



## Targeted consultation on how Ahpra and the National Boards propose to use the new power to issue public statements (warnings)

19 January 2023

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### Background to the changes to the Health Practitioner Regulation National Law (the National Law)

The Health Practitioner Regulation National Law and Other Legislation Amendment Act<sup>1</sup> (the Amendment Act) makes changes to the Health Practitioner Regulation National Law<sup>2</sup> (the National Law) that were agreed to by Australian Health Ministers in February 2022.

More than 30 aspects of the National Law are affected. The changes are broadly grouped as follows:

1. Strengthening public safety and confidence – refocusing guiding principles and objectives of the National Scheme
2. Keeping the National Scheme fit for purpose – improvements to scheme governance and operation
3. Increasing regulatory responses to protect public safety and respond to public health risks
4. Improving information sharing to protect the public
5. Strengthening registration processes
6. Enhancing scheme efficiency and effectiveness
7. Minor, consequential, and technical changes.

The changes strengthen public protection and increase public confidence in health services provided by practitioners registered under the National Scheme. They also implement reforms to improve governance and promote the efficient and effective operation of the National Scheme.

The Australian Health Practitioner Regulation Agency (Ahpra) is tasked with implementing the changes to the National Law.

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<sup>1</sup> The changes are made via the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2022*.

<sup>2</sup> Health Practitioner Regulation National Law, as in force in each state and territory

Not all changes have started. Some of the more substantial ones, or ones requiring further work to implement, are scheduled to start later, on a date/s to be determined by governments. This supports a staged approach to implementation over about 12 months. Some of these delayed changes will likely start in the first half of 2023. Ahpra will publish start dates when they are available.

Please check our [National Law amendments](#) webpage for more information and resources.

## Targeted consultation

### Our process

The changes to the National Law include some significant new powers for Ahpra and National Boards – including a power to issue public statements (warnings). This change has not yet started.

Ahpra is developing guidance on how the new power to issue public statements (warnings) will, in practice, be used. We said we would consult with the professions and the community on the new powers to issue public statements and interim prohibition orders (IPOs) to get it right, and that the guidance we issue will be published to ensure full transparency. Ahpra intends to also undertake targeted consultation on the new power to issue IPOs later in 2023.

A new chapter for public statements will be incorporated into our published **Regulatory Guide**. The current edition is [accessible here](#) on the Ahpra website. The guide sets out how Ahpra and the National Boards manage notifications about the health, performance and conduct of practitioners under Part 8 of the National Law.

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

All feedback will be considered. Our aim is to finalise the changes to the *Regulatory Guide* by March 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 to start the delayed changes is made.

This targeted consultation does not revisit policy decisions made by Health Ministers about public statements. The reforms were subject to multiple rounds of consultation, led by jurisdictions, over a number of years before the legislative bill of amendments was finalised and introduced into Queensland Parliament. The [Explanatory Notes](#) to the amendment Bill (pages 26 to 31) provides a good summary of that consultation.

### Our paper

This **consultation paper** includes:

- **Attachment A** which provides a table that sets out the proposed approach to the use of the new power to issue a public statement. The approach is designed to ensure that the use of the powers by Ahpra and the National Boards is lawful, proportionate to the relevant risk posed to the public, and is procedurally fair.
- **Attachment B** provides the draft wording for a new chapter (based on the approach above) that would be included in the *Regulatory Guide* about public statements (warnings).

The amendment to the National Law to provide Ahpra and the National Boards with the power to issue a public statements is in new Part 8, Division 7B of the National Law. You can access the amendment directly using this link to the [Health Practitioner Regulation National Law and Other Legislation Amendment Act 2022](#).

Targeted consultation with key stakeholders is being undertaken over a five week period.

## Glossary

Ahpra	Australian Health Practitioner Regulation Agency
Jurisdictions	State, territory and Commonwealth health departments
Ministerial Council	Health Ministers from each state and territory and the Commonwealth
National Boards	15 National Boards established for the 16 registered health professions
National Law	Health Practitioner Regulation National Law, as in force in each state and territory
Proclamation	This is the legal term for an instrument (called a proclamation) that is made by the Governor-in-Council. In Acts, provisions for the making of proclamations are usually limited to setting the date for the start of provisions of an Act that did not start on assent.
Tribunal	A state or territory civil and administrative tribunal that hears the most serious matters (and appeals) involving registered health practitioners under the National Law – for example, in Victoria it is the Victorian Civil and Administrative Tribunal (VCAT), while in Queensland it is the Queensland Civil and Administrative Tribunal (QCAT).

## Making a submission

Ahpra welcomes your feedback on how we propose to use the new power.

As this consultation is targeted, we will treat your response as confidential and your feedback will not be published. If Ahpra receives a request for access to a confidential 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.

There are questions in the consultation paper that you may wish to address in your response. You may decide to answer some, or all, of the questions. You may have other feedback that you would like to provide that is relevant to the targeted consultation.

Feedback can be given by completing the response form and submitting via email to [nationallawamendments@ahpra.gov.au](mailto:nationallawamendments@ahpra.gov.au). We ask that you use this form to provide your feedback as it will help us in analysing responses.

The closing date for submissions is close of business **Wednesday, 22 February 2023**.

## Questions

If you have any queries about this targeted consultation, please contact the Ahpra Government Relations Team via email: [nationallawamendments@ahpra.gov.au](mailto:nationallawamendments@ahpra.gov.au).

## Attachment A

### Proposed approach – how the new power to issue public statements will be used by Ahpra and the National Boards

#### Context

This change to the National Law will give Ahpra and the National Boards a new power to issue public statements to warn the public about serious risks posed by people, including registered practitioners, who are the subject of investigations or disciplinary proceedings.<sup>3</sup>

**The threshold for issuing a public statement is set at a high level.** It requires Ahpra or a National Board to form a **reasonable belief** that:

- the person has contravened a relevant provision<sup>4</sup> of the National Law, or is the subject of an assessment, investigation or other proceeding under Part 8 of the National Law; **and**
- that because of the conduct, performance or health, the person poses a **serious risk** to persons; **and**
- it is **necessary** to issue a public statement to protect public health or safety.

It is **not** a broad power to enable Ahpra or the National Boards to ‘name and shame’ registered health practitioners or other people being investigated before there is a formal outcome.

The new power will help us to protect the public because we can publicly explain serious risk and warn patients when the high threshold is met, while continuing investigations or disciplinary proceedings.

We anticipate this new power would more likely be used for serious matters involving unregistered people as opposed to currently registered practitioners. This new power links back to the new main guiding principle of the national registration and accreditation scheme, which is to protect the public and public confidence in the safety of health services provided by practitioners. We also expect that it will be used judiciously and will only need to be used **in a small number of cases where the public would be left at serious risk unless a public statement was made**. It may not be necessary, for example, to issue a public statement if a serious risk has been addressed through immediate action, such as a suspension of registration or placing restrictions on practice.

There are also **other safeguards** built into the legislation:

- a ‘show cause’ process is part of the process before deciding to issue a public statement
- after the show cause process is completed and a decision is made to issue a public statement, we must then wait at least 1 business day before we can publish the statement
- a decision to issue a public statement will be subject to appeal to a relevant tribunal
- the public statement may be revised or revoked where necessary.

#### Proposed approach for implementation and use of power

Issue	Proposed approach
Who will be the decision maker?	A public statement may be made by Ahpra or a National Board.

<sup>3</sup> See new Division 7B of Part 8 of the National Law.

<sup>4</sup> **Relevant provision** means any of the following provisions— (a) section 113 – restriction on use of protected title; (b) sections 115 to 119 – holding out and restrictions on use of specialist titles; (c) sections 121 to 123 – restricted acts; (d) section 133 - advertising; (e) section 136 – directing/inciting offence.

Issue	Proposed approach
	<p>It is proposed that the appropriate entity to decide whether to issue a public statement should be determined by considering the registration status of the person who will be the subject of the statement.</p> <p>This would mean that:</p> <ul style="list-style-type: none"> <li>• National Boards issue statements if the person is currently a registered practitioner or if conduct giving rise to the need for the statement occurred when the person was registered; and</li> <li>• Ahpra issues statements if the conduct giving rise to the need for the statement occurred when the person was unregistered.</li> </ul>
Who will exercise the power?	<p>It is proposed that the power be exercised by:</p> <ul style="list-style-type: none"> <li>• National Boards – delegated to such Committees as appropriate; and</li> <li>• Ahpra – Chief Executive Officer (CEO) on the advice of the Executive Director, Regulatory Operations and General Counsel.</li> </ul> <p>Some National Boards have formally delegated decisions about notifications to a committee it has established as this provides an effective and timely local response. An example is a state or territory board established by the Medical Board of Australia under section 36 of the National Law.</p>
How will verbal submissions be made?	<p>It is proposed that a person who is proposed to be the subject of a public statement may make submissions to:</p> <ul style="list-style-type: none"> <li>• National Boards – to Committee in same way as Immediate Action submissions; and</li> <li>• Ahpra – to the decision maker or to a person/s nominated by the CEO (who later provides a report of the submissions to the CEO).</li> </ul>
How will notices be sent to affected persons?	<p>Notices will be provided in the same way as other National Law notices – primarily by email.</p>
Will the public statement be made if an appeal is lodged before the statement is actually issued?	<p>Public statements may only be made when Ahpra or the National Board forms a reasonable belief that the person poses a serious risk to persons and it is necessary to protect public health or safety.</p> <p>Accordingly, it is incumbent upon the regulatory body to issue the statement without delay, so as to contain the identified risk.</p> <p>Accordingly, in most cases, the statement should be issued as soon after the mandatory 1 business day period as possible.</p> <p>However, the person may appeal in this time. It is proposed that the following principles be adopted in that situation:</p> <ul style="list-style-type: none"> <li>• Where an appeal is filed with no application for a stay of the decision to make the statement, the statement should proceed to be issued in the normal course;</li> <li>• If an appeal is filed with a stay application, then the circumstances of the matter should be considered, especially taking into account the nature of the risk and the urgency in addressing it. If those matters weigh in favour of an urgent statement, then the statement should be issued. If not, then the statement should not be made until the relevant Tribunal has considered the stay application.</li> </ul>

Issue	Proposed approach
How will public statements be made?	<p>The National Law provides that a public statement may be made ‘in a way the regulatory body considers appropriate.’</p> <p>It is proposed that there be a dedicated webpage for all public statements that are issued that is accessible from the Ahpra and National Boards’ websites. If the statement relates to a registered health practitioner, the statement will also be included with the practitioner’s registration on the public register.</p> <p>It is proposed that that the posting of the statement on the dedicated web page is considered to be the ‘making’ of the public statement. This is important when considering how the revocation of the statement will be made (see below).</p> <p>Despite the fact that the statement is ‘made’ by publishing on our website, as the purpose of the public statement is to address risk by bringing issues to the notice of affected parties, the fact that a statement has been made might be publicised in a media release and postings on social media.</p> <p>While this is likely in most cases, there may be some limited cases when it is not appropriate. In such cases, more targeted statements may be made, such as writing to aged care facilities in particular areas about the risk posed by a former practitioner who may be seeking employment as a personal care attendant.</p>
What will trigger the Board/ Ahpra to consider revision or revocation of a public statement?	<p>A public statement may be revised at any time and must be revoked if the grounds on which the statement was made no longer exist or never existed.</p> <p>It is proposed that statements may be revoked or revised either on the application of the person or on the regulatory body’s own motion.</p>
How will revision or revocation be published?	<p>A revocation must be made in the same, or similar, way to the original public statement. If the statement is made by publishing it on our website, revocation occurs by removing it from the website. It would also be appropriate to then remove any media release or other public comment about the statement having been made.</p> <p>Any material revision should be made in the same way as the original statement. Minor revisions (for example a correction where the substance is not being changed) may be made to the published statement.</p> <p>The question of whether there should be re-publication of the statement will depend on the circumstances of the matter including the nature of the original statement and the effect of any revisions.</p>
Do the Public Statement provisions apply in New South Wales?	<p>No. The power for Ahpra and the National Boards to issue a public statement does not apply in New South Wales. There are different arrangements in place for managing concerns about registered health practitioners in that state. Complaints are made to the NSW Health Care Complaints Commission. The Commission can issue public statements about health practitioners and can also warn the public about a treatment or health service where it believes the service poses a risk to public health and safety.</p>
Will Public Statement powers be exercised in Queensland?	<p>Yes. The Public Statement power is available to Ahpra and the National Boards in Queensland. However, if the Queensland Health Ombudsman is considering regulatory action or has taken regulatory</p>

Issue	Proposed approach
	action (including making a public statement), Ahpra will consult with the Health Ombudsman before exercising the power.

**Consultation questions:**

1. Is it clear who will be the decision maker for issuing a public statement and under what circumstance/s?
2. Does the proposed approach provide clarity about the threshold tests that need to be met to allow either Ahpra or a National Board to issue a public statement?
3. Is the guidance clear about the procedures that are to be followed to support a public statement being made, revised, or revoked?
4. Is there any other information that we should consider providing to help practitioners and consumers better understand how we will use this new power to issue public statements (warnings)?
5. Are there ways we can explain how this new power may be used to avoid misunderstandings among practitioners and consumers?

## Attachment B

### Draft text for *Regulatory Guide* – new chapter: public statement (warning)

#### Power to issue a public statement (public warning)

##### Context

A public statement may be made about a person under section 159Q of the *National Law* if the decision maker reasonably believes that:

- the person has contravened a relevant provision<sup>5</sup> or is the subject of an assessment, investigation or other proceedings under Part 8 of the National Law; and
- because of the person's conduct, performance or health, the person poses a serious risk to other persons; and
- it is necessary to issue a public statement to protect public health or safety.

A public statement may identify and give warnings or information about a person and/or about the health services provided by a person.

##### A. Who will be the decision maker?

A public statement may be made by Ahpra or by the National Board for the profession in which the person is or was registered. This paper uses the term '**decision maker**' to cover both Ahpra, the National Boards, and their delegates.

Generally, when the person that is the subject of the proposed statement is a **registered practitioner**, or if the conduct giving rise to the need for the public statement occurred when the person **was a registered practitioner**, the relevant National Board (through its delegated decision-making committees) will be the decision maker in relation to any proposal to make a public statement for the person.

In **most other cases**, Ahpra will be the decision maker.

**Any decision** to propose a public statement or to issue a public statement will be made by the Ahpra Chief Executive Officer on advice from the Executive Director of Regulatory Operations and General Counsel.

Public statements are not a form of disciplinary action, determination, sanction, or penalty. Their purpose is to protect the public in cases when the decision maker considers it is necessary to do so.

##### B. Grounds for making a public statement

A decision maker may only make a public statement if the decision maker **reasonably believes** that:

- the person has contravened **a relevant provision**, or the person is the subject of an assessment, investigation or other proceeding under Part 8 of the National Law; and
- because of the person's conduct, performance or health, the person poses **a serious risk** to other persons;
- it is **necessary** to issue a public statement to protect public health or safety.

A public statement may identify and give warnings or information about a person and/or about the health services provided by a person. The statutory provision sets a high threshold for the exercise of the power and it is therefore a power that will not be used commonly.

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<sup>5</sup> **Relevant provision** means any of the following provisions— (a) section 113 – restriction on use of protected title; (b) sections 115 to 119 – holding out and restrictions on use of specialist titles; (c) sections 121 to 123 – restricted acts; (d) section 133 - advertising; (e) section 136 – directing/inciting offence.



In the context of a public statement:

- reasonable belief 'requires the existence of a factual matrix sufficient to induce the belief in a reasonable person'; and
- belief has been found to be 'an inclination of the mind toward assenting to, rather than rejecting, a proposition'.

### ***Contravention of relevant provisions***

Relevant provisions for the purposes of section 159Q are sections 113, 115 to 119, 121 to 123, 133 and 136 of the National Law. A contravention of these provisions is a criminal offence.

In considering whether a person has contravened a relevant provision, there must be more than a suspicion that a contravention has occurred. There must be information available to the decision maker which gives rise to a reasonable belief that one or more contraventions have occurred, but the decision maker is not required to make factual findings about any particular alleged contravention.

### ***Serious risk***

In considering whether, because of a person's conduct, performance or health, they pose a serious risk to the public, the decision maker is not required to make factual findings about the person's actions or health. Further, the decision maker is not required to form a reasonable belief that the person has engaged in any particular identified action before it can make a public statement. Often the fact of, and serious nature of, allegations about a person will be sufficient to support a reasonable belief as to the existence of the serious risk.

The decision maker will consider the specific nature of the serious risk. This includes an assessment of who may be at risk (that is, the risk may be to the public in general, or to a specific population, such as female patients, or patients with a particular medical condition).

In circumstances where an objective of the national registration and accreditation scheme is to provide for the protection of the public by ensuring that only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered, there can be significant risk posed by persons purportedly practising in a health profession when they are not registered.

Examples of situations likely to pose a serious risk include:

- an unregistered person holding themselves out as a dentist who performs irreversible procedures on patients' teeth in a home 'clinic'; and
- a psychologist whose registration has been cancelled by a tribunal who continues to provide psychology services to patients;
- a person with overseas medical qualifications who does not hold registration in Australia but provides cosmetic treatments using medications that only a registered practitioner may prescribe and administer.
- a registered practitioner who has been found to have seriously deficient infection control procedures and who has failed to provide details of any patients that may be at serious and immediate risk as a result.

### ***Necessity***

Having formed a reasonable belief that because of the person's conduct, performance or health, they pose a 'serious risk' to people (as set out above), before proposing to issue a public statement the decision maker must also form a reasonable belief that the public statement is **necessary** to protect public health and safety.

Whilst a decision to issue a public statement is in some respects similar to a decision to take immediate action against a registered practitioner under section 156, it is not the same. Immediate action restricts a person from undertaking activity which would, but for the immediate action, be lawful. A public statement does not restrict any person's activities, but merely gives information to the public.

Given that a public statement can be issued in respect of a person who may or may not be registered under the National Law, it might address activities that are unlawful under the National Law. For example, it is an

offence to use a protected title, or carry out a restricted act, whilst unregistered. If by so doing a person poses a serious risk, it may be necessary to issue a public statement.

Public statements may also refer to health services that are not otherwise regulated under the National Law and activities that are not necessarily unlawful under the National Law. For example, the National Law does not regulate counselling or massage services, but a decision maker may reasonably believe that it is necessary to make a public statement about the counselling or massage services that have been or are being provided by a person who has contravened a relevant provision or is the subject of Part 8 proceedings.

It is in this context that the nature and seriousness of the person's conduct, performance or health which gave rise to the consideration of a public statement will be relevant to deciding whether a public statement is necessary and the form it will take. The statements made about otherwise lawful activities referenced in a public statement will reflect the minimum regulatory response the decision maker considers is necessary to protect public health or safety.

### ***Health services***

The decision maker may give warnings or information about a person or the health services provided by a person. **'Health services'** is defined in section 5 of the National Law and extends beyond the services provided by registered health practitioners within the scope of their profession. It also includes:

- hospital services;
- mental health services;
- pharmaceutical services;
- ambulance services;
- community health services;
- health education services;
- welfare services necessary to implement any of the above services;
- services provided by dietitians, masseurs, naturopaths, social workers, speech pathologists, audiologists or audiometrists; exercise physiologists; and
- pathology services.

This list is not exhaustive.

### ***Person subject to Part 8 proceeding***

The grounds for taking immediate action under section 156(1)(a) are identical to the grounds for issuing a public statement under section 159Q. In cases where the Board is considering taking or has taken immediate action under section 156(1)(a) in relation to a registered practitioner, the Board may also consider that a public statement may be necessary to protect public health or safety. For example, the Board may consider it necessary to warn the public that the practitioner has been suspended and may not lawfully practice the profession if there is information to suggest the practitioner may not abide by the suspension. However, a public statement would not necessarily be used in each case of immediate action suspension.

The Board may also want to warn the public about the provision of related health services, which could otherwise be lawfully provided by someone who is unregistered, by a practitioner whose registration is or is proposed to be suspended or is subject to conditions imposed under section 156. For example, if a physiotherapist is suspended by way of immediate action for sexual assaults of a number of patients but continues to provide massage services, the Board may decide it is necessary to issue a public statement about the continuing risk.

## C. Procedure and show cause process

### **Show cause process**

Before issuing a public statement about a person, the decision maker will:

- give the person:
  - a copy of the proposed public statement;
  - information about the way in which it is proposed to make the public statement; and
- invite the practitioner to make a submission to the decision maker, within the time stated in the notice.

Generally, the notice will:

- explain that the decision maker is proposing to issue a public statement and provide a copy of the proposed statement;
- set out the reasons for the proposed public statement;
- include copies of, or summarise, the information the decision maker considered before proposing to issue the public statement; and
- invite the person to make a submission and/or to attend before the decision maker to make a verbal submission.

Upon receipt of the notice, the person may choose to provide a submission or to make no submission. The person may provide submissions in writing and/or verbally to the decision maker.

Ahpra and National Boards are committed to ensuring that the process is procedurally fair and that the relevant person has a reasonable opportunity to make submissions. However, the time permitted for a person to provide a submission may be limited, due to the nature of the decision maker's obligation to protect public health or safety.

Verbal submissions will be made to the National Board's delegated decision making committee or, in the case of an Ahpra decision, to a person or persons nominated by the Chief Executive Officer who will provide a report of those submissions to the Chief Executive Officer.

Before deciding whether to issue a public statement, the decision maker will consider the person's submissions.<sup>54</sup>

### **Decision to make public statement**

The decision maker will decide whether to make the public statement, or make the statement in a different way or with different content, after it considers any submissions from the person. In making this decision, the decision maker will weigh up the reasons for making the public statement against the impact on the practitioner and any other relevant factors raised by the practitioner, recognising that protection of the public and public confidence in the safety of services provided by registered health practitioners are paramount.

As soon as practicable after making the decision, the decision maker will give written notice of the decision to the person. The written notice will include the reasons for the decision and if the decision is to make a public statement, will explain that the person may appeal against the decision, how an application for an appeal may be made and the period within which such an appeal must be made.

If the decision is to make the public statement, the written notice must be given at least one business day before the statement is to be made. Such notice will be given in such a way as to ensure it is brought to the attention of the affected party. Whether a notice period longer than one business day is provided will depend on the circumstances of the matter. However, the paramount concern in determining the period of notice will be the protection of the public.

Allowing such time before the statement is made provides the person with an opportunity to consider any urgent action to prevent the statement being made such as by seeking a stay of the decision or an injunction. While the circumstances of each matter will be considered carefully, generally, in the absence of a stay of the

decision or an (interim) injunction being granted, Ahpra will proceed to issue the public statement even if the person affected indicates that an appeal will be lodged.

The public statement may be made in a way that Ahpra or the National Board considers appropriate. Generally, the statement will be made by posting the public statement on a dedicated webpage that is accessible from the Ahpra and National Boards websites. When the statement relates to a registered practitioner, the statement will also be included against that person's registration on the national register.

Ahpra and the National Boards may decide to bring the making of the notice to the attention of affected parties by targeted correspondence, or to the broader public by posting on social media, by media release or otherwise.

### ***Revision of public statement***

The decision maker may revise a public statement if it reasonably believes it is necessary in the circumstances. Ahpra or National Board will consider revision either on the application of the relevant person or on their own motion.

If the proposed revision changes the public statement in a material way, the decision maker will follow the same show cause process as applied to the making of the statement the first time.

### ***Revocation***

The decision maker must revoke the public statement if the decision maker is satisfied the grounds on which the statement was made no longer exist in relation to the person, or the grounds did not exist at the time the statement was made.

For example, the decision maker may revoke the public statement if:

- it related to the use of protected titles or carrying out of restricted acts when the person was unregistered, but the person has since become registered;
- the person is no longer the subject of an assessment, investigation or other proceeding under Part 8 of the National Law and is not believed to have contravened a relevant provision;
- Ahpra's criminal investigation has determined that no offences were committed;
- reliable information obtained during Ahpra's investigation indicates that the person has ceased the behaviour that gave rise to the decision maker's reasonable belief that the person posed a serious risk to persons and the decision maker no longer believes it is necessary that the public statement be maintained to protect public health or safety – for example if the person has retired and no longer provides any health service.

As soon as practicable after deciding to revoke a public statement the decision maker will:

- give the person a written notice stating the date on which the public statement will be revoked; and
- make a public statement revoking the original public statement in the same way, or a similar way, to the way in which the original public statement was made.

Ahpra or National Board will consider revocation of the public statement either on the application of the relevant person or on their own motion. Revocation will take place in the same way as the statement was made, namely by removing the statement from the dedicated webpage. If an entry about the public statement has been made on the national register, that entry will be removed upon revocation as will any reference to the public statement accessible from our websites.

The National Law requires a public statement to be made revoking the original public statement. That statement will be made by publishing it on the dedicated webpage of the Ahpra website and may itself be removed once the National Board or Ahpra considers that the revocation statement no longer serves a useful purpose.

If the person the subject of the public statement requests that Ahpra or the National Board take additional steps in respect of the revocation (for example by issuing a media release or posting on social media about

the revocation), the full circumstances of the matter will be considered in determining whether to do so. A relevant factor in making this decision will be whether Ahpra or the National Board issued a media release or posted on social media about the public statement at the time it was made.

A decision to revise or revoke a public statement does not limit Ahpra's ability to prosecute the person for any offences alleged to have been committed by the person. Decisions about whether to prosecute an offence under the National Law are made in accordance with Ahpra's Prosecution Guidelines<sup>62</sup> and include an assessment of whether there is a reasonable prospect of a conviction and whether a prosecution is in the public interest. Similarly, a decision to revoke a public statement about a person the subject of an assessment, investigation or other proceeding under Part 8 of the National Law does not limit the Board's ability to take further action under Part 8 in relation to the health, performance or conduct of the person or affect the validity of any action previously taken.

#### **Consultation questions**

6. Do you have any feedback on the draft wording of the proposed new chapter to be inserted into the published Regulatory Guide?
7. Is there any other information or material you believe should be included in this new chapter of the Regulatory Guide?
8. Do you have any other feedback that you would like to provide?