



## 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As this consultation is targeted, we will treat your response as being confidential and your feedback will not be published.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

Name: Dr Max Ma

Organisation: Chinese Medicine Industry Council of Australia (CMIC)

Contact email: admin@cmic-aus.org.au

Contact phone: 02-9267 5977

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?

Yes for whom it can make the decision but less transparency of decision-making procedures disclosed. Careful consideration of withholding the statement should be taken for cases in the process of an assessment or investigation before a full consensus of the conclusion is made to protect any possible unnecessary harm and long-term damages to an innocent registered practitioner. However, It may be necessary to issue a statement in the process of investigation or legal proceedings for unregistered practitioners when a public risk is high and urgent.

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

Not very. For example: "other safeguards of the legislation" requires: a decision to issue a public statement will be subject to appeal to a relevant tribunal. But it seems the statement can be released even if the statement recipient wants to go to a tribunal.

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

Although the proposal has guidance that a statement can be revised or revoked, sometimes the adverse impacts to the registered practitioners are irreversible because public media or private media won't possible to update their contents even if the original media /issuer has revised or revoked, and the readers / audients who read the first statement may not necessarily be automatically informed or notified with the updates.

**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)?**

Statement to the public should only be issued after no promised action plans are made or being continued to break the law/code for which it will cause immediate serious public risks.

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

Stringent care should be taken into account to exercise the new power, and a more sensible decision making process and specific criteria should be established to avoid “revoking “ for which it seems too late for caused damages.

Generally, it is sensible to put the practitioners and consumers into one community entity as a whole rather than in an opposite position. They come with one common goal to achieve the best health result, and fundamentally they are interdependent. To protect the team of registered practitioners are actually protecting the public. However, for some “deliberate suspected offenders”, a public warning is necessary if a private warning does not work.

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)

See above comments

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

For the procedure to issue a statement for registered practitioners, the guide can consider adding in one interim step: informing his/her professional association to come back with comments after a peer assessment. If the association can help resolve the problem, then issuing a statement can be skipped.

For unregistered offenders, directly issuing a public statement seems fairer.

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

No

### Thank you

Thank you for participating in this targeted consultation.