



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

1 August 2023

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## A. 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* (the National Law) that were agreed to by Australian Health Ministers in February 2022.<sup>2</sup>

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 Registration and Accreditation Scheme (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.

There is a staged approach to implementation of the changes and most of the changes have now started. The remainder will commence on a day to be decided by Governments. Ahpra has published a commencement table on the [National Law amendments](#) webpage.

## B. Targeted consultation

### Consultation process

The changes to the National Law include some significant new powers for Ahpra and National Boards – including a power to issue interim prohibition orders (IPOs). This change has not yet commenced and will start on proclamation.

Ahpra is developing guidance on how the new power to issue IPOs will, in practice, be used. We said we would consult with the professions and the community to get it right, and that the guidance we issue will be published to ensure full transparency.

A new chapter for IPOs will be incorporated into our published Regulatory Guide. The current edition is [accessible here](#) on the Ahpra website. The Regulatory 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 October 2023. Publication of the revised Regulatory Guide will need to align with the start date of the remaining changes once this is decided by Governments and the proclamation/s is made.

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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

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 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.

## Consultation paper

This **consultation paper** provides the draft wording for a new chapter to be included in the Regulatory Guide about IPOs.

The amendment to the National Law to provide Ahpra and the National Boards with the power to issue an IPOs is in new Part 8, Division 7A 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 from 1 August to 5 September 2023. The paper is also published on the [National Law amendments](#) webpage.

## 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 analyse responses.

The closing date for submissions is close of business **Tuesday 5 September 2023**.

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).

## 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).

## C. Context for the new power to issue interim prohibition orders

### Roles of National Boards and Ahpra

National Boards are responsible for managing health, conduct and performance issues involving registered health practitioners.<sup>3</sup> Ahpra is responsible for prosecuting breaches of the National Law, including for example, when an unregistered person ‘holds themselves out’ as being a registered practitioner when they are not.

This change introduces a new section into the National Law that gives Ahpra and the National Boards the power to issue interim prohibition orders (IPOs) to unregistered practitioners, including practitioners whose registration has lapsed or been suspended, that will complement powers that we currently have to protect the public.

An IPO issued by Ahpra or a National Board can prohibit or restrict a person from providing a specified health service or all health services and prohibit a person from using protected titles. This will allow us to take swift action to control a serious risk while other action is being finalised or a matter is handed over to another regulator better placed to carry out more comprehensive regulatory action.

The threshold for issuing an IPO is set at a high level, and requires Ahpra or a National Board to **form a reasonable belief** that:

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

There are also safeguards built into the legislation:

- a ‘show cause’ process is part of the process of issuing an IPO
- an IPO can only be issued before a show cause process if Ahpra or a National Board reasonably believes it is necessary to take such urgent action to protect public health or safety
- a decision to issue or extend an IPO will be subject to appeal.

This power links back to the new paramount principle of protection of the public and public confidence in the safety of health services provided by practitioners.

In practice, when the high threshold is met, we expect it will only be necessary to take this step in extraordinary situations that are very serious and when time is of the essence.

For example:

- National Boards can currently restrict a practitioner’s registration if the practitioner poses a risk to public health and safety. But if a practitioner were to surrender their registration to avoid a restriction being imposed on their practice as a registered health practitioner, the power to issue an IPO would enable us to prevent the person offering health services in an unregistered capacity. This complements the powers we have with respect to registered practitioners.
- Ahpra has a criminal prosecution function (for offences against the National Law) and can investigate and prosecute unregistered people who hold themselves out as being a registered health practitioner (such as

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<sup>3</sup> There are different arrangements in place for managing notifications (complaints) in the co-regulatory jurisdictions of Queensland and New South Wales. In Queensland, the Health Ombudsman (OHO) receives all complaints and can refer matters to National Boards for action. Boards manage most health and performance issues that are reported to the OHO about registered health practitioners. In New South Wales, the relevant health professional councils work with the NSW Health Professional Councils Authority and the NSW Health Care Complaints Commission to manage complaints about conduct, health and performance of practitioners.

<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.

a fake dentist), use a protected title or perform protected services (such as dentistry). If Ahpra is investigating claims related to a fake dentist providing dental services without being registered, allowing this conduct to continue during the investigation puts the public at significant risk. We would be able to issue an IPO to stop that person continuing to engage in the conduct while the investigation and prosecution is in progress.

## **Other information**

We will publish FAQs to help inform practitioners and consumers about this new power and how we propose to use it. Submissions to this targeted consultation will help us to develop this information.

## **D. Draft text for Regulatory Guide – new chapter**

The information below is the proposed new chapter to be published in the [Regulatory Guide](#). Because it is a proposed new chapter to support a new power, we recommend that you refer to the information that is already published in the Regulatory Guide, which was last updated in April 2023.

### **14. Chapter: Interim prohibition orders**

#### **14.1 Introduction**

An interim prohibition order<sup>5</sup> is an order made in relation to an individual, which:

- prohibits the individual from:
  - providing a specified health service, or all health services, and/or
  - taking or using a specified title, or any title protected under Subdivision 1 of Division 10 of Part 7. These are the protected titles listed in section 113, and the specialist titles approved by the Ministerial Council under section 13 and protected by virtue of section 115, and/or
- imposes restrictions on the provision of a specified health service<sup>6</sup> or all health services by the individual.

An interim prohibition order may only be issued to a person who is not registered at the time the order is issued, including a person whose registration is suspended at the time the order is issued.

The Regulatory Guide uses the term ‘decision maker’ to cover both Ahpra, the National Boards, and their delegates.

Generally, where the unregistered person is a person whose registration is suspended, or who is the subject of ongoing proceedings under Part 8, the relevant National Board will be the decision maker in relation to any proposal to issue an interim prohibition order for the person.

In other cases, Ahpra will be the decision maker. When Ahpra is the decision maker, the decision to issue an interim prohibition order will be made by the Ahpra Chief Executive Officer on advice from the Executive Director of Regulatory Operations and General Counsel.

Because of the interim nature of interim prohibition order decisions, the allegations about the unregistered person will not have been fully investigated. Quite often, no proven conduct or sworn evidence is available when the interim prohibition order is considered. A decision maker will assess the material before it when

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<sup>5</sup> National Law, s 159B.

<sup>6</sup> Health service is defined in section 5 as including (whether provided as public or private services) services provided by registered health practitioners; hospital services; mental health services; pharmaceutical services; ambulance services; community health services; health education services; welfare services necessary to implement the other health services; services provided by dietitians, masseurs, naturopaths, social workers, speech pathologists, audiologists or audiometrists; and pathology services.

considering whether an interim prohibition order is required. If the decision maker forms the requisite reasonable beliefs on the information before it so that the requirements for an interim prohibition order are met, a decision maker will issue one.

Interim prohibition orders are not a form of disciplinary action, determination, sanction, penalty or punishment. Their purpose is to enable the decision maker to take interim action to protect the public pending a full investigation of alleged offences or finalisation of proceedings under Part 8.

## 14.2 Grounds for issuing an interim prohibition order

A decision maker may only issue an interim prohibition order if:

- the unregistered person:
  - has, in the decision maker's reasonable belief contravened a relevant provision, or
  - is the subject of an assessment, investigation or other proceeding under Part 8 of the National Law, and
- the unregistered person poses a serious risk to persons and it is necessary that the person be subject to an interim prohibition order to protect public health or safety.

### Reasonable belief

A reasonable belief:

- 'requires the existence of a factual matrix sufficient to induce the belief in a reasonable person', and
- has been found to be 'an inclination of the mind toward assenting to, rather than rejecting, a proposition'.<sup>7</sup>

### Person alleged to have committed an offence

#### ***Contravention of a relevant provision***

Relevant provisions for the purposes of section 159C (Issuing of interim prohibition order) are sections 113, 115 to 119, 121 to 123, 133 and 136 of the National Law. A contravention of any of these provisions by an unregistered person is a criminal offence.

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

#### ***Serious risk***

In considering whether an unregistered person poses a serious risk to the public, the decision maker is not required to make a final finding about the person's actions or that the person has engaged in any particular identified action. Often the fact of, and serious nature of, allegations about a person, especially if supported by relevant documentary material, 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).

The primary 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 practising in a

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<sup>7</sup> *George v Rockett* (1990) 170 CLR 104.

health profession while unregistered. Such conduct is likely to be unlawful if the person is using a protected title or holding themselves out as being registered and the risk of such conduct is clear.

In other situations, the conduct in which a person is engaging may be lawful. For example, a practitioner who has been suspended may perform health services outside that are not regulated by a National Board. The National Board may decide that the practitioner still poses a risk in providing those services.

### **Necessity**

If the other prerequisites for the issuing of an interim prohibition order are met, the decision maker must also form a reasonable belief that the interim prohibition order is **necessary** to protect public health and safety.

By way of example, a decision maker may decide it is necessary to issue an interim prohibition order if:

- a person is about to do something unlawful which exposes persons to serious risk such as an unregistered person offering to provide discounted dental procedures to be performed the following day. While the provision of such services would be itself an offence, the decision maker may decide to issue an interim prohibition order in an attempt to prevent the conduct occurring,
- a previously identified risk thought to be contained by immediate action becoming evident in a different context such as a physiotherapist suspended on the basis of alleged sexual assaults of patients continuing to provide massage services. In such a case the conduct may be lawful but nonetheless exposes the public to risk, or
- an unregistered person holds themselves out as a chiropractor and performs spinal manipulations on infants. While the conduct is unlawful, it may still be necessary to issue an interim prohibition order in an attempt to prevent the conduct from continuing while the investigation into the conduct is undertaken.

While a decision to issue an interim prohibition order is similar to a decision to take immediate action 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. Given that an interim prohibition order can only be issued to an unregistered person, much of the activity it might restrict is already activity that would be unlawful under the National Law. For example, it is an offence to use a protected title, or carry out a restricted act, while unregistered. Accordingly an interim prohibition order prohibiting these things will not impose any additional restriction on an unregistered person's lawful activities.

An interim prohibition order may also restrict an unregistered person from undertaking activities that would, but for the interim prohibition order, be lawful – for example, it may prohibit an unregistered person from providing counselling or massage services. It is in this context that the nature and seriousness of the person's conduct which gave rise to the consideration of an interim prohibition order will be relevant to deciding whether an interim prohibition order is necessary and the form it will take. The restrictions on otherwise lawful activities imposed by an interim prohibition order will reflect the minimum regulatory response the decision maker considers necessary to address the identified serious risks to the public.

In determining whether it is necessary to issue an interim prohibition order, the decision maker will also take into account whether any state or territory health complaints entity or any other relevant entity has already issued a prohibition order about the person or health services provided by the person. The decision maker will also consult with relevant health complaint entities if it believes that relevant action is being considered by that health complaints entity in respect of the relevant person.

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

The grounds for taking immediate action under section 156(1)(a) are identical to the grounds for issuing an interim prohibition order under section 159C. In cases where the Board has taken immediate action under section 156(1)(a) in relation to a registered practitioner, the Board may also consider that an interim prohibition order prohibiting specified or all health services, or imposing restrictions on the provision of such health services, may be necessary to protect public health or safety. For example, the Board may consider it necessary to restrict the provision of related health services, which could otherwise be lawfully provided by



someone who is unregistered, by a practitioner whose registration is suspended or is subject to conditions imposed under section 156.

A decision maker will take into account whether any other form of regulatory action which has already been imposed is sufficient to address the risk posed by the person, making an interim prohibition order unnecessary. For example, if the relevant person has been suspended and the suspension is sufficient to address the risk, it may be unnecessary to also issue an interim prohibition order.

### **14.3 Procedure and show cause process**

#### **Show cause process**

Before issuing an interim prohibition order to an unregistered person, the decision maker will:

- give the person notice of the proposed order, and
- invite the practitioner to make a submission to the decision maker, within the time stated in the notice.<sup>8</sup>

Generally, the notice will:

- explain that the decision maker is proposing to issue an interim prohibition order and provide a copy of the proposed order,
- set out the reasons for the proposed interim prohibition order,
- include copies of, or summarise, the information the decision maker considered before proposing to issue the interim prohibition order, 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.<sup>9</sup> The time permitted for a person to provide a submission is often very limited, due to the nature of the decision maker's obligation to promptly consider an interim prohibition order.

Verbal submissions will be made to the National Board or its 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 an interim prohibition order, the decision maker will consider the person's submissions.<sup>10</sup>

#### **Decision to issue interim prohibition order**

The decision maker will decide whether or not to issue the interim prohibition order after it considers any submissions from the person.

If the decision maker decides to issue the interim prohibition order, it will, immediately after making the decision, give written notice of the decision to the person.

If the person is a suspended practitioner, the person's entry on the public register will be updated to reflect the interim prohibition order.

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<sup>8</sup> National Law, s 159D(1).

<sup>9</sup> National Law, s 159D(2).

<sup>10</sup> National Law, s 159D(3).

## Urgent action

Where the decision maker reasonably believes it is necessary to take **urgent** action to issue the interim prohibition order to protect public health or safety, the decision maker may issue the interim prohibition order without complying with the show cause process.<sup>11</sup>

Where an interim prohibition order is issued without complying with section 159D the interim prohibition order will be given to the person with a notice that will:

- explain that the decision maker has issued an interim prohibition order and provide a copy of the order,
- set out the reasons for the interim prohibition order being made,
- include copies of, or summarise, the information the decision maker considered before issuing the interim prohibition order, and
- invite the person to make a submission and/or to attend before the decision maker to make a verbal submission within a period not less than seven days after the notice is given.

Upon receipt of the notice, the person may choose to provide a submission or to make no submission. Any submissions may be in writing and/or made verbally to the decision maker.<sup>12</sup> Where the interim prohibition order has already been issued, the time permitted for the person to provide a submission under section 159E may be extended by the decision maker at the request of the person.

After considering any submissions made by the person the decision maker will decide within a reasonable time to confirm or revoke the interim prohibition order, and give written notice of the decision to the person.<sup>13</sup> In recognition of the fact that an interim prohibition order may have a significant impact upon a person, the decision maker will move promptly to make this decision.

The written notice will include:

- the decision made,
- reasons for the decision,
- if the decision is to confirm the issue of the interim prohibition order, that the person may appeal against the decision, how an application for an appeal may be made and the period within which it must be made.

## Giving information about interim prohibition order

The decision maker may inform the person who made the complaint about the unregistered person, or the notifier who made the notification, of the decision to issue or extend the interim prohibition order and the reasons for the decision.<sup>14</sup>

## Duration of interim prohibition order

An interim prohibition order starts on the day the order is issued to the unregistered person or any later day stated in the order.

An interim prohibition order ends on the day that is 60 days after the day on which the order starts, or on an earlier day stated in the order<sup>15</sup>, unless it is revoked or extended.

## Variation of grounds

The decision maker may vary the grounds on which an interim prohibition order was issued to a person if satisfied that a different or additional ground exists in relation to the person and the decision maker continues

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<sup>11</sup> National Law, s 159E

<sup>12</sup> National Law, s 159E(3)

<sup>13</sup> National Law, s 159E(6)

<sup>14</sup> National Law, s 159I(2)

<sup>15</sup> National Law, s 159F(2)(a)

to reasonably believe that the person poses a serious risk to persons and it is necessary that the person continue to be subject to an interim prohibition order to protect public health or safety<sup>16</sup>.

### ***Revocation***

The decision maker must revoke the interim prohibition order that had been issued by it if the decision maker is satisfied the grounds on which the order was issued no longer exist in relation to the unregistered person, or the grounds did not exist at the time the interim prohibition order was issued<sup>17</sup>.

For example, the decision maker may revoke the interim prohibition order if satisfied that:

- the person is no longer unregistered,
- the person is no longer the subject of an assessment, investigation or other proceeding under Part 8 of the National Law,
- 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 person be subject to an interim prohibition order to protect public health or safety – for example if the person has retired and no longer provides any health service.

A decision to revoke an interim prohibition order does not limit Ahpra's ability to prosecute the unregistered 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>18</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 an interim prohibition order 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.

### ***Extension of interim prohibition order by decision maker***

The decision maker may extend an interim prohibition order by a period of not more than 60 days if they reasonably believe it is necessary in the circumstances. The same procedure and show cause process will apply. A decision maker has power to extend an interim prohibition order once.<sup>19</sup>

### ***Extension of interim prohibition order by tribunal***

If the decision maker reasonably believes that the grounds on which the interim prohibition order was issued or varied still exist and will continue to exist beyond the day on which the interim prohibition order will expire the decision maker may apply to the tribunal to extend the order.<sup>20</sup> The application must be made before the order expires. Once the application is made, the order continues until the Tribunal makes a decision.<sup>21</sup> The tribunal may confirm the interim prohibition order, extend the interim prohibition order (with or without amendment) for the period the tribunal considers appropriate in the circumstances, substitute another interim prohibition order<sup>22</sup> or, if it decides the interim prohibition order is not necessary, set aside the order.<sup>23</sup>

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<sup>16</sup> National Law, s 159G(2)

<sup>17</sup> National Law, s 159G(1)

<sup>18</sup> As amended from time to time and published on Ahpra's website

<sup>19</sup> National Law, s 159H

<sup>20</sup> National Law, s 159J(2)

<sup>21</sup> National Law, s 159J(3)

<sup>22</sup> National Law, s 159K(3)

<sup>23</sup> National Law, s 159K(5)

### ***Variation and revocation of extended or substituted interim prohibition order by tribunal***

Where an interim prohibition order has been extended or substituted by a tribunal and the original decision maker is satisfied that the grounds on which the interim prohibition order was issued no longer exist in relation to the person or did not exist at the time the interim prohibition order was issued, the decision maker may apply to the tribunal to revoke the order.<sup>24</sup> Similarly, the decision maker may also apply to the tribunal to vary an order.<sup>25</sup>

### **Publication of information about interim prohibition orders**

When an interim prohibition order is issued Ahpra will publish on its website the person's name, the date the order starts and the action prohibited or restrictions imposed by the order. In the case of a practitioner whose name is included in the national register of practitioners (eg a practitioner whose registration has been suspended by way of immediate action) the information about the interim prohibition order will also be published in the register.<sup>26</sup>

The requirement to publish information about an interim prohibition order does not apply if the order was issued urgently and the decision maker reasonably believes there is no overriding public interest in the publication of the information. However, the information must be published if the interim prohibition order is confirmed after considering any submissions made by the person.

The requirement to publish also does not apply if the person subject to the order asks the decision maker not to publish the information and the decision maker reasonably believes the publication of information would present a serious risk to the health or safety of the person, a member of the person's family or an associate of the person.

Information about the order will be removed from Ahpra's website and the national register if an interim prohibition order is revoked or set aside.

### **Operation of interim prohibition orders**

It is a criminal offence to contravene an interim prohibition order, with a maximum penalty of a \$60,000 fine or 3 years imprisonment or both<sup>27</sup>.

Before providing any health service, a person subject to an interim prohibition order must give written notice of the order to the following people:

- any person they intend to provide the health service to (or their parent or guardian where appropriate)
- their employer if they intend to provide the health service as an employee
- if the health service is to be provided under a contract of services or other arrangement with an entity – that entity, and
- if the health service is to be provided as a volunteer for or on behalf on an entity – that entity.

### **Meaning of 'health service'**

'Health service' is defined in section 5 of the National Law as:

**health service** includes the following services, whether provided as public or private services

- (a) services provided by registered health practitioners,
- (a) hospital services,
- (b) mental health services,
- (c) pharmaceutical services,

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<sup>24</sup> National Law, s 159L(2)

<sup>25</sup> National Law, s 159M

<sup>26</sup> National Law, s 159N

<sup>27</sup> National Law, s 159O(1)

- (d) ambulance services,
- (e) community health services,
- (f) health education services,
- (g) welfare services necessary to implement any services referred to in paragraphs (a) to (g),
- (h) services provided by dietitians, masseurs, naturopaths, social workers, speech pathologists, audiologists or audiometrists; and
- (i) pathology services.

The definition of 'health service' is inclusive of many health-related services, including those that are not regulated by the National Law.

### Review of decision to issue interim prohibition order

The decision to issue an interim prohibition order is appellable under section 199 of the National Law.

## E. Consultation questions

We welcome your feedback on the draft chapter. You may choose to answer all or some of these questions.

### Consultation questions

1. Is it clear who the **decision maker** for issuing IPOs is and under what **circumstance/s**?
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.
3. Is the guidance about the **show cause process** clear?
4. Is the process for a **decision to issue** an interim prohibition order clear?
5. Is the guidance about the process for **taking urgent action** clear?
6. Is the guidance about the process for **giving information** about an IPO clear?
7. Is the guidance about the **duration** of an IPO clear?  
This includes:
  - a. Variation of grounds for the IPO
  - b. Revoking the IPO
  - c. Extending the IPO by the decision maker and a tribunal
  - d. When a tribunal may vary, revoke, extend or substitute an IPO
8. Is the guidance clear about the process for **publishing** IPOs?
9. Is the **operation** of an IPO clear?

10. Is there **any other information or material** you believe should be clarified or included in this new chapter of the Regulatory Guide?
11. Will publishing **FAQs and examples** help practitioners and consumers better understand how we will use this new power? Is there **other information** we should consider providing?
12. Are there **ways we can explain** how this new power may be used to avoid misunderstandings among practitioners and consumers?
13. Do you have **any other feedback** that you would like to provide?