



Consultation report

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

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National Boards
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Ahpra and the National Boards regulate these registered health professions: Aboriginal and Torres Strait Islander health practice, Chinese medicine, chiropractic, dental, medical, medical radiation practice, midwifery, nursing, occupational therapy, optometry, osteopathy, paramedicine, pharmacy, physiotherapy, podiatry and psychology.

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1. Background

Changes to the Health Practitioner Regulation National Law

The *Health Practitioner Regulation National Law and Other Legislation Amendment Act*¹ (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 2022.²

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.

Prior to the automatic start of the final group of changes (21 October 2023), Western Australia had not yet passed their corresponding amendments. Accordingly, on 20 October 2023 the *Health Practitioner Regulation National Law and Other Legislation Amendment (Postponement) Regulation 2023* was passed to extend the date for automatic commencement to 21 October 2024 – but with provision to commence the remaining changes on proclamation on an earlier date if practicable. The Parliament of Western Australia passed their amendment Bill (that includes the tranche 2 changes, protecting the title ‘surgeon’ and others and moves WA to an applied laws model) on 9 May 2024 and the Act achieved assent on 14 May 2024. As a result, we expect jurisdictions will proceed with a proclamation for the start of the remaining tranche 2 amendments before October 2024.

Roles of National Boards and Ahpra

National Boards are responsible for managing health, conduct and performance issues involving registered health practitioners.³ 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.

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

² Health Practitioner Regulation National Law, as in force in each state and territory

³ 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.

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,⁴ **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 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.

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](#).

How we consulted

Targeted consultation on how Ahpra and the National Boards propose to use the new power to issue public statement warnings started from 1 August 2023 and closed on 5 September 2023. Extensions were granted on request up to 18 September 2023. The total consultation period was just under seven weeks.

Targeted consultation allowed 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 this new power and the safeguards that will be in place to ensure they are used lawfully and appropriately. The process provided an opportunity to provide feedback that will help us improve clarity and workability.

The targeted consultation paper was emailed to more than 100 key stakeholders, including peak consumer groups, health practitioner professional peaks, medical colleges, jurisdictions, indemnity insurers, and peak Aboriginal and Torres Strait Islander health groups.

⁴ **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 addition, the consultation paper and response form were publicly available on [Ahpra's dedicated webpage](#) for our implementation of the National Law amendments.

Feedback was sought on the draft wording of the new chapter for the *Regulatory Guide*. We asked open-ended questions about the draft chapter and sought feedback clarity of the draft wording; whether other information needed to be included; whether publishing FAQs or fact sheets would help practitioners, consumers and other stakeholders understand the new power and safeguards around its use; and if there are other ways that can explain how this new power may be used to avoid misunderstandings.

As we did targeted consultation, we advised stakeholders that all responses would be treated as confidential and feedback would 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 targeted consultation material stated that we were not revisiting policy decisions made by Health Ministers about public statements that led to the change to the National Law. The package of reforms was 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 and ultimately passed following parliamentary debate.

Purpose of the report on consultation

This report describes the consultation process, summarises responses received from stakeholders, and how these responses were considered in the finalisation of the new chapter for the *Regulatory Guide*. Our approach to targeted consultation was to respect confidentiality of submissions, while wanting to be transparent about the feedback we received and the changes that were agreed as a result.

1. Overview of consultation responses

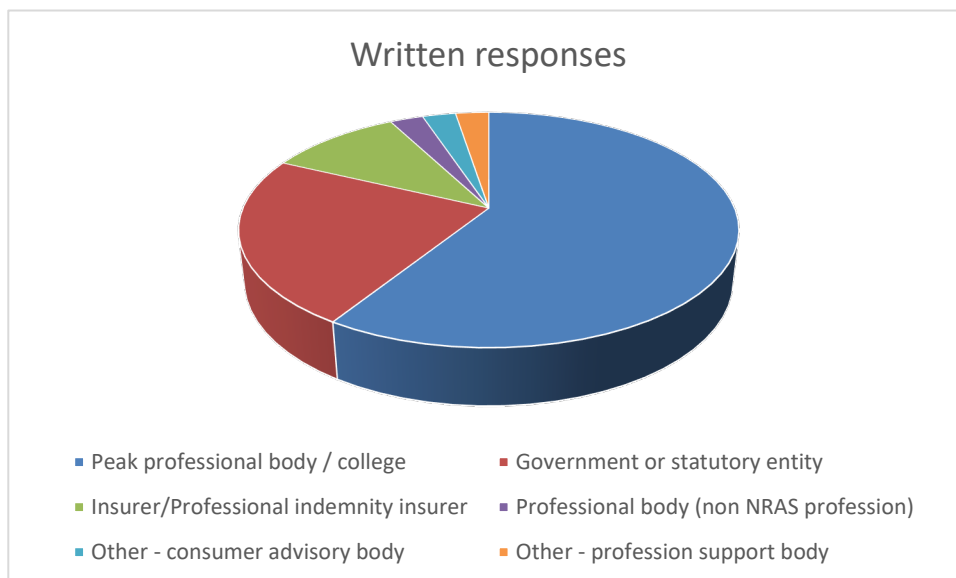
Submissions summary

Thirty-nine written responses were received to the targeted consultation, showing good interest in how Ahpra and the National Boards propose to use this new power. A breakdown is provided below:

Table 1:

Peak consumer organisation	0
Peak professional body / college	23
Government or statutory entity	9
Insurer/Professional indemnity insurer	4
Professional body (non NRAS profession)	1
Other – consumer advisory body	1
Other – profession support body	1
Total	39

Table 2:



Summary of responses

All responses to the targeted consultation were considered as part of our work to finalise changes to our regulatory policies and procedures and adding a new chapter to the published *Regulatory Guide* about issuing public statements. Many stakeholders chose to answer all questions posed in the consultation paper.

We thank all respondents for taking the time to respond and to share their thoughts on how we can improve the new chapter for the *Regulatory Guide*, strengthen the information we provide about our processes and decision-making consistent with our statutory obligations, and other ways that we can communicate the changes to practitioners and consumers and the public.

Responses can be categorised per below:

Table 3:

KEY:

Agree draft chapter is clear / mostly clear with feedback to improve clarity and workability	Concerns or reservations about use of new power; feedback to improve clarity and strengthen aspects	Opposed the new power being used and/or enacted - feedback provided
37	1	1

Of the submissions, the clear majority (37 out of 39) felt that the guidance was either clear or mostly clear. When detailed feedback was provided, it focussed on ways to improve how we explained some aspects of the proposed processes, including providing more clarity about the decision maker, thresholds, interaction with other state and territory legislation, and other improvements in the wording used in the draft chapter.

There were also suggestions on ways that this new power could be communicated (in addition to the *Regulatory Guide*) including developing FAQs, features for board newsletters and other communications that can be shared with practitioners.

One peak professional body expressed their continuing opposition to the new power and called for enactment of the change and/or implementation to cease. One other stakeholder expressed concerns about the impacts of the new power on people that are subject to an IPO and provided feedback to improve clarity and strengthen processes. We acknowledge that these views are consistent with feedback that was provided to Governments during policy development and drafting of this legislative provision.

The role for Ahpra and the National Boards is to implement the changes to the National Law. Part of our work is to ensure that we have the processes, procedures, delegations, and systems in place to support our efficient, effective, fair and transparent use of any new powers in accordance with the National Law. Governments decide when the change will be enacted, and we must be ready for when this happens.

2. Key themes and our response

Below is a high-level summary of the changes that have been made to the new chapter in the *Regulatory Guide* and to our procedures in response to the feedback provided.

Key theme	Our response
Greater clarity needed about the meaning of 'reasonable belief'	<p>Some submissions suggested that the guidance did not sufficiently explain the concept of reasonable belief.</p> <p>This concept is explained elsewhere in the <i>Regulatory Guide</i> (of which this guidance will be one chapter).</p> <p>However, an additional paragraph has been added clarifying how that concept operates compared to other legal thresholds such as 'beyond a reasonable doubt' and 'on the balance of probabilities.'</p>
Greater clarity needed about use of the power to issue an IPO and other powers under Part 8 (Notifications)	<p>A number of submissions asked for greater clarity about use of the power to issue an IPO and other powers that National Boards already have.</p> <p>A further explanation was added to describe the relationship between the IPO power and Part 8 powers generally.</p> <p>That explanation makes it clear that an IPO will not be issued if other regulatory action has been taken which appropriately addresses the risk. A sentence has also been added to this effect under the heading of 'necessity.'</p>
Greater clarity needed about serious risk	<p>A number of submissions asked for more clarity about how serious risk will be determined.</p> <p>A further explanation has been added in respect of determining whether there is 'serious risk.'</p>
Need to clarify how notice will be given	<p>Some submissions suggested that clearer guidance was required to explain whether written or verbal notice would be given of the proposal to issue an IPO.</p> <p>While it is not possible to give definitive advice to cover every situation, an explanation has been provided to the effect that written advice will be provided wherever possible and may be supplemented by verbal advice.</p>
Request to set a minimum period for submissions to be provided if issuing an IPO is proposed	<p>A number of submissions suggested that a minimum period should be set for submissions to be provided in respect of a proposal to issue an IPO.</p> <p>However, it is not possible to do so. The <i>National Law</i> does not prescribe a minimum period (as it does for submissions in response to urgent IPOs). This reflects that the minimum period will depend on the circumstances of the particular case.</p> <p>The guidance now explains this and makes it clear that the period will be reasonable.</p>
Urgent IPOs – maximum time for decision maker should be set	<p>Some submissions suggested that when an urgent IPO had been issued, there should be a maximum period provided for the decision maker to issue their decision after receiving a submission about the urgent IPO.</p> <p>An indication that the decision will strive to issue any such decision within 14 calendar days has been included.</p>

Key theme	Our response
Greater clarity needed about when a complainant / notifier will be informed of a decision to issue or vary an IPO	<p>A number of submissions suggested that a complainant/notifier should <u>always</u> be informed about the decision to issue or vary an IPO. On the other hand, the potential privacy considerations involved in doing so were also raised.</p> <p>Accordingly, to strike the right balance, a sentence was added to indicate that notice of an IPO would be provided to a complainant/notifier in most cases, subject to confidentiality issues.</p>
Unclear if a person can apply to vary or revoke an IPO	<p>A new section has been added in respect of a person making an application for variation or revocation of an IPO.</p> <p>This was in response to a number of submissions suggesting that it wasn't clear if a person could make such an application.</p>
Publication of IPO – limited circumstances when an IPO will not be published	<p>The potential to not publish an IPO and the reasons why this might happen was raised by some stakeholders.</p> <p>An explanation has been added to provide greater clarity about the limited circumstances in which a person may seek to avoid the publication of an IPO.</p>

3. Conclusion

Ahpra and the National Boards have carefully considered stakeholder feedback, agreed the changes to be made, and will publish the new chapter in the *Regulatory Guide* to coincide with the start of this change on a day to be decided by Governments.

The revised new chapter is provided in the **appendix** to this report.

4. Next steps

We recognise that the National Scheme can be complex to navigate and understand, and there are things we can do in addition to the new chapter in the *Regulatory Guide* to help explain how we propose to use this new power and respond to frequently asked questions and concerns.

Based on stakeholder feedback, Ahpra will publish additional explanatory material to help people understand this new power and how and when we are likely to need to use it.

The *Regulatory Guide* is usually reviewed annually to ensure it stays current, relevant and effective. We have scheduled a review for 12 months after the new power starts.

Appendix: Revised new chapter for the *Regulatory Guide*

1. Interim prohibition orders

1.1. Introduction

An interim prohibition order¹ 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 service² 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.

1.2. Decision maker

An interim prohibition order may be issued by Ahpra. An interim prohibition order may also be issued by a National Board for the profession in which an unregistered person was previously registered.

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

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 all 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, allegations about the unregistered person will not have been fully investigated. Quite often, conclusive evidence is not available when the interim prohibition order is considered. A decision maker will assess the material before it when considering whether an interim prohibition order is required. If the decision maker forms the requisite reasonable beliefs on the material before it so that the requirements for an interim prohibition order are met, a decision maker may issue one.

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

1.3. Grounds for issuing an interim prohibition order

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

¹ National Law, s 159B.

² 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.

- 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 decision maker reasonably believes that:
 - 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'.³

The requirement that a reasonable belief be formed before action is taken sets a lower threshold compared to the level of certainty required in criminal proceedings (beyond a reasonable doubt) or civil proceedings (on the balance of probabilities).

Contravention of a relevant provisions

Relevant provisions for the purposes of section 159C 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.

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) to suspend 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.

Serious risk

In considering whether an unregistered person poses a serious risk to the public, the decision maker is not required to make factual findings about the person's actions. 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 issue an interim prohibition order. Often the fact of, and serious nature of, allegations about a person, supported by relevant documentary material or other corroboration, will be sufficient to support a reasonable belief as to the existence of the serious risk.

³ *George v Rockett* (1990) 170 CLR 104.

A 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) and an assessment as to whether the risk will be addressed by any suspension or surrender of registration.

In the context of immediate action, it has been said that “in assessing whether a person poses a serious risk to persons it is helpful to consider the nature of the risk, the likelihood of its eventuating and the seriousness of the consequences if the risk does eventuate.”⁴

In considering the nature of the risk, the decision maker will assess 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 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 health profession despite being unregistered. Examples of situations likely to pose a serious risk include:

- an unregistered person holding themselves out as a dentist and performing irreversible procedures on patients’ teeth in a home ‘clinic’;
- 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 is providing treatments using medications that only a registered practitioner may prescribe and administer.

Necessity

Having formed a reasonable belief that a person poses a 'serious risk' to people (as set out above), a 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;
- a previously identified risk thought to be contained by immediate action arising in a different context such as a physiotherapist suspended on the basis of alleged sexual assaults of patients continues to provide massage services; or
- an unregistered person holds themselves out as a chiropractor and performs spinal manipulations on infants.

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 registered health practitioner from undertaking activity which would, but for the immediate action, be lawful. Given that an IPO 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, whilst unregistered. Accordingly an interim prohibition order prohibiting these things will not impose any additional restriction on an unregistered person’s lawful activities. For this type of restriction Parliaments have already decided that it is necessary that only registered practitioners use these titles or carry out these acts.

However, an interim prohibition order can restrict an unregistered person who in the decision maker’s reasonable belief has contravened one of the relevant provisions or who is subject to proceedings under Part 8 of the National Law from undertaking activities that would, but for the interim prohibition order, be lawful – for example, it may prohibit an unregistered person (such as a physiotherapist who has surrendered their registration) 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

⁴ *Loney v Nursing and Midwifery Board of Australia* [2020] QCAT 486, [10].

prohibition order will be relevant to deciding whether an interim prohibition order is necessary and the form it will take.

IPOs will not be used in all cases where a practitioner's registration has been suspended or cancelled. In every case, a decision maker will consider whether an IPO is indeed necessary to protect public health or safety over and above the practitioner's registration being suspended or surrendered.

The restrictions on otherwise lawful activities imposed by an interim prohibition order will only be imposed if it is necessary to ensure that health services are provided safely and to address any risk 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 other relevant entity has already issued a prohibition order about the person or health services provided by the person. To the extent allowed by applicable privacy and confidentiality requirements, the decision maker ensure consultation has occurred with relevant health complaint entities prior to deciding whether to issue an IPO in respect of the relevant person.

1.4. 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 person to make a submission to the decision maker, within the time stated in the notice.⁵

The notice of the proposed IPO may be provided in writing or verbally. The method of giving such notice will be that which is most likely to bring the relevant material to the attention of the person within the necessary timeframe. Wherever possible, notice will be given in writing, although such written notice may be supplemented by verbal advice (by telephone) of the fact that such written notice has issued to ensure it comes to the attention of the relevant person.

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.⁶

The time permitted for a person to provide a submission is not prescribed by the *National Law*. This reflects the fact that what is a reasonable time to make a submission will depend upon the circumstances of the particular case. It is not possible to set a minimum period for making a submission but such period will be reasonable in the circumstances. However, the time allowed will often be very limited, due to the nature of the decision maker's obligation to urgently consider an interim prohibition order.

Verbal submissions will be made to the National Board's delegate 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.

⁵ National Law, s 159D(1).

⁶ National Law, s 159D(2).

Before deciding whether to issue an interim prohibition order, the decision maker will consider the person's submissions.⁷

Decision to issue interim prohibition order

A 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 that an interim prohibition order has also been issued.

Urgent action

Where a 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 process⁸.

A decision to issue an IPO without a show cause process will only be made in extraordinary situations of particularly high risk and when time is of the essence.

For example, such an urgent IPO may be appropriate in circumstances where there is cogent evidence that an irreversible dental procedure is to be undertaken by an unregistered person the following day.

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 and why a show cause process was not followed;
- 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 7 days after the notice is given.

The manner of delivery of an IPO which has been issued in urgent circumstances will vary so that it is brought to the attention of the relevant person in such a way as to ensure that the public is protected. For example, 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, the decision maker may decide to issue an interim prohibition order in an attempt to prevent the conduct occurring and may require such an IPO to be hand delivered to ensure it has been received.

Upon receipt of the notice and after taking any advice they consider appropriate, 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.⁹ 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.¹⁰ 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 and will strive to deliver a decision within 14 calendar days.

⁷ National Law, s 159D(3).

⁸ National Law, s 159E

⁹ National Law, s 159E(3)

¹⁰ National Law, s 159E(6)

The written notice will include:

- the decision made;
- reasons for the decision; and
- 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

A 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.¹¹ In most cases the complainant or notifier will be informed of the decision to issue (or vary) an IPO and, subject to any privacy or confidentiality issues, will be provided with the reasons for the decision.

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 order¹², 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 ground¹³ exists in relation to the person and the decision maker continues 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 safety¹⁴.

If the grounds for the IPO are to be varied, the requirement to provide a show cause procedure applies.

If the grounds for an IPO are being varied, then the restrictions in the IPO may also be amended. A full show cause opportunity will be provided, if the grounds or restrictions in an IPO are to be varied.

Revocation

A decision maker must revoke the interim prohibition order 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 issued¹⁵.

For example, the decision maker **must** 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 an 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.

¹¹ National Law, s 159I(2)

¹² National Law, s 159F(2)(a)

¹³ Specified in s 159C(1)(a)

¹⁴ National Law, s 159G(2)

¹⁵ National Law, s 159G(1)

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 Guidelines¹⁶ 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.

Variation or revocation application

A person who is the subject of an IPO may apply to the decision maker for revocation of the IPO if the person believes that the grounds upon which the IPO was made no longer exist (or did not exist at the time of the making of the IPO).

However, if the IPO has been extended by the responsible tribunal, a decision maker cannot revoke the IPO. Instead, the person may apply to the decision maker in an attempt to have the decision maker make an application to the tribunal for revocation.

A person may apply to the decision maker for variation of an IPO if a responsible tribunal has not extended that IPO. If a responsible tribunal has extended the IPO, the person may apply to the decision maker in an attempt to have the decision maker apply to the tribunal for variation.

Extension of interim prohibition order by decision maker

A 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. An interim prohibition order may only be extended once.¹⁷ If the decision maker wants to extend the IPO beyond this period, an application must be made to the responsible tribunal (see below).

Extension of interim prohibition order by tribunal

If a 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 a responsible tribunal to extend the order¹⁸. The application must be made before the order expires, and once made the order continues until the tribunal makes a decision about the interim prohibition order.¹⁹ 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 order²⁰ or, if it decides the interim prohibition order is not necessary, set aside the order.²¹

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.²² Similarly, the decision maker may also apply to the tribunal to vary an order.²³

¹⁶ As amended from time to time and published on Ahpra's website

¹⁷ National Law, s 159H

¹⁸ National Law, s 159J(2)

¹⁹ National Law, s 159J(3)

²⁰ National Law, s 159K(3)

²¹ National Law, s 159K(5)

²² National Law, s 159L(2)

²³ National Law, s 159M

Publication of information about interim prohibition orders

When an interim prohibition order is issued, Ahpra will publish the person's name, the date the order starts and the action prohibited or restrictions imposed by the order on its website. 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.²⁴

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. It is likely that if the conditions necessary for the issue of an urgent IPO are met then there will be public interest in publishing the urgent IPO.

Also, the requirement to publish 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. The starting presumption is that an IPO will be published and a person seeking to avoid having an IPO published bears the onus to establish convincingly that the risk of harm outweighs the risk to the public that might arise in the event of non-publication. The decision maker will need to be satisfied that not publishing the IPO is necessary to address the serious risk to the health or safety of the person, their family or associates. It is not sufficient to avoid publication of the IPO merely because the person, their family or associates may be embarrassed.

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 both²⁵.

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;
- (b) hospital services;
- (c) mental health services;
- (d) pharmaceutical services;
- (e) ambulance services;
- (f) community health services;

²⁴ National Law, s 159N

²⁵ National Law, s 159O(1)

- (g) health education services;
- (h) welfare services necessary to implement any services referred to in paragraphs (a) to (g);
- (i) services provided by dietitians, masseurs, naturopaths, social workers, speech pathologists, audiologists or audiometrists; and
- (j) 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 appealable under section 199 of the National Law.