



**New Zealand House of Representatives**  
Te Whare Māngai o Aotearoa

**Regulations Review Committee**  
Komiti Arotake Waeture

54th Parliament  
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## **Complaints about the Midwifery Scope of Practice and Qualifications Notice 2024**

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Presented to the House of Representatives  
by Hon David Parker, Chairperson

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# Complaints about the Midwifery Scope of Practice and Qualifications Notice 2024

## Recommendation

The Regulations Review Committee has considered six complaints about the Midwifery Scope of Practice and Qualifications Notice 2024 and recommends that the House take note of its report.

## About the complaints

Between 24 April and 8 May 2024, we received twelve complaints from thirteen complainants about the Midwifery Scope of Practice and Qualifications Notice 2024 (the Notice). The complainants are nine individuals, five of whom are current or former midwives, and four organisations.

The complaints referred specifically to the Scope of Practice (the Scope) in the Notice. They raised concerns about the Scope in relation to Standing Order 327(2) grounds (a), (b), (c), (d), (g), (h), and (i).

## The committee's jurisdiction

Our jurisdiction in relation to regulations is set out in the Standing Orders of the House of Representatives. Under Standing Order 326(5), the committee may investigate complaints about the operation of regulations, and report on complaints to the House of Representatives. Where a complaint relates to one of the grounds in Standing Order 327(2), the committee can draw the regulation to the special attention of the House and recommend that a regulation be disallowed under the Legislation Act 2019. However, any decision to disallow a regulation is made by the House; the committee can only make a recommendation.

## The legislative scheme

The Notice was made by the Midwifery Council (the Council) under the Health Practitioners Competence Assurance Act 2003 (the Act).

The Scope, as set out in the Notice, contains nine clauses detailing a midwife's scope of practice in New Zealand. These clauses are followed by an explanatory end note which specifies that a midwife's primary obligation is to the "wāhine hāpu/pregnant person and pēpē/baby". The end note also states that, for the purposes of the Scope, the term "whānau" means "the wāhine hāpu/pregnant person and pēpē/baby in their social context, enabling care as it relates to pre-conceptual care, pregnancy, childbirth, and newborn care".

## **The empowering Act**

The Act's principal purpose, as stated in section 3, is to "protect the health and safety of members of the public by providing for mechanisms to ensure that health practitioners are competent and fit to practise their professions".

The Council is established as the authority to regulate midwives under section 114(3) of the Act. The Scope was made under section 11 of the Act, which requires appointed authorities of health professions to describe the contents of the profession through one or more scopes of practice. Subsection 11(2) provides that a scope of practice may be described "in any way the authority thinks fit".

## **The notice**

The Notice was presented to the House on 8 April 2024 and published in the *Gazette* on 9 April 2024. It came into effect on 1 October 2024.

The previous Scope of practice was published in 2010. The Notice updated the 2010 Scope as part of the first stage of a programme initiated by the Midwifery Council to make its regulatory documents more consistent with contemporary midwifery practice in New Zealand. From February to April 2022, the Council invited initial feedback from relevant organisations and all practising midwives registered in New Zealand. This resulted in some changes to the draft updated scope of practice. A second round of consultation on the amended draft, closing in November 2022, also included members of the public. More than 600 submissions were received over the two rounds of consultation. Further changes were made prior to finalisation of the updated Scope.

## **Our consideration**

We considered the twelve complaints to determine whether there was a sufficiently rational connection between the concerns raised in them and the Standing Order grounds identified. On 29 May 2024, we resolved to investigate six of the twelve complaints received, in relation to the following Standing Order 327(2) grounds:

- (a)—that the regulations are not in accordance with the general objects and intentions of the enactment under which they are made
- (i)—that the regulations, for any other reason concerning their form or purport, call for elucidation.

The following complainants raised one or both of these grounds in their complaints, and we considered that a sufficiently rational connection was made between their concerns and these grounds:

- Women's Rights Party
- Carol Bartle and Dr Alison Barrett
- Debbie Hayes
- Fern Hickson
- Victoria Robinson
- Katrina Biggs.

We invited a response from the Midwifery Council regarding these aspects of the complaints.

### **Complaints that we did not investigate**

Other complaints did not fall within the Standing Order grounds and therefore we did not investigate the following complaints:

- Siobhan Tavioni
- Speak Up For Women
- Midwifery Collective
- Mana Wāhine Kōrero
- Sarah Henderson
- Janette Martin.

We determined that the concerns raised by all complainants in relation to Standing Order 327(2) grounds (b), (c), (d), (g), and (h) did not meet the threshold for investigation.

### **Complainants' concerns**

#### **SO 327(2)(a) – not in accordance with the general objects and intentions of the enactment under which it is made**

Section 11 of the empowering Act provides for the Council to draft a midwifery scope of practice “in any way [it] thinks fit”. However, some complainants stated that the Scope is not consistent with the overall aim of the Act—to ensure the safety of health consumers through appropriate mechanisms and systems to ensure no health practitioner practises in a capacity outside their scope of practice.

The complainants' concerns are that the broad and ambiguous drafting of the Scope does not adequately describe the boundaries of care that midwives are authorised to provide, or to whom they can provide it. The 2010 Scope of Practice referred directly to the “care and treatment of pregnant women, new mothers and their newborn infants up to six weeks post-natal”. However, the 2024 Scope more broadly refers to meeting the “varied health needs” of “women/persons, babies and whānau”. The complainants state that this appears to extend the practice and clientele of midwives beyond their current remit into areas of generalist health care. As a result, they argue that regulation of the profession may become “impossible” and that other health care providers may face difficulties in understanding the boundaries of a midwife's role.

#### **SO 327(2)(i) – for any other reason concerning its form or purport, calls for elucidation**

Some complainants alleged that the wording used in the Scope is vague and ambiguous. They also raised concerns about the use of te reo Māori words and phrases (such as “tikanga ako” and “mātauranga Māori”), and the use of “persons” (as in “women/persons”) and “whānau” as recipients of care. Complainants argued that this broad use of language confounds understanding of the Scope, could result in differing interpretations, and may create confusion about a midwife's role. Therefore, complainants considered that the regulations require elucidation.

## **Initial response from the Midwifery Council**

The Midwifery Council said that the Scope is intended to recognise the increasingly complex role that midwives fill today. It explained that this could go “beyond women and their newborn babies” and that some midwives are qualified to provide care which was previously the responsibility of other health professionals. Considering this, the Scope should encompass the broad range of services that midwives may provide, and allow them to decide on the kinds of care they can provide based on their own level of expertise. As a midwife’s expected competencies are set out in the Midwifery Standards of Competence, the Council considers that it is unnecessary to detail these in the Scope, which is intended to provide the “broad boundaries” of midwifery practice.

The Council said that its use of language in the Scope is intended to be “inclusive and enabling”. It argued that this does not de-centre women and babies, but is intended to take into account the different ways that people identify and recognise the “contemporary needs of whānau”. It clarified that its explanation of the word “whānau” in the explanatory end note is not intended to be used as a definition for each use of whānau in the Scope but rather to explain what the Council means when it discusses midwives providing care to whānau.

The Council noted its reluctance to revert to the 2010 Scope of Practice, which it considers outdated. However, it indicated that it would be willing to discuss possible changes to the wording of the Scope.

## **Suggested amendments to the Scope**

We responded to the Midwifery Council’s letter, highlighting aspects of the Scope that raise concerns under SO 327(2) grounds (a) and (i), and suggesting amendments to address these concerns.

### **Clarifying a midwife’s role**

We considered that many readers may find the practical effects of clause 1, which “embeds” the Treaty of Waitangi | te Tiriti o Waitangi in midwifery practice in New Zealand, unclear. To clarify this clause, we suggested that an explanation of the obligations and expectations that this entails could be included in the clause.

Where clause 4 discusses a midwife’s prescription of treatments and medicines, we considered that this could be qualified with a note that they may do this “within the scope of their own level of training and expertise”. In clause 5, references to “physiological processes” and “recognition of complexity” are vague and could be clarified by direct mention of pregnancy and childbirth. Similarly, we considered that the wording in clause 8 about midwives “being responsive to meeting the varied health needs of women/persons, babies and whānau” is overly broad, and does not appear to add anything to the requirements and aims in the Scope.

We suggested that the Council also include a statement directly acknowledging that midwives take professional responsibility for themselves and are accountable for the care they provide, regardless of the setting in which they practise.

### **Indicating a midwife's primary clients/patients**

We found use of the word “persons” (as in “women/persons”) unclear in the Scope. Although we understand the Council’s intent to use inclusive language, we believe it is important to clarify that a midwife’s primary role is to care for individuals capable of childbearing through the process of pregnancy, childbirth, and post-partum recovery. To make clear which people midwives are primarily qualified and trained to care for, “women/persons” could be replaced with terms such as “clients” or “patients” throughout the Scope. We also suggested that the statement in the end note that “The primary obligation of kahu pōkai | midwives is to the wāhine hapū/pregnant person and pēpē/baby” may be important enough to warrant inclusion in a clause.

A midwife’s involvement and consultation with whānau, other midwives, or relevant health and social services is discussed in clauses 3 and 6. A qualifier such as “where/when appropriate” could be added in these cases, as this may not be relevant or necessary in some situations. Clause 6 could also be amended to clarify whether it is intended to reference “women/persons, whānau” or “women’s/persons’ whānau”. Further, the second sentence in the end note appears to define the meaning of whānau within the Scope. However, the Midwifery Council has informed us that this was not its intention, so we consider that this sentence could be removed. We also noted that clause 7 does not reference “women/persons”, only “whānau”, which is inconsistent with the other parts of the Scope.

### **General clarification of the Scope**

We do not consider that the use of “values” in clause 3 (“The kahu pōkai | midwife values mātauranga Māori and other worldviews”) unduly trespasses on midwives’ personal beliefs or requires midwives to value any particular worldview, as some complainants have alleged. We see the aim of this clause as requiring midwives to develop their cultural knowledge to provide appropriate and respectful care to clients. To better reflect this and avoid concerns, we suggested that the phrase “values” be replaced with “develops knowledge of”. In clause 4, “ways of knowing” could be replaced with “knowledge” to make it clearer and more succinct.

Clause 7 provides that “The tikanga/quality and safety of midwifery care is supported through seeking whānau feedback, cultural safety, continuity of care, and effective interprofessional relationships, including tikanga ako/practice.” We found it unclear whether “tikanga” is intended to equate to “quality and care” or whether they are separate concepts. This could be changed to “tikanga, quality and care”, if they are intended as separate concepts. The contextual meaning of the words “tikanga ako/practice” and “health care safe systems” in this clause should also be clarified.

### **Amendment of the Scope by the Midwifery Council**

The Midwifery Council responded to our suggested amendments with a revised version of the Scope. The Council indicated that, if the committee took no issue with this, it would like to undertake public consultation on the revised version before its publication.<sup>1</sup> We

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<sup>1</sup> The draft amended scope of practice is available on the Parliament website, in the Midwifery Council’s supplementary submission.

understand that the Council intends to undertake consultation in the first quarter of 2025. We acknowledge that changes may be made to the revised version as a result of feedback during consultation, and have indicated our willingness to review the finalised scope of practice before its publication in the *Gazette*. We have also recommended that the Council issue guidelines clarifying the elucidation matters which have given rise to the complaint, and which will be addressed by the revised Scope.

## **Our conclusion**

We resolved to uphold this complaint on the grounds that the Scope of Practice is not in accordance with the general objects and intentions of the enactment under which it is made (Standing Order 327(2)(a)) and that it requires elucidation (Standing Order 327(2)(i)).

However, we are satisfied with the Midwifery Council's response and willingness to redraft the Scope. We will review any new scope of practice as part of our regular scrutiny of secondary legislation.



## **Appendix**

### **Committee procedure**

We met between 1 May 2024 and 12 February 2025 to consider these complaints. We received written evidence from six complainants and the Midwifery Council. We received advice from the Office of the Clerk's Legislative Counsel.

### **Committee members**

Hon David Parker (Chairperson)  
Miles Anderson (from 29 January 2025)  
Ryan Hamilton (until 29 January 2025)  
Nancy Lu (from 29 January 2025)  
David MacLeod (from 18 September 2024, until 29 January 2025)  
James Meager (until 18 September 2024)  
Joseph Mooney  
Hon Jenny Salesa

### **Related resources**

The documents we received as advice and evidence in relation to this complaint are available on the [Parliament website](#).