



**Consultation on the proposed  
Naming Policy for the  
Midwifery Council**

**December 2019**

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## 1 Consultation document for Naming Policy

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

### 1.1 Why is the Council developing a naming policy?

The Council is required by recent amendments to the HPCAA to develop a naming policy which describes the circumstances under which a midwife who is the subject of an order or determination under section 157(1) of the HPCAA 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 Council 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 Council done to develop this naming policy so far?

The Council 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 was then reviewed by the Privacy Commissioner, the Health and Disability Commissioner and the Director-General of Health as required by section 157C of the HPCAA. Their feedback has been incorporated into this document, so we are now sending it out for wider stakeholder consultation.

### 1.3 What is the current situation?

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

The Council currently publishes information on its website about midwives who have been the subject of Health Practitioners Disciplinary Tribunal decisions, or who have been suspended by the Council.

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

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

This includes:

- noting on the midwife's entry on the public register where the midwife 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 midwife 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 midwives who are the subject of an order or direction, regardless of their practising certificate status. The policy will also apply to midwives who have previously been registered with the Council.

### 1.5 What will the Council consider when making a decision to name a midwife?

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

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

The affected midwife 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 Council will also consider the potential for other people to be identified in any published information.

### 1.6 Privacy

The Council is required under the Privacy Act 1993 to protect the privacy of all individuals whose personal information it holds. When considering naming a midwife the Council 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 or directions that are made as a result of a health condition.

### 1.7 Transparency

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

### 1.8 Natural justice

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

### 1.9 What kind of information could be shared?

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

### 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 Council website, Council newsletters or any other publication that would fulfil the requirement to protect the public.

### 1.11 Why are we contacting you?

The Council is now seeking comments from you on the draft Naming Policy, particularly:

- the circumstances under which a midwife may be named,
- the principles and criteria the Council 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 Council when considering naming a practitioner.

Please provide your feedback to us by midnight on **Wednesday 15 January 2020**.

Feedback can be made by email to [info@midwiferycouncil.health.nz](mailto:info@midwiferycouncil.health.nz) – please ensure the email has a subject line of **Naming Consultation**.

Note that due to the timeframe requirements for finalising and publishing this document, late submissions will not be considered.

## 2 Consultation Questions:

Section of Naming Policy	Yes	No
Section 2		
Do you agree with the proposed circumstances under which a midwife may be named?		
Under what circumstances do you think a midwife should be named?		

Section 3 and 4		
Do you agree with the principles the Council proposes to use when making decisions about naming a midwife?		
What other factors should the Council consider when making naming decisions?		

Section 5		
Do you agree with the information the Council may disclose when naming a practitioner?		
What information do you think should be disclosed by the Council		

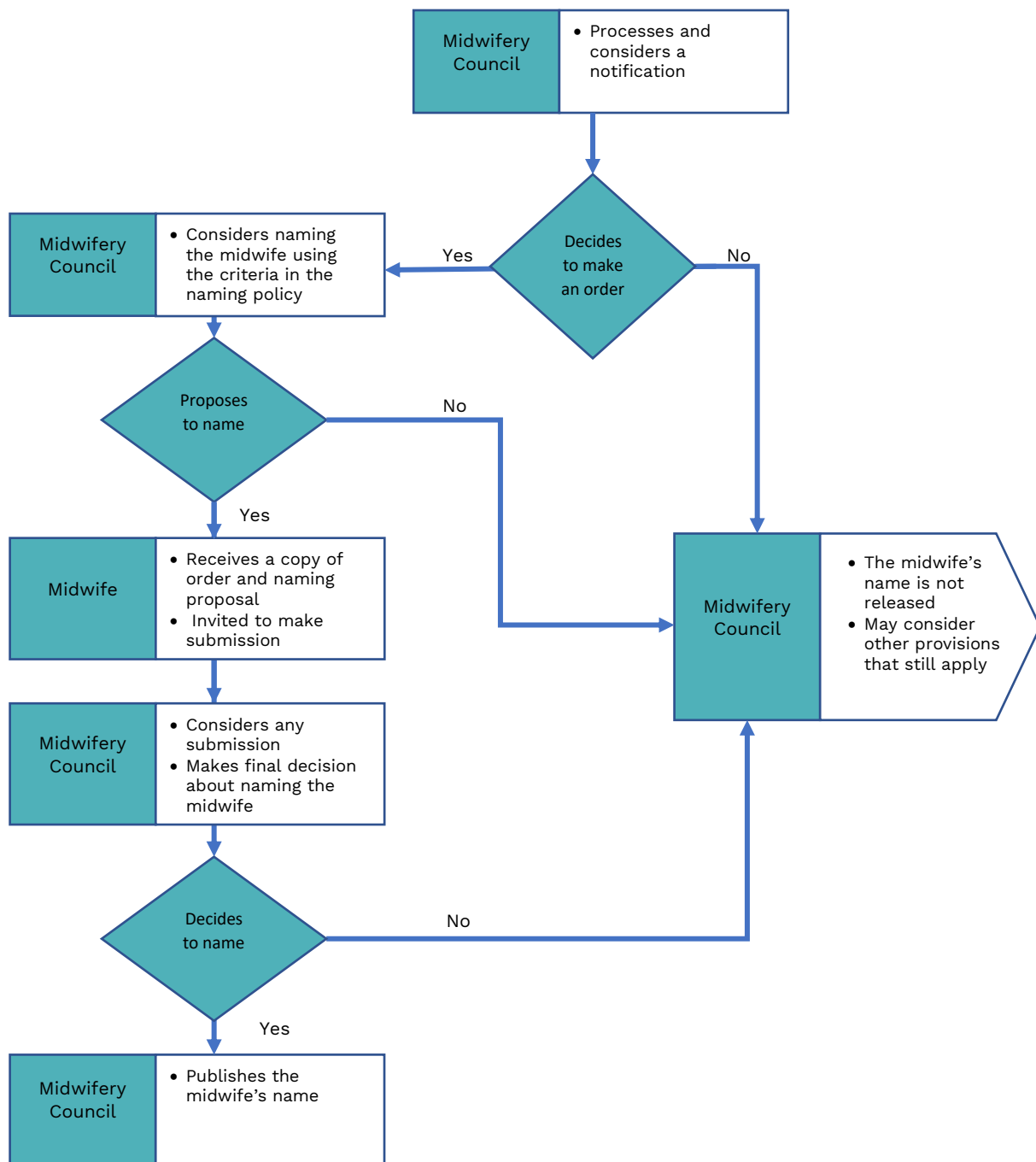
Section 6		
Do you agree with the proposed methods of naming a midwife?		
What notification methods should the Council use when naming a midwife?		

Section 7		
Is the notification period (20 business days) to the practitioner adequate?		
What time period should it be?		

Any other comments		
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### 3 Appendix 1: Overview of the process for naming midwives subject to an order or direction\*



\* An order or direction is made by the Midwifery Council.

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.

## 4 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).

## 5 Appendix 3: Timeline for Naming policy development and publication

October 2019	Draft Naming Policy approved by the Council for agency consultation with: <ul style="list-style-type: none"><li>• Health and Disability commissioner</li><li>• Office of the Privacy Commissioner</li><li>• Ministry of Health</li></ul>
November 2019	Agency feedback reviewed, approved by the Council for sector consultation.
December 2019	Sector consultation for Naming Policy with: <ul style="list-style-type: none"><li>• Stakeholders (practitioners, others etc)</li></ul>
January 2020	Review sector consultation feedback, revised draft to the Council for consideration and approval
February/March 2020	Re-review at March meeting if required
March 2020	Policy published online to meet 11 April 2020 deadline

## 6 Appendix 4: DRAFT Midwifery Council Naming Policy



### **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 Midwifery Council website:

- Code of Conduct
- Competencies for Entry to the Register
- Statement on Cultural Competence for Midwives
- Decisions by the Health Practitioners Disciplinary Tribunal
- Recently suspended midwives

Document ID: NAMEP	Version: 1.0
Facilitated by: Policy & Risk Advisor	Issue date: TBC
Approved by: Midwifery Council	Review date: TBC

## **Policy statement**

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

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 midwives by providing transparency about the Council's disciplinary procedures and decision-making processes; and
- ensure that midwives 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.

This naming policy will enhance public confidence in midwifery as a profession by allowing women to make an informed choice about the midwife they engage with.

## **1 Health practitioners for whom the naming policy applies**

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

## **2 Circumstances in which a midwife may be named**

- a. The Council may publish in any publication the name of a midwife who is the subject of an order or direction made by the Council under the HPCAA.
- b. Publication of midwife's name shall only occur following the completion of any Council process, and not while any investigation or deliberations are ongoing.

- c. Notwithstanding section 2b above, the Council may decide to name a midwife 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 38, 39(1), 43, 48 or 69 of the HPCAA.
- d. The Council will not routinely publish the names and details where midwives were investigated but are not the subject of any orders or direction, except for:
  - I. Midwives who have been exonerated during any investigation, who may ask the Council to publish their name and the details of that exoneration in order to clear their name.
  - II. Midwives who are the subject of confusion where their name is the same as or very similar to that of another midwife or health practitioner named in an order, who may ask the Council to publish their name with clarification to avoid confusion.
- e. This policy does not affect the existing requirement/s for the Council to share information about a practitioner under sections 35, 138 or 156A(2)(a) of the HPCAA.

### **3 General principles that will guide the Council's naming decisions**

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

### **4 Criteria that the Council must apply when making a naming decision**

When assessing whether to publish the name of a midwife in a notice issued under section 157(1) of the HPCAA the Council must consider the Privacy Act 1993, natural justice rights and any other relevant matters. The Council will apply the following criteria:

- a. Public safety - ensuring the safety and quality of health care and the competence of midwives. Non-disclosure in a particular case may run the

risk of harm to women and their whānau in the future. Disclosure may elicit other complaints or concerns about a practitioner's competence.

- b. Public choice - The right of existing and potential women and their whānau to know the disciplinary history of a particular midwife so as to be able to make an informed choice whether to engage their services in the future.
- c. Accountability - midwives 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, including non-compliance with an existing order.
- d. Nature of the concerns - does the concern raise serious safety or competence concerns, does non-disclosure raise a risk of harm to women and their whānau 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 midwife'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 midwife.
- 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 midwife 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 midwife, or the size of the community in which they practise.

## **5 Information the authority may disclose when naming a midwife**

- a. Where the Council has elected to publish information about a midwife, it will release a summary of the information with appropriate context.
- b. Publications instigated by the Council may include the name of the midwife, 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 midwife, additional consideration is needed with regards to the impact any disclosure may have on the midwife.

## **6 Means by which a midwife may be named**

- a. Publication will be made via posting on the relevant section of the Council website; and may also be by inclusion in the Council's electronic newsletter or other suitable media.
- b. In addition, the Council may also annotate the midwife's entry on the Register to include a reference to the order or direction.
- c. Information published on the Council's website will be reviewed periodically at an interval of not more than two (2) years.
- d. The Council may elect to share the information with other health regulators in New Zealand, or equivalent regulatory bodies overseas.

## **7 Procedures that Council must follow when making a naming decision**

- a. Where the Council proposes to publish information about a midwife, having considered the factors in section four (4) of this policy, it will be required to make the midwife aware of this proposal and the proposed content twenty (20) business days in advance of the anticipated publication.
- b. Sending the information in section 7a to the midwife's last known email address will be sufficient for this purpose.
- c. The advance notice timing in section 7a above provides the midwife with an opportunity to:
  - I. Consider the content and make any submissions to the Council within ten (10) business days of receiving the notice; and
  - II. Make their employer or any practice partners aware of the publication.



- d. Where the midwife provides submissions to Council in accordance with section 7c1 of this policy, the Council 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 woman and her whānau, the Council must also provide the intended publication content to that woman and her whānau in advance of publication.
  - i. The woman will be given an opportunity to consider the content and make a submission to the Council within ten (10) business days of receiving the notice.