



**Social Workers
Registration Board**
Kāhui Whakamana Tauwhiro

FIT AND PROPER PERSON

POLICY STATEMENT

Approved: June 2018
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For review: June 2019

FIT AND PROPER PERSON

This policy statement is based on the Social Workers Registration Act 2003 ('the Act').

1. Introduction and obligations of the Social Workers Registration Board

The Act requires the Social Workers Registration Board ('Board') to establish criteria for registration of social workers. Section 6 of the Act entitles a person who has a recognised NZ qualification to be registered if the Board is satisfied that:

- a) his or her competence to practise social work has been found satisfactory under Part 3; and
- b) he or she is a fit and proper person to practise social work; and
- c) whether because of the inclusion of an appropriate component in that qualification, or else as a result of his or her satisfactory completion of a separate course or courses of training, he or she is:
 - competent to practise social work with Māori; and
 - competent to practise social work with different ethnic and cultural groups in New Zealand; and
- d) he or she has enough practical experience.

The requirements for registration, together with the accepted ethics of the profession and the Code of Conduct, issued by the Board, are regulatory tools whereby the Board controls the suitability of persons for registration and their subsequent professional behaviour.

This policy addresses the Board's responsibilities in respect of 'fit and proper person' and 'fitness to practise' requirements under the Act. Its purpose is to outline the principles, responsibilities and processes associated with fitness to practise requirements and give some guidance about what characteristics could preclude a person from entitlement to registration.

The Board contributes, both nationally and internationally, to the ongoing professional discussion as to what constitutes a fit and proper person. The Board considers the current policy adequately reflects the reasonable expectations and views of the public, those in the social work profession and other key stakeholders in the wider social work sector.

2. Points at which the Board may consider fitness to practise social work

The Board may be required to consider whether a person is a fit and proper person to practise social work in a number of different contexts:

- at the time of an application for registration as a social worker (sections 47 and 48);
- as a result of being notified that a social worker has received a conviction;

- after receiving notification of concern about a social worker's ability to perform adequately the functions required to practise social work (section 51);
- as a result of a review by the Board following an investigation by a Complaints Assessment Committee (section 71(1)(a)); or
- at the time of renewing an Annual Practising Certificate (APC) (section 30).

3. Legislative context

The Board is empowered to determine whether a person is fit to practise under section 47 of the Act.

Section 47(1) enables the Board to find a person (the **subject**) is not a fit and proper person to practise social work if there are grounds on which a reasonable person would reach that conclusion.

Section 47(2) states that the Board may find that the subject is not a fit and proper person to practise social work if:

- he or she has been convicted, in New Zealand or overseas, of an offence that is punishable by imprisonment for 3 months or more, and the nature and circumstances of the offence reflect adversely on his or her fitness to practise social work; or
- the Board is satisfied the subject is unable to perform adequately the functions required to practise social work satisfactorily; or
- the Board is satisfied there are reasonable grounds to conclude that he or she is not of good character and reputation.

However, that is not an exhaustive list, and other considerations may also result in the Board finding that a person is not fit to practise social work.

Under section 50 of the Act, the Board is required to check with the New Zealand Police whether the person has any criminal convictions, and to consider any criminal convictions disclosed to the Board (whether in New Zealand or overseas). A fuller list of the factors the Board may take into account is set out below.

Section 47(3) enables the Board to reserve a decision (regarding an applicant for registration) on a whether the person is a fit and proper person to practice social work person if it is satisfied that:

- professional disciplinary proceedings are being taken against him or her (whether in New Zealand or overseas) or
- a licensing or registration organisation (whether in New Zealand or overseas) is making investigations that may lead to the taking of professional disciplinary proceedings against him or her, or
- the Health and Disability Commissioner is making investigations that may lead to the taking of professional disciplinary proceedings against him or her, and

- the circumstances suggest a reasonable possibility that the person is not a fit and proper person to practise social work.

The Board may also revisit its decision as to whether a person is fit to practise if further information or evidence suggests that there has been a change in circumstances.

The Board recognises its obligation to ensure the right of appeal (section 88) is adequately promulgated to persons affected by any decision or direction of the Board under the Act.

4. The Board's approach to fitness to practise

The Board is of the view that social work practitioners must be persons who possess the attributes of honesty and integrity appropriate to the professional position they hold. In order to achieve the purposes of the Act, it is important registered social workers are people:

- in whom the public can have trust and confidence; and
- who can practise social work safely and effectively.

The Board will consult, from time to time, with key stakeholders, to ensure its 'fit and proper person' considerations are in keeping with acceptable and reasonable expectations for registered social workers. This will include consultation with the profession, public, employers, educators, consumers, ethnic and cultural groups, other professional groups and Parliament.

The Social Workers Complaints and Disciplinary Tribunal also provides a perspective and possible precedents on what fitness to practise involves. In addition, rulings and experiences of authorities such as the Health Practitioners Disciplinary Tribunal, the Human Rights Commission, the Commissioner for Children, the Health and Disability Commission, the Law Commission, the Ombudsman Office, and other professional regulatory bodies also serve to inform the Board.

5. Principles

The Board will be guided by the Code of Conduct and observes the following key principles when considering 'fit and proper person' requirements:

- the health and safety of the public is paramount;
- adherence to principles of human rights and social justice;
- public trust and confidence in the social work profession is vital;
- ethical decision making;
- cultural responsiveness and valuing of difference; and
- objective, non-prejudicial and evidence-based decision making.

6. Considerations relevant to fitness to practise

The Board will consider each person's fitness to practise social work on a case-by-case basis.

In assessing whether a person is a fit and proper person to practise social work, the factors the Board may consider include the following:

Character

- whether the person is of good character, including being reliable, trustworthy and honest;
- whether the person displays respect for persons, for the cultural and social values of Aotearoa New Zealand, for the law and for the views of others;
- whether the person will maintain the trust and confidence of the public and the professional reputation of social workers;
- whether the person has ever had civil proceedings (other than divorce or dissolution of civil partnership) brought against him or her, for example a Protection or Trespass Order;
- non-criminal breaches of the law, particularly those involving ethical wrongdoing or moral turpitude or that are considered contrary to community standards;

Communication

- whether the person has the ability to communicate in English sufficiently well to be able to practise social work in New Zealand satisfactorily;¹

Professional background

- whether the person is or has been the subject of any complaints or professional disciplinary proceedings in New Zealand or overseas;
- whether the person is the subject of any licensing or registration organisation investigation that may lead to the taking of disciplinary proceedings;
- whether the person is or has been the subject of any allegations of misconduct, including academic misconduct or disciplinary proceedings or investigation at a post-secondary educational institution;
- whether the person is or has been the subject of any investigations being conducted by the Health and Disability Commissioner;
- whether the person's name has been removed from any professional register in New Zealand or overseas;

¹ This factor is addressed by the Board's *English Language Competence and English Language Testing Policy Statement*.

- whether the person has been suspended, dismissed or resigned from a social work position in New Zealand or overseas because of conduct, competence or health concerns;
- whether the person has been responsible for or contributed to any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying out his or her responsibilities as a social worker;

*Criminal history*²

- any criminal convictions in New Zealand and overseas, and the circumstances of that offending;
- any criminal charges that have been laid against that person in New Zealand, even if those proceedings did not result in a conviction (for example, if the person received a discharge without conviction);
- any other information provided by the New Zealand Police, including family violence history and infringement/demerit reports;
- any exemption granted under the Vulnerable Children's Act 2014 ('VCA'); and *Health*³
- whether the person has any physical or mental health conditions that may mean he or she is unable to perform adequately the functions required to practise social work satisfactorily.

7. Clarification of responsibilities and information required

It is the responsibility of an applicant for registration to demonstrate to the Board that he/she is a fit and proper person to be registered.

All applicants are required to provide information to enable the Board to make a determination on fitness to practise, including the following:

- one confidential professional reference;⁴
- consent for the Board to obtain a full Police check;
- a Police check from any country where the applicant has resided for one year or more (whether on one or more visits) out of the last ten years;
- a declaration of any physical and/or mental health conditions that may affect his or her ability to perform adequately the functions required to practise social work satisfactorily;

² Explained further below.

³ Explained further below.

⁴ Explained further below.

- in some cases, evidence of English language competence: as set out in the Board's *English Language Competence and English Language Testing Policy Statement*;

It is the responsibility of the applicant to ensure that information submitted to the Board is accurate. The Board may ask the applicant to provide further information about any matter arising from the application.

In light of the standards of honesty and integrity expected of registered social workers, it is important that applicants are candid and fulsome in their disclosure to the Board of any information that may affect their fitness to practise social work. If the Board later finds out that a social worker has failed to declare relevant information, this may affect his or her registration. On the other hand, honest disclosure of information is a positive action showing self-awareness, self-responsibility and insight.

It is the Board's responsibility to:

- obtain a full Police check on all applicants for registration;
- request any specialist advice or assessment required to make determinations regarding fitness to practise on the grounds of a person's physical, mental or social condition;

The Board's assessment of a person's fitness to practise should not be seen as a substitute for satisfying the legal responsibilities of employers and other organisations under the Vulnerable Children's Act 2014 to ensure that safety checks of their staff have been completed.

The Board is required under the Act to form its own assessment of a person's fitness to practise social work. Any exemption granted under the Vulnerable Children's Act may be taken into account by the Board but is not determinative.

8. Criminal history

The Board considers that conviction for offences of the nature listed below would likely lead a reasonable person to conclude that a person is not fit to practise social work:

- murder or manslaughter;
- sexual offending;
- possession of child pornography and offences relating to objectionable publications;
- violence against a person or persons;
- fraud or dishonesty;
- offences towards children or other dependent persons;
- serious alcohol and drug-related offences;
- weapons or firearms offences; and

- any other offence specified in Schedule 2 of the Vulnerable Children's Act 2014.

Applicants for registration should note that, as a result of the Vulnerable Children's Act, the "clean slate" provisions of the Criminal Records (Clean Slate) Act 2004 do not apply to the Police checks obtained by the Board.

All applicants who declare one or more convictions are required to supply a character reference, in addition to the professional reference, with their application. The Board may make further enquiries about any conviction, notification, information received or criminal proceedings, including obtaining:

- judgment or sentencing notes from the court at which the applicant's case was heard;
- pre-sentence report
- the summary of facts presented by the prosecutor to the court; and/or
- a solicitor's report of the circumstances relating to the conviction
- a letter of explanation about the circumstances of the conviction
- additional character and/or professional references (see paragraph 11 for guidance)
- a job description
- any rehabilitation reports; and /or
- any other information the Board thinks is relevant.

When assessing matters of criminal history the Board may take into account the following factors:

- the nature of the crime or offence;
- when and where the offence took place, and the circumstances of it;
- the extent to which, if at all, others suffered as a result of the wrongdoing;
- period of time over which the offence took place;
- relevance of the offence to the behavioural and attitudinal qualities expected of a member of the social work profession;
- the penalty imposed by the court;
- repetition of offending or evidence of disregard for the law;
- whether the applicant has completed their sentence;
- the level of the applicant's contrition;

- age of the applicant at the time of the offence;
- time that has elapsed since the offence took place;
- any rehabilitative programmes undertaken or other evidence of rehabilitation since the offence; and
- whether the applicant has demonstrated exemplary conduct and not re-offended in the last seven years.

In cases of one-off drink driving convictions, the Registrar considers the matter. In cases involving more than one drink driving conviction and all other convictions that are punishable by 3 months or more imprisonment, the matter is referred to the Board for consideration.

9. Health

The Act requires the Board to ensure that registered social workers are able to perform adequately the functions required to practise social work satisfactorily.

This adds a health aspect to the concept of fitness to practise: a disability, illness or other health condition may affect a person's fitness to practise social work. However, it will not necessarily do so. A person with a disability, illness or health condition which he or she manages appropriately may still be able to practise social work safely and satisfactorily.

The Board therefore requires all applicants for registration to declare whether he or she has any physical and/or mental health condition or disability that may affect his or her ability to practise social work. All applicants who declare a health condition or disability with the potential to affect fitness to practice will be asked to supply additional information and/or professional reports detailing neurological, psychiatric or addictive (drugs or alcohol) disorders including physical deterioration due to injury, disease or degeneration.

The Board may also consider the health of registered social workers when it receives a notification of a concern about a social worker's ability to perform adequately the functions required to practise social work satisfactorily.

When an applicant declares that he or she has a health condition, or the Board receives notifications of concerns about a registered social worker, the Board may consider:

- how the applicant manages his or her health condition;
- how, and the extent to which, that health condition may affect the applicant's ability to perform adequately the functions required to practise social work satisfactorily;
- whether the applicant has shown insight and understanding into the condition and how it may affect his or her ability to practise social work;
- whether the applicant has medical, psychological or other support;
- whether the applicant has informed his or her employer about the condition; and
- whether the applicant has made (or agreed with the employer or placement provider) reasonable adjustments to his or her social work practise in light of the condition.

The Board may ask an applicant for registration to undergo, at their own expense, a medical and/or psychiatric assessment to assist the Board in considering how an applicant's health may affect his or her fitness to practise. The Board may also ask for an additional professional reference.

The Board may require a registered social worker to undergo a medical examination (section 55) and this will be at the Board's expense. The Board may also impose an interim suspension (section 54) or restrictions on a registered social worker's practise (section 57) if there are concerns about the ability of the social worker to adequately perform the functions of a social worker or there are matters of public safety.

10. Confidential professional and character references

Each applicant for registration must provide one confidential professional reference from a referee who is familiar with his or her professional conduct and social work practise:

- If the applicant is currently practising social work, the referee must be a current employer or supervisor who has day-to-day responsibility for and oversight of the applicant's work.
- If the applicant is not currently employed, the referee should preferably be the most recent previous employer or supervisor who had day-to-day responsibility for and oversight of the applicant's work.
- If the applicant is a new graduate, the referee should be a supervisor from a social work placement undertaken in the course of the applicant's studies.
- In the absence of the above, a reference from a previous non-social work employer may be approved by the Board.

Each applicant for registration who declares one or more convictions must provide one confidential character reference from a referee who:

- has known the applicant for at least two years; and
- is a person of standing in the community.

Examples of persons of standing include:

- members of a regulated profession (for example, a lawyer, doctor, chartered accountant, nurse, teacher, financial advisors, engineers, pilots, real estate agents, social worker) who has a current practising certificate;
- university lecturers or professors;
- Justices of the Peace;
- elders or pastors from a church, temple or synagogue or other religious official;
- serving police officers or members of the armed forces;
- senior government officials or Members of Parliament.

A person cannot be a referee if he or she:

- is a member of the applicant's family or whanau (including spouses, partners, in laws, etc)
- resides at the same address as the applicant; or
- is the spouse or partner of someone who has already provided a reference.

References must be provided on reference forms approved by the Board. The Board reserves the right to seek an additional character and/or professional references in relation to any matter it considers relevant to the application.

11. Guidance for education providers

It is not the Board's role to assess whether students or those applying to study towards social work qualifications are fit and proper persons to practise social work. The Board does not assess a person's fitness to practise social work until he or she applies to become a registered social worker.

The Board recognises that education providers may:

- wish to advise students or prospective students about the process for applying for registration as a social worker;
- need to deal with issues of student misconduct or changes in a student's health while he or she is studying;
- be concerned about whether to allow an applicant to commence or continue study towards a social work qualification, in light of the possibility that he or she may or may not be able to register as a social worker upon completion of the qualification.

The guidance in this policy may assist education providers in their decision making.

The Board will, however, consider each applicant for registration on a case-by-case basis. As a result, the Board cannot provide a definitive list of criminal convictions or health conditions that would definitely lead to a rejection of application for registration.