



## **2015 Review of the Social Workers Registration Act 2003**

Protecting the Public - Enhancing the Profession  
E tiaki ana i te Hapori - E manaaki ana i nga mahi



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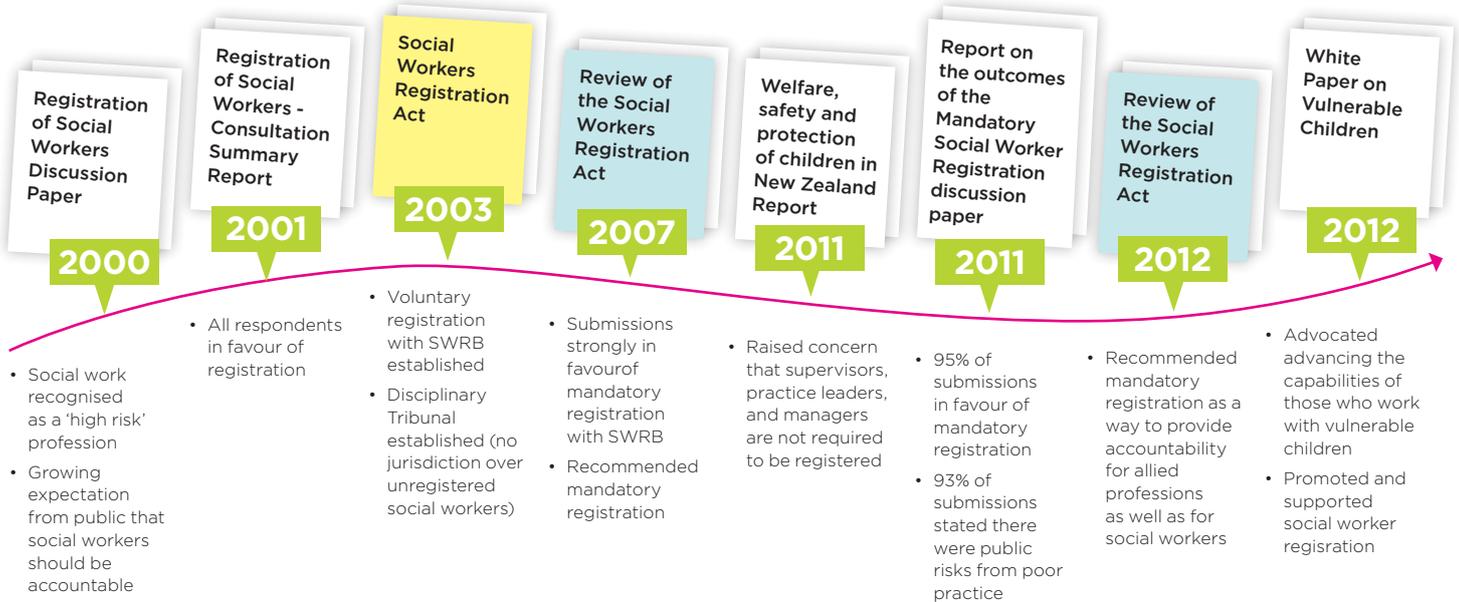
# Executive summary

## 2015 Review of the Social Workers Registration Act 2003

The Board stands by the recommendations from the 2012 review report, including the proposed implementation framework and the identified amendments to the Act.

### Section 1 - Overview

Section 1 of the Review explains the context and history of the Act and its reviews, the myths and the facts.



The myths	The facts
<p><b>X</b> NGOs face considerable financial pressures, and mandatory registration would place an additional financial burden on NGOs.</p>	<p>✓ NGOs that are facing considerable financial pressures already support registration of their social work staff.</p> <p>✓ NGOs already have processes and policies in place to ensure that they employ registerable social workers but they are waiting on mandatory registration, and the anticipated reduction of costs as a result of the economies of scale that mandatory registration would provide, to register all their social work staff.</p> <p>✓ The current voluntary registration system is expensive, and mandatory registration would likely lead to a reduction in costs as a result of economy of scale, therefore significantly reducing NGO's financial burden.</p> <p>✓ Many NGOs are also operating under the misguided belief that they need to register social service workers. The fact is that if they do not meet the requirements for social work registration they do not need to be registered. They can continue to undertake their social service work on behalf of the NGO although they cannot claim the title 'Social Worker'.</p>
<p><b>X</b> Mandatory registration would restrict the workforce.</p>	<p>✓ Mandatory registration would not restrict the social-work workforce but would in fact give a realistic assessment of that workforce.</p>
<p><b>X</b> People would change job titles to avoid registration.</p>	<p>✓ If social workers were given protection for their title, the possibility that people would change job titles to avoid registration would be negated. The issue at the moment is that the title is undermined by the fact that anyone can currently claim the title.</p>

### Section 2 - Stocktake

Section 2 of the Review shows the level of qualification of New Zealand social workers.

In both the 2006 and 2013 censuses, the majority of workers who identified as social workers would not have met the minimum criteria for registration at the time, but might have been more correctly described as social service workers.

One of the biggest challenges to ensuring the effective, efficient delivery of social work services is to ensure that we are clear about what formal social work is, and who can deliver it.



### Section 3 - Social Work and Social Services

Section 3 of the Review explains the difference between social work and social services work.

Social workers operate within legal frameworks for protecting and supporting vulnerable people.

Social service workers are 'paraprofessionals' with specialised knowledge and technical training who work closely with, and are supervised by, professionals.

## Section 4 – Defining scopes of practice

Section 4 of the Review explains the scopes of practice of social work.

Social work is a practice-based profession and an academic discipline that promotes social change and development, social cohesion, and the empowerment and liberation of people. Principles of social justice, human rights, collective responsibility and respect for diversities are central to social work. Underpinned by theories of social work, social sciences, humanities and indigenous knowledge, social work engages people and structures to address life challenges and enhance wellbeing.

Social Workers build on their base identity as a Social Worker with specific practical experience and education to specialise in specific areas of social work, such as care and protection, kaiāwhina, and health.

## Section 5 – Education and qualifications

Section 5 of the Review sets out the issues with the current situation and two options for remedying the issues.

Currently there are 17 social work qualifications recognised by the SWRB delivered over 29 sites.

### Issues with the current situation

- The **academic workforce is not sustainable** for this number of qualifications and sites – the academic workforce is underqualified and aging.
- Within the polytechnic, wānanga, and private training establishment (PTE) sector, **there is no articulation out of a BSW degree**.
- Social work **funding does not reflect the costs of work placements** adequately.

#### Option A

- Move funding for the current Bachelor of Social Work from A2 (\$6,135) to B2 (\$9,384).
- Move funding for the current Master of Social Work (Applied) from A3 (\$7,743) to B3 (\$11,931).
- Reduce the number of places funded by approximately 50%.

#### Option B

- Move funding for the current Bachelor of Social Work from A2 (\$6,135) to B2 (\$9,384) only for years 3 and 4 of the degree.
- Move funding for the current Master of Social Work (Applied) from A3 (\$7,743) to B3 (\$11,931).
- Reduce the number of places funded by approximately 25%.

► For both options it is suggested that the ratio of BSW: MASW be 85:15.

## Section 6 – Registration

Section 6 of the Review explains voluntary and mandatory registration.

### Voluntary registration (certification)

The Act introduced a certification model of regulation. Under a certification system, a registration board certifies that individuals are competent to practise social work. Only people who have successfully met all the registration criteria and completed a competency assessment can use the title 'Registered Social Worker'.

**Under a certification system, people can still practise using the title 'Social Worker' without being registered.**

### Mandatory registration (licensing)

The Act can, however, be changed to a licensing model which would make registration mandatory for all practising social workers. When the Board reviewed the Act in 2007, the majority of submitters proposed that registration become mandatory. Licensing the social work profession means that to practise as a social worker, individuals would have to be registered.

**Under a licensing system, people will no longer be able to practise using the title 'Social Worker' without being registered.**

## Limitations of current system

- 1 **Confusion for the public and employers, because anyone can use the title 'Social Worker', creating the assumption that they have the required qualification competence and experience.**
- 2 **Employers and the SWRB are unable to apply standards and fitness-to-practise processes to individuals who choose not to register or who remove themselves prior to, during, or as a result of, investigations.**
- 3 **Costs of registration are borne by only a small proportion of the social work profession.**
- 4 **Because registering is voluntary but cannot be opted out of after registration, many Registered Social Workers have thought they could opt out, but then found themselves the subject of disciplinary action under the SWRA for not maintaining their registration.**

## Section 7 – Reform

Section 7 of the Review provides clear summaries of all the issues and options considered that have led to the SWRB's five recommendations.

The SWRB engaged the firm of Luke, Cunningham and Clere, Barristers and Solicitors and the Office of the Crown Solicitor to undertake a legal issues assessment of the Social Workers Registration Act 2003. Detailed information from the resulting legal issues paper is provided in Appendix 1.

**Reform to the system needs to remove barriers and contradictions in the system. The Act should reflect current practice and the New Zealand social-work environment.**

## Section 8 – Recommendation

Section 8 of the Review sets out SWRB's recommendations for achieving reform.

**After considerable consultation with the profession, employers of social worker and the public over the last twelve years the Board is of the view that the only one option is to move forward with the introduction of mandatory registration of social workers in New Zealand and address the legislative, policy and funding issues raised in this review.**

### ► Recommendation One:

That the registration of social workers in New Zealand is made mandatory and that the legislative changes to enact this are implemented with urgency.

### ► Recommendation Two:

That consideration be given to the legal issues identified in this review document and that they are addressed as part of the legislative requirements to make the registration of social workers in New Zealand mandatory.

### ► Recommendation Three:

That consideration be given to the specific funding issues identified in this review document with regard to social work education and that they are addressed as part of the legislative requirements to make the registration of social workers in New Zealand mandatory.

### ► Recommendation Four:

That consideration be given to the specific funding issues identified in this review document with regard to entry to practise, supported by a post qualification framework, and that they are addressed as part of the legislative requirements to make the registration of social workers in New Zealand mandatory.

### ► Recommendation Five:

That consideration be given to the support for scopes of practice identified in this review document and that they are addressed as part of the legislative requirements to make the registration of social workers in New Zealand mandatory.

# Introduction from Board

After years of debate regarding social work regulation, voluntary registration of social workers was introduced with the passing of the Social Workers Registration Act 2003 (the Act). Under this voluntary system individual social workers can choose whether to register and whether or not they will be held accountable for their practice through the processes established by the Act.

The Social Workers Registration Board is required by section 104 of the Act to carefully consider whether the Act is achieving its underlying objectives of protecting the public and enhancing the professionalism of social workers. The Board is then required to present a report to the Minister for Social Development and to recommend any changes that may be required.

Section 104 requires that the Board complete a review after 3 years of operations and then at intervals of not more than 5 years. The Board's first review was published in July 2007, and a subsequent review report was published in October 2012. This current review, in 2015, has been undertaken only three years after the last review, at the request of the Hon. Anne Tolley, Minister for Social Development, so that the review can be considered alongside the reviews of both Child, Youth and Family and the Social Security Act.

## The Board's 2012 review

**The review clearly set out the Board's position that, in its view and that of the majority of those it consulted, the Board:**

- was operating effectively and efficiently within the limitations of the legislation at the time
- had prescribed and provided policy and procedures to ensure that Registered Social Workers were assessed as competent to practise and were able to be held accountable for the way in which they practised
- had introduced significant measures to enhance the professionalism of Registered Social Workers.

**The Board recommended in 2012 that the Minister:**

- agree to amend the Social Workers Registration Act 2003 to provide for a mandatory system of social worker registration through protection of the title 'social worker' and by requiring that functions normally performed by social workers not be performed by unregistered persons
- agree that policy work should be undertaken as soon as possible because of the potentially long lead time for legislative change.

Achievements

Recommendations

**The Board stands by the recommendations from the 2012 review report, including the proposed implementation framework and the identified amendments to the Act.**

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It was and continues to be the Board's view, supported by the public, the social work profession, their representative bodies, social work educators, employers of social workers, and other key agencies, that it is time to move to a mandatory system of social work registration to ensure that the public is protected from those individuals who are not competent, qualified, and experienced social workers.

In compiling this report in 2015, the Social Workers Registration Board is aware that it has continued to build on the successful implementation of the Social Workers Registration Act 2003 and this is evident from the increased support of a wide range of individuals and organisations in calling for social worker registration to be made mandatory.

This review has been informed by the knowledge accumulated by the Board over the last twelve years as it has developed a registration framework recognised nationally and internationally for being both effective and innovative. The Board is also aware that this report is delivered at a time when significant and bold change is required to improve the delivery of social services in New Zealand. The need to improve the outcomes for our most vulnerable children requires that professional social services are available and effective, so that those children progress through adolescence to become the adults required to ensure that future generations do not experience the levels of abuse, abandonment, and neglect that we are currently experiencing.

**Mandatory registration of social workers is not about regulation for regulation's sake.** It is about ensuring that social workers, as members of the largest allied health and care profession in New Zealand, are recognised as qualified, experienced, and competent practitioners. It is a national embarrassment that, in the current environment, the debate about the regulation of social workers in New Zealand is currently being side-tracked by misleading arguments concerned more with practice definition and patch protection than ensuring the safety of the public.

**Social workers, by definition, should be those individuals assessed by the Social Workers Registration Board as qualified and competent to hold the title 'Social Worker'.** The Board has worked successfully with this definition for over twelve years as part of the change required to ensure that only qualified, competent social workers are able to practise. Specialised scopes of practice and a post-qualification framework for advanced practice can only exist in a mandatory registration environment that recognises the necessity of protecting who can use the title 'Social Worker' and supporting the work of those in the wider social service sector.

The current move to review the provision of funding for social services and the reviews of the operations of Child, Youth and Family and the wider social service sector are indicative of the need to address what have been identified as failings within the current system.

These reviews alone, however, will not address all of the issues.

The reality is we do not have a pool of people available to step in and take over from the thousands of individuals that deliver our social services. We do, however, have the opportunity to accurately identify those who are able to take the lead in delivery, those who require training and investment to develop as leaders, and those whose support is vital to ensuring that a solid base exists on which to build an even better social service sector. Recognising our qualified and competent social workers by protecting their title is the first step. No other recognised profession allows unqualified and inexperienced individuals to use their title and 'practice' at delivering the specialised services that those professionals offer. This review will set out why social work is a distinct profession in its own right, the basis on which qualified and competent social work practitioners deliver their services; and why, in the interests of public protection, all social workers should be required to adhere to the requirements of the Social Workers Registration Act 2003.

**The historical, unregulated, 'all care but limited responsibility' approach to the delivery of our social services is not working** in our current environment, and this has been made evident in the recent reviews, reports, and investigations on how we care for our most vulnerable.

### Limitations that need to be addressed

As we critically review the delivery of social services in New Zealand it is important that we, as individuals, employers, educators, and Government, accept that some of the current limitations need to be addressed.

- **Experience is not enough** — a theoretical and evidence-based set of skills and knowledge of practice to provide effective social work intervention, and vice versa is vital.
- **There is a lack of Māori cultural capability** across social work practice that results in many social workers being unable to engage and respond effectively to the cultural needs of Māori. We need to strengthen social workers' capability to deliver culturally responsive services to Māori. This capability needs to be more fully integrated into education, training, and professional development plans.
- **Confusion of titles, qualification levels, professional accountability, and cultural understanding** and knowledge within the social service sector has resulted in public confusion, a lack of informed practice, and culturally ineffective delivery and outcomes.
- **Underfunded social work education and the lack of resourced entry to practise training** of graduate social workers has created a disconnect between the needs of employers and the ability of educators to meet those needs.

Social workers need regular access to high quality cultural as well as professional social work supervision.

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Properly funded social work education and resourced entry to practise training for graduate social workers can be achieved without significantly increased financial investment. This will only occur if a realistic assessment is made of the need for 17 providers of social work education at degree level in New Zealand over 29 different locations.

To ignore the need to adequately identify qualified, experienced, and competent social workers is to be complicit in the continued harm to those who are and will continue to be vulnerable. The unintended consequences of not setting qualification, experience, and competence criteria for the title 'Social Worker' include:

- the general public being unable to make informed decisions about who they are willing to receive help from and being unable to hold the provider accountable for their practice
- unqualified and inexperienced social service workers, without the skills and competence required, being left to make decisions affecting the physical, social, and mental health of vulnerable individuals
- qualified, experienced and competent social workers leaving the profession as a result of:
  - moving into management positions with better role recognition
  - lucrative overseas social work positions that acknowledge, support, and resource their professional status
  - 'burn out' due to overwork, lack of professional recognition, and professional disillusionment as a result of being held responsible by an ill-informed public for the actions of individuals claiming to be social workers but who do not have the necessary qualifications, experience, or competence.

Now is the time for New Zealand to provide effective, sustainable and appropriate social work services that reflect current international practice.

Protection of the public, by ensuring that all social workers are competent to practise and accountable for the way in which they practise, is the overriding focus of this review. We will focus on how this can be achieved as asking why should no longer be up for debate.

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Board Member and Registered Social Worker

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Board Member and Registered Social Worker

# Introduction

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The Social Workers Registration Board has been tasked with reviewing the Social Workers Registration Act 2003 and carefully considering, whether the Act is achieving its underlying objectives of protecting the public and enhancing the professionalism of social workers.

**This review is organised into eight sections:**

- |                   |  |
|-------------------|--|
| <b>Section 1</b>  | An overview of the recent history of social work and social services prior to and after the introduction of the Social Workers Registration Act 2003.    |
| <b>Section 2</b>  | A stocktake of social workers and social service workers in the sector since the introduction of the Social Workers Registration Act 2003.               |
| <b>Section 3</b>  | The difference between social work and social services.  |
| <b>Section 4</b>  | Defining Social work and Social Work Scopes of Practice.   |
| <b>Section 5</b>  | An overview of the recent history of social work education in New Zealand, including current funding and entry to practice, and options for improvement. |
| <b>Section 6</b>  | Voluntary registration (certification) and mandatory registration (licensing).   |
| <b>Section 7</b>  | Proposed legislative reform of the Social Workers Registration Act 2003.   |
| <b>Section 8</b>  | Recommendations - Section 104 of the SWR Act required the Board.   |
| <b>Appendix 1</b> | Legal issues: Detail   |

# Section 1 – Overview

## An overview of the recent history of social work and social services prior to and after the introduction of the Social Workers Registration Act 2003.

### In this section:

- The social work environment in the decade prior to the SWR Act.
- How the need for a social work regulation developed.
- The implementation of the social work registration framework over the next decade.
- An overview of the previous reviews of the SWR Act.

From **1991–2001**, the annual employment of social workers was increasing steadily, significantly faster than similar professions and all occupations generally. This growth was fuelled by a need for social work services that was far in excess of the numbers of qualified social workers available.

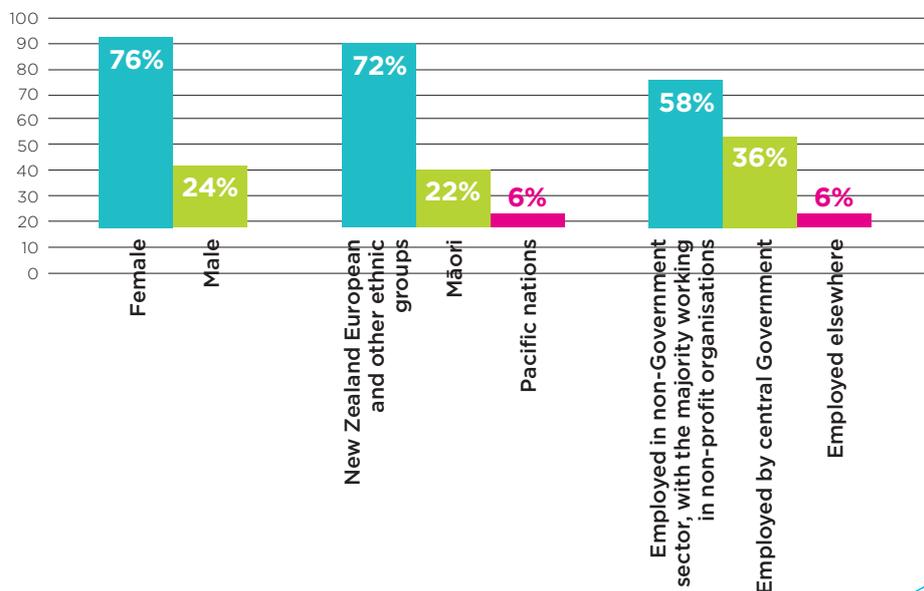
**Table 1: Annual Growth in Employment of Social Workers, 1991–2001**

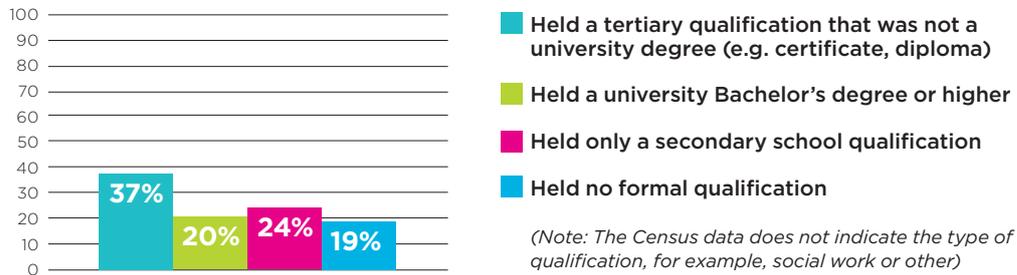
	1991–1996	1996–2001	1991–2001
<b>Social Workers</b>	5.1%	4.9%	<b>5.0%</b>
<b>All Technicians and Associate Professionals</b>	3.3%	4.0%	<b>3.7%</b>
<b>All Occupations</b>	3.1%	1.2%	<b>2.1%</b>

Source: *Census of Population and Dwellings, Statistics New Zealand.*

The **1996** Census provided a snapshot of the social work profession by capturing data on those who indicated that, at that time, their paid employment was as a social worker. In all, 8,172 people identified themselves as working under the title ‘social worker’.

**1996**





Social work in the New Zealand context has, and continues to be, inextricably associated with the organisation the individuals are employed by rather than what they actually do. The non-Government sector was essentially made up of a mix of faith-based, philanthropic and iwi social services. Central Government included the state social welfare service (currently Child, Youth and Family), District Health Boards, and Corrections.

The increasing need for qualified, experienced social workers resulted in social work remaining on the Long Term Skills Shortage List for immigration purposes. While New Zealand had large numbers of people employed in 'social work' positions, it was becoming increasingly obvious that many of them were unqualified social service workers, using the title 'Social Worker' and did not have the knowledge and skills gained as a result of a social work qualification to manage the increasing needs of the most vulnerable sector of New Zealand's population.

Those 'social workers' without the required knowledge and skills were being placed in the unenviable position of being made responsible for the delivery of professional social work practice and then made the scapegoat when things went wrong, which they inevitably would. As noted earlier, the 1996 Census figures clearly show that, at a time when the delivery of social work services was being raised as a concern, a significant number of providers did not have even the most basic qualifications on which to base their practice. 19% of those claiming to be social workers held no formal qualification and a further 24% had only a secondary school qualification. The 1996 Census did not identify those who held social work qualifications, but based on census figures from 2006 and 2013 it is estimated that in 1996 it was likely that 80% or more of the social worker population had no formal social worker qualification on which to base their practice.

A vast majority of what would now be recognised as unqualified social service workers were mislabelled as social workers in the absence of any other title, and those individuals were required to work alongside professionally qualified social workers. If they were not provided with the professional development and support to develop their social work skills and knowledge, they would simply 'burn out', be forced out, or, in the worst case scenario, continue to 'practise' with and on our most vulnerable members of society. At the same time that this need for qualified, competent, and knowledgeable social workers was identified as being increasingly important to ensure competent delivery of social work services, there was also an increased focus on the need to assess whether certain occupations required regulation.

In **1998** the Government agreed on a set package of policies to guide regulating occupations, and in **1999** a Policy Framework for Occupational Regulation was introduced. The Framework:

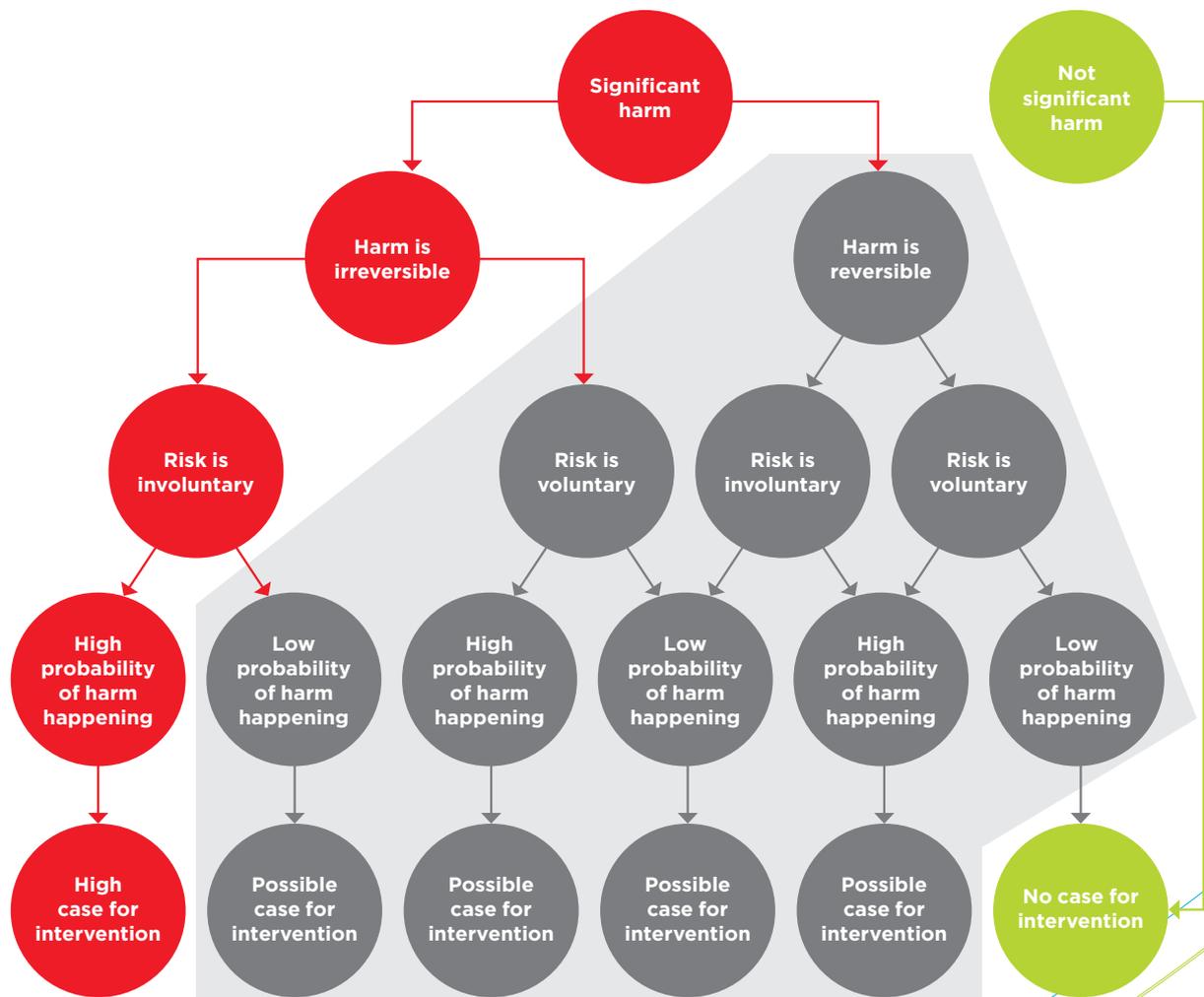
- identifies the circumstances where occupational regulation is required to achieve protection of the public
- defines methods of occupational regulation to fit particular situations
- lists the principles and processes for effective occupational regulation by statute.

**1998**

The Policy Framework for Occupational Regulation outlines three types of risk.

- 1 The likelihood of significant harm occurring.
- 2 The extent to which any harm caused is irreversible.
- 3 Whether the risk is voluntarily entered into by the client.

The following chart, based on that provided in the Policy Framework for Occupational Regulation, illustrates how social work practice with vulnerable clients (the assessment of a child's risk of harm as a result of physical or sexual abuse for example) meets the threshold for regulating an occupation.



2000

## Why do we need to regulate the social work occupation?

As the concerns about social work practice grew, the Ministry of Social Policy released a Registration of Social Workers Discussion Paper in July **2000**.

The discussion document, in posing the question ‘Why do we need to regulate the social work occupation?’ stated that the ‘issue of regulating the social work occupation has been the subject of debate over a number of years. There has been concern about the lack of credibility of social work as a profession. There has also been a growing expectation from the public, politicians, and consumer groups that people in the occupation should be more accountable and their work more transparent.’

The issue of ‘the lack of credibility of social work as a profession’ is understandable when approximately 80% or more of the ‘profession’ did not hold social work qualifications and had not been assessed as competent professional social work practitioners.

The discussion document referenced the Government’s now accepted *Policy Framework for Occupational Regulation – A guide for Government agencies involved in regulating occupations* and noted that when **‘applying this framework to the social work occupation, the Ministry of Social Policy has concluded that social work has the potential to be a moderate to high risk occupation. High risk situations may include misconduct, incompetence, malpractice or abuse. It is very difficult to assess the prevalence of poor social work practice. However, it is essential to protect the public from the outset by preventing poor practice and high risk situations from occurring.’**

The Ministry of Social Development discussion document on the Registration of Social Workers was noted by Judge Michael Brown in his report on the *Ministerial Review of the Department of Child, Youth and Family Services* in **2000** and included the recommendation that the introduction of social worker registration be given urgency. **Judge Brown noted in the review that ‘if it is quality of service provision we are seeking ... then it is through the quality of the social workers that this will be manifested ... An inadequately trained profession is if anything worse than an amateur, because of the power invested in their professional status.’**

2001

In May **2001**, the Registration of Social Workers - Consultation Summary Report was published. It reported that all respondents were in favour of registration for social workers. The three most common reasons for support were that registration would:

- set and maintain high levels of professionalism and minimum standards of practice
- result in increased safety and protection for all stakeholders (including clients and social workers)
- provide a formal mechanism for accountability for the social work profession.

## The Social Workers Registration Act

The result of the report was a commitment to establish a system for the registration of social workers in New Zealand, and in November **2003** the Social Workers Registration Act (SWRA) was passed.

2003



The SWRA provided for voluntary registration (certification). Under a certification system, a registration board certifies that individuals are competent to practise social work. Only people who have successfully met all the registration criteria and completed a competency assessment can use the title 'Registered Social Worker'. **Certification would still allow people to practice using the title of 'social worker' without being registered and therefore the protection of the public was limited in that unqualified, inexperienced individuals could still use the title.**

Section 104 of the Act did, however, provide for regular reviews of the Act. The Board was required to report on whether the voluntary system of registration was meeting the purposes of the Act in terms of protecting the public and enhancing the professionalism of social workers.

It was the view of the Board and the social work profession that the Act, in the event of voluntary registration being found not to meet the purposes of the legislation, could be changed to a licensing model which would make registration mandatory for all practising social workers. Under a licensing system, people would no longer be able to practise using the title of 'social worker' without being registered and as such would provide greater protection to the public by ensuring that only those who met the minimum requirements in terms of qualifications, experience and competence could claim the title social worker.

The inaugural Social Workers Registration Board members were duly appointed in late November 2003, and, in January **2004**, began the mammoth task of developing the policies and procedures required to implement the Act, in consultation with the social work profession, social work educators, employers of social workers, and other stakeholders.

2004



## Policies and Procedures developed by the SWRB

The following policies <http://www.swrb.govt.nz/policy> were developed, implemented, regularly reviewed, and subsequently updated in order to provide the registration framework required by the Act:

- Recognised Social Work Qualification
  - *Minimum qualification initially set at level 6 Social Work Diploma and subsequently raised to level 7 Social Work Degree in recognition of the need to provide a higher level of education and training for social workers and to be consistent with overseas practice.*
- Section 7 (Entitlement to registration with overseas qualification)
  - *Social workers with an overseas qualification assessed as equivalent to a recognised New Zealand social work qualification could be registered.*
- Section 10 (Provisional Registration)
  - *Unqualified social workers could be registered and had up to eight years to complete a qualification. Qualified social workers without enough practical experience could also be registered while they gained practical experience.*

- Section 11 (Temporary Registration)
  - *Temporary registration for no more than six months with conditions and restrictions. Usually reserved for overseas qualified social workers temporarily in New Zealand to provide training, research, education, etc.*
- Section 12 (Full Registration)
  - *Registration for all social workers who met the minimum qualification, practical experience, and competence requirements.*
- Section 13 (Enough Practical Experience to Compensate for Lack of Qualification)
  - *Full registration for social workers without a recognised New Zealand qualification or an overseas qualification equivalent to a recognised New Zealand qualification but who have been assessed as having enough practical experience in social work in New Zealand (prior to the implementation of the Act) to compensate for the lack of a recognised social work qualification. Often referred to as a 'grand-parenting' provision.*
- Enough Practical Experience
- Competence
- Fit and Proper
- Competence to practise Social Work with Māori (under review)
- Competence to practise Social Work with Different Ethnic and Cultural Groups (under review)
- English Language Competence and English Language Testing
- Renewal of Annual Practising Certificates
- Continuing Professional Development
- Supervision Expectations for Registered Social Workers
- Social Work Qualification Programme Recognition Standards
- Practicum within a Recognised Social Work Qualification

## Implementing the system of Voluntary Registration (Certification)

By October **2004** the Social Workers Registration Board began to accept applications for registration, and, in hindsight, it was at this point that the limitations of implementing the legislated voluntary framework (certification) for social work registration began to surface.

Four major issues would combine to diminish the effectiveness of the registration regime, weaken the efficiency of the process in terms of access and cost, and subsequently undermine the experience for many social workers supportive of registration.

These four issues are set out below and will be further discussed in this review:

- 1 Section 42 of the legislation allowed unqualified social workers with little or no experience to gain registration on the basis that they only had to have the intention of completing a qualification within eight years.
- 2 The scheme was voluntary, and the full costs of implementing the registration framework were initially borne by only those who voluntarily applied at the beginning.

- 3 The Act introduced a certification model of regulation, and, under this certification system, people could still practise using the title of 'social worker' without being registered.
- 4 Registered Social Workers who were initially registered under the Act failed to understand that although voluntarily registered, they were now legally obligated to maintain their registration, hold practising certificates, complete competence assessments, and undertake continued professional development.

It is significant to note that many of the above issues would result in, and indeed become the main focus of, the work of the SWRB Complaints and Disciplinary Tribunal appointed in July **2005**.

## The SWRB Complaints and Disciplinary Tribunal

The SWRB Complaints and Disciplinary Tribunal's functions were to administer the complaints process concerning Registered Social Workers and to exercise the disciplinary powers conferred by the Act.

While the intention of the Act was to provide the public with assurance that Registered Social Workers met professional standards of competent practice, engaged in ongoing professional development, and were held accountable for their practice, the Tribunal was meant to provide additional protection to the public from poor social work practice. The reality was that the Tribunal's main focus became the policing of compliance issues for those social workers who had registered.

The focus of the Tribunal should have been on ensuring the protection of the public from poor social work practice, but this protection was only available where the public's engagement was with a Registered Social Worker. The irony of this situation was not lost on the profession or the public, given the purpose of the legislation was to protect the public. The main concern was that registration, which was introduced as a result of 'concern about the lack of credibility of social work as a profession', was obviously not 'capturing' those poorly performing social workers it was supposed to.

As the registration scheme was voluntary, initially only a committed portion of the social work profession applied for registration in the first few years of registration being available, and therefore it was not surprising that in the first ten years of operation only one decision from a hearing of the Tribunal, was as a result of professional misconduct by a Registered Social Worker in relation to a client. The remainder of the initial complaints were as a result of the Registered Social Workers misinterpreting the voluntary nature of registration and not renewing their practising or competence certificates.

The Board is aware **that there are many substantiated examples of unregistered Social Workers**, or, alternatively, individuals using the title 'Social Worker' without qualifications or competence, **who have been convicted of serious offences** and/or found responsible for the delivery of unethical, incompetent, and often dangerous social work services.

**The Tribunal continues to have no jurisdiction over a social worker who is not registered.**

2005

As part of establishing the application process the Board developed a schedule of qualifications, both current and historical, that would be recognised for registration in **2004**. The Board then proceeded to undertake significant consultation throughout **2004** and **2005** to determine the entry-level qualification moving forward. At this time there was strong support for the benchmark entry-level qualification to be lifted to a degree, with a time frame for implementing this.

2006

As a result of this consultation, the Board determined that all entrants to a social work programme after 1 January **2006** would need to be enrolled in a recognised degree programme. The Board did not specify the length of the degree at that time as there were currently a mix of three and four-year degree programmes being offered. The Board was aware that this decision would need to be revisited in the future.

2007

## 2007 Review of the Social Workers Registration Act

The Board noted in the **2007** Review of the Social Workers Registration Act 2003 that it was committed to ensuring that the registration of social workers in New Zealand continued to reflect the high standards established at the time the SWRA was implemented.

Accordingly, the actions and recommendations contained in the review report provided a focus on:

- reducing the barriers to participation in the registration system, such as the cost and complexity of applying for and maintaining registration
- reviewing Board policy to ensure an inclusive and comprehensive registration system
- provision of funding to ensure that the public good requirements of the legislation were fulfilled
- proposals to amend the legislation to provide for a comprehensive system of social work registration.

As a part of the review process, the Board sought input from social workers, their representative bodies, educators, employers of social workers, and other key agencies and individuals likely to have a direct interest in the efficient and effective operation of the Act. Submissions and responses were received from 39 organisations and individuals.



The Board subsequently convened a workshop of key stakeholders to discuss the points raised in submissions and to share and discuss their perspectives on the Act and its operation, with each other and the Board.

## Submissions to the Board

The following quotes provided to the Board in submissions are indicative of the majority of submissions received:

*'The ANZASW believes that the current process of voluntary registration cannot meet the primary objective of the Act of protecting the public since it suggests users can make a choice to use a Registered Social Worker rather than an unRegistered Social Worker.'*

**Aotearoa New Zealand Association of Social Workers**

*'In my view, a mandatory system of registration is preferable as it would allow the Board to assess the competence of every social worker as a pre-requisite for registration, thereby enhancing public trust in the competence and professionalism of social workers.'*

**Health and Disability Commissioner**



## The Board's actions to complete

The feedback from submissions not only focussed on the issue of voluntary versus mandatory registration but also raised a number of issues for social workers and their employers that the Board was tasked with addressing. These included the difficulty for social work qualification graduates to access registration, the complexity of the competence assessment processes, access to registration for very experienced but unqualified social workers and general concerns about the complexity of the registration framework.

As part of the Board's recommendations arising from the review report, the Board set itself four actions to complete in 2007/08:

### Action 1

The Board will develop a set of entry-level competencies in order that new graduates can be provisionally registered.

### Action 2

The Board will work with employers, educators, and professional bodies to review the Board's current approach to competence assessment, to identify ways to:

- a** reduce compliance costs for social workers and their employers, while maintaining confidence in the competence assessment system
- b** reduce the complexity of the current processes to evidence competence
- c** reduce the costs of registration to applicants.

### Action 3

The Board will further review the operation of section 13 of the Act (the Board may recognise practical experience in certain cases).

### Action 4

The Board will explore ways to reduce the cost and complexity of registering and maintaining registration, including streamlining competence arrangements.

All four actions were completed within the stated timeframes and significantly enhanced the work undertaken by the Board prior to the review.

## Recommendations made to the Government

As well as the actions to be undertaken by the Board the following three recommendations were made to Government.

### Recommendation 1

Agree to amend the Social Workers Registration Act 2003 to provide for a comprehensive system of social worker registration through protection of the title 'social worker' and by requiring that functions normally performed by social workers cannot be performed by unregistered persons.

### Recommendation 2

Agree that the registration system be broadened to include registration of associated workers.

### Recommendation 3

Agree that policy work should be undertaken as soon as possible because of the potentially long lead time for legislative change.

Unfortunately none of the recommendations were acted on at that time.





Social worker registration remained voluntary, the title 'Social Worker' remained unprotected, and registration was limited to those social workers committed to ensuring that they were professionally competent. Registered Social Workers were held accountable for their social work practice but those whose competence, qualifications, and practical experience had not been assessed continued to be employed in the sector.

Ten years on, the Board was concerned that the very same issues around the delivery of social work, which had originally resulted in the recommendation to put in place a mandatory system of social work registration, continued to be discussed and debated in further reviews.

## The welfare, safety and protection of children in New Zealand

2011

In **2011** Mel Smith, CNZM, was asked to provide a report to the Hon. Paula Bennett, Minister for Social Development, on matters relating to the welfare, safety and protection of children in New Zealand.

The report considered the impact of current social work services in relation to the welfare, safety, and protection of children in New Zealand.

*'Social Work is demanding and while the attainment of an appropriate qualification is a necessary first step, experience accompanied by further training and supervision is essential in the development of skills ... I cannot emphasise enough how important I see the role of the supervisors, practice leaders and site manager in local offices. It is these people who must be responsible for the quality of work undertaken by social workers.'*

Continuing professional development, the development of skills and competencies, and supervision are cornerstones of social work regulation, but still registration remained voluntary. There was no requirement for social workers employed by the state care and protection service to be registered, and of greater concern was the fact that the supervisors, practice leaders, and site managers were categorised as not being required to gain or maintain registration.



In anticipation of the requirement to undertake five yearly reviews of the SWRA, the SWRB published the **2011 Mandatory Social Worker Registration** discussion paper. Similar to the discussion document published in 2000 on whether social workers should be registered, this document also raised a number of points to focus respondents on the issue of mandatory registration, as well as requesting responses to the following questions:

- Do you consider there will be improvements in moving to mandatory registration? If so, what will they be?
- Do you consider there will be any negative effects in moving to mandatory registration? If so, what will they be? How can these negative effects be addressed?
- Do you think that the costs of moving to mandatory registration will outweigh the benefits, or will the benefits outweigh the costs? How?
- If mandatory registration were introduced, what transitional measure(s) would be needed to ensure that any risks to social work services were managed?

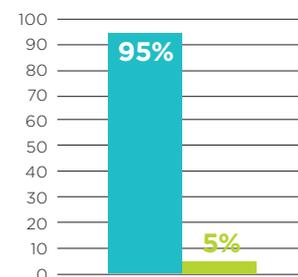
## The 2011 Report on the outcomes of the Mandatory Social Worker Registration discussion paper

This provided clear feedback to the Board. The Board received 422 submissions from a range of individuals and groups throughout New Zealand, and the following five key themes emerged from this feedback.

### 1 Support for New Zealand to move to mandatory social worker registration

Of the 422 submissions received:

- **399 (95%) were in support** of moving towards mandatory registration.
- **23 (5%) were not in support** of moving towards mandatory social worker registration (it was unclear in this category whether respondents supported any form of registration).



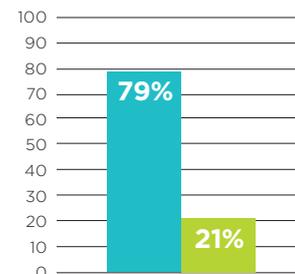
## 2 Effects of mandatory registration

Of the 422 submissions received, 412 (98%) provided comment regarding the effects of mandatory registration.

■ **327 (79%) of these respondents noted positive effects.**

■ **85 (21%) noted negative effects.**

Submissions relating to positive effects of mandatory registration were centred around providing better quality and safer practice for clients by improving and maintaining social work standards and accountability. Submissions noting negative effects focussed on how mandatory registration could affect the employer. For example, the financial cost could affect employers and impact on employment opportunities for social workers as a consequence. No negative effects to client safety were noted with moving to mandatory registration.



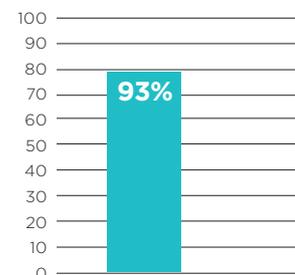
## 3 Public risk from poor social work practice

Of the 422 submissions, 380 (90%) provided comment on this topic.

■ **353 (93%) of these respondents stated that there were public risks from poor social work practice** causing clients emotional and financial harm. The most common reason cited for the current public risk was the use of the title 'Social Worker' by people who did not have a social work qualification.

Risks were particularly noted where there was risk concerning family violence, child protection, the elderly, and mental health service consumers.

Respondents saw moving to mandatory registration as an essential step in reducing public risk from poor social work practice.

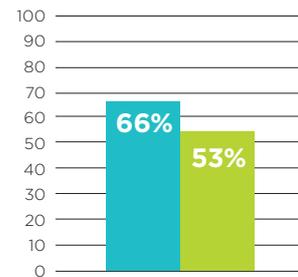


#### 4 Transitional requirements

Of the 422 submissions, 198 (47%) provided comment on the transitional requirements needed to ensure a successful move to mandatory registration.

■ **130 (66%) of these respondents supported a set transitional period, and 36 (18%) advocated for an immediate move** to mandatory registration.

■ **105 (53%) also commented on the need for resources to manage the transition** to mandatory registration. This was a particular concern for the NGO sector.



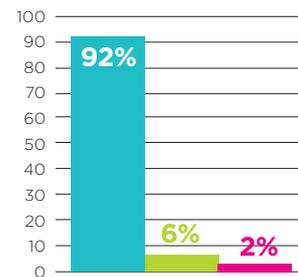
#### 5 Whether the benefits of registration outweigh the costs

Of the 422 submissions received, 202 (48%) provided comment on whether the benefits of moving to mandatory registration outweighed the costs.

■ **186 (92%) of the respondents stated that 'yes' the benefits would outweigh costs.**

■ **12 (6%) responded 'no'.**

■ **4 (2%) were unsure.**



### Green Paper for Vulnerable Children

In **2011** the Government also released the *Green Paper for Vulnerable Children*. This was a discussion document that outlined ideas the Government wanted to test with the public before making decisions. The Government was concerned about the number of children who had childhoods that made it unlikely they would thrive, belong, and achieve. The Green Paper outlined a number of ideas on how to improve leadership for vulnerable children, some policy changes, and some changes to how services were delivered.

One of the ideas raised by the Green Paper was to focus on the issue of minimum standards:

*'There are also thousands of volunteers and unregistered people who work with children, and their families and whanau. In some instances this workforce receives training and support for their roles. However, this is not consistently offered and there are no minimum standards required for those who work with children, and their families and whanau. In other areas and countries, this has been addressed by introducing minimum standards, or mandatory registration and training for the workforce.'*

The Green Paper was widely disseminated in anticipation of considerable feedback to inform the *White Paper on Vulnerable Children*, to be finalised in 2012.

## 2012 Review of the Social Workers Registration Act

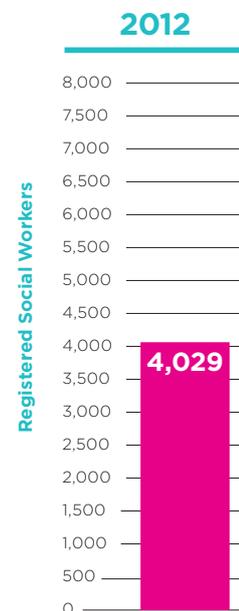
In **2012**, prior to completion of the *White Paper on Vulnerable Children*, the SWRB presented the second Review of the Social Workers Registration Act. As with the previous review in 2007, and this current review in 2015, the Board continued to question the effectiveness of the current voluntary registration system (certification) to protect the public and enhance the professionalism of social workers.

2012



The Board's preliminary view in 2012 was that the legislation should provide that:

- an unregistered person cannot use words, titles, abbreviations, or descriptions stating or implying they are a social worker
- an unregistered person cannot claim to be practising social work or state or do anything that is calculated to suggest that they are practising social work
- the definition of 'social work' includes, but is not limited to a list of specified roles (such as social workers exercising authority under the Children, Young Persons, and Their Families Act, social work positions in District Health Boards and the non-Government sector, etc.)
- 'social work' includes work in any position where a social work qualification is a prerequisite to employment
- 'social work' includes any set of skills and knowledge specified from time to time by competence components set or recognised by the Board – this allows for the introduction of advanced fields of specialised practice, for example, Care and Protection Social Work, Health Social Work by the Board
- other registered professionals – for example, health practitioners – may undertake activities normally performed by social workers if those activities fall within the accepted scope of their profession and they are competent to undertake those activities.



It was the Board's view that this approach would not allow people who were clearly undertaking core social work activities to simply reclassify themselves. Nevertheless it was unlikely that the 18,000 plus people who self-identified as social workers in the 2013 Census would become Registered Social Workers. The Board estimated that the number of practising social workers who would likely comprise the target group for registration could extend to 8000. This was based on an estimate of the number of social workers employed in the health sector (primarily through District Health Boards); the number of

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social workers employed by the Child, Youth and Family Service; and an estimate of other social workers operating in the non-Government sector and in private practice.

Mandatory registration does not mean that the remainder of those who self-identified as social workers in the 2013 Census would be unable to remain in the social service workforce, but it would require that they did not claim the title and identified expertise of those who meet the minimum criteria to earn the title 'Social Worker'.

The Board's view in **2012** was that a system of mandatory registration would recognise competent social work practice, ensure that the public was protected from those not deemed competent to practise social work, and hold those who met the criteria to work under the title 'Social Worker' accountable for their practice. This view has not changed in **2015**.

Mandatory registration is accepted and shown to provide a system of accountability for allied professions in New Zealand as well as for the Social Work profession in other countries. It is the Board's view that it is now time to ensure that the New Zealand public is afforded the assurance of regulated, competent, and accountable social work delivery that mandatory registration would provide.

'Regulation is not about impacting on the behaviour of those already 'doing the right thing' - it is about protecting the public from those who aren't.' Toni Hocquard  
SWRB Board Chair 2009-2014

The SWRB currently has 5,455 Registered Social Workers on the Social Worker Register, the majority of whom are supported by their employers to maintain their registration. Those employing organisations recognise the value of registration and the importance of their employees being held to account for their practice as well as the importance of professional supervision, continuing professional development, and the public safety that registration affords.

## White Paper on Vulnerable Children

The **2012** *White Paper for Vulnerable Children* acknowledged the many submissions on the Green Paper, with regard to social worker registration, with one section solely focused on the issue.

### **'Social worker registration**

- 36** *One way to advance the capabilities of those who work with vulnerable children is through registration of social workers. Registration is designed to improve the consistency and quality of social work practice by ensuring that practitioners are adequately educated, supervised and competent, and accountable for their actions.*
- 37** *Voluntary registration for social workers was introduced in New Zealand in 2003 through the Social Workers Registration Act 2003, administered by the Social Workers Registration Board. The assessment for registration includes recognition of qualifications and specific competence and practice requirements. New Zealand's Social Worker Registration Board is also empowered, in certain cases, to register unqualified social workers where their experience compensates for the lack of qualifications. Registered Social Workers must also adhere to a code of practice and undertake professional development. A disciplinary process is also provided for.*
- 38** *One option that has been pursued in many international jurisdictions is mandatory social worker registration. In England, mandatory registration is required to use the title 'social worker', while in Scotland, social workers need registration within six months of their employment. Registration is mandatory for a number of other occupations in New Zealand, including midwives, physiotherapists, psychologists and nurses. Responses to a recent discussion document on social worker registration in New Zealand expressed strong support for mandatory social worker registration.*
- 39** *Little is known, however, about the effectiveness of mandatory registration of social workers in improving practice quality. Concerns regarding the possible negative consequences of mandatory registration include the financial costs involved, the reduction in the social work workforce, and the possibility that people will change job titles to avoid registration.'*

The White Paper went on to state that, in relation to the social work workforce, there would be a focus on the promotion of social worker registration.

**'Promoting social worker registration**

- 74** *As noted in Chapter 6, Child, Youth and Family is working towards having all its frontline social workers registered by 2015 and has a registration action plan in place to achieve this. District Health Boards are also moving towards this requirement for both new and existing social workers in their employment. However, social workers working in the NGO sector are less likely to be registered.*
- 75** *The Children's Workforce Action Plan will contain actions to promote and support social worker registration for these social workers, eg through funding contracts. Mandatory social worker registration is not being introduced at this point, however, as NGOs are currently facing considerable financial pressures and this measure would place an additional financial burden on NGOs and possibly restrict the workforce.'*

**The myths**

The SWRB was aware that a significant number of submissions were presented to the Government via the Green Paper that supported mandatory social worker registration. Further, the SWRB was not convinced that the reasons stated for mandatory registration not being introduced were credible, in that they were based on assumptions such as:

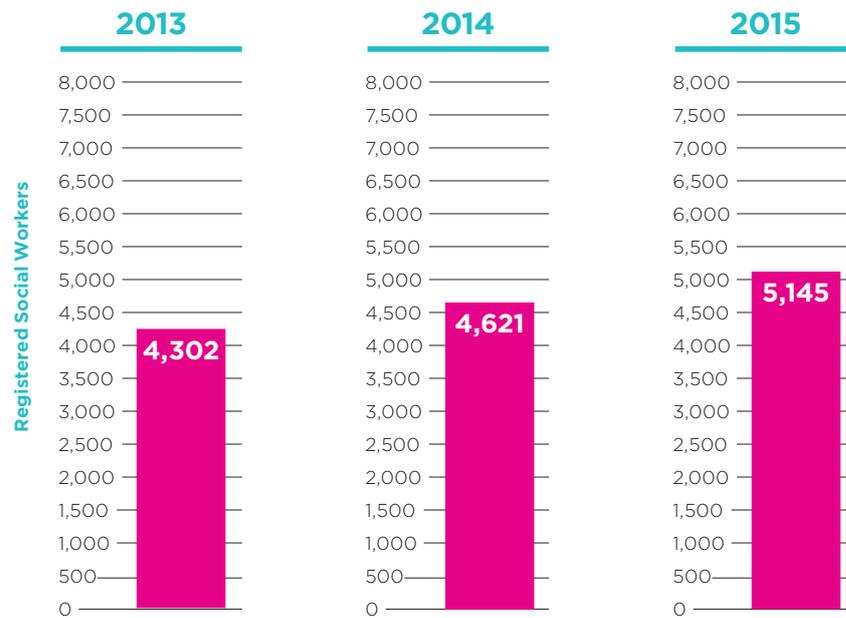
- X NGOs face considerable financial pressures, and mandatory registration would place an additional financial burden on NGOs**
- X mandatory registration would restrict the workforce**
- X people would change job titles to avoid registration.**

The above issues do not, in fact, focus on the vulnerability of individuals, and, in the SWRB's view, they are based on unsubstantiated myths associated with misrepresentation of the number of social workers who would meet the minimum requirements for registration, the actual numbers of social workers as opposed to social service workers, and an underestimation of the social work profession's view of registration.

## The facts

- ✓ NGOs facing considerable financial pressures already support registration of their social work staff. NGOs already have processes and policies in place to ensure that they employ registerable social workers but they are waiting on mandatory registration, and the anticipated reduction of costs as a result of the economies of scale that mandatory registration would provide, to register all their social work staff.
- ✓ The current voluntary registration system is expensive, and mandatory registration would likely lead to a reduction in costs as a result of economy of scale, therefore significantly reducing the financial burden on NGOs. Many NGOs are also operating under the misguided belief that they need to register social service workers. The fact is that if they do not meet the requirements for social work registration they do not need to be registered. They can continue to undertake their social service work on behalf of the NGO although they cannot claim the title social worker.
- ✓ Mandatory registration would not restrict the social work workforce but would in fact give a realistic assessment of that workforce.
- ✓ If social workers were given the privilege of protection of their title, the possibility that people would change job titles to avoid registration would be negated. The issue at the moment is that the title is undermined by the fact that anyone can currently claim the title.

Support for registration continued to grow from 2012 onwards despite the supposed 'reasons' for it being not necessary to make mandatory. There are currently 5,455 Registered Social Workers, and the rate of new applications for registration and the support of the profession and employers of social workers are not showing any sign of decreasing.



## Section 2 – Stocktake

### A stocktake of social workers and social service workers in the sector since the introduction of the Social Workers Registration Act 2003

#### In this section:

- Census data on individuals identifying as social workers in 2006 and 2013
- Careerforce – the Industry Training Organisation for the non-regulated social service sector

The following figures **(in black)** are based on the NZSCO99 definition of ‘social work’, which indicated that the training and/or experience required was a ‘recognised qualification in social work and experience in a related occupation or voluntary work.’ The NZSCO99 definition was subsequently dropped in favour of the ANZSCO definition after the 2006 Census. The ANZSCO definition for social work states, ‘Most occupations in this unit group have a level of skill commensurate with a bachelor degree or higher qualification. In some instances, relevant experience and/or on-the-job training may be required in addition to the formal qualification.’ The figures for the ANZSCO definition are provided in **green** where available.

#### 2006 Census

- **13,170 (4,977)** individuals identified that their paid employment was as a social worker, which was a 61% increase from the number in the 1996 census (8,172).
- **5,706 (43.32%) (3,363 (67.57%))** held the minimum level of qualification or higher (diploma, degree, post-graduate degree) required to be registered as a social worker but only **2,370 (17.97%) (2,103 (42.25%))** held the minimum social work qualification or higher (diploma, degree, post-graduate degree) required to be registered as a social worker.
- **1,689 (12.82%) (549 (11.03%))** held a level 1–4 certificate level qualification but only **513 (3.89%) (225 (4.25%))** held a level 1–4 certificate in social work.
- **4,179 (31.72%) (747 (15.01%))** did not hold a post-school qualification.
- **1,086 (8.24%) (309 (6.21%))** did not indicate a qualification level or were unable to be classified.

Based on the 2006 census figures, **82.03% (57.75%)** of those identifying that their paid employment was as a social worker would not have met the minimum qualification criteria for registration at that time.

## 2013 Census

The following 2013 census figures are provided using the NZSCO99 definition of social work (**in black**) to assist with comparison to the 2006 census. The figures using the ANZSCO definition are provided in **green** where available.

- **18,333** (**6,132**) individuals identified that their paid employment was as a social worker, which was a **39%** (**23.21%**) increase from the number in the 2006 census (**13,170**) (**4,977**) and a **124%** increase from the number in the 1996 census (**8,172**).
- **8,865** (**48.36%**) (**4,617**) (**75.29%**) held the minimum level of qualification or higher (diploma, degree, post-graduate degree) required to be registered as a social worker, but only **3,465** (**19%**) (**2,940**) (**48%**) held the minimum social work qualification or higher (diploma, degree, post-graduate degree) required to be registered as a social worker.
- **2,760** (**15.05%**) (**429**) (**7%**) held a level 1 – 4 certificate level qualification but only **459** (**2.5%**) (**123**) (**2.01%**) held a level 1–4 certificate in social work.
- **5,118** (**27.92%**) (**753**) (**12.28%**) did not hold a post-school qualification.
- **11,590** (**8.67%**) (**342**) (**5.58%**) did not indicate a qualification level or were unable to be classified.

Based on the 2013 census figures, **81%** (**52%**) of those identifying that their paid employment was as a social worker would not have met the minimum qualification criteria for registration at that time.

The census figures from 2006 and 2013 clearly identify that New Zealand has a specific social work profession as well as a significant but mis-titled social service workforce. Both are clearly distinguishable by looking at their qualification base, and if New Zealand is to move forward and actively ensure that the most vulnerable members of society receive the services that they need, then it is time we provided protection of title to professional social workers. At the same time we acknowledge the skills and experience of qualified social workers it is also time that we recognised the value of social service workers and stop putting undue pressure on them to provide a level of care that they do not have the education, skills, or expertise to deliver.

## The social work and social services workforces

The Social Workers Registration Board, in identifying the social work workforce, must first acknowledge the contribution and position of the wider social service and allied health sectors.

It is important that, to ensure clarity and public safety in the current environment, there is a need to accept the introduction of standard titles within the social service sector, so that the public, the education and training sector, and the labour market are better able to identify and manage the availability of required skills, competencies, and qualifications.

The Social Workers Registration Board is clear that it has a responsibility to Government and the public to regulate the social work profession. As part of the Board's role is identifying the social work profession, many have assumed that the Board is therefore also responsible for ring-fencing the profession and excluding those who don't meet the minimum criteria for registration.

It is the Board's view that this is both a limited and short-sighted approach to developing and strengthening the social service sector.

Understanding the interconnectedness of professions and occupations across the social service and allied health sectors would not be possible without acknowledging the significant contribution of the industry training organisation, Careerforce. The Board's relationship with Careerforce was further strengthened when Careerforce's coverage expanded in August 2011 to include responsibility for the Social Services Industry Training Organisation.

Careerforce is the industry training organisation for the non-regulated health, mental health, aged support, disability, social services, youth work, cleaning and pest management industries. More specifically, Careerforce has been recognised by the Government since November 2012 to set standards at Levels 1 to 8 on the New Zealand Qualifications Framework for the following sectors:

- Aged care, addiction, allied health, core health, dental support, intellectual, physical and sensory disability, mental health, orderlies, primary and secondary health care, public health and whānau ora, except where the workforce is covered by the Health Practitioners Competence Assurance Act 2003.
- Community work, counselling, employment support, Iwi/Māori social services, Pacific Island social services, social work - including suicide intervention, abuse, neglect and violence, Tamariki Ora – Well Child Services, whānau/family and foster care, and youth work, except where the workforce is covered by the Social Workers Registration Act 2003.

The Social Workers Registration Board and Careerforce, although responsible for different parts of the wider workforce, have an understanding of the need to work together to ensure that there is clarification around education and training within the wider workforce. Both organisations have undertaken significant investment in profiling the social work and social services workforce based on the data provided from the 2013 Census and other information.

The Board acknowledges the significant contribution by Careerforce to this review in providing the detailed profile of Careerforce's 2013 Workforce.

**Note:** Social Workers have been included in Careerforce's profile, as the lack of title protection for social workers, the current voluntary registration system, and confusion around the use of the title 'Social Worker' mean that many individuals claiming the title are likely to be social service workers.

The full report is available on the Careerforce website:

**[www.careerforce.org.nz/wordpress/wp-content/uploads/BERL-Profile-of-Careerforces-2013-Workforce.pdf](http://www.careerforce.org.nz/wordpress/wp-content/uploads/BERL-Profile-of-Careerforces-2013-Workforce.pdf)**

The following table, based on information provided by Careerforce, uses the Australian and New Zealand Standard Classification of Occupations 2006 (ANZSCO06) to identify which occupation classifications fall within Careerforce's coverage. For the purposes of this review, the Board has only included three of the five areas covered by Careerforce, and these are based on the level of skill required and the types of roles performed. These are Professionals, Support Workers, and Carers. The two areas not included are Technicians and Building Services Workers, as they are not considered part of the social services workforce.

**Note:** Again Social Workers have been included in Careerforce's profile, as the lack of title protection for social workers, the current voluntary registration system, and confusion around the use of the title 'Social Worker' mean that many individuals claiming the title are likely to be social service workers.

Table 1.1 Careerforce's workforce using ANZSCO06 classifications

<b>Professionals</b> <b>(16,227)</b>	251911	Health Promotion Officer
	251912	Orthotist or Prosthetist
	251999	Health Diagnostic and Promotion Professionals nec
	252215	Traditional Māori Health Practitioner
	252711	Audiologist
	272112	Drug and Alcohol Counsellor
	272113	Family and Marriage Counsellor
	272114	Rehabilitation Counsellor
	272199	Counsellors nec
	272511	Social Worker
	272612	Recreation Coordinator
	272613	Welfare Worker
<b>Support Workers</b> <b>(11,184)</b>	411213	Dental Technician
	411311	Diversional Therapist
	411512	Kaiāwhina (Hauora) (Māori Health Assistant)
	411711	Community Worker
	411712	Disabilities Services Officer
	411713	Family Support Worker
	411715	Residential Care Officer
	411716	Youth Worker
<b>Carers</b> <b>(41,241)</b>	423111	Aged or Disabled Carer
	423211	Dental Assistant
	423311	Hospital Orderly
	423312	Nursing Support Worker
	423313	Personal Care Assistant
	423314	Therapy Aide
	423411	Child or Youth Residential Care Assistant

# Section 3 – Social Work and Social Services

## The difference between social work and social services

### In this section:

- What is a social worker
- What is a social service worker

Regulation does not just stop at determining entry to a profession but also manages the ongoing participation and progression of the individual during their professional career.

One of the biggest challenges to ensuring that the delivery of social work services in New Zealand is effective, efficient, and results in a positive experience for all involved is to ensure that we are clear what is, and who can deliver, the practice of formal social work. As noted previously, based on the 2013 census figures, 81% of those identifying that their paid employment was as a social worker would not have met the minimum qualification criteria for registration at that time.

A significant proportion of the 81% will be individuals involved in providing social services in some way but who are not necessarily professional social workers. This does not mean they do not provide a valuable contribution, but it is a fact that their contribution is less likely to be theoretically driven or supported by evidence-based research.

Social work (a qualified, registered profession with a protected title) needs to be viewed as distinct from social services (a largely unqualified and unregistered workforce).

### Social workers

Social workers aim to protect vulnerable people from abuse, neglect, or self-harm and to help to enhance their well-being and quality of life. Drawing upon a rich knowledge-base and theoretical perspectives derived from the social and psychological sciences, social workers aim to promote positive individual and social change.

Social workers operate within legal frameworks for protecting and supporting vulnerable people. For example, Child, Youth and Family social workers, or those social workers contracted by Government agencies, such as Social Workers in Schools, Children's Action Plan Teams, are working with children and families using child protection policies and procedures to intervene in families to protect vulnerable children and provide support, while those working with adults aim to ensure that these adults' needs for care and protection are met. It is becoming especially important to the delivery of care and protection social work that there is more relationship-based social work delivery, which emphasises the importance of the relationship social workers have with the people they are working with.

Social workers practising in statutory contexts such as Child, Youth and Family or District Health Boards commonly assess the need for care, support, and protection of individuals or families, develop care plans, and provide or manage the provision of care. They are also responsible for implementing policies which aim to safeguard vulnerable children or adults and ensure that people have as much choice and control over services they use as possible.

Social workers also work closely with other professionals, in multi-disciplinary teams. Mental health social workers, for example, often work in teams alongside community mental health nurses, occupational therapists, psychologists, and psychiatrists. Working in multi-disciplinary teams is common for all social workers.

[www.york.ac.uk/spsw/about/what-is-social-work/](http://www.york.ac.uk/spsw/about/what-is-social-work/)

### Social service workers

Social service work includes providing personal care, supporting individuals in the tasks of daily living, and supporting people to engage with their communities.

Social service workers are often identified as paraprofessionals, that is, one who has specialised knowledge and technical training who works closely with, and is supervised by, a professional. Paraprofessionals perform many tasks. Paralegals, physician's assistants (PA's), and social work associates are examples of paraprofessionals (Barker, 2003). Quite often in New Zealand, those using the title 'Social Worker' would be better described as para-social workers — a group of supervised paraprofessional staff and volunteers, often community-based. These workers serve the needs of children and families, particularly where social welfare systems are underdeveloped or severely stretched (Children & Youth Services Review, 2010).

'Para-social workers' and social support workers are defined as receiving anything from a few days' training to up to six months' training. There is no exclusion for unpaid workers. 'Para-social workers' often work under the supervision of a professional social worker, nurse, or physician (PEPFAR, 2009).

The reason for the Social Workers Registration Board's clarification of the difference between social work and social service work in the above section of the review report is so that the Board can move on to:

- **identify our lead social workers and establish a suitable framework to develop post-qualification professional scopes of practice**

*The Board will ensure that our social work leaders, who are managing, advising, supervising, and educating social work graduates and social work students, are supported to maintain and further develop their positions of leadership.*

- **ensure that social work graduates and social work students are funded and adequately prepared to deliver needed social work services that are professionally and culturally appropriate and will enable social work graduates and social work students to develop into the social work leaders of the future**

*The Board will ensure that the aims and aspirations of Māori are integral and on-going priorities, and that access to the views of ethnic and cultural groups within New Zealand is maintained. The Board will work with Māori social service providers and organisations to ensure a bi-cultural approach to this process and to better provide for a culturally inclusive registration system. The Board is committed to the completion and implementation of the Kaitiakitanga Framework to assess social worker's competence to practise social work with Māori.*

- 
- **provide a social work education and development framework that ensures that access to social work education and the ongoing support and enhancement of professional social work practice is central to the work of the Board**

*The Board will work with social work educators, employers of social workers, and social work professional bodies to ensure that social workers are:*

- *prepared to deliver social work services in response to need*
- *supported to develop and extend their social work skills and knowledge*
- *held accountable for their practice with families and whanau.*

# Section 4 – Defining Social work and Social Work Scopes of Practice

## In this section:

- The progression of social work from an occupation through to a profession.
- The chronological stages of a mature profession.
- Defining the profession of social work.
- Scopes of practice within professional social work.

## The defining of social work as a profession in New Zealand

In New Zealand and overseas, the regulation of professions by legislation is consistent in that the use of the professional title, be it nurse, psychologist, lawyer, etc., is protected by law, and the legislation sets the minimum standards required to use the title. The minimum standards of entry into the profession are usually determined by the attainment of a recognised qualification, an assessment of the individual's competence to practise, and whether or not they are deemed a fit and proper person to practise.

## The professionalisation of social work in New Zealand

For the purposes of this review, the operational definition of 'profession' is 'a profession is defined by: (1) a body of knowledge, (2) ethical guidelines, and (3) a professional organisation with a growing set of published papers and best practices' (Cox, 2010, p. 7).

Professionalisation is characterised as 'when any trade or occupation transforms itself through the development of formal qualification based upon education, apprenticeship, and examinations, the emergence of regulatory bodies with powers to admit and discipline members, and some degree of monopoly rights' (Bullock and Trombley, 1999).

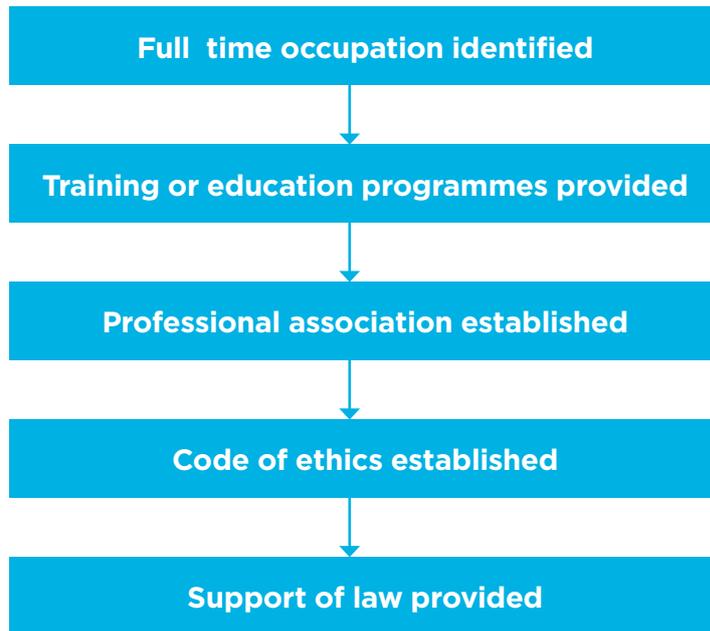
The needs of the public's most vulnerable have escalated over time, and with that has come the call from the public and social service organisations, both State and non-Government, to professionalise what was once the occupation of social work.

The initial stage of professionalisation followed the Process Model (see Figure 1), which describes the sequence of events for professionalisation. It follows a five-stage process in which each stage has a direct effect on the previous stage.

The initial stage of the process model occurs when full-time occupation is identified. At this point, the community of those involved in the occupation determines a need for this occupation.

Figure 1 represents a process model of professionalisation presented by Curnow and McGonigle (2006), which is based on similar models by Wilensky (1964), Houle (1981), Snider (1996), Tobias (2003), and Vollmer and Mills (1966). This model illustrates the professionalisation process chronologically; however, it should be noted that events in one stage might overlap with another stage.

**Figure 1 Process Model**



In the second stage, training or educational programmes are established. In this stage, knowledge and skills are identified and incorporated into a training or educational curriculum.

In the third stage, a professional association is established to help define the profession. Qualifications such as certifications and licences are developed in order to help differentiate the services of one occupation from another, as well as to distinguish qualified from unqualified practitioners.

In the fourth stage a code of ethics is developed. Professional associations define the standards of their profession, the codes of practice, the entry requirements, and the disciplinary procedures that govern it. A professional association recognises accepted methodologies and recognises professionals who follow these methodologies (McConnell, 2004).

The final stage involves gaining the support of law. The profession engages in political action such as lobbying for legal protection, legal restrictions, and recognition of title and work activities (Curnow and McGonigle, 2006, p. 288).

## Social work as a mature profession in New Zealand

Table 1 lists the elements of a mature profession identified by McConnell (2004), and includes the elements currently provided for in relation to Social Work in New Zealand. McConnell states that a profession's maturity can be gauged to the extent that it has formalised each of the elements included in the table below. The more elements applicable to a profession, the more mature the profession. An element attributed to a profession can be independent of another element. This is exemplified in the New Zealand context where the social work profession has for some time had an 'Initial Professional Education' but a voluntary rather than mandatory 'Licensing' element.

**Table 1 Elements of professional maturity**

Element	Description	Social work in New Zealand
<b>Initial Professional Education</b>	Advanced university programmes for a particular field, such as law school for lawyers and medical school for doctors.	<ul style="list-style-type: none"> <li>Undergraduate and post-graduate qualifications to PhD level currently provided.</li> </ul>
<b>Accreditation</b>	Such advanced university programmes must be accredited by one or more oversight bodies.	<ul style="list-style-type: none"> <li>SWRB Programme Recognition Standards are used to accredit all social work qualifications leading to registration.</li> </ul>
<b>Skills Development</b>	Required period of actual practise in applying university knowledge before a certification exam can be taken. For example, accounting professionals must work for one year for a board-approved organisation before taking the Certified Public Accountant (CPA) exam.	<ul style="list-style-type: none"> <li>120 days practicum included in qualification. 2,000 hours of practical experience required prior to gaining full registration.</li> </ul>
<b>Certification</b>	An actual exam, such as the CPA exam for accountants.	<ul style="list-style-type: none"> <li>2,000 hours of practical experience required prior to gaining full registration.</li> </ul>
<b>Licensing</b>	Mandatory and administered by a Governmental authority.	<ul style="list-style-type: none"> <li>Voluntary and administered by a Governmental authority.</li> </ul>

Element	Description	Social work in New Zealand
<b>Professional Development</b>	Ongoing professional education, most critically in a profession, such as medical doctors, with a rapidly changing body of knowledge.	<ul style="list-style-type: none"> <li>Registered Social Workers complete a minimum of 20 hours of continuous professional development learning per year.</li> </ul>
<b>Professional Societies</b>	Group of like-minded individuals who put their professional standards above their individual self-interest or their employer's self-interest.	<ul style="list-style-type: none"> <li>Aotearoa Association of Social Workers</li> <li>Tangata Whenua Association of Social Workers</li> <li>Council of Social Work Educators Aotearoa New Zealand</li> </ul>
<b>Code of Ethics</b>	Imposition of a behavioural standard against which to eject professionals from their professional societies or cause them to lose their licences to practise for violating the code.	<ul style="list-style-type: none"> <li>ANZASW Code of Ethics</li> <li>SWRB Code of Conduct</li> </ul>

- 
- **recognise the many social service workers who provide the base on which our social service sector is built, ensure that they are readily identified, and provide the opportunity to build on their knowledge and experience.**

*The Board acknowledges that confusion can occur over the different roles within the social service sector and intends to take greater responsibility for minimising this confusion. Mandatory registration of social workers will help to reduce confusion, in that the public, employers of social workers, and other key agencies will know that anyone using the title, 'Social Worker' must be registered. The Board will draft definitions of the key social work roles across the profession and work with key stakeholders in the unregulated social service sector to ensure that social service roles are recognised, social service workers are easily identified, and career pathways are articulated and available.*

## A definition of 'social work'

The following definition was approved by the International Federation of Social Workers (IFSW) General Meeting and the International Association of Schools of Social Work (IASSW) General Assembly in July 2014.

### Global definition of social work

'Social work is a practice-based profession and an academic discipline that promotes social change and development, social cohesion, and the empowerment and liberation of people. Principles of social justice, human rights, collective responsibility and respect for diversities are central to social work. Underpinned by theories of social work, social sciences, humanities and indigenous knowledge, social work engages people and structures to address life challenges and enhance wellbeing.

The above definition may be amplified at national and/or regional levels'.

While many other professions claim a 'social work' component within their practice this is usually an element of social care that sits outside of the recognised social work theories and practice frameworks developed by the profession and embedded within social work education. Professional social work has as a distinctive feature a model of psychosocial intervention that involves working with individuals in their own environment. Social workers, unlike many other professionals, work differently in that they undertake comprehensive assessments that incorporate not only the individual but the situational context in which they live. This is often characterised by the terminology used to reference social work practise as 'frontline' or 'community-based'.

The IFSW definition has, as its focus, defining social work but other definitions are more operationally directed, focusing on roles and tasks. Examples of these include the more general scope of Social Worker and can be expanded further to identify specialisations across the social work sector.

## Identifiable scopes of practice within the profession

### Social worker

Graduates of schools of social work (with bachelor's, master's, or doctoral degrees) who use their knowledge and skills to provide social services for clients (who may be individuals, families, groups, communities, organisations, or society in general). Social workers help people increase their capacities for problem-solving and coping, and they help them obtain needed resources, facilitate interactions between individuals and between people and their environments, make organisations responsible to people, and influence social policies. Social workers may work directly with clients – addressing individual, family, and community issues – or they may work at a systems level on regulations and policy development, or as administrators and planners of large social service systems (Barker, 2003).

Social Workers build on their base identity as a Social Worker by undertaking specific practical experience and education to specialise in areas of social work such as:

### **Kaiāwhina & Kaimahi**

Social work Kaiāwhina & Kaimahi roles occur within a number of contexts including but not limited to: whānau, hapū, iwi, NGO and State Sector organisations. They cover a range of practice scopes including education, child protection, health, youth justice etc. As well as being able to work with all people in Aotearoa they are generally highly competent in the use of Māori social work theoretical knowledge and models of practice, Te Reo and Tikanga Māori.

### **Care and protection social work**

Care and protection social workers provide social services to children and their families in order to improve their clients' social and psychological functioning, aiming to maximise the family well-being and protect children from abuse and neglect. They may provide parents with assistance in adoption arrangements, assist single parents, or find foster homes for abandoned or abused children. Care and protection social work occurs in both a statutory environment and within the NGO sector. Statutory care and protection social work will be governed by specific legislative obligations. Each sector will have unique practice characteristics.

### **Health social work**

Health social work can be defined broadly as the professional continuum of services designed to help patients, families, and groups improve or maintain optimal functioning in relation to their health. Social workers in health care respond to the ever-changing needs of those engaged in health care services, by modifying and expanding methods for providing services. Social work activities are focused on the biopsychosocial components of health and/or mental health. Additionally, social workers in this specialty field use their knowledge to develop standards of practice, recommend health policy, improve health programmes, and ensure patients, families, and organisations receive high quality and state-of-the-art social work services.

### **Community development**

Social workers in the field of community development can be found in many areas of practice and a variety of settings. The work is often not situated within legislated programmes. Community practice can involve community economic development such as improving local economies in rural areas experiencing out-migration, or it can include working with citizens, groups, and organisations to interface with large systems, institutions, and the political process. Social workers who practise from a community development or community organising perspective attempt to address the systemic issues that create social problems. In many cases, they may also be engaged in the kinds of individual problem-solving practices embodied in many social work positions.

### **Social work research**

Social work researchers manage research projects that investigate and provide reports on social issues by gathering information through interviews, focus groups, and questionnaires, and organising and analysing the gathered information using computer software packages. They analyse social problems and needs, and the different ways to respond to them.

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### **Management social work**

Management social workers have responsibility for strategic and operational leadership and management of staff teams and resources within and across social services. They are responsible for the implementation of legislation and policies relating to, for example, decisions about vulnerable people. They promote social work and social care values/ethics, equality and diversity, and relevant codes that guide practice. They may be responsible for liaising at a strategic level with other professionals in criminal justice, education, and health. They may also be responsible for contributing to local and national policy development.

### **Social work educators**

Social work educators teach, supervise, and assess social work students prior, during, and at the end of their qualifications, contributing to their placements and recommending students on the basis of appropriate evidence.

### **Social work supervisors**

Social work supervisors support social workers to meet organisational, professional and personal goals. Supervisors assist practitioners in the acquisition of skills, the understanding and application of theoretical, technical or cultural knowledge, with the aim of enhancing the practitioner's service to clients. The objectives of supervision are "professional competence, accountable and safe practice, continuing professional development, education and support"(ANZASW). Cultural and Kaupapa Maori supervision also provides cultural development and accountability. In some instances, supervisors provide administrative guidance to supervisees, and may maintain a caseload of their own.

### **Consultant social workers**

Consultant social workers deliver high-quality social work services by contributing to the development and improvement of social work practice. They contribute to policy development, deliver training, and focus on research in the field of social work practice.

# Section 5 – Education and qualifications

## An overview of the recent history of social work education in New Zealand, including current funding and entry to practice, and options for improvement

### In this section:

- Social work education
- Culturally competent social work
- Entry to practice
- Post-qualification framework

## Education

### History of social work qualification recognition by the Board

Prior to establishing the application process for registration in 2004, the Social Workers Registration Board undertook a social work qualification consultation process to:

- develop a schedule of qualifications considered recognised as at October 2004 – this established a schedule of historical qualifications
- determine the minimum qualification for recognition from the beginning of 2006
- consider transitional arrangements
- establish programme criteria and standards
- consider options for approving programmes of study.

The 2004 education provider and social service landscape at this time was complex.

There were three universities offering a range of qualifications – four-year degrees (one with an honours stream), applied master's degrees, and graduate/postgraduate diplomas.

Polytechnics, colleges of education, and institutes of technology were offering three-year degrees, some of which had embedded diploma-level qualifications as an exit point. Other polytechnics and institutes of technology offered diploma-level qualifications only.

Private providers, the industry training organisation, and Te Wananga o Aotearoa all offered work-based training diploma-level qualifications.

In addition, there were a number of qualifications that had been approved and retired, or superseded.

The process for recognising these qualifications was vested in a number of agencies:

- The New Zealand Qualifications Agency (NZQA) for programmes awarded by polytechnics, colleges of advanced education, institutes of technology, and private training providers
- Te Kaiawhina Ahumahi – the industry training organisation for the social services (under delegation from NZQA) – for the National Diploma in Social work
- New Zealand Universities Committee on University Academic Programmes – for university programmes

Some historical programmes had been approved by the NZ Council for Education and Training in Social Services or by the New Zealand Social Work Training Council – both bodies no longer in existence.

The Board's 2004/2005 Qualification Consultation process was extensive. It commenced with a Board-developed discussion document which outlined the process the Board was implementing, and the Board's legislative responsibilities, and discussed current qualifications nationally as well international perspectives on social work.

The Board met with a number of stakeholders to address concerns, which mainly related to qualifications that were not seen as social work qualifications and to the transition time frame. There was strong support for the benchmark entry-level qualification to be lifted to a degree, with a time frame for implementing this.

The Board itself had a very robust discussion about the degree-level qualification. There was strong support for a four-year degree – these had been offered by the university sector for some time, and the Board was aware of issues that might arise in the future under the Trans-Tasman Mutual Recognition Act (TTMRA), should registration become a requirement in Australia at a later date. There was also an understanding that the qualification needed to be internationally recognised.

Given the number of programmes offering only two-year diplomas and the transitions that would be required, the Board set the benchmark as a degree in social work without specifying the length. The Board was aware that this decision would need to be revisited in the future.

In terms of a transition time frame, the Board determined that all entrants to a social work programme after 1 January 2006 would need to be enrolled in a recognised degree programme. Those students who enrolled in a diploma-level qualification before 31 December 2005 would have that qualification recognised if they completed the qualification before 31 December 2009. At the same time, the Board established the minimum standards to be included in a degree-level programme.

In December 2011, the Board resolved to:

- review their programme recognition standards
- establish a programme recognition steering committee to ensure a process whereby stakeholders were consulted
- engage an external project manager to manage the review process.

In January 2012, a representative steering committee for this review was confirmed.

- Child, Youth & Family Services nominated two representatives – one from their Learning & Capability Development section and one from the Office of the Chief Social Worker.
- The District Health Boards' Social Work Leaders group nominated one representative.
- The Social Service Providers Association – an umbrella group for the non-Government sector – was also invited to nominate a representative.
- The two professional associations for social work – The Aotearoa New Zealand Association of Social Workers and The Tangata Whenua Social Workers Association – had representatives on the steering committee.
- The education sector was represented in a number of ways. The Council for Social Work Education Aotearoa New Zealand had three representatives: a university representative, a representative from the institutes of technology and polytechnic sector, and a Wananga representative.
- Other education representation involved representatives on behalf of The Asia Pacific Association of Social Work Educators, Universities New Zealand, and NZQA.

The outcome of this consultation process was a resolution to implement a four-year degree at the undergraduate level from the beginning of 2016.

The reasoning behind this decision was that four-year graduates are more work ready, are able to determine relevant evidence for practice, and are more reflective practitioners, able to utilise professional supervision. Further, the four-year degree provides time to include the additional theoretical content and skills acquisition required for practice in the 21st century.

In February 2014, the Board signed a Memorandum of Understanding with the Australian Association of Social Workers. This MOU with Australia was developed in preparation for mandatory registration in both countries and compliance with TTMRA. The move to the four-year degree was a strong influencing factor for the AASW to consider this.

The Board works closely with a number of social work regulatory authorities internationally, particularly in relation to education qualification standards.

The Board also has an MOU with NZQA regarding NZQA approval and accreditation processes and Board recognition processes for social work degrees. The MOU was developed in recognition of a number of inherent challenges when working with NZQA criteria, especially the lack of specificity required for professional degrees in their recognition process.

In 2016, the Board undertook a further consultation and review of the programme recognition standards. These 2016 standards are publicly available on the Board's website. They are being progressively implemented as programmes undertake their scheduled review.

## The delivery of recognised social work qualifications in New Zealand (2015)

### Current SWRB Recognised Social Work Qualifications

There are currently 17 providers of recognised social work degree qualifications in New Zealand that deliver over 29 sites.

	Provider and Site	Qualification
1	Bethlehem Tertiary Institute (Tauranga)	Bachelor of Social Work
2	Ara Institute of Canterbury (Christchurch)	Bachelor of Social Work
3	Eastern Institute of Technology (Tairāwhiti)	Bachelor of Social Work
4	Eastern Institute of Technology (Taradale)	Bachelor of Social Work
5	Massey University (Auckland)	Bachelor of Social Work (may be awarded with Honours) Master of Applied Social Work (may be awarded with Honours)
6	Massey University (Palmerston North)	Bachelor of Social Work (may be awarded with Honours) Master of Applied Social Work (may be awarded with Honours)
7	Manukau Institute of Technology (Auckland)	Bachelor of Applied Social Work
8	Manukau Institute of Technology (Kaitiāia)	Bachelor of Applied Social Work – recognised for 1 intake only.
9	NorthTec	Bachelor of Applied Social Work
10	Open Polytechnic	Bachelor of Social Work
11	Te Wānanga o Aotearoa (Porirua)	Bachelor of Bicultural Social Work
12	Te Wānanga o Aotearoa (Gisborne)	Bachelor of Bicultural Social Work
13	Te Wānanga o Aotearoa (Palmerston North)	Bachelor of Bicultural Social Work
14	Te Wānanga o Aotearoa (Hamilton)	Bachelor of Bicultural Social Work
15	Te Wānanga o Aotearoa (Manukau)	Bachelor of Bicultural Social Work

<b>16</b>	<b>Te Wānanga o Aotearoa (Tauranga)</b>	Bachelor of Bicultural Social Work
<b>17</b>	<b>Te Wānanga o Raukawa (Kaikohe)</b>	Poutuārongo Toiora Whānau
<b>18</b>	<b>Te Wānanga o Raukawa (Otaki)</b>	Poutuārongo Toiora Whānau
<b>19</b>	<b>Te Wānanga o Raukawa (Pukekohe)</b>	Poutuārongo Toiora Whānau
<b>20</b>	<b>The University of Auckland (Auckland)</b>	Bachelor of Social Work Bachelor of Social Work (Honours) Master of Social Work (Professional) (may be awarded with Honours)
<b>21</b>	<b>Unitec Institute of Technology (Waitakere)</b>	Bachelor of Social Practice
<b>22</b>	<b>University of Canterbury (Christchurch)</b>	Bachelor of Social Work (may be awarded with Honours) Master of Social Work (Applied)
<b>23</b>	<b>University of Otago (Dunedin)</b>	Bachelor of Social Work Bachelor of Social Work (Honours)
<b>24</b>	<b>University of Waikato (Tauranga)</b>	Bachelor of Social Work (may be awarded with Honours)
<b>25</b>	<b>Toi Ohomai Institute of Technology (Rotorua)</b>	Bachelor of Social Work
<b>26</b>	<b>Whitireia New Zealand (Porirua)</b>	Bachelor of Social Work
<b>27</b>	<b>Whitireia New Zealand (Nelson)</b>	Bachelor of Social Work
<b>28</b>	<b>Wintec (New Plymouth)</b>	Bachelor of Social Work
<b>29</b>	<b>Wintec (Hamilton)</b>	Bachelor of Social Work

### Academic workforce capacity

With 17 providers and 29 delivery sites, the Board is concerned that the current number of social work qualifications available is not sustainable, especially in terms of the academic workforce required to teach a professional qualification leading to registration.

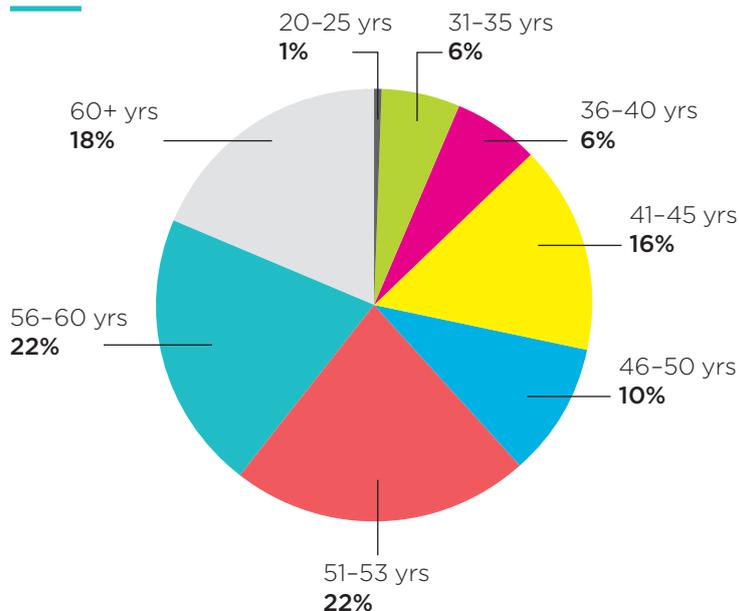
In 2015, the Board surveyed the current providers of recognised social work qualifications. Responses to the workforce survey were received from all 17 providers, with 143 responses in total.

This is the first national snapshot of the social work academic workforce that the Board is aware of. Of the current academic workforce, 77.14% are Registered Social Workers, and 73.57% work full time.

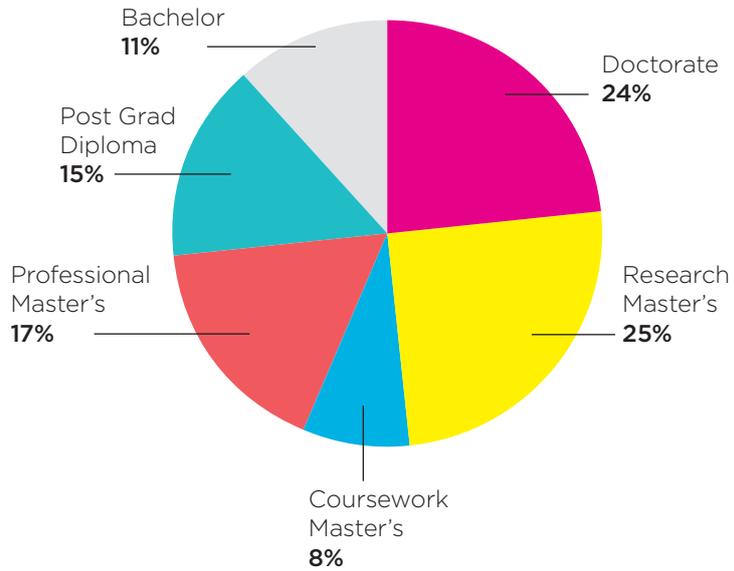
The following graphs indicate that the workforce is ageing and has a higher than anticipated number of members without the research qualifications expected of academics teaching professional social work qualifications.

Note that only 48.57% have the preferred higher research qualification, and if the non-professional Master's is added, only 56.43% have a Master's qualification that is not their first professional social work qualification.

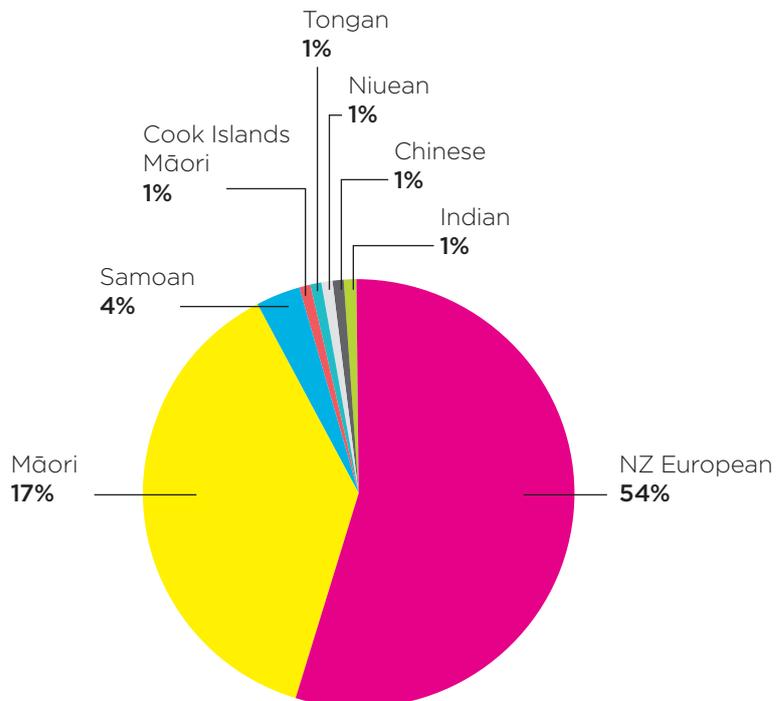
### Age



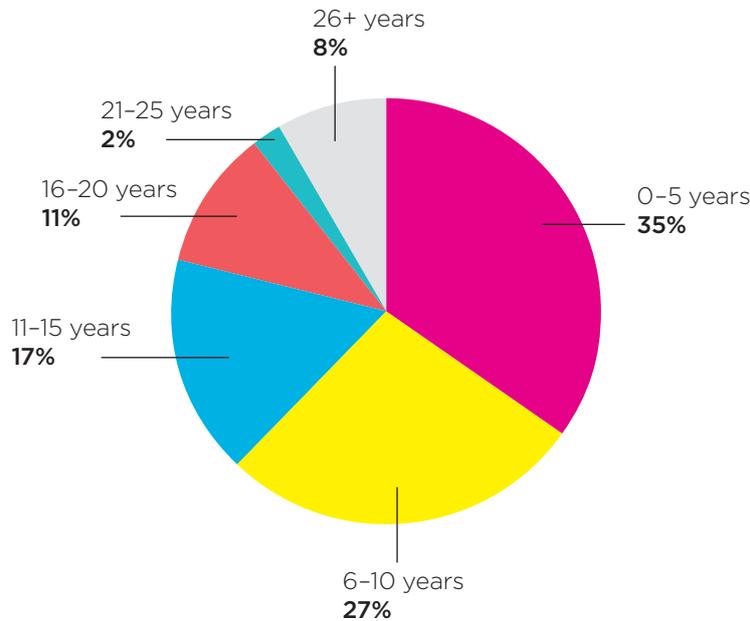
## Qualification level



## Ethnicity



## Number of years' academic practice



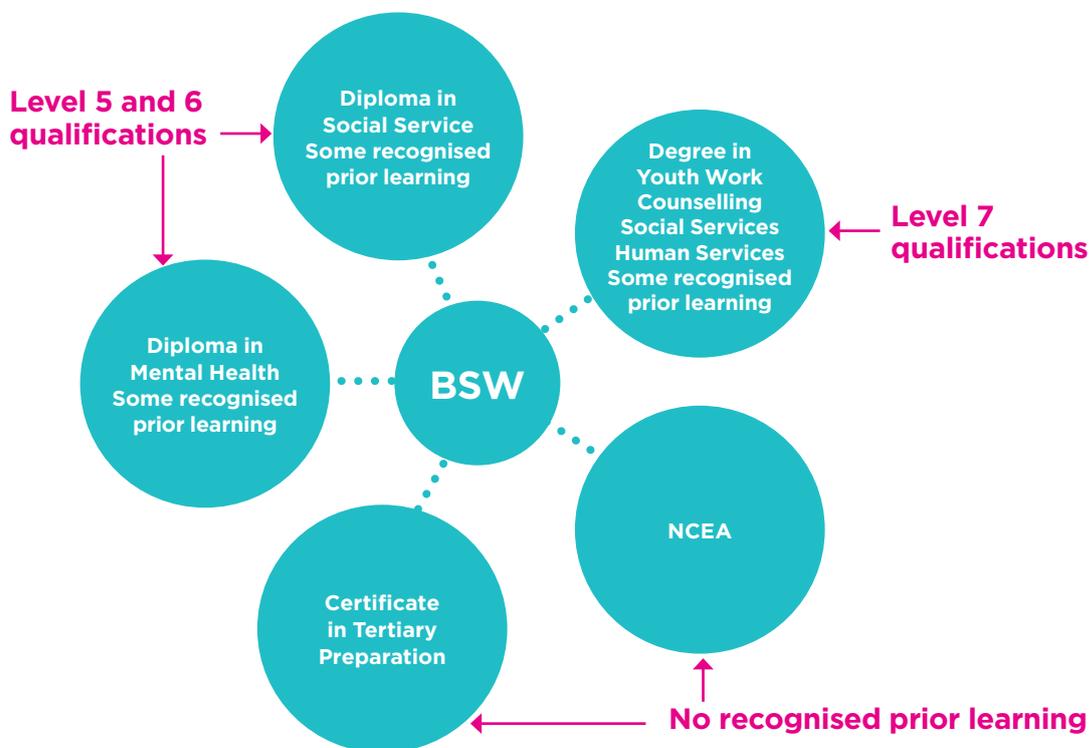
## Pathways into social work qualifications

There are multiple entry points into the recognised social work Bachelor's degree, to ensure that pathways exist for those wanting to enter the profession or those currently working in the social services sector who wish to move into professional social work.

The Board is concerned, however, that within the polytechnic, wānanga and private training establishment (PTE) sector, there is no articulation out of a Bachelor of Social Work degree. However, within the University sector, if it becomes apparent that the student is not professionally suited or is not managing academically, they may be transferred to a non-professional qualification, such as a Bachelor of Arts degree at the same institution.

These are the entry points or pathways into recognised social work qualifications.

- 1 Individuals who already hold level 5 or 6 diploma qualifications in allied health or social services, for example, can gain entry to a recognised social work degree and can utilise some of the diploma as recognised prior learning.
- 2 Individuals with level 7 degree qualifications in allied health or social services, for example, can also gain entry to a recognised social work degree and can utilise some of the degree as recognised prior learning.
- 3 Individuals with level 4 or below certificate qualifications can also gain entry to a recognised social work degree but are not able to utilise some of the certificate as recognised prior learning.



- 4 Individuals with a Bachelors' degree in a related social science can gain entry into a Master's of Social Work (Applied) as their first professional qualification. However, there are limited places available into these qualifications. We recommend that the current moratorium on new qualifications be lifted for Master level qualifications.

**Degree in Related Social Science Area**



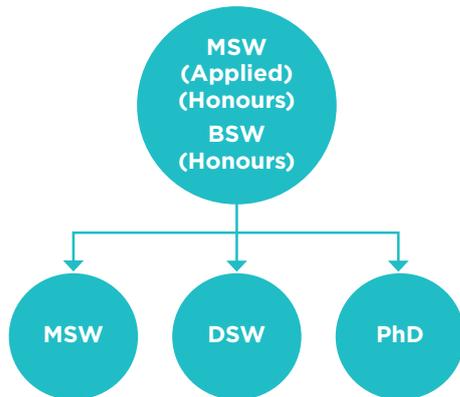
## Pathways to higher research degrees

The current academic workforce is similar to the current practice workforce in that it is an underqualified and ageing population. In order to support the development of the profession at both an academic and operational level, there needs to be investment in participation in higher research degrees.

Currently the following options are available within social work education for beginning academics as well as senior practitioners, and these options need to be factored into a post qualification framework for our lead social workers.

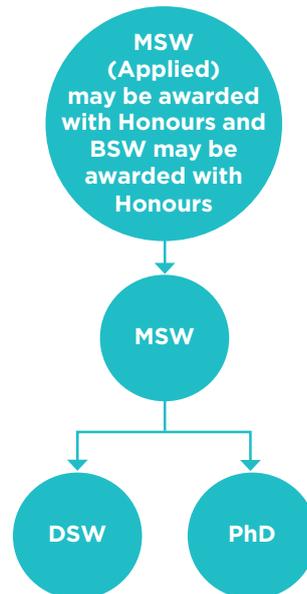
### Option 1

Social workers who hold either an Applied Master in Social Work (Honours) or a BSW (Honours) are able to enter a professional MSW, DSW, or PhD programme.



### Option 2

Social workers who hold either an MSW (Applied) that may be awarded with Honours or a BSW that may be awarded with Honours are able to enter a professional MSW and subsequently a DSW or PhD programme.



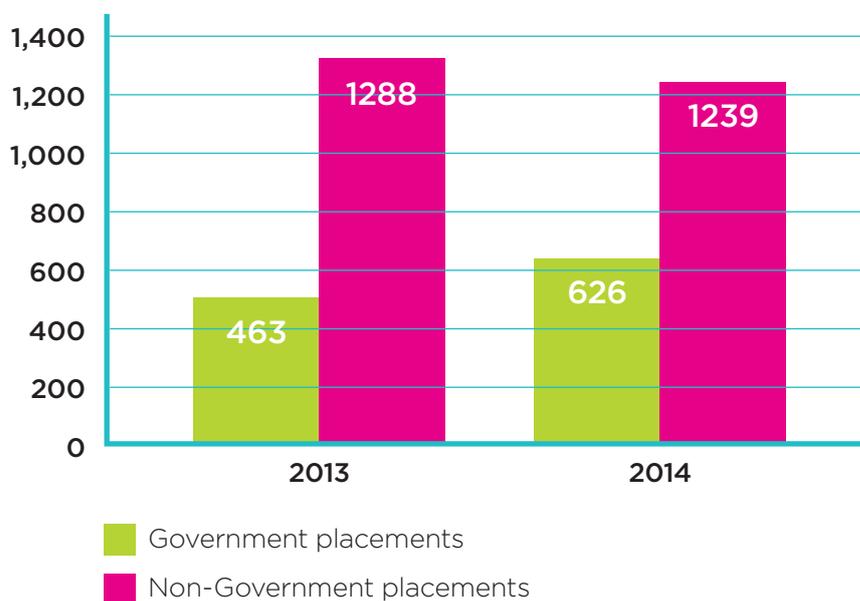
## Current placement provision

As noted, there are currently 17 providers of social work qualifications, and these qualifications are being delivered over 29 sites. As part of a first professional qualification in social work, there is a requirement that students complete 120 days of placement within a social work service. This is usually undertaken in two 60-day placements, one in year three and one in year four. Placements are important to social work students as they provide an introduction to social work practice, and the opportunity to put theoretical knowledge into practice. They also give students an insight into the area in which they want to work after graduating. A significant number of students go on to be employed by the organisations in which they complete placements.

The graph below shows the demand for placements over 2013 and 2014. There were 1,751 and 1,865 students completing placements in those years, respectively. It is important to note that the non-Government sector provides the largest proportion of placements, and currently the public sector employs the most Registered Social Workers.

There is a concern that the combined public and non-Government sector is close to capacity in regard to the number of available placements, but there is a need for the public sector to consider the percentage of students that they take on placement, given the need to have graduates knowledgeable about the work of agencies such as Child, Youth and Family. There is also concern that some students are placed in agencies where they may not receive the necessary social work practice experience. The 2016 review of the SWRB Programme recognition standards requires providers to undertake an assessment of placement providers.

In order to better manage the delivery of placements, to ensure that students are guaranteed placement opportunities and that they are exposed to practice within various agencies, it is recommended that students are registered with the Social Workers Registration Board as Student Social Workers.



A light-touch registration framework for students would have the following benefits:

- fitness to practise assessments would be standardised
- progression, retention, and completion rates would be nationally monitored
- placement experience could be tracked
- graduate destinations would be monitored

In order to manage the student registration and placement process, the Board would require all tertiary education institutions providing recognised social work qualifications to enter into documented partnership agreements with placement providers. These partnership agreements would document annual placement numbers for each institution and ensure that there were an appropriate mix of placements that reflected the needs of the students, the community, and local social work employers. Funded student numbers within qualifications would not exceed these agreed placement numbers, to ensure that there was consistency for students, education providers, and placement providers, in the area. The current model of funded student numbers not being capped has resulted in:

- many students being placed in organisations that do not have the capacity to provide a learning opportunity for the students
- some students currently employed remaining in their place of work for their placement – the Board is concerned that no new learning has taken place.

The Board believes that education providers and placement agencies should consider other placement models. These could include the following:

### Placement banks

Placements across all social work qualifications are managed by a central agency. The agency negotiates placements with social work organisations, ensures that adequate resources such as supervisors are available and monitors the placement to confirm the learning objectives are clear and met.

### Student units

Student units are dedicated placement groups within a social work organisation that are assigned a supervisor / field work educator. The assigned supervisor / field work educator oversees the placement and ensures that each student's learning objectives are met and the students and organisation benefit from the placement.

### Dedicated education units

Dedicated education units are similar to student units but provide broader learning objectives and opportunities for students. For example a dedicated education unit could exist within a District Health Board facility and social work students would work alongside other students in a multi-disciplinary setting that reflects actual practice within the organisation.

Providers should also consider options whereby multidisciplinary placements could occur across all placement models not just the dedicated education unit example.

## An assessed and supported first year of practice within a social work post-qualifying framework

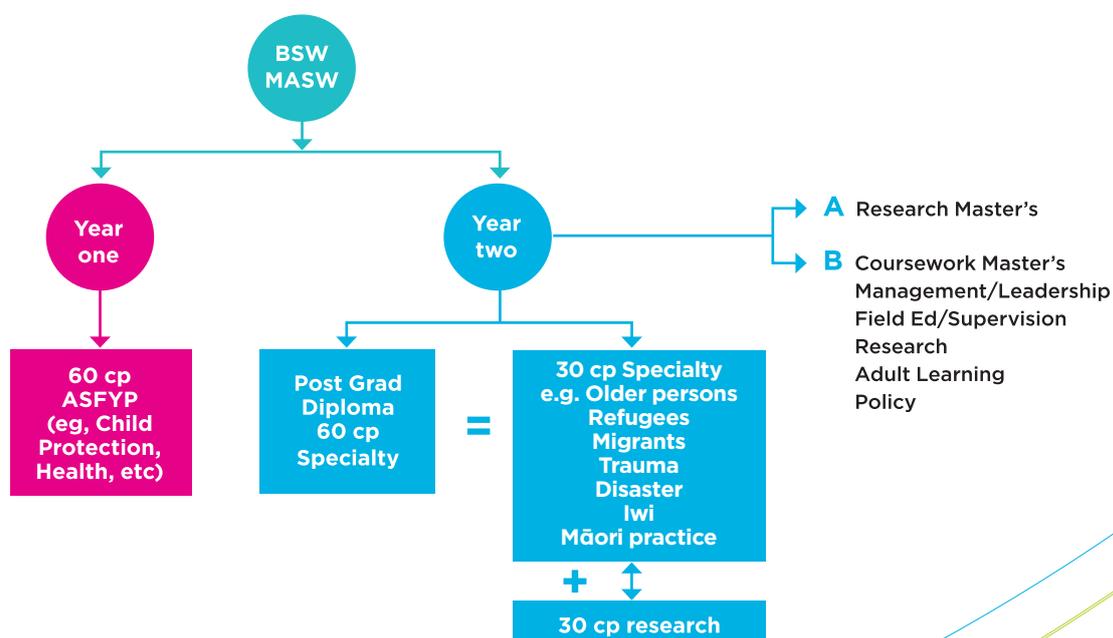
A number of professions in New Zealand (for example, nurses, doctors) and the social work profession in the UK are supported to undertake an entry to practice first year. This ensures that graduates with beginning practitioner skills are further educated, supervised, and mentored as they move towards being independent practitioners.

It is the view of the Board that, to address the issue of graduates gaining specialised knowledge to further their base social work skills, a regulated post-qualifying framework, including an Assessed and Supported First Year of Practice (ASFYP), should be implemented. This framework would be linked to recognised postgraduate qualifications.

Completion of an ASFYP would be a requirement for new graduates wanting to enhance their social work career within a specialised scope of practice (e.g. Care and Protection, Health, etc.). Graduates would, as a minimum, progress through to the completion of stage two with the opportunity to build on this through to stage four as their social work career develops.

The following is an example of how this process would work within the New Zealand social work and education sector:

- At stage one of the post-qualifying framework, the social worker enters the profession with either a BSW or MSW (Applied) as their first professional qualification.
- At stage two, the social worker undertakes an Assessed and Supported First Year of Practice (ASFYP) at a 60-credit point level (post-graduate certificate).
- At stage three, the social worker continues into the specialty area by completing a 60 credit point post-graduate diploma, consisting of 30 credit points of specialty practice and a 30 credit points research paper.
- At stage four, the social worker can continue further by completing either:
  - a research Master's
  - a coursework Master's



It order to fund the ASFYP, the Board considers that the current amount spent on the Ministry of Social Development NGO scholarships would be better redirected to an ASFYP Ministry of Social Development NGO Scholarship programme. We note that new NGO scholarships are not being offered.

The amounts spent over the past seven years on Ministry of Social Development NGO scholarships are outlined below. Additional funding could also be provided from Health workforce to support social workers in Health. This would be in addition to the current Te Pou funding for social workers and occupational therapists new to mental health. The Te Pou funding is not specifically for ASFYP.

	Student support	Fees	Total	No of students
<b>Year ending 30 June 2009</b>	\$813,111	\$373,486	\$1,186,597	163
<b>Year ending 30 June 2010</b>	\$762,361	\$486,370	\$1,248,731	167
<b>Year ending 30 June 2011</b>	\$872,411	\$523,821	\$1,369,232	164
<b>Year ending 30 June 2012</b>	\$961,909	\$470,999	\$1,432,908	176
<b>Year ending 30 June 2013</b>	\$943,890	\$487,157	\$1,431,047	181
<b>Year ending 30 June 2014</b>	\$1,034,216	\$475,182	\$1,509,398	178
<b>Year ending 30 June 2015</b>	\$906,624	\$430,871	\$1,337,495	163

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## Funding for social work education

One of the significant areas of concern for the Board is the current level of funding for recognised social work qualifications and the lack of funding for placements and field education.

### Field education costs for placements

The cost to a social service agency of a student on a field education placement, as it pertained to staff time, was estimated to be \$3,168 per placement student.

This estimate was based on the assumption that agency staff would spend approximately eight hours per week supporting each student.

An hourly rate of \$33 for staff time was derived from the Child, Youth and Family social worker scale. The other assumption was that the placement would be the standard 12 weeks. Using this model, it is estimated that the cost for the two 12-week placements, which are standard across most tertiary providers, would be \$6,336.

In order to address the lack of funding for social work education, it is necessary to look at the current funding rates for tertiary education.

The 2016 Student Achievement Component (SAC) funding rates table below provides an overview of the funding rates available by category. For the purposes of this review document, we have only provided Categories A and B to illustrate the Board's view. The full table can be found on the Tertiary Education Commission website.

<http://www.tec.govt.nz/Resource-Centre/Rates-categories-and-classifications/SAC-Rates/2016-SAC-funding-rates/>

Social Work is currently funded at Category A2.

## All Subsectors (GST Exclusive) Level

Category	Description	1	2	3	4	5
A	Arts [#03], Social Sciences [#03], General [#5.2], Vocational Training for Industry [#22.1]	\$6,014	\$6,135	\$7,743	\$8,189	\$3,405
B	Architecture (non-degree) [#02], Computer Science [#06], Fine Arts, Design [#12], Music and Performing Arts [#16], Health-related Professions #17], Vocational Training for Industry [#22.1], Medical Imaging [#25], Occupational Therapy [#28], Clinical Psychology [#34]	\$9,200	\$9,384	\$11,931	\$12,827	\$6,242

More detailed information to ensure the funding rate and course classification combinations are valid is provided in the Tertiary Education Commission's *Student Achievement Component Course Classification Guide for 2016 - The 1-39 classification prescription* published in September 2015.

The following table provides further information in relation to the current funding level of A2 and A3 for BSW and MASW social work qualifications respectively.

### #03: Arts; Advanced Studies for Teachers; Health Therapies; Humanities; Languages; Social Sciences

#### Course classification

Degree/Diploma/Certificate or other award/qualification, appropriately approved by the Universities New Zealand's Committee on University Academic Programmes, the New Zealand Qualifications Authority (NZQA), or relevant delegated quality assurance bodies: Funding Category A1-5.

Advanced Studies for Teachers	All languages (e.g. Arabic, Japanese)
American Studies	Ancient History
Animal Care and Handling	Anthropology
Applied Mathematics	Architectural History
Aromatherapy	Arts and Crafts (not meeting criteria for #12)
Art History	Asian Studies
Aviation Theory	Beauty Therapy
Body Therapy	Bridging Courses (Note 1)
Classics	Communication Studies
Community, Whanau and Family Studies	Complementary Health Therapies
Counselling (Note 3)	Criminology
Cultural Studies	Dental Assistants (not Hygienists, Therapists or Technicians)
Demography	Design / Applied Arts (not meeting criteria for #12)
Design History	Diversional and Recreational Therapy
Drama (not meeting criteria for #16)	Early Childhood Education (not meeting criteria for #19)
Economic History	Education
English	English as a Second or Other Language
Ethics (other than Legal)	Exercise, Sports and Recreation Studies (Note 2)
First Aid	Fitness Instruction
Foundation Health Studies (Note 1)	Funeral Directing
Health Care Assistants	Health Promotion
Health Related Courses	Herbal Studies
History	Homeopathy
Humanities	Hypnotherapy

Journalism	Languages
Law Enforcement	Librarianship and Information Studies
Linguistics	Literature
Māori Studies	Massage
Mathematics	Media Studies
Music History	Music (not meeting criteria for #16)
Nanny and other Childcare Education (not meeting criteria for #19)	Naturopathy
Neuromuscular therapy	Nursing Care - animals
Nursing (not meeting criteria for #17 or #24)	Occupational Health and Safety
Paramedical Studies	Performing Arts (not meeting criteria for #16)
Pest control - Health and Safety Related (Domestic pests e.g. rats, mice, cockroaches)	Pharmacy (shop) Assistant
Philosophy	Police Studies
Policy Studies / Political Science	Radio / Television (not meeting criteria for #16)
Rafting and other Adventure Sports	Recreational Studies (Note 2)
Reflexology	Religious Studies
Religious Studies / Mission and Ministry Training	Rest Home Workers
Security Services	Sign Language (other than teaching teachers or interpreters)
Social and Public Policy	Social Anthropology
<b>Social Work</b>	Sociology
Sports Coaching	Sports Playing
Sports Studies	Statistics
Teaching People with Disabilities	Tertiary Teaching/Certificates/Diplomas (JEB Qualification)
Theatre and Film Studies (not meeting criteria for #16)	Theology
Therapeutic Massage	Therapeutic Recreation
Traditional Chinese Medicine	Women's Studies

**Notes:**

- 1 Classify as #03 those foundation and bridging courses that equate to a revision of secondary school curriculum at International Standard Classification of Education (ISCED) level 3 (levels 1 to 3 of the New Zealand Register of Quality Assured Qualifications or years 11 to 13 of the secondary school system).
- 2 Classify as #03 Recreational Studies, other than those which conform to ISCED 09 courses and are classified as #5.2, which do not meet the criteria for classification as either #13 or #18.
- 3 Any health-related training/staff development courses remain the responsibility of the individual or the employer. These are programmes of less than six months that provide skills and expertise that meet employers' specific needs rather than national health service requirements, or programmes that do not provide national qualifications. Tertiary Education Organisations (TEOs) must report these Equivalent Full-Time Student (EFTS) units as cost recovery EFTS units.

The Board believes the current A2 classification for social work does not recognise the level at which the qualification is required to be delivered, the costs associated with the practicum requirements of a professional degree, and the fact that other professional qualifications are funded at a different level.

The Board proposes two options with regard to social work education funding:

**Option A**

- Move funding for the current Bachelor of Social Work from A2 (\$6,135) to B2 (\$9,384)
- Move funding for the current Master of Social Work (Applied) from A3 (\$7,743) to B3 (\$11,931).

The additional funding would be 'ring-fenced' and separated from educational institution overheads and be specifically for placement management costs. If the separation of these costs is not possible within the current TEC funding model arrangement, then an outside agency, such as the Social Workers Registration Board, could manage the allocation of this funding to providers. This could be incorporated into the proposed student registration framework to ensure efficiency and consistency of funding based on pre-negotiated student numbers.

For the current numbers of social work students, this would require additional funding. Consideration should, however, be given to the Board's concern, noted earlier, about the number of providers of social work education, the impact that this has on the social work academic workforce, and the need to provide an Assessed and Supported First Year of Practice framework.

### Option B

- Move funding for the current Bachelor of Social Work from A2 (\$6,135) to B2 (\$9,384) only for years 3 and 4 of the degree.
- Move funding for the current Master of Social Work (Applied) from A3 (\$7,743) to B3 (\$11,931).

Again, the additional funding would be 'ring-fenced' and separated from educational institution overheads and be specifically for placement management costs. If the separation of these costs is not possible within the current TEC funding model arrangement, then an outside agency, such as the Social Workers Registration Board, could manage the allocation of this funding to providers. This could be incorporated into the proposed student registration framework to ensure efficiency and consistency of funding based on pre-negotiated student numbers.

As noted above, for the current numbers of social work students, this would require additional funding. Consideration should, however, be given to the Board's concern noted earlier, about the number of providers of social work education, the impact that this has on the social work academic workforce, and the need to provide an Assessed and Supported First Year of Practice Framework.

### Ratio of Bachelor of Social Work to Master of Social Work (Applied) students

For both options it is suggested that the ratio of BSW: MASW be 85:15. A move to this ratio would require either a reduction in the number of undergraduate places available or increasing places for masters level students. As previously noted the SWRB suggests lifting the moratorium on new programmes for master level programmes.

As noted above, more detailed information to ensure the funding rate and course classification combinations are valid is provided in the Tertiary Education Commission's *Student Achievement Component Course Classification Guide for 2016 - The 1-39 classification prescription* published in September 2015.

The following provides further information in relation to the proposed funding level of B2 and B3 for BSW and MASW social work qualifications respectively.

## #17: Health Related Professions

### Programme classification

Degree/Diploma/Certificate or other award/qualification, appropriately approved by the Universities New Zealand's Committee on University Academic Programmes, the New Zealand Qualifications Authority (NZQA), or relevant delegated quality assurance bodies: Funding Category B1-5.

A provider of health-related training must be accredited by the relevant health professional body pursuant to section 12 of the Health Practitioners' Competence Assurance Act 2003 before its qualifications can be approved for funding under this classification.

**Professional degree and diploma courses** specific to the discipline may be aggregated on a qualification basis. Some health-related professional education and training qualifications have a Clinical Training classification that attracts a Clinical Training Adjustment. Record them in that classification (#24–37) in statistical returns and not as #17. Postgraduate courses do not attract clinical training funding adjustments. Record them as #17.

Nationally recognised programmes of study in:

- Applied Counselling (note 2)
- Chiropractic (note 2)
- Dental Hygienists (not Assistants)
- Forensic Psychiatry (note 2)
- Medical Imaging (Clinical Undergraduate: Training classification #25) (notes 2 and 5)
- National Certificate in Counselling/Applied Counselling (Advanced. See note 2)
- Nursing (Enrolled programme) (note 7)
- Occupational Therapy (Clinical Undergraduate Training: classification #28)
- Pharmacy Technician (note 2)
- Physiotherapy (Clinical Training: classification #29)
- Psychotherapy (note 2)

**Notes:**

- 1 Fitness and first aid courses are classified #03.
- 2 To meet the criteria for classification in #17 qualifications must be an integrated full-time programme of study with a minimum of 50% supervised, applied clinical teaching, lasting not less than one year, be taught by professionally qualified staff, and must have NZQA or the Universities New Zealand's Committee on University Academic Programmes approval, otherwise it will be classified in #03.
- 3 Any health related training/staff development courses (defined as programmes which are less than 6 months, provide skills and expertise which meet employers' specific needs rather than national health service requirements or do not provide national qualifications) remain the responsibility of the individual or the employer. Such EFTS enrolments must be reported as cost recovery EFTS places.
- 4 Academic papers offered separately from the health professional degree qualifications to meet an individual need are to be classified in #03.
- 5 Leads to registration as a Medical Radiation Technologist.
- 6 Elective courses within the programme not specific to the discipline but of general interest such as Art or Music etc. must be disaggregated to the appropriate classification.
- 7 All comprehensive nursing programmes also require Nursing Council approval, as does the Enrolled Nursing Programme.

It is recommended that, once the review of the SWRA is completed, the Board discuss this further with the Ministry of Education.

# Section 6 – Registration

## Voluntary registration (certification) and mandatory registration (licensing)

### In this section:

- Voluntary registration
- Mandatory registration
- The limitations of the current voluntary framework

### Voluntary registration

The nature of social work means that social workers are often engaging with vulnerable individuals, families, and communities, who are coping with stressful life events. It is important that people in vulnerable situations are protected from any harm which may result from poor social work practice. The present Government is focused on improving workforce capability to protect our most vulnerable members of society. The Board has previously recommended introducing mandatory social worker registration to help achieve this.

In 2003, voluntary registration of social workers was introduced with the passing of the Social Workers Registration Act (the Act). The Act helps to provide the public with the assurance that Registered Social Workers meet professional standards of competent practice, undertake ongoing professional development, and are held accountable for their practice.

The Act created the Board and the Social Workers Complaints and Disciplinary Tribunal. The Tribunal provides additional protection to the public from poor social work practice. This protection is currently only available where the public's engagement is with a Registered Social Worker. The Tribunal has no jurisdiction over a social worker who is not registered.

### Voluntary registration (certification)

The Act introduced a certification model of regulation. Under a certification system, a registration board certifies that individuals are competent to practise social work. Only people who have successfully met all the registration criteria and completed a competency assessment can use the title 'Registered Social Worker'. Under a certification system, people can still practise using the title 'Social Worker' without being registered.

### Mandatory registration (licensing)

The Act can, however, be changed to a licensing model which would make registration mandatory for all practising social workers. When the Board reviewed the Act in 2007, the majority of submitters proposed that registration become mandatory.

Licensing the social work profession means that to practise as a social worker, individuals will have to be registered. Under a licensing system, people will no longer be able to practise using the title 'Social Worker' without being registered.

### The limitations of voluntary registration

Professional organisations and employers, often illustrated through examples and case studies, have identified the limitations of the current voluntary system of social work registration in comparison to the benefits of mandatory statutory regulation.

- 1 The Act introduced a certification model of regulation, and under this certification system, people could still practise using the title 'Social Worker' without being registered. With only the title 'Registered Social Worker' being protected under the legislation, there was considerable confusion for both the public and employers in that anyone could still use the more publicly recognised title 'Social Worker' and, with that, it was assumed that they were registered and met the minimum qualification, competence, and practical experience required to be professional social workers. Registered Social Workers felt their hard-earned registration was undermined and their professional status diminished because anyone could still call themselves a social worker, and the SWRA could not hold unregistered social workers to account. Protection of title would help consumers to make informed choices by allowing them to differentiate between those who are experienced and qualified and those who are not.
- 2 Although an employer might make registration a condition of employment, there is no legal compulsion for an individual to be registered. As a result organisations and employers are unable to apply standards and fitness-to-practise processes to individuals who chose not to register or who remove themselves prior to, during, or as a result of, investigations. As the current SWR Act is written the SWRB is also unable to demand information or compel witnesses as part of fitness-to-practise proceedings. A lack of mandatory statutory regulation means that alleged misconduct or lack of competence cannot be dealt with properly. Employers have often been reluctant to share information with the Social Workers Registration Board in a voluntary registration environment, delaying or, in some cases, halting investigations. A registered social worker removed from the voluntary register owing to serious concerns about their conduct or competence can remain in practice.
- 3 As the scheme was voluntary, the costs of registration were borne by those who applied, and because registration was not mandatory, only a committed portion of the social work profession initially applied for registration, and, therefore, they shouldered the burden of the initial costs of creating a registration framework for the entire profession. The SWRB worked to reduce costs where it could, but as the Board was set up to become a self-funding crown entity, the costs associated with registration were required to be covered by the fees associated with registration.

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- 4 Section 14(2) of the SWRA allows for unqualified social workers with little or no experience to gain registration on the basis that they have the intention of completing a qualification within eight years. The purpose of this section was to provide a transition period for all social workers, especially those in the public sector, to work towards meeting the minimum qualification for registration which was, at that time, a diploma qualification. This recognised that there were significant numbers of unqualified social workers in the profession, and that, in order to improve the delivery of social work practice, it was necessary for those individuals to improve their theoretical and practical knowledge and skills. The unintended consequence, however, was that this had little impact on the qualification level and practice of many now 'Registered Social Workers' as, although they were supported by their employers to register, there was no intention or requirement for them to undertake a recognised social work qualification.
  
  - 5 Registered Social Workers were registered under an Act of Parliament. Once registered, they were legally obligated to maintain their registration, hold practising certificates, complete competence assessments, and undertake continued professional development. This was the purpose of the legislation, and social workers expected that their profession standing would be enhanced with the recognition that a registration system had afforded other professions. However, with the voluntary nature of the system, many Registered Social Workers began to question the value of registration if it was not a requirement for all and mistakenly thought they could voluntarily 'opt out'. This resulted in further confusion for the employers of social workers, the social work profession, and the public, and because the Board was required to implement the legislation, many Registered Social Workers found themselves the subject of disciplinary action under the SWRA for not maintaining their registration.

# Section 7 – Legislative Reform

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## Proposed legislative reform of the Social Workers Registration Act 2003

### In this section:

- A brief overview of the purpose and scope of the legal issues paper
- A summary of issues and options

The SWRB engaged the firm of Luke, Cunningham and Clere, Barristers and Solicitors and Office of the Crown Solicitor to undertake a legal issues assessment of the Social Workers Registration Act 2003. Luke, Cunningham and Clere have been the SWRBs legal representatives since the Act was introduced and have a very extensive working knowledge of the legislation.

More detailed information from the Legal Issues paper is provided as appendix1.

### Purpose

- 1 The purpose of the Issues Paper is to identify and discuss key problems in the operation of the Social Workers Registration Act 2003 (**SWRA**), particularly in light of the Vulnerable Children Act 2014 (**VCA**). As well, this Issues Paper will identify, where appropriate, options to simplify the SWRA and remove barriers and costs.

### Social Workers Registration Act 2003

- 2 The SWRA came fully into force on 1 October 2004.<sup>1</sup> Particular features of the SWRA will be considered in greater detail later, but at this point it may be helpful to briefly describe the SWRA. The purposes of the SWRA include:<sup>2</sup>
  - (a) to protect the safety of members of the public through mechanisms to ensure that social workers are competent to practise and accountable for their practice
  - (b) to that end, to create a framework for registration of social workers
  - (c) to establish a Board to promote the benefits of registration
  - (d) to enhance the professionalism of social workers.
- 3 The SWRA provides for individuals to apply to the Social Workers Registration Board (Board) for registration as a social worker. The Board must consider an application for registration and decide whether a person is competent and a fit and proper person to practise social work. This requires completion of a competence assessment.
- 4 Any registered person who wants to practise social work must also apply for a practising certificate to do so. The registration and/or practising certificate of a Registered Social Worker may be subject to conditions or restrictions.

<sup>1</sup> Some provisions of the SWRA had come into force earlier.

<sup>2</sup> Social Workers Registration Act 2003 [SWRA], section 3.

- 5 Registered Social Workers are subject to the oversight and disciplinary regulation of the Board and the Social Workers Complaints and Disciplinary Tribunal (**Tribunal**) and, in some cases, the Health and Disability Commissioner. Complaints or concerns about a social worker's conduct or fitness to practise social work may result in suspension or cancellation of his or her registration or practising certificate, or other disciplinary action.

## Vulnerable Children Act 2014

- 6 The VCA fully entered into force on 1 July 2015. It has three parts, which have different purposes.

### Priorities and policies

- 7 Part 1 of the VCA deals with Government priorities for vulnerable children. Its purpose is to support the Government's setting priorities to improve the well-being of vulnerable children and to ensure that children's agencies work together to do so.<sup>3</sup> It provides that the Minister may set Government priorities for improving the well-being of vulnerable children.<sup>4</sup> Once those priorities are set, children's agencies must develop a Vulnerable Children's Plan, setting out steps that will be taken to work together to achieve the Government priorities.<sup>5</sup> Children's agencies are required to report on the implementation of the plan.<sup>6</sup>
- 8 The purpose of Part 2 of the VCA is to require child protection policies to be adopted by certain state services, District Health Boards (**DHBS**), and school boards. A child protection policy must be in writing, apply to the provision of services to or in respect of children, and contain provisions on the identification and reporting of child abuse and neglect.

### Safety checks

- 9 Part 3 of the VCA establishes requirements for the safety checking of those who work with children.
- 10 For the purpose of Part 3 of the VCA, a 'children's worker' is a person who provides a regulated welfare, support, justice, health, education, transport, or policing service, and whose work may or does involve regular or overnight contact with a child and takes place without a parent or guardian of the child being present.<sup>9</sup> Relevantly for present purposes, the regulated services include, in general terms:<sup>10</sup>

<sup>3</sup> Vulnerable Children Act 2014 [VCA], section 4.

<sup>4</sup> Section 7.

<sup>5</sup> Sections 8 and 9.

<sup>6</sup> Section 11.

<sup>7</sup> Sections 14 and 16-18.

<sup>8</sup> Section 19.

- (a) services provided under the Children, Young Persons, and Their Families Act 1989 (CYPFA) or by any care and protection coordinator
- (b) services (provided by any person) arising out of a decision, recommendation, or plan made at a family group conference under the CYPFA
- (c) social or support services
- (d) home-based or residential disability support services.

- 11** State services or local authorities that provide regulated services, and individuals or organisations that are funded in whole or in part by state service or local authorities to provide related services (**regulated organisations**), are required to ensure that a safety check of a person has been completed before that person is employed or engaged as a children's worker.<sup>11</sup> The VCA requires existing children's workers also to be safety checked upon the VCA coming into force.<sup>12</sup> Children's workers must then be safety checked every three years.<sup>13</sup> This is referred to in this Issues Paper as a **safety check**.
- 12** Further restrictions apply to core workers. A children's worker is a 'core worker' if his or her work requires or allows that he or she is the only children's worker present with a child, or he or she has primary responsibility for or authority over the child.<sup>14</sup> A regulated organisation must not employ or engage a children's worker as a core worker if he or she has been convicted of a specified offence, including child sex offences and serious violent offences.<sup>15</sup> However, the Chief Executive of the Ministry of Social Development, Ministry of Health, Ministry of Education, or Ministry of Justice may grant an exemption permitting a person convicted of an offence to be a core worker if satisfied that the person would not pose an undue risk to the safety of children if employed or engaged as a core worker.<sup>16</sup> This Issues Paper refers to this as the **core worker check**.

### Interaction with the SWRA

- 13** It is the safety check requirements of Part 3 of the VCA that have the most potential to intersect with the SWRA, given that many social workers work with children and many are employed by regulated organisations.

### Other relevant legislation

- 14** The Children, Young Persons, and Their Families Act 1989 (**CYPFA**), Care of Children Act 2004, and Adoption Act 1955 all touch on the role of social workers, particularly social workers employed by the Ministry of Social Development. These Acts do not, however, regulate the professional conduct of social workers.

<sup>9</sup> Section 23.

<sup>10</sup> Schedule 1.

<sup>11</sup> Sections 24 and 25.

<sup>12</sup> Section 26.

<sup>13</sup> Section 27.

<sup>14</sup> Section 23.

<sup>15</sup> Section 28 and Schedule 2.

<sup>16</sup> Section 35.

- 15** This Issues Paper will use comparisons with other statutory professional disciplinary regimes to inform the assessment of the SWRA:
- (a) the Health Practitioners Competence Assurance Act 2003 (**HPCAA**) regulates health practitioners in order to protect the health and safety of the public
  - (b) the Lawyers and Conveyancers Act 2006 (**LCA**) governs the regulation of those providing legal services and conveyancing services, in order to maintain public confidence and protect consumers
  - (c) the Education Act 1989 (**Education Act**) governs the registration and discipline of teachers.

### Scope of this Issues Paper

- 16** This Issues Paper primarily identifies and explores key issues relating to the operation of the SWRA. In doing so, it looks primarily to the HPCAA for comparison, although some other legislation is also considered.
- 17** This Issues Paper discusses at length the following key issues:
- (a) whether registration under the SWRA should be mandatory
  - (b) competence assessments and other pre-requisites for registration
  - (c) how fitness to practise social work is assessed, including possible points of interaction with the VCA
  - (d) oversight of social workers by the Board
  - (e) notification to the Board of concerns about social workers
  - (f) CAC process and powers
  - (g) grounds of discipline and sanctions available to the Tribunal
  - (h) suspension and cancellation of registration and practising certificates
  - (i) the best means for achieving reform of the SWRA.
- 18** Other issues, including drafting issues, are identified throughout this Issues Paper as they arise. This Issues Paper does not, however, attempt to identify every consequential amendment that may be required if the structure or scheme of the SWRA is changed, such as if registration were to become mandatory.
- 19** The Issues Paper also addresses some concerns about the interrelationship between the SWRA and the VCA. It does not, however, consider generally the best way to implement the VCA.

# Summary of issues and options

## Mandatory registration

### Issue: Should registration of social workers be mandatory?

**Options:** While on one level the options are 'yes' and 'no', the key consequential issue will be the scope of any obligation to register as a social worker, as will be discussed next.

### Issue: For who or what kind of work should registration be required?

**Options:** Registration could be required to practise all social work or only certain reserved areas of social work.

The obligation to register could also be extended to the broader social service sector.

Student placement could be excluded from the scope of work for which registration is required, or students could be required to register before entering any course of study or placement.

A specific type of 'student registration' could be provided for in the SWRA, with criteria and restrictions appropriate to its context, and the criteria for provisional registration could be amended to exclude students from its scope.

### Issue: What would be the best way to define the class(es) of persons or kind(s) of work for which registration is required?

**Options:** The obligation to register could be defined by reference to the kind(s) of social work that can only be practised by Registered Social Workers.

The obligation to register could alternatively be defined by reference to the job position or title of 'social worker', but this would not capture those who practise social work by some other name.

The scope of social work that requires registration could be prescribed in legislation or by the Board.

## Pre-requisites to registration

**Issue: Are competence assessments an appropriate pre-requisite to registration as a social worker?**

**Options:** The Board could be required to assess and only recognise New Zealand and overseas qualifications where graduates of those qualifications will have the professional competence required to practise social work.

If so, where an applicant for registration has a recognised New Zealand or overseas qualification, a competence assessment may be unnecessary and professional competence could be presumed.

In addition to overseas qualifications, the Board could recognise overseas registration as a social worker as giving rise to a presumption of professional competence.

**Issue: Should 'sufficient practical experience' be retained as a basis for registration in the absence of a recognised qualification?**

**Options:** Registration on the basis of practical experience, as provided for in section 13 of the SWRA, could be removed after a transitional period so that any new entrants to the profession would be required to have a qualification in order to be registered.

**Issue: Is it appropriate or necessary for the Board to assess the cultural competence and communication skills of each applicant for registration?**

**Options:** The Board could be required to assess and only recognise New Zealand qualifications where graduates of those qualifications will have the cultural competence and communication skills required to practise social work.

If so, where an applicant for registration has a recognised New Zealand qualification, a further assessment of cultural competence and communication skills may be unnecessary.

It would still be necessary for those applying for registration without a New Zealand qualification to demonstrate cultural competence and communication skills.

The requisite standard of communication skills could be defined by reference to the practice of social work.

## Fitness to practise

### Issue: How should fitness to practise social work be assessed?

**Options:** Fitness to practise social work could be assessed against a list of pre-requisites (or disqualifying factors), or by reference to a list of mandatory considerations, none of which is determinative.

The criteria or considerations for fitness to practise social work could be defined in the SWRA or left to the Board to prescribe.

Other possible criteria or considerations include whether the applicant:

- has the ability to communicate in English sufficiently well to be able to satisfactorily practise social work
- has been subject to a professional disciplinary order (including cancellation of registration overseas) or discipline at an educational institution in a way that reflects adversely on his or her fitness to practise
- has practised social work in breach of obligations to register or hold a practising certificate
- may endanger the safety of the public
- displays respect for persons, for the cultural and social values of Aotearoa New Zealand, for the law, and for the views of others
- upholds the public and professional reputation of social workers
- is reliable and trustworthy in carrying out duties.

### Issue: Should the safety check or core worker check requirements of the VCA be integrated into the SWRA?

**Options:** The Board could be required to carry out safety checks or core worker checks.

Either check (or both checks) could be carried out at the time of registration and/or issuing a practising certificate..

However, neither of these options is likely to be an efficient or effective means of implementing the VCA in relation to social workers.

### Issue: Should fitness to practise social work be a pre-requisite to the Board's issuing a practising certificate?

**Options:** If so, the Board could impose conditions directed at fitness to practise and not just at competence.

## Oversight of social workers by the Board

**Issue: What options should be open to the Board if a Registered Social Worker is no longer competent to practise social work?**

**Options:** Where there are concerns about competence, the Board is only able to review a person's competence and to direct him or her to complete a competence assessment. Then the Board may suspend or impose conditions on a person's registration or practising certificate.

Other options could be to empower the Board to make a complaint or refer the matter to a Complaints Assessment Committee (CAC).

The possibility of cancellation for lack of competence is discussed below.

**Issue: What options should be open to the Board if a Registered Social Worker is no longer competent or fit to practise social work?**

**Options:** Currently, the only courses of action available in respect of fitness to practise are suspension of a social worker's registration or practising certificate, or the circular option of making a complaint.

Other options could be to empower the Board to:

- impose conditions on a social worker's registration or practising certificate
- make a complaint in a broader range of circumstances
- or
- refer a matter **back** to a CAC for reconsideration of the best further action to be taken.

**Issue: Should the Board be able to cancel the registration of a social worker if he or she is no longer competent or fit to practise social work?**

**Options:** It could be open to the Board to cancel a social worker's registration on this basis, or it could be open only to the Tribunal to do so, after the CAC and Tribunal processes have been followed.

If the latter, the Board could be given the power to refer its concerns about a social worker's competence or fitness to practise social work to a CAC to enable this process to be undertaken.

**Issue: What options should be open to the Board when it receives notification of concerns about a person's ability to perform adequately the function required to practise social work satisfactorily?**

**Options:** Presently the Board only has the option to order:

- interim suspension of a person's registration for up to 10 days
- that the person submit to a medical examination
- in limited urgent situations, suspension or the imposition of conditions on a person's registration or practising certificate.

Other possible courses of actions include:

- a power to suspend a person's registration for a longer period of time on an interim basis
- expanding the power of suspension and/or allowing the imposition of conditions where the Board is satisfied that the social worker is unable to perform adequately the function required to practise social work satisfactorily
- a power to review a person's fitness to practise
- a power to refer the matter to a CAC.

**Issue: Should the SWRA impose an obligation of notification to or by the Board about concerns in respect of a social worker?**

**Options:** Notification could be mandatory for social workers, their employers, the Ministry of Social Development, the Ministry of Justice, DHBs, education institutions, and/or other relevant parties.

The Board could be required to notify the Ministry of Social Development, Ministry of Justice, DHBs, and/or the employer of a social worker when it receives a complaint or notification of concerns in respect of a social worker.

The obligation to notify could apply to concerns in respect of competence, fitness to practise, mental or physical conditions, or suspected breaches of the SWRA or Code of Practice (any breach or only those of a certain gravity).

## The complaints assessment committee process

**Issue: Should the Board take over from the chairperson of the Tribunal the responsibility for administration of the complaints process?**

**Options:** The Board could take over some or all of the chairperson's role in receiving and screening complaints and/or appointing and reconstituting a CAC.

Some of these administrative tasks could be delegated to the Registrar or employees of the Board.

**Issue: Should convictions and complaints of which the Board is notified be subject to a 'screening' assessment (like complaints are) before referral to a CAC?**

**Options:** Presently, only complaints are required to be screened. A consistent approach would suggest that either complaints and convictions are **both** screened or neither is screened before referral to a CAC.

**Issue: Should the person responsible for screening complaints have powers of preliminary investigation to enable the matter to be meaningfully considered?**

**Options:** Possible powers include contacting the complainant, the person who is the subject of the complaint, and his or her employer.

**Issue: What are appropriate standards for the assessment of a complaint before it is referred to a CAC?**

**Options:** Possible considerations include whether:

- the complaint is trivial, frivolous, vexatious, or in bad faith
- the passage of time means it would be impracticable to investigate the complaint
- there are reasonable grounds to suspect or believe that a person is no longer fit or competent to practise social work
- there are reasonable grounds to suspect or believe that grounds for discipline by the Tribunal exist.

**Issue: Should the powers of a CAC be expanded?**

**Options:** The investigative powers of a CAC could be expanded to include a power to require documents or information to be produced by, for example, a social worker and his or her employer.

A broader power to request information from others may also be appropriate.

It may also be appropriate for a CAC to be able to consider other conduct or matters relating to a social worker that come to its attention in the course of investigating or considering a matter concerning that person.

The further options that could be given to a CAC once it has assessed a complaint include:

- directing an apology from the social worker to the complainant
- directing mediation of the complaint, including to the Employment Relations Authority mediation process
- referring the subject matter of the complaint to the Police
- censuring the social worker  
and/or
- directing that the social worker undergo training, counselling, or mentoring.

## The Social Workers Complaints and Disciplinary Tribunal

### Issue: Should there be changes to the membership of the Tribunal?

**Options:** The SWRA could be amended to require that the chairperson and deputy chairperson(s) of the Tribunal are lawyers.

If so, the four other members of the Tribunal that hear and determine any particular matter could be three Registered Social Workers and one layperson.

### Issue: Are the grounds for discipline by the Tribunal and the sanctions available to the Tribunal appropriate?

**Options:** Amendments to sections 82 and 83 would clarify the bases on which a social worker's registration may be cancelled by the Tribunal.

The definition of 'professional misconduct' or grounds of discipline could be amended to more general terms.

The sanctions available to the Tribunal could be expanded. In addition to making cancellation more broadly available, the Tribunal could have the power to:

- suspend a social worker for a long period
- direct termination of a social worker's employment
- take any of the courses of action available to a CAC.

## Suspension and cancellation of registration and practising certificates

**Issue: Are the provisions for cancellation or suspension of registration or practising certificates and imposition of conditions on the same appropriate?**

**Options:** The imposition of conditions could be available in conjunction with suspension, rather than only as alternatives.

The SWRA could be reviewed so that in each situation where cancellation of registration is an option, the lesser responses of suspension and/or imposition of conditions are also available.

References in the SWRA to cancellation or suspension of a practising certificate could be removed so that it is only registration that is cancelled or suspended (with a consequent automatic effect on a practising certificate).

**Issue: What powers of suspension are appropriate pending assessment and determination of a complaint and/or charge against a social worker?**

**Options:** The Board could be given the power to suspend a social worker's registration or practising certificate or impose conditions on it immediately upon receipt of a complaint, notification, or notice of conviction, where there are reasonable grounds to suspect that:

- the social worker is not competent or fit to practise social work or, because of a mental or physical condition, is unable to perform adequately the functions required to practise social work satisfactorily
- the suspension or conditions are reasonably necessary for the protection of the public.

Such a power could also or instead be given to a CAC, once a matter is referred on to it.

Instead of the power of suspension or to impose conditions, the Board and/or CAC could be given the ability to recommend or apply for suspension or to impose conditions.

## Best means for achieving reform

**Issue:** What is the best means of achieving reform of the SWRA?

**Options:** The SWRA could be retained in its present form but amended.

The SWRA could be repealed and replaced by new legislation regulating social workers.

The SWRA could be repealed, and social workers could be encompassed in the scope of the HPCAA.

Or, as a hybrid approach, the SWRA could adopt some of the services established under the HPCAA, such as the Tribunal.

# Section 8 – Recommendation

## Section 104 of the SWR Act required the Board to

1 review the operation of the Act, and its own operations, since the date of the last review

and

2 consider the extent to which the Act, and the system of voluntary registration it provides for ensures that:

- a) social workers are competent to practise,
- b) social workers are held accountable for the way in which they practise, and
- c) the professionalism of social workers is enhanced.

and

3 whether any amendments to the Act are necessary or desirable;

and

4 report its findings to the Minister.

This review has outlined the operation of the SWR Act and the Board's own operations.

The Board is of the view that the Act, and the system of voluntary registration it provides for, does not ensure that all social workers are competent to practice or held accountable for the way in which they practise and as such the Act does not enhance the professionalism of all social workers.

In considering whether any amendments to the Act are necessary or desirable the Board is of the view that the only options available are to:

- Maintain the status quo
- or
- Introduce Mandatory Registration of Social Workers and address the specific issues raised as part of the review.

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After considerable consultation with the profession, employers of social worker and the public over the last twelve years the Board is of the view that the only one option is to move forward with the introduction of mandatory registration of social workers in New Zealand and address the legislative, policy and funding issues raised in this review.

The Board therefore makes the following recommendations:

**Recommendation One:**

That the registration of social workers in New Zealand is made mandatory and that the legislative changes to enact this are implemented with urgency.

**Recommendation Two:**

That consideration be given to the legal issues identified in this review document and that they are addressed as part of the legislative requirements to make the registration of social workers in New Zealand mandatory.

**Recommendation Three:**

That consideration be given to the specific funding issues identified in this review document with regard to social work education and that they are addressed as part of the legislative requirements to make the registration of social workers in New Zealand mandatory.

**Recommendation Four:**

That consideration be given to the specific funding issues identified in this review document with regard to entry to practise, supported by a post qualification framework, and that they are addressed as part of the legislative requirements to make the registration of social workers in New Zealand mandatory.

**Recommendation Five:**

That consideration be given to the support for scopes of practice identified in this review document and that they are addressed as part of the legislative requirements to make the registration of social workers in New Zealand mandatory.



# Appendix 1 – Legal Issues: Detail

## Mandatory registration

- 20** The SWRA provides for individuals to apply to be registered as social workers but it does not require all persons practising social work to be registered.<sup>17</sup> Any person who wishes to register must be appropriately qualified to do so; the pre-requisites to registration are considered later in this Issues Paper. But because registration is not mandatory, individuals are entitled to practise social work even if not registered – or qualified to register – under the SWRA.
- 21** However, a person who is not registered cannot hold himself or herself out to be a Registered Social Worker. To do so is an offence punishable by conviction and up to three months imprisonment or a \$10,000 fine or both.<sup>18</sup>
- 22** Once a person is registered, he or she must hold a practising certificate in order to be employed or engaged as a social worker.<sup>19</sup> A Registered Social Worker is also subject to the disciplinary processes provided for in the SWRA.

## Background to voluntary registration

- 23** The genesis of the SWRA lies in the report of Michael (Mick) Brown, the first principal Youth Court Judge, who reviewed the Department of Child, Youth and Family Services in December 2000.<sup>20</sup> He recommended that the introduction of social worker registration be given urgency and that unRegistered Social Workers should only be able to exercise statutory powers if working with a Registered Social Worker and/or members of the Police.<sup>21</sup> The report explained:<sup>22</sup>

*Better recognition and practice of care and protection social work as a profession will also require a well co-ordinated and seriously implemented process of registering and suitably rewarding CYF social workers, once they have achieved (and are able to maintain) a certain standard of practice.*

- 24** The Social Workers Registration Bill was then introduced on 11 October 2001. Like the present SWRA, it provided for voluntary rather than mandatory registration. The issue of mandatory registration was debated throughout the Bill's passage through the House. The arguments for and against included the following.
- (a) It would not be practical or realistic to introduce mandatory registration immediately because many practising social workers would not meet the criteria for registration or have the time and money to immediately do what was necessary to qualify.

<sup>17</sup> SWRA, sections 6 and 8.

<sup>18</sup> Section 148. There is a similar offence in relation to employers who hold out employees as social workers.

<sup>19</sup> Section 25 and subsection 148(3).

<sup>20</sup> Michael JA Brown *Care and Protection is about adult behaviour: The Ministerial Review of the Department of Child, Youth and Family Services* (Report to the Minister of Social Services and Employment Hon Steve Maharey, December 2000).

<sup>21</sup> At [3.5] and [3.7].

<sup>22</sup> At 55.

- (b) It was estimated considerable cost would be involved in training and registering Government social workers.
  - (c) Voluntary regulation regimes are the most common form of regulating other professions – for example, accountants.
  - (d) Registration emphasises accountability, which is as necessary for social workers as for other professions who perform roles that affect others' lives.
  - (e) Without mandatory registration, those practising social work would not necessarily be subject to the complaints and disciplinary process which ensures they meet a set standard of practice.
  - (f) Those most in need of supervision or accountability might be the very ones who choose not to register.
  - (g) Registration should at least be mandatory for those employed in the Government sector, particularly those who exercise statutory powers.
  - (h) While only those who were registered would be entitled to call themselves 'Registered Social Workers', an ordinary person on the street would not know the difference between a Registered Social Worker and another person professing to work in social work, so relying on 'title protection' was insufficient protection.
- 25** Since that time, the completion of qualifications for social work has been increasingly common. While presumably a considerable sector of the profession does not hold a qualification, it could be expected that it is a smaller proportion than at the time the SWRA was enacted. The possibility of registration on the basis of practical experience rather than qualification, which is explained further below, remains open to those who entered the profession before social work qualifications were readily available or commonplace.
- 26** Moreover, since the SWRA was passed, a large proportion of social workers have already registered. The transitional difficulties, therefore, of mandatory registration have already been somewhat mitigated as was anticipated in the Parliamentary debates.
- 27** While some of these difficulties with mandatory registration have since reduced, the significant imperative in mandatory registration remains. Without mandatory registration, the assurance of the quality of services provided by social workers and consequent protection of the public are incomplete and ineffective because those not registered are able to practise social work without the oversight of the SWRA process, which ensures both competence and accountability. In other words, members of the public remain unprotected insofar as these social workers are concerned.
- 28** Moreover, the ability to practise social work while not registered compromises the meaningfulness of the accountability process under the SWRA. It permits the possibility that a person who has had his or her registration cancelled for professional misconduct, for example, could continue to practise social work.

## Mandatory registration in other professions

### Health practitioners

- 29** Under the HPCAA, there are several layers of regulation of the practice of health professions.
- 30** First, there are some ‘restricted activities’ that can **only** be practised by registered health practitioners.<sup>23</sup> These include surgical procedures, clinical procedures, orthodontics and ophthalmology.<sup>24</sup> Any person who performs or implies that he or she is willing to perform a restricted activity without being a registered health practitioner authorised to do so commits an offence punishable by conviction and a fine of up to \$30,000.<sup>25</sup>
- 31** Next, only a person who is a registered health practitioner of a particular kind can use any name or description that identifies him or her as that kind of health professional.<sup>26</sup> This means that a person who is not registered under the HPCAA as a member of a regulated profession – a midwife or physiotherapist or nurse, for example – cannot describe him or herself as being one. Any person who does so commits an offence punishable by conviction and a fine of up to \$10,000.<sup>27</sup>
- 32** The HPCAA establishes and continues regulating authorities in relation to each health profession that is regulated under the Act.<sup>28</sup> Each regulating authority is responsible for describing the ‘content of the profession’ in terms of ‘scopes of practice’, which may be defined:<sup>29</sup>
- (a) by reference to a name or form of words that is commonly understood by persons who work in the health sector;
  - (b) by reference to an area of science or learning;
  - (c) by reference to tasks commonly performed;
  - (d) by reference to illnesses or conditions to be diagnosed, treated, or managed.
- 33** Not all health professions are regulated under the HPCAA: for example, some are not regulated because they pose little risk of harm to the public or because they work under the supervision of a regulated profession.<sup>30</sup> If a health profession is not regulated under the HPCAA, there is no restriction under that Act on who can claim to be practising it.

<sup>23</sup> Health Practitioners Competence Assurance Act [HPCAA], section 9.

<sup>24</sup> Health Practitioners Competence Assurance (Restricted Activities) Order 2005.

<sup>25</sup> HPCAA, section 9.

<sup>26</sup> Section 7.

<sup>27</sup> Section 7.

<sup>28</sup> Sections 114 and 117.

<sup>29</sup> Section 11.

<sup>30</sup> Sections 115–116.

- 34** A person who is a registered health practitioner of a certain profession must only perform health services that are within the ‘scope of practice’ for which that person is authorised.<sup>31</sup> Moreover, a registered health practitioner may only practise his or her profession if he or she holds a current practising certificate.
- 35** Breach of these requirements, or other departures from the standards of competence and character required of a registered health practitioner, may be the subject of disciplinary action under the HPCAA.<sup>32</sup>

### Teachers

- 36** Under the Education Act, a person must be both a registered teacher and hold a current practising certificate in order to be employed or engaged in a teaching position.<sup>33</sup> Unqualified teachers may apply for a ‘limited authority to teach’ in a fixed-term teaching position, but cannot be appointed to a permanent teaching position.<sup>34</sup>
- 37** The Education Act defines ‘teaching position’ both by reference to the type of work and the type of position that a person may hold:<sup>35</sup>  
**teaching position** means a position in the general education system that—  
 (a) requires its holder to instruct students; or  
 (b) is the professional leader, deputy professional leader (however described), or assistant principal of a school; or  
 (c) is the professional leader of an early childhood service or other educational institution
- 38** It is an offence punishable by conviction and a fine of up to \$2,000 for a person to describe him or herself as a ‘registered teacher’ or to be employed or appointed as a teacher when he or she is not registered.<sup>36</sup> It is an offence punishable by a \$5,000 fine to employ or appoint a person as a teacher if he or she is not registered.<sup>37</sup>
- 39** Registered teachers are subject to the disciplinary oversight of the Education Council.

<sup>31</sup> Section 8.

<sup>32</sup> Section 100.

<sup>33</sup> See section 349 and following of the Education Act 1989.

<sup>34</sup> See section 365 and following of the Education Act.

<sup>35</sup> Education Act, section 348.

<sup>36</sup> Subsection 374(1).

<sup>37</sup> Subsection 374(2).

## Lawyers

- 40** The LCA prescribes that it is an offence for any person who does not hold a current practising certificate as a barrister or as a barrister and solicitor to provide legal services or describe him or herself as a lawyer, barrister, solicitor, etc.<sup>38</sup> Similarly, it is an offence for a person to hold himself or herself out as being entitled or qualified to provide legal services under the description of a lawyer.<sup>39</sup> It is also an offence for a person to carry out 'reserved areas of work' if he or she is not a lawyer.<sup>40</sup>
- 41** By contrast to the delegation to regulating authorities under the HPCAA, the scope of the legal profession is defined in the LCA itself. The LCA defines 'legal services', which can only be provided by persons holding practising certificates, as services provided by carrying out 'legal work', which in turn is defined as **including**:<sup>41</sup>
- (a) the reserved areas of work:
  - (b) advice in relation to any legal or equitable rights or obligations:
  - (c) the preparation or review of any document that—
    - (i) creates, or provides evidence of, legal or equitable rights or obligations; or
    - (ii) creates, varies, transfers, extinguishes, mortgages, or charges any legal or equitable title in any property:
  - (d) mediation, conciliation, or arbitration services:
  - (e) any work that is incidental to any of the work described in paragraphs (a) to (d)
- 42** In turn, 'reserved areas of work' is defined:<sup>42</sup>
- reserved areas of work** means the work carried out by a person—
- (a) in giving legal advice to any other person in relation to the direction or management of—
    - (i) any proceedings that the other person is considering bringing, or has decided to bring, before any New Zealand court or New Zealand tribunal; or
    - (ii) any proceedings before any New Zealand court or New Zealand tribunal to which the other person is a party or is likely to become a party; or
  - (b) in appearing as an advocate for any other person before any New Zealand court or New Zealand tribunal; or
  - (c) in representing any other person involved in any proceedings before any New Zealand court or New Zealand tribunal; or
  - (d) in giving legal advice or in carrying out any other action that, by section 21F of the Property (Relationships) Act 1976 or by any provision of any other enactment, is required to be carried out by a lawyer
- 43** Each of these offences under the LCA is punishable by conviction and, in the case of an individual, a fine of up to \$50,000.<sup>43</sup> As a result, no person can practise law or purport to do so without both being an enrolled barrister and solicitor (akin to registration) and holding a practising certificate.

<sup>38</sup> Lawyers and Conveyancers Act 2006 [LCA], section 21.

<sup>39</sup> Section 22.

<sup>40</sup> Section 24.

<sup>41</sup> Section 6.

<sup>42</sup> Section 6.

<sup>43</sup> Section 46.

**44** Persons who are enrolled barristers and solicitors are subject to the disciplinary oversight of the Law Society, by the processes provided for in the LCA.

### Other professions

**45** While the above is not a comprehensive review of all methods of professional regulation, there are a number of other professions that are similarly regulated in New Zealand: for example, plumbers, gasfitters, and drainlayers under the Plumbers, Gasfitters, and Drainlayers Act 2006; electrical workers under the Electricity Act 1992; real estate agents under the Real Estate Agents Act 2008; and auctioneers under the Auctioneers Act 2013. Each of these regimes requires registration in order to carry out certain work.

**46** There are limited exceptions to this general approach, such as voluntary registration under the Registered Architects Act 2005 and Chartered Professional Engineers of New Zealand Act 2002. But although registration of those professions is voluntary, certain work under the Building Act 2000 is restricted to registered architects or engineers.<sup>44</sup>

**47** This consistent approach across other professions indicates that, where professional services may affect the wellbeing of members of the public, mandatory registration in order to undertake certain work is necessary in order to effectively protect the public and ensure the quality of those services.

### Achieving effective regulation of a profession

**48** The above survey of other professional legislation illustrates that to achieve effective regulation of a profession requires a coordinated approach that:

- (a) prescribes types of work or roles that are reserved to registered professionals (so that no other person, going by any title or name, can practise that work)
- (b) requires persons who perform that work or those roles to be registered (and to hold a practising certificate)
- (c) confers 'title protection' on registered professionals, so that persons who are not registered cannot purport to be
- (d) creates criminal offences to enforce the requirement for registration and prohibition on 'holding out' (because statutory disciplinary processes only apply to registered persons)
- (e) provides for disciplinary oversight of those who are registered members of the profession, to ensure that registration gives assurance of appropriate standards of competence and character.

**49** In short, effective professional regulation imposes obligations – to register, and maintain appropriate standards of competence and character – and in return confers

<sup>44</sup> Or registered members of certain other professions.

privileges – to practise particular work and to carry the title of the profession. A registered professional is entitled to call him or herself a member of that profession because he or she is subject to the obligations and supervision that maintain appropriate professional standards.

- 50** If registration under the SWRA were to become mandatory, it would be necessary to consider in a systematic and thorough way the consequential amendments to the SWRA that would be appropriate. Some of these would be of a minor nature, but some more substantial changes, such as changes to title protection and other criminal offences, would also be required.

**Issue: Should registration of social workers be mandatory?**

**Options:** While on one level the options are ‘yes’ and ‘no’, the key consequential issue will be the scope of any obligation to register as a social worker, as will be discussed next.

## Social workers and the social service sector

- 51** One question that immediately arises is what scopes of work would be reserved or protected, so that only registered persons may carry them out. Before considering that question, it may be helpful to describe the kinds of work undertaken by social workers and the broader social service sector.

### Social workers

- 52** The International Federation of Social Workers defines the social work profession in the following terms:<sup>45</sup>

*Social work is a practice-based profession and an academic discipline that promotes social change and development, social cohesion, and the empowerment and liberation of people. Principles of social justice, human rights, collective responsibility and respect for diversities are central to social work. Underpinned by theories of social work, social sciences, humanities and indigenous knowledge, social work engages people and structures to address life challenges and enhance wellbeing.*

<sup>45</sup> International Federation of Social Workers *Global Definition of Social Work* (approved by the IFSW General Meeting and the International Association of Schools of Social Work General Assembly in July 2014), available online at <<http://ifsw.org/get-involved/global-definition-of-social-work/>> (accessed 1 September 2015).

- 53** Professional social workers generally deal with people and systems in crisis. They aim, amongst other things, to help people and communities develop the skills and ability to use their resources to resolve problems. The tasks and roles of a social worker may include, but are not limited to:
- (a) a holistic or clinical assessment of a client, based on the social worker's knowledge and skills
  - (b) identifying and analysing the issues that emanate from that assessment
  - (c) formulating a plan in response to the issues presented, including setting mutually agreed goals, timeframes, and review dates
  - (d) exiting support when it is deemed safe and appropriate to do so.
- 54** There is a great deal of variety within social work and the social work profession. A social worker may work as part of a multidisciplinary team or on a one-to-one basis with clients. Clients may be individuals, organisations or groups, like a class of students or a group of teenagers struggling with depression. Social workers practise in a variety of settings, for example, child protection, health, and community-based social work. A person may practise social work by direct contact with clients in a front-line role, or through a more supervisory or managerial involvement in casework, education, research, or policy decisions.
- 55** The CYPFA, Care of Children Act, and Adoption Act set out certain tasks and roles of social workers employed by the Ministry of Social Development. Some examples of those roles helpfully illustrate the kind of work that social workers employed under these pieces of legislation or in similar situations do, such as:
- (a) investigating reports that:
    - a child or young person has been or is likely to be harmed or ill-treated or
    - cases referred to them <sup>46</sup>
  - (b) in certain circumstances, attending family group conferences convened, for example, to develop a plan in respect of a child or young person <sup>47</sup>
  - (c) applying for and obtaining a warrant to search for and/or remove a child or young person that the social worker has reasonable grounds to suspect is suffering or likely to suffer ill-treatment, neglect, or harm <sup>48</sup>
  - (d) taking custody of a child or young person on behalf of the Chief Executive of the Ministry, in certain circumstances, and/or making living arrangements for a child or young person in the custody of the Chief Executive <sup>49</sup>
  - (e) applying to the court for a declaration that a child or young person is in need of care and protection, which can then result in the court directing, for example, that services or assistance be provided to the child, or in whose custody the child should be <sup>50</sup>
  - (f) being appointed by the court to provide support to a child or young person who is declared to be in need of care and protection <sup>51</sup>

<sup>46</sup> Children, Young Persons and their Families Act 1989 [CYPFA], sections 15–19.

<sup>47</sup> Sections 22, 30–31, and 251.

<sup>48</sup> Sections 39 and 40.

<sup>49</sup> Sections 48, 105, and 235.

<sup>50</sup> Section 68.

<sup>51</sup> Sections 94, and 95.

- (g) preparing a plan or report for a child, for consideration by the Court in determining what directions to make in relation to a child in need of care and protection – the plan should specify the objectives to be achieved and the services and assistance to be provided <sup>52</sup>
- (h) making a report on an application for adoption <sup>53</sup>
- (i) acting under warrant to deliver a child to a person entitled to have day-to-day care of or contact with a child, or to prevent a child being removed from New Zealand <sup>54</sup>
- (j) providing written advice to the court on an application for a guardianship order or parenting order, with or without appearing at the hearing of the application. <sup>55</sup>

### The social service sector

- 56** A related but different profession or workforce is the social service or social care sector. Social service workers do not necessarily hold any qualification and may work under the supervision of a social worker or another professional who has specialised knowledge and skills. Examples of the tasks and roles of a social service worker are:
- (a) day-to-day personal assistance to enhance people's functioning and well-being
  - (b) undertaking care-giving type functions so that clients can remain supported and independent within their particular living environments
  - (c) task-directed activities that may or may not be in consultation with the client
  - (d) formulating and reviewing plans in consultation with others.
- 57** Like social workers, social service workers may work as part of a team or one-on-one and may work in a variety of settings including in people's homes.

## The persons or work for which registration should be mandatory

### Social work and the social service sector

- 58** The factors favouring mandatory registration apply more strongly to the practice of social work than to the broader social service sector. This is because of the significant authority and influence that social workers have, including, as illustrated by their statutory roles outlined above, the provision of advice to courts and acting under warranted powers. Indeed, these statutory roles illustrate the potential for the actions of a social worker to profoundly affect the lives of the vulnerable people with whom they work.

<sup>52</sup> Sections 128–130 and 186.

<sup>53</sup> Adoption Act 1955, sections 10 and 13.

<sup>54</sup> Care of Children Act 2004, sections 72–73, 77, and 117.

<sup>55</sup> Sections 131A and 132.

- 59** Another approach would be to not restrict the practice of **all** social work to Registered Social Workers, but to prescribe certain areas of social work, such as those with high risk or those involving the exercise of statutory powers, as restricted or reserved work for which registration is required. That said, the situations in which social workers are involved can shift from low risk to high risk in an instant, so the application of a tiered approach would give rise to considerable difficulties.
- 60** That is not to say that there are not also reasons to regulate the conduct of the broader social service sector. Social service workers may also work in situations where their conduct has the ability to affect the well-being of vulnerable people, for example, care-giving for the elderly or those with physical disabilities. Some people working in the social service sector have degrees, diplomas or certificates, but others do not have any formal training. While some areas of the social service sector have identified standards of conduct, for example the Ara Taiohi Code of Ethics for youth work, there is no formal regulation. Given the diversity of the social service sector, it may be difficult to identify universal professional standards of practice or care required.
- 61** Overseas, there are a number of countries where both social workers and social service workers are registered, but a distinction between the two sectors of the workforce is recognised. The Ontario College of Social Workers and Social Service Workers maintains different forms of and criteria for registration.<sup>56</sup> CORU, the Health and Social Care Professionals Council in Ireland, provides for registration of social workers and social care workers.<sup>57</sup> Similarly, the Scottish Social Services Council and the Care Council for Wales both regulate social workers and many groups of social service workers.<sup>58</sup>
- 62** One possibility would be to regulate the social service sector only to the extent that the VCA requires safety checks to be carried out. This would confine the obligation to register to those who are social service workers in the role of ‘children’s workers’ for regulated organisations. The possibility of VCA safety checks being carried out as part of the SWRA registration process is discussed later in this Issues Paper.

### Social work students

- 63** A separate but related question is whether students who are studying towards a social work (or social service work) qualification should be required to register with the Board.

<sup>56</sup> <[www.ocswssw.org/](http://www.ocswssw.org/)>

<sup>57</sup> <[www.coru.ie](http://www.coru.ie)> Currently only a social worker register is maintained. The 12 professional registers provided for in the Health and Social Care Professionals Act 2005 (which established CORU) are being implemented over a period of time, and the register for social care workers will be phased in between 2015 and 2017.

<sup>58</sup> For Scotland, see <[www.sssc.uk.com](http://www.sssc.uk.com)> and for Wales see <[www.ccwales.org.uk](http://www.ccwales.org.uk)>.

- 64** On one view, if the SWRA prohibited the practice of social work by anybody who was not registered, social work students (whose activities on placement amount to practising social work) would be required to register. On the other hand, placement is a supervised learning experience rather than independent professional practice.
- 65** Therefore, the SWRA could make it clear that student placements do not amount to the practice of social work, so registration is not necessary. Student nurses who are on placement in a ward during their training are not required to be registered.
- 66** Another possible approach would be for students to be required to register or, indeed, for students to be required to register before entering study.
- 67** Neither law students nor teaching students nor medical students are required to register before entering study. It could be said that mandatory registration for students would prematurely exclude persons from:
- (a) education, if the person wants to pursue study without ever practising social work or providing social work services and/or
  - (b) the social work sector, where there is a possibility that the reasons why a student is unsuitable for registration may cease to exist at some point in the future. For example, a person with a history of criminal offending while a youth may, by the end of study, be able to demonstrate that he or she has turned his or her life around.<sup>59</sup>
- 68** On the other hand, mandatory registration for students would provide an early screening opportunity, so that individuals who are unlikely to qualify for registration could be identified and, depending on the relationship with education providers, be prevented from entering study. On a practical level, this would also protect the public where students are required to undertake placements in the course of their study.
- 69** In both Scotland and Wales, social work students who are working towards qualifications are required to register.<sup>60</sup> In Wales, this requires the applicant to agree to abide by the Code of Professional Conduct for Social Care, and consideration by the Council of the applicant's criminal and disciplinary record and health in order to assess whether he or she is suitable and physically and mentally fit to perform the work of a social worker.<sup>61</sup>
- 70** Presently, the criteria for provisional registration (discussed further below) enable a person to register where he or she is working towards a recognised social work qualification: hence, it enables students to obtain provisional registration.

<sup>59</sup> There are examples of this in the LCA context, where prior misconduct or criminal convictions have been held not to disqualify a person from being fit and proper to practise law where there is evidence the individual has 'turned a corner'.

<sup>60</sup> See, for Scotland, <[www.sssc.uk.com](http://www.sssc.uk.com)> and, for Wales, <[www.ccwales.org.uk](http://www.ccwales.org.uk)>.

<sup>61</sup> The Care Council for Wales (Registration) Rules 2015.

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- 71** However, if students are to be registered, it may be more appropriate, as already indicated, to have a particular form of registration for students, with criteria and restrictions that reflect its preliminary nature and also ensure the protection of the public. For example, the criteria could simply be that a person is a fit and proper person to practise social work, and the registration could require students to be supervised, and prohibit students from supervising others. This is the approach taken overseas.
- 72** If a separate form of student registration were provided for in the SWRA, the criteria for provisional registration could be amended so that it is not available to students.

**Issue: For who or what kind of work should registration be required?**

**Options:** Registration could be required to practise all social work or only certain reserved areas of social work.

The obligation to register could also be extended to the broader social service sector.

Student placement could be excluded from the scope of work for which registration is required, or students could be required to register before entering any course of study or placement.

A specific type of 'student registration' could be provided for in the SWRA, with criteria and restrictions appropriate to its context, and the criteria for provisional registration could be amended to exclude students from its scope.

## Defining the persons or work for which registration is mandatory

- 73** If registration were to become mandatory for the practice or study of social work and/or social service work, certainty and transparency of the law would require the kinds of work reserved to registered persons to be clearly defined. As described above, social workers and social service workers may work in a broad variety of contexts and undertake a wide range of tasks.
- 74** As the above description of other professions illustrates, there are a number of possible approaches to identifying the scope of the requirement for registration.

### Definition by reference to work

- 75** One approach, which appears most widely adopted in other professions, would be to define the obligation to register by reference to the type(s) of work that constitute reserved or restricted social work, and to prohibit any person who is not registered from carrying out that work.
- 76** The SWRA already assumes that it is possible to identify when a person is engaged in social work: it prohibits a Registered Social Worker from being engaged or employed as a social worker without a practising certificate.<sup>62</sup> The Board has already developed a view on what will constitute the practice of social work. As well as or instead of a general description, the roles and powers specifically given to some social workers under the CYPFA, Adoption Act, and Care of Children Act could be included in any definition of 'social work'.<sup>63</sup>
- 77** It is unlikely that the difficulties of defining the boundaries of social work would be greater than the difficulties of defining the scope of other professions.

### Definition by reference to titles or positions

- 78** A different approach would be to define the obligation to register by reference to the title or position of a person, for example, 'social worker'.
- 79** For example, a starting point would be to require all persons who are 'social workers' in terms of the CYPFA, Adoption Act, and Care of Children Act to register. Presumably, there is already some clear means of identifying those who constitute social workers under these Acts, given that those statutes confer specific powers on them. However, this starting point would not necessarily capture all the larger group of social workers who are practising social work, for example, in non-Governmental organisations, in health or education, for the Department of Corrections, or as independent practitioners.

<sup>62</sup> SWRA, section 25.

<sup>63</sup> The issue of what work, if any, should be reserved to Registered Social Workers was discussed in the *Registration of Social Workers Consultation Summary Report* published in May 2001.

- 80** More fundamentally, a person may be employed or acting under a job title **other** than 'social worker' but nevertheless be practising social work. This is why restrictions on carrying out regulated work are essential to the proper functioning of a professional regulation system: to ensure that unregistered persons do not continue to practise 'social work' by some other name.
- 81** For these reasons, a focus on the kinds of work for which registration is required, rather than on the title of the roles, is preferable. This is because the effect of title protection is that a person who is registered is a 'social worker' by definition, and that nobody else is entitled to call themselves that.

### A question of form

- 82** In addition to the issue of the content or substance of the definition of the persons or work to whom mandatory registration applies, there is a question of **form**. The definition of social work could either be:
- (a) legislatively prescribed in the SWRA, in an approach similar to the LCA or Education Act
  - or
  - (b) prescribed by the Board in regulations or another instrument, in the same way as regulating authorities under the HPCAA describe their professions.

#### **Issue: What would be the best way to define the class(es) of persons or kind(s) of work for which registration is required?**

**Options:** The obligation to register could be defined by reference to the kind(s) of social work that can only be practised by Registered Social Workers.

The obligation to register could alternatively be defined by reference to the job position or title of 'social worker', but this would not capture those who practise social work by some other name.

The scope of social work that requires registration could be prescribed in legislation or by the Board.

# Pre-requisites to registration

**83** Under the SWRA, there are a number of prerequisites that must be satisfied before a person is entitled to be registered. These pre-requisites differ for the different kinds of registration that are provided for in the SWRA. The requirement to obtain a practising certificate provides a further opportunity for the Board to assess an applicant before authorising him or her to practise social work.

## Registration under the SWRA

**84** After considering an application for registration, the Board must decide whether an applicant should be registered and, if so, whether that registration should be full, provisional, temporary, and/or subject to restrictions or conditions.<sup>64</sup> The Board makes the registration decision, and this is given effect by the Registrar, who may issue certificates of registration.<sup>65</sup>

### Full registration

**85** A person may only be given **full registration** if he or she meets the criteria in sections 6, 7, or 13 of the SWRA.<sup>66</sup> A person is entitled to full registration as a social worker if the Board is satisfied that he or she:<sup>67</sup>

- (a) has a New Zealand qualification recognised by the Board as appropriate for social workers working in New Zealand<sup>68</sup>
- (b) has been assessed as competent under Part 3 of the SWRA
- (c) is a fit and proper person to practise social work
- (d) is competent to practise social work with Māori and different ethnic and cultural groups in New Zealand
- (e) has enough practical experience in practising social work – the Board has prescribed that this requires 2000 hours of supervised social work practice.

**86** A person who does not have a recognised New Zealand qualification may still be registered if he or she meets the requirements in (b), (c), (d) and (e) above, and:<sup>69</sup>

- (a) has an equivalent overseas qualification
- (b) is a Registered Social Worker overseas or has a good reason for not being registered
- (c) has satisfactorily completed training to ensure that he or she is competent to practise social work with Māori and different ethnic and cultural groups in New Zealand
- (d) can speak, write, and understand English reasonably effectively
- (e) intends to live and practise social work in New Zealand.

<sup>64</sup>SWRA, section 9.

<sup>65</sup>Section 18–20.

<sup>66</sup>Section 12.

<sup>67</sup>Section 6.

<sup>68</sup>See the section 4 definition of 'recognised New Zealand qualification'.

<sup>69</sup>Section 7.

**87** If a person has neither a recognised New Zealand qualification nor an equivalent overseas qualification, he or she may still be registered if the Board is satisfied that the criteria in (b), (c), and (d) of paragraph 85 above are met and that the person's 'practical experience in practising social work in New Zealand is enough to compensate for the lack of such a qualification'.<sup>70</sup>

### Limited registration

**88** The term **limited registration** is used to refer to 'provisional or temporary registration'.<sup>71</sup>

**89** **Provisional registration** is registration subject to conditions and, possibly, restrictions, and for a finite period of no more than two years. In total, no person may be provisionally registered for more than eight years.<sup>72</sup> A person may be provisionally registered if he or she: <sup>73</sup>

- (a) has been assessed as competent under Part 3 of the SWRA
- (b) is a fit and proper person to practise social work
- (c) meets some of the other criteria in sections 6 or 7
- (d) is working towards meeting the rest of the criteria in sections 6 or 7
- (e) if he or she has previously been provisionally registered, is making satisfactory progress towards meeting the criteria for full registration or has good reasons for not doing so.

**90** Provisional registration is available, for example, to a person who has newly graduated from a social work qualification and is currently working towards the required 2000 hours of supervised social work experience.

**91** **Temporary registration** is registration for a period of no more than six months and subject to restrictions that relate to the institution or place where the person intends to practise social work. Temporary registration may also be subject to other conditions or restrictions. In total, no person may be temporarily registered for more than three years.<sup>74</sup> A person may be temporarily registered only if he or she:<sup>75</sup>

- (a) is a fit and proper person to practise social work
- (b) can speak, write, and understand English reasonably effectively
- (c) is or will be visiting New Zealand temporarily and wishes to practise social work at a particular institution in New Zealand
- (d) has enough knowledge and practical experience of social work to practise social work at that institution.

<sup>70</sup> Section 13.

<sup>71</sup> Section 4.

<sup>72</sup> Section 10.

<sup>73</sup> Section 14. Essentially the same criteria apply where a person applies to renew provisional registration: see sections 22 and 23.

<sup>74</sup> Section 11.

<sup>75</sup> Section 15. Essentially the same criteria apply where a person applies to renew temporary registration: see sections 22 and 23.

## Competence assessments

- 92** It is a pre-requisite of registration that the applicant must hold a recognised New Zealand qualification, an overseas equivalent, or have sufficient practical experience to compensate for the absence of such a qualification. In addition to this, an applicant must **also** complete a competence assessment and, in light of that, be assessed by the Board as having the skill, knowledge, and professional standards that can be expected of a Registered Social Worker (**professional competence**).
- 93** Part 3 of the SWRA governs the competence assessments required for registration. The Board must only find that a person is satisfactorily competent to practise social work if: <sup>76</sup>
- (a) he or she has completed a competence assessment expressly required by the Board  
or
  - (b) he or she has completed a competence assessment within the past five years and the Board does not require him or her to complete another  
and
  - (c) in the Board's opinion, he or she has the skill and knowledge required to practise social work and meets the professional standards reasonably to be expected of a Registered Social Worker.
- 94** The Board may set programs or competence assessments for the purpose of helping it to assess competence. It may also set specific competence assessments for certain kinds of social work.<sup>77</sup>
- 95** Registered Social Workers are also required to complete a competence assessment every five years in order to retain their practising certificates.<sup>78</sup>

## Competence in other professions

- 96** Under the HPCAA, a person may be registered in relation to a scope of practice if he or she:<sup>79</sup>
- (a) is fit for registration, considering his or her communication skills, proficiency in the English language, criminal and disciplinary history, mental and physical health
  - (b) has the prescribed qualifications
  - (c) is competent to practise within that scope of practice.

<sup>76</sup> Section 38.

<sup>77</sup> Section 42.

<sup>78</sup> Section 44.

<sup>79</sup> HPCAA, section 15.

- 97** The health authority may make an authority to practise a scope of practice subject to conditions, such as supervision or oversight, a time period for practice, or qualifications that must be gained.<sup>81</sup> Under the HPCAA, the 'prescribed qualifications' in relation to a profession may be a qualification from a New Zealand or overseas institution, successful completion of an assessment prescribed by the regulating authority, registration with an overseas organisation, or experience.<sup>82</sup>
- 98** A different approach is taken under the Education Act, where the Education Council must be satisfied that an applicant for registration is 'satisfactorily trained to teach'.<sup>83</sup> This does not require an assessment of the applicant's competence, but rather consideration of his or her **training**, including qualifications and completion of any other training recognised by the Education Council.<sup>84</sup>
- 99** Under the LCA, a person is qualified for admission as a barrister and solicitor if he or she: <sup>85</sup>
- (a) has the qualifications prescribed by the New Zealand Council of Legal Education
  - (b) is a fit and proper person to be admitted as a barrister and solicitor.
- 100** The LCA also provides for recognition of admission to the bar in an overseas country.
- 101** None of these Acts contains provisions equivalent to Part 3 of the SWRA that provide the registering authority to require each applicant to practically have his or her competence assessed.

### Professional competence

- 102** There is no obvious rationale for requiring both a qualification (or experience) and assessment by the Board of a person's professional competence:
- (a) the Board prescribes which New Zealand qualifications are to be recognised for the purpose of registration and, in assessing a qualification, will no doubt review the standards of competence required to obtain it <sup>86</sup>
  - (b) in the context of overseas qualifications, the Board undertakes a similar enquiry
  - (c) the assessment of whether a person has sufficient practical experience to compensate for lack of a qualification will also no doubt involve an assessment of the skills and competence acquired through that experience.
- 103** Of course, this approach assumes a measure of stringency in the requirements set by the Board for a qualification to be recognised.

<sup>80</sup> Section 16.

<sup>81</sup> Section 22.

<sup>82</sup> Section 12.

<sup>83</sup> Education Act, section 353.

<sup>84</sup> Section 354. The Education Council has published a policy on how training is to be assessed.

<sup>85</sup> LCA, section 49.

<sup>86</sup> See the Social Workers Registration Board *The Process for Recognition/Re-Recognition of Social Work Qualifications in New Zealand* (policy Statement, approved February 2013, last reviewed June 2015).

### Effect of mandatory registration

**104** These issues around the utility and efficiency of the current provisions for competence assessments will become more pressing if registration becomes mandatory. To require the Board to assess the professional and cultural competence of every applicant for registration would be hugely consuming of time and resources. Moreover, as discussed above, it could be said that these assessments are of limited value anyway, at least where an applicant has a New Zealand or overseas qualification recognised by the Board.

### Ensuring competence if competence assessments are removed

**105** The SWRA provides a number of safeguards that would ensure the competence of Registered Social Workers if the competence assessment is removed. This is because, as explained above, to some extent professional competence is already monitored through the recognition and requirement of a New Zealand or overseas qualification or sufficient practical experience.

**106** Moreover, as will be discussed below, the oversight of the Board and the disciplinary provisions of the SWRA regulate the conduct and competence of social workers once they are registered. The Board is able to review the competence of a social worker at any time. In essence, removing the requirement that a person complete a competence assessment upon an application for registration and every five years thereafter would rely on a presumption of competence until cause for concern arose, in which case the complaints and disciplinary processes under the SWRA would be engaged as appropriate.

#### **Issue: Are competence assessments an appropriate pre-requisite to registration as a social worker?**

**Options:** The Board could be required to assess and only recognise New Zealand and overseas qualifications where graduates of those qualifications will have the professional competence required to practise social work.

If so, where an applicant for registration has a recognised New Zealand or overseas qualification, a competence assessment may be unnecessary and professional competence could be presumed.

In addition to overseas qualifications, the Board could recognise overseas registration as a social worker as giving rise to a presumption of professional competence.

## Registration on the basis of practical experience

- 107** There is no clear guidance or standards in the SWRA for when a person will have sufficient practical experience that he or she may be registered under section 13 of the SWRA in the absence of a New Zealand or overseas qualification. The Board has developed a policy that requires an applicant for registration on the basis of practical experience to demonstrate the core competencies or kinds of knowledge required.<sup>87</sup>
- 108** The scheme of the SWRA makes clear that the primary basis for registration should be completion of a qualification. As it becomes more common for persons who wish to practise social work to complete formal qualifications, the provision to recognise practical experience may less frequently need to be relied on.
- 109** On the other hand, it seems likely that there will be a generation of social workers who have not completed formal qualifications but who have considerable practical experience. At the very least, it would seem appropriate for such persons to be able to rely on their practical experience, particularly where a person has entered the profession before the SWRA came into force and/or before social work qualifications were so readily available.
- 110** If registration were to become mandatory, it would be appropriate to retain practical experience as a basis for registration to enable this generation to apply for registration. This could be confined to a transitional period of, for example, one year, so that it is only available to people who **already** have sufficient experience and that those who are newly entering the profession must complete a qualification.

### **Issue: Should 'sufficient practical experience' be retained as a basis for registration in the absence of a recognised qualification?**

**Options:** Registration on the basis of practical experience, as provided for in section 13 of the SWRA, could be removed after a transitional period so that any new entrants to the profession would be required to have a qualification in order to be registered.

## Other pre-requisites to registration

- 111** The assessment and monitoring of fitness to practise, another pre-requisite to registration, is discussed below.

<sup>87</sup> Social Workers Registration Board *Practical Criteria for Section 13 Registration: Enough Practical Experience Without a Recognised Social Work Qualification* (policy Statement, approved May 2010, last reviewed May 2015).

## Cultural competence

- 112** In addition to professional competence, the Board must be satisfied that an applicant is competent to practise social work with Māori and other ethnic or cultural groups (**cultural competence**). The SWRA does not clearly provide how cultural competence is to be assessed, although the Board has published policies expanding upon what is involved in cultural competence.<sup>88</sup> The competence assessment provisions in Part 3 of the SWRA seem primarily directed at professional competence.
- 113** There is no specific provision in the SWRA of the matters the Board must consider in recognising qualifications. Cultural competence, at least in relation to New Zealand qualifications, could and currently does address this issue, like professional competence, when assessing whether a qualification is suitable for recognition.<sup>89</sup>
- 114** A straightforward and efficient option could be to give legislative foundation to this approach, making it mandatory for the Board to consider, when deciding whether to recognise a New Zealand qualification, whether that qualification contains training or assessment of cultural matters so that a person who successfully completes the qualification can be considered to have cultural competence. This would avoid the need to assess the cultural competence of individual applicants.
- 115** In any event, the above approach would not address cultural competence where an applicant for registration relies on an overseas qualification or practical experience.
- 116** Given the specific requirement of competence in practising social work with Māori, it is unlikely that cultural competence will be adequately addressed by an overseas qualification. Currently, an applicant relying on an overseas qualification is required to complete training for cultural competence in order to be fully registered.
- 117** A person who relies on practical experience (which currently must be experience in New Zealand) in order to be registered is not necessarily required to complete training but must be assessed as sufficiently culturally competent.<sup>90</sup>

## Communication skills

- 118** In the context of an overseas qualification, an applicant is required to satisfy the Board that he or she has sufficient competence in the English language to communicate well. There is no specific equivalent requirement in the SWRA in relation to applicants who have a New Zealand qualification or who are applying based on practical experience in New Zealand.

<sup>88</sup> Social Workers Registration Board *Competence to Practise Social Work with Maori* (policy statement, approved May 2010, last reviewed May 2011) and *Competence to Practise Social Work with Different Ethnic and Cultural Groups* (policy statement, approved May 2010, last reviewed May 2011).

<sup>89</sup> Social Workers Registration Board *The Process for Recognition/Re-Recognition of Social Work Qualifications in New Zealand* (policy Statement, approved February 2013, last reviewed June 2015).

<sup>90</sup> See Social Workers Registration Board *Criteria for Section 13 Registration: Enough Practical Experience Without a Recognised Social Work Qualification* (policy Statement, approved May 2010, last reviewed May 2015).

- 119** In any event, the Board has published a policy statement that requires all applicants for registration to be able to effectively speak English and communicate in order to be a fit and proper person able to perform the functions of social work.<sup>91</sup> This could be given legislative foundation. The criteria for fitness to practise social work are discussed further below.
- 120** The Board's policy is that sufficient communication skills will be presumed where a person has gained their qualification in New Zealand or in another country where it was taught and assessed in English, unless there are concerns that become apparent in the registration application process. In other cases, a person must demonstrate their English language competence, including completing International English Language Testing.<sup>92</sup>
- 121** Consistently with the Board's policy, it seems appropriate that every applicant for registration must have the ability to effectively communicate in English. While the Board currently treats this as an issue of fitness to practise, as does the HPCAA,<sup>93</sup> communication skills seem to fit better as a form of competence, particularly if they are to be assumed as a result of completion of a qualification.
- 122** As with professional and cultural competence, the most appropriate and efficient way to ensure a person seeking registration on the basis of a New Zealand qualification is completed in English would be for the Board to be required to take this into account when assessing whether to recognise a qualification, and to give legislative foundation to this requirement.
- 123** On a related point, the description in the SWRA of the requisite ability to communicate is relatively vague – it is framed in terms of the ability to speak, write and understand English 'reasonably effectively' and 'reasonably well'. By contrast, section 16 of the HPCAA, which prescribes the communication skills for a health practitioner to be fit to practise, requires the communication skills to be sufficient in relation to the intended health practice and 'to protect the health and safety of the public'.<sup>94</sup>
- 124** Drawing on this comparison, the requisite standard of communication skills in the SWRA could be defined by reference to the practice of social work, for example: the applicant's ability to communicate in English is sufficient to enable him or her to satisfactorily practise social work.

<sup>91</sup> Social Workers Registration Board *Fit and Proper Person* (policy statement, approved August 2009, last reviewed May 2013).

<sup>92</sup> Social Workers Registration Board *English Language Competence and English Language Testing* (policy statement, approved August 2009, last reviewed August 2013).

<sup>93</sup> HPCAA, section 16.

<sup>94</sup> HPCAA, subsections 16(a) and (b).

**Issue: Is it appropriate or necessary for the Board to assess the cultural competence and communication skills of each applicant for registration?**

**Options:** The Board could be required to assess and only recognise New Zealand qualifications where graduates of those qualifications will have the cultural competence and communication skills required to practise social work.

If so, where an applicant for registration has a recognised New Zealand qualification, a further assessment of cultural competence and communication skills may be unnecessary.

It would still be necessary for those applying for registration without a New Zealand qualification to demonstrate cultural competence and communication skills.

The requisite standard of communication skills could be defined by reference to the practice of social work.

# Fitness to practise social work

**125** The Board must consider whether a person is a fit and proper person to practise social work when he or she applies for registration.<sup>95</sup> A person must be a fit and proper person to practise social work before he or she can obtain any form of registration, either full or limited.

## The standard for fitness to practise social work

**126** The Board is required to assess a person's fitness to practise social work in a number of contexts but, in each of these, the same standard is to be applied.

**127** The Board may find a person is not a fit and proper person to practise social work only if it is satisfied that there are grounds on which a reasonable person would reach that conclusion, including if:<sup>96</sup>

- (a) the person has been convicted in New Zealand or overseas of an offence punishable by imprisonment for three months or more, and the nature and circumstances of the offence reflect adversely on his or her fitness to practise social work
- (b) the person is unable to perform adequately the functions required to practise social work satisfactorily
- (c) there are reasonable grounds that the person is not of good character and reputation.

**128** In order to assist in this assessment, the Board must ask the Police to check the applicant's criminal history and must consider any convictions that are disclosed or otherwise known to the Board.<sup>97</sup>

## The ability to perform adequately the functions required to practise social work satisfactorily

**129** The ability to perform adequately the functions required to practise social work satisfactorily is one of the components of fitness to practise under the SWRA, although on its face it would appear to overlap somewhat with competence. In the context of the SWRA, it seems that the ability to perform 'adequately the functions required to practise social work satisfactorily' is referring not to professional competence but to whether physical or mental health issues make it inappropriate for the person to practise social work.

**130** This is the approach taken in other professional legislation. Subsection 16(d) of the HPCAA says that a person will not be fit for registration if he or she 'is unable to perform the functions required for the practice of that **profession because of some mental or physical condition**'. Likewise, subsection 55(1)(l) of the LCA says the Law Society must take into account whether, '**because of a mental or physical condition**, the person is unable to perform the functions required for the practice of the law'.

<sup>95</sup> SWRA, section 48.

<sup>96</sup> Section 47.

<sup>97</sup> Section 50.

## Fitness to practise in other professions

- 131** In many other respects, the concept of fitness to practise in the SWRA is broadly similar to the way fitness to practise is described in other professional legislation. There are some further criteria or considerations for fitness in relation to health practitioners and lawyers:
- (a) whether the person has ever been subject to a professional disciplinary order or discipline at university in a way that reflects adversely on his or her fitness to practise<sup>98</sup>
  - (b) whether there is any reason to believe that the person may endanger the health and safety of members of the public<sup>99</sup>
  - (c) whether the person has ever been declared bankrupt or been the director of a failed company<sup>100</sup>
  - (d) whether the person has practised the profession in breach of legal obligations to register or hold a practising certificate<sup>101</sup>
  - (e) whether the person has previously been registered in an overseas country, and that registration has been cancelled or suspended.<sup>102</sup>
- 132** It could be appropriate to adopt some of these as relevant to fitness to practise under the SWRA as well, although some reflect the particular contexts of the health and legal professions, such as factor (c), which reflects the fact that lawyers often handle money and business affairs for clients.
- 133** One difference between the SWRA and HPCAA, on the one hand, and the LCA, on the other, is that, rather than prescribing criteria or pre-requisites that must be met, the LCA lists considerations that are to be taken into account in assessing fitness to practise. In other words, a person may be a fit and proper person to practise law even if one of the 'negative' factors exists, because the assessment of fitness is made by taking into account those factors rather than being determined by any one of them.
- 134** By contrast to the lists of considerations or criteria in the HPCAA and LCA, the Education Act simply says that an application for registration must be 'fit to be a teacher'.<sup>103</sup> There is no legislative prescription of what that requires. Instead, the Education Council has a policy that lists mandatory considerations in assessing whether a person is fit to be a teacher.<sup>104</sup> These include that the person:
- (a) displays respect for persons, for the cultural and social values of Aotearoa New Zealand, for the law, and for the views of others
  - (b) upholds the public and professional reputation of teachers
  - (c) is reliable and trustworthy in carrying out duties.

<sup>98</sup> HPCAA, subsection 16(g).

<sup>99</sup> Subsection 16(h).

<sup>100</sup> LCA, subsection 55(1)(b).

<sup>101</sup> Subsections 55(1)(d) and (e).

<sup>102</sup> Subsections 55(1)(h) and (i).

<sup>103</sup> Education Act, section 353.

<sup>104</sup> The policy is available at <<http://www.educationcouncil.org.nz/content/section-three-policy-documents>>.

**135** Again, some of these, particularly factor (a), may be appropriate in the SWRA context, particularly given the SWRA's emphasis on cultural competence.

#### **Issue: How should fitness to practise social work be assessed?**

**Options:** Fitness to practise social work could be assessed against a list of pre-requisites (or disqualifying factors), or by reference to a list of mandatory considerations none of which is determinative.

The criteria or considerations for fitness to practise social work could be defined in the SWRA or left to the Board to prescribe.

Other possible criteria or considerations include whether the applicant:

- has the ability to communicate in English sufficiently well to be able to satisfactorily practise social work
- has been subject to a professional disciplinary order (including cancellation of registration overseas) or discipline at an educational institution in a way that reflects adversely on his or her fitness to practise
- has practised social work in breach of obligations to register or hold a practising certificate
- may endanger the safety of the public
- displays respect for persons, for the cultural and social values of Aotearoa New Zealand, for the law, and for the views of others
- upholds the public and professional reputation of social workers
- is reliable and trustworthy in carrying out duties.

## **Possible interaction with the VCA**

**136** The issue of whether a person is suitable to work safely with children is best considered in the context of whether a person is a fit and proper person to practise social work. It is more aligned with the character of a person than his or her competence.

### **Safety checks under the VCA**

**137** The safety check and core worker check requirements of the VCA have already been described above at a general level

**138** The particular requirements for a safety check under the VCA are prescribed in detail in the Vulnerable Children (Requirements for Safety Checks of Children's Workers) Regulations 2015.<sup>105</sup> The safety check must include:<sup>106</sup>

- (a) confirmation of the identity of the person
- (b) obtaining the following information:
  - (i) a police record
  - (ii) a chronological summary of the person's work history for the preceding five years
  - (iii) the name of any professional organisation, licence, or registration that the person belongs to or holds, if that is relevant to the proposed children's work
  - (iv) the name of at least one independent referee
  - (v) any other information the regulated organisation considers relevant
- (c) an interview with the person, whether face-to-face or by telephone or some other form of communication
- (d) contacting at least one independent referee to request any information relevant to the assessment of risk
- (e) contacting at least one of any professional organisations to which the person belongs or from which the person holds a licence or registration, to request any information relevant to the assessment of risk
- (f) a risk assessment that assesses the risk the person would pose to the safety of children, if employed or engaged as a children's worker, taking into account the information obtained and any guidelines in existence.

**139** A periodic safety check, to be completed every three years, requires:<sup>107</sup>

- (a) confirming whether the person has changed his or her name since the last safety check
- (b) obtaining a police record
- (c) obtaining the name of any professional organisation, licence, or registration that the person belongs to or holds, if that is relevant to the proposed children's work
- (d) contacting at least one of any professional organisations to which the person belongs or from which the person holds a licence or registration, to request any information relevant to the assessment of risk
- (e) repeating the same risk assessment as required for the initial safety check.

### Overlap between the VCA and SWRA

**140** There is already a limited degree of overlap between the SWRA and the VCA, in that the Board is required under the SWRA to obtain and consider a person's criminal history in assessing whether he or she is a fit and proper person for the purpose of registration and/or issue of a practising certificate, and the VCA safety checks also require assessing a person's criminal convictions.

<sup>105</sup> VCA, sections 31 and 32.

<sup>106</sup> Sections 31 and 32, and the Vulnerable Children (Requirements for Safety Checks of Children's Workers) Regulations 2015, regulations 5-8.

<sup>107</sup> Regulations 9-13.

- 141** Completion of a full or partial safety check, as required by the VCA, could be adopted within the SWRA as a pre-requisite to registration and/or issue of a practising certificate as a social worker.
- 142** The VCA provisions that require children's workers to be safety checked do not require the particular organisation that employs or engages the worker to complete the safety check – rather the obligation is to ensure that a safety check is completed. Likewise, the regulations that prescribe the requirements for a safety check contemplate that the check can be carried out by a person or organisation acting on behalf of the regulated organisation.<sup>108</sup> As a result, completion of a safety check by the Board could satisfy the requirements of the VCA, so that an employer would not necessarily be required to repeat the check.<sup>109</sup>

### Approach under the Education Act

- 143** The Education Act was amended in July 2015, and the new provisions reflect some of the safety check requirements of the VCA. In particular, a requirement for registration as a teacher is that the applicant passes the VCA core worker check:<sup>110</sup>
- (a) the person has not been convicted of an offence specified in the VCA as disqualifying a person from being a 'core worker'
  - or
  - (b) the person has been granted an exemption under the VCA in respect of that offence.
- 144** These provisions essentially import the 'core worker' safety check into the requirements for registration as a teacher. Similarly, the pre-requisites to issuing a practising certificate under the Education Act include that the person has had a satisfactory police check within the past three years.<sup>111</sup> However, in neither the registration nor practising certificate context does the Education Act require the Education Council to complete full safety checks as required by the VCA.

### Possible approaches under the SWRA

- 145** There are a number of options for interaction between the VCA and the SWRA processes. The Board could be required to carry out full safety checks or, like the Education Council, only core worker checks. If it is appropriate for the Board to carry out either check, the question arises whether this is best considered at the time of registration or when issuing a practising certificate.
- 146** However, before such consequential matters arise, there are a number of other difficulties that would arise if the Board were to be required to carry out VCA processes.

<sup>108</sup> Definition in regulation 3 and also subregulation 8(3).

<sup>109</sup> Failure to ensure that a required safety check is completed is an offence: VCA, sections 25, 26 and 27. There is a defence, however, if the regulated organisation can show that it took all reasonable steps to ensure that a safety check was completed or the situation was a short-term emergency: VCA, sections 29 and 30.

<sup>110</sup> VCA, section 353.

<sup>111</sup> Section 361.

- 147** First, the scope of the VCA's application does not (and is not likely to in the future) align with the scope of the SWRA obligation to register or hold a practising certificate. Not every social worker will qualify as a 'children's worker' under the VCA, either because of the kind of work they do or because of their employment situation. The VCA applies to much broader types of work, although not necessarily every social worker would be within its ambit. Moreover, the VCA only applies to regulated organisations and would not necessarily capture social workers in all forms of employment or practice. Therefore, to apply the VCA requirements to every social worker would, in several respects, overreach the scope of the safety check requirements beyond that set out in the VCA.
- 148** One possible way around this issue would be to adopt the VCA requirements under the SWRA in relation to a particular 'scope of practice' would qualify them as a 'children's worker' or a 'core worker', if the concept of 'scopes of practice' were adopted in the SWRA, as part of either registration or the issuing of practising certificates.
- 149** Second, the VCA seems to contemplate that a safety check is undertaken in relation to a particular person in particular employment. The assessment of risk required as part of the safety check would necessarily require considering in a meaningful way the day-to-day activities of the social worker, and realistically the Board is not likely to be sufficiently familiar with these.
- 150** A related issue is that a social worker's role or employment context may change over the period of registration or practising certificate, and the obligation to undertake safety and core worker checks arises upon engagement or employment of a person. The fact that a recent safety check had been completed by the Board would therefore not preclude employers from having to undertake safety checks in some cases.
- 151** If, in the Education Act context, where it can be anticipated that the vast proportion of teachers would qualify as 'children's workers', given the nature of the work and that many education institutions receive at least some Government funding, the full safety check of the VCA has not been adopted, this could indicate that to adopt full safety checks in relation to social workers would be inappropriate. It would certainly be onerous for the Board to complete a safety check in relation to every applicant for registration.
- 152** It could be expected that, in many cases, the Board will be contacted by an employer for the purpose of a safety check of a Registered Social Worker.<sup>112</sup>

<sup>112</sup> See Vulnerable Children (Requirements for Safety Checks of Children's Workers) Regulations, subregulation 7(2).

### The best opportunity to complete a safety check

- 153** If it were to be appropriate for the Board to carry out either safety or core worker checks, the question arises whether this is best considered at the time of registration and/or issuing a practising certificate.
- 154** To require a safety check for registration when a person may not even be presently practising social work – or not practising in any way that involves children – could be an overly broad requirement. Although, on the other hand, it could be said that a person who poses an unacceptable risk to the safety of children should not be registered even if he or she is not practising.
- 155** Given the longevity of registration, it is the practising certificate process that is the first touch point to reassess a person’s suitability to practise social work once he or she is registered. The new requirements for obtaining a practising certificate could be that:
- (a) on a first application, the Board must complete a safety check unless satisfied that one has been undertaken in the previous three years
  - (b) on subsequent occasions, that a safety check has been completed in the previous three years (whether by the Board or someone else).

#### **Issue: Should the safety check or core worker check requirements of the VCA be integrated into the SWRA?**

**Options:** The Board could be required to carry out safety checks or core worker checks.

Either check (or both checks) could be carried out at the time of registration and/or issuing a practising certificate..

However, neither of these options is likely to be an efficient or effective means of implementing the VCA in relation to social workers.

# Oversight of social workers by the board

**156** The SWRA provides for the Board to review a Registered Social Worker's competence and/or fitness to practise social work in a number of situations, as well as providing for a complaints and disciplinary process administered by the Tribunal. As a result, a Registered Social Worker may have their registration and/or practising certificate cancelled or suspended or may be subject to other disciplinary action.

## Applications for a practising certificate

**157** Upon receiving an application, the Registrar may issue a practising certificate, refuse to issue a practising certificate, or refer the application to the Board. The Registrar must refer an application to the Board if there are reasonable grounds to believe or suspect that the applicant:<sup>113</sup>

- (a) has not completed a competence assessment with satisfactory results
- (b) has previously held a practising certificate but not for the immediately preceding three years
- (c) has at any time failed to maintain a reasonable standard of professional competence;
- (d) has not been practising social work as a profession at any time during the immediately preceding three years  
or
- (e) is not a fit and proper person to practise social work.

**158** The Registrar **may** also refer an application for a practising certificate to the Board if the applicant was first registered within the three years immediately preceding the application. <sup>114</sup>

**159** Where an application is referred to the Board, the Board may direct the Registrar to:

- (a) issue a practising certificate without any particular conditions<sup>115</sup>
- (b) issue a practising certificate subject to particular conditions
- (c) refuse to issue a practising certificate until certain conditions are met (and possibly, in the meantime, to issue an interim practising certificate)<sup>116</sup>  
or
- (d) refuse entirely to issue a practising certificate.<sup>117</sup>

<sup>113</sup> SWRA, section 30. The standard of belief applies to grounds (a) and (b) and suspicion to (c) to (e).

<sup>114</sup> Subsection 30(2).

<sup>115</sup> The Board may adopt general conditions that apply to all practising certificates or to a particular class of social workers: section 29.

<sup>116</sup> See section 37.

<sup>117</sup> Sections 31 and 33.

- 160** What type of practising certificate, if any, is appropriate (and what conditions to impose) depends on the Board's assessment of the applicant's competence to practise as a social worker.<sup>118</sup>
- 161** The SWRA does not expressly direct the Board to consider fitness to practise nor to refuse a practising certificate (or impose conditions) where it considers a person is not fit to practise social work.
- 162** This is not dissimilar from the process under the Education Act: fitness to practise is not per se a requirement for the issue of a practising certificate as a teacher; only a satisfactory police check is required.<sup>119</sup> Under the HPCAA, it is only the ability to satisfactorily practise the health profession – rather than the whole concept of fitness to practise – that the Act directs to be reassessed for the issue of a practising certificate.<sup>120</sup> At the other end of the spectrum is the LCA, where a practising certificate may be refused if a person is not a fit and proper person to hold one.<sup>121</sup>
- 163** The application for a practising certificate could be an appropriate opportunity for the Board to consider fitness to practise, which should be a pre-requisite to the issue of a practising certificate. In other words, the Board's assessment of an application for a practising certificate and imposition of any conditions should not solely focus on competence. Like with competence, though, fitness to practise, once established, could be presumed to continue unless there is cause for concern.

**Issue: Should fitness to practise social work be a pre-requisite to the Board's issuing a practising certificate?**

**Options:** If so, the Board could impose conditions directed at fitness to practise and not just at competence.

### Ensuring competence

- 164** The Board may review a Registered Social Worker's competence to practise social work **at any time**.<sup>122</sup> It must do so when directed to by a CAC. When the Board is doing so, the social worker has a right to be heard.<sup>123</sup>
- 165** After reviewing a person's competence, the Board may direct the person to complete a competence assessment, or place conditions on that person's registration, practising certificate or both.<sup>124</sup>

<sup>118</sup> Section 33.

<sup>119</sup> Section 361.

<sup>120</sup> Section 27.

<sup>121</sup> Section 39.

<sup>122</sup> Section 39. It also must do so when a Complaints Assessment Committee determines it should under section 72.

<sup>123</sup> Section 40.

<sup>124</sup> Section 41.

- 166** If a Registered Social Worker fails a competence assessment (being one prescribed by the Board) or refuses to complete one, the Board may impose conditions on the social worker's registration or practising certificate or may suspend the social worker's registration or practising certificate.<sup>125</sup> Those conditions or the suspension remain in effect until the person has satisfactorily undertaken a competence assessment.<sup>126</sup>
- 167** Failing a competence assessment is not in itself grounds for taking disciplinary action.<sup>127</sup> However, currently the Board does not have the express power to make a complaint or refer a matter to the CAC where it has concerns about a person's competence which, although not inherently grounds for taking disciplinary action, may be in some cases.

### Ensuring competence in other professions

- 168** Under the Education Act, the first port of call for complaints about competence is a teacher's employer. However, in certain circumstances, the Education Council may investigate a teacher's competence and may impose conditions on the teacher's practising certificate, refer the teacher to have any impairment assessed and addressed, or cancel the teacher's practising certificate.<sup>128</sup>
- 169** Under the HPCAA, once a regulating authority has reason to believe that a health practitioner fails to meet the required standard of competence, it may order the person to undertake a competence programme or examination, impose conditions on his or her scope of practice, or direct the practitioner to undertake counselling.<sup>129</sup> If a person fails (or fails to complete) a competence programme, or the health practitioner may pose a risk of harm to the public, the regulating authority may suspend his or her practising certificate or impose conditions or alter the scope of practice until it is satisfied of the person's competence.<sup>130</sup> Suspension is effective until the regulating authority is satisfied of competence.<sup>131</sup>
- 170** The LCA does not contain provisions directed at assessment or review of competence other than through the complaints and disciplinary process.

<sup>125</sup> Section 45.

<sup>126</sup> Section 45.

<sup>127</sup> Subsection 45(6).

<sup>128</sup> Education Act, section 412.

<sup>129</sup> HPCAA, section 38.

<sup>130</sup> Sections 39 and 43.

<sup>131</sup> Section 39.

### Issue: What options should be open to the Board if a Registered Social Worker is no longer competent to practise social work?

**Options:** Where there are concerns about competence, the Board is only able to review a person's competence and to direct him or her to complete a competence assessment. Then the Board may suspend or impose conditions on a person's registration or practising certificate.

Other options could be to empower the Board to make a complaint or refer the matter to a CAC. The possibility of cancellation is discussed below.

## Ensuring fitness to practise

- 171** The only other context, apart from upon an application for registration, in which the SWRA presently provides for the Board to review a social worker's fitness to practise is when a CAC determines that it should (after a complaint made against the social worker).<sup>132</sup> The Board must undertake the same assessment as it does upon an application for registration.
- 172** If the Board is satisfied that the social worker is not a fit and proper person, the Board may direct that the social worker's registration or practising certificate be suspended or make a complaint against the social worker.<sup>133</sup>
- 173** Currently, the ability of the Board to make a complaint after reviewing fitness to practise raises an issue of circularity as this option is only available when the Board has reviewed fitness to practise **pursuant to** a direction from a CAC to do so. Possible options to ameliorate this issue would be:
- (a) to expand the availability of this option so that the Board can make a complaint in other contexts, where the CAC will not yet have considered the matter – convictions are referred to a CAC, so it is not purely a complaints-based system and/or
  - (b) where the CAC has already considered the matter, to reframe the Board's power as one of reference **back** to the CAC, so that rather than the CAC procedure beginning again, the CAC could determine what to do next in light of the Board's assessment. A similar approach is taken where a complaint has been referred to conciliation but is not resolved as a result.<sup>134</sup> The CAC could, for example, decide to lay a charge before the Tribunal.

<sup>132</sup> SWRA sections 39 and 72.

<sup>133</sup> Section 49.

<sup>134</sup> Section 73.

- 174** Presently, the only meaningful option currently open to the Board is to suspend a person's registration or practising certificate. There is no maximum period of suspension specified in the SWRA. It could be appropriate for the SWRA to prescribe the maximum period of suspension or when a suspension will end (for example, a suspension because of incompetence ends once a competence assessment is satisfactorily completed, as discussed below).
- 175** One additional option that may be appropriate is to enable the Board to impose conditions on a person's practising certificate or registration when there are concerns about his or her fitness to practise. On the one hand, fitness to practise issues may lend themselves to remedy in this way to a lesser extent than, for example, competence issues, because fitness to practise goes to the core of a person's character and suitability.
- 176** On the other hand, there may well be situations where the nature of the fitness issue, or the limited information available to the Board, may mean that imposition of conditions is more appropriate than suspension (for example, if the complaint is at a very early stage and is relatively unsubstantiated). Therefore, it would seem pre-emptive to preclude the Board from dealing with such matters by way of conditions.
- 177** The HPCAA also provides for a regulating authority to review fitness to practise of a health practitioner when directed to do so by a professional conduct committee (akin to a CAC).<sup>135</sup> Unhelpfully, there is no express provision in the HPCAA for the process to be followed by a regulating authority pursuant to such a direction, or the courses of action open to it.

**Issue: What options should be open to the Board if a Registered Social Worker is no longer competent or fit to practise social work?**

**Options:** Currently, the only courses of action available in respect of fitness to practise are suspension of a social worker's registration or practising certificate, or the circular option of making a complaint.

Other options could be to empower the Board to:

- impose conditions on a social worker's registration or practising certificate
- make a complaint in a broader range of circumstances, or
- refer the matter **back** to a CAC for further reconsideration of the best further action to be taken.

The possibility of cancellation because of unfitness to practise is discussed next.

<sup>135</sup> Subsection 80(2)..

## Cancellation of registration because of incompetence or unfitness to practise social work

- 178** The SWRA does not currently provide for the Board to cancel a social worker's registration on the basis that he or she ceases to be a fit and proper person to practise social work, or he or she is no longer competent. In some cases, cancellation of registration could be appropriate.
- 179** Given the Board currently has an indeterminate power of suspension on the basis of unfitness to practise, and that the SWRA currently assigns the Board the primary role of assessing fitness to practise (at the time of registration), the Board could be given a power of cancellation on this basis. If this power were to be conferred, it would be important for the social worker to have an opportunity to be heard beforehand.
- 180** Likewise, the Board has primary responsibility under the SWRA for assessment of professional and cultural competence.
- 181** Under section 132 of the SWRA, the Board may direct the cancellation of a social worker's registration if he or she 'was not entitled to be registered'. This is very broad, but it is not altogether clear whether it would enable the Board to cancel the registration of a person it has found to be incompetent or unfit to practise. The language of 'was not entitled' suggests that the inquiry is to be made at the time that registration was granted, so that it is targeted at correcting errors, rather than at a reassessment with the benefit of hindsight in light of new circumstances, conduct, or information. The HPCAA contains a similar provision.
- 182** By contrast, under section 362 of the Education Act, the Education Council **must** cancel a person's registration if it is satisfied that the person **no longer** satisfies the requirements for registration as a teacher – which include being fit to be a teacher.<sup>136</sup> This is not necessarily preceded by any disciplinary process.
- 183** Given the gravity of cancelling registration, it could be appropriate that cancellation of registration is generally only available after the CAC and/or Tribunal processes have been followed to completion. The CAC and Tribunal processes are discussed further below: currently incompetence or unfitness to practise, in general terms, is not grounds for cancellation of registration by the Tribunal either.

<sup>136</sup> Education Act, section 357.

**Issue: Should the Board be able to cancel the registration of a social worker if he or she is no longer competent or fit to practise social work?**

**Options:** It could be open to the Board to cancel a social worker's registration on this basis, or it could be open only to the Tribunal to do so, after the CAC and Tribunal processes have been followed.

If the latter, the Board could be given the power to refer its concerns about a social worker's competence or fitness to practise social work to a CAC to enable this process to be undertaken.

## Notification of concerns about a person's ability to practise social work

- 184** As already referred to, if a person considers that a Registered Social Worker may be unable to adequately and satisfactorily undertake social work, he or she may give the Registrar notice of the circumstances.<sup>137</sup> The Registrar must put such a notice before the Board.<sup>138</sup>
- 185** The Board may suspend a person's registration on an interim basis for up to 10 days if, upon receipt of a notice or for some other reason, the chairperson of the Board considers the social worker may not be able to perform adequately the functions required to practise social work satisfactorily.<sup>139</sup> The issue of interim suspension is discussed further, later in this Issues Paper.
- 186** The Board may also require the person in respect of whom notification has been received to submit to a medical examination.<sup>140</sup>
- 187** If a medical examination has taken place, or the person failed to attend the required examination, and the Board considers the matter should be dealt with **urgently**, the Board may suspend the social worker's registration or practising certificate, or both, or make either subject to conditions.<sup>141</sup> It may only do so if:
- (a) it is satisfied that the person is unable to perform adequately the functions required to practise social work satisfactorily, and the order is necessary to protect the health and safety of the public, **or**
  - (b) it has been unable to decide whether the person is able to perform adequately the functions required to practise social work satisfactorily, because he or she did not undergo medical examination.<sup>142</sup>

<sup>137</sup> SWRA, section 51.

<sup>138</sup> Section 53.

<sup>139</sup> Section 54.

<sup>140</sup> Sections 55–56.

<sup>141</sup> Section 57.

<sup>142</sup> Section 57.

- 188** The power to suspend (apart from interim suspension) or impose conditions on a social worker's registration or practising certificate is restricted to situations of urgency. The SWRA does not provide any specific powers for how the Board is to respond once a medical examination has taken place (or if one does not) where the circumstances are not urgent. Perhaps rather than limiting suspension to 'urgent' situations, the touchstone should be whether suspension is necessary to protect the public.
- 189** Under the HPCAA, the power of a regulating authority to suspend or impose conditions on a health practitioner who is not able to adequately perform his or her functions because of a medical or physical condition is not limited to urgent situations.
- 190** Furthermore, the SWRA does not expressly state the duration of the suspension or conditions that may be imposed in this context, either in terms of a maximum period or the circumstances in which a suspension or condition may lift or be revised. By contrast, where a person's registration or practising certificate is suspended because of concerns about competence, the SWRA specifies that this suspension remains in effect until competence is established.<sup>143</sup> Similarly, under the HPCAA, suspension or conditions imposed after a notification remain in place until the regulating authority is satisfied that the health practitioner is able to practise satisfactorily or the conditions are no longer necessary.<sup>144</sup>
- 191** Presumably, aside from ordering a medical examination or suspension, the Board must revert to powers found elsewhere in the SWRA in order to respond to the situation (for example, the power to review a social worker's competence at any time).
- 192** The receipt of a notification of this kind could trigger the Board's ability to reassess the social worker's fitness to practise, in the same way as a direction to do so by a CAC.<sup>145</sup> After all, the ability to perform adequately the functions of a social worker is an aspect of fitness to practise in the SWRA. It would be as part of that assessment that the Board would look at the results of a medical examination and assess whether the person is able to perform adequately the functions required to practise social work satisfactorily.
- 193** It may be appropriate for other courses of action to be open to the Board where such a notification is received. The Board could also refer the matter to the CAC. Although notification is not a 'complaint', the CAC process is also used to assess notification of convictions, which also do not have a complainant.

<sup>143</sup> Section 45.

<sup>144</sup> Section 51.

<sup>145</sup> Under section 48.

**Issue: What options should be open to the Board when it receives notification of concerns about a person's ability to perform adequately the function required to practise social work satisfactorily?**

**Options:** Presently the Board only has the option to order:

- interim suspension of a person's registration for up to 10 days
- that the person submit to a medical examination
- in limited urgent situations, suspension or the imposition of conditions on a person's registration or practising certificate.

Other possible courses of actions include:

- a power to suspend a person's registration for a longer period of time on an interim basis
- expanding the power of suspension and/or allowing the imposition of conditions where the Board is satisfied that the social worker is unable to perform adequately the function required to practise social work satisfactorily
- a power to review a person's fitness to practise
- a power to refer the matter to a CAC.

## Mandatory notification

**194** The SWRA simply provides that a person may notify the Board if he or she has concerns about a social worker. There is no obligation to give such notification or any other kind.

### Mandatory notification in other professions

**195** The HPCAA includes two provisions, adopting voluntary notification in one context and mandatory notification in another. First, every health practitioner has an **obligation** to give notice to the relevant authority if he or she has reason to believe that another health practitioner may be unable to perform his or her professional functions properly (because of a mental or physical health condition).<sup>146</sup> This is the same basis on which notification under the SWRA is only voluntary.

**196** Second, the HPCAA provides that a health practitioner may notify the relevant authority if the practice of another health practitioner **may** pose a risk of harm to the public because he or she does not have the requisite competence.<sup>147</sup> There is no basis for notifications of this kind under the SWRA, although presumably this could be dealt with as a complaint.

<sup>146</sup> HPCAA, sections 45 and 47.

<sup>147</sup> Section 34.

- 197** In a slightly different vein, the HPCAA requires a **regulating authority** to report concerns about a health practitioner's competence to relevant Government departments, the Health and Disciplinary Commissioner, and, if known, the health practitioner's employer.<sup>148</sup>
- 198** The HPCAA does not contain provisions that require health practitioners to notify the regulating authority if they believe or suspect professional misconduct on the part of another health practitioner. By contrast, under the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, rules 2.8 and 2.9, a lawyer has an obligation to report concerns about misconduct, but it is not mandatory to report lesser 'unsatisfactory conduct'.
- 199** On the other hand, the LCA does not require lawyers to notify the Law Society where there are more general concerns about competence, fitness to practise, or mental or physical health issues.
- 200** Under the Education Act, mandatory reporting obligations are imposed on employers and former employers of teachers. They must notify the Education Council if:<sup>149</sup>
- (a) the employer dismisses the teacher for any reason
  - (b) in certain circumstances, the employer was dissatisfied with the teacher's conduct or intended to investigate it
  - (c) the former employer receives a complaint about a teacher's conduct while he or she was an employee
  - (d) the employer has reason to believe that the teacher has engaged in serious misconduct
  - (e) the employer is satisfied that the teacher has not reached the required level of competence.

### Who should be subject to notification obligations?

- 201** This raises the issue of whether there should in some circumstances be mandatory notification under the SWRA and, if so, who the obligation should apply to and in respect of which matters.
- 202** An obligation to notify the Board could be imposed on Registered Social Workers and/or on their employers. There could likewise be other relevant parties who have an obligation to report: for example, the Ministry of Social Development (even when the social worker concerned is not employed by the Ministry) and Ministry of Justice, DHBs, education institutions, or members of other professions. It would be Registered Social Workers, their employers, and possibly the Ministries who would have the background knowledge to best identify and evaluate concerns about other social workers.

<sup>148</sup> Section 35.

<sup>149</sup> Education Act, section 392 and following.

**203** It may be inappropriate to impose on members of the public an obligation to notify the Board, not least because the only way to enforce an obligation would be to create an offence, which would be heavy-handed.

**204** It could also be appropriate for the Board to be required to notify employers and/or Government departments – such as the Ministry of Social Development, Ministry of Justice, and/or DHBs – when a concern arises in relation to a social worker, so that they can take appropriate action. In order to avoid unfairly tarnishing the reputation or employment relations of a social worker, it may be appropriate for the Board to first screen complaints or notifications. Or the obligation on the Board to notify others could be confined to where there is a risk to the safety of the public.

### The matters for which notification should be mandatory

**205** The obligation on social workers (and, possibly, other relevant parties) to notify the Board could relate to concerns about any or all of the following matters:

- (a) Whether, because of a mental or physical condition, the social worker is unable to adequately perform the functions to satisfactorily undertake social work
- (b) whether the social worker is not a fit and proper person to practise social work
- (c) whether the social worker may pose a risk of harm to the public because he or she does not have the requisite competence to practise social work and/or
- (d) whether the social worker has committed a breach of the Code of Conduct or other offence (criminal or disciplinary) under the SWRA.

**206** Or, like under the LCA, the obligation to notify the Board could apply where the issue is of a certain gravity, and not where the concerns are less serious.

#### **Issue: Should the SWRA impose an obligation of notification to or by the Board about concerns in respect of a social worker?**

**Options:** Notification could be mandatory for social workers, their employers, the Ministry of Social Development, the Ministry of Justice, DHBs, education institutions, and/or other relevant parties.

The Board could be required to notify the Ministry of Social Development, Ministry of Justice, DHBs, and/or the employer of a social worker when it receives a complaint or notification of concerns in respect of a social worker.

The obligation to notify could apply to concerns in respect of competence, fitness to practise, mental or physical conditions, or suspected breaches of the SWRA or Code of Practice (any breach or only those of a certain gravity).

# The complaints assessment committee process

## Overview of the process

### Receipt of a complaint or notice of a conviction

- 207** Any person may make a complaint about a Registered Social Worker to the Health and Disability Commissioner or to the Registrar, who will notify the chairperson of the Social Workers Complaints and Disciplinary Tribunal.<sup>150</sup> The SWRA provides for the Commissioner and the Registrar/chairperson to notify each other of complaints, and no action is to be taken under the SWRA in relation to a complaint while it is being investigated by the Commissioner.<sup>151</sup>
- 208** The Health and Disability Commissioner deals with complaints relating to the provision of health and disability services. The Commissioner's role and jurisdiction is set out in the Health and Disability Commissioner Act 1994.
- 209** The chairperson of the Tribunal must refer the complaint to a CAC, unless the chairperson is satisfied that it does not need to be pursued.<sup>152</sup>
- 210** Where a social worker is convicted of an offence punishable by imprisonment of three months or more, the court must notify the Registrar. If the chairperson receives notice from a court that a Registered Social Worker has been convicted, the chairperson **must** refer this to a CAC.<sup>153</sup>

### Complaints Assessment Committees

- 211** A CAC is appointed by the chairperson of the Tribunal, in consultation with the Board, and must include two Registered Social Workers and one layperson.<sup>154</sup> A person who is a member of the Board or the Tribunal may not be a member of a CAC.<sup>155</sup> A CAC may regulate its own procedure as it thinks fit and may appoint a legal adviser.<sup>156</sup>
- 212** As soon as reasonably practicable after a complaint or notice of conviction is referred to the CAC, the CAC must determine the complaint.<sup>157</sup> In doing so, the CAC may undertake or arrange for investigation and consider the results of any investigations already carried out into the subject matter of the complaint.<sup>158</sup>

<sup>150</sup> SWRA, section 59.

<sup>151</sup> Sections 60–61, 62, and 64. Section 62.

<sup>152</sup> Where the complaint is not referred to the Health and Disability Commissioner, this must happen as soon as reasonably practicable. In other cases, presumably this occurs once notification comes from the Commissioner. In cases where the Commissioner has jurisdiction as well as the Tribunal, the complaint should be referred to a CAC unless both the HDC and chairperson of the Tribunal agree it should not be. Where there is no overlapping jurisdiction, the decision is made by the chairperson of the Tribunal: sections 64 and 65.

<sup>153</sup> Subsection 65(2).

<sup>154</sup> Section 66.

<sup>155</sup> Section 66.

<sup>156</sup> Sections 67–68.

<sup>157</sup> Subsection 71(1).

<sup>158</sup> Subsection 71(2).

The committee must give the social worker and the complainant an opportunity to be heard.<sup>159</sup> The committee may decide that:<sup>160</sup>

- (a) the Board should review the competence and/or fitness to practise of the social worker concerned
- (b) the complaint should be submitted to conciliation
- (c) the complaint or conviction should be submitted to the Tribunal or
- (d) no further steps should be taken under the SWRA in relation to the complaint or conviction.

**213** If a complaint submitted to conciliation is resolved by agreement, the CAC must notify the chairperson of the Tribunal. If it is not resolved, the committee must determine whether to submit the complaint to the Tribunal or whether no further steps should be taken.<sup>161</sup>

**214** Where a complaint or conviction is to be submitted to the Tribunal, the CAC must frame an appropriate charge and lay it before the Tribunal.<sup>162</sup> The committee may also recommend to the Tribunal that, pending the determination of the charge, the social worker's registration should be suspended, or restrictions should be imposed on the social worker's practice.<sup>163</sup>

## Division of responsibilities

**215** The SWRA generally assigns administration of the complaints process to the Tribunal, in particular the Chairperson. The roles assigned to the Chairperson include:

- (a) receiving notification of complaints from the Registrar or Commissioner
- (b) screening of complaints before they are referred to a CAC
- (c) appointing the CAC
- (d) reconstituting a CAC, if necessary.

**216** It would be more appropriate for the administration of the complaints process to be the responsibility of the Board. The reasons for this include that these tasks are primarily administrative, whereas the Tribunal is a judicial body. Moreover, the chairperson (or deputy) of the Tribunal will be a member of the Tribunal that determines any resulting charge against a social worker who is the subject of a complaint. This raises issues of conflict of interest, given the chairperson will have already reviewed the complaint and may well receive, at that time, prejudicial information that will not be before the Tribunal when the resulting charge is determined.

<sup>159</sup> Subsection 71(3).

<sup>160</sup> Subsection 71(1).

<sup>161</sup> Subsection 73(3).

<sup>162</sup> Subsections 72(3) and 73(4).

<sup>163</sup> Section 74.

- 217** In addition, the appointment of a CAC could be a task that the Board can delegate to the Registrar and/or the Board's staff, rather than requiring consultation with members of the Board. It may, however, be appropriate for the Board to be involved where a social worker seeks to have a CAC reconstituted.
- 218** The above approach is consistent with the approach taken in other professions' legislation. Under the HPCCA, it is the regulating authority and not the Tribunal that screens complaints and that responds to requests for reconstitution of professional conduct committees.<sup>164</sup>

**Issue: Should the Board take over from the chairperson of the Tribunal the responsibility for administration of the complaints process?**

**Options:** The Board could take over some or all of the chairperson's role in receiving and screening complaints and/or appointing and reconstituting a CAC.

Some of these administrative tasks could be delegated to the Registrar or employees of the Board.

## 'Screening' of complaints

- 219** When a complaint is received, it must be referred to a CAC unless the chairperson of the Tribunal is satisfied it should not be pursued. By contrast, wherever notification of a conviction is received, it **must** be referred to a CAC.
- 220** As a preliminary point, given that a CAC may consider either a complaint or a conviction of a social worker, the title 'Complaints Assessment Committee' does not reflect the full scope of a CAC's role. The Board also receives notifications from employers about alleged professional misconduct, and the term 'complaint' tends to confuse people. It may be appropriate to rename the body that performs this function as a 'professional conduct committee', which is the language used in the HPCAA context.

## Screening of convictions

- 221** First, it is not clear why every conviction notified to the Registrar is to be referred to a CAC without any assessment of the nature of the conviction or gravity of the offending. The Registrar is notified by the Court of every conviction punishable by 'three months' imprisonment or more. Conceivably, this means every conviction for 'drunk driving', for example, must be referred.<sup>165</sup>

<sup>164</sup> HPCAA, section 68 and 75.

<sup>165</sup> Land Transport Act 1998, subsection 56(3).

**222** Given that the SWRA already tasks the Board with assessing whether a conviction reflects on a practitioner's fitness to practise in the context of applications for registration (and a practising certificate), the Board is well-positioned to assess whether a conviction is of a nature (for example, repeat offending) or gravity that would warrant consideration by a CAC.

### Investigative steps for the purpose of screening

**223** The second issue that arises in this context is whether it would be appropriate for the chairperson of the Tribunal<sup>166</sup> to have investigative powers available when assessing a complaint or conviction that has been received, and deciding whether to refer it to a CAC or whether the matter does not need to be pursued. Meaningful assessment could, in many cases, be expected to require steps to be taken to investigate or verify the complaint.

**224** Possible powers appropriate in this context could be to contact the complainant, the person who is the subject of the complaint, and/or his or her employer to request information. The scope of any powers should reflect the preliminary nature of this assessment.

### The standard to be applied during screening

**225** Finally, the current provisions of the SWRA do not provide any guidance on the threshold or criteria against which a complaint or conviction should be assessed in deciding whether it should be pursued. This should be clarified – for example, that frivolous vexatious complaints may be dismissed, or that a complaint should be assessed against whether there are reasonable grounds to suspect the social worker has engaged in conduct that adversely reflects on his or her fitness to practise, or that he or she may have breached the Code of Conduct.

**226** The screening criteria should reflect the broader ambit of the CAC process and so, for example, should not focus on the ultimate possible grounds for a charge before the Tribunal.

**227** Moreover, the screening of complaints should reflect the other courses of action that may be available instead of referring a complaint to a CAC. For example, the Board could review a person's competence, fitness to practise, or ability to perform adequately the functions of social work (by, for example, ordering a medical examination). This raises the issue of whether for the Board to conduct such a review would be pre-empting the CAC process or, on the other hand, would better inform the CAC when the matter is referred on.

<sup>166</sup> It has been suggested above that this role should be reassigned to the Board.

### Screening of complaints in other professions

- 228** Under the HPCAA, a regulating authority screens a complaint before it is referred to a professional conduct committee. The HPCAA provides limited guidance on the criteria for screening, but one basis for referral is whether the complaint raises questions about the appropriateness or safety of the health practitioner's practice.<sup>167</sup>
- 229** Under the LCA, a complaint is referred directly to a Lawyers Standards Committee without being screened by the Law Society.<sup>168</sup> It is the Committee that first enquires into a complaint and decides whether or not any action should be taken at all.<sup>169</sup> The LCA provides the matters that the Committee may take into account when deciding whether to take no more action in relation to a complaint, which include: <sup>170</sup>
- (a) whether the subject matter of the complaint is trivial, or the complaint is frivolous, vexatious, or not made in good faith
  - (b) the length of time that has passed between the conduct to which the complaint relates and the making of the complaint
  - (c) whether the person aggrieved by the person who is the subject of the complaint wishes further action to be taken.

<sup>167</sup> See section 68 of the HPCAA.

<sup>168</sup> LCA, section 135.

<sup>169</sup> Section 137.

<sup>170</sup> Section 138.

**Issue: Should convictions and complaints of which the Board is notified be subject to a 'screening' assessment, like complaints are, before referral to a CAC?**

**Options:** Presently, only complaints are required to be screened. A consistent approach would suggest that either complaints and convictions are both screened or neither is screened before referral to a CAC.

**Issue: Should the person responsible for screening complaints have powers of preliminary investigation to enable the matter to be meaningfully considered?**

**Options:** Possible powers include contacting the complainant, the person who is the subject of the complaint, and his or her employer.

**Issue: What are appropriate standards for the assessment of a complaint before it is referred to a CAC?**

**Options:** Possible considerations include whether:

- the complaint is trivial, frivolous, vexatious, or in bad faith
- the passage of time means it would be impracticable to investigate the complaint
- there are reasonable grounds to suspect or believe that a person is no longer fit or competent to practise social work
- there are reasonable grounds to suspect or believe that grounds for discipline by the Tribunal exist.

## The powers of the Complaints Assessment Committee

- 230** When assessing a complaint, a CAC: <sup>171</sup>
- (a) may undertake or arrange for any investigations it thinks necessary in relation to a complaint
  - (b) may take into account any investigations or assessments of the subject matter of the complaint already carried out
  - (c) may require a complaint to be supported by a statutory declaration
  - (d) must give the social worker and complainant the opportunity to provide a written statement
  - (e) may give the social worker and the complainant the opportunity to appear in person.
- 231** The four courses of action or 'outcomes' available to a CAC have already been described above.

### Powers of complaints committees in other professions

- 232** Professional conduct committees under the HPCAA are analogous to CACs under the SWRA. Focusing on those matters that go beyond the powers of a CAC under the SWRA, the HPCAA specifically provides that a professional conduct committee may:
- (a) receive any statement or information as evidence, even if it would not be admissible in a court of law <sup>172</sup>
  - (b) hear oral evidence and receive statements and submissions from the health practitioner, employer, complainant, and certain others <sup>173</sup>
  - (c) if there are reasonable grounds to believe the information is necessary, and there is no alternative to compulsion, require any person to produce papers, documents, records, or things <sup>174</sup>
  - (d) direct that the regulating authority refer the subject matter of the investigation to the Police
  - (e) direct that the regulating authority counsel the health practitioner. <sup>175</sup>
- 233** Under the LCA, a Lawyers Standards Committee may:
- (a) direct the parties to a complaint to explore the possibility of resolving it by negotiation, conciliation, or mediation, and report back to the Committee <sup>176</sup>
  - (b) appoint investigators to investigate and report back to the Committee – investigators have the power to examine any accounts or records <sup>177</sup>

<sup>171</sup> SWRA, section 71.

<sup>172</sup> HPCAA, section 76.

<sup>173</sup> Section 76.

<sup>174</sup> Section 77.

<sup>175</sup> Section 80.

<sup>176</sup> LCA, section 143.

<sup>177</sup> Section 146.

- (c) require the production of all documents, accounts, records, and information within the control of a practitioner or firm (or certain other people) and make copies of them<sup>178</sup>
- (d) receive any statement or information as evidence, even if it would not be admissible in a court of law<sup>179</sup>
- (e) determine that there has been unsatisfactory conduct on the part of a lawyer or firm.<sup>180</sup>

**234** Where the Standards Committee determines there has been unsatisfactory conduct, it has a range of options available:<sup>181</sup>

- (a) censure or reprimand the practitioner
- (b) order the practitioner to apologise to the complainant
- (c) order the practitioner to pay compensation to any person who has suffered loss
- (d) order the practitioner to pay a fine of up to \$15,000
- (e) order the practitioner to make his or her practice available for inspection or take advice in relation to the management of his or her practice
- (f) order the practitioner to undergo practical training or education
- (g) order the practitioner to pay costs.

**235** The Education Act contains little detail about the powers of a Complaints Assessment Committee during the investigation phase. This is governed by the New Zealand Teachers Council (Conduct) Rules 2004, which enable a CAC to seek further information about a teacher who is the subject of a complaint, or a report from the person who has made the complaint and/or from the teacher's employer, before considering the matter for the first time. The CAC may also review relevant records of the Teachers Council at this stage.<sup>182</sup>

**236** The CAC may undertake further investigation, including:<sup>183</sup>

- (a) requesting information from any person
- (b) engaging any suitably qualified person to carry out an investigation
- (c) meeting with the teacher, the person who made the complaint or report, the teacher's employer, and any other person who may assist with the investigation
- (d) copying and holding documents.

<sup>178</sup> Section 147.

<sup>179</sup> Section 151.

<sup>180</sup> Section 152.

<sup>181</sup> Section 156.

<sup>182</sup> New Zealand Teachers Council (Conduct) Rules 2004, subrule 16(1).

<sup>183</sup> Rule 19.

**237** After an investigation, the powers of a CAC include:<sup>184</sup>

- (a) dismissing the report or complaint, or resolving to take it no further
- (b) resolving to seek resolution of the matter by agreement
- (c) referring the report or complaint for a competence assessment, where the matter touches more on competence than conduct
- (d) referring the teacher to an impairment process
- (e) making a finding of misconduct short of serious misconduct
- (f) censuring a teacher
- (g) laying a charge before the Disciplinary Tribunal  
or
- (h) referring the matter to the Tribunal for a hearing.

### Possible further powers for a CAC

**238** A CAC has primary responsibility under the SWRA for investigation of a complaint. The information that the CAC obtains will form the evidence against a social worker in any Tribunal proceedings. Particularly if a charge is laid before the Tribunal, it is essential that the CAC has access to all relevant information. But, even before that, the CAC needs to be properly informed in order to assess whether a charge should be laid or if some other course of action is appropriate. To perform its functions properly, then, the CAC requires the power to obtain information. The present 'investigation' power is very vague.

**239** Another issue is what course of action should be available to or required of a CAC where, in the course of investigating or considering a matter, the CAC becomes aware of other conduct or matters related to the social worker under consideration that cause concern or may warrant investigation.

**240** Under the HPCAA, a regulating authority may refer further matters to a professional conduct committee when a committee is already considering a matter concerning a particular health practitioner.<sup>185</sup> The regulating authority may do so when it considers that the further matter should form part of the professional conduct committee's consideration.

**241** While a similar power could be added in to the SWRA, this process would require the CAC to first inform the Board (or chairperson of the Tribunal, if the chairperson retains the screening function) about the matter or conduct it has become aware of, and for the Board to then screen and refer the matter back to the CAC. This circular process seems unduly laborious, particularly given the 'light-touch' nature of the screening stage before a matter is referred to a CAC, and the fact that a CAC is well-positioned to assess whether the further conduct of which it has become aware warrants investigation and/or a disciplinary response, as this evaluation is the core of the CAC function.

<sup>184</sup> Education Act, section 401, and New Zealand Teachers Council (Conduct) Rules, rules 18 and 20.

<sup>185</sup> Subsection 68(4).

- 242** Additionally, the powers of bodies analogous to a CAC in other professional legislation indicate that the range of available responses to a complaint could appropriately be expanded. For example, if the CAC identifies that there is low level misconduct not warranting a charge before the Tribunal, the option to censure a practitioner may be appropriate to denounce the behaviour.
- 243** The SWRA appears to contemplate that the CAC itself performs the function of conciliation. This does not seem an appropriate function for the CAC: conciliation, like mediation, would be most effectively performed by an independent third person. Under the HPCAA, a professional conduct committee may appoint an independent person to act as conciliator.<sup>186</sup> An appointment power would enable the CAC to make use of existing conciliation service providers and/or professionals.
- 244** Mediation may be an appropriate alternative to conciliation, particularly where the matter has arisen from a dispute between a social worker and his or her employer, or concerns in the employment context. In these cases, a power to refer the parties to the mediation processes related to the Employment Relations Act 2000 might be appropriate.

#### **Issue: Should the powers of a CAC be expanded?**

**Options:** The investigative powers of a CAC could be expanded to include a power to require documents or information to be produced by, for example, a social worker and his or her employer.

A broader power to request information from others may also be appropriate.

It may also be appropriate for a CAC to be able to consider other conduct or matters relating to a social worker that come to its attention in the course of investigating or considering a matter concerning that person.

The further options that could be given to a CAC once it has assessed a complaint include:

- directing an apology from the social worker to the complainant
- directing mediation of the complaint, including to the Employment Relations Authority mediation process
- referring the subject matter of the complaint to the Police
- censuring the social worker and/or
- directing that the social worker undergo training, counselling, or mentoring.

<sup>186</sup> HPCAA, section 82.

# The social workers complaints and disciplinary tribunal

## The Tribunal process

- 245** The Tribunal comprises a chairperson, a lawyer, and five other members appointed by the Board, and at least one layperson appointed by the Minister.<sup>187</sup> A member of the Board cannot be a member of the Tribunal.<sup>188</sup>
- 246** A charge before the Tribunal may be laid either by a CAC, as described above, or by the Director of Proceedings under the Health and Disability Commissioner Act 1994.<sup>189</sup>
- 247** As soon as reasonably practicable after charges are laid, the chairperson of the Tribunal must convene a hearing to consider the charge.<sup>190</sup> Tribunal hearings are generally to be held in public.<sup>191</sup> Each charge is heard by a Tribunal consisting of the chairperson (or a deputy chairperson), the lawyer, two of the Tribunal members appointed by the Board, and the member of the Tribunal appointed by the Minister.<sup>192</sup>
- 248** After a hearing, the Tribunal may decide that the social worker has:<sup>193</sup>
- (a) been guilty of **professional misconduct**, which means:<sup>194</sup>
    - (i) a breach of the Code of Conduct
    - or
    - (ii) claiming or holding oneself out to be a Registered Social Worker, while employed or engaged as a social worker, while not holding a current practising certificate
  - (b) been guilty of conduct that is unbecoming of a social worker and reflects adversely on his or her fitness to practise
  - (c) been convicted by a court of an offence that is punishable by three months imprisonment or more and was committed in circumstances that reflect adversely on the social worker's fitness to practise;
  - or
  - (d) failed to comply with restrictions on his or her registration or interim restrictions pending determination of the charge.
- 249** If the Tribunal is satisfied of any of the above matters, it may make an order that:
- (a) the social worker's registration be cancelled
  - (b) the registration of the social worker be suspended for up to 12 months
  - (c) the person may only practise social work in accordance with certain restrictions, for a period of up to 3 years
  - (d) the person is censured
  - (e) the person must pay a fine of up to \$10,000 to the Board
  - (f) the person must undergo stated additional training, professional development, or both
  - or
  - (g) the person must pay part or all of the costs and expenses related to the matter.

<sup>187</sup> SWRA, section 116.

<sup>188</sup> Section 116.

<sup>189</sup> Section 75.

<sup>190</sup> Subsection 75(3).

<sup>191</sup> Section 79.

<sup>192</sup> Section 119.

<sup>193</sup> Subsection 82(1).

<sup>194</sup> Subsection 82(2).

**250** If the Tribunal orders the cancellation of a social worker's registration, it may set a time period within which the person may not apply for reregistration, and may also impose conditions that the person must satisfy before he or she can apply for registration again, such as that the person must undertake specified training or attend treatment for alcohol or drug abuse.<sup>195</sup>

## Grounds for discipline and sanctions in other professions

**251** Under the HPCAA, the Tribunal may discipline a health practitioner if it is satisfied:<sup>196</sup>

- (a) the practitioner has been guilty of professional misconduct because of any act or omission that amounts to malpractice or negligence within the scope of practice
- (b) the practitioner has been guilty of professional misconduct because of any act or omission that has brought or was likely to bring discredit to the profession
- (c) the practitioner has been convicted of an offence that reflects adversely on his or her fitness to practise
- (d) the practitioner has practised while not holding a current practising certificate
- (e) the practitioner has performed a health service that forms part of a scope of practice that he or she was not permitted to perform
- (f) the practitioner has failed to observe any conditions included in the practitioner scope of practice
  - or
- (g) the practitioner has breached a previous order of the Tribunal.

**252** The disciplinary orders available to the Tribunal are not confined to specific grounds of discipline. In other words, if any of the grounds for discipline are met, the Tribunal may make orders that:<sup>197</sup>

- (a) the health practitioner's registration be cancelled (and that certain conditions must be satisfied before he or she can apply for reregistration)<sup>198</sup>
- (b) the health practitioner's said registration be suspended for up to 3 years
- (c) the health practitioner may, for a period of up to 3 years, practise only in accordance with certain conditions
- (d) the health practitioner be censured
- (e) the health practitioner must pay a fine of up to \$30,000
- (f) the health practitioner pay costs.

<sup>195</sup> Section 84.

<sup>196</sup> HPCAA, section 100.

<sup>197</sup> Section 101.

<sup>198</sup> Section 102.

- 253** Following a hearing of a charge of serious misconduct or into another matter referred to the Disciplinary Tribunal by a CAC, the Disciplinary Tribunal established under the Education Act may:<sup>199</sup>
- (a) resolve to take the matter no further
  - (b) refer the teacher for a competency review or an impairment assessment
  - (c) censure the teacher
  - (d) impose conditions on the teacher's practising certificate
  - (e) suspend the teacher's practising certificate for a finite period or until certain conditions are met
  - (f) impose a fine of up to \$3,000
  - (g) order that the teacher's registration or practising certificate be cancelled
  - (h) require the teacher or any party to pay costs
  - (i) direct the Education Council to impose conditions on any subsequent practising certificate issued to the teacher.
- 254** Under the LCA, the grounds for discipline by the Tribunal are that the person has been:<sup>200</sup>
- (a) guilty of **misconduct**, which relevantly means:<sup>201</sup>
    - (i) conduct that occurs at a time when the lawyer is providing legal services and would reasonably be regarded by lawyers as 'disgraceful or dishonourable' or
    - (ii) wilful or reckless contravention of any provision of the LCA or the client care and conduct rules
    - (iii) wilful or reckless failure on the part of the lawyer to comply with restrictions on a practising certificate
    - (iv) employing or permitting to work in legal services a person who has had his or her enrolment as a lawyer suspended or cancelled or
    - (v) conduct unconnected with the provision of legal services but would justify a finding that the lawyer is not a fit and proper person to practise as a lawyer or
  - (b) guilty of unsatisfactory conduct, which is poor conduct that is not so serious as to amount to misconduct, such as: <sup>202</sup>
    - (i) conduct that occurs at a time when the lawyer is providing legal services and that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer
    - (ii) conduct that occurs at a time when the lawyer is providing legal services and that would be regarded by lawyers as being unacceptable, unbecoming of lawyers, or unprofessional
    - (iii) contravention of any provision of the LCA or the client care and conduct rules or
    - (iv) failure on the part of the lawyer to comply with restrictions on a practising certificate or

<sup>199</sup> Education Act, section 404.

<sup>200</sup> LCA, section 241.

<sup>201</sup> Section 7.

<sup>202</sup> Section 12.

- (c) guilty of negligence or incompetence of such a kind that it reflects on a person's fitness to practise or brings the profession into disrepute  
or
- (d) convicted of an offence that reflects on his or her fitness to practise or tends to bring the profession into disrepute.

**255** If one of these grounds exist, then the Tribunal may:<sup>203</sup>

- (a) take any of the actions available to a Standards Committee that finds unsatisfactory conduct on the part of a lawyer, which are set out above;
- (b) suspend the lawyer from practice for a period of up to 36 months (three years)
- (c) prohibit the lawyer from practising on his or her own account (essentially requiring supervision)
- (d) direct that the person's employment as a lawyer be terminated
- (e) order a fine of up to \$30,000.

**256** The Tribunal may also strike a lawyer's name off the role – the equivalent to cancelling registration, only if it is satisfied that the lawyer is, by reason of his or her conduct, not a fit and proper person to be a practitioner.<sup>204</sup>

## Membership of the Tribunal

**257** The SWRA provides that the Tribunal's membership is made up of a chairperson and deputy chairperson(s), a lawyer, and five other members appointed by the Board, and at least one layperson appointed by a Minister.<sup>205</sup> The Tribunal that hears and determines a particular matter consists of the chairperson (or a deputy chairperson), the lawyer, two of the members appointed by the Board, and the layperson appointed by the Minister.<sup>206</sup>

## Membership of other professional disciplinary Tribunals

**258** Under the HPCAA, the Tribunal is made up of a chairperson and deputy chairperson(s), who must be lawyers, and members of a panel appointed by the Minister of health practitioners of each profession and laypersons.<sup>207</sup> For the hearing of a particular matter, the Tribunal consists of the chairperson (or a deputy chairperson), three members of the same health profession as the person who is the subject of the hearing, and one layperson.<sup>208</sup>

<sup>203</sup> Section 156.

<sup>204</sup> Section 244.

<sup>205</sup> SWRA, section 116.

<sup>206</sup> Section 119.

<sup>207</sup> HPCAA, sections 86 and 87.

<sup>208</sup> Section 88.

**259** The Lawyers and Conveyancers Disciplinary Tribunal comprises a chairperson, a deputy chairperson, and between seven and 15 each of laypersons, lawyers, and conveyancers.<sup>209</sup> Both the chairperson and the deputy chairperson must have had not less than seven years' practice as lawyers.<sup>210</sup> For the purpose of proceedings, the Tribunal consists of a chairperson,<sup>211</sup> and an even number of other members, not less than four, who must be half laypersons and half of whom must be lawyers or conveyancers (depending on whether the person before the Tribunal is a lawyer or conveyancer).<sup>212</sup>

### Changes to the membership of the SWRA Tribunal

**260** Unlike in other professions, the chairperson of the Tribunal established under the SWRA is not required to be a lawyer. Rather, a lawyer is appointed as another member of the Tribunal (both in a general sense and for the hearing of matters).

**261** For a number of reasons, it would be appropriate that the chairperson of the Tribunal is a lawyer himself or herself. These reasons include:

- (a) The Tribunal sits within the Court hierarchy, with rights of appeal to the District Court and, in some circumstances, the High Court.<sup>213</sup> The Tribunal sits within the legal system and performs a quasi-legal function.
- (b) While there is considerable flexibility around the process to be followed by the Tribunal – for example, the ability to consider any information even if it would not otherwise be admissible in a court of law,<sup>214</sup> the conduct of a hearing before the Tribunal must comply with the rules of natural justice.<sup>215</sup> Court procedure and witness questioning and admissibility rules would be an obvious framework to adopt as a starting point or to inform the Tribunal, and lawyers are very familiar with these.
- (c) Both the complaints assessment committee and the social worker who is the subject of a charge before the Tribunal may be represented by lawyers at Tribunal proceedings.<sup>216</sup> Both of these lawyers are likely to make legal arguments, both as to the charge and also the procedure to be applied. This makes it essential that the chairperson knows the law. If a social worker is not represented, the onus falls even more heavily on the Tribunal, particularly the chairperson, to ensure that the hearing is fair and the social worker has a proper opportunity to defend him or herself.
- (d) The questions the Tribunal is required to consider may involve arguments based on case law – both judgments from the courts, and also previous Tribunal decisions. Such issues require an understanding of the legal principles of precedent, the hierarchy of courts and authority of their decisions, and how cases can (and cannot) be properly distinguished from one another.

<sup>209</sup> LCA, section 228.

<sup>210</sup> Section 230.

<sup>211</sup> Or a person who is appointed to fulfil the role of chairperson, if the Tribunal is sitting in divisions.

<sup>212</sup> Section 234.

<sup>213</sup> SWRA, Part 5.

<sup>214</sup> Clause 6 of Schedule 2 to the SWRA.

<sup>215</sup> Clause 5 of Schedule 2 to the SWRA.

<sup>216</sup> Sections 75 and 76.

- (e) Moreover, issues before the Tribunal may often engage questions of statutory interpretation – for example, of the SWRA and the Privacy Act 1993, and the chairperson of the Tribunal needs to have a working understanding of those statutes and the ability to assess, during the course of the hearing, the arguments being made as to their interpretation. This also requires an understanding of the relationship between case law and statute law.
- (f) The Tribunal is required to write decisions, which are akin to judgments.

- 262** To rely on the member of the Tribunal who is a lawyer to ensure legal principles of natural justice are complied with at a hearing sits in tension with the role of a chairperson to chair and conduct proceedings; it would be sensible for the chairperson to be the lawyer.
- 263** If the chairperson of the Tribunal were to be a lawyer, this may require consequential adjustment to the membership of the Tribunal. It would be consistent with the approach taken in other professions if the membership of the Tribunal, for the hearing of a matter, were comprised of a chairperson or deputy chairperson (who is a lawyer) and four other members.
- 264** If three of these other members were Registered Social Workers and one a layperson, this would retain the same representativeness as the SWRA currently provides for, and would be in line with the HPCAA.

## The grounds for disciplining a social worker and the available sanctions

### Bases on which registration may be cancelled

- 265** Subsection 83(1) of the SWRA states that the Tribunal may make any or all of those orders if satisfied that any of the grounds of discipline exists. Subsection 83(2), however, states that the Tribunal must not cancel a social worker's registration unless it finds him or her guilty of 'gross or severe professional misconduct'. This essentially means a gross or severe offence of holding out as a Registered Social Worker without a practising certificate or a gross or severe breach of the Code of Conduct.
- 266** On one interpretation, subsection 83(2) precludes the cancellation of a social worker's registration unless the Tribunal finds there to be professional misconduct – as opposed to any other grounds of discipline.
- 267** However, this approach is at odds with the opening words of subsection 83(1), which indicates that any of the disciplinary orders can be made if any grounds for discipline exists.

- 268** This approach would also restrict the availability of cancellation beyond what is appropriate. This is particularly so in light of the VCA, where a person may have a conviction that disentitles him or her from being a social worker (or at least from being a children's worker). For example, leaving aside the VCA, a person who has been found guilty of a sexual crime against a child committed in the course of social work, while having breached the Code of Conduct, more directly has a criminal conviction that means the person is no longer a fit and proper person to practise social work as required for registration.
- 269** Another approach, which would give best effect to the language of sections 82 and 83, is that cancellation of registration is a sanction available to the Tribunal where any of the grounds for discipline is made out, **but** where a social worker has been found guilty of professional misconduct, registration can only be cancelled if that misconduct is 'gross or severe'. In this way, subsection 83(2) prevents cancellation of registration where there has been a less serious breach of the Code of Conduct.

### Definition of 'professional misconduct'

- 270** At present, as a result of the definition of 'professional misconduct', much of the 'work' for establishing the grounds of discipline by the Tribunal is done by the Code of Conduct, which sets out standards of competence and personal and professional conduct. The Code of Conduct is also very specific. Moreover, it may be changed by the Board – rather than being prescribed in legislation or regulations.
- 271** An alternative approach would be to define in legislation, in broader terms, the kinds of conduct that would be professional misconduct. For example, it could be defined as conduct that reflects on a person's competence or fitness to practise or is in breach of the SWRA or Code of Conduct. This would be similar to the approach under the HPCAA and LCA.
- 272** Competence and fitness to practise as touchstones for when cancellation of registration is available would reflect their core roles as pre-requisites to registration.
- 273** This could be accompanied by a hierarchy of misconduct, as is set out in the LCA, so that wilful or reckless conduct is dealt with more seriously than negligent conduct and cancellation of registration is only available for the former kind or where the conduct means a person is no longer fit to practise social work.
- 274** On the other hand, under the HPCAA and Education Act, the full range of disciplinary actions, including cancellation of registration, are available wherever any ground for discipline exists so that the Tribunal is not restricted in its response to any particular case. Of course, the decision of the Tribunal would still be subject to appellate oversight to ensure responses were not disproportionate.

### Other grounds for discipline

**275** If some of the other options for reform already discussed are implemented, it may be appropriate to also add in further grounds for discipline, such as practising outside of a scope of practice or practising social work without holding a practising certificate. These could alternatively be encompassed in any general basis for discipline that a breach of the SWRA has occurred.

### Other sanctions available to the Tribunal

**276** The strength and range of the options available to the Tribunal under the SWRA are more limited than in other professions. Other courses of action that may be appropriate include:

- (a) cancelling registration in a broader range of circumstances
- (b) suspending registration for a greater period of time – three years would be in line with the HPCAA and LCA and be more of a sanction for what could be serious misconduct
- (c) directing the termination of a social worker’s employment
- (d) any of the courses of action available to a CAC.

#### Should there be changes to the membership of the Tribunal?

**Options:** The SWRA could be amended to require that the chairperson and deputy chairperson(s) of the Tribunal are lawyers.

If so, the four other members of the Tribunal that hear and determine any particular matter could be three Registered Social Workers and one layperson.

#### Are the grounds for discipline by the Tribunal and the sanctions available to the Tribunal appropriate?

**Options:** Amendment to sections 82 and 83 would clarify the bases on which a social worker’s registration may be cancelled by the Tribunal.

The definition of ‘professional misconduct’ or grounds of discipline could be amended to more general terms.

The sanctions available to the Tribunal could be expanded. In addition to making cancellation more broadly available, the Tribunal could have the power to:

- suspend a social worker for a long period
- direct termination of a social worker’s employment
- take any of the courses of action available to a CAC.

# Suspension and cancellation of registration and practising certificates

**277** At various time throughout this Issues Paper, the circumstances in which a social worker may have his or her practising certificate or registration made subject to conditions or suspended or cancelled have been identified in the course of discussing other issues. It is helpful, however, to look at all of those circumstances in one place and to consider the relationship between suspension and/or cancellation of registration and/or a practising certificate.

## Relationship between registration and a practising certificate

**278** It is noted that:

- (a) a certificate of registration is automatically cancelled if registration is suspended or cancelled, and the certificate must be surrendered<sup>217</sup>
- (b) a practising certificate must be surrendered if it is cancelled or suspended, or conditions are imposed, or if registration is suspended or cancelled.<sup>218</sup>

**279** If a person holding a practising certificate ceases to be a Registered Social Worker, his or her practising certificate is cancelled.<sup>219</sup> In other words, cancellation of registration actually cancels a practising certificate, rather than merely requiring it to be surrendered, as is obviously appropriate.

**280** However, the SWRA does not make the same clear in respect of suspension of registration: it does not state that suspension of registration necessarily suspends a practising certificate, as opposed to just requiring it to be surrendered. This must be a drafting omission.

## Powers to cancel, suspend, or impose conditions

### Survey of cancellation and suspension powers

**281** The table below compares the circumstances where a social worker's practising certificate and/or registration may be made subject to conditions, suspended or cancelled.

<sup>217</sup> SWRA, section 21.

<sup>218</sup> Section 36.

<sup>219</sup> Subsection 34(3).

Circumstances	Practising certificate			Registration		
	Conditions	Suspend	Cancel	Conditions	Suspend	Cancel
Social worker fails a competence assessment (section 45)	Yes	Yes	-	Yes	Yes	-
Social worker refuses or fails to complete a competence assessment (section 45)	Yes	Yes	-	Yes	Yes	-
Board determines social worker may not be fit and proper person after direction from CAC (section 49)	-	Yes	-	-	Yes	-
Chairperson of Board considers social worker may be unable to adequately perform functions to practise social work satisfactorily (section 54)	-	-	-	-	10 days	-
Notification of concerns about social worker is received and requires urgent action (section 57)	Yes	Yes	-	Yes	Yes	-
Charge is laid against a social worker in Tribunal (sections 74 and 77)	Yes	-	-	Yes	Yes	-
Grounds exist to discipline social worker (sections 82 and 83)	Yes	-	-	Yes	Yes	-

Circumstances	Practising certificate			Registration		
	Conditions	Suspend	Cancel	Conditions	Suspend	Cancel
Tribunal finds social worker guilty of gross or severe professional misconduct (subsection 83(2))	-	-	-	Yes	Yes	Yes
Overseas qualification or registration is cancelled or suspended (section 133)	-	-	-	-	Yes	Yes
Person registered on basis of overseas qualification is residing overseas (section 131)	-	-	-	-	-	Yes
Registration was obtained by false or misleading representation (section 132)	-	-	-	-	-	Yes
Applicant <b>was not</b> entitled to be registered (section 132)	-	-	-	-	-	Yes
Death of a social worker (section 128)	-	-	-	-	-	Yes

**282** In addition, as is discussed further below, limited registration and interim practising certificates can be cancelled by the Board at any time.<sup>220</sup>

### A hierarchy of responses

**283** The imposition of conditions, suspension, and cancellation are in effect a hierarchy of responses. In many circumstances, it may well be appropriate for the Board to have the full range of responses available to it. In particular, if the Board has the power to suspend registration or a practising certificate, it could, as a less drastic alternative, have the power to impose conditions on a practising certificate or registration.

**284** Suspension and/or the imposition of conditions will not always be appropriate alternatives: for example, cancellation is evidently appropriate upon the death of a social worker.

**285** However, presently, the options to cancel or suspend registration or a practising certificate or to impose conditions as alternatives do not seem to be approached consistently throughout the SWRA, as the table above illustrates.

**286** Moreover, the SWRA does not currently provide for the suspension **and** imposition of conditions, other than as alternatives. This means that in cases where it may be appropriate for conditions to apply to a social worker at the end of suspension, it will be necessary to cancel the practising certificate or registration (so a new application for practising certificate or, more significantly, registration is required). It may, however, also be appropriate (and more straightforward) for the Board (or Tribunal) to be able to impose new conditions on a practising certificate when it is suspended, which would apply when registration or the practising certificate 'resumes'.

### Cancellation or suspension of registration rather than a practising certificate

**287** In a number of places in the SWRA, the option is given to cancel or (more frequently) suspend either a social worker's registration **or** practising certificate.

**288** Cancellation of registration is obviously the most serious penalty, as it would require a full reapplication for registration, and assessment again of all the pre-requisites, and it is also possible to set a time period within which no reapplication can be made. Moreover, the Board could, upon a new application, only grant limited registration to a person who was previously fully registered.

**289** It should be noted that although the SWRA does not provide for the power to cancel a practising certificate, this is automatic upon cancellation of registration. It has been suggested above that the SWRA could be clarified so that suspension of registration likewise will suspend a practising certificate.

<sup>220</sup> Sections 24 and 37.

- 290** In that context, it is unclear whether the power to cancel or suspend a practising certificate is a meaningful or useful alternative to cancelling or suspending registration. Are there going to be circumstances in which it is appropriate to cancel or suspend a person's practising certificate without also cancelling or suspending his or her registration? Perhaps such circumstances can more readily be envisaged in the context of cancellation, given the gravity of the sanction of cancelling registration.
- 291** Under the HPCAA, the suspension of a practising certificate is not always an alternative to the suspension of registration. In some contexts, the HPCAA refers to suspension of a practising certificate,<sup>221</sup> and in others it refers to the suspension of registration.<sup>222</sup> The LCA simply refers to 'suspension from practice'. Under the Education Act, it is a teacher's practising certificate rather than registration that is suspended.

#### **Are the provisions for cancellation or suspension of registration or practising certificates and imposition of conditions on the same appropriate?**

**Options:** The imposition of conditions could be available in conjunction with suspension, rather than only as alternatives.

The SWRA could be reviewed so that in each situation where cancellation of registration is an option, the lesser responses of suspension and/or imposition of conditions are also available.

References in the SWRA to cancellation or suspension of a practising certificate could be removed so that it is only registration that is cancelled or suspended (with a consequent automatic effect on a practising certificate).

#### **Suspension of a social worker pending resolution of a notification, complaint, or charge**

- 292** The Board may suspend a person's registration on an interim basis for up to 10 days if, upon receipt of a notice of concerns about a person's ability to practise social work or for some other reason, the chairperson of the Board considers the social worker may not be able to perform adequately the functions required to practise social work satisfactorily.<sup>223</sup>
- 293** Otherwise, the Board may only suspend a social worker **after** the Board has determined he or she is no longer a fit and proper person to practise social work, or the person has failed a competence assessment, or there are urgent circumstances.

<sup>221</sup> HPCAA, ss 48 and 69.

<sup>222</sup> Sections 50 and 93.

<sup>223</sup> SWRA, section 54.

**294** A Complaints Assessment Committee that lays a charge before the Tribunal may recommend that, pending the Tribunal's determination, the registration of a social worker be suspended or subject to conditions.<sup>224</sup> The Tribunal may make an order to suspend the registration of the social worker or impose restrictions on his or her practice pending determination of the charge, if the Tribunal is satisfied that it is necessary or desirable to do so, having regard to the need to protect the health or safety of members of the public.<sup>225</sup>

### Interim suspension in other professions

**295** The suspension provisions under the LCA are somewhat similar to those under the SWRA: namely that the Lawyers Standards Committee may apply to the Tribunal after the decision to lay a charge has been made.<sup>226</sup>

**296** But, under the HPCAA, where there is a pending criminal proceedings or a disciplinary investigation into a health practitioner that 'casts doubt on the appropriateness of the practitioner's conduct in his or her professional capacity', the regulating authority may suspend his or her practising certificate or impose conditions. The suspension or conditions may stay in place until the practitioner's conduct is no longer in doubt, the criminal proceeding is disposed of, or the investigation into his or her conduct is complete.<sup>227</sup>

**297** Also under the HPCAA, once notification of concerns about a practitioner's mental or physical condition is received, a regulating authority can suspend or impose conditions on a health practitioner's practising certificate for up to 20 days, with a right to extend it for another 20 days if that is necessary for a medical examination to be completed.<sup>228</sup>

**298** A professional conduct committee may notify a regulating authority if it is concerned that a health practitioner's practice poses a risk of serious harm to the public, and may recommend suspension of his or her practising certificate.<sup>229</sup>

**299** The Education Act provisions lie somewhere between the SWRA and HPCAA. At any time after it receives a complaint or a report that involves a teacher's possible serious misconduct, a CAC may apply to the chairperson of the Disciplinary Tribunal for an interim suspension of the teacher's practising certificate or authority.<sup>230</sup> This suspension lasts until the end of any period specified by the chairperson, until any specified conditions are met, or until it is lifted as a result of an application by the teacher.<sup>231</sup>

<sup>224</sup>Section 74.

<sup>225</sup>Section 77.

<sup>226</sup>LCA, section 155.

<sup>227</sup>HPCAA, section 69.

<sup>228</sup>Section 48.

<sup>229</sup>Section 79.

<sup>230</sup> Education Act, section 402.

<sup>231</sup>Section 403.

## Expanding the circumstances in which a social worker's registration may be suspended

- 300** The interim suspension power of the Board in the SWRA is very confined, both in the circumstances in which it is available (essentially where, because of mental or physical health, a person is unable to practise social work satisfactorily) and the length of time that it applies for: 10 days. The other powers of suspension given to the Board generally only arise once the Board has finished its assessment of a social worker's competence or fitness to practise.
- 301** There seems no logical reason why concerns about a person's ability to practise social work satisfactorily as a result of mental or physical health may warrant immediate interim suspension, but concerns about a person's fitness to practise or professional or cultural competence does not. The basis on which suspension may be ordered could be expanded to include these circumstances.
- 302** Ten days is unlikely to be sufficient time for resolution of a complaint or concern about a social worker. For example, ongoing criminal or disciplinary proceedings or resolution of a long-term mental health problem may well take longer than that. This could be remedied by expanding the timeframe of interim suspension, either to a certain number of days or until the Board is satisfied that competence, fitness to practise, or the ability to perform functions is established.<sup>232</sup>
- 303** Under the SWRA, suspension pending determination of a complaint is otherwise only available to the Tribunal once a charge has been laid. There may be cases where the nature of a complaint or conviction would warrant an immediate suspension, without waiting for the CAC process to be completed or even begin.
- 304** This power could be available to the Board, as an expanded form of the present interim suspension power, as just described. Or it could be a power given to the CAC. The need for such a power in order to properly protect the public is self-evident. A circumstance may arise where, from the very nature of the matter notified to the Board (such as a very serious criminal conviction) or of information discovered by a CAC during the investigation, it is clear that a social worker is putting the public at risk, and conditions or suspension are necessary to ensure public safety **before** further action is taken and certainly before a charge is laid in the Tribunal.
- 305** Any suspension that is directed by the Board could be reviewed by the CAC (if the matter is referred to the CAC), and likewise a CAC could be subject to review by the Tribunal if need be.

<sup>232</sup>SWRA, section 45.

- 306** Instead of giving the suspension power directly to the Board or CAC, the Board or CAC could be required to apply to the Tribunal for an order suspending a social worker, as is the position under the Education Act. Or the CAC could be given a power to recommend suspension to the Board.
- 307** Another option that could be useful would be to enable the Board to impose conditions on a practising certificate (for example, requiring supervision) immediately upon receipt of a complaint or notification, until the cause for concern is resolved. In line with the hierarchy of responses, this will sometimes be an appropriate response less drastic than suspension. In other cases, it may be insufficient to protect the public.

**What powers of suspension are appropriate pending assessment and determination of a complaint and/or charge against a social worker?**

**Options:** The Board could be given the power to suspend a social worker's registration or practising certificate or impose conditions on it immediately upon receipt of a complaint, notification, or notice of conviction, where there are reasonable grounds to suspect that:

- the social worker is not competent or fit to practise social work or, because of a mental or physical condition, is unable to perform adequately the functions required to practise social work satisfactorily
- the suspension or conditions are reasonably necessary for the protection of the public.

Such a power could also or instead be given to a CAC, once a matter is referred on to it.

Instead of the power of suspension or to impose conditions, the Board and/or CAC could be given the ability to recommend or apply for suspension or to impose conditions.

## Best means for achieving reform

**308** This Issues Paper has identified a number of issues arising from the SWRA in its current form – some fundamental, some relatively minor, and some that are simply a matter of legislative drafting. In addition to those already discussed, a number of miscellaneous and smaller issues are identified below.

**309** There are a number of responses available in relation to these issues. This raises the overarching question of **how** change is best to be affected to the SWRA, if it is decided change is appropriate.

### Amendment to the SWRA

**310** The ‘light touch’ approach would be to simply amend the SWRA. This would mean the current provisions could be altered or improved upon, but still retained to some extent as a foundation. One benefit of this approach would be that those parts of the SWRA that do not presently give rise to any issues and the experience with the SWRA to date could be retained to inform future implementation of it.

**311** On the other hand, this approach could result in a lot of ‘tinkering about the edges’ and allow the possibility that some consequential amendments to existing provisions would be overlooked, causing further confusion as to the interpretation or implementation of the SWRA.

### Repeal the SWRA

#### Replace the SWRA with new legislation

**312** Another option would be to repeal the SWRA and replace it with new legislation specific to social workers. This would allow the opportunity of a ‘clean slate’, although of course there would be much that could be carried over or learned from the existing legislation.

#### Extend the HPCAA to social workers

**313** One final option would be to repeal the SWRA and instead of enacting specific legislation to regulate social workers, extend the scope of the HPCAA to apply to social workers. This would obviously require some amendment to the HPCAA, but it would not require entire overhaul of the HPCAA, primarily because in many respects the HPCAA essentially establishes the framework for regulation (beyond the legislation) by regulating authorities.

**314** Without significant amendment, the HPCAA could recognise the Board as a ‘regulating authority’, which would enable the Board to define criteria for registration or education and define scopes of practice, amongst other things. Any particular areas of social work to be reserved to Registered Social Workers could be recognised under the provisions of the HPCAA that already allow further kinds of work to be restricted.<sup>233</sup>

<sup>232</sup>HPCAA, section 9.

- 315** As the comparisons with the HPCAA throughout this Issues Paper illustrate, in many ways the HPCAA is better drafted and thought out than the SWRA. Rather than amending the SWRA by heavily copying or adapting provisions from the HPCAA, it could be more straightforward to simply adopt the HPCAA as applicable to social workers.
- 316** Social workers, no matter where they work, often have to deal with situations where there is risk to or concern about the health and safety of individuals, groups, or communities. Social workers are concerned with health, in a broader sense, in that they work to enhance the well-being (in a holistic sense) of those they work with, and their families and communities.
- 317** In the New Zealand health arena, social workers are part of Allied Health Aotearoa New Zealand, a group of health professional associations.
- 318** Furthermore, the World Health Organisation's determinants of health include the conditions in which people are born, grow, live, work, and age, and how these conditions are shaped by the distribution of money, power, and resources at global, local, and national levels. These are core social work concerns.
- 319** It then follows that social workers could, in the broader sense of the definition, qualify as 'health practitioners'. This is already recognised in New Zealand legislation: the Health and Disability Commissioner Act 1994 includes social workers within the class of persons who are health practitioners.<sup>234</sup>
- 320** In England, the health, psychological, and social work professions are regulated together, subject to the Health and Care Professions Council (**HCPC**), the name of which was changed from Health Professions Council when its scope was expanded.<sup>235</sup> The HCPC regulates biomedical scientists, podiatrists, dietitians, physiotherapists, radiographers, and social workers (amongst others). It is distinct from the General Medical Council, which regulates doctors.
- 321** Or, if full integration of social workers into the HPCAA were not adopted, nevertheless some services established under the HPCAA could be utilised by the social work profession: for example, the Tribunal. This may be more efficient in terms of resources than establishing a separate Tribunal under the SWRA.

<sup>234</sup>Section 2.

<sup>235</sup>See <<http://www.hpc-uk.org/>>.

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### **What is the best means of achieving reform of the SWRA?**

**Options:** The SWRA could be retained in its present form but amended.

The SWRA could be repealed and replaced by new legislation regulating social workers.

The SWRA could be repealed, and social workers could be encompassed in the scope of the HPCAA.

Or, as a hybrid approach, the SWRA could adopt some of the services established under the HPCAA, such as the Tribunal.

# Miscellaneous issues

**322** Obviously if there is substantive amendment to the SWRA on any of the issues identified above, it will be necessary to make consequential amendments throughout the SWRA. For example, amendments throughout the SWRA would be required to give effect to:

- (a) mandatory registration
- (b) removal of a competency assessment as a pre-requisite for registration.

**323** The final section of this Issues Paper does not attempt to identify every possible amendment of this kind. Rather it identifies discrete issues, not already addressed, that arise with various provisions of the SWRA. The legislative provisions are considered in order.

Section	Issues and comments
1	<b>Title</b>
2	<b>Commencement</b>
3	<p><b>Purpose</b></p> <p>The purposes of ensuring social workers are competent and accountable and enhancing their professionalism are more likely to be achieved by mandatory registration than reliance on the Board's promoting the benefits of registration.</p>
4	<b>Interpretation</b>
6	<p><b>Entitlement to registration of New Zealand-qualified social workers</b></p> <p>Possible amendments to this provision have already been discussed earlier in this Issues Paper.</p> <p>One matter of legislative drafting is that it would be preferable if 'fitness to practise' or 'fit and proper person to practise social work' was used consistently throughout the SWRA. Or at the very least, wherever the term 'fitness' is used, it should be clarified as 'fitness to practise social work'.</p>
7	<b>Entitlement to registration of overseas-qualified social workers</b>
8	<p><b>Applications for registration</b></p> <p>If there is a presumption of competence, like under the HPCAA, it may be appropriate to adopt a process whereby the Registrar considers applications and only refers applications to the Board where there is cause for concern. In straightforward cases, the Registrar could register an applicant.</p>
9	<b>Consideration of applications by Board</b>

Section	Issues and comments
10	<p><b>Provisional registration</b></p> <p>Provisional registration is a ‘stepping stone’ form of registration for a person who does not yet meet the requirements for full registration but who meets some of them and is working towards the rest of the requirements. Even for provisional registration, a person must have passed a competence assessment and be fit to practise social work.</p> <p>The present criteria for provisional registration enables students working towards a recognised social work qualification to be provisionally registered. If a new form of registration were established for students, it could become a requirement of provisional registration that a person already has a recognised social work qualification, in the same way that, at the moment, provisional registration requires a person to be fit to practise social work.</p>
11	<p><b>Temporary registration</b></p> <p>Where a person has provisional registration (section 10) or temporary registration, the Board must impose conditions or restrictions on his or her registration and may impose restrictions. Full registration is not subject to conditions or restrictions (although conditions may be imposed on a practising certificate).</p> <p><b>The concepts of conditions and restrictions</b></p> <p>It is unclear from the SWRA why it is necessary to have different concepts of conditions and restrictions, and what the difference is. From sections 17 and 29, it appears that a restriction is permanent, but a condition may be met in a finite way. For example, a restriction may be that a person can only practise social work in a particular place; a condition may be that a person is registered on the condition that within a certain period of time he or she completes a particular training programme.</p> <p>As a matter of simplification, it would seem preferable to use the concept of ‘conditions’ to refer to any terms or restrictions on a person’s registration or, for that matter, on a practising certificate. This is the approach taken in the HPCAA.</p>
12	<p><b>Criteria for full registration</b></p> <p>It is unclear why sections 6 and 7 are not included here in the part of the legislation that sets out criteria for registration.</p> <p>It is also not clear why section 12 in its current form does not refer to section 13 as an alternative basis for registration. That would be a more straightforward way to draft the SWRA than to say, as in subsection 13(2), that section 13 overrides section 12.</p>

Section	Issues and comments
13	<p><b>Board may recognise practical experience in certain cases</b></p> <p>The removal of this provision following a transitional period is discussed above.</p>
14	<p><b>Criteria for provisional registration</b></p> <p>Subsections 14(1)(b)(ii), (2), and (3) no longer have any application, given that more than three months has passed since the coming into force of the SWRA. Any references to these provisions elsewhere in the SWRA will also need to be removed, for example, in section 10.</p>
15	<p><b>Criteria for temporary registration</b></p>
16	<p><b>Applications by certain people previously registered</b></p>
17	<p><b>Board to give reasons</b></p>
18	<p><b>Registrar to register successful applicants</b></p>
19	<p><b>Registrar to notify unsuccessful applicants</b></p>
20	<p><b>Certificates of registration</b></p> <p>The issue of a registration certificate seems to be conceptually different from registration and does not necessarily follow from registration. It is conceivable, therefore, that a person who is registered may not have applied for or been issued a registration certificate.</p> <p>The purpose for this is unclear. It would seem preferable that everyone who is registered is issued with a certificate. That way, if a person does not have a certificate, this will clearly indicate that he or she is not registered (or that his or her registration has been suspended). It would enable members of the public to more easily assess whether a person is a Registered Social Worker.</p> <p>A separate point is that subsection 20(3) requires provisional or temporary registration to be recorded on a certificate of registration. The conditions or restrictions that are imposed as part of limited registration should also be recorded.</p>

Section	Issues and comments
21	<p><b>Surrender of certificate of registration</b></p> <p>Section 21 deals with the surrender of a registration certificate.</p> <p>If a person's registration is suspended or cancelled, he or she must deliver the certificate to the Registrar. This makes sense in that a person who is not <b>presently</b> actively registered should have to surrender their certificate of registration.</p> <p>In addition to the requirement of surrender, suspension or cancellation of registration <b> Cancels</b> the certificate of registration. It is not clear why suspension should cancel the certificate of registration – and why delivery of the certificate would not suffice. The effect of this is that once the term of suspension ends, the person will presumably need to apply for the issue of a <b>new</b> registration certificate, rather than the existing certificate being returned. However, this does not seem an undue practicable burden.</p> <p>Given the conceptual distinction between registration and the issue of a registration certificate, the cancellation of a certificate upon suspension does not cancel registration itself. This seems appropriate; however, it is not made particularly clear in the SWRA.</p>
22	<p><b>Renewal of limited registration</b></p>
23	<p><b>Criteria for renewal of limited registration</b></p>
24	<p><b>Cancellation of limited registration</b></p> <p>Presently under the SWRA, limited registration can be cancelled at any time at the Board's absolute discretion – full registration cannot. There seems no obvious reason why limited registration should be more vulnerable than full registration. Especially if, for example, a large number of graduate students have provisional registration while they gain practical experience, there seems no clear reason why their registration should be more vulnerable in this way than full registration. It is also surprising that there is no provision for a person with limited registration to be heard before such a decision is made, whereas this right is given in relation to other decisions of the Board.</p>

Section	Issues and comments
25	<p data-bbox="400 456 1278 488"><b>Practising Registered Social Workers to hold practising certificates</b></p> <p data-bbox="400 510 1347 678">The way this provision is framed as preventing the employment or engagement of a person as a social worker does not necessarily capture a person who is self-employed or working in an independent capacity. This provision would be more straightforward framed as prohibiting a person from practising social work without a practising certificate.</p> <p data-bbox="400 701 1326 943">In any event, if mandatory registration is implemented, the scope of the prohibition on practising social work may need to be expanded so that <b>no person</b> may <b>practise</b> social work unless he or she is a Registered Social Worker and holds a current practising certificate. In order to be enforceable against persons who are not Registered Social Workers, this would need to be a criminal offence rather than dealt with through the SWRA disciplinary process.</p> <p data-bbox="400 965 1326 1066">The approach taken in other professional legislation indicates this should be a fineable only offence. The criminal offences in the SWRA are discussed further below in relation to section 148.</p>
26	<p data-bbox="400 1099 903 1131"><b>Applications for practising certificates</b></p>
27	<p data-bbox="400 1167 911 1198"><b>Effect of making compliant application</b></p>
28	<p data-bbox="400 1234 794 1265"><b>Issue of practising certificates</b></p>
29	<p data-bbox="400 1301 879 1332"><b>Board may adopt general conditions</b></p> <p data-bbox="400 1355 1315 1420">The ability to also impose conditions through a practising certificate is a useful tool for the Board.</p> <p data-bbox="400 1442 1299 1574">It does, however, add to the complexity of the relationship between registration (which in the case of provisional or temporary registration, may itself be subject to conditions or restrictions) and practising certificates.</p> <p data-bbox="400 1597 1351 1697">This may nevertheless be appropriate, given that some conditions would only be relevant to a social worker who is actually practising – for example, continuing professional development.</p>

Section	Issues and comments
30	<p><b>Restrictions on issue of practising certificates</b></p> <p>If the SWRA were to be amended to remove the requirements for competency assessment in favour of a presumption of competence until cause for concern arises, subsections 30(1)(a)(i), (ii) and (iii), and (4) would need amendment or even repeal, with their function being instead captured by subsection 30(1)(b)(i).</p> <p>Under subsection 30(2), the Registrar <b>may</b> refer an application for a practising certificate to the Board if the applicant has been registered for less than three years. There are, however, no criteria to inform the Registrar's decision whether or not to do so – and, as a result, no clear statutory indication of the purpose for this referral power or why it is necessary in addition to referral on the basis of competence or fitness to practise.</p> <p>Subsections 30(1)(a)(iv) and (1)(b)(ii) overlap considerably. If a person has not held a practising certificate for the previous three years (but has been registered over that time), there will likely be grounds to suspect that he or she has not been practising social work over that time. If he or she has been doing so, it would be a breach of the SWRA.</p> <p>If subsections 30(1)(a)(iv) and 30(2) are directed at referring applications by newly Registered Social Workers to the Board, this could be provided for more clearly and directly in the statute, with subsection 30(1)(b)(ii) retained to deal with those who are returning to social work after some time away.</p> <p><b>Delegation to the Registrar</b></p> <p>Clause 17 of Schedule 3 to the HPCAA provides that regulating authorities may delegate their functions, duties, or powers to the Registrar. There are a number of instances in the SWRA where a function is given to the Board but it may be appropriate for the Registrar to deal with it too, particularly more administrative tasks.</p> <p>For example, the Board could delegate to the Registrar the ability to impose conditions in certain kinds of cases (such as students). Or, alternatively, the SWRA could be amended to provide for this particular power.</p> <p>There are a number of other instances in the SWRA where delegation may be appropriate, too.</p>
31	<p><b>Board to consider certain applications</b></p> <p>Whether by delegation or legislative amendment, there may be cases where it is (more) appropriate for the Registrar to impose conditions on a practising certificate.</p>

Section	Issues and comments
32	<p><b>Procedure for consideration</b></p> <p>For clarity, reference could be added in subsection 32(3)(b) to the right of the Board in section 142 to withhold certain information.</p>
33	<p><b>Decisions of Board as to practising certificates</b></p> <p>The utility of an interim practising certificate under subsections 33(1)(c) (i) and (3) are not entirely clear, given that a practising certificate may be issued subject to conditions under subsection 33(1)(b), and that the Board is entitled to identify the period for which a practising certificate is in force in any particular case under section 34. Moreover, it seems artificial to refer in subsection 33(1)(c)(i) to the Board as refusing to issue a practising certificate, if in fact an interim practising certificate is issued.</p>
34	<p><b>Currency of practising certificates</b></p>
35	<p><b>Conditions on practising certificates</b></p> <p>Although it is not made expressly clear in section 35, presumably this provision requires a practising certificate and certificate of registration to record both generally applicable conditions (like continuing professional development) and conditions particular to the social worker.</p> <p>As a matter of legislative drafting, both subsections 35(1)(a) and (2) (a) should refer to <b>restrictions or</b> conditions (assuming the distinction between restrictions and conditions, discussed above, remains).</p>
36	<p><b>Surrender of practising certificates</b></p> <p>As with a certificate of registration, a practising certificate must be surrendered if a social worker's registration or practising certificate is cancelled or suspended or recalled so that it can be endorsed with conditions or restrictions. The drafting of this provision is not entirely clear, however. In particular, it is not clear why (as a matter of drafting or substance) specific provisions of the SWRA are identified in subsections 36(1)(b) and (c), rather than making the section applicable whenever registration is suspended or cancelled and whenever conditions or restrictions are being added to a practising certificate.</p> <p>Also, section 36 does not provide, in contrast to section 21 in relation to certificates of registration, that suspension of registration or of a practising certificate necessarily <b> Cancels</b> the practising certificate that is to be surrendered. A consequence of this is that, when the registration or practising certificate is no longer suspended, the practising certificate presumably 'revives' in its previous form. In some contexts, this may, however, be appropriate to require an application for or issue of a new practising certificate so that the Board can reassess the conditions on it. But perhaps those circumstances should be limited, as they presently are, to where a practising certificate has been cancelled.</p>

Section	Issues and comments
37	<p><b>Interim practising certificates</b></p> <p>The utility of interim practising certificates has been addressed above. The rationale for the ability to cancel an interim practising certificate at any time is not entirely clear. The Board cannot cancel a standard practising certificate at any time, without following the procedures in the SWRA. The current nature of an interim practising certificate (being valid for a finite period, subject to conditions of practice, and also subject to conditions that must be complied with in order for a full practising certificate to be issued) does not seem obviously to necessitate or warrant a power of cancellation at any time.</p>
38	<p><b>Competence to practise social work</b></p> <p>If competence assessments were no longer to be a pre-requisite to registration, this provision would not need to be retained in its current form.</p>
39	<p><b>Reviews of competence to practise social work</b></p> <p>This is the kind of function that the Board could choose to delegate to the Registrar – a possibility indicated above. Or, at least, the Board could give the Registrar a preliminary role in this assessment.</p>
40	<p><b>Form of review</b></p>
41	<p><b>Actions after review of competence</b></p>
42	<p><b>Competence assessments</b></p> <p>Although the relevance of the ability to set competence assessments will change if a competence assessment is no longer required before registration or periodically afterwards, the Board should still retain the option of prescribing competence assessments for use in the circumstances where it is required to consider competence – for example, after a complaint has been assessed by a CAC.</p> <p>In relation to subsection 42(5), instead of a requirement that a competence assessment be published in newspapers, an alternative is that the Registrar/Board must notify all Registered Social Workers. This seems more appropriate. It would better ensure that the people who most need to be informed are informed, whereas a newspaper would not achieve that. This notification requirement may not be appropriate at all if competence assessments are no longer generally required.</p>

Section	Issues and comments
43	<p><b>Copies of competence assessments to be available</b></p> <p>If this provision makes copies of exam papers or assessment tasks available in advance, as it seems to do, this significantly compromises the effectiveness and integrity of competence assessments. It may be appropriate for this provision to be removed.</p>
44	<p><b>Registered Social Workers to complete assessments every 5 years</b></p>
45	<p><b>Actions if Registered Social Worker fails assessment</b></p>
46	<p><b>Confidentiality of information</b></p> <p>Section 46 is in similar terms to section 44 of the HPCAA. Unlike the HPCAA, however, section 46 of the SWRA does not contain any provision for enforcing the obligation of confidence. The HPCAA provides that it is a fineable offence to contravene the obligation of confidence.</p> <p>Another difference between the two is that the restriction in subsections 46(3) and (4) of the SWRA applies to <b>all</b> statements or information relating to the conduct of a person obtained during an assessment – under subsection 44(4) of the HPCAA, the restriction seems limited to statements by a health practitioner about his or her own conduct. Consideration should be given to the appropriate scope of the restrictions in the SWRA.</p> <p>Moreover, the drafting of section 44 of the HPCAA is clearer than, in particular, subsections 46(3) and (4) of the SWRA.</p>
47	<p><b>Fitness to practise social work</b></p> <p>It is not clear what the outcome or process is where the Board reserves its decision. Presumably the Board is entitled to defer its decision on registration until the outcome of the proceedings or investigation. Should there be a maximum period for which the Board can defer its decision?</p>
48	<p><b>Consideration of fitness to practise social work</b></p>
49	<p><b>Action if Board considers Registered Social Worker not fit and proper</b></p> <p>The drafting of section 49 is not as clear as it could be. Subsections 49(1) and (2) suggest that the Board may suspend a person if he or she ‘may not be’ fit to practise social work. Subsection 49(3) states that the Board may only suspend if satisfied that the person is <b>not</b> a fit and proper one. Subsection 49(3) should prevail, but this is not made expressly clear.</p>
50	<p><b>Board to ask Police for information, and consider convictions</b></p>
51	<p><b>Notification of conditions affecting ability to practise social work</b></p>

Section	Issues and comments
52	Power to seek medical advice
53	Notice to be put before chairperson
54	Interim suspensions
55	Power to order medical examination
56	Conduct and consequences of examination
57	Restrictions may be imposed because of condition
58	Revocation of restrictions
59	Complaints against Registered Social Workers
60	Registrar to notify Tribunal of complaints
61	Registrar to notify Health and Disability Commissioner of certain complaints
62	Health and Disability Commissioner may notify Tribunal of complaints
63	<p><b>Notification of convictions</b></p> <p>For the same reasons as have been discussed above in relation to the notification and screening of complaints, it is more appropriate for the Board to be notified rather than the chairperson of the Tribunal.</p>
64	<b>Suspension of action while Health and Disability Commissioner investigates</b>
65	<b>Referral of complaints and notices of conviction to complaints assessment committees</b>
66	<p><b>Complaints assessment committees</b></p> <p>References throughout the SWRA to a person who is 'not a Registered Social Worker' could in many places be more appropriately replaced with reference to 'a layperson'.</p>
67	<b>Committees may regulate own procedure</b>
68	<b>Committees may appoint legal advisers</b>

Section	Issues and comments
69	<p><b>Information to be given to social worker and complainant</b></p> <p>This, too, is an administrative function and would be more properly managed by the Board rather than the Tribunal chairperson.</p>
70	<p><b>Social workers and complainants may request changes in membership of complaints assessment committee</b></p> <p>Again, consequential amendment to this provision will be necessary if, as suggested above, the Board is to appoint the committees.</p>
71	<p><b>Determination of complaint by complaints assessment committee</b></p> <p>Subsection 71(1)(a) refers to ‘fitness’ of a social worker, which presumably is a reference to his or her fitness to practise social work. This should be referred to consistently throughout the SWRA.</p> <p>Subsection 71(2) sets out what the committee may do ‘In making its determination’; subsection 71(3) sets out what the committee must do ‘Before making its determination’. Logically the investigation provided for in subsection 71(2) would be carried out ‘before’ making its determination, rather than ‘in’ making its determination. Consistency between the two subsections would be desirable.</p>
72	<p><b>Procedure after committee makes determination</b></p>
73	<p><b>Conciliation</b></p>
74	<p><b>Committee may recommend suspension of registration or imposition of conditions</b></p> <p>The language of subsection 74(b) differs from the usual expression in the SWRA of conditions or restrictions on a person’s practising certificate or registration. It is not clear whether ‘restrictions ... on the practice of social work’ refers to restrictions on a practising certificate or registration (or either). This section should be amended to use language consistent with the rest of the SWRA.</p>
75	<p><b>Laying of charge before Tribunal</b></p>
76	<p><b>Notice of disciplinary proceedings to be given to social worker</b></p>
77	<p><b>Interim suspension of registration or imposition of restrictions on practice</b></p>
78	<p><b>Social worker may apply for revocation of direction</b></p>

Section	Issues and comments
79	<p><b>Hearings of Tribunal to be public</b></p> <p>The SWRA does not contain any provision to enforce suppression orders made under subsection 79(2) except the general provision in clause 13 of Schedule 2: the offence of intentionally disobeying a Tribunal order, punishable by conviction and a fine of \$1,000. By contrast, under sections 95 and 98 of the HPCAA, breach of a suppression order made by the Tribunal is punishable by a fine of up to \$10,000, and the offence is included in the same section as the suppression power: so that it is clearly identifiable.</p>
80	<p><b>Special protection for certain witnesses</b></p> <p>In contrast to the option of suppression under subsection 80(6), suppression of the names of complainants in sexual cases is mandatory and automatic under the HPCAA (section 98) and the Criminal Procedure Act 2011 (section 203). The SWRA should be amended to afford the same standard of protection. Moreover, some means of enforcing suppression – by a criminal offence, for example – is required.</p>
81	<p><b>Application for revocation of order under section 79</b></p>
82	<p><b>Grounds on which Tribunal may make order</b></p> <p>The heading ‘Grounds on which social workers may be disciplined’ would better reflect the content of the provision.</p>
83	<p><b>Penalties</b></p>
84	<p><b>Orders as to restoration of registration</b></p> <p>Like section 74, subsection 83(1)(a)(ii) fails to distinguish between conditions on a practising certificate and conditions on registration.</p> <p>A matter of legislative drafting: subsection 83(1)(d) refers to ‘training’ and ‘professional development’. Elsewhere, the SWRA refers to ‘education and training’. Consistent language should be used throughout.</p>
85	<p><b>Orders of Tribunal</b></p>
86	<p><b>Funding</b></p>
87	<p><b>Recovery of fines and costs</b></p>
88	<p><b>Rights of appeal</b></p>
89	<p><b>Notice of right of appeal</b></p>
90	<p><b>Orders to have effect pending determination of appeal</b></p>

Section	Issues and comments
91	<b>Procedure on appeal</b>
92	<b>Court's decision final</b>
93	<b>Court may refer matter back for reconsideration</b>
94	<b>Orders as to costs</b>
95	<b>Orders as to publication of names</b>
96	<b>Appeal on question of law</b>
97	<p><b>Social Workers Registration Board established</b></p> <p>The Board is established as a crown entity. By contrast, under the HPCAA, regulatory authorities are bodies corporate. Likewise, the New Zealand Law Society is a body corporate, funded by the profession. Consideration should be given to whether the independence of the Board would not be improved if it were re-established as a body corporate funded by the profession.</p>
99	<p><b>Functions of Board</b></p> <p>If some of the options discussed above are taken up, the functions of the Board should be amended, for example, to refer to its roles administering the complaints process and to remove reference to the promotion of registration if it were to become mandatory. These are examples of consequential amendments.</p>
100	<b>Obligations of Board in relation to Māori</b>
101	<b>Obtaining views of ethnic and cultural groups</b>
102	<b>Restriction on Ministerial direction</b>
104	<p><b>Review of operation of Act</b></p> <p>If mandatory registration were to be introduced, it could be useful to again provide for a review of the legislation.</p>
105	<p><b>Code of conduct</b></p> <p>Subsection 105(1)(b) refers to a code of conduct that 'should apply generally in the social work profession'. In the voluntary registration environment, the code of conduct cannot have any meaningful application to the profession beyond those who are registered. It is not altogether clear what effect it is intended to have, but at most it can be aspirational.</p>

Section	Issues and comments
106	<p><b>Membership</b></p> <p>This requires 10 members of the Board: 6 Registered Social Workers and 4 lay people. Under the HPCAA, a regulating authority may have between 5 and 14 members and a majority must be members of the profession. If there are fewer than 8 members, there must be 2 laypersons; if there are 9 or more members, there must be 3 laypersons.</p> <p>More flexibility of this kind could be added to the SWRA.</p>
107	<b>Additional information in annual report</b>
108	<b>Board may set fees</b>
109	<b>Disciplinary levy</b>
110	<b>Further provisions relating to fees and levy</b>
113	<b>Other provisions relating to Board</b>
114	<b>Social Workers Complaints and Disciplinary Tribunal established</b>
115	<p><b>Function of Tribunal</b></p> <p>In accordance with the discussion above, the Tribunal should not administer the complaints process, and subsection 115(a) should be deleted.</p>
116	<p><b>Membership of Tribunal</b></p> <p>Possible changes to the membership of the Tribunal have been discussed above.</p> <p>Consideration should be given to whether this provision could not be replaced by a system like sections 86 to 88 of the HPCAA, which provides for the Minister to appoint a panel of members of the Tribunal.</p>
117	<b>Suitability of certain people to be appointed</b>
118	<b>Removal of members</b>
119	<b>Hearings by Tribunal</b>
120	<b>Other provisions relating to Tribunal</b>
121	<b>Register of social workers</b>
122	<b>Register to be maintained in parts</b>

Section	Issues and comments
123	<p><b>Information to be registered</b></p> <p>It may be appropriate to require both home and work address details.</p>
124	<p><b>Certificates of registered information</b></p> <p>This is a very broad provision that requires the Board to make personal details available to any member of the public, particularly as the information on the register can go beyond that required by the terms of subsection 123(1). Subsection 123(1)(h) provides that the Board may record other matters it considers appropriate.</p> <p>It may be appropriate to alter the nature of this provision so that it sets out and confines what particular information may be available to the public, which could be limited, for example, to the social worker's name, work address, type and date of registration and practising certificate, and any conditions applicable to that person.</p>
125	<p><b>Social workers to notify changes of address</b></p>
126	<p><b>Changes of name</b></p> <p>This seems a very administrative function to require the Board to carry out. As the Registrar has the responsibility for maintaining the Register and keeping it up to date, this function could be delegated (or reallocated) to the Registrar.</p>

Section	Issues and comments
127	<p><b>Social worker may ask for registration to be cancelled</b></p> <p>Subsection 127(1) provides that the Board may cancel a social worker's registration on his or her application. On the other hand, subsection 129(3) provides that the Board <b>must</b> cancel a social worker's registration if he or she advises the Board, after an inquiry by the Registrar, that he or she is no longer practising social work.</p> <p>The best interpretation at present is that subsection 129(3) should be read in the context of section 129 as a whole: it is cancellation that follows on from an administrative function of the Registrar, essentially. Section 127 is a more general provision that the Board has a discretion but not an obligation to cancel registration if a person requests it to be cancelled: this is what applies in all contexts other than when the administrative process under section 129 has been followed.</p> <p>This still leaves an element of inconsistency or arbitrariness, given that whether or not a person can deregister depends on whether he or she contacts the Registrar first, or the Registrar makes contact. Accordingly, the relationship between these two provisions could be clarified.</p> <p>In the context of mandatory registration, voluntary 'deregistration' may be less problematic because a person who is not registered would be prohibited from practising social work and, if an ex-Registered Social Worker did so, this would be an offence.</p> <p>On a different note, pending criminal proceedings (as well as disciplinary proceedings) may also be an appropriate basis to refuse to cancel registration, given that certain criminal convictions could result in disciplinary proceedings.</p>
128	<p><b>Entry to be cancelled on death of social worker</b></p> <p>Subsection 128(4) may be unnecessary.</p>
129	<p><b>Revision of Register</b></p> <p>It should be open to the Registrar to contact a Registered Social Worker by other means, for example, email or a normal letter. The requirement of registered post is intended to provide some protection to a social worker – by ensuring that the letter was delivered – seeing as a failure to reply can result in cancellation. It may be more appropriate, however, to provide this protection by requiring the Registrar to make use of all contact details that it has for the social worker in order to get in touch. In any event, a normal rather than registered letter suffices in this context under section 144 of the HPCAA.</p>
130	<p><b>Restoration of entries</b></p>

Section	Issues and comments
131	<p><b>Cancellation of registration of overseas qualified person for non-residence in New Zealand</b></p> <p>The purpose of this provision, and the reasons for its scope, are not clear. If the purpose is to prevent persons with no recent connection to New Zealand from maintaining registration (to prevent, for example, people using registration here as a marker of their legitimacy even though they are not subject to any meaningful regulation because they are not in the country), there would be no reason to confine its application to persons who are registered based on overseas qualifications; the basis of registration would seem irrelevant. The lack of clarity behind this is not helped by the fact that the provision does not contain any criteria to assist the Board in making its determination.</p> <p>Proceeding on the basis of the apparent purpose identified above, the timeframes seem very short: it is enough that the person has, within three years of registration, resided overseas for 6 consecutive months and intends to continue residing overseas. A longer timeframe may be more appropriate – such as extending the time the person needs to have resided overseas to at least a year.</p>
132	<p><b>Cancellation of registration on Board’s direction</b></p>
133	<p><b>Removal of qualifications, or cancellation of registration, overseas</b></p> <p>This provision applies when a person has obtained registration on the basis of an overseas qualification or registration under section 7 and the validity of that qualification or registration is called into question. Because the overseas or professional registration was the basis of registration in New Zealand, it is sensible that, when that basis changes, the Board can review registration. The social worker in question has a right to be heard on the matter.</p> <p>It is not clear why the Board’s ability to review registration is not triggered where a New Zealand qualification on which registration under section 6 is based is invalidated. This situation should also be included in the scope of section 133.</p>
134	<p><b>Cancellation or suspension not to affect existing liabilities</b></p>
135	<p><b>Board to publish Register</b></p>
136	<p><b>Inspection of Register</b></p>
137	<p><b>Board to appoint Registrar</b></p>
138	<p><b>Registrar to carry out Board’s decisions and comply with directions of Board and Tribunal</b></p>

Section	Issues and comments
139	<b>Registrar may refuse to act if fine or costs outstanding, or fee not paid</b>
140	<p><b>Notice of restrictions or conditions imposed on registration or practising certificate</b></p> <p>This is another more administrative task that might appropriately be reassigned or delegated to the Registrar, particularly as the Registrar will be required to implement the conditions in other ways anyway (for example, entering them on the register).</p>
141	<b>Certificate of Registrar to be evidence</b>
142	<p><b>Board may withhold information in certain circumstances</b></p> <p>The Privacy Act 1993 is also applicable to the Board and may provide grounds to withhold information. This section should be amended to also refer to the Privacy Act.</p>
143	<b>Immunity of members and legal advisers of CACs and other from civil liability to third parties</b>
144	<b>Proceedings not invalid because of defect in appointment</b>
145	<b>Notice and service of documents</b>
146	<b>Publication of orders</b>
147	<b>Regulations</b>

Section	Issues and comments
148	<p><b>Offences</b></p> <p>The kinds of offences that would be appropriate if registration were to become mandatory have already been referred to above: some consequential amendment to this provision may be needed, such as a generally applicable offence of practising social work (or reserved areas of social work) while not registered.</p> <p>Subsections 148(3) and (5) are criminal offences that only apply to Registered Social Workers. They relate to conduct that will also be within the scope of the CAC and Tribunal processes. It could therefore be appropriate for them to be exclusively dealt with through the disciplinary process – as they are in the nature of professional misconduct – rather than by criminal charges. Or the option of criminal charges could be retained in the case of repeated or egregious misconduct: but again, the Tribunal process and cancellation of registration may be appropriate.</p> <p>The SWRA does not provide who is to lay charges for these offences. The provisions of the Criminal Procedure Act 2011 will apply, so that anyone can lay charges, but it may be appropriate for this function to be allocated within the SWRA. The Board would perhaps be the most appropriate decision-maker, seeing as the offences' primary function is in relation to people who are <b>not</b> Registered Social Workers (and who therefore are beyond the proper oversight of the CAC and Tribunal processes).</p> <p><b>A consistent approach to prosecution</b></p> <p>The Board is currently developing a prosecution policy that relates to when criminal charges should be laid.</p> <p>If, as suggested above, the Board (in the place of the chairperson of the Tribunal) assumes responsibility for screening all complaints and determining whether they should be referred to a CAC, the prosecution policy will need to address when the Board would pursue criminal charges rather than the disciplinary process. For example, even if the public interest test set out in the Solicitor-General's Prosecution Guidelines were not met in a particular case so as to warrant criminal prosecution, disciplinary proceedings may well be appropriate.</p> <p>On the other hand, if the chairperson of the Tribunal retains responsibility for screening complaints, the Board's prosecution policy will not have direct application to the decision to refer a matter to the CAC and follow the disciplinary process. If the Board were to defer the decision to lay criminal charges pending consideration of a matter by the CAC and/or the Tribunal, the six-month time limit for laying charges (under the Criminal Procedure Act) may well expire. Another option would be for the Board and the chairperson of the Tribunal to enter a memorandum of understanding to ensure a consistent approach.</p>
149	<p><b>Consequential amendments</b></p>

Section	Issues and comments
<b>Schedule 1</b>	
<b>2</b>	<b>Criteria for appointment</b> While clause 2(4) is presumably intended to avoid any (appearance of a) conflict of interest, it also precludes any person employed by the Ministry of Social Development from being on the Board. The Ministry, particularly the Department of Child, Youth and Family, is a significant provider of social work services, and the representativeness of the Board might be hampered by this exclusion.
<b>7</b>	<b>Limit on term</b>
<b>10</b>	<b>Vacation of office if status changes</b>
<b>20</b>	<b>Members representing other members</b>
<b>33</b>	<b>Procedure generally</b>
<b>37</b>	<b>Quorum</b>
<b>39</b>	<b>Voting</b>
<b>43</b>	<b>Restriction on delegation</b>
<b>55</b>	<b>Legal advisers</b>

Section	Issues and comments
<b>Schedule 2</b>	
1	Deputy chairperson
2	Term of office
3	Vacation of office
4	Expenses of Tribunal
5	Procedure of Tribunal
6	Evidence
7	Powers of investigation
8	Witness summons
9	Service of witness summons
10	Witness' allowances
11	Privileges and immunities
12	Non-attendance or refusal to co-operate
13	Contempt of Tribunal
14	Power to amend charges
15	Adjournments
16	Legal and medical advisers
17	Immunity of members of Tribunal







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