



**Social Workers
Registration Board**
Kāhui Whakamana Tauwhiro

Procedures for dealing with Complaints and Notifications of Concern

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Introduction

The Social Workers Registration Board (SWRB) was established with the Social Work Registration Act 2003 (the Act). The primary purpose of the Act is to protect the safety of members of the public and enhance the professionalism of social workers.

This policy explains the SWRB's principles and processes for dealing with notifications of concern and complaints received about registered social workers. It is intended to provide guidance on how these will be assessed or managed. Each notification will be considered on its own merits, and managed on a case by case basis.

Notifications of concern can raise questions about a social workers conduct, competence or fitness to practice (health/ reputation). The SWRB only has jurisdiction to act or investigate where the notification or complaint is about a **registered** social worker.

Principles

The SWRB aims to approach and process all concerns raised with a mind to these principles.

Accountability and Transparency

- The SWRB is accountable for its decisions to the public and the Minister of Social Development.
- The SWRB undertakes its work on behalf of the NZ public and the social work profession.
- The notification process is clear and freely accessible to all.
- Policies and decision are implemented and monitored.
- Rights to confidentiality and privacy are respected and maintained.

Independence

- The independence of the Board's members and of the Chairperson of the Tribunal is important to ensure the integrity of decisions.
- Decisions relating to governance and quasi-judicial matters are made independently of any stakeholder interest, personal or professional interest or relationship.

Consistency

- The Board aims to ensure good decisions over time by giving consideration to previous decisions. Decisions are based on the regulatory standards existing at the time.
- In relation to thresholds for action and penalties, similar cases are treated similarly.
- The SWRB recognises however that each situation has its own distinguishing features and is considered on a case by case basis.

Cultural competence

- The SWRB recognises that social workers in New Zealand work with a culturally diverse population.
- The SWRB promotes cultural diversity and awareness with respect to Te Tiriti o Waitangi.
- Complaints and notifications are managed in a culturally appropriate manner and advice from cultural advisors is sought when needed.

Natural Justice

The SWRB:

- adopts fair and transparent procedures;
- acts in good faith;
- acts without bias;
- gives parties full opportunity to read/see and respond to all evidence collected in an investigation before a decision is made;
- considers all evidence and weighs it carefully before deciding whether there is substance to the concern;
- gives reasons for the decision;
- gives a proportionate response;
- responds as promptly as possible;
- gives opportunities to be heard; and
- takes into account only relevant considerations and extenuating circumstances and ignores irrelevant considerations.

The focus of the SWRB is on resolution not retribution, and protection of the public. Disciplinary action is reserved for the most severe cases.

Notification of Concerns

Any person can make a notification or raise a concern about a registered social worker to the Registrar.¹

Notifications can be made orally or in writing.² A formal written notification may be requested to accompany an oral notification. Social workers should be given a reasonable opportunity to consider the concern raised and respond to it. For this reason generally notifications cannot be made anonymously.

Notifications come from a variety of sources including employers, members of the public, clients, other social workers and the courts. Each notification is assessed independently and on its own merits.

¹ S 59 (1) Social Workers Registration Act 2003 (SWR Act 2003).

² S 59(2) SWR Act 2003.

If someone has concerns about the standard of social work service they have received, in the first instance they will be encouraged to discuss the matter with the social worker involved. The SWRB encourages that all concerns be dealt with in the first instance at an employing organisational level.

Health or Disability Service

If a notification of concern relates to the provision of a health or disability service, the matter must promptly be referred to the Health and Disability Commissioner (HDC).³ The SWRB will take no further action at that stage. The HDC may or may not refer the notification of concern back to the SWRB to manage.

Convictions

If a registered social worker is convicted of a criminal offence punishable by imprisonment for a term of 3 months or longer, the Registrar of the Court is required to notify the Chair of the Tribunal, unless the court orders otherwise.⁴

The Chair of the Tribunal is required under the Act to refer such a Notice of Conviction to a Complaints Assessment Committee.

If the social worker has been charged with a criminal offence the SWRB will, in most cases, wait until the criminal process has been resolved. However if it is clear from the nature of the charges that the social worker may pose a risk of harm to the public, the SWRB will consider taking action.

Employer notification

It is common and encouraged that employers notify or raise a concern with the SWRB where a registered social worker in their employee has:

- a professional improvement plan or similar in place;
- been dismissed for any reason;
- resigned from their employment prior to disciplinary action or full investigation;
- been the subject of disciplinary action or an investigation;
- health concerns; and
- competence concerns.

If an employer is undertaking an internal process because of a concern raised, the SWRB will not take any action if they consider the matter is being successfully and appropriately managed unless there is a risk to the public.

³ S 61 SWR Act 2003.

⁴ S 63 SWR Act 2003.

Members of the public

Members of the public are encouraged to notify the SWRB if they have concerns about the practise, behaviour or competence of a registered social worker.

The SWRB recognises people may face challenging circumstances or be going through a difficult or stressful time. The SWRB will be transparent, prompt, fair and accountable in all interactions with the public.

Multiple notifications

Members of the public may notify the SWRB of concerns they have about multiple social workers. These will be considered independently of each other and each concern assessed on its own merits. However the SWRB cannot make general inquiries or investigate matters that relate to systems or processes of other agencies.

Process

There are a number of possible procedural steps involved once a notification or complaint is made, and those will vary depending on individual circumstances. Consent to disclose the details of the complaint will be needed from the complainant in the first instance. Social workers will then be informed about any complaint against them, asked for their response and are encouraged to seek support and legal advice.

Initial Risk Assessment

When a notification of concern is received an initial risk assessment will be made. The initial inquiry may be altered as more information comes to light.

Initial risk will be classified as follows:

Level of risk	Likely impact on the public
Unacceptable Risk	Immediate and ongoing risk of harm to the public
High Risk	Likely risk of harm to the public
Medium Risk	Possible risk of harm to public but not ongoing
Low Risk	Harm to the public unlikely
No Risk	No foreseeable risk to public

If the initial risk is assessed to be unacceptable, high or medium the Registrar may be immediately consulted, or an emergency Triage Meeting called to determine a course of action.

Preliminary inquiry

This stage of the process may be straight forward and proceed quickly but can at other times be slower if there are delays in receiving responses from parties involved, or if further information is required. The SWRB will keep parties involved informed of progress. Preliminary inquiries may take the form of letters, emails or phone calls. The following may also occur:

- contact with employer or former employer of the social worker⁵
- contact with key agencies e.g. MSD, Courts, MVCOT, DHBs, Police
- contact with key people e.g. Supervisors, Managers

When enough information has been collated the social worker will be advised that a concern has been received and an opportunity to respond will be given. Generally a social worker has 21 days to respond.

Triage Meeting

The Triage meeting occurs fortnightly and is attended by the Registrar, Senior Professional social work staff, and members of the Professional Standards Team. The following matters will be discussed at this meeting:

- new concerns / notifications;
- ongoing concerns/ notifications;
- preliminary findings;
- risk assessment;
- course of action;
- referrals to be made; and
- what further information is required.

Once all relevant information has been received the Triage team will make a decision on whether:

- further information about competence concerns needs to be gathered by way of a preliminary competence inquiry;
- concern is within the jurisdiction of the SWRB;
- closed / no further action is required;
- the social worker requires an educative letter;
- the matter needs to be referred to another agency (back to employer/to HDC);

OR

If the matter relates to conduct, and the Triage team believe the matter is serious and may need further investigation, the concern will be referred to the Chair of the Social Workers Registration Board Complaints and Disciplinary Tribunal.

If the concern relates to the competence of a social worker the matter will be managed through the SWRB's Competence process.

⁵ See S 99(1)(p) SWR Act 2003.

If the concern relates to the fitness of a social worker the matter will be managed by the SWRB's Health Advisor / Fitness to Practice/ Health process.

Code of Conduct

The SWRB has published a Code of Conduct as required under the Act.⁶ The Code of Conduct sets out the minimum professional standards of integrity and conduct that apply to registered social workers and to the social work profession in general. The Code of Conduct can be found on the website at: <http://www.swrb.govt.nz/complaints/code-of-conduct>

The Code complements the legal obligations social workers have under the Act as well as other relevant applicable laws, practise standards, and guidelines. This includes but is not limited to:

- The Code of Ethics – Published by the Aotearoa New Zealand Association of Social Workers
- Competence standards (issued by SWRB) and Practice standards (issued by ANZASW)
- The Code of Health and Disability Services Consumers Rights (HDC Code)
- Employer codes of conduct
- Health Information Privacy Code 1994
- Relevant legislation, including the Privacy Act 1993, the Protection of Personal Property Rights Act 1988, and the Health and Disability Commissioner (Code of Health and Disability Services Consumers' Rights) Regulations 1996.

Chairperson of the Tribunal

Where the concerns raised indicate a serious level of concern about a social workers conduct, these matters will be referred to the Chairperson of the Tribunal along with the social worker's response. The Chairperson will decide whether they need to be pursued and go to a Complaints Assessment Committee *or* if no further action should be taken⁷.

The Chairperson, in consultation with at least 3 board members, has the power to:

- appoint a Complaints Assessment Committee
- dissolve or reconstitute a Complaints Assessment Committee⁸

The Chairperson is required to have regard to whether any expertise knowledge or particular cultural group needs to be represented on a committee.

Reasons for taking no further action on a notification may include:

⁶ S 105 SWR Act 2003.

⁷ Section 65 SWR Act 2003.

⁸ Section 66 SWR Act 2003.

- there is insufficient information to assess the complaint
- the complaint is outside the SWRB jurisdiction
- other options are considered more appropriate

The social worker concerned and the complainant / person who notified the SWRB will be given notice of the Chairperson's decision.

Complaints Assessment Committees

A complaint comes before a Complaints Assessment Committee (CAC) after referral from the Chairperson of the Tribunal. This will likely be where a concern or notification relates to:

- a conviction for an offence that is punishable by imprisonment of 3 months or more
- the conduct of the social worker

A CAC must consist of 2 registered social workers and 1 non-registered social worker (a layperson).⁹ Once the potential members are appointed the Chairperson of the Tribunal will advise the social worker and the complainant of the CAC membership and provide them with a brief description of each CAC member.¹⁰

New Zealand is a small country and the situation will arise where the CAC member will know either the social worker or complainant. This does not necessarily mean there is a conflict of interest, but care will be taken to avoid a conflict situation.

Both parties have the right to object to the membership and request changes within 10 working days, reasons must be provided in writing.¹¹ The Chairperson must consider the request and may reconstitute the CAC. Once the membership is confirmed the Chairperson will write to inform both parties.

On confirmation of the CAC membership, the members will be provided with all the information in relation to the complaint, and will officially commence its investigation. CACs regulate their own procedure and decide how they wish to run an investigation. An investigator may be appointed to conduct inquiries on behalf of a CAC. The rules of natural justice, the Act and any regulations under the Act are adhered to.

A CAC can request legal advice if they are unsure of procedure, matters of law or evidence. The legal advisor or investigator cannot be present during deliberations of the CAC.¹²

The CAC may receive as evidence any statements, information and documents they deem relevant. They may also have regard to any investigations or considerations of the subject matter already carried out.¹³

⁹ Section 66 SWR Act 2003.

¹⁰ Section 69 SWR Act 2003.

¹¹ Section 69 and 70 SWR Act 2003.

¹² Section 68 SWR Act 2003.

¹³ Section 71 SWR Act 2003.

They may also receive statements or submissions from the social worker, their employer, clients, any clinical expert and the complainant. The evidence must be relevant to the matter at hand and abide by the rules of natural justice (see above for the meaning of this term).

The CAC must give the social worker a reasonable opportunity to make a written explanation or statement in relation to the complaint, and may give them a reasonable opportunity to appear before them.¹⁴ In the case of a complaint the CAC must give the complainant reasonable opportunity to appear and make written statement.¹⁵ A person who appears before the CAC is entitled to be accompanied by 1 person of his or her choice.¹⁶

Information obtained as a result of a CAC investigation is considered to be confidential for the purposes of the CAC investigation and determination.

The CAC must make a determination upon conclusion of the investigation.

A CAC can determine:¹⁷

- the Board should review the competence or fitness of the social worker concerned or both;
- to submit the complaint to conciliation;
- to submit a complaint or conviction to the Tribunal; or
- that no further steps should be taken under the Act.

If the CAC determine that the Board should review the competence or fitness of a social worker to practice or submits the complaint to conciliation, the CAC will give written notice to The Registrar, social worker and the complainant of their determination and the reasons.

If the complaint is submitted to conciliation the CAC must try to help the RSW and complainant concerned resolve the complaint by agreement. It must give notice to the Chairperson of the Tribunal once agreement is reached. If an agreement cannot be successfully reached the CAC must submit the complaint to the Tribunal or decide that no further steps be taken.¹⁸

If submitted to the Tribunal, the CAC must frame an appropriate charge, lay it before the Tribunal and give written notice to the social worker and complainant.

If a CAC determinations that no further steps are required in relation to a complaint or conviction the social worker and complainant will be given written notice of the CAC's determination and reasons.

¹⁴ Section 71(3)(a) SWR Act 2003.

¹⁵ Section 71(3)(b) SWR Act 2003.

¹⁶ Section 77(5).

¹⁷ Section 71.

¹⁸ See section 73 SWR Act.

Rights of Appeal

Section 88 of the Act sets out the process for appeals:

(1) A person may appeal to the District Court against any decision or direction of the Board under this Act that adversely affects him or her (not being a decision or direction affecting a person only because he or she is a person of a particular kind or description).

(2) A person may appeal to the District Court against the whole or any part of a decision or order made in relation to him or her under Part 4 (other than a determination of a complaints assessment committee).

(3) For the purposes of subsection (2),—

(a) a decision includes a decision to refuse to make an order; and

(b) an order includes a direction under section 77; and

(c) a decision or order made in relation to a charge laid by the Director of Proceedings or a complaints assessment committee is made in relation to the Director of Proceedings or a complaints assessment committee (as well as any other person).

(4) The appeal—

(a) must be brought by way of notice of appeal in accordance with rules of court; and

(b) must be lodged within 20 working days after notice of the decision or order is communicated to the appellant, or within any further time a District Court Judge allows on application made before or after the period expires.