



DIETITIANS BOARD

Te Mana Mātanga Mātai Kai

**Consultation on the proposed
Naming Policy for the
Dietitians Board**

November 2019

Submissions due Friday 25 January 2020

**The Registrar
Dietitians Board
Te Mana Mātanga Mātai Kai
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1 Consultation document for Naming Policy

The Dietitians Board (the Board) is the regulator of Dietitians in Aotearoa New Zealand, established under the Health Practitioners Competence Assurance Act 2003 (HPCAA). The role of the Board is to protect the health and safety of the public by ensuring Dietitians are fit and competent to practise.

1.1 Why is the Board developing a naming policy?

The Board is required by recent changes to the HPCAA to develop a naming policy which describes the circumstances under which a Dietitian who is the subject of an order or determination may be publicly named. This policy must be in place by 11 April 2020.

The purposes of this policy as defined in section 157B(2) of the HPCAA are to:

- enhance public confidence in the health professionals for which the Board is responsible and its disciplinary procedures by providing transparency about its decision-making processes
- ensure that health practitioners whose conduct has not met expected standards may be named where it is in the public interest to do so
- improve the safety and quality of health care.

1.2 What has the Board done to develop this naming policy so far?

The Board has worked collaboratively with other health regulators to understand the requirements and intentions of the new HPCAA amendments. The naming policy was drafted and then subjected to review by a legal firm to ensure alignment with the requirements of section 157B of the HPCAA.

The draft will also be reviewed by the Privacy Commissioner, the Health and Disability Commissioner and the Director-General of Health as required by section 157C of the HPCAA.

1.3 What is the current situation?

The Board have had the powers to name Dietitians who are the subject of competence, health and conduct orders under section 157(1) since the inception of the HPCAA in 2003.

The naming policy defines the circumstances under which the Board would consider naming a Dietitian, along with the method of naming and information that may be included.

Currently, under other sections in the HPCAA, the Board must share information regarding Dietitians who are subject to orders.

This includes:

- noting on the Dietitian's entry on the public register where the Dietitian is suspended or has conditions on their practice (s138)
- mandatory notifications to Accident Compensation Corporation, Health and Disability Commissioner, employers and other related parties where a Dietitian may have posed a risk of harm to the public (s35(1), s35(2))
- the naming policy does not change these requirements.

1.4 Who will the naming policy apply to?

The policy will apply to all registered Dietitians who are the subject of an order or directive, regardless of their practising certificate status. The policy will also apply to Dietitians who have previously been registered with the Board.

1.5 What will the Board consider when making a decision to name a Dietitian?

The primary purpose of naming any Dietitian under this policy will be to protect the public. The decision to name will not be done to punish the Dietitian.

The Board will consider the risk posed to the public, along with the existing levels of transparency that occur under other sections of the HPCAA. The Board will also consider the effect of naming on the Dietitian, particularly where there may be sensitive information such as health issues.

The affected Dietitian will always be advised of the intent to name, and their feedback will be taken into consideration before a final decision to name is made. The Board will also consider the potential for other people to be identified in any published information.

1.6 Privacy

The Board is required under the Privacy Act 1993 to protect the privacy of all individuals whose personal information it holds. When considering naming a Dietitian the Board will give due consideration to this requirement and the effect naming could have on the practitioner and others who

could be identified as a result of the naming decision. Particular consideration will be given to orders/directives that are made as a result of a health condition.

1.7 Transparency

The Board operates under a cross cutting principle of transparency. The processes the Board uses when making a decision are shared with the Dietitian. Information the Board uses to make an order or directive will be shared with the Dietitian wherever possible. This principle also applies to the public, where the Board aims for transparency in its decision-making process and outcomes. Information about action that the Board has taken forms part of this process.

1.8 Natural justice

When considering naming the affected Dietitian will be given a copy of the proposed content and publication form of the notice. The Dietitian will be given an opportunity to make submissions about the proposal which will be considered by the Board prior to making a final decision on naming.

1.9 What kind of information could be shared?

The Board may, on a case by case basis, name a Dietitian who is the subject of an order or determination, along with a summary of the issue and action/s taken by the Board.

1.10 Where will the information be published?

The method of sharing information will be decided on a case by case basis. Options include the Board website, Board newsletters or any other publication that would fulfil the requirement to protect the public.

1.11 Why are we contacting you?

The Board is now seeking comments from you on:

- the draft Naming Policy
- circumstances under which a Dietitian may be named
- the principles and criteria the Board will use when making a naming decision
- the information to be disclosed and the means of information publication
- the procedures to be used by the Board when considering naming a practitioner.

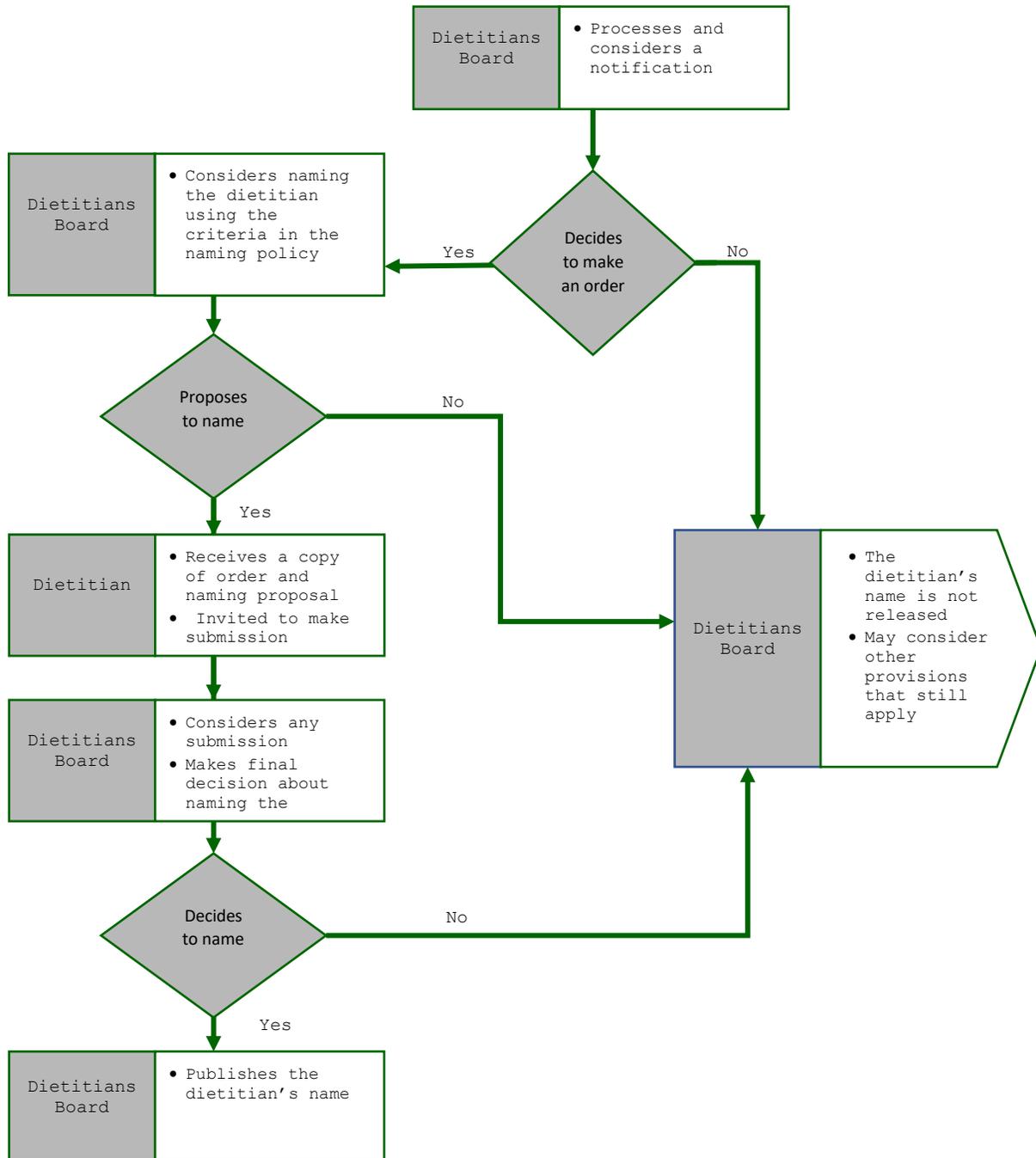
Please provide your feedback to us by **Friday 25 January 2020**.

2 Consultation Questions:

Please provide feedback on any or all of the following questions.

Section of Naming Policy	
Section 2	
Do you agree with the proposed circumstances under which a Dietitian may be named?	Y/N
Under what circumstances do you think a Dietitian should be named? <i>Please comment</i>	
Section 3 and 4	
Do you agree with the principles the Board proposes to use when making decisions about naming a Dietitian?	Y/N
What other factors should the Board consider when making naming decisions? <i>Please comment</i>	
Section 5	
Do you agree with the information the Board may disclose when naming a practitioner?	Y/N
What information do you think should be disclosed by the Board? <i>Please comment</i>	
Section 6	
Do you agree with the proposed methods of naming a Dietitian?	Y/N
What notification methods should the Board use when naming a Dietitian? <i>Please comment</i>	
Section 7	
Is the notification period (10 business days) to the practitioner adequate?	Y/N
What time period should it be? <i>Please comment</i>	
<i>Please provide any other comments or feedback -</i>	

Appendix 1: Overview of the process for naming Dietitians subject to an order or directive*



* An order or direction is made by the Dietitians Board.

For example: Suspension, inclusion of conditions or change in permitted health services when a practitioner does not satisfy the requirements of a competence or recertification programme under section 43(1) of the HPCAA.

3 Appendix 2: Relevant section of the HPCAA

157B Authorities to issue naming policies

- (1) Each authority must issue a naming policy not later than 12 months after this section comes into force.
- (2) The purpose of the naming policy is to—
 - (a) enhance public confidence in the health professions for which the authority is responsible and their disciplinary procedures by providing transparency about their decision-making processes; and
 - (b) ensure that health practitioners whose conduct has not met expected standards may be named where it is in the public interest to do so; and
 - (c) improve the safety and quality of health care.
- (3) A naming policy must set out—
 - (a) the class or classes of health practitioners in respect of whom the naming policy applies; and
 - (b) the circumstances in which a health practitioner may be named; and
 - (c) the general principles that will guide the authority’s naming decisions; and
 - (d) the criteria that the authority must apply when making a naming decision; and
 - (e) the requirement to have regard to the consequences for the health practitioner of being named, including the likely harm to the health practitioner’s reputation; and
 - (f) the procedures that the authority must follow when making a naming decision; and
 - (g) the information the authority may disclose when naming a health practitioner; and
 - (h) the means by which a health practitioner may be named.

Section 157B: inserted, on 12 April 2019, by [section 46](#) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

4 Appendix 3: Timeline for Naming policy development and publication

November 2019	Draft policy to the Board for review and approval to move to consultation Consultation on Naming Policy sent to <ul style="list-style-type: none">• Stakeholders (practitioners, others etc.)• Health and Disability commissioner• Office of the Privacy Commissioner• Ministry of Health
January 2020	Review consultation feedback Revised draft to the Board for consideration and approval (or at February 2020 Board meeting)
February 2020	Final edits or review as required
March 2020	Policy published online to meet 11 April 2020 deadline

5 Appendix 4: DRAFT Dietitians Board Naming Policy



DIETITIANS BOARD

Te Mana Mātanga Mātai Kai

Naming Policy

Refers to the following key legislation:

- Health Practitioners Competence Assurance Act 2003
- Privacy Act 1993
- Official Information Act 1982
- Defamation Act 1992
- The New Zealand Bill of Rights Act 1990

And refers to the following related information on the Dietitians Board website:

- Professional Standards & Competencies for Dietitians
- Code of Ethics & Conduct for Dietitians

Document ID: DIETNAMEPOL	Version: 1.0
Facilitated by: Registrar	Issue date: TBC
Approved by: Dietitians Board	Review date: TBC

Policy statement

The Dietitians Board (the Board) exists to protect public safety. As the Dietitians regulator it oversees professional standards in Dietitians. The Board makes sure Dietitians meet and maintain professional standards of education, conduct and performance, so that Dietitians deliver high quality healthcare throughout their careers. The Board will hold Dietitians to account if their conduct falls short of these standards.

This naming policy will enhance public confidence in Dietitians as a profession by allowing the public to make informed choices about Dietitians they engage with. It allows the Dietitians Board to publish information about a Dietitian where that Dietitian has fallen short of professional expectations or is otherwise the subject of an order or direction.

The naming policy was developed in accordance with section 157B of the Health Practitioners Competence Assurance Act 2003 (HPCAA), which states that the purpose of the naming policy is to:

- enhance public confidence in Dietitians by providing transparency about the Board’s disciplinary procedures and decision-making processes; and
- ensure that Dietitians whose conduct has not met expected standards may be named where it is in the public interest to do so; and
- improve the safety and quality of health care.

1 Health practitioners for whom the naming policy applies

- a. This naming policy applies to:
 - I. Any Dietitian registered with the Board; or
 - II. Any Dietitian who has previously held registration with the Board.
- b. In New Zealand, Dietitians are registered health practitioners who practise within the Dietitians Scope of Practice, as prescribed by the Board under section 11 of the HPCAA.

2 Circumstances in which a Dietitian may be named

- a. The Board may publish in any publication the name of a Dietitian who is the subject of an order or direction made by the Board under the HPCAA.

- b. Publication of Dietitian's name shall only occur following the completion of any Board process, and not while any investigation or deliberations are ongoing.
- c. Notwithstanding section 2b above, the Board may decide to name a Dietitian who is the subject of an interim suspension order; or has interim change to or conditions imposed on his or her scope of practice, under sections 39(1), 48 or 69 of the HPCAA.
- d. The Board will not routinely publish the names and details where Dietitians were investigated but are not the subject of any orders or direction, except for:
 - I. Dietitians who have been exonerated during any investigation, who may ask the Board to publish their name and the details of that exoneration in order to clear their name.
 - II. Dietitians who are the subject of confusion where their name is the same as or very similar to that of another Dietitian or health practitioner named in an order, who may ask the Board to publish their name with clarification to avoid confusion.

3 General principles that will guide the Board's naming decisions

- a. In making a decision about the publication of information relating to a Dietitian, the Board will maintain a focus on protecting public safety.
- b. When deciding what information is published, the Board must weigh the public interest in making the information available against the consequences for the Dietitian of being named, including the likely harm to the Dietitian's reputation.

4 Criteria that the Board must apply when making a naming decision

When assessing whether to publish the name of a Dietitian in a notice issued under s 157(1) of the HPCAA, the Board must consider, among any other relevant matters, the following criteria:

- a. **Public safety** - ensuring the safety and quality of health care and the competence of Dietitians. Non-disclosure in a particular case may run the risk of harm to members of the public in the future. Disclosure may elicit other complaints or concerns about a practitioner's competence.
- b. **Public choice** - The right of existing and potential members of the public to know the disciplinary history of a particular Dietitian so as to be able to make an informed choice whether to engage their services in the future.
- c. **Accountability** - Dietitians are accustomed to being held to account for the standard of care or service they provide. They should expect that some information may need to be disclosed if serious accountability or health and safety concerns are raised.

- d. **Nature of the concerns** - does the concern raise serious safety or competence concerns, does non-disclosure raise a risk of harm to members of the public in the future? Concerns of a serious nature will raise stronger public interest considerations in favour of disclosure.
- e. **Whether the investigation is ongoing** - disclosing the details of an allegation during an ongoing investigation may unfairly suggest that there is substance to the allegation.
- f. **Action taken in respect of the outcome of an investigation** – the public interest in disclosure will be higher, and a Dietitian’s legitimate expectation of privacy will be reduced, where a concern has been investigated and found to be substantiated. It will often be in the public interest to know the remedial actions or consequences imposed on the Dietitian.
- g. **Extent to which information is already in the public domain** - the privacy interest may be diminished by prior knowledge or public availability of the information. If information about the concern is already in the public domain, this may increase the public interest in disclosure of a summary about the outcome of any investigation. The purpose of such disclosure would be to demonstrate that appropriate action has been taken to investigate the concern and institute any protective measures or remedial action.
- h. **Likelihood of harm to the Dietitian arising from disclosure** - there may be factors that heighten the risk of personal or professional harm arising from disclosure, for example the physical or mental health of the Dietitian, or the size of the community in which they practise.

5 Information the authority may disclose when naming a Dietitian

- a. Where the Board has elected to publish information about a Dietitian, it will release a summary of the information with appropriate context.
- b. Publications instigated by the Board may include the name of the Dietitian, a short context of the concern and citation of the relevant section of the HPCAA.
- c. Where the order relates to the health of a Dietitian, additional consideration is needed with regards to the impact any disclosure may have on the Dietitian.

6 Means by which a Dietitian may be named

- a. Publication will be made via posting on the relevant section of the Dietitians Board website; and may also be by inclusion in the Board’s electronic newsletter.
- b. In addition, the Board may also annotate the Dietitian’s entry on the Register to include a reference to the order or direction.

- c. Information published on the Board's website will be reviewed periodically.
- d. The Board may elect to share the information with other health regulators in New Zealand, or equivalent regulatory bodies overseas.

7 Procedures that Board must follow when making a naming decision

- a. Where the Board proposes to publish information about a Dietitian, having considered the factors in section four (4) of this policy, it will be required to make the Dietitian aware of this proposal and the proposed content ten (10) business days in advance of the anticipated publication.
- b. Sending the information in section 7a to the Dietitian's last known email address will be sufficient for this purpose.
- c. The advance notice timing in section 7a above provides the Dietitian with an opportunity to:
 - I. consider the content and make any submissions to the Board within five (5) working days of receiving the notice; and
 - II. make their employer or any practice partners aware of the publication.
- d. Where the Dietitian provides submissions to Board in accordance with section 7c1, the Board must consider those submissions before making a final decision whether or not to make the publication and the content and scope of any publication.
- e. Where a publication relates to a specific event or concern, irrespective of whether that clearly identifies a member of the public, the Board must also provide the intended publication content to that individual in advance of publication.