

24 March 2020

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Dear practitioner/stakeholder

Outcome from Naming policy consultation

Thank you for your feedback on our recent consultation on a new naming policy under the Health Practitioners Competence Assurance Act 2003.

Council has approved the [Policy on naming practitioners who are the subject of an order or direction made by Council \(“Naming policy”\)](#)—with some amendments.

The policy will take effect from 12 April 2020.

Background

Recent amendments to the Health Practitioners Competence Assurance Act 2003 (new sections 157A to 157I) required us to develop, consult on and implement a naming policy by 12 April 2020.

We issued a [consultation on a draft Naming policy](#) on 10 October 2019, with submissions closing on 6 December 2019. We asked our stakeholders and practitioners if they agreed or disagreed with the draft Naming policy and to provide comments.

Consultation feedback

We received a total of 26 submissions—from registered practitioners (the majority), government agencies, professional bodies, and an educational institution. The [consultation submissions](#) are available on our website. These were considered by Council on 2 March 2020.

Most submitters agreed with the draft Naming policy. Of the 26 submitters:

- 14 agreed (54%)
- 9 did not agree (35%)
- 3 neither agreed or disagreed (11%).

Disagreement of the policy was predominantly from the dentist/dental specialist practitioner group (8 of 13 submitters in this group, or 62.5%)

Three submitters did not state specifically whether they agreed or disagreed with the policy—New Zealand Dental Association (NZDA), New Zealand Association of Orthodontists (NZAO) and the Office of the Privacy Commissioner. However, NZDA and NZAO shared serious concerns about aspects of the Naming policy and believed it required significant amendment.

The Office of the Privacy Commissioner was generally supportive of our Naming policy position. The feedback provided was general across several naming policies received from responsible authorities. Most of the points made by the Privacy Commissioner were already incorporated in our draft policy, with room for improvement highlighted in just two key areas, concerning non-disclosure of third-party information and removal of a naming publication.

Reasons given by submitters for agreeing with the Naming policy related to:

- a) The benefits of increased transparency within the dental industry, such as—
 - gaining public trust
 - improving informed choices in decision making
 - recognising the public has a right to know
 - enhancing public confidence.
- b) The public knowing more could reduce harm.
- c) It makes good sense.
- d) The draft policy achieves the statutory purpose.

The key concerns or disagreement with the draft policy related to:

- a) The impact on practitioners –
 - It would cause immense stress and adversely impact on practitioner well-being
 - The policy was unfairly skewed towards the public's right to know to the detriment of practitioners' privacy, well-being and rehabilitation.
- b) Council already has discretion to publish orders. The presumption to name is unnecessary and faulty. There are other less harsh ways for Council to manage competency and fitness to practise concerns. The policy focus was wrong.
- c) Serious consequences and risks of publishing notices on social media platforms –
 - loss of control of published information in social media environment
 - risk of media platforms being used for 'fake news'.
- d) Lack of confidence that the policy would be applied fairly and consistently over time.
- e) The policy focus was wrong –
 - it will not always be in the public interest to name a practitioner
 - use of principles from the disciplinary area cannot be applied to the Naming policy.

It was suggested that Council could employ less onerous means to manage practitioner issues such as—supervision and other supportive measures; and displaying practice restrictions and conditions on the register. The view was expressed that Council already had effective ways to reveal concerns or restrictions on a practitioner to patients, and that the Naming policy goes too far.

The opinion of NZDA (shared by NZAO) was that the Naming policy has the wrong focus; that it improperly refers to the disciplinary jurisdiction (conduct arena) in determining applicable principles. It failed to adequately recognise practitioner well-being, privacy and rehabilitation, and that there are varied public interest reasons when determining whether to name a practitioner. Further, the policy underplays Council's discretion and wrongly presents an imposing 'presumptive' proposition that "is simply unfair and wrong".

Outcome – Council’s decision

In Council’s view, the overall premise of dissenting submissions appeared practitioner-centric and overlooked the clear parliamentary intent to achieve greater transparency in health regulators’ decision-making with a greater focus on the public interest. There was no punitive intent (to ‘name and shame’). Council’s policy recognises that naming has adverse consequences that need to be considered before deciding on publication and meet statutory requirements.

Council noted the key themes and concerns from the consultation feedback and agreed to amend the draft Naming policy as follows:

- i. Page 3, paragraph 6—**Policy application:**
Clarification of practitioners to whom the policy applies.
- ii. Page 7, paragraph 24—**Privacy principles:**
Strengthen the privacy considerations to ensure third-party information is not disclosed as part of a naming publication— in line with the feedback provided by the Office of the Privacy Commissioner. The intention is only the practitioner would be named.
- iii. Page 8, paragraph 27(f)—**Procedures in deciding to name:**
Include a prompt for Council to consider when to review the relevance (and ongoing availability) of a naming publication to avoid unnecessarily infinite duration—in line with the recommendation of the Office of the Privacy Commissioner.
- iv. Page 11, paragraph 34(c)—**Means of publication:**
Whilst Council does not currently use social media, it may be useful in certain situations. As Council has little control on whether the information remains on these sites (for example, when no longer relevant), these sites would not be used for publishing the original notice, but where appropriate may be useful to raise awareness of a notice (via a link to the notice on Council’s website). Accordingly, this is now reflected in the amended policy. Council’s intention for the publication of naming notices would most typically be via the Dental Council website and dental register.

The new Naming policy is available on [our website](#).

Yours sincerely



Marie Warner

Chief Executive