

Social Workers Complaints and Disciplinary Tribunal

Social Workers Registration Act 2003

BEFORE THE SOCIAL WORKERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

REF RSW9/D1/SWDT/2020

UNDER the Social Workers Registration Act (“the Act”)

IN THE MATTER of a disciplinary charge laid against a social worker
under Part 4 of the Act.

BETWEEN **A PROFESSIONAL CONDUCT COMMITTEE appointed
by the SOCIAL WORKERS REGISTRATION BOARD**

AND **Ms [RSW X name suppressed]** of Auckland,
registered social worker
Practitioner

Hearing held on Friday, 20 November 2020 by AVL

MEMBERS Ms J C Hughson (Chairperson)
Mr P McGurk, Ms S Hunt, Ms S Jarvis (registered social workers)
Mr B Marra (layperson)

IN ATTENDANCE Ms G J Fraser (Hearing Officer)

APPEARANCES Ms C Paterson for the Professional Conduct Committee
Mr D Dickinson for the practitioner

DECISION ON JURISDICTION

Dated 1 December 2020

Introduction

1. By Notice of Charge dated 6 August 2020 a Professional Conduct Committee (PCC) of the Social Workers Registration Board (the Board) charges the practitioner with conduct unbecoming a social worker that reflects adversely on her fitness to practise as a social worker pursuant to section 82(1)(b) of the Social Workers Registration Act 2003 (the SWR Act). Alternatively, the practitioner is charged with professional misconduct pursuant to section 82(1)(a) of the Act¹.
2. The Notice of Intention to Bring Disciplinary Proceedings dated 11 August 2020 sets out the Charge as particularised in the following terms:

“In particular:

- (a) Between 2017 and 2018 [RSW X] created two fake identification cards representing that she was employed by Work and Income New Zealand and Oranga Tamariki (ID cards), when she was not in fact employed by either of those agencies; and/or*
- (b) In or around July 2018, while attending [] Hospital outside of the hospital’s visiting hours to visit a client (as part of her social work practice as a social work practitioner at []), [RSW X] displayed the ID cards on a lanyard around her neck; and/or*
- (c) During the above hospital visit, [RSW X] did not correct a charge nurse who stated that [RSW X] was from Oranga Tamariki.*

The nature and extent of [RSW X’s] conduct, as set out above, reflects adversely on her fitness to practise as a social worker and/or breached Principles 1 and/or 9 of the Code of Conduct issued by the Social Workers Registration Board pursuant to section 105 of the Act.

3. At a pre-hearing conference held on Thursday, 17 September 2020 the Charge was set down for hearing in Auckland on Thursday, 19 November 2020². Counsel for the practitioner indicated that the practitioner wished to apply for an interim non-publication order in respect of her name. Counsel for the practitioner was directed to

¹ Notice of Charge dated 6 August 2020 signed by the Presiding Member of the PCC, Ms Phyllis Huitema.

² Subsequently the hearing was adjourned.

file an application supported by evidence and a memorandum of counsel. Counsel for the PCC indicated that a non-publication order was sought for the junior social worker who was said to work for the practitioner at the relevant time. The PCC was also directed to file an application, supported by evidence and/or a memorandum of counsel. The applications were filed and were referred to the Chairperson for consideration. The Chairperson convened a full Tribunal to hear the applications on Friday, 16 October 2020. Interim non-publication orders were made in respect of both the junior social worker and the practitioner³.

4. When preparing for that hearing the Chairperson searched the register entry of the practitioner as it appears currently on the Register published online on the website of the Social Workers Registration Board. The Chairperson did so because annexed to a Memorandum of Counsel for the PCC filed in support of the PCC's application for a non-publication order in respect of the junior social worker⁴ was an excerpt from a transcript of an interview (conducted by the PCC during its investigation) with [Mr L] to whom the junior social worker first reported her concerns about the practitioner. In that transcript it is recorded that *"[junior social worker's] original concern was around the fact that [the practitioner] wasn't a registered social worker"*.
5. The Register entry records that the practitioner was first registered with the Board on 26 October 2018.
6. As above, the Charge alleges that the practitioner committed acts "between 2017 and 2018" (the creation of two fake identification cards) and in "July 2018" (displaying the identification cards when visiting Waitakere Hospital and not correcting a charge nurse who stated that the practitioner was from Oranga Tamariki). These are the acts that are alleged to amount to conduct unbecoming of a social worker that reflect adversely on her fitness to practise as a social worker (section 82(1)(b)) ('conduct unbecoming'), or alternatively, professional misconduct pursuant to section 82(1)(a).
7. On 15 October 2020 the Chairperson issued a Minute in which she invited the parties to address the Tribunal on the issue of whether or not the Tribunal has jurisdiction to

³ Orders for Interim Non-Publication of the Names of Original Complainant and of Practitioner dated 16 October 2020.

⁴ Memorandum of Counsel for the PCC regarding non-publication order in respect of [the junior social worker] dated 1 October 2020.

review conduct by a registered social worker that is alleged to amount to professional misconduct or ‘conduct unbecoming’, when that conduct is alleged to have occurred prior to that practitioner’s registration as a social worker (the jurisdiction issue).

8. In accordance with timetabling directions made in that Minute, written submissions in relation to the jurisdiction issue were received by the Tribunal, from Counsel for the PCC. Counsel submitted that the Tribunal had jurisdiction to hear the Charge. By Memorandum dated 30 October 2020 Counsel for the practitioner advised that he had no response in opposition to the PCC’s submissions and that he accepted the PCC’s “interpretations”. A full Tribunal then heard the matter (by audio visual link). Counsel appeared for the first part of the hearing and answered questions from the Tribunal before the Tribunal deliberated⁵. This document records the Tribunal’s decision that it does not have jurisdiction to hear the charge as laid and striking out the charge, together with the reasons for that decision.

Relevant background to the regulation of social workers

9. The Tribunal was informed by the parties that at the time of the alleged conduct the practitioner was working as a social worker, but she was not a registered social worker.
10. The Board is not yet the regulatory authority for all persons who practise social work or provide social work services to the public. Mandatory registration of social workers comes into effect on 28 February 2021. Until then there are persons who are practising social work who may be calling themselves social workers but who are not and/or have never been registered with the Board. That is because of the voluntary approach to the registration of social workers that has been in place since the SWR Act first took effect⁶. Non-registered social workers (like this practitioner was) are not, and have not been, subject to the processes under the SWR Act, including the complaints and disciplinary regime. Those social workers have not been regulated. As such, there has been a major

⁵ The Tribunal deliberated after the hearing and reconvened on 24 November 2020 for further deliberations.

⁶ Section 2(1): sections 97 to 113, 137, 141 to 149, Schedule 1, and Schedule 3 (except for the provision relating to the Health and Disability Commissioner Act 1994) brought into force, on 1 November 2003, by the [Social Workers Registration Act Commencement Order 2003](#) (SR 2003/250).

Section 2(1): so much of the Act as not in force immediately before the close of 30 September 2004 brought into force, on 1 October 2004, by the [Social Workers Registration Act Commencement Order 2003](#) (SR 2003/250).

gap for acts, omissions, and conduct by unregistered social workers the effect of which has been (and continues) that such acts and conduct have been immune from complaint to the Board⁷.

11. The Board has recognised that it has no jurisdiction over social work practitioners who are not registered⁸. Unregistered social workers are not subject to statutory requirements including assessments of their competence and fitness to practise or covered by existing complaints and disciplinary processes. They are not required to have professional supervision or to undertake CPD [Continuing Professional Development]. This means and has meant that the Board has been unable to hold unregistered social workers accountable for their work.
12. The public safety concern associated with this situation was a significant driving force behind the legislative change to the SWR Act in February 2019⁹. On 28 February 2019 the Social Workers Registration Legislation Act 2019 amended the SWR Act to introduce mandatory registration of social workers (as above, the relevant provisions are to take effect on 28 February 2021, being two years from the date the Act was amended) and a range of other changes including, relevantly, to section 82 of the Act relating to the grounds for discipline.

⁷ Social workers who are not registered under the SWR Act but who are members of The Aotearoa New Zealand Association of Social Workers (ANZASW) (the professional association for social workers) are subject to a complaints process with the Association. See www.anzasw.nz. A member can be investigated for issues relating to his or her social work practice. Complaints resolution procedures are administered by a Complaints Convenor who has a range of resolution options available, from mediation and informal, culturally specific, resolution opportunities, through to formal disciplinary procedures. The complaints process applies when members are not registered social workers but are alleged to have committed a Disciplinary Offence (as specified in Clause 9 of the Standing Orders relating to the Complaint Procedures of the ANZASW (effective from 1 September 2018)). The process also applies if a complaint is received about a member who is a registered social worker and who is alleged to have acted improperly or inappropriately in the course of carrying out any role or function for the Association and the Chief Executive determines that a complaint to the Board is not warranted; or who is alleged to have committed a Disciplinary Offence and the Board has elected not to take any action in respect of the alleged Disciplinary Offence (Clause 2 of the Standing Orders relating to Scope of the Standing Orders). Clause 10 iii of the Standing Orders provides that complaints about matters that occurred before a member became a member; or more than 7 years prior to the receipt of the complaint, “shall not activate” the complaints procedures. Members of ANZASW are also required to comply with CPD requirements, evidence competence to practice, and have professional supervision. Social workers who are not members of ANZASW are not subject to the Association’s complaints process and therefore cannot be investigated by the ANZASW. It is not known to the Tribunal whether the practitioner is a member of the ANZASW.

⁸ Board website regarding ‘Mandatory Registration’. The Act is administered by the Ministry for Social Development (MSD). MSD has also recognised this (MSD Website).

⁹ Social Workers Registration Legislation Act 2019.

- 13.** The jurisdiction issue here is an important one because increasing numbers of social workers who may be or may have been practising social work but who have never registered, will register under the Act with the introduction of mandatory registration. That raises the question whether, when legislating for mandatory registration, Parliament intended that any pre-registration ‘misconduct’ by a social worker will be captured by the disciplinary provisions that will apply to those social workers once they become registered.

Submissions for the PCC

- 14.** It was submitted for the PCC that the Tribunal has jurisdiction to consider the Charge against the practitioner on the basis that the complaint that resulted in the Charge was made at a time when the practitioner was a registered social worker. Counsel advised the Tribunal that the complaint was made in January 2019. It was submitted that in accordance with the text and purpose of the SWR Act (including the protection of the safety of members of the public by prescribing or providing for mechanisms to ensure that social workers are competent to practise and accountable for the way in which they practise¹⁰ and enhancing the professionalism of social workers), that is sufficient to confer jurisdiction on the Tribunal to consider and determine the Charge.
- 15.** Counsel for the PCC submitted, in summary:
- a. With reference to section 5 of the Interpretation Act 1999, the interpretation consistent with the text and purpose of the Act is that the Tribunal’s jurisdiction derives from the fact that a person is registered as a social worker when a complaint is made about the person’s conduct. If the complaint is made when the practitioner is registered, then it may be dealt with in accordance with the disciplinary processes in Part 4 of the Act.
 - b. The Act does not require, expressly or impliedly, that the conduct occurred while the person was registered.
 - c. The Tribunal may exercise its functions and powers in respect of a person who is a “social worker”; that is someone “currently registered with the Board”.

¹⁰ Section 3 (Purpose), SWR Act.

- d. There are compelling policy reasons why the Tribunal should find that the disciplinary regime under the Act is able to respond to conduct that occurred when the social worker was not yet registered but in circumstances where the individual is registered at the time of the complaint. Adopting this approach is consistent with the public protection purpose of the Act.
16. As above, Counsel for the practitioner accepted the PCC's position on these matters. He confirmed that at the hearing.

Discussion

17. This is a case concerned with whether the Tribunal may make a finding under section 82(1)(a) and 82(1)(b) of the SWR Act in relation to the conduct of social workers prior to their registration under the Act.
18. The question is whether those sections of the Act apply to all conduct by a registered social worker or only some, namely, conduct after the practitioner becomes registered under, and therefore is regulated by, the Act. The question is as to the ambit and scope of the Act.
19. Notwithstanding the position of the parties, the parties accepted that as a creature of statute the Tribunal must be satisfied for itself that it has jurisdiction under its home statute to review the conduct charged. For the reasons explained below, it is not so satisfied.

A matter of statutory interpretation

20. The Tribunal agreed with Counsel for the PCC that resolution of the issue by the Tribunal is a matter of statutory interpretation. That is because there is no specific provision in the SWR Act that provides expressly that the Tribunal has jurisdiction to discipline a social worker in respect of acts or omissions that are alleged to amount to professional misconduct or conduct unbecoming a social worker that reflects adversely on his or her or their fitness to practise, when that conduct was alleged to have been committed (or omitted) before they became a registered social worker under the Act.
21. To construe those sections the Tribunal has simply read them and looked at the SWR Act in which they are contained, to determine what is the fair meaning of those sections. Fairness is important because in the Tribunal's view it could be considered to be unfair

for a person to be susceptible to an adverse disciplinary finding under the Act for an action or omission which was not a disciplinary offence when it was carried out. There is an argument to be made that it can be assumed that Parliament would not have intended such an unreasonable result (that a person should find himself or herself liable for a disciplinary offence for an event that could not properly have been regarded as a disciplinary act when the person did it), unless the Act is clear that was Parliament's intention, either explicitly or by implication.

- 22.** As was said by Lord Mustill in *State for Social Security v Tunncliffe*¹¹ at [724] (referred to by Asher J in *Art Deco Society (Auckland) Inc v Auckland City Council*)¹²:

“In my judgment the true principle is that Parliament is presumed not to have intended to alter the law applicable to past events and transactions in a manner which is unfair to those concerned in them, unless a contrary intention appears. It is not simply a question of classifying an enactment as retrospective or not retrospective. Rather, it may well be a matter of degree – the greater the unfairness, the more it is to be expected that Parliament will make it clear if that is intended”.

- 23.** Section 6 of the Interpretation Act 1999 provides that an Act applies to circumstances as they arise. That is, the law shall be considered as always speaking, and Acts are forward-looking, and are intended to apply to all situations arising or continuing after they have come into force.
- 24.** Section 7 of the Interpretation Act 1999 provides that an enactment does not have retrospective effect.
- 25.** As was said by the High Court in *Art Deco Society (Auckland) Inc v Auckland City Council*¹³ sections 6 and 7 are not absolute rules. They do no more than continue the traditional common law presumptions that statutes are always speaking, and against retrospectivity¹⁴.
- 26.** Section 4 of the Interpretation Act 1999 is clear that if the words of an Act provide otherwise, or the context of the Act requires a different interpretation, an Act may not apply to circumstances as they arise, or alternatively, an Act may be retrospective. The

¹¹ [1991] 2 All ER 712, 724

¹² [2006] NZRMA 49 (HC)

¹³ [2006] NZRMA 49 (HC)

¹⁴ Above, fn.5.

traditional approach of considering any presumption against the words in the context of the Act, remains.

27. As Asher J observed in *Art Deco Society* at [49]:

“the approach to interpretation indicated in section 6 is consistent with the notion that legislation is given a commonsense interpretation, in accordance with ordinary notions of fairness. If there is a tension between sections 6 and 7 of the Interpretation Act 1999, then it is necessary to consider the words and context of the Act in question, as required by section 4 of the Interpretation Act 1999, to resolve that tension.”

28. In summary, the effect of those provisions is that Courts will not readily interpret a statute as having retrospective effect unless the intention of the legislature to do so is clear, particularly where unjust consequences may follow.

29. The real question therefore, is whether Parliament has demonstrated with sufficient clarity, either expressly or by distinct and necessary implication, that sections 82(1)(a) and (b) of the SWR Act shall have retrospective effect in respect of the conduct of registered social workers that was committed before they registered.

30. Asher J in *Art Deco Society* stated:

“[50] The task of the Courts in interpreting legislation which is alleged to have a retrospective effect has not changed as a consequence of the enactment of s 7 of the Interpretation Act 1999. If in the end it is clear that Parliament’s intention is that the legislative provision is to have a retrospective effect, then the Courts will find that that is the effect of the Act, even if there are no express words stating that the provision has retrospective effect: *W v W* (2000) 14 PRNZ 157, 161-162 (CA).

[51] Ultimately the issue is one of construction, in which the plain words in the text of the section, the purpose and scheme of the legislation, and the overall fairness of giving the provision retrospective effect are relevant. The Court of Appeal has stated in *Prouse v Commissioner of Inland Revenue* (1994) 16 NZTC 11,249 at 11,252:

The ultimate question is one of the construction of the statute. It involves weighing retrospectivity concerns in determining the intention of Parliament as reflected in the scheme and language of the legislation.”

31. As to the common law presumption against retrospectivity, in *Maxwell v Murphy* (1957) 96 CLR 261, 267 His Honour Dixon CJ stated that unless the contrary intention appeared with reasonable certainty a statute changing the law should not be understood as applying to facts or events that had already occurred in such a way as to impose

liabilities which did not exist at the time. Procedural changes were recognised as not coming within this approach. This was partly the reason why in *Dental Council of New Zealand v Bell*¹⁵ Tipping J observed that it was perfectly clear that in so far as the new Dental Act changed the procedure for the investigation of complaints against dentists the new procedure applied to acts and conduct occurring before it came into force. That is, a registered dentist who was subject to the regulatory requirements of the governing statute could not avoid the consequences of unprofessional actions by virtue of procedural changes, as the overarching requirements attached to registration had not changed. As Tipping J noted in respect of substantive changes to the law regulating registered dentists:

“Closer examination is necessary as to whether or not the Act was intended to have retrospective effect in a substantive rather than a procedural sense but it should be noted that the trigger for the operation of the powers and procedures of the new Act is the making of a complaint and, as earlier observed, a decision that the Act had no substantive retrospective effect might mean that some complaints could be investigated and some could not, or that the earlier procedures pro tanto continued.”

32. This is not a situation involving change from one mandatory regime to another mandatory regime or which gives rise to any concern about the need for parallel disciplinary procedures as was raised in *Dental Council of NZ v Bell*¹⁶. That case concerned whether complaints made under the Dental Act 1988 applied to conduct pre-dating the coming into force of that Act on 1 January 1989. Before that date, the dental profession was governed by the Dental Act 1963, the whole of which was repealed by section 86(1) of the new Act. The dentist (Dr Bell) contended that the complaints against him, which were made after the new Act came into force but were about his conduct pre-dating the new Act, should (if anything) be dealt with under the provisions of the old Act. The High Court made an order declaring that the provisions relating to complaints contained in the new Act did apply to complaints relating to conduct pre-dating the coming into force of that (new) Act. Reaching the view that Parliament must have intended the new Act to have retrospective effect, not only procedurally but also in substantive terms, the Court reasoned at page 447 that:

¹⁵ [1992] 1 NZLE 438.

¹⁶ Above, fn. 5.

“the plain and ordinary meaning of the words used signal clearly, at least by implication, an intent that all conduct should be covered by the new Act. Parliament could hardly have intended the old procedures to apply to conduct occurring before 1 January 1989 with the procedural and logistical difficulties that such a conclusion would involve: with the risk of two systems running in parallel and the real difficulties that would arise in a case where relevant conduct straddled the change-over date.”

- 33.** The High Court observed that the absence of any transitional provisions in the new Dental Act bearing on the question must signal the fact that Parliament meant the new provisions to take over substantively as well as procedurally and to relate to all conduct of which complaints were made after the passing of the new Act, irrespective of whether the conduct pre-dated the new Act.
- 34.** In contrast to the present situation that case was not required to determine whether the disciplinary regime in the new Act could be retrospectively applied to a registered dentist for their pre-registration conduct. At all material times, including when the conduct charged was alleged to have occurred, Dr Bell was a registered dentist. In this case however it must follow (as was accepted by Counsel for the PCC) that at the time of the alleged offending the practitioner was not committing a professional disciplinary offence under the SWR Act because she was not a registered social worker. She was not a member of the registered social work profession and as such she was not regulated by the Act.

Approach

- 35.** Having regard to those matters, the proper starting point for the Tribunal is section 5 of the Interpretation Act 1999: the meaning of section 82(1)(a) and (b) of the SWR Act must be ascertained from the text and in the light of the Act’s purpose.
- 36.** The interpretation of a statute must include its context, not just the relevant sections that confer jurisdiction on the Tribunal in isolation. The fundamental question the Tribunal asked itself was whether it could find, from the terms of the statute, with sufficient clarity, an intent that section 82(1)(a) and (b) should govern events occurring before a social worker becomes registered under the Act, as well as events occurring thereafter. Such intent can be found either from express provisions, of which directly there are none, or by necessary and distinct implication.

Ascertaining meaning from the text and in the light of the Act's purpose:

The disciplinary regime under the SWR Act

- 37.** Part 4 of the SWR Act deals with the discipline of social workers. It proceeds on the basis the PCC and the Tribunal have jurisdiction in respect of “*social workers*”. Section 115 which deals with the function of the Tribunal, provides that one of the functions of the Tribunal is “*to exercise the disciplinary powers over social workers conferred by this Act*”.
- 38.** One of the changes to the Act introduced by the Social Workers Registration Legislation Act 2019 was the inclusion of a definition of “*social worker*”. The term “*social worker*” is defined in section 4 as meaning:
- “a person who is registered under this Act as a social worker”*
- 39.** Section 5A of the SWR Act, which was also introduced from 28 February 2019, relates to the Board’s function to describe the social work services that are performed by the social work profession, in one or more scopes of practice (notified in the *Gazette*). Scopes of practice notified by the Board come into effect from 28 February 2021. It is from that date, that mandatory registration takes effect, and a person cannot practise social work or hold themselves out as practising as a social worker, unless they are registered.
- 40.** The key jurisdictional trigger for complaints about a social worker is that a social worker is registered, although it is not necessary that the social worker holds an annual practising certificate. Section 59 provides that “*any person may make a complaint against a social worker ...*”.
- 41.** Here there is no question that the complaint about the practitioner which led to the establishment of the PCC was made when the practitioner was a registered social worker. Counsel advised that in August 2017¹⁷ the practitioner had applied to the Board to be registered. However, she did not achieve registration until 26 October 2018. As above, the complaint was made in January 2019. The Tribunal noted that had the complaint been made prior to the practitioner’s registration, the Board would not have been able to take any steps in terms of initiating a complaint investigation process by a

¹⁷ Submissions of Counsel for the PCC at [1.2].

PCC, as the practitioner was not on the Board's Register. She was practising as a social worker on an unregistered basis, as she was legally able to.

42. The question is whether the Tribunal's jurisdiction to make findings under section 82(1)(a) and (b) extends to the practitioner's conduct prior to 26 October 2018.
43. The Tribunal accepted the PCC's submission that there is nothing explicit in any of the relevant sections of the Act (even after amendment in 2019) to suggest that the power to investigate a complaint is limited to events or conduct which occurred after the coming into force of the Act.
44. It is accepted that the receipt of a complaint about a social worker initiates the Board's complaints function and process. Upon receipt of a complaint the Registrar must refer the complaint to the Board¹⁸. The Board must then refer the complaint to a PCC unless the Board is satisfied that "*the complaint does not need to be pursued*".¹⁹
45. One reason why a complaint would not need to be pursued is when no reasonable PCC could form the view that it has reason to believe that grounds exist entitling the Tribunal to exercise its powers under Part 4 of the Act. Section 75(2)(a) requires a PCC to hold such a belief for a charge to be laid in the Tribunal. If the conduct complained about could not reasonably amount to one of the disciplinary offences in section 82 then it follows that there would not be grounds existing entitling the Tribunal to exercise its disciplinary powers. More is said about that matter below.
46. The submission for the PCC was that the Tribunal's jurisdiction to exercise its disciplinary powers and functions is triggered when the complaint which led to the charge that has been laid, is made. The Tribunal does not accept that submission. The sections of the SWR Act relating to the Tribunal's functions and powers make no reference to a "complaint". While a "complaint" gives the Board the power to establish a professional conduct committee (to investigate the complaint)²⁰, and one of the determinations that may be made by the PCC is to "*submit the complaint or conviction to the Tribunal*"²¹, the Tribunal's jurisdiction is triggered by a charge, properly brought on the basis that the PCC (or the Director of Proceedings) has reason to believe that grounds exist

¹⁸ Section 60, SWR Act.

¹⁹ Section 65, SWR Act.

²⁰ Section 65, SWR Act.

²¹ Section 71(1)(c), SWR Act.

entitling the Tribunal to exercise its powers under Part 4 of the Act²². A PCC could not reasonably form the belief that grounds exist entitling the Tribunal to exercise its powers, if the conduct could not amount to one of the grounds on which the Tribunal may make an order under section 82.²³

47. For the reasons set out below, the Tribunal considers that misconduct by a social worker that is alleged to have occurred entirely and exclusively prior to his or her registration under the Act could not amount to a disciplinary offence for the purposes of section 82(1)(a) or (b). The Tribunal's view is that the only conduct that occurred entirely and exclusively prior to a social worker's registration that can be reviewed by the Tribunal is where the practitioner has been convicted by a court of an offence (subsequent to registration) in respect of that conduct and where it is alleged that the offending that led to the conviction was committed in circumstances that reflect adversely on the "social worker's" fitness to practise as a social worker. This is the offence set out in section 82(1)(c).

Grounds for discipline

48. Section 82 sets out the grounds on which a "social worker" may be disciplined as follows:

82 Grounds on which Tribunal may make order

- (1) The Tribunal may make an order under section 83 in respect of a social worker if, after conducting a hearing on a charge laid against the social worker, it is satisfied that 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 practise as a social worker.
 - (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

²² Section 75 (1) and (2)(a), SWR Act.

²³ Sections 82 and 83, SWR Act. Such a finding would be grounds for judicial review of a PCC's determination to lay a charge.

- (d) Has failed to comply with conditions on his or her registration, or conditions stated under section 77(1)(b).
 - (2) A social worker is guilty of professional misconduct if he or she –
 - (a) Breaches the code of conduct; or
 - (b) While practising as a social worker, claims or holds himself or herself out to be registered while not holding a current practising certificate; or
 - (c) Fails to report to the Board as required by section 51(1A); or
 - (d) Commits an act or omission that, in the opinion of the Tribunal has brought or is likely to bring discredit to the social work profession.
 - (3) The Tribunal must not make an order under section 83 in respect of an offence for which a social worker was convicted if, when the Board decided he or she should be registered it was -
 - (a) aware of the conviction; and
 - (b) adequately informed of the circumstances of the offence.
 - (4) 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.
- 49.** Section 82(1)(c) relating to the referral of criminal convictions was added by the Social Workers Registration Legislation Act 2019. Prior to the Act’s amendment in February 2019, convictions were considered by the Tribunal in the context of charges brought under section 82(1)(b). The introduction of section 82(1)(c) brings the SWR Act into line with the Health Practitioners Competence Assurance Act 2003, which contains a similar, although not identical provision in section 100(1)(c).
- 50.** Section 83 identifies the penalties which may be imposed on a “*social worker*” who has been found guilty of one of the disciplinary offences in section 82. The range of penalty orders the Tribunal may make was extended by the Social Workers Registration Legislation Act 2019. As above, the Tribunal must not make an order under section 83 in respect of an offence for which the social worker was convicted, if when the Board decided he or she should be registered it was aware of the conviction and adequately informed of the circumstances of the offence. It follows that if the Board was not so aware or adequately informed at that time then the Tribunal may make an order. However, the nature of the charge would not be a referral of the conviction itself under section 82(1)(c). In the Tribunal’s view such conduct would be charged as professional misconduct under section 82(1)(a) (or ‘conduct unbecoming’ under section 82(1)(b)) on the basis that the practitioner failed to inform the Board once they were registered, of the conviction and the circumstances of the offending. In this regard the Board’s Code

of Conduct provides in Principle 9 that social workers are expected to be honest, open and constructive in his or her dealings with the SWRB.

51. Alternatively, section 82(1)(c) could be construed as indicating that convictions that the Board did not know about or was not adequately informed as to the circumstances of the offence could amount to a disciplinary offence under this subsection and that this subsection is clear that Parliament intended for it to have retrospective effect. The absence of similar clarity in section 82(1)(a) and (b) indicate that the same could not be said for those subsections.
52. While section 82(1)(a) and (b) could, by themselves, be interpreted as granting jurisdiction over misconduct whenever it occurred, the Tribunal is of the view a proper contextual interpretation of section 82 (by a consideration of the statute as a whole) supports the conclusion that those subsections do not confer jurisdiction over pre-registration conduct.
53. If the Tribunal had jurisdiction to consider pre-registration conduct that is charged under section 82(1)(a) and section 82(1)(b) it would be obliged to consider that conduct in the light of conditions, circumstances and contemporary professional standards prevailing at the time of the conduct. This would include the fact that the legislation did not require mandatory registration or the imposition of the obligations that go along with that. The focus of the Tribunal's inquiry when considering charges of professional misconduct and 'conduct unbecoming' must always be on whether the practitioner's conduct was an acceptable discharge of their *professional* obligations at the time of the conduct (which is a question of degree)²⁴. The Tribunal does not consider it could fairly assess the conduct of a social worker who was not a member of the registered social work profession at the time of the conduct, as to do so would involve the application of the professional standards and expectations that applied to registered social workers who adopted those responsibilities by virtue of their voluntary registration. That some social workers were required by their employer to register prior to this becoming mandatory reflects the importance of registration, but not its universal application.
54. Counsel for the PCC submitted, with reference to the Board's Code of Conduct, that the standards in the Code apply to unregistered social workers as well as to registered social

²⁴ *F v MPDT and CAC* (Court of Appeal, CA203/04).

workers. While that may be the Board's aspiration, the reality has been and continues to be that the Code is not enforceable against anyone other than registered social workers, at least in the Tribunal's context²⁵. It may be the case that an unregistered social worker is not aware of the Board's Code, or was not required by their employer, as a term of their employment, to work in accordance with the standards in the Code. In any event, the Tribunal does not consider that a social worker can fairly be disciplined for a breach of the Code that they were not legally bound by because they were not members of the registered social work profession governed by the Board under the Act, at the time of the conduct.

55. For these reasons, the Tribunal considers it could not conclude fairly or reasonably that conduct committed (or omitted) by a person in the course of their work before they became a member of the registered social work profession, could amount to professional misconduct as defined in section 82(2) or 'conduct unbecoming'. Such conduct could not be said to have been a falling short of acceptable or expected professional standards for a social worker, when the relevant standards against which the conduct must be assessed were those enforceable against only registered social workers.
56. The Tribunal takes the view that were it to have jurisdiction over a social worker's conduct committed entirely and exclusively prior to registration, this would lead to an absurd result as a social worker could be found guilty of professional misconduct or 'conduct unbecoming' for pre-registration conduct that occurred what could be months or even years ago, at a time when they were not committing a disciplinary offence because they were not members of the registered social worker profession. Further, with mandatory registration imminent, there is the potential for this to open the floodgates of complaints and disciplinary proceedings. As discussed below, this is a significant public policy reason why, without a clearly expressed intention, it cannot have been Parliament's intention to capture conduct entirely and exclusively

²⁵ Section 82(2)(a). It is acknowledged that section 105 provides that a Code of Conduct issued and maintained by the Board to cover minimum standards of integrity and conduct applies to "social workers" (which must mean registered social workers given the definition in section 4) and that those standards "should apply generally in the social work profession".

committed or omitted prior to a person's registration, at least in terms of the Tribunal's disciplinary powers under section 82(1)(a) and(b).

57. Without prejudice to those points the following matters are noted. There is assistance derived from the legislation governing other professional disciplines, given close similarities and differences in legislation and the benefit that can be derived from the significant body of authority that has been collected as a consequence of mandatory registration and the disciplinary procedures prescribed by those other Acts.
58. Unlike the situation as it is under the Health Practitioners Competence Assurance 2003 in respect of health practitioners, the Education and Training Act 2020 (previously the Education Act 1989) in respect of teachers and the Real Estate Agents Act 2008 in respect of real estate agents, there is no specific provision in the SWR Act that provides that the Tribunal has jurisdiction to discipline "former social workers" (meaning former *registered* social workers). This appears to the Tribunal to be a significant "gap" in the regulatory scheme governing social workers which only Parliament can fill by amending the Act. In any event, the Tribunal considers that the exclusion of "former social worker" from the definition of "social worker" in section 4 indicates that it was Parliament's intention that the Tribunal may only exercise its disciplinary powers over a social worker who is currently registered or registered under the Act as it was amended from February 2019, in respect of conduct in the discharge of their professional obligations as a *registered* social worker.
59. Sections 100(1)(a) and (b) of the Health Practitioners Competence Assurance Act 2003 refer to a practitioner (health practitioner) being guilty of professional misconduct because of acts or omissions that, in the judgement of the Tribunal amount to malpractice or negligence *in relation to the scope of practice in respect of which the practitioner was registered at the time that the conduct occurred*; or because of any act or omission that, in the judgement of the Tribunal, has brought or was likely to bring discredit to *the profession that the health practitioner practised at the time that the conduct occurred*. Therefore, at least in relation to conduct liable to disciplinary sanction under sections 100(1)(a) and (b) of that Act, it is clear on the plain wording of those provisions that the conduct of a health practitioner (or former health practitioner) can only be the subject of a disciplinary charge if, at the time of the conduct in question, the practitioner was registered. The Tribunal considers that the italicised wording above

indicating temporal matters are clearly intended to apply to health practitioners (current and former) who may, at the time of the hearing of a charge laid against them, be practising in a different scope of practice or in a different health profession than they were at the time of the alleged conduct charged, or to individuals who are not registered or practising currently but who were registered at the time of the conduct charged (former health practitioners). The temporal requirements in those subsections are required because the Act explicitly covers conduct by a former health practitioner.

60. The Tribunal considers that the absence of a temporal requirement in sections 82(1)(a) and 82(1) (b) of the SWR Act is not inconsistent with the Tribunal's view that Parliament's intention was that a social worker can only be disciplined for matters that amount to professional misconduct or 'conduct unbecoming' occurring by way of commission or omission from the point at which they registered under the Act.
61. There is no similar temporal reference or qualification in section 100(1)(c) of the Health Practitioners Competence Assurance Act 2003 which deals with the referral of criminal convictions that reflect adversely on a practitioner's fitness to practise their profession. However, the Tribunal considers that provision proceeds on the premise that the practitioner concerned is a health practitioner at the time that he or she is or they are *convicted* of an offence which reflects adversely on his or her fitness to practise. It does not proceed on the basis that a health practitioner or former health practitioner may be found guilty of a disciplinary offence in respect of convictions they received prior to their registration. That follows because any pre-registration convictions would be matters for the registration authority at the time a person's application for registration is being considered. Pre-registration convictions are relevant to the question of whether the practitioner is a fit and proper person to practise in the relevant profession and that is a matter for the regulatory authority when deciding whether to register the person or to issue or renew an annual practising certificate.
62. As indicated above, the same can be said for section 82(1)(c) of the SWR Act which provides that the Tribunal may make an order under section 83 in respect of "a social worker" if it is satisfied the "*social worker*" "*has been convicted by a court (in New Zealand or elsewhere) of an offence that is punishable by imprisonment for a term of 3 months or longer and was committed in circumstances that reflect adversely on the social worker's fitness to practise as a social worker*". That is, the Tribunal considers this

provision proceeds on the premise that the practitioner is a registered social worker at the time they are convicted of a qualifying offence. The Tribunal considers that section 82(3) supports this interpretation. This subsection is clear that the Tribunal must not make an order under section 83 in respect of an offence for which a social worker was convicted if, when the Board decided he or she was registered it was aware of the conviction and was adequately informed of the circumstances of the offence. A person who has not disclosed a conviction to the Board at the time of applying for registration²⁶ could be charged with an offence against section 148(1), as discussed below.

63. Section 82(1)(d) of the SWR Act provides that the Tribunal may make an order under section 83 if it is satisfied that the social worker has failed to comply with conditions on his or her registration, or conditions stated in section 77(1)(b) (interim suspension pending the hearing of a charge). Clearly, this provision also proceeds on the premise that the practitioner is a registered social worker.
64. It is the Tribunal's view that those provisions are indicative of Parliament's intention that it is post-registration conduct that is within the Tribunal's jurisdiction under section 82(1)(a) and (b). That is, professional misconduct, or 'conduct unbecoming' and/or the receipt of a conviction for a qualifying offence that reflects adversely on their fitness to practise when the practitioner is registered at the time the conviction is entered. In any event those provisions do not undermine the view the Tribunal has taken in relation to section 82(1)(a) and (b).
65. Other sections of the Act support this approach and provide reassurance that a practitioner whose pre-registration conduct might properly require consideration can be properly assessed. These are the provisions for Offences, which are not confined to registered social workers, and Part 2 of the Act which governs applications for registration and annual practising certificates.
66. Section 148 creates offences and penalties as follows:

148 Offences

- (1) Every person commits an offence, and is liable on conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding \$10,000 or both, who, for

²⁶ Sections 6 and 7 provide that one of the criteria to be registered is that the applicant is a fit and proper person to practise social work. See also sections 13, 14 and 15. Pre-registration convictions are relevant to the question of whether the applicant is a fit and proper person to practise social work (section 47(2)(c)), SWR Act.

- the purpose of obtaining registration or a practising certificate (for himself or herself or for any other person),-
- (a) makes an oral or written declaration or representation that, to his or her knowledge, is false or misleading in a material particular; or
 - (b) produces a document to the Board, or otherwise uses a document, knowing that it contains a declaration or representation that, to his or her knowledge, is false or misleading in a material particular; or
 - (c) produces a document to the Board, or otherwise uses a document, knowing that it is not genuine.
- (2) Every person commits an offence, and is liable on conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding \$10,000 or both, who holds himself or herself out as a registered social worker when –
- (a) He or she is not a registered social worker; or
 - (b) He or she is a registered social worker, but his or her registration is suspended.
- (3) Every registered social worker commits an offence and is liable on conviction... who is engaged or employed as a social worker contrary to section 25 [Practising registered social workers to hold practising certificates].
- (4) A person commits an offence, and is liable on conviction...if they hold an employee or a professional social worker out as a social worker, knowing that the employee or associate –
- (a) Is not a social worker registered under this Act; or
 - (b) Is a social worker registered under this Act –
 - (i) Whose registration is suspended; or
 - (ii) Who does not hold a current practising certificate; or
 - (iii) Who holds a current practising certificate that is suspended.
- (5) A social worker commits an offence, and is liable on conviction ...who-
- (a) Holds himself or herself out as holding a current practising certificate when-
 - (i) He or she does not hold a current practising certificate; or
 - (ii) His or her current practising certificate is suspended; or
 - (b) Fails or refuses to comply with-
 - (i) A condition on his or her registration; or
 - (ii) A condition on his or her practising certificate.
- (6) A person commits an offence and is liable on conviction to a fine not exceeding \$2000, if they disclose information in breach of section 46(1) [Confidentiality of information].
- (7) A person commits an offence, and is liable on conviction to a fine not exceeding \$2000, if they receive a production notice under section 68B [issued by a PCC] and –
- (a) Refuse or fail without reasonable excuse to comply with the notice; or
 - (b) Knowingly or recklessly provide information that is false or misleading in any material particular.
- (8) A person commits an offence, and is liable on conviction to a fine not exceeding \$2000 if they intentionally and without lawful excuse publish any information in breach of a suppression order made under section 79(2)(b) to (d) or in breach of section 80(6).

- 67.** The sanctions set out under section 148 are not included in the statutory powers given to the Tribunal. Section 148 explicitly provides authority over past conduct and supports the view that had Parliament intended to cover pre-registration conduct in the Tribunal's power to make findings under section 82(1)(a) and (b), it would have provided so explicitly.
- 68.** As is apparent, section 148 provides that certain conduct constitutes an offence subject to conviction, a term of imprisonment and a fine. Some of the offences under this section expressly include any person ("every person" or "a person"). Other offences under section 148 use the more restrictive term "a social worker" or "every registered social worker" (for example, section 148(3) and section 148(5)), as do the provisions which cover the powers of the Tribunal. In the Tribunal's view, this along with the fact that the SWR Act expressly provides for the consideration of past conduct when assessing a person's competence or fitness to be registered (discussed below), supports a finding that this use of language deliberately draws a distinction between social workers, registered social workers, and "persons" or "applicants" (for registration).
- 69.** It is not the case that a person who holds himself or herself or themselves out as a (registered) social worker and who was not or has not been registered or was not registered at the time, can do so with impunity. Such a person may be charged under section 148(2) and could be the subject of civil liability as well as to a fitness to practise assessment by the Board. Having regard to the conduct alleged in the Charge in this case, it may be open to the Board or MSD to commence a court proceeding against the practitioner for an offence against section 148(2)(a) (if the conduct involved the practitioner holding herself as a registered social worker employed by Oranga Tamariki), or alternatively for a complaint to be laid with Police for alleged criminal offending. Were the conduct to result in a criminal conviction then the conviction (if it was for a qualifying offence) may be referred to the Tribunal by way of a charge laid by a PCC under section 82(1)(c). Then (and only then) the conduct which led to the conviction (that is, the conduct charged here) could be considered by the Tribunal, in the Tribunal's view.
- 70.** The sections of the SWR Act that specifically provide for consideration of pre-registration conduct are also relevant to an understanding of the statutory scheme and

aid in interpreting the Tribunal’s jurisdiction to make findings under section 82. Those sections provide for the consideration of pre-registration conduct in the context of the Board’s assessment of a person’s competence to practise social work under Part 3 (Competence and fitness), and of whether a person is fit and proper to practise social work to be eligible for registration (see Part 2 Registration and practising certificates)²⁷. As was submitted for the PCC, the conduct alleged in the charge here, if established²⁸, would have a bearing on the assessment of the practitioner’s fitness to practise social work. The conduct is serious and involves allegations of dishonesty. For the reasons already given, the Tribunal does not accept that confers jurisdiction on the Tribunal to exercise disciplinary powers in respect of the practitioner in relation to that conduct under section 82(1)(a) or (b). However, such conduct would enable the Board to act, as fitness and propriety to practise is one of the criteria for registration and for the issue and renewal of a practising certificate and therefore is a matter that falls squarely within the Board’s functions and powers as the regulator of (registered) social workers. Section 48 of the Act provides that the fitness and propriety of a person to practise social work may be considered by the Board after a person has applied for registration (or a practising certificate) or after a mandatory report from an employer or after the referral of a complaint (or a notice of conviction) to a professional conduct committee.

- 71.** As Counsel for the PCC identified in the written submissions, the Board may take steps to cancel a social worker’s registration after he or she has or they have been registered²⁹. Specifically, the Board may direct cancellation if it is satisfied that the social worker either obtained registration by making a false or misleading representation or declaration, or that the social worker is not entitled to be registered.³⁰

²⁷ It is noted that section 47(30) provides that **in the case only of an applicant for registration** [emphasis added], the Board may reserve its decision on whether an applicant is a fit and proper person to practise social work if it is satisfied (a) that (i) professional disciplinary proceedings are being taken against him or her (whether in New Zealand or overseas); or (ii) 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 (iii) the Health and Disability Commissioner is making investigations that may lead to the taking of professional disciplinary proceedings against him or her; and (b) that the circumstances suggest a reasonable possibility that he or she is not a fit and proper person to practise social work. The reference to professional disciplinary proceedings in section 47(3) cannot be a reference to professional disciplinary proceedings under the SWR Act as such proceedings can only be brought against a registered social worker of which an applicant for registration is not.

²⁸ It is understood by the Tribunal that the facts are admitted.

²⁹ Section 132, SWR Act.

³⁰ Section 6, SWR Act.

72. Having regard to those matters, in the Tribunal's view, on a proper and contextual construction of the SWR Act the Tribunal does not have jurisdiction over the actions of persons before they were registered social workers, when those actions or omissions are charged as professional misconduct or 'conduct unbecoming'. The Tribunal's jurisdiction is entirely statutory, and the statute is clear that it has jurisdiction in respect of allegations of the misconduct of registered social workers. As discussed, the use of broader language of the provisions addressing the Board's assessment of an applicant for registration's fitness or propriety to be registered and to hold a practising certificate, and the offences and penalties provision in section 148 provide support for a finding that the Tribunal's jurisdiction to make findings under section 82(1)(a) and (b) does not extend to conduct that occurred entirely and exclusively prior to registration when that conduct is charged as professional misconduct or 'conduct unbecoming'.

Other considerations

73. The Tribunal does not consider that that the jurisdiction conferred on the Tribunal under sections 82(1)(a) and (b) should be broadly interpreted to extend to pre-registration conduct (conduct that is alleged to have occurred entirely and exclusively prior to registration). Given the consequences for a person's livelihood that flow from being subject to a regulatory scheme, and the voluntary nature of registration between 2003 and 2021 professional discipline legislation like the SWR Act should in the Tribunal's view not have retrospective effect unless that is clearly Parliament's intention.

74. Having regard to the public protection intent of the legislation, the Tribunal notes that at the time of the alleged conduct as charged, the public was not protected from the practitioner because of the voluntary registration regime in place under the SWR Act. Counsel for the PCC accepted that. The Tribunal does not consider it fair, reasonable, or that it was Parliament's intent that when a person becomes registered, the practitioner immediately exposes himself or herself to disciplinary liability for such conduct under section 82(1)(a) and (b).

75. The reality is that before a social worker registered with the Board under the Act, he or she or they may well have done something deliberately or otherwise that could have been detrimental to the welfare or safety of a person, knowing that he or she was or

they were not liable to disciplinary action for so doing. That is the very situation that Parliament has intended to rectify by legislating for the mandatory registration of social workers.

- 76.** While the Tribunal accepted the PCC's submission that there are policy reasons - namely public protection- which point towards an interpretation of section 82(1)(a) and (b) that supports the interpretation the PCC contended, as indicated in the Tribunal's view there is also a significant public policy reason why it cannot have been (unless clearly expressed in the Act) Parliament's intention to capture a social worker's pre-registration conduct, at least in terms of the Tribunal's disciplinary powers for offences under section 82(1)(a) and (b). That policy reason is the need to avoid 'opening the floodgates' of complaints and disciplinary proceedings, which the Tribunal considers is a real possibility were it to find the Tribunal has jurisdiction over the practitioner's conduct in this case. Any person who knows a social worker is now registered under the SWR Act could make a complaint about that social worker, even in respect of historical conduct in the course of their practise of social work when they were not registered (and were not required to be registered). The Tribunal could be inundated with charges and that would lead to difficulties for the Tribunal associated with having to ensure fairness to all parties to such proceedings, as well as resourcing issues for the Tribunal.
- 77.** The Tribunal understands that since the mid-2000's entities like Child Youth and Family/Oranga Tamariki and District Health Boards as employers have strongly encouraged their existing social workers to be *registered* social workers and some entities require employed social workers to be registered as a condition of their employment. The Tribunal does not consider that it can have been or was Parliament's intention when enacting the amendments to the legislation in February 2019 and introducing mandatory registration, to confer power on the Tribunal to discipline those social workers who did not register for conduct committed (or omitted) when they were employed and/or worked as social workers on an unregistered basis.
- 78.** It is for all these reasons that the Tribunal considers that it lacks jurisdiction to hear the charge in this case.
- 79.** The Tribunal notes that in cases where the conduct charged is alleged to have occurred prior to registration and carried forward from that period when the social worker was not registered into the period when he or she or they became registered (for example,

an inappropriate relationship between a social worker and a client that commenced prior to registration and continued into the period when the social worker was registered), such conduct may be within reach of the Tribunal's jurisdiction³¹. But the Tribunal does not need to be concerned with that issue here as the conduct charged in this case is alleged to have occurred entirely and exclusively prior to the practitioner's registration.

Summary

- 80.** The disciplinary provisions of the Act are not intended to have retrospective effect. A person is not liable for disciplinary sanction by the Tribunal under section 82(1)(a) or (b) of the SWR Act for conduct that occurred entirely and exclusively before they registered with the Board. The Act came into force in 2003/2004, with mandatory registration taking effect in February 2021. It is not the role of the Tribunal to enforce disciplinary findings against practitioners, under those provisions, for conduct occurring during a period when they were, lawfully, practising social work without being registered to do so and were not bound by all that registration entails.
- 81.** That the Tribunal does not have jurisdiction over pre-registration conduct does not pose a risk to the protection of the public or the maintenance of professional standards. The Act provides adequate mechanisms to ensure the competence and fitness of social workers for conduct occurring before they register. Further, the Act also provides for the prosecution of offences under the Act for conduct that may have arisen while a social worker was not registered.

Approach and outcome

- 82.** Clause 5 of Schedule 2 to the SWR Act entitles the Tribunal to regulate its own procedure (in the manner it thinks fit)³², subject only to compliance with the legislation and the rules of natural justice.
- 83.** The parties accepted that the Tribunal has jurisdiction to strike out a charge if the Tribunal does not have jurisdiction to deal with it.

³¹ PCC v RSW [*name suppressed*], RSW7/SWCDT 30 October 2020.

³² Clause 5 (3) and Clause 5(1), Schedule 2 of the SWR Act.

84. In an application to strike out civil claims, which is what a professional disciplinary charge is³³, the decision-maker must assume that the factual allegations made in the relevant pleading (here, the Notice of Charge) can be established, and on that basis, ask whether the relevant party (here, the PCC) can succeed.
85. On that approach, having found that the Tribunal does not have jurisdiction to deal with the charge, the appropriate course is to strike out the charge. The PCC cannot succeed here. Accordingly, the charge against the practitioner is struck out.
86. In addition to providing a copy of this decision to the parties, the Tribunal directs the Hearing Officer to provide a copy of this decision to the Registrar of the Social Workers Registration Board.

DATED at **Wellington** this 1st day of December 2020



Jo Hughson
Chairperson
Social Workers Complaints and Disciplinary Tribunal

³³ *Z v Complaints Assessment Committee* [2009] 1 NZLR 1.