



National Health  
Practitioner  
Ombudsman

# Consultation paper

National Health Practitioner Ombudsman's  
investigation into delay and procedural  
safeguards for health practitioners subject to  
immediate action

February 2025

# Consultation paper

In June 2024 the National Health Practitioner Ombudsman (the Ombudsman) commenced an own motion investigation into delay and procedural safeguards for health practitioners subject to immediate action.

The Ombudsman is seeking submissions from health practitioners, health services and organisations, and others interested in informing the investigation. Specifically, the investigation seeks to hear perspectives on timeliness and access to a fair process in matters where a practitioner is subject to immediate action.

This will help the investigation to identify any issues, and whether it is necessary for the Ombudsman to respond by recommending changes.

This consultation paper provides information about the investigation and how to make a submission to the Ombudsman.

**Public consultation opens on 27 February 2025 and closes on 31 March 2025.**

**Please complete and return the consultation form by [email](mailto:submission@nhpo.gov.au) to [submission@nhpo.gov.au](mailto:submission@nhpo.gov.au)**

<b>Contents</b>	
<b>Consultation paper</b> .....	<b>2</b>
<b>Context for the investigation</b> .....	<b>3</b>
What is immediate action? .....	3
What is the Ombudsman’s role? .....	4
<b>About the investigation</b> .....	<b>4</b>
What is the Ombudsman investigating? .....	4
Why is the Ombudsman investigating?.....	5
<b>Your participation – making a submission</b> .....	<b>7</b>
How do I make a submission? .....	7
When can I make a submission? .....	8
How will information I provide in my submission be used? .....	8
Will my submission be made public? .....	9
What will happen after I make a submission? .....	9
Can I make a complaint about how Ahpra or a National Board handled my matter?.....	9
Access to support services .....	9

# Context for the investigation

The National Registration and Accreditation Scheme's (the National Scheme's) primary guiding principle is the assurance of public protection and public confidence in health services provided by registered health practitioners.<sup>1</sup> 'Immediate action' can be seen as a mechanism to achieve this objective by enabling a National Health Practitioner Board (National Board) to swiftly respond to protect the public from a serious risk posed by a registered health practitioner.<sup>2</sup>

While public protection is the National Scheme's paramount principle, the Health Practitioner Regulation National Law's (the National Law's) other guiding principles are also relevant to the appropriate use of immediate action. This includes, for example, that the National Scheme operates in a way that is "transparent, accountable, efficient, effective and fair."<sup>3</sup> The notion of ensuring fairness for practitioners can be seen to stem from this guiding principle, alongside existing recognised principles regarding procedural fairness.

## What is immediate action?

Immediate action is defined, and its requirements outlined, in the National Law. In summary, immediate action refers to a National Board's decision to take action regarding a health practitioner's registration if it reasonably believes that a health practitioner poses a serious risk to the public, and/or it is in the public interest to do so.<sup>4</sup> Action may include, for example, placing conditions on a practitioner's registration or suspending the practitioner's registration.

Immediate action is described by the Australian Health Practitioner Regulation Agency (Ahpra) and the National Boards as an 'interim action'. It is generally described this way because:

- a National Board makes immediate action decisions quickly and on the basis of the information before it, which is often limited<sup>5</sup>
- after taking immediate action, the relevant National Board must decide which further action to take to address the issue/s which led to the immediate action.<sup>6</sup> This may include deciding to investigate a matter/s, referring a matter/s to the relevant Tribunal or a panel, or requiring that the practitioner undertake a health or performance assessment.

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<sup>1</sup> See Health Practitioner Regulation National Law, s 3A.

<sup>2</sup> The National Scheme regulates 16 health professions. Individuals seek to practice in one of these professions are required to first be registered by the relevant National Board.

<sup>3</sup> See Health Practitioner Regulation National Law, s 3A.

<sup>4</sup> Section 156 of the National Law details the circumstances in which immediate action can be taken.

<sup>5</sup> *Kozanoglu v Pharmacy Board of Australia* [2012] VSCA 295 (12 December 2012).

<sup>6</sup> See National Law, s 158(1)(b).

## What is the Ombudsman's role?

The Ombudsman champions fairness by taking every complaint seriously and shining a light on systemic issues to affect positive change.

The Ombudsman's office provides a free and independent complaint handling service that is open to all, including the public, health practitioners, education providers, students and specialist medical trainees.

The office assists with complaints about bodies in the National Scheme, including Ahpra, the 15 National Boards, accreditation authorities and specialist medical colleges. This includes considering complaints about how Ahpra and the National Boards manage notifications and immediate action-related processes. Put generally, the Ombudsman's role is to consider whether Ahpra and the National Boards' actions and decisions are in line with the relevant legislation, policies and procedures.

## About the investigation

In June 2024, the Ombudsman commenced an own motion investigation into delay and procedural safeguards for health practitioners subject to immediate action.<sup>7</sup>

### What is the Ombudsman investigating?

The Ombudsman is investigating how matters involving health practitioners subject to immediate action are handled by Ahpra and the National Boards, including if existing policies and procedures enable timely and procedurally fair outcomes. The issues being investigated include:

- whether Ahpra's current policies and procedures allow for the timely:
  - use of immediate action
  - investigation of health practitioners subject to immediate action
- whether there are sufficient procedural safeguards for health practitioners subject to immediate action.

Current Ahpra and National Board processes (and associated policies) that the investigation is considering include:

- identification of a matter that may meet the threshold for immediate action
- consideration of whether immediate action is necessary, including the ongoing management of a matter when immediate action is being considered
- ongoing management of a matter after immediate action is taken, including in relation to communication

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<sup>7</sup> Pursuant to s. 5(1)(b) of the Ombudsman Act 1976 (Cth).

- a matter’s outcome when a practitioner is subject to immediate action, including referral to a Tribunal
- review processes in relation to decisions to take immediate action.

The Ombudsman is not investigating the immediate action processes undertaken by the Office of the Health Ombudsman in Queensland (the OHO) and bodies in New South Wales including the Health Professional Councils Authority (HPCA) and Health Professional Councils.<sup>8</sup>

The investigation is considering a range of information to inform its findings, including available research, Ahpra’s notifications-related data, the Ombudsman office’s complaints data, targeted engagement with affected individuals and organisations, and submissions received through this public consultation process.

## Why is the Ombudsman investigating?

The Ombudsman’s routine monitoring activities identified that practitioners had increasingly raised issues with her office about immediate action being taken. In 2023–24 the office recorded 84 issues related to immediate action being taken across complaints about the notifications process, compared to 51 issues in 2022–23, 45 issues in 2021–22 and 24 issues in 2020–21.

Health practitioners raised a range of concerns with the Ombudsman related to immediate action processes. A common theme identified by the Ombudsman’s office was practitioners expressing frustration with the time taken to receive an outcome for the matter that led to immediate action being taken, and a lack of communication about its progress.

## Timeliness in the management of matters when a practitioner is subject to immediate action

The National Law outlines certain expectations for the management of a matter when a practitioner is subject to immediate action. In general, a National Board must ensure that an investigation is conducted “as quickly as practicable, having regard to the nature of the matter to be investigated.”<sup>9</sup> The National Law does not specify a time limit on the duration of immediate action.<sup>10</sup> Instead, immediate action has effect until the decision is set aside on appeal by the relevant Tribunal or the suspension is revoked or the conditions removed by the National Board or an undertaking is agreed upon.<sup>11</sup>

As noted above, complainants have raised concerns with the Ombudsman about the length of time taken to investigate and finalise matters when they are subject to immediate action. This includes, for example, practitioners being subject to immediate action restrictions on their registration for over two years. This is a concern that has also been raised by practitioners in relevant Tribunal proceedings. For example, in a recent decision by the Victorian Civil and Administrative Tribunal, it

<sup>8</sup> The Ombudsman’s jurisdiction does not extend to considering the actions and decisions of the OHO or the HPCA.

<sup>9</sup> See National Law, s 162.

<sup>10</sup> Peers v Medical Board of Australia [2024] VSC 630 (15 October 2024).

<sup>11</sup> See National Law, s 159.

was observed that the Nursing and Midwifery Board of Australia had not complied with its obligation to undertake investigations as quickly as practicable.<sup>12</sup>

The investigation of concerns which led a National Board to take immediate action is often complex and can involve engagement with external organisations to receive and consider necessary information. It is possible that the practicalities of the time needed to investigate a matter may not always align with practitioner or stakeholder expectations.

It is well understood that practitioners engaging with a regulator regarding concerns raised about them and/or their professional practice can experience significant negative impacts, including psychological distress and financial and career implications.<sup>13</sup> As part of its quality improvement work, Ahpra recently supported the publishing of research which provided greater insight from practitioner interviews about what is causing their distress.<sup>14</sup> One of the “notable” contributing factors the research identified was the time taken to close a notification, which had “ongoing emotional and practical repercussions” for practitioners.<sup>15</sup> This research did not focus specifically, however, on practitioners who have been subject to immediate action.

In recent years, Ahpra has signalled its focus on improving health practitioners’ experiences throughout the notifications process, particularly where a notification relates to a practitioner’s health.

A tension the investigation will examine stems from the responsibility Ahpra and the National Boards have to protect the public, while also ensuring fair treatment of practitioners.

## Procedural safeguards in the management of matters when a practitioner is subject to immediate action

Practitioners have voiced their concern that a National Board’s immediate action decision has had an unfair impact on them and their livelihood. Given a National Board often makes a decision to take immediate action based on limited information, it is possible that after gaining further information about the matter, it may decide that the immediate action decision (which based on the limited information was reasonable), is now not necessary.<sup>16</sup> In other circumstances, the restrictive action taken may be changed due to the National Board’s consideration of the full information. For example, a National Board may decide not to take further action in relation to the matter which originally led to the decision to take immediate action. These circumstances give rise to risks of

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<sup>12</sup> *Nursing and Midwifery Board of Australia v Bronstring (Review and Regulation)* [2024] VCAT 1040 (30 October 2024).

<sup>13</sup> Bradfield O, Jenkins K, Spittal M, Bismark M. Australian and New Zealand doctors' experiences of disciplinary notifications, investigations, proceedings and interventions relating to alleged mental health impairment: a qualitative analysis of interviews. *Int J Law Psychiatry*. 2023 Jan-Feb;86:101857. doi: 10.1016/j.ijlp.2022.101857. Epub 2022 Dec 24.

<sup>14</sup> Biggar S, van der Gaag A, Maher P, Evans J, Bondu L, Kar Ray M, Phillips R, Tonkin A, Schofield C, Ayscough K, Hardy M, Anderson S, Saar E, Fletcher M. 'Virtually daily grief'-understanding distress in health practitioners involved in a regulatory complaints process: a qualitative study in Australia. *Int J Qual Health Care*. 2023 Oct 20;35(4):mzad076.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Kozanoglu v Pharmacy Board of Australia* [2012] VSCA 295 (12 December 2012).

unfairness to practitioners, particularly given the concerns regarding psychological distress and financial and career implications outlined above.

The National Law outlines certain procedural safeguards in relation to a National Board's ability to take immediate action. This includes, for example, a 'show cause' requirement which outlines that a National Board must give a practitioner notice of, and invite submissions in response to, its proposal to take immediate action.<sup>17</sup> The National Board must consider such submissions before taking any immediate action.

In addition, under the National Law decisions to restrict a practitioner's practice (such as by suspending or imposing, changing or refusing to change or revoke a condition on their registration), are appellable to the relevant Tribunal.<sup>18</sup> This includes immediate action decisions to restrict a practitioner's practice.

The investigation will consider whether procedural safeguards such as these are sufficient to protect practitioners who are subject to immediate action.

## Your participation – making a submission

The Ombudsman welcomes submissions from all individuals and organisations.

In particular, the Ombudsman seeks to understand how immediate action-related processes are working in practice, and your experience or knowledge about:

- timeliness in the management of matters following immediate action being taken
- safeguards to ensure practitioners are treated fairly when immediate action is in place.

### How do I make a submission?

You can make a submission to the Ombudsman by filling out the attached consultation form. The form includes 6 questions, and an opportunity to share any further information you think may help inform the investigation. The form also allows you to provide some information about you and/or the organisation for which you are making a submission.

Please [email](mailto:submission@nhpo.gov.au) your completed consultation form to us at: [submission@nhpo.gov.au](mailto:submission@nhpo.gov.au).

Alternatively, you can post your consultation form to:

National Health Practitioner Ombudsman  
GPO Box 2630  
Melbourne 3001

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<sup>17</sup> See National Law, s 157.

<sup>18</sup> See National Law, s 199.

While we request that submissions are made using the consultation form, we recognise that this might not suit your needs. We will also accept submissions by phone or a written response:

- call us on 1300 795 265
- provide a written response to the email or postal addresses outlined above.

If you choose to provide a submission in a format other than the consultation form, we request that you also consider the consultation questions outlined below. Wherever possible, please include examples or relevant data to support your response.

- Do you think Ahpra and the National Boards handle matters where a health practitioner is subject to immediate action in a timely way? Please explain your answer. You may wish to explain what your expectations for timeliness are, and whether your expectations have been met.
- Are you aware of any barriers to the timely finalisation of a matter where a practitioner is subject to immediate action? If you identify any barriers, please describe whether these barriers relate to Ahpra and the National Boards' processes or are outside their control.
- Do you think improvements are needed to ensure matters are handled more quickly when a practitioner is subject to immediate action? Please explain your answer. If you think improvements are needed, please describe the improvements you think would be beneficial.
- Do you think health practitioners are treated fairly when they are subject to immediate action? Please explain your answer. You may wish to consider what you think it means to be treated fairly and whether this occurs/occurred.
- Do you think there are sufficient procedural safeguards for health practitioners who have had immediate action taken against them? Please explain your answer. Existing procedural safeguards include the 'show cause' process and the ability to appeal a decision to take immediate action to a Tribunal. You may wish to consider whether certain procedural safeguards are effective.
- Do you think reforms or additional procedural safeguards are needed for practitioners subject to immediate action? Please explain your answer. If you answered 'Yes', please describe what reforms or additional procedural safeguards you think are necessary and why.

## When can I make a submission?

We will begin accepting submissions from 27 February 2025 until 5:00pm on 31 March 2025.

## How will information I provide in my submission be used?

Your submission will help us understand more about how immediate action-related processes are working, and whether improvements are needed.

Submissions will be collected, analysed and interpreted by the Ombudsman and her Policy and communications team. This may include summarising themes found in the submissions received.

Our office is dedicated to ensuring appropriate protection of personal information. We will not disclose your personal information without your consent, except where required to do so by law. We collect and handle the information provided as part of this consultation in line with relevant legislation and our [privacy policy](http://www.nhpo.gov.au/privacy-and-confidentiality): <www.nhpo.gov.au/privacy-and-confidentiality>.



Participation in this consultation is voluntary and consent for the collection and use of information contained in submissions is taken to have been provided when a submission is received.

## Will my submission be made public?

Your submission will not be published and we will not share your submission with Ahpra or the National Boards.

We may request your consent to reproduce information contained in your submission as part of the Ombudsman's final report. Identifying information will only be published if and once your consent has been provided. Alternatively, the information will be deidentified prior to publication.

For any questions regarding the investigation or submissions process, or to request alternative arrangements to provide a submission, please contact us via [email](mailto:submission@nhpo.gov.au) at <submission@nhpo.gov.au> or call our office on 1300 795 265.

## What will happen after I make a submission?

If you choose to share your contact details with us, we may contact you to discuss your submission further.

We will also provide you with an update when the investigation's report is published, and if relevant, at other key progress points.

## Can I make a complaint about how Ahpra or a National Board handled my matter?

You are welcome to make a complaint to our office about how Ahpra or a National Board handled your matter. If you wish to make a complaint, please:

Make a complaint online via our [website](http://www.nhpo.gov.au/make-a-complaint): <www.nhpo.gov.au/make-a-complaint>

Call our complaints team on 1300 795 265

[Email](mailto:complaints@nhpo.gov.au) complaints@nhpo.gov.au.

Please remember that submissions we receive as part of this investigation will not be considered as complaints to the Ombudsman or to the National Health Practitioner Privacy Commissioner. This investigation will not come to specific findings on individual complaints.

## Access to support services

We recognise that discussing these issues as part of this investigation may be challenging, particularly for practitioners who have been the subject of regulatory action. We encourage you to seek support if needed, including from your general practitioner or other relevant health practitioners. Further details for some available support services, including those designed to support health practitioners specifically, are provided here.

**Lifeline**

Call: 13 11 14 or visit: [www.lifeline.org.au](http://www.lifeline.org.au)

**Black Dog Institute**

Designed by health professionals, for health professionals, The Essential Network (TEN) makes accessing support quick, easy and confidential.

Visit: [www.blackdoginstitute.org.au/the-essential-network/about-ten](http://www.blackdoginstitute.org.au/the-essential-network/about-ten)

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Drs4Drs has been established by the medical profession for the medical profession. Through a network of doctors' health advisory and referral services, independent, free, safe, supportive and confidential services are available across Australia.

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