

## Dental Council Guidelines on Consultation

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## Introduction

- 1 The Dental Council exists to protect the health and safety of the public through the exercise of mechanisms provided by the Health Practitioners Competence Assurance Act (HPCAA) 2003 to ensure that oral health practitioners are competent and fit to practise their professions. In consulting on issues and proposals and deciding on actions the Council's primary purpose of protecting the public will remain paramount.
- 2 The Dental Council has a statutory requirement to consult when prescribing qualifications for registration and defining scopes of practice. It also consults with interested parties and individuals on a number of other occasions.
- 3 The Council has established consultation processes in place and a number of Council publications refer to the circumstances in which Council will consult and the approach it will follow.
- 4 The purpose of these guidelines is to clarify and improve the Council's consultation processes. Current consultation information and additional best practice guidance have been pulled together into one coherent document, which sets out:
  - the Dental Council's approach to consultation
  - a description of consultation
  - statutory requirements to consult
  - the circumstances where the Council has agreed that it will, or may consult
  - the consultation process the Council will adopt.

## Legislation

- 5 Under the HPCAA regulatory authorities must, before defining scopes of practice or prescribing qualifications, consult about its proposal:
  - with persons who the authority considers are able to represent the views of health practitioners, or of classes of health practitioner, registered with the authority; and
  - with organisations that the authority considers will be affected by the proposal or whose members the authority considers will be affected by the proposal.
- 6 The legislation also provides the Council with a number of additional statutory powers to regulate the oral health practitioners under its jurisdiction.

## The Dental Council approach to consultation

- 7 The exercise of Council's statutory powers impacts on the public, the oral health practitioners it regulates and on the wider health regulatory environment. As such the Council is committed to good decision making processes. An integral part of good decision making is consultation.
- 8 Done properly, consultation can help create a greater understanding of the role of Dental Council and a greater sense of ownership of problems and solutions by interested parties.
- 9 Consultation is common sense. The Council does it because it is pragmatic and good management practice. Participation by interested parties leads to better decision making and robust policies and procedures.
- 10 Consultation must take place with the right people for the right purpose and in a way that is consistent with the principles of good consultation. Legal action may result if consultation is not undertaken when required or if it is undertaken in a manner contrary to good practice. However, consultation should not be seen as a burdensome obligation but as a positive process that can contribute significantly to good decision-making.
- 11 If people understand why and how decisions have been made, there is likely to be less antagonism – and less risk of litigation – and greater ease of implementation.

## What is consultation?

- 12 'Consultation' has both a general meaning and a legal meaning.

- 13 The Court of Appeal has identified certain elements of legal consultation,<sup>1</sup> which are summarised below.
- Consultation is not to be equated with ‘negotiation’. The word ‘negotiation’ implies a process that has as its objective arrival at agreement. However, ‘consultation’ may occur without those consulted agreeing with the outcome.
  - Consultation is the statement of a proposal *not yet fully decided on*.
  - Consultation includes listening to what others have to say and considering the responses.
  - The consultative process must be genuine and not a sham.
  - Sufficient time for consultation must be allowed.
  - The party obliged to consult must provide enough information to enable the person consulted to be adequately informed so as to be able to make intelligent and useful responses.
  - The party obliged to consult must keep an open mind and be ready to change and even start afresh, although it is entitled to have a work plan already in mind.
- 14 After the consultation, the party obliged to consult will reach a decision that may or may not alter the original proposal.
- 15 The following principles should underpin meaningful consultation.
- The timing of consultation should be built into the planning process from the start so that it has the best prospect of improving the proposals concerned and so that sufficient time is left for consultation at each stage. Sometimes there will be pressure to do things quickly and so sometimes the time scales need to be shortened. If so, clear reasons need to be given.
  - It should be clear who is being consulted, about what questions, in what timescale and for what purpose.
  - A consultation document should be appropriate for the people it is intended to reach and be as simple and concise as possible. However, it must not leave out relevant information that has led to the decision to change or review policy. It should include a summary of the main questions it seeks views on. It should make it as easy as possible for readers to respond.
  - Consultation documents should be made widely available (with electronic means used as appropriate but recognising not everyone has access to these) and effectively drawn to the attention of all interested groups and individuals.
  - Sufficient time should be allowed for considered responses from all groups with an interest. The timeframe will always depend on the complexity and volume of material and the number of people to be consulted. For a substantial consultation, 30 to 50 working days is generally considered adequate. The key issue is that there must be time to consult meaningfully.
  - Responses should be analysed carefully and with an open mind. The results should be made widely available and should contain an account of the views expressed and reasons for decisions finally taken.
  - The consultation process should be evaluated to ensure lessons are learned about what did and did not work.
- 16 Refer to Appendix 1 for case law, which further elaborates on what proper consultation involves.

### Role of Professional Associations

- 17 Given their representation role on behalf of their members and their strong interests in promoting the provision of quality oral health services to the public, the professional associations for dentistry, dental technology, dental therapy and dental hygiene are key Council stakeholders.
- 18 As such the Council approach is to develop memoranda of understanding with each association. These clarify roles and relationships and establish processes, over and above the consultation processes set out in this document, to foster understanding of and communication and cooperation between each party.

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<sup>1</sup> *Wellington International Airport v Air New Zealand* [1993] 1 NZLR 671, 675.

## The Dental Council consultation process

19 The Dental Council has agreed that, following identification of a possible issue requiring attention, its consultation process will normally involve the following steps:

### a) Deciding whether consultation is required

It is not possible to give a comprehensive list of every situation in which consultation should occur. The Dental Council will examine each situation and issue and decide whether consultation is necessary or desirable.

Nevertheless, the Council's consultation requirements can be summarised as follows:

- The Council **must** consult when there is a specific statutory requirement to do so.
- The Council **will** consult when the issue under consideration could involve possible significant change or have a significant impact on the sector or the public.
- The Council **may** consult when there are policy reasons to do so such as to encourage 'buy in' to the proposal or to promote good management of its relationships.

See Resource Tools (1): [Dental Council Consultation Requirements](#).

### b) Deciding who should be consulted

Generally speaking those who could be affected by the outcome of the consultation, now or in the future, need to be consulted

### c) Involving key stakeholders at the earliest possible stage

To seek their views on consultation methods, timelines, those to be consulted. Telephone or email contact is considered sufficient.

See Resource Tools (4): [Template for Consultation Plan](#).

### d) Development of a consultation plan

This should include the scope of the consultation, what ideas and information need to be conveyed and to whom, the kind of feedback that will be useful, the level of participation that is desired, any communication requirements and the identification of any barriers to effective consultation. The plan should also include:

- The method of consultation to be used. Examples include discussion papers with submission forms, website, Dental Council News, surveys/polling, meetings, working parties, focus groups networking. Financial, personnel and time constraints may affect the choice of methods and as such the Council generally uses discussion papers as its main method of consultation.
- Timeframes. The timeframe will depend on the complexity and volume of the material and where possible will take into consideration the suggestions of key stakeholders. As a guideline a period of not less than 4 weeks and not more than 14 weeks should be set for people to make submissions, with an appropriate timeframe for responses to a major consultation document being 10 – 12 weeks. If, after commencing a consultation process, stakeholders express the view that a longer period of consultation than had been planned is necessary, the Council may decide to extend the consultation period and will notify all stakeholders of the extension.

See Resource Tools (2) [Consultation Period](#) and (3): [Checklist: Formal Consultation Timeline](#).

### e) Providing and receiving the right information

Stakeholders must be provided with information to enable them to be sufficiently informed of the issues so as to be able to make useful responses. The Council will communicate in everyday language and avoid the use of jargon and acronyms.

When written submissions are required, people will usually be asked to answer specific questions, with room for additional comments at the end of the submission. The number of questions will be limited so people are not discouraged from responding.

Questions need to be asked in a way that gives answers that can be meaningfully analysed. Therefore the person who is to analyse the submissions should be asked to critique the questions and format.

It is a good idea to pre-test questions to ensure they are clear, jargon-free and will elicit the information being sought.

Leading questions may result in accusations of predetermining a particular response.

It is important to get people to identify their interest or for whom they speak.

People should be asked to specifically identify whether they want their submission to remain confidential or whether for privacy reasons they wish their names removed from their submission if it is released.

See Resource Tools (5): *Checklist: Consultation Document*.

**f) Acknowledging and analysing information**

It is important to acknowledge the contribution made by those who take part in consultations and to assure them that their views will be considered in the analysis process.

All submissions should be acknowledged on receipt.

All input from the consultation should be reviewed and collated into a full report for Council

See Resource Tools (6): *Guidelines for Analysis of Submissions*.

**g) Report to Council with recommendations based on the consultation process**

Once the analysis of submissions has been completed, recommendations based on the external consultation can be made and Council can make a decision.

In some circumstances it may be necessary to engage in another round of consultation. For example where the proposed decision is so different from the proposal consulted on or the Council has become aware of new information which stakeholders should know about.

It is important that decisions and the reasons for them are conveyed to those who have participated in the consultation.

A summary of submissions (which may be an abbreviated version of the Council report) and the decisions taken in relation to them, should be sent to all who requested a copy.

A box that can be ticked should be included on the submission form to indicate whether or not people want a copy of the submissions analysis. That will save sending out unwanted copies.

In some cases, it may be most appropriate to deliver the results of consultation in person; for instance, to those most affected by the proposals and those who have made a major contribution to the project.

**h) Evaluation**

The Council will evaluate the effectiveness of major consultation exercises through gathering feed back from stakeholders and staff involved in the process.

An evaluation report might include:

- an assessment of the aims of the consultation against the outcomes
- the methods used and how effective they were

- the overall planning and implementation of the consultation
- evaluations by participants and staff
- the cost compared with budget
- how information and views gained in the process changed the Council's plans
- recommendations for future consultations
- what difference the consultation made to the ultimate decision(s) or how the policy changed from start to finish.

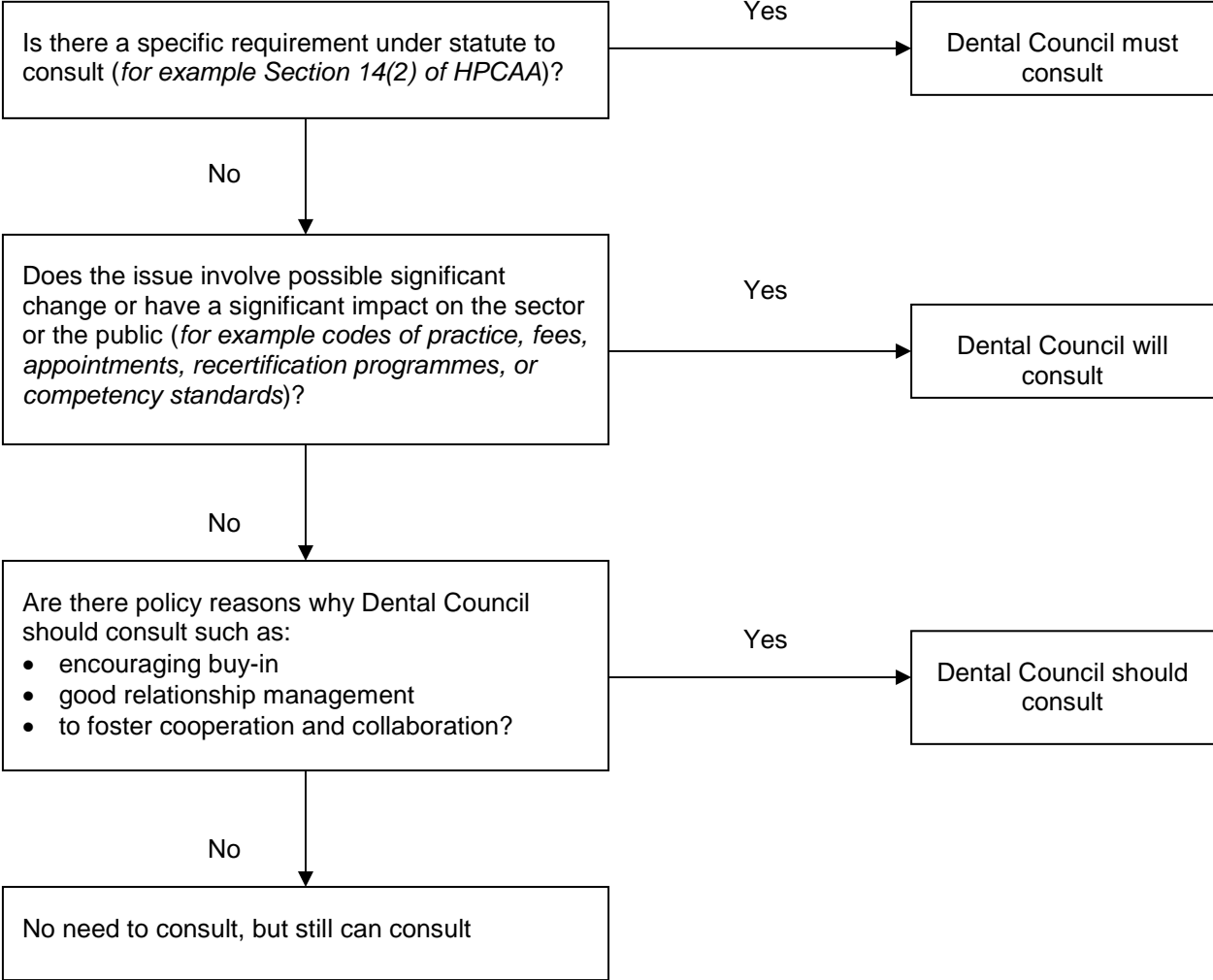
See Resource Tools (7): *Templates for Evaluation of Consultation*.

### Acknowledgement

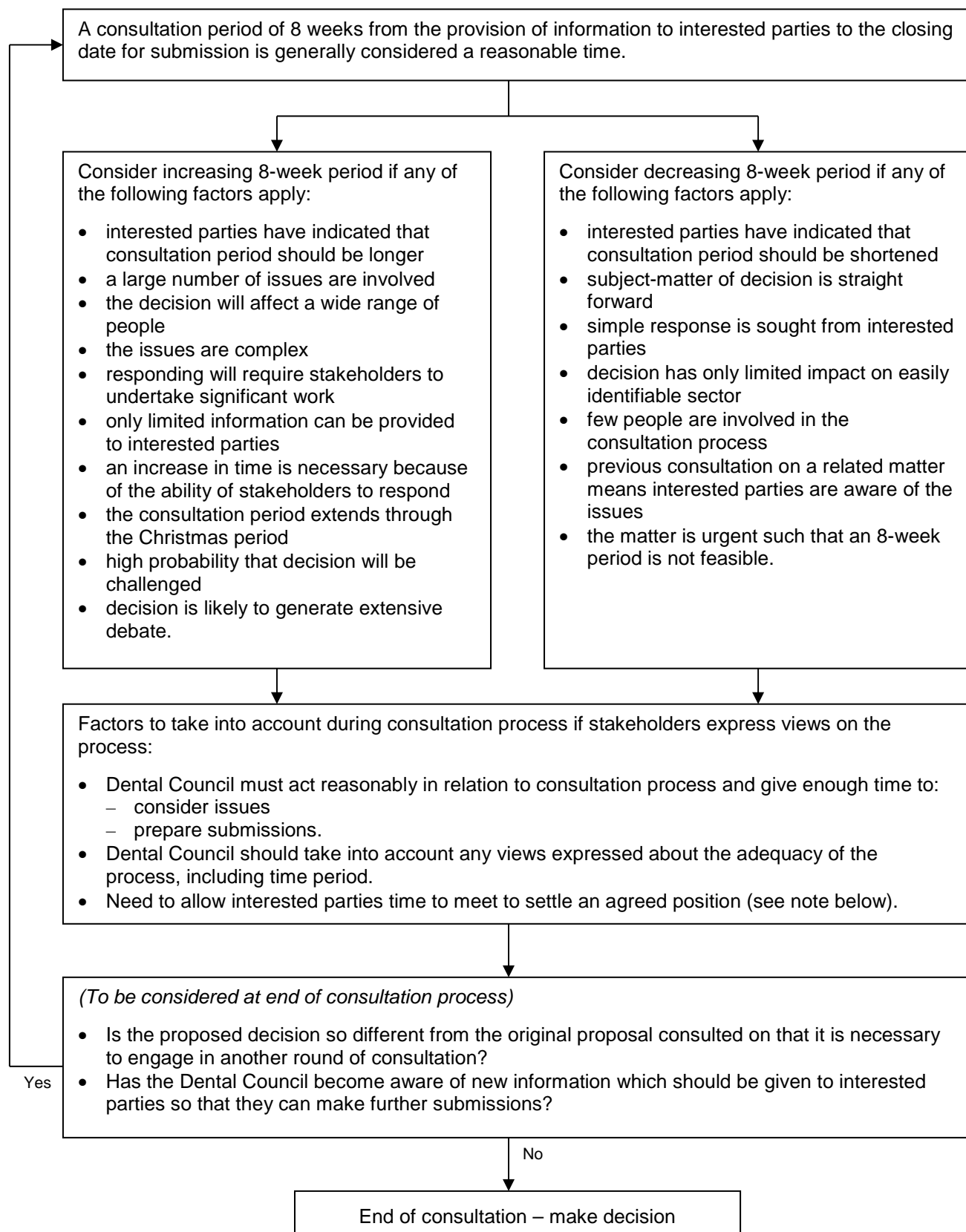
20 This document makes extensive use of the Ministry of Health Consultation Guidelines of August 2002. The Dental Council thanks the Ministry for kindly making these available.

# Resource Tools

## 1 Dental Council Consultation requirements



## 2 Consultation period



**Note** – If after commencing a consultation process stakeholders express the view that a longer period of consultation than had been planned is necessary, the Dental Council may decide to extend the consultation period. If the period is extended, it is important to notify all stakeholders of the extension and allow the extended period for submissions from everyone. This is necessary to avoid a challenge because some people have been treated differently from others.



### 3 Checklist: formal consultation timeline

#### **Key milestones before consultation can begin**

- Proposals and research completed.
- Any legal points clarified.
- Internal consultation
- Consultation plan written up.
- Communications plan written by communications manager.
- Discussion paper and questions to be consulted on agreed.
- Questions to be consulted on reviewed by the person who is to analyse the submissions.
- External review to trial discussion document and questions – good idea but not essential.
- Final discussion document and consultation plan to Council for approval (if required).

#### 4 Template for consultation plan (to be developed for all major consultation)

This template includes matters that need to be addressed in planning a consultation. Use these headings for the written plan that will be sent to the Council. Do not include details, just the overview.

##### **Purpose of the consultation**

Explain the purpose of this consultation and how it fits into the overall plan.

##### **Objectives of this consultation**

Describe your objectives – for instance, the scope, what ideas and information are to be conveyed and to whom, the kind of feedback that will be useful, the level of participation that is desired, the identification of any consultation barriers.

##### **Background**

Problems that led to changes proposed, what work is already being done. Document scientific background/research to support the proposed change.

##### **Risks/opportunities**

Outline risks for the Council proceeding or not proceeding with consultation, advantages and opportunities from consultation, and other organisations' issues/consultations that are relevant. Also consider the political environment and any barriers to consultation.

##### **Legal opinion**

Has one been sought? What was it?

##### **Documents**

Attach the final discussion document, including the submission form if used. Detail any other resources that are to be prepared to publicise and explain the main document(s). Explain how information is being provided.

##### **Timeframe**

Include key dates, including distribution date and closing date for submissions.

##### **Individual(s) and/or groups to be consulted**

List who is to be informed and consulted, and why.

##### **Methods**

Describe the methods to be used to inform and consult.

##### **Media**

Discuss whether any media coverage should be sought.

##### **Analysis of submissions**

Explain how the information received will be recorded, and analysed, how and by whom, and when this will occur.

**Budget**

Estimate costs.

**Feedback to interested parties**

Say when and how this will take place.

**Evaluation**

Describe what is to be measured, whether it is to be an internal only, or internal plus external evaluation.

## 5 Checklist: consultation document

### Information

- Is the name of the consultation document simple and understandable?
- Are the logo, address and the date of publication of the document clearly in evidence?
- Is there a brief summary of the issues in the document as a separate item?
- Have you provided some background to the discussion (eg, what is the history to the issue, what decisions have been made in the past, what is the scientific basis, what happens now)?
- Have you stated what the document is for (eg, what you will do with the responses and how that will influence funding decisions)?
- Have you stated the following?
  - date consultation document released
  - when submissions are to be returned by
  - to whom submissions are to be returned
  - a contact person for further information or extra copies
- Have you identified the target audience in the document (for example, what sort of groups/individuals should read and comment on the document)?
- Is the document written in simple jargon-free language, and has the document been read by several disinterested parties and checked for ease of reading, format, etc?
- Have you included a visible footer on each page stating page number and the title of the discussion document?
- Is a glossary of terms needed?
- Will the document be loaded on to the website for access?

### Response

- Will you have a separate submission booklet with a submission form to be filled in?
- If using a booklet are questions in the booklet cross-referenced with the main document?
- What information do you request about the person/organisation submitting a response?
  - name/address
  - are you an oral health practitioner, a professional association, a provider, a consumer organisation, etc?
  - how many people have contributed to this response?
- Will you include the statement that their names will be included in the summary of responses unless they indicate otherwise?
- Will you include a box to tick if they wish to receive the summary of responses?
- Will you ask submitters for their comments/recommendations on the consultation process?

### Cover letter

- Will you identify in the cover letter the groups to whom the document has been distributed?
- Will you have different letters for different groups of people?
- Will you suggest that the document be copied and passed on to others?
- Has the cover letter been signed?
- Have you said where further copies are available?
- Have you identified whom people can contact for further information?
- Will you state in the cover letter when the summary of responses and decisions will be available?

## 6 Guidelines for analysis of submissions

Submissions need to be skilfully analysed in an appropriate way to provide useful and meaningful data. They are not research exercises or referenda per se. Analysis of submissions needs to take this into account to ensure that all significant responses are reported, but that not too much weight is given to a 'vocal majority' or well-organised factional groups.

### Principles

- 1 Analysis of submissions is issue-based not vote-counting. Analyses are therefore almost always qualitative rather than quantitative exercises.
- 2 It is important to identify the nature of the particular 'sample' of submissions and, as far as possible (which it often is not), how representative the responses are of the people and organisations that the Council wished to consult. This is not so much a numbers exercise attempting to prove representativeness, but more an attempt to show, for example, how many dentists responded. This is important if the analysis is to be treated as a significant input into policy making.
- 3 All submissions, in any form (written, verbal, focus group, public meeting) should be recorded as fully as is practical and necessary to retain the 'flavour' of the content. The original wording should be included where relevant.
- 4 Analysis should include reference to the type of stakeholder and the sort of views put forward. For example 'Dentists considered the main issues to be X and Y, whereas dental technicians felt it was Z'. However, it is unusual for all members of a group hold the same perspective, and this should also be noted.

### Points for analysis

- 1 In general, smaller volumes of submissions may be analysed manually. However, once submission volumes reach substantial numbers (which may be determined as much by the size of individual submissions as much as by numbers), consider a computer database system.
- 2 Where a computer database has been used, ensure that this is retained and is accessible.

### Process for analysis

- 1 Acknowledge all submissions by letter.
- 2 Collect all written submissions and records of meetings in one place. At this point, remove all duplications (eg, fax copies) and number the submissions consecutively. Make copies of submissions and store them separately.
- 3 Ideally, the person analysing the submissions should be involved in the development of the questions for discussion. However, this may be difficult to achieve if the person has been engaged on contract for that specific task.
- 4 Submissions should be carefully analysed for:
  - possible new approaches to the question consulted on
  - further evidence of the impact of the proposals
  - levels of support among particular groups.
- 5 Where possible, Council members should read full submissions of key submitters.
- 6 The person analysing the submission prepares a summary of the submissions received.
- 7 A copy of the summary of submissions should generally be made available to all those who made submissions and other interested parties (or to those who requested the summary if a tick box request was included in the discussion document). This can be accompanied by posting the document on the website.
- 8 The person analysing the submissions should record and note separately all submissions that refer to the consultation process.

- 9 If significant new options emerge from consultation, this should be flagged in the subsequent Council paper
- 10 If deadlines for submissions are extended, public notification of this extension must occur, so that submitters have an equal opportunity to respond. In addition, this deadline should be negotiated with the coder/analyst to ensure analysis timeframes are still manageable.

## 7 Templates for evaluation of consultation

### Analysis of responses

To be completed by person writing the summary of submissions.

Name of the policy/project/plan: \_\_\_\_\_

Number of submissions received: \_\_\_\_\_

Administration (recording, filing, thanking etc) was:

Difficult

Satisfactory

Straightforward

Fast and easy

Comment/recommendation: \_\_\_\_\_

### Meeting reports where relevant

Number received: \_\_\_\_\_

Meetings were adequately and accurately recorded:

Rarely

Sometimes

Mostly

Almost always

Comment/recommendation: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Coverage**

We heard from the following:	Yes	No	Not able to identify
Representatives of most affected parties			
• Oral health practitioners (note numbers by scopes)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Professional Associations (list)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Educational Providers (list)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Other organisations (list)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The public/consumer groups (list)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Others (list)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comment/recommendation: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Discussion/consultation document**

From your reading and analysis:

- how many people commenting understood the issues?
  - Very few
  - Some
  - Most
  - Almost all



- in relation to the information they needed the document was:

Too short/condensed

Barely full enough

Exactly right length

Too long/complex

### Analysis

Were you able to group the submitters along useful lines (eg, providers, profession):

Rarely

Sometimes

Mostly

Almost always

Comment/recommendation: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Number of questions asked in the discussion document:

Too few

Okay

Right number

Too many

Comment/recommendation: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The responses in the written submissions related to the questions:

Rarely

Sometimes

Mostly

Almost always

Comment/recommendation: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Collation/analysis was:

Difficult

Satisfactory

Straight forward

Fast and easy

Comment/recommendation: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Comments/recommendations made by submitters on the consultation process: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Other comment/recommendations: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

## Personal ratings by team members

To be completed by the person in charge of the consultation, presenters and other staff involved.

Name of policy/project/plan: \_\_\_\_\_

## Discussion/consultation document

From formal and informal feedback you have received:

- after reading the text, how many people understood the issues?

Very few

Some

Most

Almost all

- in relation to the information people needed, the document was:

Too short/condensed

Barely full enough

Exactly right length

Too long/complex

## Overall

Indicate the degree that you consider this consultation exercise:

	Not at all		Very well	
• Met the goals set	1	2	3	4
• Improved our understanding of the proposed policy's impact	1	2	3	4
• Increased the level of understanding amongst key stakeholders/affected people	1	2	3	4
• Identified concerns of stakeholders	1	2	3	4
• Allowed sufficient time for participants to respond	1	2	3	4
• Identified some solutions	1	2	3	4
• Caused the Council to rethink some of the policy or proposal	1	2	3	4
• Was the right plan for complexity of the issue and numbers of people affected:	1	2	3	4
• budget				
• methods				
• staffing				

Overall rating:

Not okay 1

Satisfactory 2

Very good 3

Excellent 4

What improvements would you recommend for future exercises? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

What worked well? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

List the three most significant changes made to the Council’s thinking, and/or to the plan/ policy, as a result of submissions made and your discussions with others. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

**External evaluation**

To be completed by members of key stakeholder organisations.

Name of policy/project/plan: \_\_\_\_\_

**Policy document**

From formal and informal feedback you have received:

- after reading the text, how many people understood the issues?

Very few

Some

Most

Almost all

- in relation to the information people needed, the document was:

Too short/condensed

Barely full enough

Exactly right length

Too long/complex

**Overall**

Indicate the degree that you consider this consultation exercise:

	Not at all		Very well	
	1	2	3	4
• Met the objectives outlined in the consultation plan	1	2	3	4
• Improved the Council's understanding of how the policy would affect the sector	1	2	3	4
• Increased the level of understanding amongst key stakeholders/affected people	1	2	3	4
• Identified concerns of stakeholders	1	2	3	4
• Allowed sufficient time for participants to respond	1	2	3	4
• Identified some solutions	1	2	3	4
• Was the right plan for complexity of the issue and numbers of people affected	1	2	3	4
• Reached the individuals and groups in our area who needed to know	1	2	3	4
• Was worth the time and effort we put into it	1	2	3	4

What improvements would you recommend for future exercises? \_\_\_\_\_

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What was done well? \_\_\_\_\_

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Date: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

## Appendix 1: Case Law on Consultation

The following case law further elaborates on what proper consultation involves.

In the case *Wellington International Airport v Air New Zealand*,<sup>2</sup> the Court of Appeal defined 'consultation' to be a process that is more than notification but something less than negotiation and agreement:

- *'Consultation must be allowed sufficient time, and genuine effort must be made. It is to be a reality, not a charade. The concept is grasped most clearly by an approach in principle. To 'consult' is not merely to tell or present. Nor, at the other extreme, is it to agree. Consultation does not necessarily involve negotiation toward an agreement, although the latter, not uncommonly, can follow, as the tendency in consultation is to at least seek consensus ...*
- *... Consulting involves the statement of a proposal not yet finally decided upon, listening to what others have to say, considering their responses and then deciding what will be done.*
- *Implicit in the concept is a requirement that the party consulted will be (or will be made) adequately informed so as to be able to make intelligent and useful responses. It is also implicit that the party obliged to consult, while quite entitled to have a working plan already in mind, must keep an open mind and be ready to change and even start afresh. Beyond that there are no universal requirements as to form. Any manner of oral or written interchange that allows adequate expression and consideration of views will suffice. Nor is there any universal requirement as to duration. In some situations adequate consultation could take place in one telephone call. In other contexts it might take years of formal meetings.'*

In *Napier City Council v Health Care Hawkes Bay*,<sup>3</sup> the High Court made it clear that it was not up to the CHE to decide subjectively whether it had released enough information about its regional hospital proposal. In particular, the CHE was required to 'communicate' adequately with the plaintiff, this being a two-way process. The CHE was required to give the plaintiff information to which it was entitled and a reasonable time to consult and make decisions. The CHE was also subject to the Official Information Act 1982 and was bound to comply with that Act in the course of its consultation exercise.

In *New Zealand Private Hospitals Association v Northern Regional Health Authority*,<sup>4</sup> the High Court considered that if the method of contracting with private hospitals was to change to an elaborate tendering procedure, this had to be preceded by appropriate consultation.

In *Bishop and Others v Central Regional Health Authority*,<sup>5</sup> a case about payment for services for the RHA, the Court emphasised that the RHA's consultation obligation was 'in regard to its intentions relating to the purchase of services' and stated:

- *'The statutory direction is not restricted to 'policy' as opposed to 'procedure'. It does not mention the word 'policy'. The only requirement is that the matter be one "relating to" purchase of services. While Parliament would not have intended to include trivia, significant changes in practice as to payment, eligibility, and availability – and pre-eminently, whether a payment in fact made in the past will continue – fall within that category.'*

### Other issues to be considered

The Courts will, if necessary, ensure the discretion to consult with appropriate persons or organisations is exercised correctly. For instance, if persons clearly affected by a proposal are not consulted, they may have good grounds for legal complaint.

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<sup>2</sup> *Wellington International Airport v Air New Zealand* [1993] 1 NZLR 671, 675.

<sup>3</sup> *Napier City Council v Health Care Hawkes Bay* (judgement of Ellis J, 15 December 1994).

<sup>4</sup> *New Zealand Private Hospitals Association v Northern Regional Health Authority* (judgement of Blanchard J, 7 December 1994).

<sup>5</sup> *Bishop and Others v Central Regional Health Authority* (judgement of McGechan J, 11 July 1997).

Legitimate expectations also need to be borne in mind. For example, an established practice about consultation, or specific promises about who will be consulted, or about what will be the subject of consultation, may create 'legitimate expectations' that are enforceable.<sup>6</sup>

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<sup>6</sup> The doctrine of legitimate expectation was considered in *Te Heu Heu v Attorney-General* [1998] NZAR 337. Robertson J stated that the test was: 'whether objectively the Council by conduct or assurance had created a situation which gave rise to a legitimate expectation as to consultation about matter affecting the mutual interests of the two groups'.