New Zealand House of Representatives
Te Whare Māngai o Aotearoa

Petitions Committee
Komiti Whiriwhiri Take Petihana

54th Parliament
March 2025

Petition of Deb Hayes: Investigate Midwifery Council's removal of 'woman & baby' from Scope of Practice

Presented to the House of Representatives
by Greg O'Connor, Chairperson

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Petition of Deb Hayes

Recommendation

The Petitions Committee has considered the petition of Deb Hayes—Investigate Midwifery Council's removal of 'woman & baby' from Scope of Practice—and recommends that the House take note of its report.

Request concerning the revised Scope of Practice for midwives

The petition was presented to the House on 9 April 2024. It requests:

> That the House of Representatives inquire into the Midwifery Council's decision to use the word 'whānau' and not the words 'women' or 'baby' in the Scope of Practice of a midwife, and whether the Midwifery Council is discharging its Regulatory Authority duties appropriately under the HPCAA 2003.

Background

The Health Practitioners Competence Assurance Act 2003 requires that a scope of practice be defined for each health practitioner. Under the Act, no health practitioner may practise outside their defined scope of practice, so that health practitioners only operate within their area of professional training and expertise.

The Act provides for an authority to be appointed that is responsible for the registration and oversight of practitioners of a particular health profession. The authority with responsibility for midwives is Te Tatau o te Whare Kahu | Midwifery Council. This is the group that is required to set the profession's scope of practice.

The scope of practice for midwives first came into force on 12 February 2010.[1] It said that a midwife "works in partnership with women on her own professional responsibility, to give women the necessary support, care and advice during pregnancy, labour and the postpartum period up to six weeks, to facilitate births and to provide care for the newborn".

In 2019, the Midwifery Council identified that there was a need to update the midwifery scope of practice. Reasons for this included:

- new technologies and digital skills
- cultural competence
- stakeholder engagement, including the role and involvement of wider family members
- the diversity and complexity of the different settings in which midwives operate
- acknowledgement of gender diversity.

[1] Te Tatau o te Whare Kahu | Midwifery Council: *Midwifery (Scope of Practice and Qualifications) Notice 2010*.

While we have been considering this petition, the Regulations Review Committee has also been considering complaints about the revised midwifery scope of practice. The Regulations Review Committee has now reported on its consideration of those complaints.[2]

"Women" and "baby" in the revised scope of practice

Comments from the petitioner

The petitioner is a midwife with 32 years' experience, who works in a primary care setting. She expressed concern that the words "women" and "baby" were replaced by the word "whānau" in early drafts of the revised scope of practice for midwives.

Deb Hayes told us that the recipients of midwifery care are "100 percent women/wāhine and babies/pēpē". She does not believe it is necessary to change sex-based language in describing midwifery care, and that "women/wāhine can only achieve sex-based rights if the language used is clear and specific to them". She said that the scope of practice for midwives should put women and babies front and centre.

The petitioner said that the words "women" and "babies" were missing from the draft revised scope of practice from March 2022 to March 2024. She acknowledged that "women/person" has now been added into the gazetted scope of practice, but told us she believed that the current scope of practice "has relegated women to a subset of persons". She asked whether it was right, fair, or legal to remove words that describe the female sex in a legally binding document which is designed to describe the people that a midwife cares for in simple terms.

Deb Hayes said the change in language is intended to include "women who identify as something other than women". Her written submission included an estimate that each year around six pregnant trans men give birth in New Zealand, based on Australia's statistics. She considers that care for patients who do not identify as women could be best addressed on an individual basis, through specific instructions in their Lead Maternity Carer plan.

The petitioner said that when the revision of the scope of practice began, there was a link (which has since been deleted) on the website of the Midwifery Council to the Trans Pregnancy Care Project. She told us this project conducted 20 interviews with 29 transgender parents or potential parents who had accessed maternity care or fertility treatments over 5 years. She said that, during this five-year period, there were approximately 285,000 births in New Zealand. She said that 20 experiences out of 285,000 was "not a persuasive statistic". She does not believe this is comprehensive or unbiased research that a professional authority body such as the Midwifery Council should use.

Deb Hayes said that sex-based feminine language in maternity care is offensive to a minority of parents. She told us that the Midwifery Council has produced a scope of practice "that is not succinct enough in language and intent to keep the midwifery profession safe", because she believes that the Midwifery Council tried to centre the minority of parents to whom sex-based language is offensive or irrelevant. She asked Parliament to hold an inquiry into the revision of language in the scope of practice for midwives. She has also submitted to the

[2] The report of the Regulations Review Committee on Complaints about the Midwifery Scope of Practice and Qualifications Notice 2024 is available on the Parliament website.

Regulations Review Committee, which has been considering the Midwifery Scope of Practice and Qualifications Notice 2024.[3]

The petitioner said that, in consultation undertaken by the Midwifery Council, 90.8 percent of respondents had objected to the changes to the scope of practice. She said that these responders were not listened to. She told us she had concerns that the Midwifery Council had not been transparent and had not used fair process when developing the revised scope of practice.

Comments from Mana Wāhine Kōrero

Mana Wāhine Kōrero expressed concern about the consultation with iwi Māori and wāhine Māori regarding te reo Māori words in the revised midwifery scope of practice. It said that one of the stated aims of the revised scope of practice was to embed te Tiriti o Waitangi into the daily practice of a midwife. However, it felt that te reo Māori was misused in the revised scope, and expressed concern that a te reo Māori version of the revised scope was not published alongside the English version.

Mana Wāhine Kōrero felt that the use of te reo Māori words throughout the drafts of the scope was inappropriate. It said the use changed the text from the previous version, and therefore also changed Māori conceptions of birth, wāhine, and pēpē. In particular, Mana Wāhine Kōrero expressed concern about the way the word “whānau” was used, and it objected to the introduction of the term “kahu pōkai” for midwife.

Whānau

Mana Wāhine Kōrero said early drafts of the revised scope of practice replaced “wāhine” and “women” with the word “whānau”. It said this distorted the traditional meaning of the word “whānau”. We understand that Mana Wāhine Kōrero’s concern was that “whānau” was used in place of words for “mother”, “father”, or “parent”, rather than in its commonly understood meaning of family, particularly extended family groups. It did not believe this was an appropriate use of the word “whānau”.

Kahu pōkai

Kahu pōkai is the term used by the Midwifery Council for “midwife”. Mana Wāhine Kōrero told us that this is a made-up word. It saw no need for a new te reo Māori term for midwife. It said that there are existing words for midwife in te reo Māori, and that the combination of words in the term adopted by the Midwifery Council is confusing and potentially offensive.

Comments from the Midwifery Council

The Midwifery Council said that the midwifery scope of practice provides boundaries of practice for the entire midwifery profession. It is not specific to an individual. Rather, all care provided by midwives must sit within the scope of practice. The Council said that it is responsible for ensuring that midwives are competent to practise and can be responsive to the needs of whānau.

[3] Submissions to the Regulations Review Committee about the Midwifery Scope of Practice and Qualifications Notice 2024 are available on the Parliament website.

The council told us that the version of the scope of practice which gave rise to the petition is not the version that has been approved by the Council and gazetted. The revised scope of practice, which was due to come into effect on 1 October 2024 at the time of our September 2024 hearing, refers to wāhine hapū/pregnant persons, women/persons, and pēpē/babies. The use of the word "whānau" is explained in the scope of practice:

> Whānau refers to the wāhine hapū/pregnant person and pēpē/baby in their social context, enabling care as it relates to pre-conceptual care, pregnancy, childbirth, and newborn care.

The Council told us that use of the word "whānau" in the revised scope of practice was intended to be "inclusive and all encompassing". It said this was intended to be broader than the English term "family". It told us that the scope of practice recognises that midwives need to understand the needs of all people, including how they identify, and to work within that context.

The Council said the midwifery scope of practice and standards of competence had not been revised for some time. It told us that midwifery care has evolved, and so there was a need to review the scope of practice. In 2020, the Council began a project to revise the three core documents that cover midwifery practice, beginning with the scope of practice.

We heard that the Council's intention has been to improve equitable outcomes. It said the latest annual report of the Perinatal and Maternal Mortality Review Committee, published in June 2024, continues to challenge the maternity sector to acknowledge persistent and systemic health inequities.[4] The Council said that the Pae Ora (Healthy Futures) Act 2022 and Te Pae Tata health strategy provide a mandate for the health sector to address health equities and for midwives' responsibilities to embed te Tiriti o Waitangi in midwifery practice.

The Council told us that it was always the intention to convey that the primary obligation of a midwife is to the wāhine hapū/woman/pregnant person and the newborn baby. It said that the revised scope of practice is also intended to address an imbalance of representation, understanding, and appreciation of Māori knowledge, values, and practice.

We were told that the revision of the scope of practice was undertaken by the Collaborative Reference Group and a project team. The Collaborative Reference Group was made up of midwives and consumers. It included tangata whenua and tangata tiriti from across the maternity sector. The Council held two rounds of consultation on the draft scope of practice, with consultation closing in April 2022 and November 2022. In 2023, it said it also obtained independent legal advice, and consulted directly with the Minister of Health Hon Dr Shane Reti. On 8 February 2024, the Midwifery Council unanimously adopted the revised scope of practice. On 8 April 2024, the revised scope of practice was submitted for publication in the *New Zealand Gazette*.

The Midwifery Council noted that, as the scope of practice is secondary legislation, it also falls under the responsibility of the Regulations Review Committee. At the time of our

[4] The Sixteenth Annual Report of the Perinatal and Maternal Mortality Review Committee, June 2024, is available on the website of the Te Tāhā Hauora | Health Quality and Safety Commission.

hearing, the Council was also considering some recommendations and feedback from that committee.

The Council said that the revised scope of practice is a change for the midwifery workforce, and that it is committed to ensuring that all midwives receive the education and support they need. It said it was preparing educational materials to assist the workforce transition to the new requirements.

We asked what lessons the council is taking from the process of revising the scope of practice as a lesson for similar processes. The Midwifery Council replied that there had been a change of personnel since the project began in 2020, but that revising the standards of competence first, rather than the scope of practice, may have better clarified what the revision of the scope of practice meant for midwifery practice.

We asked the Council to explain why earlier drafts had chosen to use "whānau" rather than "wāhine hapū" as the focus of midwifery care. We were told that the word "whānau" assists midwives to consider the existing context for wāhine hapū/woman/pregnant person. The council told us there is a lot of evidence that the wellbeing of a baby depends on recognising the context in which they are born and raised. We asked why the Council uses the term "pregnant person". We were told that also arises out of a desire to be inclusive of all people who need maternity care. We discussed the reference to trans men—men who were assigned female at birth but who now identify as male—who have had a baby. The Council said it was not aware of how many trans men in New Zealand give birth each year.

We asked what is the basis for the Midwifery Council's incorporation of Te Ao Māori and te reo Māori in its work, including the revision of the scope of practice. We heard that the Collaborative Reference Group included representation of tangata whenua as well as other groups, and the Midwifery Council drew on that expertise.

In response to Mana Wāhine Kōrero's concerns about the use of the term "kahu pōkai" for "midwife", the Midwifery Council told us that the term was gifted to the Council, and that it has used it since 2020. It said that different iwi used different terms and, as a national regulator, the Council needed a single term that could be used in a national context.

The Midwifery Council said its intention had been to gazette a te reo Māori version of the new scope of practice, along with the English version, and it sought a translation from the Department of Internal Affairs. However, it told us that there were concerns about accuracy, variations of translation, and consideration of primacy if there was a misalignment between language versions. It decided to gazette the English version and will publish a version in te reo Māori as a supporting document later.

Natural justice issues

Parliament observes the principles of natural justice in its proceedings. Parliament's rules, the Standing Orders, require select committees to manage allegations that may seriously damage a person's reputation and give people a right of reply.[5] Features of this include:

[5] Standing Orders 236-242 describe how natural justice applies in select committees. The Standing Orders are available on the Parliament website.

- Committees have a duty to prevent irrelevant or unjustified allegations being made in their proceedings.
- Where a serious allegation has been made and the relevant proceedings are not or cannot be returned or suppressed, the affected person must be informed and given an opportunity to respond.[6]

The video of the Mana Wāhine Kōrero's oral submission is not available on the website. We considered that some statements in their oral submission were allegations that were potentially damaging to an individual and an organisation. We initially asked the Clerk of the House to take down the video of our hearing temporarily while we gave those people the chance to reply. Following further consideration of the responses we received, we asked the Clerk to permanently remove the video of the hearing.

This is not an action we have taken lightly. In general, we believe that Parliament should be a place where a range of views are able to be heard, including on difficult and complex issues. That includes the matters raised in this petition. However, we believe the potential harm, especially to an individual with no connection to the core matter raised in this petition, was significant enough to warrant permanent removal of the video.

Our response to the petition

This petition raised questions about how different views about personal identity should be addressed in formal documents and healthcare services.

Use of te reo Māori

We have heard the concerns of the petitioner and Mana Wāhine Kōrero about the expertise available to the Midwifery Council as it considered the use of te reo Māori in its revised scope of practice. We wonder if the Council's consultation sufficiently addressed concerns about the adoption of the new term "kahu pōkai" for midwife, and discomfort with the way the term "whānau" was used. We encourage the Midwifery Council to ensure it has appropriate te reo Māori expertise available to it as it continues to consult on the midwifery scope of practice and as it revises its other core documents.

"Women" and "babies"

The petitioner objected to the exclusion of female-sex language from drafts of the revised midwifery scope of practice. We note that the words "women" and "babies" were included in the version of the scope of practice which was gazetted in April 2024. We think this shows that submitters to the Midwifery Council's consultation process were listened to.

Following the feedback from the Regulations Review Committee, we understand that the Midwifery Council has prepared a further version of the midwifery scope of practice. It opens with this description:

> The primary obligation of a kāhu pokai | midwife is to provide whānau-centred care for individuals (however they may identify) who are capable of

[6] Parliamentary Practice in New Zealand, 31.2. Further information on natural justice is available in Chapter 31 of Parliamentary Practice in New Zealand, which is available on the Parliament website.

> childbearing and who are preparing for pregnancy, pregnant, birthing, and post-partum up to six weeks.

The revised scope of practice also refers to “the women and gender diverse people they [midwives] serve”. We understand that the Midwifery Council intends to hold a further round of consultation on this version. We encourage the petitioner to continue to engage with the Midwifery Council’s consultation process.

Appendix

Committee procedure

The petition was referred to us on 9 April 2024. We met between 23 May 2024 and 13 March 2025 to consider it. We invited and received written submissions from the petitioner and the Midwifery Council. We also accepted a written submission from Mana Wāhine Kōrero. We heard oral evidence from the petitioner, the Midwifery Council, and Mana Wāhine Kōrero. Following the hearing of evidence, we invited the Midwifery Council and Dr Jaimie Veale to provide further written submissions relating to natural justice concerns in the hearing, and heard a second oral submission from the Midwifery Council.

Committee members

Greg O'Connor (Chairperson)
Carl Bates (to 29 January 2025)
Kahurangi Carter (from 29 January 2025)
Greg Fleming
Paulo Garcia (from 29 January 2025)
Francisco Hernandez (to 29 January 2025)

Benjamin Doyle and Dr Vanessa Weenink also participated in some of our consideration of this petition.

Related resources

The documents we received as evidence in relation to this petition are available on the Parliament website.

Recordings of our hearings can be accessed online on the Parliament website at the following links:

- Hearing with the petitioner on 12 September 2024.
- Hearing with the Midwifery Council on 12 September 2024.
- Hearing with the Midwifery Council on 17 October 2024 (1.32.20 to the end).