



## Response form – Targeted consultation on how Ahpra and the National Boards propose to use the new power to issue interim prohibition orders

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### Targeted consultation

The Australian Health Practitioner Regulation Agency (Ahpra) is undertaking targeted consultation about how Ahpra and the National Boards propose to use the new power to issue interim prohibition orders (IPOs) to unregistered persons (including suspended practitioners). The change to the National Law to allow Ahpra and the National Boards to use this new power has not yet started. The start date is a decision of Governments.

Ahpra is releasing this targeted consultation paper to key stakeholders. For ease of reference, the targeted consultation paper is accessible on our [Ahpra National Law amendments implementation website](#).

Targeted consultation allows Ahpra to take a focused approach to test and refine our proposed implementation with those stakeholders that have an interest in how we are proposing to use the new power and the safeguards that will be in place to ensure the power is used lawfully and appropriately. The process provides an opportunity for key stakeholders to provide feedback that will help us improve clarity and workability.

This targeted consultation does not revisit policy decisions made by Health Ministers about IPOs. The reforms were subject to multiple rounds of consultation, led by jurisdictions, over a few years before the legislative bill of amendments was finalised and introduced into Queensland Parliament.

### How we will treat responses to targeted consultation

Ahpra will consider your response and any feedback before finalising the changes to our regulatory policies and procedures, and the published *Regulatory Guide*.

As this consultation is targeted, we will treat your response as being confidential and your feedback will not be published. If Ahpra receives a request for access to a submission, it will be determined in accordance with the *Freedom of Information Act 1982* (Cth), which has provisions designed to protect personal information and information given in confidence.

Our aim is to finalise the changes to the *Regulatory Guide* by October 2023. Publication of the revised *Regulatory Guide* will need to align with the start date of the delayed changes once this is decided by Governments and the proclamation/s is made.

### How to give feedback

We invite your response to specific questions in the targeted consultation paper using the response form below. You may respond to all or some of these questions. You may also like to provide other feedback that is relevant to the targeted consultation.

Please email your submission to [nationallawamendments@ahpra.gov.au](mailto:nationallawamendments@ahpra.gov.au) by close of business **Tuesday 5 September 2023**.

## Response form

### Your details

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Are you making a submission as: (please check the relevant box)

- ☐ A consumer organisation
- ☒ A peak body / professional association (registered health professions)
- ☐ An individual consumer/member of the public
- ☐ An individual health practitioner
- ☐ Government or statutory authority
- ☐ Professional body (profession not regulated under NRAS): [Click or tap here to enter text.](#)
- ☐ Other – please describe: [Click or tap here to enter text.](#)
- ☐ Prefer not to say

### Feedback

1. Is it clear who the **decision maker** for issuing IPOs is and under what **circumstance/s**?

From the perspective of the profession of psychology, we understand that the decision makers will be:

- the Psychology Board of Australia (i.e., where the unregistered person is a person whose registration is suspended, or who is the subject of ongoing proceedings under Part 8), or
- AHPRA (i.e., in all other cases).

For ease of clarity, we recommend including a subheading (i.e., Decision maker), or a subsection under 14.1 to highlight the content for 'decision maker' and to ensure it is easy to locate when needed.

2. Is the **threshold** that needs to be met to allow either Ahpra or a National Board to issue an IPO clear? This includes:

- a. Reasonable belief
- b. When a person is alleged to have committed an offence
- c. Serious risk
- d. Necessity
- e. If a person is already subject to 'Part 8' action.

The 'thresholds' to be met to allow a decision maker to issue an IPO are clear.

3. Is the guidance about the **show cause process** clear?

The guidance about the 'show cause process' is clear.

4. Is the process for a **decision to issue** an interim prohibition order clear?

The process for a 'decision to issue' an interim prohibition order is clear.

5. Is the guidance about the process for <b>taking urgent action</b> clear?
The guidance about the process for 'taking urgent action' is clear..
6. Is the guidance about the process for <b>giving information about</b> an IPO clear?
The guidance about the process for 'giving information about' an IPO is clear; however, use of the word 'may' before "inform the person" creates ambiguity. We recommend clarity be provided about the conditions under which the decision maker would/would not inform the person who made the complaint of the decision to issue or extend the interim prohibition order and the reasons for the decision.
7. Is the guidance about the <b>duration of an IPO</b> clear? This includes: <ul style="list-style-type: none"> <li>a. Variation of grounds for the IPO</li> <li>b. Revoking the IPO</li> <li>c. Extending the IPO by the decision maker and a tribunal</li> <li>d. When a tribunal may vary, revoke, extend or substitute an IPO</li> </ul>
<p>We note that the Regulatory Guide (p10) specifies that the IPO <i>"starts on the day the order is issued to the unregistered person or any later day stated in the order"</i>.</p> <p>However, we also note the following:</p> <ul style="list-style-type: none"> <li>• There is no information about how the IPO will be provided by AHPRA or a National Board.</li> <li>• There appears to be no requirement or mechanism for the decision maker to confirm that the IPO has been received. Situations could arise whereby the IPO does not arrive, is not received, or there is dispute about if/when it was received. Any of these potential scenarios could impact actioning of the IPO. For this reason, it would be beneficial to establish a process to confirm that the IPO has been received.</li> </ul> <p>It is also unclear what action a person may take if an IPO is revoked because, for example, it is determined that no offence has been committed or alternatively, in the event of a vexatious notification. An IPO having been issued under either of these circumstances has the potential to cause unfair and unwarranted damage to a health practitioner's reputation and a concomitant loss of earnings.</p> <p>Further, whilst we understand the intent of the IPO is to protect the public, where a practitioner is required to stop providing services due to be issued an IPO, the expectations around how to best manage the wellbeing of current clients/patients is not clear. Guidance around this would be beneficial to ensure best practice management of clients/patients.</p> <p>Further information about the above could be provided in the FAQs.</p>
8. Is the guidance clear about the <b>process for publishing</b> IPOs?
<p>The process for publishing the IPO is clear.</p> <p>However, as above, we are concerned about the reputational damage associated with publishing information within the context of vexatious notifications.</p>
9. Is the <b>operation</b> of an IPO clear?
Yes, the operation of an IPO is clear.
10. Is there <b>any other information</b> or material you believe should be clarified or included in this new chapter of the <i>Regulatory Guide</i> ?

Please see points above regarding areas that require further information, clarification or material.
11. Will publishing <b>FAQs</b> help practitioners and consumers better understand how we will use this new power? Is there <b>other information</b> we should consider providing?
Publishing FAQs would be beneficial to assist practitioners and consumers to better understand this new power, and would help to clarify areas that remain either ambiguous or require further information/clarification (please see above).
12. Are there ways <b>we can explain</b> how this new power may be used to avoid misunderstandings among practitioners and consumers?
Please see our responses above regarding the publishing of FAQs and relevant examples of areas that we believe require further clarification (particularly regarding the incidence of vexatious claims).
13. Do you have <b>any other feedback</b> that you would like to provide?
The consultation paper, p7 states that <i>"Interim prohibition orders are not a form of disciplinary action, determination, sanction, penalty or punishment."</i> We understand that the intent of an IPO is to protect the public, however, from a practitioner perspective the issuing of an IPO does in fact result in disciplinary action, penalty or punishment, particularly in the case where a person is unable to practice and experiences financial loss and/or potential reputational damage as a result.

### Thank you

Thank you for participating in this targeted consultation.