# The Australasian College of Cosmetic Surgery

***Raising Standards, Protecting Patients***

## Submission to the Senate Community Affairs References Committee inquiry into Administration of registration and notifications by the Australian Health Practitioner Regulation Agency and related entities under the Health Practitioner Regulation National Law.

28 June 2021

Dear Sir/Madam,

It has been brought to the attention of the **Australasian College of Cosmetic Surgery (ACCS, College)** that submissions 71 and 76 have been made by the **Australasian Society of Aesthetic Plastic Surgeons (ASAPS)** and **Operation Redress (OR)**, respectively, to the Senate Community Affairs References Committee (the Committee) in its inquiry into the Administration of registration and notifications by the Australian Health Practitioner Regulation Agency and related entities under the Health Practitioner Regulation National Law.

Both submissions contain errors of fact, omission and misrepresentation about the ACCS and could also leave the Inquiry with an incorrect view of cosmetic surgery in Australia. Accordingly, the College considers it is compelled to make rebuttal submissions so as to ensure that the Committee is provided with accurate and reliable information upon which to make its assessment of the matter.

Whilst such rebuttal submissions are by their very nature unavoidably negative, they are followed by a positive submission from the College in accordance with Term of Reference (a) of the Inquiry regarding standards for registration of health practitioners. The submission provides a positive framework for the improvement of patient safety, rather than practitioner protection, for consideration by the Committee. We very much hope this will assist the Committee in its difficult task of attempting to find a solution to the problems that have been identified.

In all the circumstances and notwithstanding the original closing date for submissions of 30 April 2021, permission was granted on 21 June 2021 for the College to make this submission by close of business today, 28 June 2021.

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## INTRODUCTION - COSMETIC SURGERY IN AUSTRALIA

Cosmetic surgery in Australia is an important employer of many highly trained medical professionals and allied health workers. The sector represents a very significant segment of medical activity that delivers significant benefits to Australians and enhances their quality of life. It provides in excess of $1 billion annual economic activity, as a result of which it inevitably attracts a diverse range of vested interest groups.

## 1. The fundamental problem

1. As a relatively new and expanding area of specialised practice, cosmetic medicine and surgery is not one of the surgical specialties recognised by the Australian Medical Council (AMC), as Australian legislation requires that recognition of any new specialty be based upon reducing a 'burden of disease'. By definition, cosmetic medicine and surgery is not based upon disease and therefore cannot currently be recognised as a specialty.

2. Thus, medical practice in this field falls outside the specialist training programs accredited by the AMC and provided by traditional medical and surgical colleges in public hospitals. Further, there is virtually no exposure to cosmetic surgery provided to specialist trainees in the taxpayer funded public hospital system where such training is traditionally undertaken.

3. The AMC highlighted this problem in its 2002 Report of the education programmes of the Royal Australasian College of Surgeons (RACS) in which it estimated that only *'...20 to 30 per cent of positions currently have some time spent in a private consulting or theatre environment although not all of those even would involve cosmetic surgery or medicine.'*[1] Fifteen years later in 2017, the situation remained unchanged. At that time, the equivalent AMC Report[2] regarding the education programmes of RACS and the Australasian Board of Plastic and Reconstructive Surgery, responsible for training plastic and reconstructive surgeons in Australia, stated **that AMC-accredited specialist plastic surgeons have a *'deficit'* in their experience of aesthetic (cosmetic) surgery and qualify with a *'gap in this area of practice.'*** In 2017 the United Kingdom General Medical Council also recognised that qualifications in any given specialty does not imply expertise in cosmetic surgery. Related perspective was recently highlighted in articles published internationally in the Annals of Plastic Surgery[3] and within Australia in The Daily Telegraph[4], Herald Sun[5,6] and The Australian[7].

4. Thus, any doctor, including plastic and reconstructive surgeons, wishing to practise cosmetic medicine and surgery has had no option but to acquire privately organised training on an ad hoc basis. This training varied greatly and was not subject to any quality controls. Some obtained adequate appropriate training whilst others did not. Many have had no training at all in the field.

5. Such lack of formal training was the primary reason the Australasian College of Cosmetic Surgery was formed, as detailed below. Nevertheless, there remains no nationally accredited and easily recognisable system for patients to know whether or not they are in safe hands, or even if the doctor has any training in cosmetic surgery, as any Australian medical practitioner may call themselves a 'Cosmetic Surgeon'. Overall therefore, selecting an appropriately qualified surgeon for a cosmetic surgical procedure can be a complete lottery for patients.

6. Upon this background and in the context of their plastic surgeon members qualifying with a '*deficit*' in their experience of aesthetic (cosmetic) surgery' and with a *'gap in this area of*

*practice",* ASAPS are campaigning, purportedly motivated by patient safety concerns, to persuade the COAG Health Council to prohibit the title 'cosmetic surgeon'. However, ASAPS omit to point out that such action would of course deliver them an effective monopoly.

## 2. A solution

7. In contrast to ASAPS, the ACCS seeks regulation to protect consumers from practitioners calling themselves cosmetic surgeons without essential training, qualifications and recertification. It has therefore proposed to the COAG Health Council a competency-based National Accreditation Standard for cosmetic surgery. Any medical practitioner, including plastic surgeons, performing such surgery under the title 'cosmetic surgeon or aesthetic plastic surgeon' would have to achieve the benchmark Standard and undertake recertification. AHPRA would maintain a Register of such practitioners to whom the title 'cosmetic surgeon or cosmetic/aesthetic plastic surgeon' would then be restricted, thereby protecting the public by practitioner regulation. This would remove confusion for consumers, allowing them to identify competent, safe practitioners and also prevent any monopoly, including that sought by ASAPS. Competition between safe practitioners based on competence, price and service, would benefit and protect patients by improving standards.

8. The proposed National Accreditation Standard is the right thing to do for patient safety, being described by senior health officials as a 'no brainer.' If ASAPS concerns about patient safety were bona fide, they would support it. They do not, instead lobbying hard to prevent it because they seek commercial advantage by manipulating the regulatory reform process to eliminate competent professional competitors who *are* trained in cosmetic surgery. In short, not to protect patients but to protect and enhance their privileged incomes.

9. Having been made aware of the AMC-identified deficiencies in the specialist training of plastic and reconstructive surgeons in Australia, politicians and regulators should not be misled regarding practitioners trained in cosmetic surgery from those who are not. They should also not be misled into creating a cosmetic surgical monopoly for those reconstructive plastic surgeons untrained in cosmetic surgery. The ACCS respectfully suggests that by supporting the solution of a National Accreditation Standard which will protect patients but not protect any particular group of doctors, decision makers will best serve the public interest.

# 3. Rebuttal of submission 71 - Australasian Society of Aesthetic Plastic Surgeons, 30 April 2021.

***Errors of fact, misrepresentation and omission***

***ASAPS' claim 1.*** *'Executive Summary. Every year thousands of patients, mostly women, who seek cosmetic surgery unknowingly risk their lives and livelihoods at the hands of operators who have neither specialist training nor registration but use the title "Cosmetic Surgeon".'*

## Facts

10. Neither specialist training nor registration in Australia has any bearing whatsoever upon training in cosmetic surgery. The Australian Medical Council (AMC) highlighted this deficiency in its 2002 and 2017 Reports[1,2] of the education programmes of the Royal Australasian College of Surgeons (RACS) (the most recent of which includes the Australasian Board of Plastic and Reconstructive Surgery (ABPRS)) that is responsible for training plastic and reconstructive surgeons in Australia. The latest report stated that AMC-accredited specialist plastic surgeons have a '*deficit'* in their experience of aesthetic (cosmetic) surgery and qualify with a *'gap in this area of practice.'*

11. 'Cosmetic Surgeon' is not a protected title under the Health Practitioner Regulation National Law Act 2009 (National Law). That any medical practitioner may call themselves a 'Cosmetic Surgeon' is the very problem that the ACCS is seeking to be addressed by regulatory authorities.

12. ASAPS conflate all practitioners performing cosmetic surgery into two groups – 'plastic surgeons' and 'non-plastic surgeons', irrespective of training and experience in cosmetic surgery. There are in fact three groups comprising:

    (a) ACCS Fellows;

    (b) RACS Plastic Surgical Fellows (who the AMC identified as having a '*deficit*' in their experience of aesthetic (cosmetic) surgery and qualifying with a *'gap in this area of practice')*; and

    (c) other practitioners many of whom may have no formal training, qualification or re-certification in cosmetic surgery.

13. Specialist training / registration is irrelevant in relation to cosmetic surgery for the reasons identified by the AMC (see paragraph 10 above). In contrast, what is critical are essential training, qualifications, competency and recertification, so that confusion for consumers is eliminated, instead allowing them to identify competent, safe practitioners.

14. In this regard, candidates for Fellowship of the ACCS are selected as a result of a formal application process. Since its foundation, the ACCS has promoted and maintained an inclusive approach, welcoming surgeons from a variety of specialty backgrounds. All must be fully registered as medical practitioners with AHPRA and preference is given to candidates who have attained Fellowship of one of the Royal Colleges of Surgeons or an equivalent post-graduate surgical qualification (as determined by the College). All applications must be deemed appropriate and acceptable at the discretion of the College[8].

15. All candidates must have at least five years post-graduate experience including three years of (non-cosmetic) accredited surgical training in posts approved by the College. Whilst special consideration of other experience may also apply in some circumstances and program

requirements may be modified for candidates who can demonstrate appropriate and relevant training, qualifications and experience in cosmetic surgery (also as determined by the College), no Fellowship can be awarded without successful completion of the formal examination process.

16. The ACCS training program provides two years of advanced training in cosmetic surgery during which candidates for Fellowship are required to master a set of skills in consultation, clinical judgement and performance and are subject to direct observation and evaluation prior to undertaking written examinations. Only following successful completion are candidates then invited to attend final viva voce examination. Successful completion of all components lead to award of Fellowship (FACCS). This is the only qualification specific to cosmetic surgery in Australia.

***ASAPS' claim 2.*** *'This persistent dereliction (by AHPRA) has exposed and continues to expose patients to potential serious injury and tragically, at times, death.'*

## Facts

17. There are numerous documented cases of serious injury to patients undergoing cosmetic surgery at the hands of surgeons, including plastic surgeons, untrained in cosmetic surgery.

18. Some examples include:

    (a) Approximately 1,000 women who have recently been granted permission by the New South Wales Supreme Court to launch a class action against The Cosmetic Institute, whose head of surgery was an ASAPS plastic surgeon. The case was brought after two women, aged 21 and 22, suffered life-threatening complications on the operating table at the company's Parramatta and Bondi Junction clinics.

    (b) In Queensland, a patient presented to a Fellow of the ACCS with serious bilateral infection, wound breakdown and implant exposure following bilateral breast augmentation by a plastic surgeon who was a Board member of ASPS. A standard of care repeatedly below that expected of a reasonable surgeon offering breast augmentation surgery, including re-implantation of an infected implant, resulted in the patient requiring urgent surgery by the ACCS Fellow to remove the implants to allow the infection to resolve. The patient made an uneventful recovery and subsequently returned for a successful augmentation with the same ACCS cosmetic surgeon.

    (c) In Victoria, a patient recently had his leg amputated after botched calf-implant surgery at the hands of another plastic surgeon.

    (d) Separately, [redacted] had his registration cancelled under the Health Practitioner Regulation National Law by the New South Wales Civil and Administrative Tribunal. He was not a plastic surgeon but promoted himself as a 'cosmetic surgeon.' He was in fact a registered medical practitioner without any cosmetic surgery qualifications. He was not a Fellow of the ACCS. Notably, the Civil and Administrative Tribunal (NSW) relied upon expert evidence provided by a Fellow of the ACCS to the Health Care Complaints Commission (NSW) and the Medical Council (NSW) in the adverse assessment of [redacted] standard of care.

19. To date, the only known death of a patient undergoing cosmetic surgery in Australia due to surgical error was at the hands of a plastic surgeon. [redacted], a [redacted] liposuction patient, lost her life in 2007 at the hands of a plastic surgeon who she thought was

adequately trained in cosmetic procedures. According to the Victorian coroner, [redacted] death was avoidable, but her surgeon delivered a 'wholly inadequate clinical response' when complications developed. Further, the Coroner specifically noted that 'irrespective of a practitioner's provenance or primary qualifications, there was a need for specific training and experience in performing liposuction surgery.'[9] Consistent with the AMC's findings, the plastic surgeon was unable to evidence formal training in liposuction and the Medical Board subsequently required him to undergo further education.

***ASAPS' claim 3.*** *'ASAPS urges AHPRA to fulfill its obligations under the National Law by:*

*2. enforcing the National Law through the imposition of penalties and/or professional disciplinary action on general health practitioners and organisations who incorrectly use the title "Cosmetic Surgeon" or other words that imply a specialist registration in contravention of the National Law.'*

## Facts

20. Cosmetic surgery is not recognised as a medical specialty in Australia.

21. 'Cosmetic Surgeon' is not a protected title under the National Law.

22. 'Surgeon' is not a protected title under the National Law.

23. Use of the title 'Cosmetic Surgeon' does not therefore imply specialist registration. That specialist knowledge may be inferred by patients is a problem and this is addressed in the solution provided later in this submission.

24. As the AMC have documented, specialist registration in plastic surgery in Australia does not imply training, examination or expertise in cosmetic surgery but rather is characterized by a '*deficit'* in experience of aesthetic (cosmetic) surgery and qualification with a *'gap in this area of practice.'*[2] Again, the mistaken inference by patients that specialist registration in plastic surgery guarantees training and expertise in cosmetic surgery is also addressed in the solution provided later in this submission.

***ASAPS' claim 4.*** *'1. Patients and the registration of Specialist Plastic Surgeons*

*Members of the ASAPS are Specialist Plastic Surgeons who are registered as specialists in the recognised discipline of Plastic Surgery by the Australian Health Practitioner Regulation Agency (AHPRA). Specialist Plastic Surgeons are trained to the highest Australian standards by the Royal Australasian College of Surgeons (RACS). The RACS is accredited and monitored by the Australian Medical Council (AMC). The AMC is the national standards body for medical education and training. AMC's purpose is to ensure that the standards of education, training and assessment of the medical profession promote and protect the health of the Australian community.'*

## Facts

25. The specialist regulator, the Australian Medical Council (AMC), reported in its Accreditation Report of 2017 that plastic surgeons trained by the Royal Australasian College of Surgeons (RACS) have *'a deficit'* in their experience of aesthetic (cosmetic) surgery and qualify with a '*gap in this area of practice*'.[2] This is because cosmetic surgery falls outside reconstructive plastic surgery training in public hospitals where cosmetic procedures are not performed.

Accredited specialist plastic surgeons therefore qualify in Australia with little or no training in cosmetic surgery. So damaging was the AMC's finding to ASPS' political narrative that it lobbied to have the report revised. The AMC refused.[10] The Australasian College of Cosmetic Surgery, the only organisation which *has* provided specific training, examination and re-certification in cosmetic surgery for over 20 years, has only accredited a few plastic surgeons who *can* demonstrate appropriate training and pass its examination.

***ASAPS' claim 5.*** *'2. Patients and the non-registration of "Cosmetic Surgeons".*

*…The unregulated use of titles such as "Cosmetic Surgeon" that are not recognised by AHPRA serve to deceive and confuse the public…The impact of this exploitative behaviour is disproportionately manifesting as adverse outcomes for women…'*

## Facts

26. See 'Facts' above addressing ASAPS' claim 3. As neither a title 'Cosmetic Surgeon' (nor speciality of cosmetic surgery) is recognised under the National Law, use of such title in its own right cannot properly be inferred as being deceptive.

27. Notwithstanding, the ACCS acknowledges that consumers are often confused by the fact that any Australian medical practitioner may call themselves a 'Cosmetic Surgeon', irrespective of any training in cosmetic surgery they may or may not have undertaken. It is to address this very problem that the ACCS proposed to COAG Health Council in January 2021 the development of a National Accreditation Standard in cosmetic surgery requiring essential training, qualifications, competency and recertification in cosmetic surgery, along with a Register of Cosmetic Surgeons detailing those who have met and maintain the Standard. ASAPS refuse to support this.

28. Numerous cases of adverse outcomes to women undergoing cosmetic surgery exist at the hands of surgeons of all types, untrained in cosmetic surgery including plastic surgeons. See paragraph 18 addressing **ASAPS' claim 2**.

***ASAPS' claim 6.*** *'ASAPS is extremely concerned that Australian patients continue to be misled by poorly trained medical practitioners with no specialist training nor registration who self-label as "Cosmetic Surgeons". This facilitates the deception that these practitioners are registered surgical specialists. ASAPS members, who are registered as Specialist Plastic Surgeons, are seeing the adverse impacts of this misleading activity every day as they form the front line of practitioners called upon to correct the frequent surgical failures… Two years ago, ASAPS conducted a member survey to obtain a nationwide snapshot of the problem… In aggregate, more than 85% of members surveyed reported to ASAPS having treated numerous patients in the past 12 months with complications following invasive surgery performed by doctors who were not registered as Surgical specialists…In fact, research conducted by ASAPS reveals that 81% of Australians believe that if a practitioner uses the title "Cosmetic Surgeon" then that practitioner must be a registered specialist surgeon.'*

## Facts

29. See 'Facts' above addressing ASAPS' claim 4. In short to reiterate, the specialist regulator, the AMC recently found that specialist training and registration in Australia in plastic surgery does not imply training, examination or expertise in cosmetic surgery but rather is characterized by

a '*deficit*' in experience of aesthetic (cosmetic) surgery and qualification with a 'gap in this area of practice.'[2]

30. See above addressing ASAPS' claim 1 at paragraphs 12-16 and ASAPS' claim 5 at paragraphs 26.

31. ACCS Fellows are regularly called upon to correct the work of Australian plastic surgeons untrained in cosmetic surgery. In a contemporary survey of ACCS Fellows in early 2021, it was found that 94% had been consulted by patients to address operative problems following cosmetic surgery undertaken by Australian qualified specialist plastic surgeons holding FRACS (Plast) and 87% had undertaken revisional surgery on patients to address operative problems following cosmetic surgery undertaken by such Australian qualified specialist plastic surgeons.

32. Further, in an earlier survey performed by Galaxy Research[11], 97% believed that doctors should have to pass an exam and get a 'licence' in cosmetic surgery before being allowed to practise it. 98% believed that patients have the right to know if the doctor performing their cosmetic surgery procedure is trained *specifically* (emphasis added) in cosmetic surgery.

***ASAPS' claim 7.*** *'ASAPS is also concerned that use of the title "Cosmetic Surgeon'' and other indicia implying specialist registration by members of organisations such as the Australasian College of Cosmetic Surgery (ACCS). When the ACCS refers to its members on its website and in other public forums it creates an illusion that its members have been comprehensively trained in cosmetic surgery and implies that those same members possess specialist, if not superior, skills in cosmetic surgery.'*

## Facts

33. ACCS Fellows *are* comprehensively trained in cosmetic surgery. However, there is not and cannot be any representation on either its website or in other public fora that suggests specialist status as cosmetic medicine and surgery is not one of the surgical specialties recognised by the Australian Medical Council. That is a national problem (see **ASAPS' claim 8** for further details.)

34. However, that does not mean that the ACCS cannot train medical practitioners in cosmetic medicine and surgery. The lack of available training in cometic medical practice was in fact the very reason the ACCS and its predecessor, the Australian Association of Cosmetic Surgery, came into existence. As a consequence, the ACCS has trained medical practitioners in the field of cosmetic medical practice for almost 3 decades now and arguably to the highest level in Australia. It remains the only professional organisation in Australia which provides education and training of medical doctors leading to Fellowship specifically in cosmetic medicine and surgery. It is also the only organisation that undertakes specific recertification in cosmetic medical practice. To become an ACCS Fellow, doctors must typically complete a minimum of 12 years of medical and surgical education and training and demonstrated competency specifically in cosmetic medicine and surgery.

35. The primary goal of the ACCS is to ensure the safe provision of cosmetic medicine and cosmetic surgical procedures to the Australian general community through the supply of appropriately trained and certified health care practitioners. As has been demonstrated by the AMC's findings, it is in fact ASAPS which '*creates an illusion*' that all plastic surgeons are comprehensively trained in cosmetic surgery whereas to the contrary, only the small minority who seek post-qualification specialist private instruction are so trained.

***ASAPS' claim 8.*** *'It is important to note that despite previous efforts, the ACCS has never achieved a sufficient standard to achieve accreditation as a training body by the AMC.'*

## Facts

36. In 2008 the ACCS was invited to make an official application to the Australian Medical Council (AMC) to seek recognition of cosmetic medicine and surgery as a new specialty.[12] This has on occasion been misunderstood as the College seeking specialty recognition for itself, which was not the case. Similarly, whether intentionally or unintentionally, ASAPS have fallen into error about this once again in their current submission to this Senate Committee.

37. In fact, the relevant submission to the AMC was entitled **'Application to the Australian Medical Council for recognition of a medical specialty - cosmetic medical practice'** as the College believed this best represented the interests of *all* Members encompassing both medicine and surgery. If successful, it would have removed the confusion about the training and skills of different types of doctors offering cosmetic services and allowed *any* training provider (including ASPS, ASAPS and RACS) to apply to have their qualification recognized for accreditation in the new specialty. Ultimately, the application was unsuccessful since, for cosmetic medical practice, it remains not possible to satisfy the criterion of reduction in the '*burden of disease*' set down by the AMC which must be met for the recognition of any new specialty. It should be noted, consistent with their concerns about protecting themselves ahead of protecting patients, that ASPS, ASAPS and RACS all opposed the creation of a new specialty claiming that they were trained in cosmetic surgery and it was their domain.

38. Notwithstanding ASAPS' error detailed above, in relation to its additional allegation about sufficiency of 'standard' achieved by the ACCS', it is worth noting ACCS functionality within the national health care delivery framework. Relevant examples include, but are not limited to, ACCS surgical Fellows representing the College in professional activities such as:

    (a) the Australian Breast Device Registry (ABDR) – a Commonwealth Government health initiative that records information on surgeries involving breast devices such as breast implants. Managed by Monash University, the ABDR is endorsed by the major surgical societies in Australia.[13]

    (b) the Medicare item number review group.

    (c) the out of pocket Medicare expenses taskforce.

    (d) consultation by the Health Departments of SA, WA, Vic, NSW, ACT and Qld regarding the regulation of private facilities in cosmetic surgery.

    (e) the ethical health care delivery framework.

    (f) membership of the Therapeutic Goods Administration expert working group on Breast-Implant Associated Anaplastic Large Cell Lymphoma (BIA-ALCL) and related scientific publications in the international peer reviewed medical literature.[14,15]

    (g) assessment of cosmetic surgery complaints for AHPRA and the relevant complaints bodies.

    (h) the Butterfly Foundation in relation to the issue of Body Dysmorphic Disorder.

39. The implication of such diverse expertise of ACCS Fellows is self-evident.

***ASAPS' claim 9.*** *'The State of California makes legislative amendments to protect patients.*

*'In the Australian context, AHPRA would be the equivalent of the Medical Board of California, The Australian Medical Council (AMC) would be equal to the ACGME and the American Board of Medical Specialities would correspond to all the AMC accredited Specialist Colleges in Australia.'*

## Fact

40. Neither a title 'Cosmetic Surgeon', nor a speciality of cosmetic surgery, is recognised under National Law. The statements made by ASAPS under the above section are hyperbole which bear no relation to Australian legislation. (Also see Fact provided in relation to ASAPS' claim 8.)

***ASAPS' claim 10.*** *'a. ASAPS and AHPRA and "Cosmetic Surgeons"*

*'The issues around the adverse health outcomes from reckless use of the term "Cosmetic Surgeon" has been raised with AHPRA on numerous occasions. AHPRA has failed to address the issue that the incorrect use of professional titles, which exploits the information asymmetry between deceptive medical practitioners and a vulnerable patient population, clearly breaches the Health Practitioner Regulation National Law Act 2009.'*

## Fact

41. Many Australian plastic surgeons, including members of ASAPS, refer to themselves as 'cosmetic plastic surgeons' despite complaining about the title 'cosmetic surgeon.' This is in context of ASAPS omitting to mention that the AMC have identified that accredited specialist plastic surgeons have a '*deficit*' in their experience of cosmetic surgery and qualify with a *'gap in this area of practice.'* Accordingly, ASAPS and some plastic surgeons may justly be accused of holding out in regard to purported expertise in cosmetic surgery thereby providing a perfect example of the very 'information asymmetry' and 'deceptive' conduct of which ASAPS now accuse others in breach of the Health Practitioner Regulation National Law Act 2009.

***ASAPS' claim 10.*** *'Additionally, ASAPS has outlined the issue of unregulated and misleading use of the term 'cosmetic surgeon' and its damage to public health and patient care to Commonwealth and State Health regulators for the better part of two decades. Sadly, this has been passed between Federal and State health authorities during that period, and little to no action has been taken.'*

## Facts

42. For any reform process to succeed to the benefit of patients, vested interests and structural bias of representative stakeholder groups must be recognised and prevented. This is to ensure that the mistakes and failures of the past, as demonstrated by the disbanding of the NSW Cosmetic Surgery Credentialing Council (CSCC)[16] recommended by the 1999 Walton Cosmetic Surgery Inquiry[17], are not repeated. In relation to that position, approaching 20 years ago on 30 July 2003, [redacted], Chairman wrote to the Director General of NSW Health stating *'It is my considered opinion that the Cosmetic Surgery Credentialing Council will be unable to reach a consensus on how to credential Category 1 provides of cosmetic surgery, that is, the credentialing of practitioners performing invasive cosmetic procedures…Regrettably, the*

*situation has now arisen where the ongoing viability of the CSCC has stalled due to differing opinions…I believe that the very purpose of the CSCC can no longer be sustained…'*[18]

43. In other words, the partisan position of ASAPS, now displayed in their 2021 submission to this Committee, remains steadfastly unchanged over two decades, despite the objective findings of the AMC report about their member's "deficit" in training and qualification to undertake the safe practice of cosmetic surgery in Australia.

***ASAPS' claim 12**. 'However, AHPRA does have the power and duty to protect patients. AHPRA can enforce a titling regime that will ensure patients are empowered to make informed choices. Patients' understanding of the skills and expertise of their medical practitioner is powerfully embedded in the titles used by those practitioners. This is exactly why the issue of titling is so important.'*

## Facts

44. The ACCS entirely agrees. To best protect patients, the ACCS has requested that Australian governments regulate and restrict the use of the title 'Cosmetic Surgeon' and allow its use only by those practitioners who can demonstrate acceptable training and qualification by examination in this field in conjunction with meeting ongoing CPD requirements. This would be complemented by the formation of a Register of such surgeons, administered independently by AHPRA (and on a cost-neutral, 'user pays' basis), thereby facilitating effective regulation. The College suggests that such action is appropriate not only to promote patient safety, by ensuring the maintenance of clinical standards and professional conduct, but also to provide a mechanism for the public to be able to evaluate the training and experience of individual practitioners.

45. Only two groups of practitioners might be anticipated to object to the implementation of a national Register of such competent providers of cosmetic surgery. **Firstly**, medical practitioners performing cosmetic surgical procedures who do not meet the required standard. **Secondly**, medical practitioners (or their craft-group representatives) who seek to achieve a monopolistic commercial advantage by manipulating the regulatory reform process to eliminate competent competitors[19].

46. The ACCS reiterates that, in respect to the latter, enabling patients to make informed and safe choices from a diverse range of accredited and competent providers should be the fundamental objective of any reform process. The College also notes that ASAPS refuse to countenance the proposal, which would of course require their members to reach the same objective, competency-based National Accreditation Standard in cosmetic surgery.

47. It is perhaps trite to note that allowing one craft group to create a monopoly over the provision of certain health procedures is antithetical to the interests of consumers/patients and to the provision of safe medical services.

***ASAPS' claim 13**. 'It is clear from the text of the Act that the intention of the State and Territory Parliaments was to protect patients from being deceived by false and misleading titles. Practitioners*

*who call themselves "Cosmetic Surgeons" and organisations such as the ACCS who call their members "Cosmetic Surgeons" are clearly in breach of section 118 of the National Law.'*

## Facts

48. The title 'Cosmetic Surgeon' is neither recognised nor protected under the National Law.

49. The title 'Surgeon' is neither recognised nor protected under the National Law.

50. In light of i) and ii), it is a specious suggestion that 'Cosmetic Surgeon' or 'Surgeon' indicate specialist status. They do not and accordingly, cannot therefore be inferred to be 'false' nor 'misleading' titles.

51. Despite i) – iii) above, ASAPS submit that the title 'Cosmetic Surgeon' when used by those who are not one of their members is 'deceptive,' 'false' and 'misleading.' ASAPS claims that 'cosmetic surgeon' is a 'made up title' but conveniently overlook that 'cosmetic (or aesthetic) plastic surgeon' is no different. In that regard, ASAPS have no difficulty in relation to their members referring to themselves as a 'cosmetic (or aesthetic) plastic surgeon' despite the objective findings of the AMC report. That report detailed clearly that AMC-accredited specialist plastic surgeons in Australia have a '*deficit'* in their experience of cosmetic surgery and qualify with a *'gap in this area of practice.'* In light of this, it must be considered that it is actually the conduct of ASAPS' members which is 'deceptive,' 'false' and 'misleading'.

***ASAPS' claim 14**. 'AHPRA has not been willing to acknowledge that specialist registration is implicit in the fabricated title "Cosmetic Surgeon" and that its use by non-specialist practitioners is a deliberate attempt to deceive patients into thinking that they are registered specialists. This constitutes a flagrant breach of section 118.'*

## Facts

52. AHPRA is correct. For the reasons detailed at paragraphs 48-50 in response to **ASAPS' claim 13**, Specialist registration is not implicit in the title 'Cosmetic surgeon'.

53. However, specialist registration is implicit in the title 'Cosmetic plastic surgeon' despite the existence of documented evidence from the AMC that reconstructive specialist plastic surgical training in Australia does not include training and expertise in cosmetic surgery. See paragraph 51 in response to **ASAPS' claim 13**.

***ASAPS' claim 15**. 'b. ASAPS and non-specialist proceduralists.*

*ASAPS acknowledges that many medical practitioners will and should carry out surgical and other procedures during their careers. The issue that needs redress, however, is the holding out to the public that the practitioner is specialist…It is important to note that ASAPS recognises the invaluable contribution made by General Practitioners to the welfare of patients in non-metropolitan communities and to this end, they must not be disenfranchised or disadvantaged by any legislative or regulatory decisions.'*

## Facts

54. In light of the AMC report, which details that specialist accreditation in plastic surgery in Australia does not include or imply training and expertise in cosmetic surgery, it is actually

plastic surgeons who may be accused of holding out to the public that they are a specialists in cosmetic surgery. Their specialist plastic surgical qualification does not represent such training and does not automatically encompass the practice of cosmetic surgery. To claim that it does grossly misrepresents the truth.

55. ASAPS' position must be called out for what it is – a simple attempt to create a monopoly for the benefit of its members in metropolitan areas by creation of a cartel in cosmetic surgery. This, whilst simultaneously appearing to give the impression of not creating difficulties for regulatory authorities in regard to practitioners in non- metropolitan communities where cosmetic surgery is not undertaken in significant numbers. This specious distinction between metropolitan and non-metropolitan areas demonstrates that the ASAPS submission is motivated by the desire to create a monopoly. Inherent in this submission is that rural and regional patients do not need to have the same level of protection to metropolitan patients. ACCS expects patients in rural and regional areas would strongly disagree. The only reason for this distinction is that more high net worth patients (those most likely to seek cosmetic procedures) reside in metropolitan areas – the market ASAPS wishes to monopolise.

***ASAPS' claim 16**. 'c. Implications and results for patients from AHPRA "non or slow action" on breaches due to use of "fabricated titles".'*

## Patient 1, Gold Coast, Queensland

## Facts

56. Due to the nature of current breast implant manufacture, it is most unlikely that a prosthesis would 'burst' in the weeks following implantation surgery. Further, post-operative infection is a well-established risk of any surgery, irrespective of practitioner type. It does not necessarily imply any fault, wrongdoing or negligence on the part of the surgeon as it may be caused by a multitude of variables. Factual accuracy needs to be established in this case relied upon by ASAPS. Accordingly, ASAPS ought be required to submit corroborating evidence to the Committee for scrutiny in order to substantiate such claims.

***ASAPS' claim 17**. 'c. Implications and results for patients from AHPRA "non or slow action" on breaches due to use of "fabricated titles".'*

## Patient 2, NSW

## Facts

57. No breast implant is a lifetime device and a range of complications are very common, of the order of 20% at 10 years. As a consequence, it is not necessarily surprising that 'several years after her surgery' this patient developed problems. That does not necessarily imply 'damage caused by her original operation.' Again, factual accuracy needs to be established in this case relied upon by ASAPS. Accordingly, ASAPS ought be required to submit corroborating evidence to the Committee for scrutiny in order to substantiate such claims.

58. ASAPS report a cost of $52000 for *'three subsequent reconstructive surgeries.'* The ACCS submits the Committee ought consider such claim in context of the dangers of regulatory authorities creating the aformentioned cartel for ASAPS' members. By way of example of the implications

of such cartel behaviour is a case of cosmetic breast surgical complications at the hands of two Australian plastic surgeons - the first a member of ASAPS; the second a member of the Australian Society of Plastic Surgeons (ASPS). Under these two plastic surgeons, a young woman underwent breast augmentation using PIP breast implants (since banned), followed by complications including asymmetry, pain, 'uniboob' deformity and failed revisional surgery. A third plastic surgeon and member of both ASPS and ASAPS advised her that he was the *'only surgeon in Australia'* capable of fixing her breasts. He reportedly quoted $1800 to complete a form and $40000 to fix his plastic surgical colleagues' work. The patient declined and following successful staged reconstructive surgeries in the practice of ACCS Fellows, she is now a restored, happy young woman.

59. As the AMC report demonstrates, specialist practitioner status in reconstructive plastic surgery bears no more relationship to training, expertise and qualification in cosmetic surgery than for any other specialists - for example Oral and Maxillofacial Surgeons. Again, factual accuracy needs to be established in the case relied upon by ASAPS.

***ASAPS' claim 18**. 'c. Implications and results for patients from AHPRA "non or slow action" on breaches due to use of "fabricated titles".'*

## Patient 3, Tasmania, (surgery in Queensland)

## Fact

60. [redacted] was a self-promoted 'cosmetic surgeon' who was a medical practitioner without any cosmetic surgery qualifications. He was not a Fellow of the ACCS – a fact which has been conveniently omitted from ASAPS' submission. As documented earlier, the Civil and Administrative Tribunal (NSW) in fact relied upon expert evidence provided by a Fellow of the ACCS to the Health Care Complaints Commission (NSW) and the Medical Council (NSW) in the adverse assessment of [redacted] standard of care. It is exactly this type of practitioner who would be prevented from undertaking cosmetic surgery following implementation of the ACCS' proposed National Accreditation Standard in cosmetic surgery and AHPRA-administered Register of Cosmetic Surgeons. ASAPS oppose this proposal and establishment of the Register.

***ASAPS' claim 19**. '3. Recommendations*

*ASAPS urges AHPRA to fulfill its obligations under the National Law by:*

*2. enforcing the National Law through the imposition of penalties and/or professional disciplinary action on general health practitioners and organisations who incorrectly use the title "Cosmetic Surgeon" or other words that imply a specialist registration in contravention of the National Law.'*

## Facts

61. See Facts in response to ASAPS' claims 1, 3, 5-7, 10 and 12-15.

# 4. Rebuttal of submission 76 - Operation Redress, April 2021

## Errors of fact, misrepresentation and omission

***Operation Redress Claim 1.*** *'The research triggered our interest in a group of cosmetic surgeons who work under the same banner around Australia. We have chosen not to identify them, but to use their conduct as a case study.'*

## Facts

62. Operation Redress is not a regulatory authority. It comprises two private individuals, one of whom is Mr Michael Fraser.

63. [redacted]

***Operation Redress Claim 2.*** *'The conduct we have observed and that others have alleged with this particular group of doctors appears to be egregious. Our concern with making a complaint to the AHPRA prosecutions team is that it would not be handled properly, and they would potentially inform the doctors prior to investigating, enabling the potential for them to cover their tracks, destroy evidence and intimidate potential witnesses and victims.'*

## Fact

64. AHPRA is a national regulatory body with power devolved from government. It is reputed to conduct itself at all times as an establishment body in accordance with due process and the National Law. The suggestions made by Operation Redress against it are as outrageous as they are baseless. The ACCS acknowledges and respects the difficulties faced by AHPRA in administering the current system. AHPRA remains the proper authority to which any complaints should be made for investigation, whether or not considered 'egregious,' for the safety and protection of the public.

***Operation Redress Claim 3.*** *'Some of the Alleged Conduct.'*

## Fact

65. In relation to any and all such complaints, see **Fact** in response to **Operation Redress' claim 2**. Further, it is notable that some of the complaints made by Operation Redress are equally applicable to ASAPS' plastic surgeons, yet have not been mentioned. For example, in relation to advertising and social media, psychology Professor Emeritus Nichola Rumsey delivered a *'stern rebuke'* to ASAPS plastic surgeons at their 2018 Symposium and said she was *'..."deeply uncomfortable" with the advertising and social media marketing plastic surgeons engaged in.'*[21] Operation Redress make no mention of this.

***Operation Redress Claim 4.*** *'Unfortunately, cosmetic surgeons have shown that self-regulation is out of the question. The colleges and industry groups are not adequately tackling the issue of cosmetic surgery advertising on social media. There is currently limited oversight occurring, and in our opinion the risk to the public is too great to ignore. We do not want a situation where the public health system is overrun because cosmetic surgery has gone poorly, and people who would otherwise not seek out cosmetic enhancements are falling victim to commercially-driven cosmetic surgeons.'*

## Facts

66. Certainly, consumers need greater protection as currently, any medical practitioner can call themselves a 'cosmetic or aesthetic surgeon,' irrespective of training or specialist title. There are **three** groups who do so, comprising ACCS Fellows, RACS Plastic Surgical Fellows (who the AMC identified as having a '*deficit'* in their experience of cosmetic surgery and qualifying with a *'gap in this area of practice')* and other practitioners many of whom may have no formal training, qualification or re-certification in cosmetic surgery. [redacted] is an example of the latter group - a self-promoted 'cosmetic surgeon' who was in fact a medical practitioner without any cosmetic surgery qualifications.

67. The Australian Association of Cosmetic Surgery was established in 1992 and succeeded by the Australasian College of Cosmetic Surgery in 1999. It is a not-for-profit, multi-disciplinary fellowship-based body of general surgeons, cosmetic surgeons, plastic surgeons, maxillofacial surgeons, dermatologists, ear nose and throat surgeons, ophthalmologists and other doctors who practise cosmetic medicine and surgery. The College has a medical faculty that trains and accredits cosmetic physicians and a surgical faculty that trains and accredits cosmetic surgeons. The ACCS provides recertification of Fellows by means of annual Continuing Professional Development in addition to educational activities including training workshops and journal club events.

68. The primary goal of the ACCS is to ensure the safe provision of cosmetic medicine and cosmetic surgical procedures to the Australian general community through the supply of appropriately trained and certified health care practitioners.

69. The ACCS supports regulation to protect consumers from practitioners calling themselves cosmetic surgeons without essential training, qualifications and recertification and has therefore proposed to the COAG Health Council a competency-based National Accreditation Standard for cosmetic surgery. To reiterate, any medical practitioner, including plastic surgeons, performing such surgery under the title 'cosmetic surgeon or aesthetic plastic surgeon' would have to achieve the benchmark Standard and recertify. AHPRA would maintain a Register of such practitioners to whom the title 'cosmetic surgeon or cosmetic/aesthetic plastic surgeon' would then be restricted, thereby protecting the public by practitioner regulation. This would remove confusion for consumers, allowing them to identify competent, safe practitioners and also prevent any monopoly, including that sought by ASAPS. Competition between safe practitioners based on competence, price and service, would benefit and protect patients by improving standards.

70. A National Accreditation Standard is the right thing to do for patient safety, being described by senior health officials as a 'no brainer.'

***Operation Redress Claim 5.*** *'Educational material about how registered health professionals should behave seems to be in great supply, yet due diligence on registrations and memberships seems to be inadequate. For example, The Australasian College of Cosmetic Surgery published a media release in*

*2019: "Raising standards, Protecting Patients...Brazilian Butt Lift: Advice to patients – Don't do it!...BBL is the cosmetic procedure with the highest risk of death." Yet one of their current fellows heavily promotes this kind of procedure and does many of them. There is quite a bit of conduct that is unlikely to tick the box under their code of conduct, yet this appears to have no effect on the particular doctor's fellowship.'*

## Facts

71. In June 2009 the ACCS welcomed the Australian Competition and Consumer Commissions' (ACCC) recognition of the public benefits provided by the ACCS's Code of Practice. This was the first Code of Conduct for cosmetic medical or surgical practice and the first medical practitioner code to be authorised by the ACCC. The Code of Practice, which was authorised after extensive public stakeholder consultation, provides patients with greater protection and requires all College members to meet exemplary standards. Relevantly, in the ACCC submission process RACS, ASPS and ASAPS all made submissions against the Code of Conduct for cosmetic practice even though (or perhaps because) at the time they did not have one of their own.

72. In conjunction with its Code of Practice and Constitution, the College also has a robust complaints mechanism in place to address any complaint of improper conduct/practice against its Fellows.

73. No complaint in relation to the matter allegedly identified at Operation Redress Claim 5 has been received by the College. If such a complaint were to be received, due process would be followed in accordance with the Code of Practice and Constitution of the College. Notwithstanding the College believes that Operation Redress may in fact be mistakenly referring to a Doctor who is neither a Fellow nor Member of the College, the College cannot be expected to act in the absence of having received a formal complaint naming an individual against whom an allegation is being made. Further, no College has the jurisdiction to prevent a practitioner from performing a specific procedure unless it has been banned by the relevant statutory body.

## 5. Submission of the Australasian College of Cosmetic Surgery in relation to the terms of reference (a) of the Senate Committee inquiry:

The current standards for registration of health practitioners by the Australian Health Practitioner Regulation Agency (AHPRA) and the National Boards under the Health Practitioner Regulation National Law (National Law)

### *a) ACCS Submission on the reform of the National Law*

74. The Commonwealth of Australian Governments Health Council (COAG HC) recently proposed to reform the National Law in relation to protection of patients regarding cosmetic surgery.

75. Accordingly, on 4 January 2021, the ACCS made a submission to assist the Health Council in strengthening public protection under the Health Practitioner Regulation National Law. The ACCS' submission aimed to facilitate greater knowledge and awareness amongst Australia's policymakers concerning both:

    (a) The reasons reform is needed - to improve public safety and eliminate confusion about which medical practitioners are appropriately trained to provide cosmetic surgical procedures; and

    (b) A pragmatic solution which would address effectively the reasons for reform.

76. The proposed solution is encapsulated in the following recommendations:

    (a) Establishment of a register of Cosmetic Surgeons (the Register) to be maintained by AHPRA.

    (b) Development of an objective, transparent, competency-based points system of accreditation whereby only practitioners who have adequate training, qualifications and experience can be placed on the Register.[22] The value of such a points-based accreditation system is that it would be objective, transparent and competency-based and would exclude any medical practitioner with minimal formal surgical training and unassessed/unaudited practice-based experience. It is important to appreciate that such an approach would capture inadequately trained practitioners who cause harm including for example recent high-profile cases that have resulted in class actions (such as TCI) and also rogue lone operators (such as [redacted]). Further, it would allow patients to identify such inadequately trained practitioners whilst also ensuring that any trained, competent practitioner would have a route to becoming registered on the Register of Cosmetic Surgeons.

    (c) Development of an agreed mechanism to monitor Continuing Professional Development of these practitioners specific to this clinical scope of practice. The ACCS has suggested that for a practitioner to maintain their entry on the Register of Cosmetic Surgeons, they must fulfill criteria comprising:

        (i) Current registration as a medical practitioner with AHPRA

        (ii) Biennial maintenance of cosmetic-surgery specific CPD

(iii) Maintenance of appropriate cosmetic-surgery specific recency of practice

(iv) Maintenance of appropriate cosmetic-surgery specific medical indemnity insurance

(d) Regulation and restriction of the use of the title 'Cosmetic Surgeon' to those practitioners who can demonstrate acceptable training and qualification by examination in this field by having met the points requirement, are on the Register and keep up to date with their ongoing CPD requirements.

77. Consistent with the existing National Credentialing Standard for Medical Practitioners[23], the proposed Register of credentialed Cosmetic Surgeons would be based on competency and open to **all** registered medical practitioners who meet the competency requirements. The College suggests that such action is appropriate not only to promote patient safety, by ensuring the maintenance of clinical standards and professional conduct, but also to provide a mechanism for the public to be able to evaluate the training and experience of individual practitioners. This will circumvent any vested interests of surgical lobby groups who may wish to prevent patients from being protected by a National Standard, or similar benchmark, applicable to all practitioners. Previous attempts to enact reforms to protect cosmetic surgery patients in Australia have failed in part because of such vested interests (see Fact in response to ASAPS' claims 10). The ACCS submits that enabling patients to make informed and safe choices should be the objective of any reform process.

78. The ACCS has committed to work across all State and Territory jurisdictions to develop and finalise the proposed legislation that will deliver upon the HC's announcement to strengthen public protections and to provide better information to all Australians.

### *b) Risk to patients and the wider public of formation of a commercial monopoly*

79. It is critical that restriction of the title of Cosmetic Surgeon should not be a mechanism for any group(s) of practitioners to establish or to maintain a commercial monopoly in the sector. Competition is essential in all elements of human endeavor and this needs to be encouraged in a safe manner. In this context, Australian Governments should be cognisant of the vested interests inherent in representations from each of the various groups who practise in the field.

80. Access to the title Cosmetic Surgeon, if restricted, should be open to any medical practitioner who can demonstrably meet the agreed standard, irrespective of their medical background.

81. As detailed above, the ACCS therefore proposes the development of a new objective, transparent, competency-based system and standard to identify medical practitioners who have relevant training, qualifications, experience and recertification, specifically in cosmetic surgical procedures. Importantly, any such standard developed should **not** require as a threshold criterion any particular qualification or membership of any particular professional organisation such as the ACCS, RACS, ASPS, or ASAPS.

### *c) Summary*

82. The fundamental aim of the current reform process to the National Law is to ensure that an appropriate accreditation system with accompanying policies, procedures and administrative process is implemented on a cost-neutral basis in order to ensure that regulatory change puts patient safety first.

83. For any patient-focused accreditation model to succeed, including that proposed by the ACCS in early 2021, vested interests and structural bias of representative stakeholder groups must be recognised and prevented. This is to ensure that the mistakes and failures of the past are not repeated (see **Fact** in response to **ASAPS' claim 10**).

84. This Senate Inquiry Committee ought to be alive to and guard against being manipulated in its role by those seeking to achieve commercial advantage from the reform process.

85. If patients are to be genuinely protected, any terms of reference for an accreditation model must ensure that no group is over-represented and individual stakeholder self-interest is not allowed to subvert the objective assessment of a practitioner's competence. This is a critical concept in order to create the environment in which the National Law can be developed and implemented.

86. Further, prevention of monopolistic conduct in the determination of policy and legislative outcomes of the reform process is also essential in order to guarantee that no single representative body, College or craft group may determine and/or adjudicate the qualifications and accreditation of practitioners who are permitted to undertake cosmetic surgery in Australia. This is consistent with the existing National Credentialing Standard for Medical Practitioners[23] and will avoid the risks to patient safety that such a monopoly would create.

87. Upon such background, the Committee ought be aware that annually, cosmetic surgery in Australia is worth $1bn. It is commonly accepted that cosmetic plastic surgeons can earn more than $2m per year. The Australian Society of Plastic Surgeons (ASPS) and ASAPS are 'pay to join' private organisations. Neither is a regulatory authority nor government agency. They are vested-interest lobby groups seeking to monopolise the cosmetic surgery market by restricting provision of services and related income to their membership. In this context, ASPS previously publicised it existed *'…to represent the economic and political interests of those plastic surgeons who choose to belong to it…'*[24]

88. ASPS and ASAPS are currently campaigning, purportedly motivated by patient safety concerns, to persuade the COAG Health Council to prohibit the title 'cosmetic surgeon'. However, ASAPS omit to point out that such action would of course deliver them an effective monopoly.

89. By such title prohibition, ASPS/ASAPS' seek not public protection, rather preservation and expansion of their exclusive $2m club. However, their campaign is detrimental to public interest, both in relation to potentially negative effects for patients' individual safety and by the creation of a monopoly. It is in the public interest that it be called-out. Fortunately, ASPS/ASAPS' three main campaign arguments are easily dismantled with facts.

90. The first is that only specialist plastic surgeons are trained, qualified and safe to perform cosmetic surgery. This is false. Specialist plastic surgeons are in fact, not trained and qualified in cosmetic surgery upon registration as specialists with AHPRA. The specialist regulator, the AMC, recently reported that plastic surgeons trained by the Royal Australasian College of Surgeons (RACS) have *'a deficit'* in their experience of cosmetic surgery and qualify with a '*gap in this area of practice*'. This is because cosmetic surgery falls outside reconstructive plastic surgery training in public hospitals where cosmetic procedures are not performed. Accredited specialist plastic surgeons therefore qualify with little or no training in cosmetic surgery. So damaging was the AMC's finding to ASPS' political narrative that it lobbied to have the report revised[10]. The AMC refused. The ACCS, the only organisation which *has* provided specific training, examination and re-certification in cosmetic surgery for over 20 years, has only accredited a few plastic surgeons who *can* demonstrate appropriate training and pass its examination.

91. The second ASPS/ASAPS' fallacy is that prohibiting the title 'cosmetic surgeon', thereby channelling all cosmetic surgery patients to ASPS/ASAPS' members, will enhance patient safety. This implies that 'non-plastic surgeons' have disproportionately high cosmetic surgical complication rates. However, in 2012 a report of informed consent disputes found two thirds of complaints relating to cosmetic surgery procedures were against plastic surgeons.[25] Further, the only cosmetic surgery death from inadequate training was at the hands of a plastic surgeon whose liposuction patient believed he was competent because of his specialist registration. As detailed earlier and consistent with the AMC's findings, he was unable to evidence formal training in liposuction and the Medical Board subsequently required him to undergo further education. Numerous other cases include the class action against The Cosmetic Institute, whose head of surgery was a plastic surgeon, leg amputation after botched calf-implant surgery, also by a plastic surgeon and the cosmetic breast surgeries by ASPS and ASAPS' members requiring staged reconstructive breast surgeries in the practice of an ACCS Surgical Fellow.

92. Finally, ASPS/ASAPS conflate all practitioners performing cosmetic surgery into **two** groups – 'plastic surgeons' and 'non-plastic surgeons', irrespective of training and experience in cosmetic surgery. As detailed earlier, there are in fact **three** groups (see paragraphs 12-16 addressing **ASAPS' claim 1**.)

93. In all the circumstances, only two groups of practitioners might be anticipated to object to the implementation of a national Register of such competent providers of cosmetic surgery. **Firstly**, medical practitioners performing cosmetic surgical procedures who do not meet the required standard. **Secondly**, medical practitioners (or their craft-group representatives) who seek to achieve a commercial advantage by manipulating the regulatory reform process to eliminate competent competitors[19]. The College reiterates that, in respect to the latter, enabling patients to make informed and safe choices from a diverse range of accredited and competent providers should be the fundamental objective of any reform process. The College also notes that ASAPS refuse to countenance the proposal, which would of course require their members to reach the same objective, competency-based National Accreditation Standard in cosmetic surgery.

94. The accreditation model proposed by the ACCS would ensure that:

    (a) The public can be provided clear assurances regarding practitioners who are trained, experienced and properly accredited in cosmetic surgery, thereby improving safety.

    (b) Medical practitioners who undertake cosmetic surgical procedures be required to maintain and enhance their knowledge and skills to deliver the highest levels of patient safety by means of ongoing cosmetic surgery specific Continuing Professional Development.

95. The ACCS believes that AHPRA should administer the Register of Cosmetic Surgeons. This would ensure an independent and transparent administrator, with no single group dominating and monopolising access to the Register. Entry and annual fees would be set to cover the costs of administering the Register.

96. Such a system would improve public safety, be straightforward to implement from the regulatory perspective and be self-funding. It would also ensure that no single group could dominate the accreditation process of an area of practice that is not currently recognised as a specialty, as a consequence of which comprises a diverse range of practitioners.

97. Implementation of such an agreed national accreditation system would put the safety of patients first and achieve an outcome consistent with the purpose of the current regulatory reform process.

98. Finally, the proposed accreditation system is consistent with the wishes of Australians. In a survey performed by Galaxy Research[11], 97% believed that doctors should have to pass an exam and get a 'licence' in cosmetic surgery before being are allowed to practise it. Further, 98% believed that patients have the right to know if the doctor performing their cosmetic surgery procedure is trained *specifically* in cosmetic surgery. Only Fellows of the ACCS fulfil both parameters. Yet, for different reasons, neither the recommendations of the 1999 Walton Cosmetic Surgery Inquiry nor the 2009 request to the AMC to recognise cosmetic surgery as an independent specialty were adopted, so patients have not benefitted from any regulatory reform. 2021 provides the opportunity.

## Conclusion

99. In contravention of the National Law, ASAPS are attempting to hold out to the public that plastic surgeons in their membership are surgeons trained in cosmetic surgery, despite the specialist regulator the AMC, finding to the contrary in its reports spanning a period now approaching 20 years.[1,2] Irrespective of those reports, ASAPS recently commenced a 'campaign' entitled 'Know The Difference', designed to convince Australians who undertake a cosmetic surgical procedure that they will only be safe if they choose a specialist plastic surgeon.[19]

100. ASPS informed patients in 1998 and 2008 (despite the AMC report of 2002) that the post-nominals FRACS after a plastic surgeon's name was an assurance that the surgeon was ***'fully trained*** *in the field of Plastic and Reconstructive* ***and Cosmetic Surgery Procedures*** *by the Royal Australasian College of Surgeons (or its equivalent)* (emphasis added)'.[26]

101. [redacted]

102. Despite 98 and 99 above, ASAPS are attempting to prevent surgeons who ***are*** trained in cosmetic surgery, such as Surgical Fellows of the ACCS, from offering their services to the healthcare consumer, in order to create a monopoly for ASAPS members.

103. The above mentioned ASAPS' campaign comprises cartel behaviour.

104. The practical implications of such cartel behaviour are:

    (a) price gouging where patients are forced to pay many thousands of dollars in out of pocket fees for revisional surgery which may be covered by Medicare and private health insurance; and

    (b) reduction in standards through lack of competition and oversight.

105. Operation Redress is not a regulatory authority. It comprises two private individuals. Any affiliations with other organisations/individuals have not been disclosed in their submission of April 2020 and remain unknown at this time.

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# The Australasian College of Cosmetic Surgery

## Raising Standards, Protecting Patients

## Addendum Submission to the Senate Community Affairs References Committee inquiry into Administration of registration and notifications by the Australian Health Practitioner Regulation Agency and related entities under the Health Practitioner Regulation National Law.

29 June 2021

Dear Sir/Madam,

Further to the submission of yesterday Monday 28 June 2021 by the **Australasian College of Cosmetic Surgery** (the College) to the **Senate Community Affairs References Committee inquiry into Administration of registration and notifications by the Australian Health Practitioner Regulation Agency and related entities under the Health Practitioner Regulation National Law**, three formatting errors have been identified. They as follows:

**Paragraph 50 should read:** In light of paragraphs 48 and 49, it is a specious suggestion that 'Cosmetic Surgeon' or 'Surgeon' indicate specialist status. They do not and accordingly, cannot therefore be inferred to be 'false' nor 'misleading' titles.

**Paragraph 51 should read:** Despite paragraphs 48 - 51 above, ASAPS submit that the title 'Cosmetic Surgeon' when used by those who are not one of their members is 'deceptive,' 'false' and 'misleading.' ASAPS claims that 'cosmetic surgeon' is a 'made up title' but conveniently overlook that 'cosmetic (or aesthetic) plastic surgeon' is no different. In that regard, ASAPS have no difficulty in relation to their members referring to themselves as a 'cosmetic (or aesthetic) plastic surgeon' despite the objective findings of the AMC report. That report detailed clearly that AMC-accredited specialist plastic surgeons in Australia have a '*deficit'* in their experience of cosmetic surgery and qualify with a *'gap in this area of practice.'* In light of this, it must be considered that it is actually the conduct of ASAPS' members which is 'deceptive,' 'false' and 'misleading'.

**Paragraph 102 should read:** Despite paragraphs 99 and 100 above, ASAPS are attempting to prevent surgeons who ***are*** trained in cosmetic surgery, such as Surgical Fellows of the ACCS, from offering their services to the healthcare consumer, in order to create a monopoly for ASAPS members.

In light of the above, the College would be grateful if this Addendum Submission could be appended to the original for accuracy of comprehension by the reader. The College appreciates the understanding of the Committee in this matter and apologies for any inconvenience.

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