



## Response form – Targeted consultation on how Ahpra and the National Boards propose to use the new power to issue public statements

19 January 2023

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### Targeted consultation

The Australian Health Practitioner Regulation Agency (Ahpra) is undertaking targeted consultation about how Ahpra and the National Boards propose to use the new power to issue public statements (warnings). The change to the National Law to allow Ahpra and the National Boards to use this new power has not yet started.

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

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

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

### How we will treat responses to targeted consultation

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

As this consultation is targeted, we will treat your response as being confidential and your feedback will not be published.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

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

### How to give feedback

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

Please email your submission to [nationallawamendments@ahpra.gov.au](mailto:nationallawamendments@ahpra.gov.au) by close of business **Wednesday 22 February 2023**.

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## Response form

### Your details

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

- A peak consumer organisation
- A peak professional body
- An individual consumer/member of the public
- An individual health practitioner
- Government or statutory authority
- Other organisation – please describe: Click or tap here to enter text.
- Other – please describe: Click or tap here to enter text.
- Prefer not to say

### Feedback

#### 1. Is it clear who will be the decision maker for issuing a public statement and under what circumstances?

While, the Royal Australian College of General Practitioners (RACGP) understands the intent of the changes to the National Law that empower Apha and the National Boards to issue public statements, careful consideration of the potential impacts the statements could have on practitioners is needed.

There is a need to balance protecting the public with protecting the integrity of a system that presumes persons are innocent until proven otherwise. Public statements should be made as a last resort, after all other avenues for risk mitigation have been explored, and only after the investigation is complete with all appeals processes exhausted and/finalised.

Whilst it is clear that the registration status of a practitioner determines who the decision maker will be, further consideration of an external review process is required to ensure that the decision-making process is transparent and impartial.

The circumstances under which a public statement can be made are clear, however further transparency around the 'reasonable belief' and 'serious risk' threshold is required and is discussed below.

#### 2. Does the proposed approach provide clarity about the threshold tests that need to be met to allow either Apha or a National Board to issue a public statement?

The RACGP notes that the threshold for issuing a public statement is set at a high level and welcomes the statement that the new power does not enable Apha or the National Boards to 'name and shame' practitioners or other people being investigated before there is a formal outcome.

Despite this, care must be taken to ensure that the practical definition of 'reasonable belief' is transparent and centred on facts and known events. It is imperative that the proposed approach makes it clear what steps are to be taken before this power is applied and when this power could be applied.

The threshold tests for 'serious risk' should be examined and validated by an independent and external entity with the appropriate clinical expertise and professional judgement to determine the true likelihood of serious harm.

Furthermore, there is tension between the statement that the new power does not enable the 'naming and shaming' of practitioners or other people being investigated before there is a formal outcome, and the apparent proposed approach that supports public statements being issued while investigations or disciplinary hearings remain ongoing. This is concerning and is at odds with principles of natural justice.

Given this, further consideration is required to ensure the working definition of 'serious risk' is rigorous and transparent, thereby safeguarding the rights of affected practitioners and guaranteeing the power is applied fairly and uniformly.

### 3. Is the guidance clear about the procedures that are to be followed to support a public statement being made, revised, or revoked?

The RACGP notes the inclusion of show cause and appeals processes and the obligation to revoke a public statement where the grounds on which the statement was made no longer exist or never existed. This is welcome; however, it does not prevent the potential unforeseen damage that could occur from a public statement issued where the practitioner is not at fault. In the event of a public statement being significantly revised or revoked, Ahpra and the National Boards must actively and transparently remediate the reputational damage imposed on the affected person.

It must be made clear to an affected person that Ahpra will proceed to issue a public statement in the absence of a stay of the decision (court order) or an interim injunction, even if the person indicates they will lodge an appeal. Whilst advice is provided on this matter in the consultation paper, further explanation of this proposed approach will provide affected persons with additional guidance and clarity.

The use of a dedicated webpage for all public statements issued provides an appropriate publication channel for public statements. However, further consideration of the impacts of sharing public statements on social media is necessary.

Clarification of the controls that will be put in place to protect the affected persons from a potential social media 'pile-on' is imperative. Unnecessary publication on social media channels will serve to intensify public discourse, further damaging the practitioner's reputation and significantly impacting their wellbeing and that of their families and colleagues.

The additional prospect of reputational damage being unnecessarily inflicted upon the colleagues of affected persons by virtue of their professional proximity to a high-profile case also needs to be carefully considered when sharing public statements on social media platforms. As information published on social media platforms is enduring, and social media platforms are often reluctant to edit or remove content, it is imperative that further detail regarding how social media statements will be managed is provided.

Where revisions to public statements are made, further clarification is required about the nature of the publication of the correction. Affected persons require assurance that it will be made clear to the public that a revision has been made to the original statement, with an explanation of the material effect the revision has had on the content of the original statement.

Additionally, the promotion of the revision or revocation must be equal to the promotion of the original public statement. Simply removing the statement from the dedicated website or social media platform provides no enduring evidence that the statement has been revised or revoked (including where allegations are proven to be false).

Affected persons must be assured that the publication of revisions and revocations are commensurate with the publication of the original statement.

The onus to take the necessary additional steps in respect to a revocation should rest with Ahpra and the National Boards and not at the request of the affected person.

**4. Is there any other information that we should consider providing to help practitioners and consumers better understand how we will use this new power to issue public statements (warnings)?**

The RACGP recommends that Ahpra and the National Boards undertake both consumer and practitioner focused education and awareness activities, explaining the new power to make public statements and providing clarity regarding the issues outlined in this submission.

**5. Are there ways we can explain how this new power may be used to avoid misunderstandings among practitioners and consumers?**

A comprehensive and tailored awareness and education campaign will assist with avoiding misunderstandings among practitioners and consumers. The RACGP has received member feedback indicating that practitioner confidence in Ahpra is low due to its handling of vexatious complaints, lack of capacity, its unpredictable timelines and non-transparent processes. The provision of transparent and clear information on the new power will serve to strengthen public and practitioner confidence in Ahpra and the National Boards.

**6. Do you have feedback on the draft wording of the proposed new chapter to be inserted into the published Regulatory Guide (Attachment B to the consultation paper)**

The RACGP supports the inclusion of examples and explanations within the new chapter. However, further clarification around threshold tests, appeals, the promotion of statements on social media channels, and revisions and revocations is required.

**7. Is there any other information or material you believe should be included in this new chapter of the Regulatory Guide?**

Other than the inclusion of the additional clarifying information noted in question 6, the RACGP believes no additional information or material is required in the new chapter.

**8. Do you have any other feedback that you would like to provide?**

The RACGP understands the intent of the changes to the National Law that empower Ahpra and the National Boards to issue public statements but remains concerned about the potential impacts for practitioners.

According to human rights principles, society has a duty of care to ensure that systems and processes do not increase the likelihood of harm, regardless of whether an individual under investigation is at fault or not.

Ahpra has an obligation to provide support to practitioners to minimise the mental health impacts of a public statement, including referral to appropriate support services and resources.

The proposed approach provides limited clarification around areas of significant concern for practitioners, particularly threshold tests and the making, revision or revoking of public statements. Further explanation is required to ensure that the new Regulatory Guide chapter is fit for purpose and provides practitioners with robust and transparent information.

## Thank you

Thank you for participating in this targeted consultation.