

## Practitioner Guide for verbal submissions

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### General information about making a verbal submission to a Board

#### Purpose

This guide provides general information to practitioners about making a verbal submission in response to proposed 'relevant action'<sup>1</sup>, 'immediate action'<sup>2</sup> or any other proposed action decision by a National Board<sup>3</sup>.

#### What is a 'Show Cause'?

The process of inviting you to provide a response (submission) about a proposed action in relation to your registration before a final decision is made is commonly referred to as a 'show cause' process.

If you choose to respond to the proposed action, your response to the Board can be written or presented in person to the Board (or both).

The Board is comprised of both practitioner and community members and is supported by Ahpra staff. The Board will consider any information you provide during a show cause process in deciding whether any action is required.

#### What should my verbal submission be about?

The primary consideration of the Board is the protection of the public and public confidence in the safety of health services. The Board will assess the risks posed by your professional practice and/or conduct, which, in some circumstances, can include conduct outside of practice, particularly if it may adversely impact public confidence in the profession and/or the regulatory system. Board decision-making is shaped by the Regulatory Principles for the National Scheme.

Your verbal submission is your opportunity to tell the Board why it should not take the proposed action. Alternatively, you may make submissions that you agree to the proposed action or that a different action would be more appropriate. You may, for example, consider that no regulatory action should be taken by the Board or that the proposed action is not a proportionate regulatory response to the issue or risk identified by the Board.

It may be helpful for you to:

- Prepare a written outline of your submission.

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<sup>1</sup> Any action defined by section 155 of the National Law.

<sup>2</sup> Any action defined by section 178 of the National Law.

<sup>3</sup> Any reference to a National Board includes a reference to its delegate.

Ensure your submission focuses on the conduct, performance and/or health issues identified by Board. These can be found in the show cause notice explaining the reasons for Board's proposed action.

- If you haven't already, provide information to assist in the Board's determination of whether your health, performance and/or conduct meets the legal definitions or tests identified within the show cause notice and presents an ongoing risk to the health and safety of the public.

What information to provide will depend on the issues identified by the Board but may include employer or supervisor reports about your work performance, professional or personal references or information from your treating practitioner(s) commenting on your health, treatment and fitness to practise.

Your ability to recognise any performance, conduct and/or health issues that pose a potential public risk and your ability to explain how you intend to mitigate that risk in the future may assist the Board to determine what action, if any, is necessary.

### **How long will I have to make my submission?**

As a general rule Boards allow 15-30 minutes for any verbal submission. The Chairperson will generally welcome you to the meeting, explain the process and invite you to make your submission.

If you consider additional time will be required, please contact Ahpra to discuss this prior to the due date for your response to the proposed action.

### **Will my submission be recorded?**

It is not common practise for verbal submissions to be recorded by video or audio. Whilst it is possible, the circumstances must be in line with the Ahpra Video Conferencing Policy, with all parties attending the meeting consenting to the recording

Should you and/or your legal representative wish to have your submission recorded, please contact Ahpra Regulatory Operations staff prior to the meeting.

Any requests made on the day of the meeting may not be accommodated.

### **Can I use an interpreter or another form of communication support?**

Some people require communication support (such as an interpreter or access to specific technology) in order to make a verbal submission to the Board. This need may arise because English is not a person's first language, or they have a medical condition or disability that impacts their ability to communicate.

It is important that you have access to adequate support to communicate effectively with the Board. If you would like access to an interpreter or another support to make a verbal submission it is important that you contact Ahpra as soon as is possible so that arrangements can be made.

### **Do I need to bring any documents with me?**

No, you are not obliged to. However, you may have supporting documents that you want the Board to consider in addition to your verbal submission. If you do have documents to provide in addition to your verbal submission, you will need to provide these by the due date of your written response to the proposed action. This date will be contained in the proposed action notice.

### **Do I have to answer the Board's questions?**

No. You are under no obligation to respond to any questions or produce any information as part of your verbal submission, and the Board cannot compel you to provide information or answer questions.

The Board may ask questions to clarify the content of your verbal submission. If you decide not to answer some (or any) questions, your decision in this regard will not be considered by the Board in making its decision.

### Can I ask the Board questions?

You can ask questions seeking clarification about the verbal submission process.

However, the Board is unable to answer any questions beyond this, such as questions about the prior administration of the matter or the Board's proposed action or deliberative process.

### Can I take my legal representative into the Board meeting with me?

Yes. You can take your legal representative into the Board meeting with you.

Your legal representative can provide you with advice, guidance and support throughout the meeting; however, it is the Board's expectation that your verbal submission will be delivered by you. Your legal representative may want to emphasise or clarify certain points after you have spoken. Boards are generally happy for this to occur.

In some circumstances the Board will permit legal representatives to make all of the verbal submissions on a practitioner's behalf. If you want to make a verbal submission but propose that your representative speak at the meeting on your behalf then this needs to be arranged with the Board, via Ahpra, prior to the meeting. Generally, the Boards expect to hear from practitioners directly so be prepared to explain why you would like your representative to speak on your behalf.

### Can a support person (who is not a legal representative) attend the Board meeting with me?

Any person can accompany you before and after the Board meeting to provide you with support. However, a person who is not your legal representative may not be permitted to attend the Board meeting with you while you make your verbal submissions. This is because of the confidential nature of the information being discussed (either by you or by the Board) while you and any person with you are before the Board.

Your privacy as well as the privacy of all other persons related to the matter before the Board (i.e. patient(s), notifier and/or other third parties) is important. The Privacy Act 1988 (Cth) and the Australian Privacy Principles as well as the National Law regulate the use and disclosure of confidential and protected information obtained by Ahpra and the National Boards. The Privacy Act and the National Law impose strict obligations regarding the collection, use and disclosure of the information obtained under the National Law.

For this reason, permission for any support person (who is not your legal representative) to attend the meeting during your submission **must** be sought from the Board, through Ahpra, prior to the meeting date.

Whether permission can be granted for the support person to also attend during your verbal submission will depend on whose personal information will be discussed and whether the support person nominated by you has prior consent or is otherwise permitted access to that information. For example, if the only information before the Board relates to your own health any support person you nominate is presumed to have your consent to access your personal information that may be discussed during the meeting.

Where a patient or other person's confidential information is before the Board, permission cannot be granted by Ahpra or the Board for a member of the public to attend with you during your verbal submission unless that person has an adequate legal basis to access the protected information.

### Can I take a break during my submission?

Yes. At any time during your verbal submission, you can request a short break. If you need to, you can leave the room to speak to your legal representative or your support person.

Boards recognise that it can be stressful to provide a verbal submission in response to proposed regulatory action.

It is important to remember that the hearing of your verbal submission is your opportunity to present information to the Board to inform its decision.

### What shouldn't my verbal submission be about?

If you have prepared a written submission, the verbal submission should not simply repeat the points made in the written version. You can assume that all Board members have read your written submission fully. However, it is reasonable to expand or highlight key issues that you think will assist the Board in its assessment of the risk that your practice may, or may not, pose to the public and/or public confidence in the profession.

You may have a grievance about the notification process managed by Ahpra or other issues outside of the Board's control. Unless these issues are relevant to the information or evidence relied on by the Board, using your time before the Board to discuss unrelated information may not assist the Board to make a well-informed decision.

To assist you, where the Board considers your submissions may not be relevant to the issues, the proposed action or reasons for that proposed action, the Board may prompt you. Any prompt is intended to ensure you are afforded every opportunity to use your time before the Board to assist it to make an informed decision.

### When will I know what the decision is?

The Board will not necessarily make a decision while you are present on the day. If this is the case, an Ahpra staff member will contact you or your legal representative following the Board's decision to tell you the outcome. You will also be informed of the decision in writing, together with the Board's reasons, as soon as practicable after the decision has been made.

### Practical considerations and further information

The time and location for your verbal submission will be provided to you by Ahpra in advance of the meeting. Some Boards may convene to hear your verbal submissions via videoconference due to the Board sitting as a National Board or committee.

Some practitioners request to make submissions via videoconference. If you would like to connect to a Board meeting in this way, please contact Ahpra in advance so that this can be arranged.

If you have any further questions, please contact the Ahpra staff member identified in your proposed action notice or contact Ahpra on 1300 419 495 quoting your Ahpra reference number found in the proposed action notice.

## Document control

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