



New Zealand
College of Midwives
Te Kāreti o ngā Kaiwhakawhānau ki Aotearoa



Orientation document March 2026: New Zealand College of Midwives Class Action against the Crown

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Introduction

The New Zealand College of Midwives | Te Kāreti o ngā Kaiwhakawhānau ki Aotearoa (the College) is leading a Class Action against the Crown on behalf of nearly 1,500 self-employed midwives. The College is a charitable organisation representing some 95% of New Zealand midwives, providing and promoting quality standards and providing a collective voice for midwives and women. The class action is funded by global litigation funder, Omni Bridgeway. The claims relate to the work carried out by self-employed Lead Maternity Carer (LMCs) midwives; the midwives who work in the community, provide essential pregnancy, birth and postnatal care to over 55,000 women and over 55,000 babies each year.

The case was first heard in the High Court in Wellington over 6 weeks in August and September 2024. The Court has now released its decision in favour of the midwives and awarded costs against the Crown. Significant findings include:

- The Crown breached its contractual promise to the College that the Crown would ensure self-employed midwives receive fair and reasonable remuneration. The Judge ordered that loss of income to each Representative Plaintiff in the proceeding be back-dated to 1 July 2020 and to continue in subsequent years;
- The Crown did not act in good faith in its dealings with the College in the period leading up to the College's decision that it had no alternative but to take the Crown to court.
- Going back as far as 2007 and continuing to the present, the Crown's method for paying LMC midwives unlawfully discriminated against LMC midwives on the basis of their sex in breach of section 19 of the New Zealand Bill of Rights Act 1990.
- In addition to damages for breach of contract, the Crown must pay to each of the Representative Plaintiffs the sum of \$1,000 for Bill of Rights damages for the "inherent loss of dignity by virtue of the unlawful discrimination, with such an award serving to "vindicate the public interest"

The Crown has until 28 April 2026 to file any appeal. The College remains committed to working constructively with the Government to improve outcomes for mothers and babies. To achieve this aim, a sustainable midwifery workforce is essential. Health New Zealand's workforce plan has estimated that midwifery has the most critical shortage out of all of the regulated health professions, with a 40% shortage.



Timeline



At a glance

Approximately how many midwives are affected by this case?

Nearly 1,500 midwives are in the Class Action.

What did the New Zealand College of Midwives' case successfully claim?

The case involved two formal signed settlement agreements entered into between the College on behalf of LMC midwives and the Ministry of Health to resolve earlier High Court proceedings issued by the College. The Crown argued the settlement agreements did not create any legal obligation on it to carry out the terms of the settlement including that there was no obligation to ensure fair and reasonable remuneration. The College's argument, that agreements, like any contract, created a binding contractual obligation on the Crown to pay fair and reasonable remuneration, was accepted by the Court.

The case also involved a consideration of whether there was gender-based discrimination dating back to 2007, evident in the current structure of the then section 88, and now section 94 Primary Maternity Services Notice issued under the Pae Ora (Healthy Futures) Act 2022. In particular, the College argued that LMC midwives work under unilateral terms and conditions set by the Crown with no legally enforceable right to negotiate terms including work hours, and remuneration. The claim pleaded this amounted to gender discrimination under section 19 Bill of Rights Act 1990 as LMCs were not treated as the same as comparator professions. The Court found that the Crown had breached the fundamental rights of LMC midwives to be free from gender discrimination. It made the declaration that:

"By issuing the 2007 and 2021 Notices the Crown unlawfully discriminated against LMC midwives on the basis of their sex in breach of s19 of the New Zealand Bill of Rights Act 1990, because the Notices unilaterally impose restrictive terms and conditions that are not imposed on obstetricians providing straightforward lead maternity care and GPs providing non-maternity services"

What does the community-based midwifery profession seek?

It is the midwifery profession's view that the pressing and systemic issues facing the LMC midwifery workforce remain unresolved. They include:

- ▶ That the current illegal and discriminatory structure under which the government engages with the self-employed midwifery workforce be replaced with the establishment of a new primary midwifery contract model that gives LMC midwives contractual entitlements, similar to those enjoyed by other contracted primary health care professionals (such as GPs and community pharmacists).
- ▶ The need for nationally consistent investment in structural supports to assist community-based midwives to achieve equitable outcomes, promote workforce sustainability and manage the demands of 24/7 service delivery.
- ▶ Fair and reasonable remuneration.

History

In August 2015, due to concerns about the sustainability of primary midwifery services, the College commenced judicial review proceedings in the High Court against the Ministry of Health, alleging gender-based discrimination under the New Zealand Bill of Rights Act 1990.

Before the case could be heard the Ministry offered mediation, which the College accepted

on behalf of LMC midwives. The judicial review proceedings were adjourned to allow mediation to occur. At the conclusion of mediation, the Crown agreed to enter into a settlement agreement and in return the College, on behalf of LMC midwives, agreed to withdraw its judicial review proceedings.

As the mediation progressed, Public Statements were issued jointly by the College and the Ministry informing the public of some, but not all, of the written agreements reached in mediation. As the mediation processes were otherwise

confidential, verbatim extracts in italics from those public statements are quoted below. Following the High Court decision, the Crown's commissioning of PricewaterhouseCoopers (PwC) to assess on two occasions fair and reasonable remuneration and the PwC final assessments, are no longer confidential matters. Some key agreements were that:

- *The current modular structure and payment system inadequately reflects the challenges of modern midwifery practice.*
- *The sustainability of Lead Maternity Care midwifery is central to the national primary maternity services and requires national support.*
- *Any new funding model will support the provision of equitable, high quality midwifery care and services to women that are available, accessible, acceptable and of no cost to the woman.*
- *Any new community LMC midwifery service funding model should eliminate gender discrimination, ensure equity and fairness for midwives in line with the government's workforce equity principles.*
- *[A Co-design Project would be carried out by the Ministry and College]. The new co-design funding model will support sustainability of community LMC midwives and include the right to negotiate terms and conditions.*
- *The co-design process and resulting funding model will be in line with the principle that equal pay has no element of gender-based differentiation and is free of systemic under-valuation, as outlined in the Government's response to the Joint Working Group on Pay Equity Principles.*
- *The Ministry also agreed to prepare a bid for the 2018 Budget that reflected the findings of the co-design report and job evaluation process [per subsequent Public Statement December 2018].*

Breach of 2017 Settlement Agreement by Ministry of Health; Second Settlement Agreement (2018)

Although a new funding model was co-designed, the Ministry of Health publicly admitted it did not complete all of the actions it had committed to undertake. This led to further formal mediation between the parties in 2018, which resulted in a signed second settlement agreement. The joint

Public Statement following this 2018 Agreement recorded some, but not all, of the matters agreed. Verbatim extracts in italics from those public statements are quoted below:

- *...the Ministry acknowledges that it breached the May 2017 agreement that it had reached with the College.*
- *The Ministry apologises to the College and its members for breaching the May 2017 Settlement Agreement. Having expressly and formally agreed to do so, the Ministry did not prepare a Budget bid reflecting co-design. The Ministry acknowledges that its breach was through no fault of the College.*
- *The Ministry has reaffirmed its commitment to the co-design principles, including a Blended Payment Model for LMC midwives. The Ministry has also reiterated its support for the continuity of midwifery model of care as central to maternity services in New Zealand.*
- *The Ministry has agreed to a process to ensure a 'fair and reasonable' service price for LMC midwives. The College and the Ministry will work on this together throughout 2019.*
- *The Ministry and the College have agreed to work together in early 2019 on structural changes to the way LMC midwives are funded and contracted.*
- *The Director-General of Health, Dr Ashley Bloomfield, reiterates that strengthening and stabilising maternity services is a priority for the Ministry. The Ministry and the College have renewed their commitment to work together in good faith.*

Alleged Breach of the Second Settlement Agreement

The Class Action alleged that the Ministry also failed to honour its commitments under the 2018 Agreement, and funding and contracting of LMCs remains under the same structure and model as before. The High Court agreed that the 2018 Agreement created binding contractual obligations on the Crown; and that the Crown had not acted in good faith in its dealing with the College and left the College with no option but to file proceedings.

The College's position is that the systemic issues continue to worsen without being addressed and midwives continue to leave the workforce.

It is within the above context that the Class Action was submitted.

Extracts from High Court Decision

- ▶ “[1] Midwifery is a profession imbued with gender. It gives rise to a “gender trifecta” – midwifery care is “provided by women, for women, in relation to women’s reproductive health within a model of care that supports women’s empowerment and choice” (para [1] judgment quoting Association of Ontario Midwives v Ontario (Health and Long--Term Care) (2018) 2018 DRT0 1355 [Association of Ontario Midwives (Discrimination) at [275])

- ▶ “[261] In conclusion, I find that the Crown breached its duties to take all necessary steps to work together with the College to fulfil the outcomes-focused obligations in the contract, and to act in good faith, by:
 - (a) pausing development of the national provider organisation in October 2019;
 - (b) failing to reach agreed deadlines and repeatedly reassuring the College that it was still on track for the July 2020 deadline;
 - (c) not clearly communicating with the College, particularly about the constraints placed on its actions; and
 - (d) commissioning the PwC Extension Work without informing the College it had done so and without informing the College of the outcome of that work.” (para [261] judgment)

- ▶ “[581] Overall, I accept that the financial disadvantage resulting from the inability of LMC midwives to impose a co-payment, together with the lack of bargaining power and the lack of any means to require the Crown to negotiate to increase the service price and any guarantee as to a fair and reasonable service price, together with impact on quality of life, sense of value and self-worth, amounts to material disadvantage arising from their differential treatment.” (para [581] judgment)

- ▶ “[593] The Crown must be entitled to pursue its longstanding policy of providing free maternity care to New Zealanders. But it must implement that policy in a non-discriminatory manner. As outlined above, the effect of the co-payment is that LMC midwives suffer financial detriment compared with obstetricians when providing the same services. That discrimination, on the basis of gender, will only be demonstrably justified when there are no other less rights-intrusive alternatives for achieving free maternity care for New Zealanders. The Crown has not established that that is the position in this case.” (para [593] judgment)

- ▶ “[643] Those LMC midwives who appeared gave evidence that the LMC midwife role is, by its very nature, challenging – it involves being on-call, coupled with the need to always be accessible, the need to travel (particularly for rural midwives), the lack of monetary recognition of “after hours” work, and the clinical and emotional challenges of dealing with an increasingly diverse population, leading to more complex pregnancies. In that context, the loss of autonomy arising from the unilateral imposition of the Notice, and the inability to negotiate change, have, I accept, had a negative impact on their sense of value and self-worth.” (para [643] judgment)

- ▶ “[646] As to the second purpose of Bill of Rights damages, both the Canadian and New Zealand Supreme Courts have cited the South African decision of *Fose v Minister of Safety & Security* as providing a good working definition of the word vindication:

Deterrence speaks for itself as an object. But the idea of vindication ... calls for some elaboration. One of the ordinary meanings which “to vindicate” bears, the aptest now so it seems to me, is “to defend against encroachment or interference”. Society has an interest in the defence that is required here. Violations of constitutionally protected rights harm not only their particular victims, but society as a whole too. That is so because, unless they are adequately remedied, they will impair public confidence and diminish public faith in the efficacy of the protection, and for a good reason too since one invasion discounted may well lead to another. The importance of the two goals is obvious and does not need to be laboured. How they are best attained is the question.” (para [646] judgment)

- ▶ “[647] The award to each LMC midwife would also serve this vindicatory purpose.” (para [647] judgment)