issues that link to the inherent power imbalance between employers and employees.⁹

The power imbalance between the employer (who may also be the medical practitioner performing procedures and owner of the practice) and the employee (the nurse working in the practice) presents an ethical and professional dilemma that may result in nurses not reporting poor practice. They may remain silent for fear of poor treatment in the workplace and threats to their ongoing employment, especially if they are employed in a casual or contract capacity.

The ANMF recommends that Ahpra, the NMBA and the MBA undertake an education campaign to support nurses and medical practitioners to understand their obligations for mandatory notifications under the National Law. This should include clear information regarding the reporting requirements, including how a notification is made, the nuances that exist in co-regulatory jurisdictions, and how to access support. It should also address the risks associated with a power imbalance, outlining how nurses and medical practitioners can be cognisant of this occurring and understand the protections that health practitioners are afforded if making a mandatory notification against a colleague/employer.

The ANMF provides our members with advice and assistance when responding to Ahpra notifications and associated issues and/or outcomes determined as a result of a notification. We acknowledge that recently Ahpra has been making improvements to their notification processes, however, our members continue to report delays in notification matters being actioned, outcomes determined and processes completed.

⁷ Nurses and Midwifery Board of Australia. *Registered Nurse Standards for Practice. Standard 2.9*. Australia: Nurses and Midwifery Board of Australia, 2016.

⁸ Nursing and Midwifery Board of Australia. *Enrolled Nurse Standards for Practice*. Australia: Nursing and Midwifery Board of Australia, 2016.

⁹ Lam, Long W, and Angela J Xu. "Power Imbalance and Employee Silence: The Role of Abusive Leadership, Power Distance Orientation, and Perceived Organisational Politics." *Applied Psychology* 68, no. 3 (2019): 513-46.



Further, ANMF members also experience a lack of continuity when dealing with Ahpra staff involved with notifications when they occur. This results in delays and members having to repeat information to every new officer with whom they speak. Anecdotally, it seems nurses and midwives do not feel the regulator will manage this process efficiently and without significant disruption to, and expectation of, the notifier. These process issues impact nurse's employment and psychological, social and emotional wellbeing. Involvement in an Ahpra notification is often very stressful for nurses, irrespective of their context of practice, therefore it is essential that Ahpra have clear, timely and supportive processes to build trust and to ensure notifications are completed effectively.

Scope of practice

Employers often lack knowledge about the scope of practice of the registered and enrolled nurses they employ. Registered nurses must assess, plan, coordinate and provide safe, quality nursing care. They apply critical thinking and analysis to their practice. Registered nurses are responsible and accountable for the supervision and delegation of nursing care to enrolled nurses and aspects of nursing care to other healthcare workers.

Enrolled nurses must at all times be supervised, directly or indirectly by a named and accessible registered nurse. An enrolled nurse cannot be supervised by a medical practitioner or another enrolled nurse. Although this is outlined in the NMBA's *Position statement on nurses and cosmetic procedures* it is reportedly poorly understood by many employers in cosmetic practice. Just as nurses are required to be aware of the relevant MBA Guidelines for medical practitioners, it should also be a requirement that medical practitioners are familiar with the NMBA *Position statement on nurses and cosmetic procedures*. Medical practitioners should also understand the scope of practice of both a registered nurse and an enrolled nurse, and the NMBA's supervision and delegation requirements for these nurses.

Cosmetic procedures are often driven by volumes of sales and profit, rather than a focus on improved health outcomes. This results in the potential for treatment decisions motivated by financial targets rather than person-centred, best practice care. This is a particular risk for a person with body



dysmorphic disorder, a serious mental illness, who may present for cosmetic procedures.¹⁰

When profit drives practice it may lead to the employer applying pressure on, or directing, nurses' clinical decisions. This may result in the expectation that nurses will work outside their scope of practice.

Informed consent

The NMBA's *Code of conduct for nurses* comprehensively describes the nurse's role and responsibilities in supporting people's right to informed consent. It would be useful to reinforce this information in the NMBA's *Position statement on nurses and cosmetic procedures* to remind nurses of these professional expectations. Further, as outlined above, it is also important for medical practitioners to clearly understand the nurse's professional obligations in relation to informed consent. This detail should be added to the revised MBA Guidelines.

Good governance dictates that the complaints process be articulated by the health practitioner when obtaining informed consent. This information can also be reinforced by the nurse if they are not the health practitioner performing the cosmetic procedure. The ANMF supports the inclusion of an overview of the nurse's responsibility to inform the person receiving care about the complaints process in the NMBA *Position statement on nurses and cosmetic procedures*.

Protected titles

Many members of the public do not fully appreciate the difference in scope of practice between registered and enrolled nurses. When receiving a cosmetic procedure from a nurse, there is an inherent risk that the person will assume the nurse is a registered nurse. The ANMF recommends that the NMBA *Position statement on nurses and cosmetic procedures* advises nurses to ensure the person receiving care is aware of their title as a registered or enrolled nurse prior to the procedure and, upon enquiry by the person, the differences between the two levels of nursing.

¹⁰ O'Keefe, Elissa J, and Robin Curran. "Nursing and People with Cosmetic and Related Concerns." Chap. 21 In *Nursing in Australia*, edited by N Wilson, P Lewis, L Hunt and L Whitehead, 213-20: Routledge, 2020.



Addressing the issues

To address these issues it must be acknowledged that nurses are a growing cohort of the cosmetic procedures workforce. As such, employers who employ nurses to work in cosmetic practice must:

- Be familiar with the NMBA standards for practice, code of conduct, guidelines and decision making framework to ensure nurses can work safely within their scope of practice. Nurses must not be expected to work outside their scope of practice. Nurses' practice must also be supported with organisational policies and guidelines which are consistent with regulatory and legislative requirements.
- Understand and ensure that a registered nurse is available to supervise an enrolled nurse's practice at all times and that a medical practitioner does not have the authority to supervise an enrolled nurse's practice.
- Understand that a nurse's scope of practice focusses on person-centred, evidence-based, best practice care rather than profit. The nurse working in a cosmetic practice who clinically assesses a person and finds the requested procedure is not in the person's best interest or would be detrimental to their mental or physical health must be allowed to use clinical judgement and act appropriately in the best interest of the person, despite the fiscal outcome.
- Acknowledge the inherent power imbalance that exists between employer and employee and respect the professional mandatory obligation of the nurse to report unsafe or unprofessional conduct or professional misconduct of other health practitioners which may include the employer.
- Work toward systems that tackle the fundamental power imbalance that can impede the reporting of poor and/or unprofessional conduct including protection of the nurse who reports an employer.
- Ensure public liability insurance and professional indemnity insurance are openly and honestly disclosed.



Ahpra, the NMBA and the MBA should:

- Ensure systems are in place to protect nurses from retribution when reporting unsafe or unprofessional conduct or professional misconduct.
- Undertake an education campaign to support nurses' and medical practitioners' understanding of their obligations under mandatory notifications requirements.
- Review their compliance role in respect to Section 136 of the National Law and should exercise their capacity to prosecute breaches of this provision.

The ANMF notes that an advisory group/s may be convened throughout key points of this review. We welcome further opportunities to provide feedback and strongly encourage the review panel to appoint nurses to any such groups. The setting in which cosmetic surgery is practiced will almost always include nurses. Feedback from nurses, will of course, enrich the independent review.

Conclusion

Thank you for the opportunity to provide feedback to the Independent review of the regulation of health practitioners in cosmetic surgery commissioned by Ahpra and the Medical Board of Australia. The ANMF has identified a number of issues facing nurses providing care for people undergoing cosmetic procedures. These issues relate to the legal and ethical responsibilities, professional regulation and the power imbalance between health practitioners and the employer and employees in private services. Nurses and their health practitioner colleagues need to be supported to clearly understand their role and obligations while working in this expanding area of practice.