



Social Workers
Registration Board

Kāhui Whakamana Tauwhiro

PROSECUTION POLICY

POLICY STATEMENT

Approved: Feb 2016

For Review: Feb 2018

INTRODUCTION

1. The Social Workers Registration Board (Board) was established under the Social Workers Registration Act 2003 (the Act), section 3. The Act also establishes the Social Workers Complaints and Disciplinary Tribunal (Tribunal), section 114.
2. The Act provides for the Board to be able to prosecute people and entities in a variety of circumstances. The Tribunal has a variety of powers and non-compliance with some of the Tribunal's orders or processes can also attract prosecution by the Board.
3. This policy sets out how the Board is to exercise its discretion to prosecute. It is to be read together with, and subject to, the Solicitor-General's Prosecution Guidelines. The purpose of this policy is to provide general guidance. It does not provide a binding set of rules about how the Board will exercise its powers in particular cases. The touchstone of any case will always be whether the proposed exercise of prosecution powers is likely to further the Boards functions.
4. There is a difference between a criminal prosecution in the District Court by the Board and a prosecution in the Tribunal by a Complaints Assessment Committee for professional disciplinary purposes. This policy is about a criminal prosecution in the District Court by the Board as the main section that deals with 'offences' in the Act (s 148) states that people can be liable, on conviction, to imprisonment.

POWERS OF PROSECUTION

The Board

5. The Board is able to prosecute both registered social workers and other people, for example, employers of social workers. The Board can prosecute under section 148 of the Act when (in summary):
 - 5.1 A person who when applying for registration or a practising certificate knowingly
 - a) makes a false or misleading declaration or representation or
 - b) produces a document to the Board knowing it contains a misleading or false declaration or particular or
 - c) produces a document to the Board knowing it is not genuine.
 - 5.2 A person holds themselves out as a registered social worker when
 - a) they are not a registered social worker or
 - b) holds themselves out as registered but their registration is suspended.
 - 5.3 A registered social worker is employed or engaged as a social worker but does not have a current practising certificate

- 5.4 A person holds an employee or professional associate out as a registered social worker knowing that the employee or associate is not a registered social worker or is a registered social worker
- a) whose registration is suspended or
 - b) does not hold a current practising certificate or
 - c) who holds a current practising certificate that is suspended
- 5.5 A registered social worker holds him or herself out as holding a current practising certificate when
- a) they do not have a current practising certificate or
 - b) their current practising certificate is suspended or
- 5.6 A registered social worker fails or refuses to comply with
- a) a restriction or condition on his or her registration or
 - b) a condition on his or her practising certificate.

The Tribunal

6. The Act also outlines when an offence is committed in the Tribunal and are summarised below. The description of the offences are not substitutes for the actual provisions in the legislation but instead give an indication as when an offence is committed.
7. When any matter is before the Tribunal, the Chairperson of the Tribunal has the power to require information from people (Schedule 2, clause 7). The Act provides for the prosecution of a person for failing to provide information without reasonable excuse. (Schedule 2, clause 12 (2)).
8. The Act also provides for prosecution when a person, after being summoned to attend, without reasonable excuse
- a) fails to attend in accordance with the summons or
 - b) refuses to be sworn or to give evidence or after having been sworn refuses to answer any question that they are lawfully required to answer
9. A person also commits an offence who after being summoned to produce to the Tribunal any papers, documents, records or things, without reasonable excuse, fails to produce them
10. A person commits an offence who
- a) wilfully obstructs or hinders the Tribunal or any member of it or any authorised person in any inspection or examination of papers, documents, records or things pursuant to clause 7(1), or
 - b) without reasonable excuse fails to comply with any requirement of the Tribunal or any authorised person made under clause 7(1)(a) or (b)

c) without reasonable excuse acts in contravention of or fails to comply with any order made by the Tribunal under clause 7(3) or any term or condition of such an order.

11. Every person commits an offence who

a) threatens, assaults or intimidates or intentionally insults the Tribunal or any member or advisor or officer of the Tribunal (during, going to or leaving a hearing) or

b) intentionally interrupts proceedings of the Tribunal or otherwise misbehaves while the Tribunal is sitting or

c) intentionally and without lawful excuse disobeys an order or direction of a member of the Tribunal in the course of proceedings.

12. If the Tribunal makes a decision to prosecute anyone who is in breach of any of the provisions which the Tribunal is responsible for, the administrative tasks, such as signing and filing any charges or instructing lawyers will be the responsibility of the Board.

APPROACH TO THE USE OF PROSECUTION POWER

13. The Board is guided in the exercise of its prosecution power by the following principles:

Proportionality: The decision to prosecute will reflect the Board's assessment of the seriousness of the breach, including the nature and importance of the information, the previous record of the person (good or bad history in terms of meeting the requirements of law), the level of knowledge of the breach, and the attitude towards the breach.

Consistency: This means treating like cases alike. It does not mean that every case will be treated the same way; every situation will have its own distinguishing features.

Accountability: The Board undertakes its work on behalf of the New Zealand public and the social work profession. Sometimes prosecutions will be informed by legitimate public and profession expectations of accountability.

Prioritisation: The cost of a potential prosecution, relative to the seriousness of the breach, is one relevant consideration.

THE PROSECUTION PROCESS

14. The Board will generally take the following steps as part of its prosecution process under the Act:

- 14.1 Investigation of suspected breach
- 14.2 Correspondence with the person suspected of breaching the Act, during which an opportunity is provided to respond to the allegations
- 14.3 Obtaining external legal advice about the merits of prosecution
- 14.4 Where appropriate, laying charges in the District Court
- 14.5 Where appropriate, considering alternatives to prosecution such as attending mediation, issuing a written warning, agreeing that an amount be paid to a charity by way of penalty, or requiring that there be a public acknowledgment of the breach.

15. The Board can decide to take no further action in relation to an alleged breach.

DECISION TO PROSECUTE

16. Any decision to prosecute a person for a breach of the Act will be made by the Board following a recommendation in writing by the CEO. The decision to prosecute is made by the Board, not by the CEO.

17. Any prosecution that is commenced will aim to:

- 17.1 penalise non-compliance with the Act, and
- 17.2 inform and guide behaviour of others.

18. Any decision to prosecute is subject to and guided by the Solicitor-General's Prosecution Guidelines.

SOLICITOR-GENERAL'S PROSECUTION GUIDELINES

19. The Solicitor-General's Prosecution Guidelines provide a framework for the Board's decision to prosecute under the Act.

20. Accordingly, the Board will only initiate a prosecution if it is satisfied that:

- 20.1 the evidence able to be put before the court provides a reasonable prospect of conviction; and
- 20.2 prosecution is required in the public interest.

21. Prosecution is more likely to be required in the public interest when one or a number of the following factors apply:

- 21.1 The breach is serious
- 21.2 The breach is blatant
- 21.3 Breaches of the relevant sort are prevalent
- 21.4 There are previous relevant breaches

21.5 The breach is likely to be continued or repeated.

THE BOARD WILL OBTAIN LEGAL ADVICE

22. Before deciding to commence a prosecution, the Board will obtain external legal advice as to the appropriateness of prosecution as a response to the alleged breach.

PUBLICITY

23. The Board will generally publicise the outcome of prosecutions for the purposes of education and deterrence (unless such publicity is not in the public interest or is not allowed by law).

ADDITIONAL GUIDANCE

24. The Board encourages stakeholders to:

24.1 access information about the Act and their obligations

24.2 work with the Board to ensure that obligations are met

24.3 contact the Board as soon as possible if a breach of obligations is suspected

24.4 If there has been a breach, discuss potential remedial action as early in the process as possible.

REVIEW

25. This policy will be reviewed as per the PDR Review Policy.