

**DECISION NO:** 3ANAPC 05/13/SWDT

**IN THE MATTER** of the Social Workers  
Registration Act 2003

**AND**

**IN THE MATTER** of a charge laid by the  
Complaints Assessment Committee

**Complainant**

**AND**

Thomas Fonoti  
Registered Social Worker

**Respondent**

**BEFORE THE SOCIAL WORKERS REGISTRATION BOARD  
COMPLAINTS AND DISCIPLINARY TRIBUNAL**

**PRESENT:**

**Ms V Hirst (Chairperson)**  
**Ms S Dyhrberg, Mr D Russell, Ms J Prentice,**  
**Ms R Corrigan (Members)**  
**Mr S McKinley (Hearing Officer)**

**HEARING:** Held in Wellington on Friday 22 March 2013.

## **Introduction:**

1. Thomas Fonoti is a Registered Social Worker.
2. On 24 January 2013, a Complaints Assessment Committee (CAC) of the Social Workers Complaints and Disciplinary Tribunal laid a disciplinary charge against Thomas Fonoti under the Social Workers Registration Act 2003 (the Act).
3. The Tribunal hearing was held on 22 March 2013. Thomas Fonoti did not appear. Evidence of the charge and various documents relating to the proceeding being sent to Thomas Fonoti were placed before the Tribunal. The Tribunal is satisfied that Thomas Fonoti had been appropriately served under Section 145 of the Social Workers Registration Act 2003.

## **The charge:**

4. *Practising without a current practising certificate contrary to Section 25 of the Social Workers Registration Act 2003.*

Section 25 of the Act provides “No registered social worker may be employed or engaged as a social worker unless he or she holds a practising certificate.”

## **The Facts:**

5. Thomas Fonoti has been a registered social worker since 25 November 2010 under the Social Workers Registration Act 2003.
6. That from 1 July 2012 Thomas Fonoti practiced as a social worker while not holding a current practicing certificate.
7. Documentary evidence was led from Mr S McKinley, Registrar and Chief Executive of the Social Worker’s Registration Board (the Board).

8. It was submitted that the evidence established the following chronology, which the Tribunal accepts.
9. Thomas Fonoti was first registered as a social worker on 25 November 2010 and remains on the register.
10. Under Section 25 it is a requirement for practising registered social workers to hold an Annual Practising Certificate (APC). An APC includes holding a valid Certificate of Competency.
11. When an APC is due for renewal, a notice including a declaration is sent to the social worker at the address they have given to the Board, as well as an invoice. A notice was sent to Thomas Fonoti on 14 May 2012.
12. It is also a requirement to inform the Board if the social worker is no longer practising by indicating this on the Renewal of Annual Practising Certificate form.
13. Thomas Fonoti was advised by registered letter dated 9 November 2012 that due to not receiving any notification from him/her or not completing the requirement to renew their APC, including holding a valid Certificate of Competency, he/she was deemed to be practising without a current APC and that the matter had been referred to a CAC, as per section 65 (1) of the Act.
14. Membership of the CAC was advised and Thomas Fonoti was informed of their right to request changes in membership. Thomas Fonoti was also informed of their right to make a written explanation or statement or to appear before the committee. Thomas Fonoti did not respond.
15. The CAC determined that Thomas Fonoti was deemed to be practising social work from 1 July 2012 without an APC and was therefore in breach of Section 25 of the Act. A charge was laid with the Tribunal.

16. Thomas Fonoti was advised of this outcome by letter dated 1 February 2013 and offered the opportunity to appear before the Tribunal – either personally or by a representative. Thomas Fonoti chose not to do so. To date there has been no response from Thomas Fonoti.

**Discussion and Finding:**

17. The Tribunal finds that the charge under section 25 of the Act is made out. Despite communications from the Board that it is a legal requirement under the Act for a registered social worker to hold an APC, including a current certificate of competency, Thomas Fonoti continued to practice from 1 July 2012 without an APC.

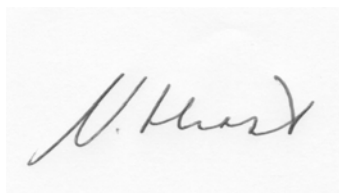
18. Section 82(2)(b) of the Act deems a registered social worker to be guilty of professional misconduct if “*While employed or engaged as a social worker, claims or holds himself or herself out to be registered while not currently holding a current practicing certificate*”. The Tribunal accepts that there is not sufficient evidence in this case that Thomas Fonoti has ‘held himself or herself out’ to the Board or their employer that he/she was registered while not holding an APC.

19. If the Tribunal had made a finding of professional misconduct penalties under section 83 of the Act may have been considered. The Act, as it stands, in respect of penalties for breaching section 25 does not provide any other sanctions or penalties other than section 48 (3) that “*Every social worker commits an offence, and is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding \$10,000 or both, who is engaged or employed as a social worker contrary to section 25*”.

20. The Tribunal is not convinced that this is an appropriate penalty in these circumstances. This is the first time Thomas Fonoti has had a disciplinary charge laid before the Tribunal. However, the Tribunal accepts that Thomas Fonoti is likely to still be practising.

21. The Tribunal does need to send a clear message to the profession that practicing without an APC is unacceptable in any circumstances. This is because: the principal purpose of the Act as stated in section 3(a) *is to protect the safety of members of the public, by prescribing or providing mechanisms to ensure social workers are (i) competent to practice; and (ii) accountable for the way in which they practise*; APC's and certificates of competency are key to meeting this purpose. An APC in effect communicates to the public that a practitioner is fit and competent to practice. The process for issuing practicing certificates allows for a degree of scrutiny of the social worker's current practice. Failure to comply undermines the fundamental premise on which the regulatory system operates.
22. If Thomas Fonoti should come before the Tribunal on a further charge of practising without holding a valid APC that is made out the Tribunal may give fuller consideration to utilising the more serious penalties available to it under section 148 of the Act.
23. The Tribunal directs that a copy of this decision be published on the Board's website.

**DATED** at Auckland this 20<sup>th</sup> day of May 2013.

A handwritten signature in black ink, appearing to read 'V. Hirst', is centered on a light gray rectangular background.

Vicki Hirst  
Chairperson  
Social Workers Complaints and Disciplinary Tribunal

