

A GUIDE TO DISCIPLINARY PROCEEDINGS



Social Workers
Registration Board
Kāhui Whakamana Tauwhiro

COMPLAINTS AND DISCIPLINARY TRIBUNAL

WHAT IS THE SOCIAL WORKERS COMPLAINTS AND DISCIPLINARY TRIBUNAL?

The Social Workers Disciplinary Tribunal hears and determines disciplinary proceedings brought against a registered social worker under Part 4 of the Social Workers Registration Act 2003. This guide does not replace the Act, which contains the legal and statutory provisions relating to the operation of the Tribunal. This guide sets out the usual procedures to be followed before and during a hearing, but the Tribunal may adopt different procedures, appropriate to the circumstances from time to time.

The Tribunal comprises a Chair, one or more deputy chairs, at least 1 lawyer and 5 other members (all appointed by the Board) plus at least one layperson appointed by the Minister. When the Tribunal sits to hear and determine any matter, it sits with a presiding Chair or Deputy Chair plus 4 other members including one lawyer, two other members and a layperson.

An Executive Hearing Officer from the Social Workers Registration Board will also be present to attend to administrative functions.

GROUND ON WHICH A TRIBUNAL MAY MAKE AN ORDER

Section 82 of the Act provides a social worker may be disciplined if the Tribunal is satisfied the social worker:

- (a) has been guilty of professional misconduct; or
- (b) has been guilty of conduct that –
 - (i) is unbecoming of a social worker; and
 - (ii) reflects adversely on the social worker's fitness to practice as a social worker; or
- (c) has been convicted by a court (in New Zealand or elsewhere) of an offence that –
 - (i) is punishable by imprisonment for a term of 3 months or longer; and
 - (ii) was committed in circumstances that reflect adversely on the social worker's fitness to practise as a social worker; or
- (d) has failed to comply with restrictions on his or her registration, or restrictions stated under section 77(1)(b).

A social worker is guilty of professional misconduct if they either

- breach the code of conduct; or

- while employed or engaged as a social worker, claims or holds himself or herself out to be registered while not holding a current practising certificate.

The Tribunal cannot penalise a social worker if, when the Board was deciding to register the social worker, they were told of the conviction and given adequate information about the circumstances of that conviction.

A Social Worker is not guilty of a disciplinary offence just because he or she has practised honestly and in good faith a theory of social work that is not in conflict with the code of conduct.

WHAT HAPPENS AFTER THE CHARGE HAS BEEN SUBMITTED TO THE TRIBUNAL AND THE SOCIAL WORKER HAS RECEIVED THE NOTICE OF DISCIPLINARY PROCEEDINGS?

PRE-HEARING REQUIREMENTS

Once the Notice of Disciplinary Proceedings has been given to the social worker and he/she (or their representative) has returned the completed Pre-Hearing Checklist to the Executive Hearing Officer (or after 21 working days has elapsed without filing of the Pre-Hearing Checklist), the Executive Hearing Officer will consult with the parties to confirm the date and time of the Pre-Hearing Meeting.

There are particular procedures available under the Act with which the parties should be familiar. For example, the social worker is reminded of the obligation under section 76(3) of the Act to notify the Tribunal in writing whether or not he or she wishes to be heard by the Tribunal, either personally or by a representative.

The social worker can also indicate if they wish to apply for orders under section 79 (e.g. name suppression).

PRE-HEARING MEETING

This is usually a teleconference where the Chair of the Tribunal, the prosecuting counsel, the social worker (or their representative) and the Executive Hearing Officer of the Tribunal meet and discuss the details of the hearing, such as date, time, venue, how evidence might be offered, etc. (see glossary of terms).

INFORMATION FOR ALL PARTIES IN PROCEEDINGS BEFORE THE TRIBUNAL

Hearings of the Tribunal are held in public unless grounds for the Tribunal to order otherwise exist. (section 79). Where one party or the other, or the complainant, requests an order that the whole or any part of the hearing shall be held in private, or where the Tribunal itself wishes to consider that possibility, the Tribunal will invite all parties affected to submit their views. Where the Tribunal is satisfied that it is desirable to do so, it may order that the whole or any part of the hearing shall be held in private.

Similar orders may be made prohibiting publication of written materials or the name, or any particulars of the affairs of any person.

As section 88 of the Act provides a right of appeal against the whole or any part of any order made under section 79 of the Act, the Tribunal needs to deal with applications in advance of the hearing.

Accordingly it is essential that any such applications are identified promptly and made formally to the Tribunal so that they can be dealt with well in advance of the hearing.

There are special protections for complainants contained in section 80 of the Act. Where the charge relates to or involves any matter of a sexual nature, or any matter that may result in the complainant giving evidence on matters of an intimate or distressing nature, special safeguards to protect privacy can be implemented.

After the Pre-Hearing Meeting, the Tribunal will forward a minute to the parties setting out a timetable, or steps to be taken, any directions or orders made, and such other matters as are appropriate.

WHAT HAPPENS AT THE HEARING?

The hearing is held in public unless otherwise ordered.

The hearing remains always under the control of the Chair.

The Tribunal must comply with the rules of natural justice which, amongst other things, require that each party is entitled to a fair and impartial hearing, to have opportunity to put its case and to be present when the other party is conducting its case. Subject to this, the Tribunal may receive as evidence any statement, document, information or matter that may, in its opinion, assist it to deal effectively with the matters before it, whether or not it would be admissible in a Court of law.

Where the charge relates to or involves any matter of a sexual nature, or where any matter that may require or result in the complainant giving evidence on matters of an intimate or distressing nature, the Tribunal will offer the complainant the right to give his or her oral evidence in private.

Under section 80(6) of the Act, the Tribunal also has a discretion to order that evidence of acts performed on a complainant, or which the complainant is alleged to have been compelled or induced to perform or to consent to, may not be the subject of publication in any report or account.

Subject to the rules of natural justice, under Schedule 2, paragraph 14 of the Act, the Tribunal may at any time during the hearing of any charge, amend the charge in any way.

The Tribunal may from time to time appoint a legal or medical advisor, who may be present at any hearing of the Tribunal and at any time may respectively advise the Tribunal on matters of law, procedure, evidence, or on clinical or scientific matters (legal) or medical matters (medical). However a legal or medical advisor is not entitled to be present during any deliberations of the Tribunal.

The Tribunal may adopt whatever procedures are appropriate to the circumstances, however, the usual procedure at the hearing (if the social worker does not admit the charge) is as follows:

- (a) The Tribunal requires the parties to adduce evidence by way of written statements unless applications to the contrary are made and granted prior to the hearing of the charge(s), e.g. where appropriate, evidence may be given by affidavit or video-link by witnesses who cannot attend.
- (b) The party upon whom the burden of proof lies, either a Complaints Assessment Committee or the Director of Proceedings, will present its case first. The burden of proof is the burden of establishing the facts that give rise to the charge. The party with the burden of proof will be referred to as the "prosecution". Prosecution counsel will make opening submissions and will

call each of the prosecution witnesses in turn. Each party attempts to establish its case by providing evidence sufficient to satisfy the Tribunal.

- (c) Evidence may be given either on oath or affirmation. If so, each witness must be sworn or affirmed. The procedure for taking the oath is as follows:

The witness holds a Bible in his or her right hand and the Executive Hearing Officer says to the witness:

“Do you swear that the evidence you are about to give in these proceedings will be the truth, the whole truth and nothing but the truth?”

The witness replies:

“I do.”

Alternatively the witness may make an affirmation, a non-religious binding obligation. The procedure for affirmation is similar.

The Executive Hearing Officer asks the witness:

“Do you solemnly, sincerely and truly declare and affirm that the evidence you are about to give in these proceedings will be the truth, the whole truth and nothing but the truth?”

The witness replies:

“I do.”

- (d) The witness then gives evidence of the facts that are within his or her knowledge. If an expert is called, that person may give an opinion on the relevant issues. This part of the evidence is called “evidence-in-chief”. The evidence-in-chief will normally be presented in the form of a written statement which is read to the Tribunal. Alternatively, the evidence may be led, that is, given in response to questions from prosecuting counsel. During this examination the usual rules of evidence apply. For example, leading questions may not be asked on matters which are in dispute between the parties. A leading question is one which is worded so that it suggests the desired answer to the witness. Leading questions may, however, be put in preliminary matters (matters that are not in dispute) or during cross-examination.
- (e) The representative for the respondent social worker (or the social worker themselves if unrepresented) may then cross-examine the witness.
- (f) If a witness has been cross-examined, prosecution counsel may re-examine the witness but only on matters which have been raised in cross-examination.
- (g) The same procedure is followed for all other witnesses called by the prosecution.
- (h) The representative for the respondent then makes opening submissions and calls witnesses in the same way.
- (i) The Tribunal Chair and members may ask questions of a witness. Isolated questions may be asked during examination-in-chief and cross-examination but members of the Tribunal will usually reserve questions until the conclusion of the re-examination of the witness. The

parties will be given an opportunity to question the witness on any issues which arise from the Tribunal's questions.

- (j) The Executive Hearing Officer will keep a formal record of the hearing.
- (k) The Tribunal will retire to consider the case and reach a decision.

WHAT HAPPENS AFTER THE HEARING?

If circumstances permit, the Tribunal will meet in private to consider the evidence which has been placed before it and reach a decision immediately after the conclusion of the hearing. If possible, the Tribunal will reconvene and announce its decision orally. If the charge has been upheld, the Chair will invite counsel to make submissions as to penalty.

If the Tribunal does not communicate its decision to the parties on the day of the hearing, the written Decision will be sent direct to the social worker and counsel for both prosecution and respondent social worker with a copy to the complainant. If the charge has been upheld, written submissions on penalty will be sought.

The submissions on penalty will be considered by the Tribunal before it issues a final Decision or finding. This Decision will be sent to the respondent social worker, the complainant and to counsel for the prosecution and respondent.

WHAT IF THE SOCIAL WORKER ADMITS THE CHARGE?

If the social worker admits the charge, then the focus of the Tribunal hearing will be about the appropriate penalty. As above, the Chair will ask for submissions from each party on penalty. If the social worker does not want to appear before the Tribunal they will be encouraged to make submissions on penalty as they may believe, for example, that a fine should not be imposed because of their financial situation.

PENALTIES ORDERS AVAILABLE TO THE SOCIAL WORKERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

The Tribunal in making orders may –

- (a) order that the registration of the social worker be cancelled;
- (b) order that the registration of the social worker be suspended for a period of not more than 12 months;
- (c) order that there are restrictions on the social workers practice (as to employment, supervision or otherwise) for a period of not more than 3 years;
- (d) order that the social worker is censured;
- (e) order that the social worker pays a fine of not more than \$10,000 to the Board;
- (f) order that the social worker undergo stated training, professional development or both;
- (g) order that the social worker pay part or all of the costs and expenses of and incidental to any related HDC investigation, any related CAC investigation, the prosecution of any charge and /or the hearing concerned.

The Tribunal can only order cancellation of registration if the social worker is found guilty of gross or severe professional misconduct.

If the Tribunal is dealing with an offence related to a conviction, the Tribunal cannot impose a fine.

The Tribunal must have regard to the amount of any award of damages against the social worker in respect of the conduct concerned if considering imposing a fine and how much the fine will be.

PUBLICATION OF INFORMATION - PUBLICATION OF TRIBUNAL ORDERS

Under section 146 of the Act, when the Tribunal makes an order under the Act in respect of any social worker, the Registrar must publish, in any publications the Tribunal directs, a notice stating

- (a) the effect of the Order;
- (b) the name of the social worker; and
- (c) a summary of the proceedings in which the order is made.

GENERAL INFORMATION

COMMONLY USED TERMS:

Adjournment:

Occurs when the Tribunal may postpone proceedings for any reason but will resume them at a later date.

Appeal:

A party who is dissatisfied with the decision of the Tribunal may apply to the District Court to reconsider the matter.

Chair and Deputy Chairs:

A Chair is allocated to conduct every hearing. They also convene "Pre-Hearing Meetings" to ensure that matters proceed to a hearing as soon as possible.

Checklist:

The document (supplied by the Tribunal) which is to be filed by or on behalf of each party after a "Notice of Intention to Bring Disciplinary Proceedings" has been received. It is a formal response by the parties to the matters raised by the Notice of Disciplinary Proceedings.

If no Checklist is filed on behalf of a social worker, then the Tribunal may proceed and the social worker will be entitled to appear and be heard at the hearing only on such conditions as to payment of costs and expenses or otherwise as the Tribunal thinks fit and so orders.

Complainant:

The person who took a complaint to the Health and Disability Commissioner or to the Social Workers Registration Board.

Decision:

Once a matter has been heard, the Tribunal makes a “Decision”, which is set out in writing, signed by the presiding Chair on behalf of the Tribunal and distributed to the parties involved. The complainant will receive a copy of the Decision from the party that laid the charge, either the Director of Proceedings or a Complaints Assessment Committee. If the complainant has any questions about the Decision, he/she should discuss them in the first instance with the lawyer who prosecuted the charge.

Director of Proceedings:

The person designated under section 15 of the Health and Disability Commissioner Act 1994 as the Director of Proceedings. Disciplinary proceedings against a social worker can only be brought before the Tribunal by either the Director of Proceedings or a Complaints Assessment Committee.

Executive Hearing Officer:

The person appointed by the SWRB who attends to administrative functions associated with the Tribunal’s proceedings and attends hearings.

Interim Suspension / Imposition of Conditions on Practice

At any time after a Notice of Disciplinary Proceedings has been given to a social worker, the Tribunal may, if it is satisfied that it is necessary or desirable to do so, having regard to the need to protect the members of the public, make an order that until the disciplinary proceedings in respect of which a charge is pending has been determined:

(a) That the registration of that social worker shall be suspended;

or alternatively:

(b) That the social worker may practise only in accordance with conditions specified by the Tribunal.

The Tribunal may make such an order, under section 77 of the Act, on the recommendation of the Director of Proceedings, or a Complaints Assessment Committee, or of its own initiative. Although the Tribunal is not obliged to give any notice to a social worker that it intends to make one or other of the above orders, in practice, only in very unusual circumstances would it do so without first giving an opportunity for submissions to be made.

Under section 78 of the Act, the social worker may apply at any time to the Tribunal for the revocation of one or other of the above orders. Also, the Tribunal may, at any time, of its own initiative, revoke one or other of the above orders.

Notice of Disciplinary Proceedings:

The Notice which the Chair must give when required under section 76 of the Act to convene a hearing of the Tribunal to consider a charge against a social worker.

Party:

Means either a Complaints Assessment Committee, the Director of Proceedings, or a respondent social worker in any proceedings before the Tribunal, and includes any person added to the proceedings.

Pre-Hearing Meeting:

This is a compulsory meeting between parties, conducted by the Chair or Deputy Chair, after the social worker has notified the Tribunal in writing whether he or she wishes to be heard by the Tribunal. It is usually a telephone conference. The conference is one of the procedures established by the Tribunal to ensure that proceedings are conducted fairly and expeditiously and that the expense of the hearing is minimized. The meeting provides the opportunity for discussion about the issues to be raised at the hearing, how the evidence will be put before the Tribunal, the date and location of the hearing and any other matters which have to be resolved before the hearing. The process is relatively informal, and discussions are confidential. The matters agreed to are recorded by the presiding Chair and forwarded to the parties.

Preliminary Matters:

These are pre-hearing procedural steps (sometimes referred to as “interlocutories”) which may be taken prior to the hearing. Their purpose is to assist the presentation of facts at the hearing. The procedures include discovery (or disclosure) and inspection of documents. The need for any interlocutories will normally be discussed at the Pre-Hearing Meeting when timetable deadlines will be indicated.

Complaints Assessment Committee:

A Complaints Assessments Committee (or “CAC”) consists of 2 registered social workers and one non registered social worker. CACs are appointed by the Chairperson of the Tribunal to investigate complaints referred to the SWRB. CACs are also required to investigate the circumstances of certain offences allegedly committed by a social worker. At the conclusion of an investigation, a CAC may determine that a charge be brought against the social worker before the Tribunal. The CAC is usually represented by an independent lawyer to prosecute the charge against the social worker.

Respondent:

The social worker who is called upon to respond to the charge.

ANY QUESTIONS?

This guide summarises what happens before, at, and after a disciplinary hearing. If you have any questions, please do not hesitate to phone (04) 931 2650 and ask to speak to the Executive Hearing Officer of the Tribunal.