



**MEDICAL SCIENCES COUNCIL
OF NEW ZEALAND**

TE KAUNIHERA PŪTAIAO HAUORA O AOTEAROA

CONSULTATION OUTCOMES

POLICY: NAMING OF PRACTITIONERS SUBJECT TO AN ORDER OR DIRECTION

IN NOVEMBER 2019 THE MEDICAL SCIENCES COUNCIL PUBLISHED A CONSULTATION DOCUMENT SEEKING FEEDBACK ON A POLICY FOR THE NAMING OF PRACTITIONERS WHO HAVE BEEN SUBJECT TO AN ORDER OR DIRECTION.

THIS REPORT SUMMARISES THE KEY THEMES OF THE CONSULTATION FEEDBACK AND THE COUNCIL'S RESPONSE

FEBRUARY 2020

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Introduction

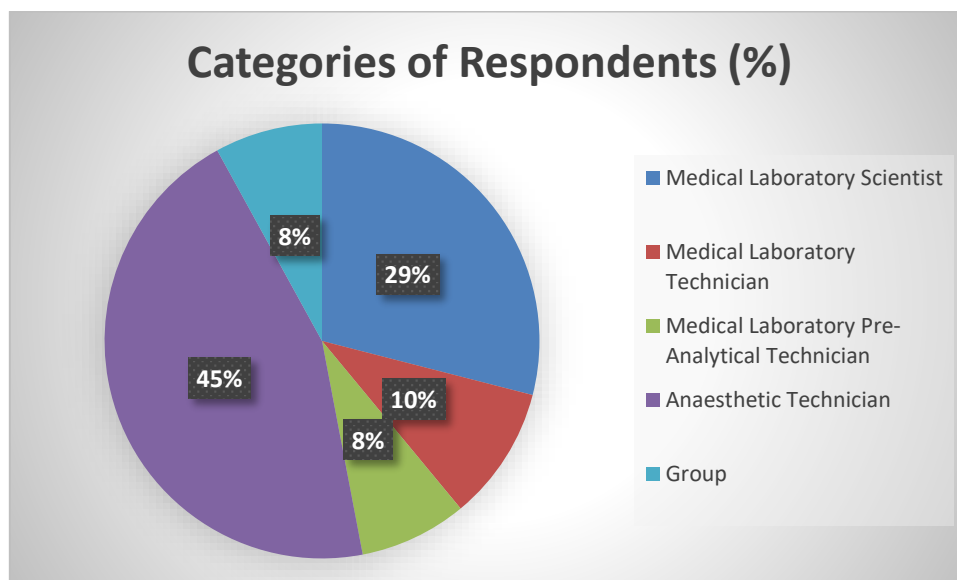
The Medical Sciences Council (the Council) extends its thanks and appreciation to the individuals and groups who provided feedback to a recent (November 2019) consultation on a policy for naming practitioners who have been subject to an order or direction. The policy has been set in accordance with the requirements of sections 157 and 157A to 157I of the Health Practitioners Competence Assurance Act 2003 (the Act).

Consultation Response Rate

The 4 submissions categorised as “groups” were received from the Office of the Privacy Commissioner, the Health and Disability Commissioner, the Ministry of Health, and the Anaesthetic Technicians Society of New Zealand.

The 45 submissions received from individual members of the anaesthetic technology and medical laboratory science professions equated to <1% of the total number of practitioners who hold a current practising certificate which represents a low response rate.

Category	Number of respondents
Medical Laboratory Scientist	14
Medical Laboratory Technician	5
Medical Laboratory Pre-Analytical Technician	4
Anaesthetic Technician	22
Group	4
TOTAL	49



Consultation Results

Questions	Response Options	MLS	MLT	MLPAT	AT	GROUP	Total
Do you agree or disagree with the policy?	Agreed	12	5	4	20	4	45
	Disagreed	2	-	-	2	-	4
Is there anything stated in the policy that requires further clarification?	Yes	-	3	-	1	3	7
	No	14	2	4	21	1	42

Consultation Feedback: Key Themes

Consultation respondents were asked to provide their feedback via an online questionnaire in response to two questions. The following table summarises key themes from respondents' answers to those questions.

Question	Respondent Themes
<p>1. Do you agree or disagree with the policy?</p>	<ul style="list-style-type: none"> - Policy is compliant with legislation - it is in the best interests of the public and practitioners - From a recruitment it would be helpful to know who has been disciplined in the past
<p>2. Is there anything stated in the policy that requires further clarification?</p>	<ul style="list-style-type: none"> - Format could be changed so there is explicit reference to each of the clauses under section 157B of the Act which articulates what a naming policy must set out - Include a reference as to whether publication of a naming order on a website should be removed after a certain date or at the end of a set period - Adding a further circumstance whereby a practitioner may be named when there has been compliance with an order or direction would incentivise compliance and enhance public safety - Some practitioners expressed concern about the use of social media to publish a naming notice - From a recruitment perspective it would be helpful to know who has been disciplined in the past

Council Deliberation and Decision

The Council noted that while over 85% of respondents did not identify any improvements in respect of the clarity of the policy document, other respondents did make a number of recommendations as to how clarity could be improved.

The Council agreed that the use of published information in respect of employment recruitment is outside the jurisdiction of the naming policy.

Closely related to the latter, was the recommendation that the policy includes a reference as to the Council's position on whether publication of a naming order on a website should be removed after a certain date or at the end of a set period. This is stated in the revised policy in that the context of the facts of each case will be taken into account when the Council makes such a determination. To do otherwise increases a risk for the policy to be overly prescriptive or direct and thereby reducing a statutory discretion.

One submission suggested that an additional circumstance should be added in which a practitioner may be named – that is, where there has been non-compliance with an order or direction as it would incentivise compliance and enhance public safety. Legal advice has clarified that Section 157 provides the statutory discretion to publish information about the effect of an *order or direction*, not a practitioner's compliance with such an order or direction. The purpose of the naming policy is to ensure transparency and public confidence in processes (and the outcome of those processes, i.e. orders and directions) where a practitioner has not met expected standards. The legal and professional expectation is that orders and directions will be complied with and any failure to do so may be grounds for discipline. Based on legal advice, the Council agreed that including non-compliance with an order or direction as a circumstance for naming a practitioner, would not be included in the policy.

The Council's final edition of the policy on *Naming of Practitioners Subject to an Order or Direction* includes a number of formatting changes with the policy being structured around each of the factors listed in the provision under section 157B (3) of the Act in terms of what a naming policy must set out.