Te Tatau o te Whare Kahu
Midwifery Council

Putting Patients First: Modernising health workforce regulation

Submission to the Ministry of Health

Te Tatau o Te Whare Kahu | Midwifery Council welcomes the review of the legislation that regulates health practitioners in New Zealand and the invitation to all New Zealanders to be part of the discussion.

The central purpose of workforce regulation in health, is patient and public safety. For health practitioner's patient safety means that those using their services should not be harmed by their advice or intervention. However, at a systems level, public safety considerations include availability of workforce and access to health services, and contemporary health practitioner regulation needs to strike the right balance between the two. Under-regulation can place patients at risk of harm from health practitioners, while over regulation can place the public at risk of harm by potentially impacting access to the services patients need.

The Midwifery Council is keen to contribute to the forthcoming policy development on the principles that should underpin possible reform and the policy options relating to core functions, regulatory mechanisms, structure, and governance.

The discussion document *Putting Patients First: Modernising health workforce regulation* seeks feedback on a number of considerations that we will address in this submission along with other relevant matters that the Midwifery Council considers should be explored to inform comprehensive policy advice.

1. Context

Professional regulation is a factor in overall workforce dynamics however, as a lever for access to safe and sustainable health services, it is only one of several factors that include models of care, funding, and employment policies. As such, changes to the regulatory framework may not necessarily achieve system improvements and improvements for patients unless the other levers are brought into play.

An example is the recent changes to the Midwifery Scope of Practice that enables midwives to expand their practice with appropriate education and ongoing competency. There are many ways that this will improve access to services, such as early pregnancy ultrasound, however the lack of specified funding means the benefit this would accrue to patients is constrained.

The discussion document affirms that any changes to the regulatory system must not compromise clinical safety. Ensuring that clinical safety is consistently maintained while at the same time flexing rules and standards to accommodate shifting workforce and system needs, creates an inherent tension between the two. Patients want the system to work efficiently and smoothly for them, but they also need to have confidence that the people they are entrusting

Te Tatau o te Whare Kahu | Midwifery Council
Level 6, 22–28 Willeston Street, Wellington 6011 | PO Box 9644, Marion Square, Wellington 6141
Phone: +64 4 499 5040 | Email: info@midwiferycouncil.health.nz | Website: www.midwiferycouncil.health.nz

with their care are qualified, safe, and competent, and that mechanisms and the standards set to ensure this are robust.

When things go wrong, or there is an adverse outcome for a patient, these standards of competence are the measure to which regulated health practitioners are held accountable. In the same way that health targets stand as an accountability measure regardless of impacting pressures, the clinical and conduct standards patients expect of health practitioners should not be discounted due to system related deficits.

2. Midwifery identity and expertise

It is acknowledged in the discussion document that patients benefit when professional identity and profession-specific expertise is retained in the regulatory system.

Midwifery is a unique profession, and New Zealand has a unique model of midwifery care that is globally recognized as representing a cost-effective strategy to optimize outcomes for women and newborns with minimal use of unnecessary interventions and resources. Midwifery led maternity care in New Zealand offers continuity of care, across care settings that is whānau centric, partnership based and holistic. Midwives provide care on their own responsibility and work autonomously within their scope of practice.

Retaining and supporting this model for women, babies and whānau so that they receive the support they need is in part a function of workforce availability. The success of this model of care is however equally due the expertise and particular attributes of midwives who achieve and maintain the skills and standards required to be a midwife in New Zealand. Their identity and mana as an autonomous profession is critical to their sense of vocation and purpose and contributes to public trust in the profession and New Zealand's maternity service.

Midwifery is an approach to care of women, gender diverse people and their newborn infants whereby midwives:

- *Optimise the normal biological, psychological, social, and cultural processes of childbirth and early life of the newborn.*
- *Work in partnership with women, respecting the individual circumstances and views of each woman*
- *Promote women's personal capabilities to care for themselves and their families*
- *Collaborate with midwives and other health professionals as necessary to provide holistic care that meets each woman's individual needs*

International Confederation of Midwives – Definition of Midwifery 2017

---

3. Patient-centred regulation

The Midwifery Council fully recognises its core function of protecting the public and acknowledges the need for patient voice to factor significantly in its work. The Council last year asked the Ministry of Health to consider the appointment of a third layperson to the then eight-person Council and this was agreed. Laypeople on Council are critical to both regulatory determinations and the governance of the organisation, and quorum for any decision-making meeting of Council requires at least one layperson to be present.

Te Tatau o te Whare Kahu | Midwifery Council
Level 6, 22–28 Willeston Street, Wellington 6011 | PO Box 9644, Marion Square, Wellington 6141
Phone: +64 4 499 5040 | Email: info@midwiferycouncil.health.nz | Website: www.midwiferycouncil.health.nz

When the Council is making decisions on policy and standards we consult publicly and reach out to consumer groups. Mechanisms to do this could be enhanced and it is an area we are keen to discuss with government along with potential structural change to increase consumer participation.

In addition to the voice of consumers in the Council's work, meeting the needs of patients brings into focus the system level dynamics of regulatory policy. Well defined scopes of practice help patients and whānau understand the range of care a particular professional group can provide and ensures the public can be confident that those practitioners are both qualified and competent. On the other hand, being overly prescriptive about scopes of practice can limit the ability to respond to changes in consumer demand and workforce challenges.

The Midwifery Council has taken a balanced approach to this by retaining core midwifery competencies but allowing midwives to expand their practice if they choose. Council does require that midwives who expand their practice have the appropriate education to do so and maintain competence over time. Expanded practice within Scope is a relatively new approach, and not everyone is comfortable with it as yet, but it has the potential to be responsive to patient and health system needs. This has been achieved within the current regulatory framework and supports the primary premise of the discussion document – meeting patients needs.

4. Scope of regulation

The discussion document asks whether the regulator should solely focus on clinical safety and ensuring whether the most qualified professional is providing care for the patient, as opposed to matters that might be considered extraneous to clinical practice and public safety.

In the same way that workforce and system issues can impact on public safety, other "non-clinical" matters also impact directly on the safety and wellbeing of patients and whānau. Cultural safety has been given as an example of a factor that could be considered unnecessary as a core regulatory focus.

In the case of cultural safety there is clear evidence that poor cultural safety considerations can give rise to suboptimal or adverse clinical outcomes. This can be due to unconscious bias that leads to different treatment pathways and clinical decision making, or risks arising when cultural needs are ignored, leading to an environment where open and trusted communication between the patient and health practitioner is compromised. Communication and trust are central to good patient care and safe clinical decision making. If these elements are compromised it can lead to patient disadvantage and harm and may even result in the patient and whānau choosing not to seek care.

Everyone receiving health services in New Zealand has rights under the *Code of Health and Disability Services Consumers Rights*. Right 1(3) of the Code states that:

> *Every consumer has the right to be provided with services that take into account the needs, values, and beliefs of different cultural, religious, social, and ethnic groups, including the needs, values, and beliefs of Māori.*

To support practitioners in complying with the Code, and to mitigate the risk to consumers when rights are breached, regulators have a responsibility to ensure that the profession is educated and has ongoing competence in all matters that are held to be basic patient rights.

Where the Health and Disability Commission (HDC) finds a health practitioner has breached patient rights, the case may be referred to the Responsible Authority (regulator) to consider

Te Tatau o te Whare Kahu | Midwifery Council
Level 6, 22–28 Willeston Street, Wellington 6011 | PO Box 9644, Marion Square, Wellington 6141
Phone: +64 4 499 5040 | Email: info@midwiferycouncil.health.nz | Website: www.midwiferycouncil.health.nz

possible disciplinary action. It would be unfair and contrary to natural justice to hold a practitioner accountable on matters that have not formed part of the regulator's standards should there be a shift to the focus being solely on clinical safety.

> *"It is not sufficient for providers to have polices and protocols regarding cultural support pathways. What is needed is that these are put into practice in order to improve consumers' experiences and outcomes within the health system. It also behoves providers to practise in a culturally safe manner, for example, by involving whanau in decision-making, and being mindful of personal and institutional biases when people present for care, and when they express their choices about the cultural support they require."*
>
> *Morag McDowell, Health, and Disability Commissioner 2023*

Midwifery care in particular requires an acute focus on cultural safety so that midwives have the knowledge and competence to establish relationships with whānau that supports a partnership in care and enables a safe and nurturing environment for wāhine hapū and the newborn baby.

5. Streamlined regulation

The Midwifery Council supports the exploration of policy and structural options that would support greater collaboration and generate efficiencies in processes and costs. We note that the current legislation does not preclude this and we, along with seven other Responsible Authorities, share premises and back-office functions with the Nursing Council e.g. payroll and finance systems.

There are however some barriers to extending this to other common operational areas such as a single IT platform for registration and regulatory functions. Transitioning from existing systems can be a complex and expensive process and at this time Responsible Authorities receive no Crown funding and so the cost of any large-scale change process would need to be funded via practitioner fees.

Full amalgamation of regulators, whether that be all or some, could come at a cost to the profession and patients. The discussion document acknowledges that patients benefit when professional identity and profession-specific expertise is retained in the regulatory system however this could be eroded with amalgamations or a shift to single regulator.

For many years midwives were regulated by the Nursing Council and the creation of the Midwifery Council in 2004 completed the separation of midwifery from nursing. Midwifery is recognised as a distinctly different and autonomous profession, as was intended by the Nurses Amendment Act in 1990. This professional standing has supported the development of the midwifery led model in New Zealand and a move to amalgamate could be a retrograde step in retaining and building on the success of this model.

Further considerations regarding amalgamation or a single regulator are the transition to, and operation of, larger bureaucracies. Smaller organisations can often be more nimble than larger organisations and innovation can be hindered with more layers of decision makers and a drive

Te Tatau o te Whare Kahu | Midwifery Council
Level 6, 22–28 Willeston Street, Wellington 6011 | PO Box 9644, Marion Square, Wellington 6141
Phone: +64 4 499 5040 | Email: info@midwiferycouncil.health.nz | Website: www.midwiferycouncil.health.nz

for uniformity, as opposed to profession specific problem solving. An example is the Midwifery Council's move to create a two-stage application process for internationally qualified midwives to encourage them to complete the first stages of application without incurring the full application fee. This was something we were able do quickly and independently under our own authority.

Similarly larger organisations may not necessarily accrue the financial benefits expected of 'economy of scale.' Australia has a single regulatory authority (Ahpra) however a simple calculation using the published annual expenses of that organisation vs New Zealand's Responsible Authorities collectively, arrives at a per capita cost of AU$12.07 and NZ$13.07, respectively.

Transition to a single entity or amalgamation can be complex and difficult and can impact on service delivery as we have seen with the structural changes in Health with the establishment of Health New Zealand. Likewise concerns relating to the newly created national institute of technology, Te Pukenga, have led to its disestablishment and reintroduction of independent and autonomous polytechnics.

6. Right-sized regulation

Right-touch regulation

The Midwifery Council and other Responsible Authorities pursue a 'right-touch' approach to regulation. Right-touch regulation is based on the principles of proportionate, consistent, targeted, transparent, accountable, and agile regulation.

Some individual midwives may pose a risk to patients because of competence or conduct issues, or health issues that may affect their ability to safely practice. In this context, right-touch regulation means that the Council responds appropriately to manage any immediate or ongoing risk posed by that midwife. The Council's approach to any notification of concern it receives is intended to be proportionate to the circumstances.

When setting regulatory standards for midwives the Council also adheres to right-touch principles to ensure that the standards are appropriately set to ensures midwives practice safety and confidently and at a level that the public would expect of the profession.

Standards of registration

The standards required by Council for midwives to be registered are designed protect the public and support midwives commencing practice in New Zealand.

Graduating midwifery students need both theoretical knowledge and practice experience to be able to work safely and independently in any maternity setting. Reducing the theoretical and practice requirements for undergraduate education increases risk to the public and hinders the new graduate's move to independent practice. This could also impact on the more experienced midwives who would need to provide more support and oversight.

The registration of internationally qualified midwives (IQM) is built on the premise that they must meet the same standards of competence expected of New Zealand qualified midwives. In the majority of cases IQMs are able to be registered and issued an annual practising certificate (APC) on the proviso that particular knowledge gaps that maybe unique to midwifery practice in New Zealand e.g. prescribing, are addressed though education within a prescribed time frame.

Te Tatau o te Whare Kahu | Midwifery Council
Level 6, 22–28 Willeston Street, Wellington 6011 | PO Box 9644, Marion Square, Wellington 6141
Phone: +64 4 499 5040 | Email: info@midwiferycouncil.health.nz | Website: www.midwiferycouncil.health.nz

The Midwifery Council is currently progressing a streamlined and compact course to meet these education needs and provide an orientation to New Zealand practice. This will be available in 2026, and the programme will also accommodate the needs of midwives returning to practice.

There is perhaps a misconception that it is difficult for overseas qualified midwives to gain registration in New Zealand. An analysis of the cohort of IQMs who applied for registration in 2023 shows that of the forty-five who applied, only one was declined due to her qualification not being comparable to New Zealand. This midwife was offered an alternative pathway, which includes sitting an exam that is a subset of the National Midwifery Exam undertaken by New Zealand graduates but unfortunately, she did not pass. Excluding four outliers, the average time from application to registration was 25 days. The four outliers were two midwives whose qualifications were not deemed equivalent and needed to progress through the alternative pathway, one who delayed submitting required documentation, and one delayed because she had less than 12 months experience in her home country.

Of note is that ten midwives (22% of the cohort) were registered but never applied for a practising certificate (APC) or did not renew their APC in 2024. Some appear to be practising in Australia, perhaps using the Trans Tasman Mutual Recognition Act to get there. Others are registered with the Nursing Council and may have applied for both in parallel.

Complaints and notifications

Reducing the requirements for registration and standards for ongoing competence will inevitably impact on patient experience and outcomes and have a knock-on effect by increasing the number of complaints to the regulators. The discussion document is focused on registration of practitioners in the context of service accessibility but is silent on what happens when things go wrong and what patient and whānau expectations are when this happens. Expectations do not always focus solely on the practitioner involved but also on the expectations of standards for the profession as a whole.

When to regulate

When considering whether a professional group should be regulated the threshold of acceptable risk is the matter in question. Under the current regulatory framework, the need for regulation of a professional group is determined by the Ministry of Health based on the assessment of risk of harm to the health and safety of the public. The criteria used for that assessment is comprehensive and it follows that the professional groups that are currently regulated under the Health Practitioners Competence Assurance Act 2003 have met that threshold and will continue to do so. Arguably potential risk escalates as registered health practitioners expand practice to meet patient needs which indicates a strong need for continued regulation at this level.

Options to provide lower-level regulation for currently unregulated health workers is an area that we believe could be explored. Auxiliary roles can contribute significantly to meeting the needs of patients however there are risks where roles are not clearly defined and differentiated and where accountability under a statute of law is absent.

7. Future-proofed regulation

Regulating to meet system needs

As noted in the introduction to this submission, the central purpose of workforce regulation in health is patient and public safety. There is a dual perspective on safety: that health

Te Tatau o te Whare Kahu | Midwifery Council
Level 6, 22–28 Willeston Street, Wellington 6011 | PO Box 9644, Marion Square, Wellington 6141
Phone: +64 4 499 5040 | Email: info@midwiferycouncil.health.nz | Website: www.midwiferycouncil.health.nz

practitioners are safe in their individual practice; and that at a systems level the availability of workforce and access to health services is in itself a matter of public safety.

If regulatory measures, to ensure practitioners are qualified, safe, and accountable in their practice, are loosened in response to workforce pressures, the threshold of risk also changes. This might not be readily recognisable to patients or even employers and funders. Questions of patient choice and consent also arise in this scenario.

Establishing enabling scopes of practice based on education and competence as we have done with the midwifery Scope of Practice is a safe way to improve access to a range of services through a single point of care (assuming system and funding frameworks accommodate). Sound regulatory oversight of expanded care within Scope of Practice is however required.

Government control and direction

Under the current legislation appointments to Responsible Authorities are made by the Minister who also has the power to audit authorities and require the authority to respond to concerns.

Increased government intervention beyond these powers will compromise the integrity and independence of the regulator and potentially tie its operations and decision making to political agendas. Greater levels of stewardship without compromising independence of decision making could however be achieved with mechanisms such as a Minister's Letter of Expectations.

A matter that will need to be considered if the Government is able to give direction to regulators is the financial implications. For example, a directive to a regulator to regulate a new profession would need to be funded by the Crown. It would be unreasonable for the members of one profession to have to fund the establishment of another through the fees they pay to the regulator.

8. In conclusion

We are pleased to have the opportunity to provide feedback on this discussion paper and offer a balanced, thoughtful voice to this extremely important kōrero - endorsing a safe, responsive, and sustainable system for generations to come, mō ō tātou mokopuna. A review of the current health workforce regulation framework that considers practical solutions that strengthen trust, fairness, and innovation, is both welcome and timely. We view this document as an important starting point for a robust conversation about how to best meet the needs of all patients and ensure they receive quality healthcare. As a Council, we look forward to collaborating constructively with the Minister of Health to support this process moving forward to construct a regulatory framework that is patient-centred, evidence-based, and future-focused.

Kind regards,

Kiley Clark
Chair, Midwifery Council Board

30 April 2025

Siobhan Connor
Deputy Chair, Midwifery Council Board

30 April 2025

Te Tatau o te Whare Kahu | Midwifery Council
Level 6, 22–28 Willeston Street, Wellington 6011 | PO Box 9644, Marion Square, Wellington 6141
Phone: +64 4 499 5040 | Email: info@midwiferycouncil.health.nz | Website: www.midwiferycouncil.health.nz