

ISSUES PAPER

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

Contents

GLOSSARY	iii
INTRODUCTION	4
Purpose	4
Social Workers Registration Act 2003	4
Vulnerable Children Act 2014	4
Other relevant legislation	6
Scope of this Issues Paper	7
SUMMARY OF ISSUES AND OPTIONS	8
MANDATORY REGISTRATION	15
Background to voluntary registration	15
Mandatory registration in other professions	17
Achieving effective regulation of a profession	20
Social workers and the social service sector	21
The persons or work for which registration should be mandatory	23
Defining the persons or work for which registration is mandatory	26
PRE-REQUISITES TO REGISTRATION	28
Registration under the SWRA	28
Competence assessments	30
Registration on the basis of practical experience	33
Other pre-requisites to registration	33
FITNESS TO PRACTISE SOCIAL WORK	37
The standard for fitness to practise social work	37
Possible interaction with the VCA	39
OVERSIGHT OF SOCIAL WORKERS BY THE BOARD	44
Applications for a practising certificate	44
Ensuring competence	45
Ensuring fitness to practise	47
Cancellation of registration because of incompetence or unfitness to practise social work	48
Notification of concerns about a person’s ability to practise social work	49
Mandatory notification	51
THE COMPLAINTS ASSESSMENT COMMITTEE PROCESS	55
Overview of the process	55
Division of responsibilities	56
“Screening” of complaints	57
The powers of the complaints assessment committee	60
THE SOCIAL WORKERS COMPLAINTS AND DISCIPLINARY TRIBUNAL	64
The Tribunal process	64
Grounds for discipline and sanctions in other professions	65
The grounds for disciplining a social worker and the available sanctions	68
SUSPENSION AND CANCELLATION OF REGISTRATION AND PRACTISING CERTIFICATES	73
Relationship between registration and a practising certificate	73
Powers to cancel or suspend, or impose conditions	73
Suspension of a social worker pending resolution of a notification, complaint or charge	76
BEST MEANS FOR ACHIEVING REFORM	80
Amendment to the SWRA	80
Repeal the SWRA	80
MISCELLANEOUS ISSUES	83

GLOSSARY

Long form	Abbreviation
Social Workers Registration Act 2003	SWRA
Vulnerable Children Act 2014	VCA
Social Workers Registration Board	Board
Social Workers Complaints and Disciplinary Tribunal	Tribunal
District Health Boards	DHBs
Children, Young Persons and their Families Act 1989	CYPFA
Health Practitioners Competence Assurance Act 2003	HPCAA
Lawyers and Conveyancers Act 2006	LCA
Education Act 1989	Education Act
Complaints Assessment Committee	CAC

INTRODUCTION

Purpose

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

Social Workers Registration Act 2003

2. The SWRA came fully into force on 1 October 2004.¹ Particular features of the SWRA will be considered in greater detail later but at this point it may be helpful to briefly describe the SWRA. The purposes of the SWRA include:²
 - (a) to protect the safety of members of the public through mechanisms to ensure that social workers are competent to practise and accountable for their practise;
 - (b) to that end, create a framework for registration of social workers;
 - (c) to establish a Board to promote the benefits of registration; and
 - (d) to enhance the professionalism of social workers.
3. The SWRA provides for individuals to apply to the Social Workers Registration Board (**Board**) for registration as a social worker. The Board must consider an application for registration and decide whether a person is competent and a fit and proper person to practise social work. This requires completion of a competence assessment.
4. Any registered person who wants to practise social work must also apply for a practising certificate to do so. The registration and/or practising certificate of a registered social worker may be subject to conditions or restrictions.
5. Registered social workers are subject to the oversight and disciplinary regulation of the Board and the Social Workers Complaints and Disciplinary Tribunal (**Tribunal**) and, in some cases, the Health and Disability Commissioner. Complaints or concerns about a social worker's conduct or fitness to practise social work may result in suspension or cancellation of his or her registration or practising certificate, or other disciplinary action.

Vulnerable Children Act 2014

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

¹ Some provisions of the SWRA had come into force earlier.

² Social Workers Registration Act 2003 [SWRA], s 3.

Priorities and policies

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

Safety checks

9. Part 3 of the VCA establishes requirements for the safety checking of those who work with children.
10. For the purpose of Part 3 of the VCA, a "children's worker" is the person who provides a regulated welfare, support, justice, health, education, transport or policing service and whose work may or does involve regular or overnight contact with a child and takes place without a parent or guardian of the child being present.⁹ Relevantly for present purposes, the regulated services include, in general terms:¹⁰
 - (a) services provided under the Children, Young People and their Families Act 1989 (**CYPFA**) or by any care and protection coordinator;
 - (b) services provided by any person arising out of a decision, recommendation or plan made at a family group conference under the CYPFA;
 - (c) social or support services; and
 - (d) home-based or residential disability support services.
11. State services or local authorities that provide regulated services and individuals or organisations that are funded in whole or in part by state service or local authority to provide related services (**regulated organisations**) are required to ensure that a safety check of a person has been completed before that person is employed or engaged as a children's

³ Vulnerable Children Act 2014 [VCA], s 4.

⁴ Section 7.

⁵ Sections 8 and 9.

⁶ Section 11.

⁷ Sections 14 and 16–18.

⁸ Section 19.

⁹ Section 23.

¹⁰ Schedule 1.

worker.¹¹ The VCA requires existing children’s workers also to be safety checked upon the VCA coming into force.¹² Children’s workers must then be safety checked every three years.¹³ This is referred to in this Issues Paper as a **safety check**.

12. Further restrictions apply to core workers. A children’s worker will be a “core worker” if his or her work requires or allows that he or she is the only children’s worker present with a child or he or she has primary responsibility for or authority over the child.¹⁴ A regulated organisation must not employ or engage a children’s worker as a core worker if he or she has been convicted of a specified offence, including child sex offences and serious violent offences.¹⁵ However, the chief executive of the Ministry of Social Development, Ministry of Health, Ministry of Education or Ministry of Justice may grant an exemption permitting a person convicted of an offence to be a core worker if satisfied that the person would not pose an undue risk to the safety of children if employed or engaged as a core worker.¹⁶ This Issues Paper refers to this as the **core worker check**.

Interaction with the SWRA

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

Other relevant legislation

14. The Children, Young Persons and their Families Act 1989 (**CYPFA**), Care of Children Act 2004 and Adoption Act 1955 all touch on the role of social workers, particularly social workers employed by the Ministry of Social Development. These Acts do not, however, regulate the professional conduct of social workers.
15. This Issues Paper will use comparisons with other statutory professional disciplinary regimes to inform the assessment of the SWRA:
 - (a) the Health Practitioners Competence Assurance Act 2003 (**HPCAA**) regulates health practitioners in order to protect the health and safety of the public;
 - (b) the Lawyers and Conveyancers Act 2006 (**LCA**) governs the regulation of those providing legal services and conveyancing services, in order to maintain public confidence and protect consumers; and
 - (c) the Education Act 1989 (**Education Act**) governs the registration and discipline of teachers.

¹¹ Sections 24 and 25.

¹² Section 26.

¹³ Section 27.

¹⁴ Section 23.

¹⁵ Section 28 and Schedule 2.

¹⁶ Section 35.

Scope of this Issues Paper

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

SUMMARY OF ISSUES AND OPTIONS

Mandatory registration

ISSUE: Should registration of social workers be mandatory?

OPTIONS: While on one level, the options are “yes” or “no”, as will be discussed next, the key consequential issue will be the scope of any obligation to register as a social worker.

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

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

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

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

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

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

OPTIONS: The obligation to register could be defined by reference to the kind(s) of social work that can only be practised by registered social workers.

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

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

Pre-requisites to registration

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

OPTIONS: The Board could be required to assess and only recognise New Zealand or overseas qualifications where a graduate of that qualification will have the professional competence required to practise social work.

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

competence could be presumed.

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

ISSUE: Should “sufficient practical experience” be retained as a basis for registration in the absence of a recognised qualification?

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

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

OPTIONS: The Board could be required to assess and only recognise New Zealand qualifications where a graduate of that qualification will have the cultural competence and communication skills required to practise social work.

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

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

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

Fitness to practise

ISSUE: How should fitness to practise social work be assessed?

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

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

Other possible criteria or considerations include whether the applicant:

- has the ability to communicate in English sufficiently well to be able to satisfactorily practise social work;
- has been subject to a professional disciplinary order (including cancellation of registration overseas) or discipline at an educational institution in a way that reflects adversely on his or her fitness to practise;

- has practised social work in breach of obligations to register or hold a practising certificate;
- may endanger the safety of the public;
- displays respect for persons, for cultural and social values of Aotearoa New Zealand, for the law and for the views of others;
- upholds the public and professional reputation of social workers; and
- is reliable and trustworthy in carrying out duties.

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

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

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

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

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

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

Oversight of social workers by the Board

ISSUE: **What options should be open to the Board if a registered social worker is no longer competent to practise social work?**

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

Other options could be to empower the Board to make a complaint/ refer the matter to a CAC.

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

ISSUE: **What options should be open to the Board if a registered social worker is no longer competent or fit to practise social work?**

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

Other options could be to empower the Board to:

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

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

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

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

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

OPTIONS: Presently the Board only has the option to order:

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

Other possible courses of actions include:

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

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

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

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

notification of concerns in respect of a social worker.

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

The complaints assessment committee process

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

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

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

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

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

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

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

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

OPTIONS: Possible considerations include whether:

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

ISSUE: Should the powers of a CAC be expanded?

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

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

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

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

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

The Social Workers Complaints and Disciplinary Tribunal

ISSUE: Should there be changes to the membership of the Tribunal?

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

If so, the four other members of the Tribunal that hear and determine any particular matter could be three registered social workers and one layperson.

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

OPTIONS: Amendment to ss 82 and 83 would clarify the bases on which a social worker's registration may be cancelled by the Tribunal.

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

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

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

Suspension and cancellation of registration and practising certificates

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

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

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

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

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

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

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

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

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

Best means for achieving reform

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

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

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

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

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

MANDATORY REGISTRATION

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

Background to voluntary registration

23. The genesis of the SWRA lies in the report of Michael (Mick) Brown, the first principal Youth Court Judge, who reviewed the Department of Child, Youth and Family Services in December 2000.²⁰ He recommended that the introduction of social worker registration be given urgency and that social workers should only be able to exercise statutory powers if working with a registered social worker and/or members of police.²¹ The report explained:²²

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

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

¹⁷ SWRA, ss 6 and 8.

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

¹⁹ Sections 25 and 148(3).

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

²¹ At [3.5] and [3.7].

²² At 55.

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

Mandatory registration in other professions

Health practitioners

29. Under the HPCAA, there are several layers of regulation of the practise of health professions.
30. First, there are some “restricted activities” that can *only* be practised by registered health practitioners.²³ These include surgical procedures, clinical procedures, orthodontics and ophthalmology.²⁴ Any person who performs or implies that he or she is willing to perform a restricted activity without being a registered health practitioner authorised to do so commits an offence punishable by conviction and a fine of up to \$30,000.²⁵
31. Next, only a person who is a registered health practitioner of a particular kind can use any name or description that identifies him or her as that kind of health professional.²⁶ This means that a person who is not registered under the HPCAA as a member of a regulated profession – a midwife or physiotherapist or nurse, for example – cannot describe him or herself as being one. Any person who does so commits an offence punishable by conviction and a fine of up to \$10,000.²⁷
32. The HPCAA establishes and continues regulating authorities in relation to each health profession that is regulated under the Act.²⁸ Each regulating authority is responsible for describing the “content of the profession” in terms of “scopes of practise”, which may be defined by reference to:²⁹
- (a) a name or form of words that is commonly understood by persons who work in the health sector:
 - (b) an area of science or learning:
 - (c) tasks commonly performed: and/or
 - (d) illnesses or conditions to be diagnosed, treated, or managed.
33. Not all health professions are regulated under the HPCAA: for example, some are not regulated because they pose little risk of harm to the public or because they work under the supervision of a regulated profession.³⁰ If a health profession is not regulated under the HPCAA, there is no restriction under that Act on who can claim to be practising it.
34. A person who is a registered health practitioner of a certain profession must only perform health services that are within the “scope of practise” for which that person is authorised.³¹ Moreover, a registered health practitioner may only practise his or her profession if he or she holds a current practising certificate.

²³ Health Practitioners Competence Assurance Act [HPCAA], s 9.

²⁴ Health Practitioners Competence Assurance (Restricted Activities) Order 2005.

²⁵ HPCAA, s 9.

²⁶ Section 7.

²⁷ Section 7.

²⁸ Sections 114 and 117.

²⁹ Section 11.

³⁰ Sections 115–116.

³¹ Section 8.

35. Breach of these requirements, or other departures from the standards of competence and character required of a registered health practitioner, may be the subject of disciplinary action under the HPCAA.³²

Teachers

36. Under the Education Act, a person must be both a registered teacher and hold a current practising certificate in order to be employed or engaged in a teaching position.³³ Unqualified teachers may apply for a “limited authority to teach” in a fixed term teaching position, but cannot be appointed to a permanent teaching position.³⁴
37. The Education Act defined “teaching position” both by reference to the type of work and the type of position that a person may hold:³⁵

teaching position means a position in the general education system that—

- (a) requires its holder to instruct students; or
 - (b) is the professional leader, deputy professional leader (however described), or assistant principal of a school; or
 - (c) is the professional leader of an early childhood service or other educational institution
38. It is an offence punishable by conviction and a fine of up to \$2,000 for a person to describe him or herself as a “registered teacher” or to be employed or appointed as a teacher when he or she is not registered.³⁶ It is an offence punishable by a \$5,000 fine to employ or appoint a person as a teacher if he or she is not registered.³⁷
39. Registered teachers are subject to the disciplinary oversight of the Education Council.

Lawyers

40. The LCA prescribes that it is an offence for any person who does not hold a current practising certificate as a barrister or as a barrister and solicitor to provide legal services or describe him or herself as a lawyer, barrister, or solicitor etc.³⁸ Similarly, it is an offence for a person to hold himself or herself out as being entitled or qualified to provide legal services under the description of a lawyer.³⁹ It is also an offence for a person to carry out “reserved areas of work” if he or she is not a lawyer.⁴⁰
41. By contrast to the delegation to regulating authorities under the HPCAA, the scope of the legal profession is defined in the LCA itself. The LCA defines “legal services”, which can only be

³² Section 100.

³³ See s 349 and following of the Education Act 1989.

³⁴ See s 365 and following of the Education Act.

³⁵ Education Act, s 348.

³⁶ Section 374(1).

³⁷ Section 374(2).

³⁸ Lawyers and Conveyancers Act 2006 [LCA], s 21.

³⁹ Section 22.

⁴⁰ Section 24.

provided by persons holding practising certificates, as services provided by carrying out “legal work”, which in turn is defined as *including*:⁴¹

- (a) the reserved areas of work:
- (b) advice in relation to any legal or equitable rights or obligations:
- (c) the preparation or review of any document that—
 - (i) creates, or provides evidence of, legal or equitable rights or obligations; or
 - (ii) creates, varies, transfers, extinguishes, mortgages, or charges any legal or equitable title in any property:
- (d) mediation, conciliation, or arbitration services:
- (e) any work that is incidental to any of the work described in paragraphs (a) to (d)

42. In turn, “reserved areas of work” is defined:⁴²

reserved areas of work means the work carried out by a person—

- (a) in giving legal advice to any other person in relation to the direction or management of—
 - (i) any proceedings that the other person is considering bringing, or has decided to bring, before any New Zealand court or New Zealand tribunal; or
 - (ii) any proceedings before any New Zealand court or New Zealand tribunal to which the other person is a party or is likely to become a party; or
- (b) in appearing as an advocate for any other person before any New Zealand court or New Zealand tribunal; or
- (c) in representing any other person involved in any proceedings before any New Zealand court or New Zealand tribunal; or
- (d) in giving legal advice or in carrying out any other action that, by section 21F of the Property (Relationships) Act 1976 or by any provision of any other enactment, is required to be carried out by a lawyer

43. Each of these offences under the LCA is punishable by conviction and, in the case of an individual, a fine of up to \$50,000.⁴³ As a result, no person can practise law or purport to do so without both being an enrolled barrister and solicitor (akin to registration) and holding a practising certificate.

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

Other professions

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

⁴¹ Section 6.

⁴² Section 6.

⁴³ Section 46.

46. There are limited exceptions to this general approach, such as voluntary registration under the Registered Architects Act 2005 and Chartered Professional Engineers of New Zealand Act 2002. But although registration of those professions is voluntary, certain work under the Building Act 2000 is restricted to registered architects or engineers.⁴⁴
47. This consistent approach across other professions indicates that, where professional services may affect the wellbeing of members of the public, mandatory registration in order to undertake certain work is necessary in order to effectively protect the public and ensure the quality of those services.

Achieving effective regulation of a profession

48. Moreover, the above survey of other professional legislation illustrates that to achieve effective regulation of a profession requires a coordinated approach that:
 - (a) prescribes types of work or roles that are reserved to registered professionals (so that no other person, going by any title or name, can practise that work);
 - (b) requires persons who perform that work or those roles to be registered (and to hold a practising certificate);
 - (c) confers “title protection” on registered professionals, so that persons who are not registered cannot purport to be;
 - (d) creates criminal offences to enforce the requirement for registration and prohibition on “holding out” (because statutory disciplinary processes only apply to registered persons); and
 - (e) provides for disciplinary oversight of those who are registered members of the profession, to ensure that registration gives assurance of appropriate standards of competence and character.
49. In short, effective professional regulation imposes obligations – to register, and maintain appropriate standards of competence and character – and in return confers privileges – to practise particular work and to carry the title of the profession. A registered professional is entitled to call him or herself a member of that profession because he or she is subject to the obligations and supervision that maintain appropriate professional standards.
50. If registration under the SWRA were to become mandatory, it would be necessary to consider in a systematic and thorough way the consequential amendments to the SWRA that would be appropriate. Some of these would be of a minor nature, but some more substantial changes, such as changes to the title protection and other criminal offences would also be required.

⁴⁴ Or registered members of certain other professions.

ISSUE: Should registration of social workers be mandatory?

OPTIONS: While on one level, the options are “yes” or “no”, as will be discussed next, the key consequential issue will be the scope of any obligation to register as a social worker.

Social workers and the social service sector

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

Social workers

52. The International Federation of Social Workers defines the social work profession in the following terms:⁴⁵

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

53. Professional social workers generally deal with people and systems in crisis. They aim, amongst other things, to help people and communities develop the skills and ability to use their resources to resolve problems. The tasks and roles of a social worker may include, but are not limited to:
- (a) a holistic or clinical assessment of a client based on the social worker’s knowledge and skills;
 - (b) identifying and analysing the issues that emanate from that assessment;
 - (c) formulating a plan in response to the issues presented, including setting mutually agreed goals, time frames and review dates; and
 - (d) exiting support when it is deemed safe and appropriate to do so.
54. There is a great deal of variety within social work and the social work profession. A social worker may work as part of a multidisciplinary team or on a one-to-one basis with clients. Clients may be individuals, organisations or groups, like a class of students or a group of

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

teenagers struggling with depression. Social workers practise in a variety of settings, for example, child protection, health, or community-based social work. A person may practise social work by direct contact with clients in a front-line role, or through a more supervisory or managerial involvement in casework, education, research or policy decisions.

55. The CYPFA, Care of Children Act and Adoption Act set out certain tasks and roles of social workers employed by the Ministry of Social Development. Some examples of those roles helpfully illustrate the kind of work that social workers employed under these pieces of legislation or in similar situations do, such as:
- (a) investigating reports that a child or young person has been or is likely to be harmed or ill-treated or cases referred to them;⁴⁶
 - (b) in certain circumstances, attending family group conferences convened, for example, to develop a plan in respect of a child or young person;⁴⁷
 - (c) applying for and obtaining a warrant to search for and/or remove a child or young person that the social worker has reasonable grounds to suspect is suffering or likely to suffer ill-treatment, neglect or harm;⁴⁸
 - (d) taking custody of a child or young person on behalf of the chief executive of the Ministry in certain circumstances and/or making living arrangements for a child or young person in the custody of the chief executive;⁴⁹
 - (e) applying to the court for a declaration that a child or young person is in need of care and protection, which can then result in the court directing, for example, that services or assistance be provided to the child or in whose custody the child should be;⁵⁰
 - (f) being appointed by the court to provide support to a child or young person who is declared to be in need of care and protection;⁵¹
 - (g) preparing a plan or report for a child for consideration by the Court in determining what directions to make in relation to a child in need of care and protection. The plan should specify the objectives to be achieved and the services and assistance to be provided;⁵²
 - (h) making a report on an application for adoption;⁵³
 - (i) acting under warrant to deliver a child to a person entitled to have day to day care of or contact with a child, or to prevent a child being removed from New Zealand;⁵⁴ and

⁴⁶ Children, Young Persons and their Families Act 1989 [CYPFA], ss 15–19.

⁴⁷ Sections 22, 30–31 and 251.

⁴⁸ Sections 39 and 40.

⁴⁹ Sections 48, 105 and 235.

⁵⁰ Section 68.

⁵¹ Sections 94 and 95.

⁵² Sections 128–130 and 186.

⁵³ Adoption Act 1955, ss 10 and 13.

- (j) providing written advice to the court on an application for a guardianship order or parenting order and may appear at the hearing of the application.⁵⁵

The social service sector

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

The persons or work for which registration should be mandatory

Social work and the social service sector

58. The factors favouring mandatory registration apply more strongly to the practise of social work than to the broader social service sector. This is because of the significant authority and influence that social workers have, including, as illustrated by their statutory roles outlined above, the provision of advice to courts and acting under warranted powers. Indeed, these statutory roles illustrate the potential for the actions of a social worker to profoundly affect the lives of the vulnerable people with whom they work.
59. Another approach would be to not restrict the practise of *all* social work to registered social workers but to proscribe certain areas of social work, such as those with high risk or those involving the exercise of statutory powers, as restricted or reserved work for which registration is required. That said, the situations in which social workers are involved can shift from low risk to high risk in an instant, so that the application of a tiered approach would give rise to considerable difficulties.
60. That is not to say that there are not also reasons to regulate the conduct of the broader social service sector. Social service workers may also work in situations where their conduct has the ability to affect the well-being of vulnerable people, for example, care-giving for the elderly or those with physical disabilities. Some people working in the social service sector have degrees, diplomas or certificates, but others do not have any formal training. While some areas of the

⁵⁴ Care of Children Act 2004, ss 72–73, 77 and 117.

⁵⁵ Sections 131A and 132.

social service sector have identified standards of conduct, for example the Ara Taiohi Code of Ethics for youth work, there is no formal regulation. Given the diversity of the social service sector, it may be difficult to identify universal professional standards of practise or care required.

61. Overseas, there are a number of countries where both social workers and social service workers are registered, but a distinction between the two sectors of the workforce is recognised. The Ontario College of Social Workers and Social Service Workers maintains different forms of and criteria for registration.⁵⁶ CORU, the Health and Social Care Professionals Council in Ireland, provides for registration of social workers and social care workers.⁵⁷ Similarly, the Scottish Social Services Council and Care Council for Wales both regulate social workers and many groups of social service workers.⁵⁸
62. One possibility would be to only regulate the social service sector to the extent that the VCA requires safety checks to be carried out. This would confine the obligation to register to those who are social service workers in the role of “children’s workers” for regulated organisations. The possibility of VCA safety checks being carried out as part of the SWRA registration process is discussed later in this Issues Paper.

Social work students

63. A separate but related question is whether students who are studying towards a social work (or social service work) qualification should be required to register with the Board.
64. On one view, if the SWRA prohibited the practise of social work by anybody who was not registered, social work students whose activities on placement amount to practising social work would be required to register. On the other hand, placement is a supervised learning experience rather than independent professional practise.
65. Therefore, the SWRA could make clear that student placements do not amount to the practise of social work, so that registration is not necessary. Student nurses who are on placement in a ward during their training are not required to be registered.
66. Another possible approach would be for students to be required to register or, indeed, for students to be required to register before entering study.
67. Neither law students, teaching students nor medical students are required to register before entering study. It could be said that mandatory registration for students would prematurely exclude persons from:
 - (a) education, if the person wants to pursue study without ever practising social work or providing social work services; and/or

⁵⁶ <www.ocswssw.org/>

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

⁵⁸ For Scotland, see <www.sssc.uk.com> and for Wales see <www.ccwales.org.uk>.

- (b) the social work sector, where there is a possibility that the reasons why a student is unsuitable for registration may cease to exist at some point in the future. For example, a person with a history of criminal offending while a youth may, by the end of study, be able to demonstrate that he or she has turned his or her life around.⁵⁹
68. On the other hand, mandatory registration for students would provide an early screening opportunity, so that individuals who are unlikely to qualify for registration could be identified and, depending on the relationship with education providers, be prevented from entering study. On a practical level, this would also protect the public where students are required to undertake placements in the course of their study.
69. In both Scotland and Wales, social work students who are working towards qualifications are required to register.⁶⁰ In Wales, this requires the applicant to agree to abide by the Code of Professional Conduct for Social Care and consideration by the Council of the applicant's criminal and disciplinary record and health in order to assess whether he or she is suitable and physically and mentally fit to perform the work of a social worker.⁶¹
70. Presently, the criteria for provisional registration (discussed further below) enable a person to register where he or she is working towards a recognised social work qualification: hence, it enables students to obtain provisional registration.
71. However, if students are to be registered, it may be more appropriate, as already indicated, to have a particular form of registration for students, with criteria and restrictions that reflect its preliminary nature and also ensure the protection of the public. For example, the criteria could simply be that a person is a fit and proper person to practise social work, and the registration could require students to be supervised and prohibit students from supervising others. This is the approach taken overseas.
72. If a separate form of student registration were provided for in the SWRA, the criteria for provisional registration could be amended so that it is not available to students.

ISSUE:	For who or what kind of work should registration be required?
OPTIONS:	<p>Registration could be required to practice all social work or only certain reserved areas of social work.</p> <p>The obligation to register could also be extended to the broader social service sector.</p> <p>Student placement could be excluded from the scope of work for which registration is required, or students could be required to register before</p>

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

⁶⁰ See, for Scotland, <www.sssc.uk.com> and, for Wales, <www.ccwales.org.uk>.

⁶¹ The Care Council for Wales (Registration) Rules 2015.

entering any course of study or placement.

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

Defining the persons or work for which registration is mandatory

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

Definition by reference to work

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

Definition by reference to titles or positions

78. A different approach would be to define the obligation by reference to the title or position of a person, for example, as a “social worker”.
79. For example, a starting point would be to require all persons who are “social workers” in terms of the CYPFA, Adoption Act and Care of Children Act to register. Presumably, there is already some clear means of identifying those who constitute social workers under these Acts, given that those statutes confer specific powers on them. This starting point would not, however, necessarily capture all the larger group of social workers who are practising social

⁶² SWRA, s 25.

⁶³ The issue of what work, if any, should be reserved to registered social workers was discussed in the *Registration of Social Workers Consultation Summary Report* published in May 2001.

work, for example, in non-governmental organisations, in health or education, for the Department of Corrections or as independent practitioners.

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

A question of form

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

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

OPTIONS: The obligation to register could be defined by reference to the kind(s) of social work that can only be practiced by registered social workers.

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

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

PRE-REQUISITES TO REGISTRATION

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

Registration under the SWRA

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

Full registration

85. A person may only be given **full registration** if he or she meets the criteria in ss 6, 7 or 13 of the SWRA.⁶⁶ A person is entitled to full registration as a social worker if the Board is satisfied that he or she:⁶⁷
- (a) has a New Zealand qualification recognised by the Board as appropriate for social workers working in New Zealand;⁶⁸
 - (b) has been assessed as competent under Part 3 of the SWRA;
 - (c) is a fit and proper person to practise social work;
 - (d) is competent to practise social work with Maori and different ethnic and cultural groups in New Zealand; and
 - (e) has enough practical experience in practising social work: the Board has prescribed that this requires 2000 hours of supervised social work practise.
86. A person who does not have a recognised New Zealand qualification may still be registered if he or she meets the requirements in (b), (c), (d) and (e) above and:⁶⁹
- (a) has an equivalent overseas qualification;
 - (b) is a registered social worker overseas or has a good reason for not being registered;
 - (c) has satisfactorily completed training to ensure that he or she is competent to practise social work with Maori and different ethnic and cultural groups in New Zealand;

⁶⁴ SWRA, s 9.

⁶⁵ Section 18–20.

⁶⁶ Section 12.

⁶⁷ Section 6.

⁶⁸ See the s 4 definition of “recognised New Zealand qualification”.

⁶⁹ Section 7.

- (d) he or she can speak, write and understand English reasonably effectively; and
- (e) intends to live and practise social work in New Zealand.

87. If a person has neither a recognised New Zealand qualification or an equivalent overseas qualification, he or she may still be registered if the Board is satisfied that the criteria in (b), (c) and (d) of para 85 above are met and that person's "practical experience in practising social work in New Zealand is enough to compensate for the lack of such a qualification".⁷⁰

Limited registration

88. The term **limited registration** is used to refer to "provisional or temporary registration".⁷¹

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

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

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

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

- (a) is a fit and proper person to practise social work;
- (b) can speak, write and understand English reasonably effectively;

⁷⁰ Section 13.

⁷¹ Section 4.

⁷² Section 10.

⁷³ Section 14. Essentially the same criteria apply where a person applies to renew provisional registration: see ss 22 and 23.

⁷⁴ Section 11.

⁷⁵ Section 15. Essentially the same criteria apply where a person applies to renew temporary registration: see ss 22 and 23.

- (c) is or will be visiting New Zealand temporarily and wishes to practise social work at a particular institution in New Zealand; and
- (d) has enough knowledge and practical experience of social work to practise social work at that institution.

Competence assessments

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

Competence in other professions

96. Under the HPCAA, a person may be registered in relation to a scope of practise if he or she:⁷⁹
- (a) is fit for registration, which requires considering his or her communication skills, proficiency in the English language, criminal and disciplinary history, mental and physical health;⁸⁰

⁷⁶ Section 38.

⁷⁷ Section 42.

⁷⁸ Section 44.

⁷⁹ HPCAA, s 15.

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

Professional competence

102. There is no obvious rationale for requiring both a qualification (or experience) and assessment by the Board of a person’s professional competence:
- (a) the Board prescribes which New Zealand qualifications are to be recognised for the purpose of registration and, in assessing a qualification, will no doubt review the standards of competence required to obtain it;⁸⁶
 - (b) in the context of overseas qualifications, the Board undertakes a similar enquiry; and

⁸⁰ Section 16.

⁸¹ Section 22.

⁸² Section 12.

⁸³ Education Act, s 353.

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

⁸⁵ LCA, s 49.

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

- (c) the assessment of whether a person has sufficient practical experience to compensate for lack of a qualification will also no doubt involve an assessment of the skills and competence acquired through that experience.

103. Of course, this approach assumes a measure of stringency in the requirements set by the Board for a qualification to be recognised.

Effect of mandatory registration

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

Ensuring competence if competence assessments are removed

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

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

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

OPTIONS: The Board could be required to assess and only recognise New Zealand or overseas qualifications where a graduate of that qualification will have the professional competence required to practice social work.

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

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

Registration on the basis of practical experience

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

Should “sufficient practical experience” be retained as a basis for registration in the absence of a recognised qualification?

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

Other pre-requisites to registration

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

Cultural competence

112. In addition to professional competence, the Board must be satisfied that an applicant is competent to practise social work with Maori and other ethnic or cultural groups (**cultural competence**). The SWRA does not clearly provide how cultural competence is to be assessed

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

although the Board has published policies expanding upon what is involved in cultural competence.⁸⁸ The competence assessment provisions in Part 3 of the SWRA seems primarily directed at professional competence.

113. There is no specific provision in the SWRA of the matters the Board must consider in recognising qualifications. The issue of cultural competence, at least in relation to New Zealand qualifications, could and currently does address this issue, like professional competence, when assessing whether a qualification is suitable for recognition.⁸⁹
114. A straightforward and efficient option could be to give legislative foundation to this approach, making it mandatory for the Board to consider, when deciding whether to recognise a New Zealand qualification, whether that qualification contains training or assessment of cultural matters so that a person who successfully completes the qualification can be considered to have cultural competence. This would avoid the need to assess the cultural competence of individual applicants.
115. In any event, the above approach would not address cultural competence where an applicant for registration relies on an overseas qualification or practical experience.
116. Given the specific requirement of competence in practising social work with Maori, it is unlikely that cultural competence will be adequately addressed by an overseas qualification. Currently, an applicant relying on an overseas qualification is required to complete training for cultural competence in order to be fully registered.
117. A person who relies on practical experience (which currently must be experience in New Zealand) in order to be registered is not necessarily required to complete training but must be assessed as sufficiently culturally competent.⁹⁰

Communication skills

118. In the context of an overseas qualification, an applicant is required to satisfy the Board that he or she has sufficient competence in the English language to communicate well. There is no specific equivalent requirement in the SWRA in relation to applicants who have a New Zealand qualification or who are applying based on practical experience in New Zealand.
119. In any event, the Board has published a policy statement that requires all applicants for registration to be able to effectively speak English and communicate in order to be a fit and

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

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

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

proper person able to perform the functions of social work.⁹¹ This could be given legislative foundation; the criteria for fitness to practise social work are discussed further below.

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

⁹¹ Social Workers Registration Board *Fit and Proper Person* (Policy statement, approved August 2009, last reviewed May 2013).

⁹² Social Workers Registration Board *English Language Competence and English Language Testing* (Policy statement, approved August 2009, last reviewed August 2013).

⁹³ HPCAA, s 16.

⁹⁴ HPCAA, s 16(a) and (b).

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

OPTIONS: The Board could be required to assess and only recognise New Zealand qualifications where a graduate of that qualification will have the cultural competence and communication skills required to practice social work.

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

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

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

FITNESS TO PRACTISE SOCIAL WORK

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

The standard for fitness to practise social work

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

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

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

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

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

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

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

⁹⁵ SWRA, s 48.

⁹⁶ Section 47.

⁹⁷ Section 50.

Fitness to practise in other professions

131. In many other respects, the concept of fitness to practise in the SWRA is broadly similar to the way fitness to practise is described in other professional legislation. There are some further criteria or considerations for fitness in relation to health practitioners and lawyers:
- (a) the person must not have been subject to a professional disciplinary order or discipline at university in a way that reflects adversely on his or her fitness to practise;⁹⁸
 - (b) there is no reason to believe that the person may endanger the health and safety of members of the public;⁹⁹
 - (c) whether the person has ever been declared bankrupt or been the director of a failed company;¹⁰⁰
 - (d) whether the person has practised the profession in breach of legal obligations to register or hold a practising certificate;¹⁰¹ and
 - (e) whether the person has previously been registered in an overseas country but that registration has been cancelled or suspended.¹⁰²
132. It could be appropriate to adopt some of these as relevant to fitness to practise under the SWRA as well although some reflect the particular contexts of the health and legal professions, such as factor (c) which reflects that lawyers often handle money and business affairs for clients.
133. One difference between the SWRA and HPCAA on the one hand and the LCA on the other is that, rather than prescribing criteria or pre-requisites that must be met, the LCA lists considerations that are to be taken into account in assessing fitness to practise. In other words, a person may be a fit and proper person to practise law even if one of the ‘negative’ factors exists, because the assessment of fitness is made by taking into account those factors rather than being determined by any one of them.
134. By contrast to the lists of considerations or criteria in the HPCAA and LCA, the Education Act simply says that an application for registration must be “fit to be a teacher”.¹⁰³ There is no legislative prescription of what that requires. Instead, the Education Council has a policy that lists mandatory considerations in assessing whether a person is fit to be a teacher.¹⁰⁴ These include that the person:
- (a) displays respect for persons, for cultural and social values of Aotearoa New Zealand, for the law and for the views of others;

⁹⁸ HPCAA, s 16(g).

⁹⁹ Section 16(h).

¹⁰⁰ LCA, s 55(1)(b).

¹⁰¹ Section 55(1)(d) and (e).

¹⁰² Section 55(1)(h) and (i).

¹⁰³ Education Act, s 353.

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

- (b) upholds the public and professional reputation of teachers;
- (c) is reliable and trustworthy in carrying out duties.

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

ISSUE:	How should fitness to practice social work be assessed?
OPTIONS:	<p>Fitness to practice social work could be assessed against a list of pre-requisites (or disqualifying factors) or by reference to a list of mandatory considerations none of which is determinative.</p> <p>The criteria or considerations for fitness to practice social work could be defined in the SWRA or left to the Board to prescribe.</p> <p>Other possible criteria or considerations include whether the applicant:</p> <ul style="list-style-type: none"> • has the ability to communicate in English sufficiently well to be able to satisfactorily practise social work; • has been subject to a professional disciplinary order (including cancellation of registration overseas) or discipline at an educational institution in a way that reflects adversely on his or her fitness to practice; • has practiced social work in breach of obligations to register or hold a practising certificate; • may endanger the safety of the public; • displays respect for persons, for cultural and social values of Aotearoa New Zealand, for the law and for the views of others; • upholds the public and professional reputation of social workers; and • is reliable and trustworthy in carrying out duties.

Possible interaction with the VCA

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

Safety checks under the VCA

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

138. The particular requirements for a safety check under the VCA are prescribed in detail in the Vulnerable Children (Requirements for Safety Checks of Children’s Workers) Regulations 2015.¹⁰⁵ The safety check must include:¹⁰⁶

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

139. A periodic safety check, to be completed every three years, requires:¹⁰⁷

- (a) confirming whether the person has changed his or her name since the last safety check;
- (b) obtaining a police record;
- (c) obtaining the name of any professional organisation, license or registration that the person belongs to or holds if that is relevant to the proposed children’s work;

¹⁰⁵ VCA, ss 31 and 32.

¹⁰⁶ Sections 31 and 32, and the Vulnerable Children (Requirements for Safety Checks of Children’s Workers) Regulations 2015, regs 5–8.

¹⁰⁷ Regs 9–13.

- (d) contacting at least one of any professional organisation to which the person belongs or from which the person holds a license or registration, to request any information relevant to the assessment of risk; and
- (e) repeating the same risk assessment as required for the initial safety check.

Overlap between the VCA and SWRA

140. There is already a limited degree of overlap between the SWRA and VCA, in that the Board is required under the SWRA to obtain and consider a person’s criminal history in assessing whether he or she is a fit and proper person for the purpose of registration and/or issue of a practising certificate, and the VCA safety checks also require assessing a person’s criminal convictions.
141. Completion of a full or partial safety check as required by the VCA could be adopted within the SWRA as a pre-requisite to registration and/or issue of a practising certificate as a social worker.
142. The VCA provisions that require children’s workers to be safety checked do not require the particular organisation that employs engages the worker to complete the safety check; rather the obligation is to ensure that a safety check is completed. Likewise, the regulations that prescribe the requirements for a safety check contemplate that the check can be carried out by a person or organisation acting on behalf of the regulated organisation.¹⁰⁸ As a result, completion of a safety check by the Board could satisfy the requirements of the VCA, so that an employer would not necessarily be required to repeat the check.¹⁰⁹

Approach under the Education Act

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

¹⁰⁸ Definition in reg 3 and also reg 8(3).

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

¹¹⁰ VCA, s 353.

¹¹¹ Section 361.

Education Act require the Education Council to complete full safety checks as required by the VCA.

Possible approaches under the SWRA

145. There are a number of options for interaction between the VCA and the SWRA processes. The Board could be required to carry out full safety checks or, like the Education Council, only core worker checks. If it is appropriate for the Board to carry out either check, the question arises whether this is best considered at the time of registration or issuing a practising certificate.
146. However, before such consequential matters arise, there a number of other difficulties that would arise if the Board were to be required to carry out VCA processes.
147. First, the scope of the VCA's application does not (and is not likely to in the future) align with the scope of the SWRA obligation to register or hold a practising certificate. Not every social worker will qualify as a "children's worker" under the VCA, either because of the kind of work they do or because of their employment situation. The VCA applies to much broader types of work, although not necessarily every social worker would be within its ambit. Moreover, the VCA only applies to regulated organisations and would not necessarily capture social workers in all forms of employment or practise. Therefore to apply the VCA requirements to every social worker would in several respects overreach the scope of the safety check requirements beyond that set out in the VCA.
148. One possible way around this issue would be to adopt the VCA requirements under the SWRA in relation to a particular "scope of practise" would qualify them as a "children's worker" or a "core worker", if the concept of scopes of practise were adopted in the SWRA either as part of registration or the issue of practising certificates.
149. Second, the VCA seems to contemplate that a safety check is undertaken in relation to a particular person in particular employment. The assessment of risk required as part of the safety check would necessarily require considering in a meaningful way the day-to-day activities of the social worker, and realistically the Board is not likely to be sufficiently familiar with these.
150. A related issue is that a social worker's role or employment context may change over the period of registration or practising certificate and the obligation to undertake safety and core worker checks arises upon engagement or employment of a person. The fact that a recent safety check had been completed by the Board would therefore not avoid employers having to undertake safety checks in some cases.
151. If, in the Education Act context, where it can be anticipated that the vast proportion of teachers would qualify as "children's workers", given the nature of the work and that many education institutions receive at least some government funding, the full safety check of the VCA has not been adopted, this could indicate that to adopt full safety checks in relation to social workers would be inappropriate. It would certainly be onerous for the Board to complete a safety check in relation to every applicant for registration.

152. It could be expected that, in many cases, the Board will be contacted by an employer for the purpose of a safety check of a registered social worker.¹¹²

The best opportunity to complete a safety check

153. If it were to be appropriate for the Board to carry out either safety or core worker checks, the question arises whether this is best considered at the time of registration and/or issuing a practising certificate.

154. To require a safety check for registration when a person may not even be presently practising social work – or not practising in any way that involves children – could be an overly broad requirement. Although, on the other hand, it could be said that a person who poses an unacceptable risk to the safety of children should not be registered even if he or she is not practising.

155. Given the longevity of registration, it is the practising certificate process that is the first touch point to reassess a person’s suitability to practise social work once he or she is registered. The new requirements for obtaining a practising certificate could be that:

- (a) on a first application, the Board must complete a safety check unless satisfied that one has been undertaken in the previous three years; and
- (b) on subsequent occasions, that a safety check has been completed in the previous three years (whether by the Board or someone else).

<p>ISSUE: Should the safety check or core worker check requirements of the VCA be integrated into the SWRA?</p> <p>OPTIONS: The Board could be required to carry out safety checks or core worker checks.</p> <p> Either check (or both checks) could be carried out either at the time of registration or issue of a practising certificate (or both).</p> <p> Neither of these options is likely, however, to be an efficient or effective means of implementing the VCA in relation to social workers.</p>
--

¹¹² See Vulnerable Children (Requirements for Safety Checks of Children's Workers) Regulations, reg 7(2).

OVERSIGHT OF SOCIAL WORKERS BY THE BOARD

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

Applications for a practising certificate

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

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

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

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

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

¹¹³ SWRA, s 30. The standard of belief applies to grounds (a) and (b) and suspicion to (c) to (e).

¹¹⁴ Section 30(2).

¹¹⁵ The Board may adopt general conditions that apply to all practising certificates or to a particular class of social workers: s 29.

¹¹⁶ See s 37.

¹¹⁷ Sections 31 and 33.

160. What type of practising certificate, if any, is appropriate (and what conditions to impose) depends on the Board's assessment of the applicant's competence to practise as a social worker.¹¹⁸
161. The SWRA does not expressly direct the Board to consider fitness to practise, or to refuse a practising certificate (or impose conditions) where it considers a person is not fit to practise social work.
162. This is not dissimilar from the process under the Education Act: fitness to practise per se a requirement for issue of a practising certificate as a teacher; only a satisfactory police vet is required.¹¹⁹ Under the HPCAA, it is only the ability to satisfactorily practise the health profession – rather than the whole concept of fitness to practise – that the Act directs to be reassessed for the issue of a practising certificate.¹²⁰ At the other end of the spectrum is the LCA, where a practising certificate may be refused if a person is not a fit and proper person to hold one.¹²¹
163. The application for a practising certificate could be an appropriate opportunity for the Board to consider fitness to practise, which should be a pre-requisite to the issue of a practising certificate. In other words, the Board's assessment of an application for a practising certificate and imposition of any conditions should not solely focus on competence. Like with competence, though, fitness to practise, once established, could be presumed to continue unless there is cause for concern.

ISSUE:	Should fitness to practice social work be a pre-requisite to the Board issuing a practising certificate?
OPTIONS:	If so, the Board could impose conditions directed at fitness to practice and not just at competence.

Ensuring competence

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

¹¹⁸ Section 33.

¹¹⁹ Section 361.

¹²⁰ Section 27.

¹²¹ Section 39.

¹²² Section 39. It also must do so when a complaints assessment committee determines it should under s 72.

¹²³ Section 40.

¹²⁴ Section 41.

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

Ensuring competence in other professions

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

¹²⁵ Section 45.

¹²⁶ Section 45.

¹²⁷ Section 45(6).

¹²⁸ Education Act, s 412.

¹²⁹ HPCAA, s 38.

¹³⁰ Sections 39 and 43.

¹³¹ Section 39.

ISSUE: What options should be open to the Board if a registered social worker is no longer competent to practice social work?

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

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

Ensuring fitness to practise

171. The only other context, apart from upon an application for registration, in which the SWRA presently provides for the Board to review a social worker's fitness to practise is when a CAC determines that it should (after a complaint made against the social worker).¹³² The Board must undertake the same assessment as it does upon an application for registration.
172. If the Board is satisfied that the social worker is not a fit and proper person, the Board may direct that the social worker's registration or practising certificate be suspended or make a complaint against the social worker.¹³³
173. Currently, the ability of the Board to make a complaint after reviewing fitness to practise raises an issue of circularity as this option is only available when the Board has reviewed fitness to practise *pursuant to* a direction from a CAC to do so. Possible options to ameliorate this issue would be:
- (a) to expand the availability of this option so that the Board can make a complaint in *other* contexts, where the CAC will not yet have considered the matter: convictions are referred to a CAC so it is not purely a complaint-based system; and/or
 - (b) where the CAC has already considered the matter, to reframe the Board's power as one of reference *back* to the CAC, so that rather than the CAC procedure beginning again, the CAC could determine what to do next in light of the Board's assessment. A similar approach is taken where a complaint has been referred to conciliation but is not resolved as a result.¹³⁴ The CAC could, for example, decide to lay a charge before the Tribunal.
174. Presently, the only meaningful option currently open to the Board is to suspend a person's registration or practising certificate. There is no maximum period of suspension specified in the SWRA. It could be appropriate for the SWRA to prescribe the maximum period of suspension or when a suspension will end (for example, a suspension because of

¹³² SWRA ss 39 and 72.

¹³³ Section 49.

¹³⁴ Section 73.

incompetence ends once a competence assessment is satisfactorily completed, as discussed below).

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

<p>ISSUE: What options should be open to the Board if a registered social worker is no longer competent or fit to practice social work?</p> <p>OPTIONS: Currently, the only courses of action available in respect of fitness to practice are suspension of a social worker's registration or practising certificate, or the circular option of making a complaint.</p> <p>Other options could be to empower the Board to:</p> <ul style="list-style-type: none">• impose conditions on a social worker's registration or practising certificate;• make a complaint in a broader range of circumstances; or• refer the matter <i>back</i> to a CAC for further reconsideration of the best further action to be taken. <p>The possibility of cancellation because of unfitness to practice is discussed next.</p>
--

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

178. The SWRA does not currently provide for the Board to cancel a social worker's registration on the basis that he or she ceases to be a fit and proper person to practise social work or he or she is no longer competent. In some cases, cancellation of registration could be appropriate.
179. Given the Board currently has an indeterminate power of suspension on the basis of unfitness to practise, and that the SWRA currently assigns the Board the primary role of assessing

¹³⁵ Section 80(2).

fitness to practise (at the time of registration) the Board could be given a power of cancellation on this basis. If this power were to be conferred, it would be important for the social worker to have an opportunity to be heard beforehand.

180. Likewise, the Board has primary responsibility under the SWRA for assessment of professional and cultural competence.
181. Under s 132 of the SWRA, the Board may direct the cancellation of a social worker's registration if he or she "was not entitled to be registered". This is very broad but it is not altogether clear whether it would enable the Board to cancel the registration of a person it has found to be incompetent or unfit to practise. The language of "was not entitled" suggests that the inquiry is to be made at the time that registration was granted, so that it is targeted at correcting errors, rather than at a reassessment with the benefit of hindsight in light of new circumstances, conduct or information. The HPCAA contains a similar provision.
182. By contrast, under s 362 of the Education Act, the Education Council *must* cancel a person's registration if it is satisfied that the person *no longer* satisfied the requirements for registration as a teacher – which include being fit to be a teacher.¹³⁶ This is not necessarily preceded by any disciplinary process.
183. Given the gravity of cancelling registration, it could be appropriate that cancellation of registration is generally only available after the CAC and/or Tribunal processes have been followed to completion. The CAC and Tribunal processes are discussed further below: currently incompetence or unfitness to practise, in general terms, is not grounds for cancellation of registration by the Tribunal either.

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

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

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

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

184. As already referred to, if a person considers that a registered social worker may be unable to adequately and satisfactorily undertake social work, he or she may give the Registrar notice of the circumstances.¹³⁷ The Registrar must put such notice before the Board.¹³⁸

¹³⁶ Education Act, s 357.

¹³⁷ SWRA, s 51.

¹³⁸ Section 53.

185. The Board may suspend a person’s registration on an interim basis for up to 10 days if, upon receipt of a notice or for some other reason, the chairperson of the Board considers the social worker may not be able to perform adequately the functions required to practise social work satisfactorily.¹³⁹ The issue of interim suspension is discussed further later in this Issues Paper.
186. The Board may also require the person in respect of whom notification has been received to submit to a medical examination.¹⁴⁰
187. If a medical examination has taken place, or the person failed to attend the required examination, and the Board considers the matter should be dealt with *urgently*, the Board may suspend the social worker’s registration or practising certificate or both or make it subject to conditions.¹⁴¹ It may only do so if:
- (a) it is satisfied that the person is unable to perform adequately the functions required to practise social work satisfactorily and the order is necessary to protect the health and safety of the public; *or*
 - (b) it has been unable to decide whether the person is able to perform adequately the functions required to practise social work satisfactorily, because he or she did not undergo medical examination.¹⁴²
188. The power to suspend (apart from interim suspension) or impose conditions on a social worker’s registration or practising certificate is restricted to situations of urgency. The SWRA does not provide any specific powers for how the Board is to respond once a medical examination has taken place (or if one does not) where the circumstances are not urgent. Perhaps rather than limiting suspension to ‘urgent’ situations, the touchstone should be whether suspension is necessary to protect the public.
189. Under the HPCAA, the power of a regulating authority to suspend or impose conditions on a health practitioner is not able to adequately perform his or her functions because of a medical or physical condition is not limited to urgent situations.
190. Furthermore, the SWRA does not expressly state the duration of the suspension or conditions that may be imposed in this context, either in terms of a maximum period or the circumstances in which a suspension or condition may lift or be revised. By contrast, where a person’s registration or practising certificate is suspended because of concerns about competence, the SWRA specifies that this suspension remains in effect until competence is established.¹⁴³ Similarly, under the HPCAA, suspension or conditions imposed after a notification remain in place until the regulating authority is satisfied that the health practitioner is able to practise satisfactorily or the conditions are no longer necessary.¹⁴⁴

¹³⁹ Section 54.

¹⁴⁰ Sections 55–56.

¹⁴¹ Section 57.

¹⁴² Section 57.

¹⁴³ Section 45.

¹⁴⁴ Section 51.

191. Presumably, aside from ordering a medical examination or suspension, the Board must revert to powers found elsewhere in the SWRA in order to respond to the situation: for example, the power to review a social worker's competence at any time.
192. The receipt of a notification of this kind could trigger the Board's ability to reassess the social worker's fitness to practise, in the same way as a direction to do so by a CAC.¹⁴⁵ After all, the ability to perform adequately the functions of a social worker is an aspect of fitness to practise in the SWRA. It would be as part of that assessment that the Board would look at the results of a medical examination and assess whether he or she is able to perform adequately the functions required to practise social work satisfactorily.
193. It may be appropriate for other courses of action to be open to the Board where such a notification is received. The Board could also refer the matter to the CAC. Although notification is not a "complaint", the CAC process is also used to assess notification of convictions, which do not have a complainant.

<p>ISSUE:</p> <p>OPTIONS:</p>	<p>What options should be open to the Board when it receives notification of concerns about a person's ability to perform adequately the function required to practice social work satisfactorily?</p> <p>Presently the Board only has the option to order:</p> <ul style="list-style-type: none"> • interim suspension of a person's registration for up to 10 days; • the person to submit to a medical examination; and • in limited urgent situations, suspension or the imposition of conditions on a person's registration or practising certificate. <p>Other possible courses of actions include:</p> <ul style="list-style-type: none"> • a power to suspend for a longer period of time on an interim basis; • expanding the power of suspension and/or allowing the imposition of conditions where the Board is satisfied that the social worker is unable to perform adequately the function required to practice social work satisfactorily; • a power to review fitness to practice; • a power to refer the matter to a CAC.
---	--

Mandatory notification

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

¹⁴⁵ Under s 48.

Mandatory notification in other professions

195. The HPCAA includes two provisions, adopting voluntary notification in one context and mandatory notification in another. First, every health practitioner has an *obligation* to give notice to the relevant authority if he or she has reason to believe that another health practitioner may be unable to perform his or her professional functions properly (because of a mental or health condition).¹⁴⁶ This is the same basis on which notification under the SWRA is only voluntary.
196. Second, the HPCAA provides that a health practitioner *may* notify the relevant authority if the practise of another health practitioner may pose a risk of harm to the public because he or she does not have the requisite competence.¹⁴⁷ There is no basis for notifications of this kind under the SWRA, although presumably this could be dealt with as a complaint.
197. In a slightly different vein, the HPCAA requires a *regulating authority* to report concerns about a health practitioner’s competence to relevant government departments, the Health and Disciplinary Commissioner and, if known, the health practitioner’s employer.¹⁴⁸
198. The HPCAA does not contain provisions that require health practitioners to notify the regulating authority if they believe or suspect professional misconduct on the part of another health practitioner. By contrast, under the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, rr 2.8 and 2.9, a lawyer has an obligation to report concerns about misconduct but it is not mandatory to report lesser “unsatisfactory conduct”.
199. On the other hand, the LCA does not require lawyers to notify the Law Society where there are more general concerns about competence, fitness to practise, or mental or physical health issues.
200. Under the Education Act, mandatory reporting obligations are imposed on employers and former employers of teachers. They must notify the Education Council if:¹⁴⁹
- (a) the employer dismisses the teacher for any reason;
 - (b) in certain circumstances, the employer, was dissatisfied with the teacher’s conduct or intended to investigate it;
 - (c) the former employer receives a complaint about a teacher’s conduct while he or she was an employee;
 - (d) the employer has reason to believe that the teacher has engaged in serious misconduct;
 - (e) the employer is satisfied that the teacher has not reached the required level of competence.

¹⁴⁶ HPCAA, ss 45 and 47.

¹⁴⁷ Section 34.

¹⁴⁸ Section 35.

¹⁴⁹ Education Act, s 392 and following.

Who should be subject to notification obligations?

201. This raises the issue of whether there should in some circumstances be mandatory notification under the SWRA and, if so, who the obligation should apply to and in respect of which matters.
202. An obligation to notify the Board could be imposed on registered social workers and/or on their employers. There could likewise be other relevant parties who have an obligation to report: for example, the Ministry of Social Development (even when the social worker concerned is not employed by the Ministry) and Ministry of Justice, DHBs, education institutions or members of other professions. It would be registered social workers, their employers and possibly the Ministries who would have the background knowledge to best identify and evaluate concerns about other social workers.
203. It may be inappropriate to impose on members of the public an obligation to notify the Board, not least because the only way to enforce an obligation would be to create an offence, which would be heavy-handed.
204. It could also be appropriate for the Board to be required to notify employers and/or government departments – such as the Ministry of Social Development, Ministry of Justice and/or DHBs – when concerns arises in relation to a social worker, so that they can take appropriate action. In order to avoid unfairly tarnishing the reputation or employment relations of a social worker, it may be appropriate for the Board to first screen complaints or notifications. Or, the obligation on the Board to notify others could be confined to where there is a risk to the safety of the public.

The matters for which notification should be mandatory

205. The obligation on social workers (and, possibly, other relevant parties) to notify the Board could relate to concerns about any or all of the following matters:
 - (a) whether because of a mental or physical condition the social worker is unable to adequately perform the functions to satisfactorily undertake social work;
 - (b) whether the social worker is not a fit and proper person to practise social work;
 - (c) whether the social worker may pose a risk of harm to the public because he or she does not have the requisite competence to practise social work; and/or
 - (d) whether the social worker has committed a breach of the code of conduct or other offence (criminal or disciplinary) under the SWRA.
206. Or, like under the LCA, the obligation to notify the Board could apply where the issue is of a certain gravity, and not where the concerns are less serious.

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

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

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

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

THE COMPLAINTS ASSESSMENT COMMITTEE PROCESS

Overview of the process

Receipt of a complaint or notice of a conviction

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

Complaints assessment committees

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

¹⁵⁰ SWRA, s 59.

¹⁵¹ Sections 60–61, 62 and 64. Section 62.

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

¹⁵³ Section 65(2).

¹⁵⁴ Section 66.

¹⁵⁵ Section 66.

¹⁵⁶ Sections 67–68.

¹⁵⁷ Section 71(1).

matter of the complaint.¹⁵⁸ The committee must give the social worker and the complainant an opportunity to be heard.¹⁵⁹ The committee may decide that:¹⁶⁰

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

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

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

Division of responsibilities

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

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

216. It would be more appropriate for the administration of the complaints process to be the responsibility of the Board. The reasons for this include that these tasks are primarily administrative whereas the Tribunal is a judicial body. Moreover, the chairperson (or deputy) of the Tribunal will be a member of the Tribunal that determines any resulting charge against a social worker the subject of a complaint. This raises issues of conflict of interest given the chairperson will have already reviewed the complaint and may well receive, at that time,

¹⁵⁸ Section 71(2).

¹⁵⁹ Section 71(3).

¹⁶⁰ Section 71(1).

¹⁶¹ Section 73(3).

¹⁶² Section 72(3) and s 73(4).

¹⁶³ Section 74.

prejudicial information that will not be before the Tribunal when the resulting charge is determined.

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

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

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

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

"Screening" of complaints

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

Screening of convictions

221. First, it is not clear why every conviction notified to the Registrar is to be referred to a CAC without any assessment of the nature of the conviction or gravity of the offending. The Registrar is notified by the Court of every conviction punishable by three months imprisonment or more. Conceivably, this means every conviction for "drunk driving", for example, must be referred.¹⁶⁵
222. Given that the SWRA already tasks the Board with assessing whether a conviction reflects on a practitioners fitness to practise in the context of applications for registration (and a practising

¹⁶⁴ HPCAA, s 68 and 75.

¹⁶⁵ Land Transport Act 1998, s 56(3).

certificate), the Board is well positioned to assess whether a conviction is of a nature (for example, repeat offending) or gravity that would warrant consideration by a CAC.

Investigative steps for the purpose of screening

223. The second issue that arises in this context is whether it would be appropriate for the chairperson of the Tribunal¹⁶⁶ to have investigative powers available when assessing a complaint or conviction that has been received and deciding whether to refer it to a CAC or whether the matter does not need to be pursued. Meaningful assessment could in many cases be expected to require steps to be taken to investigate or verify the complaint.
224. Possible powers appropriate in this context could be to contact the complainant, the person who is the subject of the complaint and/or his or her employer to request information. The scope of any powers should reflect the preliminary nature of this assessment.

The standard to be applied during screening

225. Finally, the current provisions of the SWRA do not provide any guidance on the threshold or criteria against which a complaint or conviction should be assessed in deciding whether it should be pursued. This should be clarified, for example, that frivolous vexatious complaints may be dismissed or that a complaint should be assessed against whether there are reasonable grounds to suspect the social worker has engaged in conduct that adversely reflects on his or her fitness to practise, or that he or she may have breached the code of conduct.
226. The screening criteria should reflect the broader ambit of the CAC process and so, for example, should not focus on the ultimate possible grounds for a charge before the Tribunal.
227. Moreover, the “screening” of complaints should reflect the other courses of action that may be available instead of referring a complaint to a CAC. For example, the Board could review a person’s competence, fitness to practise, or ability to perform adequately the functions of social work (and, for example, ordering a medical examination). This raises the issue of whether for the Board to conduct such a review would be “pre-empting” the CAC process or, on the other hand, would better inform the CAC when the matter is referred on.

Screening of complaints in other professions

228. Under the HPCAA, a regulating authority screens a complaint before it is referred to a professional conduct committee. The HPCAA provides limited guidance on the criteria for screening, but one basis for referral is whether the complaint raises questions about the appropriateness or safety of the health practitioner’s practise.¹⁶⁷
229. Under the LCA, a complaint is referred directly to a Lawyers Standards Committee without being “screened” by the Law Society.¹⁶⁸ It is the Committee that first enquires into a complaint

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

¹⁶⁷ See s 68 of the HPCAA.

¹⁶⁸ LCA, s 135.

and decides whether or not any action should be taken at all.¹⁶⁹ The LCA provides the matters that the Committee may take into account when deciding whether to take no more action in relation to a complaint, which include:¹⁷⁰

- (a) whether the subject matter of the complaint is trivial or the complaint is frivolous, vexatious or not made in good faith;
- (b) the length of time that has passed between the conduct to which the complaint relates and the making of the complaint; and
- (c) whether the person aggrieved by the person who is the subject of the complaint wishes further action to be taken.

ISSUE:	Should convictions <i>and</i> complaints of which the Board is notified be subject to a “screening” assessment, like complaints are, before referral to a CAC?
OPTIONS:	Presently, only complaints are required to be screened. A consistent approach would suggest that either complaints and convictions are <i>both</i> screened or neither is screened before referral to a CAC.
ISSUE:	Should the person responsible for screening complaints have powers of preliminary investigation to enable the matter to be meaningfully considered?
OPTIONS:	Possible powers include contacting the complainant, the person who is the subject of the complaint, and his or her employer.
ISSUE:	What are appropriate standards for the assessment of a complaint before it is referred to a CAC?
OPTIONS:	Possible considerations include whether: <ul style="list-style-type: none">• the complaint is trivial, frivolous, vexatious or in bad faith;• the passage of time means it would be impracticable to investigate the complaint;• there are reasonable grounds to suspect or believe that a person is no longer fit or competent to practice social work;• there are reasonable grounds to suspect or believe that grounds for discipline by the Tribunal exist.

¹⁶⁹ Section 137.

¹⁷⁰ Section 138.

The powers of the complaints assessment committee

230. When assessing a complaint, a CAC:¹⁷¹

- (a) may undertake or arrange for any investigations it thinks necessary in relation to a complaint;
- (b) may take into account any investigations or assessments of the subject matter of the complaint already carried out;
- (c) may require a complaint to be supported by a statutory declaration;
- (d) must give the social worker and complainant the opportunity to provide a written statement; and
- (e) may give the social worker and the complainant the opportunity to appear in person.

231. The four courses of action or “outcomes” available to a CAC have already been described above.

Powers of complaints committees in other professions

232. Professional conduct committees under the HPCAA are analogous to CACs under the SWRA. Focusing on those matters that go beyond the powers of a CAC under the SWRA, the HPCAA specifically provides that a professional conduct committee may:

- (a) receive any statement or information as evidence even if it would not be admissible in a court of law;¹⁷²
- (b) hear oral evidence and receive statements and submissions from the health practitioner, employer, complainant and certain others;¹⁷³
- (c) if reasonable grounds to believe the information is necessary and there is no alternative to compulsion, require any person to produce papers, documents, records or things;¹⁷⁴
- (d) direct that the regulating authority refer the subject matter of the investigation to the Police; and
- (e) direct that the regulating authority counsel the health practitioner.¹⁷⁵

233. Under the LCA, a Lawyers Standards Committee may:

- (a) direct the parties to a complaint to explore the possibility of resolving it by negotiation, conciliation or mediation and report back to the Committee;¹⁷⁶

¹⁷¹ SWRA, s 71.

¹⁷² HPCAA, s 76.

¹⁷³ Section 76.

¹⁷⁴ Section 77.

¹⁷⁵ Section 80.

- (b) appoint investigators to investigate and report back to the Committee: investigators have the power to examine any accounts or records;¹⁷⁷
 - (c) require the production of all document, accounts, records and information within the control of a practitioner or firm (or certain other people) and make copies of them;¹⁷⁸
 - (d) receive any statement or information as evidence even if it would not be admissible in a court of law;¹⁷⁹
 - (e) determine that there has been unsatisfactory conduct on the part of a lawyer or firm.¹⁸⁰
234. Where the Standards Committee determines there has been unsatisfactory conduct, it has a range of options available:¹⁸¹
- (a) censure or reprimand the practitioner;
 - (b) order the practitioner to apologise to the complainant;
 - (c) order the practitioner to compensation to any person who has suffered loss;
 - (d) order the practitioner to pay a fine of up to \$15,000;
 - (e) order the practitioner to make his or her practise available for inspection or take advice in relation to the management of his or her practise;
 - (f) order the practitioner to undergo practical training or education;
 - (g) order the practitioner to pay costs.
235. The Education Act contains little detail about the powers of a complaints assessment committee during the investigation phase. This is governed by the New Zealand Teachers Council (Conduct) Rules 2004, which enable a CAC to seek further information about a teacher the subject of a complaint or a report from the person who has made the complaint and/or from the teacher's employer before considering the matter for the first time. The CAC may also review relevant records of the Teachers Council at this stage.¹⁸²
236. The CAC may undertake further investigation, including:¹⁸³
- (a) requesting information from any person;
 - (b) engaging any suitably qualified person to carry out an investigation;

¹⁷⁶ LCA, s 143.

¹⁷⁷ Section 146.

¹⁷⁸ Section 147.

¹⁷⁹ Section 151.

¹⁸⁰ Section 152.

¹⁸¹ Section 156.

¹⁸² New Zealand Teachers Council (Conduct) Rules 2004, r 16(1).

¹⁸³ Rule 19.

- (c) meeting with the teacher, the person who made the complaint or report, the teacher's employer and any other person who may assist with the investigation; and
- (d) copy and hold documents.

237. After an investigation, the powers of a CAC include:¹⁸⁴

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

Possible further powers for a CAC

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

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

240. Under the HPCAA, a regulating authority may refer further matters to a professional conduct committee when a committee is already considering a matter concerning a particular health practitioner.¹⁸⁵ The regulating authority may do so when it considers that the further matter should form part of the professional conduct committee's consideration.

241. While a similar power could be added in to the SWRA, this process would require the CAC to first inform the Board (or chairperson of the Tribunal, if the chairperson retains the

¹⁸⁴ Education Act, s 401 and New Zealand Teachers Council (Conduct) Rules, rr 18 and 20.

¹⁸⁵ Section 68(4).

“screening” function) about the matter or conduct it has become aware of, for the Board to then screen and refer the matter back to the CAC. This circular process seems unduly laborious, particularly given the “light-touch” nature of the screening stage before a matter is referred to a CAC, and the fact that a CAC is well-positioned to assess itself whether the further conduct of which it has become aware warrants investigation and/or a disciplinary response, as this evaluation is the core of the CAC function.

242. Additionally, the powers of bodies analogous to a CAC in other professional legislation indicates that the range of available responses to a complaint could appropriately be expanded. For example, if the CAC identifies that there is low level misconduct not warranting a charge before the Tribunal, the option to “censure” a practitioner may be appropriate to denounce the behaviour.
243. The SWRA appears to contemplate that the CAC itself performs the function of conciliation. This does not seem an appropriate function for the CAC: conciliation, like mediation, would be most effectively performed by an independent third person. Under the HPCAA, a professional conduct committee may appoint an independent person to act as conciliator.¹⁸⁶ An appointment power would enable the CAC to make use of existing conciliation service providers and/or professionals.
244. Mediation may be an appropriate alternative to conciliation, particularly where the matter has arisen from dispute between a social worker and his or her employer or concerns in the employment context. In this context, a power to refer the parties to the mediation processes related to the Employment Relations Act 2000 might be appropriate.

<p>ISSUE: Should the powers of a CAC be expanded?</p> <p>OPTIONS: The investigative powers of a CAC could be expanded to include a power to require documents or information to be produced from, for example, a social worker and his or her employer.</p> <p> A broader power to request information from others may also be appropriate.</p> <p> It may also be appropriate for a CAC to be able to consider other conduct or matters relating to a social worker that come to its attention in the course of investigation or considering a matter concerning that person.</p> <p> The further options that could be given to a CAC once it has assessed a complaint include:</p> <ul style="list-style-type: none">• directing an apology from the social worker to the complainant;• directing mediation of the complaint, including to the Employment Relations Authority mediation process;• referring the subject matter of the complaint to the police;• censuring the social worker; and/or• direct that the social worker undergo training, counselling or mentoring.

¹⁸⁶ HPCAA, s 82.

THE SOCIAL WORKERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

The Tribunal process

245. The Tribunal comprises a chairperson, a lawyer and five other members appointed by the Board, and at least one layperson appointed by the Minister.¹⁸⁷ A member of the Board cannot be a member of the Tribunal.¹⁸⁸
246. A charge before the Tribunal may be laid either by a CAC, as described above, or by the Director of Proceedings under the Health and Disability Commissioner Act 1994.¹⁸⁹
247. As soon as reasonably practicable after charges are laid, the chairperson of the Tribunal must convene a hearing to consider the charge.¹⁹⁰ Tribunal hearings are generally to be held in public.¹⁹¹ Each charge is heard by a Tribunal consisting of the chairperson (or a deputy chairperson), the lawyer, two of the Tribunal members appointed by the Board and the member of the Tribunal appointed by the Minister.¹⁹²
248. After a hearing, the Tribunal may decide that the social worker has:¹⁹³
- (a) been guilty of **professional misconduct**, which means:¹⁹⁴
 - (i) a breach of the code of conduct; or
 - (ii) claiming or holding oneself out to be a registered social worker, while employed or engaged as a social worker, while not holding a current practising certificate;
 - (b) been guilty of conduct that is unbecoming of a social worker and reflect adversely on his or her fitness to practise;
 - (c) been convicted by a court of an offence that is punishable by three months imprisonment or more and was committed in circumstances that reflect adversely on the social worker's fitness to practise; or
 - (d) failed to comply with restrictions on his or her registration or interim restrictions pending determination of the charge.
249. If the Tribunal is satisfied of any of the above matters, it may make an order that:
- (a) cancel the social worker's registration;

¹⁸⁷ SWRA, s 116.

¹⁸⁸ Section 116.

¹⁸⁹ Section 75.

¹⁹⁰ Section 75(3).

¹⁹¹ Section 79.

¹⁹² Section 119.

¹⁹³ Section 82(1).

¹⁹⁴ Section 82(2).

- (b) the registration of the social worker be suspended for up to 12 months;
- (c) the person may only practise social work in accordance with certain restrictions, for a period of up to 3 years;
- (d) the person is censured;
- (e) the person must pay a fine of up to \$10,000 to the Board;
- (f) the person must undergo stated additional training, professional development, or both;
or
- (g) the person must pay part or all of the costs and expenses related to the matter.

250. If the Tribunal orders the cancellation of a social worker's registration, it may set a time period within which the person may not apply for reregistration and may also impose conditions that the person must satisfy before he or she can apply for registration again, such as that person must undertake specified training or attend treatment for alcohol or drug abuse.¹⁹⁵

Grounds for discipline and sanctions in other professions

251. Under the HPCAA, the Tribunal may discipline a health practitioner if it is satisfied:¹⁹⁶

- (a) the practitioner has been guilty of professional misconduct because of any act or omission that amounts to malpractise or negligence within the scope of practise;
- (b) the practitioner has been guilty of professional misconduct because of any act or omission that has brought or was likely to bring discredit to the profession;
- (c) the practitioner has been convicted of an offence that reflects adversely on his or her fitness to practise;
- (d) the practitioner has practised while not holding a current practising certificate;
- (e) the practitioner has performed a health service that forms part of the scope of practise that he or she was not permitted to perform;
- (f) the practitioner has failed to observe any conditions included in the practitioner scope of practise; or
- (g) the practitioner has breached a previous order of the Tribunal.

252. The disciplinary orders available to the Tribunal are not confined to specific grounds of discipline. In other words, if any of the grounds for discipline is made out, the Tribunal may make orders that:¹⁹⁷

¹⁹⁵ Section 84.

¹⁹⁶ HPCAA, s 100.

- (a) the health practitioner’s registration be cancelled (and that certain conditions must be satisfied before he or she can apply for reregistration)¹⁹⁸;
- (b) the health practitioners said registration be suspended for up to 3 years;
- (c) the health practitioner may for a period of up to 3 years practise only in accordance with the conditions;
- (d) the health practitioner be censured;
- (e) the health practitioner must pay a fine of up to \$30,000;
- (f) the health practitioner pay costs.

253. Following a hearing of a charge of serious misconduct or into another matter referred to it by a CAC, the Disciplinary Tribunal established under the Education Act may:¹⁹⁹

- (a) resolve to take the matter no further;
- (b) refer the teacher for a competency review or an impairment assessment;
- (c) censure the teacher;
- (d) impose conditions on the teacher’s practising certificate;
- (e) suspend the teacher’s practising certificate for a finite period or until certain conditions are met;
- (f) impose a fine of up to \$3,000;
- (g) order that the teacher’s registration or practising certificate be cancelled;
- (h) require the teacher or any part to pay costs;
- (i) direct the Education Council to impose conditions on any subsequent practising certificate issued to the teacher.

254. Under the LCA, the grounds for discipline by the Tribunal are that the person has been:²⁰⁰

- (a) guilty of **misconduct**, which relevantly means:²⁰¹
 - (i) conduct that occurs at the time when he or she is providing legal services and would reasonably be regarded by lawyers as “disgraceful or dishonourable”; or

¹⁹⁷ Section 101.

¹⁹⁸ Section 102.

¹⁹⁹ Education Act, s 404.

²⁰⁰ LCA, s 241.

²⁰¹ Section 7.

- (ii) wilful or reckless contravention of any provision of the LCA or the client care and conduct rules;
 - (iii) wilful or reckless failure on the part of the lawyer to comply with restrictions on a practising certificate;
 - (iv) employing or permitting to work in legal services a person who has had his or her enrolment as a lawyer suspended or cancelled; or
 - (v) conduct unconnected with the provision of legal services but would justify a finding that the lawyer is not a fit and proper person to practise as a lawyer; or
- (b) guilty of **unsatisfactory misconduct**, which is misconduct that is not so serious as to amount to misconduct, such as:²⁰²
- (i) conduct that occurs at the time when he or she is providing legal services and falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer;
 - (ii) conduct that occurs at the time when he or she is providing legal services and that would be regarded by lawyers as being unacceptable, unbecoming of lawyers or unprofessional;
 - (iii) contravention of any provision of the LCA or the client care and conduct rules; or
 - (iv) failure on the part of the lawyer to comply with restrictions on a practising certificate; or
- (c) guilty of negligence or incompetence of such a kind that it reflects on a person's fitness to practise or brings the profession into disrepute; or
- (d) convicted of an offence that reflects on his or her fitness to practise or tends to bring the profession into disrepute.

255. If one of these grounds exist, then the Tribunal may:²⁰³

- (a) take any of the actions available to a Standards Committee that finds unsatisfactory conduct on the part of a lawyer, which are set out above;
- (b) suspend the lawyer from practise for a period of up to 36 months (three years);
- (c) prohibit the lawyer from practising on his or her own account (essentially requiring supervision);
- (d) direct the person's employment as a lawyer be terminated;

²⁰² Section 12

²⁰³ Section 156.

(e) order a fine of up to \$30,000.

256. The Tribunal may also strike a lawyer's name off the role – the equivalent to cancelling registration, *only if* it is satisfied that the lawyer is, by reason of his or her conduct, not a fit and proper person to be a practitioner.²⁰⁴

Membership of the Tribunal

257. The SWRA provides that the Tribunal's membership is made up of a chairperson (and deputy chairperson(s)), a lawyer and five other members appointed by the Board, and at least one layperson appointed by a Minister.²⁰⁵ The Tribunal that hears and determines a particular matter consists of the chairperson (or a deputy chairperson), the lawyer, two of the members appointed by the Board and the layperson appointed by the Minister.²⁰⁶

Membership of other professional disciplinary Tribunals

258. Under the HPCAA, the Tribunal is made up of a chairperson (and deputy chairperson(s)), who must be lawyers, and members of a panel, appointed by the Minister, of health practitioners of each profession and laypersons.²⁰⁷ For the hearing of a particular matter, the Tribunal consists of the chairperson (or a deputy chairperson), three members of the same health profession as the person who is the subject of the hearing, and one layperson.²⁰⁸

259. The Lawyers and Conveyancers Disciplinary Tribunal comprises a chairperson, a deputy chairperson, between seven and 15 each of laypersons, lawyers and conveyancers.²⁰⁹ Both the chairperson and the deputy chairperson must have had not less than seven years' practice as a lawyer.²¹⁰ For the purpose of proceedings, the Tribunal consists of a chairperson,²¹¹ and an even number of other members, not less than four, who must be half lay members and half lawyers or conveyancers (depending on whether the person before the Tribunal is a lawyer or conveyancer).²¹²

Changes to the membership of the SWRA Tribunal

260. Unlike in other professions, the chairperson of the Tribunal established under the SWRA is not required to be a lawyer; rather, a lawyer is appointed as another member of the Tribunal (both in a general sense and for the hearing of matters).

261. For a number of reasons, it would be appropriate that the chairperson of the Tribunal is a lawyer himself or herself. These reasons include:

²⁰⁴ Section 244.

²⁰⁵ SWRA, s 116.

²⁰⁶ Section 119.

²⁰⁷ HPCAA, ss 86 and 87.

²⁰⁸ Section 88.

²⁰⁹ LCA, s 228.

²¹⁰ Section 230.

²¹¹ Or a person who is appointed to fulfil the role of chairperson, if the Tribunal is sitting in divisions.

²¹² Section 234.

- (a) The Tribunal sits within the Court hierarchy, with rights of appeal to the District Court and, in some circumstances, the High Court.²¹³ The Tribunal sits within the legal system and performs a quasi-legal function.
- (b) While there is considerable flexibility around the process to be followed by the Tribunal – for example, the ability to consider any information even if it would not otherwise be admissible in a court of law,²¹⁴ the conduct of a hearing before the Tribunal must comply with the rules of natural justice.²¹⁵ Court procedure and witness questioning and admissibility rules would be an obvious framework to adopt as a starting point or to inform the Tribunal, and lawyers are very familiar with these.
- (c) Both the complaints assessment committee and the social worker who is the subject of a charge before the Tribunal may be represented by lawyers at Tribunal proceedings.²¹⁶ Both of these lawyers are likely to make legal arguments, both as to the charge and also the procedure to be applied. This makes it essential that the chairperson knows the law. If a social worker is not represented, the onus falls even more heavily on the Tribunal, particularly the chairperson, to ensure that the hearing is fair and the social worker has a proper opportunity to defend him or herself.
- (d) The questions the Tribunal is required to consider may involve arguments based on case law – both judgments from the courts, and also previous Tribunal decisions. Such issues require an understanding of the legal principles of precedent, the hierarchy of courts and authority of their decisions, and how cases can (and cannot) be properly distinguished from one another.
- (e) Moreover, issues before the Tribunal may often engage questions of statutory interpretation – for example, of the SWRA and the Privacy Act 1993, and the chairperson of the Tribunal needs to have a working understanding of those statutes and the ability to assess, during the course of the hearing, the arguments being made as to their interpretation. This also requires an understanding of the relationship between case law and statute law.
- (f) The Tribunal is required to write decisions, which are akin to judgments.

262. To rely on the member of the Tribunal who is a lawyer to ensure legal principles of natural justice are complied with at a hearing sits in tension with the role of a chairperson to chair and conduct proceedings; it would be sensible for the chairperson to be the lawyer.

263. If the chairperson of the Tribunal were to be a lawyer, this may require consequential adjustment to the membership of the Tribunal. It would be consistent with the approach taken in other professions if the membership of the Tribunal, for the hearing of a matter, were comprised of a chairperson or deputy chairperson (who is a lawyer) and four other members.

²¹³ SWRA, Part 5.

²¹⁴ Clause 6 of sch 2 to the SWRA.

²¹⁵ Clause 5 of sch 2 to the SWRA.

²¹⁶ Sections 75 and 76.

264. If three of these other members were registered social workers and one a layperson, this would retain the same representativeness as the SWRA currently provides for, and would be in line with the HPCAA.

The grounds for disciplining a social worker and the available sanctions

Bases on which registration may be cancelled

265. Section 83(1) of the SWRA states that the Tribunal may make any or all of those orders if satisfied that any of the grounds of discipline exists. Section 83(2), however, states that the Tribunal must not cancel a social worker's registration unless it finds him or her guilty of "gross or severe professional misconduct". This essentially means a gross or severe offence of holding out as a registered social worker without a practising certificate or a gross or severe breach of the code of conduct.

266. On one interpretation, s 83(2) precludes the cancellation of a social worker's registration unless the Tribunal finds there to be professional misconduct – as opposed to any other grounds of discipline.

267. However, this approach is at odds with the opening words of s 83(1), which indicates that any of the disciplinary orders can be made if any grounds for discipline exists.

268. It would also restrict the availability of cancellation beyond what is appropriate. This is particularly so in light of the VCA, where a person may have a conviction that disentitles him or her from being a social worker (or at least from being a children's worker). Or even leaving aside the VCA, a person who has been found guilty of a sexual crime against a child committed in the course of social work, this may constitute a breach of the code of conduct, but more directly it is simply a criminal conviction that means the person is no longer a fit and proper person to practise social work as required for registration.

269. Another approach, which would give best effect to the language of ss 82 and 83 is that cancellation of registration is a sanction available to the Tribunal where any of the grounds for discipline is made out *but* where a social worker has been found guilty of professional misconduct, registration can only be cancelled if that misconduct is "gross or severe". In this way, s 83(2) prevents cancellation of registration where there has been a less serious breach of the code of conduct.

Definition of "professional misconduct"

270. At present, as a result of the definition of "professional misconduct", much of the "work" for the grounds of discipline by the Tribunal is done by the code of conduct, which sets out standards of competence and personal and professional conduct. The code of conduct is also very specific. Moreover, it may be changed by the Board – rather than being prescribed in legislation or regulations.

271. An alternative approach would be to define in legislation, in broader terms, the kinds of conduct that would be professional misconduct. For example, it could be defined as conduct

that reflects on a person's competence or fitness to practise or is in breach of the SWRA or code of conduct. This would be similar to the approach under the HPCAA and LCA.

272. Competence and fitness to practise as touchstones for when cancellation of registration is available would reflect their core roles as pre-requisites to registration.
273. This could be accompanied by a hierarchy of misconduct, as is set out in the LCA, so that wilful or reckless conduct is dealt with more seriously than negligent conduct and cancellation of registration is only available for the former kind or where the conduct means a person is no longer fit to practise social work.
274. On the other hand, under the HPCAA and Education Act, the full range of disciplinary actions, including cancellation of registration, are available wherever any ground for discipline exists so that the Tribunal is not restricted in its response to any particular case. Of course, the decision of the Tribunal would still be subject to appellate oversight to ensure responses were not disproportionate.

Other grounds for discipline

275. Depending on if some of the other options for reform already discussed are implemented, it may be appropriate to also add in further grounds for discipline, such as practising outside of a scope of practise or practising social work without holding a practising certificate. These could alternatively be encompassed in any general basis for discipline that a breach of the SWRA has occurred.

Other sanctions available to the Tribunal

276. The strength and range of the options available to the Tribunal under the SWRA is more limited than in other professions. Other courses of action that may be appropriate include:
 - (a) cancellation of registration in a broader range of circumstances;
 - (b) suspension of registration for a greater period of time – three years would be in line with the HPCAA and LCA and be more of a sanction for what could be serious misconduct;
 - (c) direct the termination of a social worker's employment; and
 - (d) any of the courses of action available to a CAC.

ISSUE: Should there be changes to the membership of the Tribunal?

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

If so, the four other members of the Tribunal that hear and determine any particular matter could be three registered social workers and one layperson.

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

OPTIONS: Amendment to ss 82 and 83 would clarify the bases on which a social worker's registration may be cancelled by the Tribunal.

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

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

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

SUSPENSION AND CANCELLATION OF REGISTRATION AND PRACTISING CERTIFICATES

277. At various time throughout this Issues Paper the circumstances in which a social worker may have his or her practising certificate or registration made subject to conditions or suspended or cancelled have been identified in the course of discussing other issues. It is helpful, however, to look at all of those circumstances in one place and to consider the relationship between suspension and/or cancellation of registration and/or a practising certificate.

Relationship between registration and a practising certificate

278. It is noted that:

- (a) a certificate of registration is automatically cancelled if registration is suspended or cancelled, and must be surrendered;²¹⁷ and
- (b) a practising certificate must be surrendered if it is cancelled or suspended, or conditions imposed, or registration is suspended or cancelled.²¹⁸

279. If a person holding a practising certificate ceases to be a registered social worker, his or her practising certificate is cancelled.²¹⁹ In other words, cancellation of registration actually cancels a practising certificate, rather than merely requiring it to be surrendered, as is obviously appropriate.

280. However, the SWRA does not make the same clear in respect of suspension of registration: it does not state that suspension of registration necessarily suspends a practising certificate, as opposed to just requiring it to be surrendered. This must be a drafting omission.

Powers to cancel or suspend, or impose conditions

Survey of cancellation and suspension powers

281. The table below compares the circumstances where a social worker's practising certificate and/or registration may be made subject to conditions, suspended or cancelled.

Circumstances	Practising certificate			Registration		
	Conditions	Suspend	Cancel	Conditions	Suspend	Cancel
Social worker fails a competence assessment (s 45)	Yes	Yes	–	Yes	Yes	–
Social worker refuses or fails to complete a competence assessment (s 45)	Yes	Yes	–	Yes	Yes	–
Board determines social worker may not be fit and proper person after direction from CAC (s 49)	–	Yes	–	–	Yes	–

²¹⁷ SWRA, s 21.

²¹⁸ Section 36.

²¹⁹ Section 34(3).

Chairperson of Board considers social worker may be unable to adequately perform functions to practise social work satisfactorily (s 54)	-	-	-	-	10 days	-
Notification of concerns about social worker received and requires urgent action (s 57)	Yes	Yes	-	Yes	Yes	-
Charge laid against a social worker in Tribunal (ss 74 and 77)	Yes	-	-	Yes	Yes	-
Grounds exist to discipline social worker (ss 82 and 83)	Yes	-	-	Yes	Yes	-
Tribunal finds social worker guilty of gross or severe professional misconduct (s 83(2))	Yes	-	-	Yes	Yes	Yes
Overseas qualification or registration is cancelled or suspended (s 133)	-	-	-	-	Yes	Yes
Person registered on basis of overseas qualification is residing overseas (s 131)	-	-	-	-	-	Yes
Registration obtained by false or misleading representation (s 132)	-	-	-	-	-	Yes
Applicant <i>was not</i> entitled to be registered (s 132)	-	-	-	-	-	Yes
Death of a social worker (s 128)	-	-	-	-	-	Yes

282. In addition, as is discussed further below, limited registration and interim practising certificates can be cancelled by the Board at any time.²²⁰

A hierarchy of responses

283. The imposition of conditions, suspension and cancellation are in effect a hierarchy of responses. In many circumstances, it may well be appropriate for the Board to have the full range of responses available to it. Particularly, if the Board has the power to suspend registration or a practising certificate, it could as a less drastic alternative have the power to impose conditions on a practising certificate or registration.

284. Suspension and/or the imposition of conditions will not always be appropriate alternatives: for example, cancellation is evidently appropriate upon the death of a social worker.

285. However, presently, the options to cancel or suspend registration or a practising certificate or to impose conditions as alternatives do not seem to be approached consistently throughout the SWRA, as the table above illustrates.

²²⁰ Sections 24 and 37.

286. Moreover, the SWRA does not currently provide for the suspension *and* imposition of conditions other than as alternatives. This means that in cases where it may be appropriate for conditions to apply to a social worker at the end of suspension, it will be necessary to cancel the practising certificate or registration (so a new application for practising certificate or, more significantly, registration is required). It may, however, also be appropriate (and more straightforward) for the Board (or Tribunal) to be able to impose new conditions on a practising certificate when it is suspended which would apply when registration or the practising certificate “resumes”.

Cancellation or suspension of registration rather than a practising certificate

287. In a number of places in the SWRA, the option is given to cancel or (more frequently) suspend either a social worker’s registration *or* practising certificate.

288. Cancellation of registration is obviously the most serious penalty, as it would require a full reapplication for registration, and assessment again of all the pre-requisites, and it is also possible to set a time period within which no reapplication can be made. Moreover, the Board could, upon a new application, only grant limited registration to a person who was previously fully registered.

289. It should be noted that although the SWRA does not provide for the power to cancel a practising certificate, this is automatic upon cancellation of registration. It has been suggested above that the SWRA could be clarified so that suspension of registration likewise will suspend a practising certificate.

290. In that context, it is unclear whether the power to cancel or suspend a practising certificate is a meaningful or useful alternative to cancelling or suspending registration. Are there going to be circumstances in which it is appropriate to cancel or suspend a person’s practising certificate without also cancelling or suspending his or her registration? Perhaps such circumstances can more readily be envisaged in the context of cancellation, given the gravity of the sanction of cancelling registration.

291. Under the HPCAA, the suspension of a practising certificate is not always an alternative to the suspension of registration. In some contexts, the HPCAA refers to suspension of a practising certificate,²²¹ in others it refers to the suspension of registration.²²² The LCA simply refers to “suspension from practise”. Under the Education Act, it is a teacher’s practising certificate rather than registration that is suspended.

²²¹ HPCAA, ss 48 and 69.

²²² Sections 50 and 93.

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

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

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

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

Suspension of a social worker pending resolution of a notification, complaint or charge

292. The Board may suspend a person's registration on an interim basis for up to 10 days if, upon receipt of a notice of concerns about a person's ability to practise social work or for some other reason, the chairperson of the Board considers the social worker may not be able to perform adequately the functions required to practise social work satisfactorily.²²³
293. Otherwise, the Board may only suspend a social worker *after* the Board determined he or she is no longer a fit and proper person to practise social work, or the person has failed a competence assessment, or there are urgent circumstances.
294. A complaints assessment committee that lays a charge before the Tribunal may recommend that, pending its determination, the registration of a social worker be suspended or subject to conditions.²²⁴ The Tribunal may make an order to suspend the registration of the social worker or impose restrictions on his or her practise pending determination of the charge, if it is satisfied that it is necessary or desirable to do so having regard to the needs protect the health or safety of members of the public.²²⁵

Interim suspension in other professions

295. The suspension provisions under the LCA are somewhat similar to those under the SWRA: namely that the Lawyers Standards Committee may apply to the Tribunal after the decision to lay a charge has been made.²²⁶
296. But, under the HPCAA, where there is a pending criminal proceedings or a disciplinary investigation into a health practitioner that "casts doubt on the appropriateness of the practitioner's conduct in his or her professional capacity", the regulating authority may suspend his or her practising certificate or impose conditions. The suspension or conditions

²²³ SWRA, s 54.

²²⁴ Section 74.

²²⁵ Section 77.

²²⁶ LCA, s 155.

may stay in place until the practitioner's conduct is no longer in doubt, the criminal proceeding is disposed of, or the investigation into his or her conduct is complete.²²⁷

297. Also under the HPCAA, once notification of concerns about a practitioner's mental or physical condition is received, a regulating authority can suspend or impose conditions on a health practitioner's practising certificate for up to 20 days, with a right to extend it for another 20 days if that is necessary for a medical examination to be completed.²²⁸
298. A professional conduct committee may notify a regulating authority if it is concerned that a health practitioner's practise poses a risk of serious harm to the public and may recommend suspension of his or her practising certificate.²²⁹
299. The Education Act provisions lie somewhere between the SWRA and HPCAA. At any time after it receives a complaint or a report that involves a teacher's possible serious misconduct, a CAC may apply to the chairperson of the Disciplinary Tribunal for an interim suspension of the teacher's practising certificate or authority.²³⁰ This suspension lasts until the end of any period specified by the chairperson, or until any specified conditions are met, or it is lifted as a result of an application by the teacher.²³¹

Expanding the circumstances in which a social worker's registration may be suspended

300. The interim suspension power of the Board in the SWRA is very confined, both in the circumstances in which it is available (essentially where because of mental or physical health, a person is unable to practise social work satisfactorily) and the length of time that it applies for: 10 days. The other powers of suspension given to the Board generally only arise once the Board has finished its assessment of a social worker's competence or fitness to practise.
301. There seems no logical reason why concerns about a person's ability to practise social work satisfactorily as a result of mental or physical health may warrant immediate interim suspension, but concerns about a person's fitness to practise or professional or cultural competence does not. The basis on which suspension may be ordered could be expanded to include these circumstances.
302. Ten days is unlikely to be sufficient time for resolution of a complaint or concern about a social worker. For example, ongoing criminal or disciplinary proceedings or resolution of a long-term mental health problem may well take longer than that. This could be remedied by expanding the time frame of interim suspension, either to a certain number of days or until the Board is satisfied that competence, fitness to practise, or the ability to perform functions is established.²³²

²²⁷ HPCAA, s 69.

²²⁸ Section 48.

²²⁹ Section 79.

²³⁰ Education Act, s 402.

²³¹ Section 403.

²³² SWRA, s 45.

303. Under the SWRA, suspension pending determination of a complaint is otherwise only available to the Tribunal once a charge has been laid. There may be cases where the nature of a complaint or conviction would warrant an immediate suspension, without waiting for the CAC process to be completed or even begin.
304. This power could be available to the Board, as an expanded form of the present interim suspension power, as just described. Or, it could be a power given to the CAC. The need for such a power in order to properly protect the public is self-evident. A circumstance may arise where from the very nature of the matter notified to the Board (such as a very serious criminal conviction) or of information discovered by a CAC during the investigation it is clear that a social worker is putting the public at risk and conditions or suspension is necessary to ensure public safety *before* further action is taken and certainly before a charge is laid in the Tribunal.
305. Any suspension that is directed by the Board could be reviewed by the CAC (if the matter is referred to the CAC) and likewise a CAC could be subject to review by the Tribunal if need be.
306. Instead of giving the suspension power directly to the Board or CAC, it could be required to apply to the Tribunal for an order suspending a social worker, as is the position under the Education Act. Or, the CAC could be given a power to recommend suspension to the Board.
307. Another option that could be useful would be to enable the Board to impose conditions on a practising certificate (for example, requiring supervision) immediately upon receipt of a complaint or notification, until the cause for concern is resolved. In line with the hierarchy of responses, this will sometimes be an appropriate response less drastic than suspension; but in other cases it may be insufficient to protect the public.

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

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

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

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

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

BEST MEANS FOR ACHIEVING REFORM

308. This Issues Paper has identified a number of issues arising from the SWRA in its current form: some fundamental, some relatively minor, and some that are simply a matter of legislative drafting. In addition to those already discussed, a number of miscellaneous and smaller issues are identified below.
309. There are a number of responses available in relation to these issues. This raises the overarching question of *how* change is best to be affected to the SWRA if it is decided change is appropriate.

Amendment to the SWRA

310. The “light touch” approach would be to simply amend the SWRA. This would mean the current provisions could be altered or improved upon, but still retained to some extent as a foundation. One benefit of this approach would be that those parts of the SWRA that do not presently give rise to any issues and the experience with the SWRA to date could be retained to inform future implementation of it.
311. On the other hand, this approach could result in a lot of “tinkering about the edges” and allow the possibility that some consequential amendments to existing provisions would be overlooked, causing further confusion as to the interpretation or implementation of the SWRA.

Repeal the SWRA

Replace the SWRA with new legislation

312. Another option would be to repeal the SWRA and replace it with new legislation specific to social workers. This would allow the opportunity of a “clean slate” although of course there would be much that could be carried over or learned from the existing legislation.

Extend the HPCAA to social workers

313. One final option would be to repeal the SWRA and instead of enacting specific legislation to regulate social workers, extend the scope of the HPCAA to apply to social workers. This would obviously require some amendment to the HPCAA but it would not require entire overhaul of the HPCAA, primarily because in many respects the HPCAA essentially establishes the framework for regulation (beyond the legislation) by regulating authorities.
314. Without significant amendment, the HPCAA could recognise the Board as a “regulating authority”, which would enable the Board to define criteria for registration or education and define scopes of practise, amongst other things. Any particular areas of social work to be reserved to registered social workers could be recognised under the provisions of the HPCAA that already allow further kinds of work to be restricted.²³³

²³³ HPCAA, s 9.

315. As the comparisons with the HPCAA throughout this Issues Paper illustrate, in many ways the HPCAA is better drafted and thought out than the SWRA. Rather than amending the SWRA by heavily copying or adapting provisions from the HPCAA, it could be more straightforward to simply adopt the HPCAA as applicable to social workers.
316. Social workers, no matter where they work, often have to deal with situations where there is risk to or concerns about the health and safety of individuals, groups or communities. Social workers are concerned with health, in a broader sense, in that they work to enhance well-being (in a holistic sense) of those they work with, and their families and communities.
317. In the New Zealand health arena, social workers are a part of the “Allied Health professionals” group of practitioners.
318. Furthermore, the World Health Organisation determinants of health include the conditions in which people are born, grow, live, work and age and how these conditions are shaped by the distribution of money, power and resources at global, local and national levels. These are core social work concerns.
319. It then follows that social workers could, in the broader sense of the definition, qualify as “health practitioners”. This is already recognised in New Zealand legislation: the Health and Disability Commissioner Act 1994 includes social workers within the class of persons who are health practitioners.²³⁴
320. In England, the health, psychological and social work professions are regulated together subject to the Health and Care Professions Council (**HCPC**), the name of which was changed from Health Professions Council when its scope was expanded.²³⁵ The HCPC regulates biomedical scientists, podiatrists, dietitians, physiotherapists, radiographers, and social workers (amongst others). It is distinct from the General Medical Council, which regulates doctors.
321. Or, if full integration of social workers into the HPCAA were not adopted, nevertheless some services established under the HPCAA could be utilised by the social work profession: for example, the Tribunal. This may be more efficient in terms of resources than establishing a separate Tribunal under the SWRA.

²³⁴ Section 2.

²³⁵ See <<http://www.hpc-uk.org/>>.

ISSUE: What is the best means of achieving reform of the SWRA?

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

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

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

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

MISCELLANEOUS ISSUES

322. Obviously if there is substantive amendment to the SWRA on any of the issues identified above it will be necessary to make consequential amendments throughout the SWRA. For example, amendments throughout the SWRA would be required to give effect to:

- (a) mandatory registration;
- (b) removal of a competency assessment as a pre-requisite for registration

323. The final section of the Issues Paper does not attempt to identify every possible amendment of this kind. Rather it identifies discrete issues, not already addressed, that arise with various provisions of the SWRA. The legislative provisions are considered in order.

Section	Issues and comments
1	Title
2	Commencement
3	<p>Purpose</p> <p>The purposes of ensuring social workers are competent and accountable and enhancing their professionalism are more likely to be achieved by mandatory registration rather than reliance on the Board promoting the benefits of registration.</p>
4	Interpretation
6	<p>Entitlement to registration of New Zealand-qualified social workers</p> <p>Possible amendments to this provision have already been discussed earlier in this Issues Paper.</p> <p>One matter of legislative drafting is that it would be preferable if “fitness to practise” or “fit and proper person to practise social work” was used consistently throughout the SWRA. Or at the very least, wherever the term “fitness” is used, it should be clarified as “fitness to practise social work”.</p>
7	Entitlement to registration of overseas-qualified social workers
8	<p>Applications for registration</p> <p>If there is a presumption of competence, like under the HPCAA, it may be appropriate to adopt a process whereby the Registrar considers applications and only refers applications to the Board where there is cause for concern. In straightforward cases, the Registrar could register an applicant.</p>
9	Consideration of applications by Board
10	<p>Provisional registration</p> <p>Provisional registration is a “stepping stone” form of registration, for a person who does not yet meet the requirements for full registration but who meets some of them and is working towards the rest of the requirements. Even for provisional registration, a person must have passed a competence assessment and be fit to practise social work.</p> <p>The present criteria for provisional registration enables students working towards a</p>

Section	Issues and comments
	recognised social work qualification to be provisionally registered. If a new form of registration were established for students, it could become a requirement of provisional registration that a person already has a qualified recognised social work qualification, in the same way that at the moment provisional registration requires a person to be fit to practise social work.
11	<p>Temporary registration</p> <p>Where a person has provisional registration (s 10) or temporary registration, the Board must impose conditions or restrictions on his or her registration and may impose restrictions. Full registration is not subject to conditions or restrictions (although conditions may be imposed in a practising certificate).</p> <p>The concepts of conditions and restrictions</p> <p>It is unclear from the SWRA why it is necessary to have different concepts of conditions and restrictions, and what the difference is. From ss 17 and 29, it appears that a restriction is permanent but a condition may be met in a finite way. For example, a restriction may be that a person can only practise social work in a particular place; a condition may be that a person is registered on the condition that within a certain period of time he or she completes a particular training programme.</p> <p>As a matter of simplification, it would seem preferable to use the concept of “conditions” to refer to any terms or restrictions on a person’s registration or, for that matter, on a practising certificate. This is the approach taken in the HPCAA.</p>
12	<p>Criteria for full registration</p> <p>It is unclear why ss 6 and 7 are not included here in the part of the legislation that sets out criteria for registration.</p> <p>It is also not clear why s 12 in its current form does not refer to s 13 as an alternative basis for registration. That would be a more straightforward way to draft the SWRA than to say as in s 13(2) that s 13 overrides s 12.</p>
13	<p>Board may recognise practical experience in certain cases</p> <p>The removal of this provision following a transitional period is discussed above.</p>
14	<p>Criteria for provisional registration</p> <p>Section 14(1)(b)(ii), (2) and (3) no longer have any application, given that more than three months has passed since the coming into force of the SWRA. Any references to these provisions elsewhere in the SWRA will also need to be removed, for example, in s 10.</p>
15	<p>Criteria for temporary registration</p>
16	<p>Applications by certain people previously registered</p>
17	<p>Board to give reasons</p>
18	<p>Registrar to register successful applicants</p>
19	<p>Registrar to notify unsuccessful applicants</p>

Section	Issues and comments
20	<p>Certificates of registration</p> <p>The issue of a registration certificate seems to be conceptually different from registration, and does not necessarily follow from registration. It is conceivable therefore that a person who is registered may not have applied for or been issued with a registration certificate.</p> <p>The purpose for this is unclear. It would seem preferable that everyone who is registered is issued with a certificate. That way, if a person does not have a certificate, this will clearly indicate that he or she is not registered (or that his or her registration has been suspended). It would enable members of the public to more easily assess whether a person is a registered social worker.</p> <p>A separate point is that s 20(3) requires provisional or temporary registration to be recorded on a certificate of registration. The conditions or restrictions that are imposed as part of limited registration should also be recorded.</p>
21	<p>Surrender of certificate of registration</p> <p>Section 21 deals with the surrender of a registration certificate.</p> <p>If a person’s registration is suspended or cancelled, he or she must deliver the certificate to the Registrar. This makes sense in that a person who is not <i>presently</i> ‘actively’ registered, should have to surrender their certificate of registration.</p> <p>In addition to the requirement of surrender, suspension or cancellation of registration <i> Cancels</i> the certificate of registration. It is not clear why suspension should cancel the certificate of registration – and why delivery of the certificate would not suffice. The effect of this is that once the term of suspension ends, the person will presumably need to apply for issue of a <i>new</i> registration certificate, rather than the existing certificate being returned. However, this does not seem an undue practicable burden.</p> <p>Given the conceptual distinction between registration and the issue of a registration certificate, the cancellation of a certificate upon suspension does not cancel registration itself. This seems appropriate, however it is not made particularly clear in the SWRA.</p>
22	<p>Renewal of limited registration</p>
23	<p>Criteria for renewal of limited registration</p>
24	<p>Cancellation of limited registration</p> <p>Presently under the SWRA, limited registration can be cancelled at any time at the Board’s absolute discretion – full registration cannot. There seems no obvious reason why limited registration should be more ‘vulnerable’ than full registration. Especially if, for example, a large number of graduate students have provisional registration while they gain practical experience, there seems no clear reason why their registration should be more vulnerable in this way than full registration. It is also surprising that there is no provision for a person with limited registration to be heard before such a decision is made, whereas this right is given in relation to other decisions of the Board.</p>

Section	Issues and comments
25	<p>Practising registered social workers to hold practising certificates</p> <p>The way this provision is framed as preventing the employment or engagement of a person as a social worker does not necessarily capture a person who is self employed/working in an independent capacity. This provision would be more straightforward framed as prohibiting a person from practising social work without a practising certificate.</p> <p>In any event, if mandatory registration is implemented, the scope of the prohibition on practising social work may need to be expanded so that <i>no person</i> may <i>practise</i> social work unless he or she is a registered social worker and holds a current practising certificate. In order to be enforceable against persons who are not registered social workers, this would need to be a criminal offence rather than dealt with through the SWRA disciplinary process.</p> <p>The approach taken in other professional legislation indicates this should be a fineable only offence. The criminal offences in the SWRA are discussed further below in relation to s 148.</p>
26	<p>Applications for practising certificates</p>
27	<p>Effect of making compliant application</p>
28	<p>Issue of practising certificates</p>
29	<p>Board may adopt general conditions</p> <p>The ability to also impose conditions through a practising certificate is a useful tool for the Board.</p> <p>It does, however add to the complexity of the relationship between registration (which in the case of provisional or temporary registration, may itself be subject to conditions or restrictions) and practising certificates.</p> <p>This may nevertheless be appropriate, given that some conditions would only be relevant to a social worker who is actually practising – eg. continuing professional development.</p>
30	<p>Restrictions on issue of practising certificates</p> <p>If the SWRA were to be amended to remove the requirements for competency assessment in favour of a presumption of competence until cause for concern arises, s 30(1)(a)(i), (ii) and (ii) and (4) would need amendment or even repeal, with their function being instead captured by s 30(1)(b)(i).</p> <p>Under s 30(2), the Registrar <i>may</i> refer an application for a practising certificate to the Board if the applicant has been registered for less than three years. There are, however, no criteria to inform the Registrar’s decision whether or not to do so – and, as a result, no clear statutory indication of the purpose for this referral power or why it is necessary in addition to referral on the basis of competence or fitness to practise.</p> <p>Section 30(1)(a)(iv) and (1)(b)(ii) overlap considerably. If a person has not held a practising certificate for the previous three years (but has been registered over that time), there will likely be grounds to suspect that he or she has not been practising</p>

Section	Issues and comments
	<p>social work over that time. If he or she has been doing so, it would be a breach of the SWRA.</p> <p>If s 30(1)(a)(iv) and 30(2) are directed at referring applications by newly registered social workers to the Board, this could be provided for more clearly and directly in the statute, with s 30(1)(b)(ii) retained to deal with those who are returning to social work after some time away.</p> <p>Delegation to the Registrar</p> <p>Clause 17 of sch 3 to the HPCAA provides that regulating authorities may delegate their functions, duties or powers to the Registrar. There are a number of instances in the SWRA where a function is given to the Board but it may be appropriate for the Registrar to deal with it too, particularly more administrative tasks.</p> <p>For example, the Board could delegate to the Registrar the ability to impose conditions in certain kinds of cases (such as students). Or, alternatively, the SWRA could be amended to provide for this particular power.</p> <p>There are a number of other instances in the SWRA where delegation may be appropriate, too.</p>
31	<p>Board to consider certain applications</p> <p>Whether by delegation or legislative amendment, there may be cases where it is (more) appropriate for the Registrar to impose conditions on a practising certificate.</p>
32	<p>Procedure for consideration</p> <p>For clarity, reference could be added in s 32(3)(b) to the right of the Board in s 142 to withhold certain information.</p>
33	<p>Decisions of Board as to practising certificates</p> <p>The utility of an interim practising certificate under s 33(1)(c)(i) ad (3) is not entirely clear, given that a practising certificate may be issued subject to conditions under s 33(1)(b) and that the Board is entitled to identify the period for which a practising certificate is in force in any particular case under s 34. Moreover, it seems artificial to refer in s 33(1)(c)(i) to the Board as refusing to issue a practising certificate, if in fact an interim practising certificate is issued.</p>
34	<p>Currency of practising certificates</p>
35	<p>Conditions on practising certificates</p> <p>Although it is not made expressly clear in s 35, presumably this provision requires a practising certificate and certificate of registration to record both generally applicable conditions (like continuing professional development) and conditions particular to the social worker.</p> <p>As a matter of legislative drafting, both s 35(1)(a) and (2)(a) should refer to <i>restrictions or conditions</i> (assuming the distinction between restrictions and conditions, discussed above, remains).</p>
36	<p>Surrender of practising certificates</p>

Section	Issues and comments
	<p>Like with a certificate of registration, a practising certificate must be surrendered if a social worker's registration or practising certificate is cancelled or suspended or required so that it can be endorsed with conditions or restrictions. The drafting of this provision is not entirely clear, however. In particular, it is not clear why (as a matter of drafting or substance) specific provisions of the SWRA are identified in s 36(1)(b) and (c) rather than making the section applicable whenever registration is suspended or cancelled and whenever conditions or restrictions are being added to a practising certificate.</p> <p>Also, s 36 does not provide, in contrast to s 21 in relation to certificates of registration, that suspension of registration or of a practising certificate necessarily <i> Cancels </i> the practising certificate that is to be surrendered. A consequence of this is that, when the registration or practising certificate is no longer suspended, the practising certificate presumably "revives" in its previous form. In some contexts, this may, however, be appropriate to require an application for or issue of a new practising certificate so that the Board can reassess the conditions on it. But perhaps those circumstances should be limited, as they presently are, to where a practising certificate has been cancelled.</p>
37	<p>Interim practising certificates</p> <p>The utility of interim practising certificates has been addressed above. The rationale for the ability to cancel an interim practising certificate at any time is not entirely clear. The Board cannot cancel a standard practising certificate at any time, without following the procedures in the SWRA. The current nature of an interim practising certificate, being valid for a finite period subject to conditions of practise and also conditions that must be complied with in order for a full practising certificate to be issued, does not seem obviously to necessitate or warrant a power of cancellation at any time.</p>
38	<p>Competence to practise social work</p> <p>If competence assessments are no longer to be a pre-requisite to registration, this provision would not need to be retained in its current form.</p>
39	<p>Reviews of competence to practise social work</p> <p>This is the kind of function that the Board could choose to delegate to the Registrar, a possibility indicated above. Or, at least, the Board could give the Registrar a preliminary role in this assessment.</p>
40	<p>Form of review</p>
41	<p>Actions after review of competence</p>
42	<p>Competence assessments</p> <p>Although the relevance of the ability to set competence assessments will change if a competence assessment is no longer required before registration or periodically afterwards, the Board should still retain the options of prescribing competence assessments for use in the circumstances where it is required to consider competence, for example, after a complaint has been assessed by a CAC.</p>

Section	Issues and comments
	In relation to s 42(5), instead of a requirement that a competence assessment be published in newspapers, an alternative is that the Registrar/Board must notify all registered social workers seems more appropriate. It would better ensure that the people who most need to be informed, are informed, whereas as newspaper would not achieve that. This notification requirement may not be appropriate at all if competence assessments are no longer generally required.
43	<p>Copies of competence assessments to be available</p> <p>If this provision makes copies of exam papers or assessment tasks available in advance, as it seems to do, this significantly compromises the effectiveness and integrity of competence assessments. It may be appropriate for this provision to be removed.</p>
44	Registered social workers to complete assessments every 5 years
45	Actions if registered social worker fails assessment
46	<p>Confidentiality of information</p> <p>Section 46 is in similar terms to s 44 of the HPCAA. Unlike the HPCAA, however, s 46 of the SWRA does not contain any provision for enforcing the obligation of confidence. The HPCAA provides that it is a fineable offence to contravene the obligation of confidence.</p> <p>Another difference between the two is that the restriction in s 46(3) and (4) of the SWRA applies to <i>all</i> statements or information relating to the conduct of a person obtained during an assessment – under s 44(4) of the HPCAA, the restriction seems limited to statements by a health practitioner about his or her own conduct. Consideration should be given to the appropriate scope of the restrictions in the SWRA.</p> <p>Moreover, the drafting of s 44 of the HPCAA is clearer than, in particular, ss 46(3) and (4) of the SWRA.</p>
47	<p>Fitness to practise social work</p> <p>It is not clear what the outcome or process is where the Board reserves its decision. Presumably the Board is entitled to defer its decision on registration until the outcome of the proceedings or investigation. Should there be a maximum period for which the Board can defer its decision?</p>
48	Consideration of fitness to practise social work
49	<p>Action if Board considers registered social worker not fit and proper</p> <p>The drafting of s 49 is not as clear as it could be. Section 49(1) and (2) suggest that the Board may suspend a person if he or she “may not be” fit to practise social work. Section 49(3) states that the Board may only suspend if satisfied that the person is <i>not</i> a fit and proper one. Section 49(3) should prevail, but this is not made expressly clear.</p>
50	Board to ask Police for information, and consider convictions
51	Notification of conditions affecting ability to practise social work

Section	Issues and comments
52	Power to seek medical advice
53	Notice to be put before chairperson
54	Interim suspensions
55	Power to order medical examination
56	Conduct and consequences of examination
57	Restrictions may be imposed because of condition
58	Revocation of restrictions
59	Complaints against registered social workers
60	Registrar to notify Tribunal of complaints
61	Registrar to notify Health and Disability Commissioner of certain complaints
62	Health and Disability Commissioner may notify Tribunal of complaints
63	<p>Notification of convictions</p> <p>For the same reasons as have been discussed above in relation to the notification and screening of complaints, it is more appropriate for the Board to be notified rather than the chairperson of the Tribunal.</p>
64	Suspension of action while Health and Disability Commissioner investigates
65	Referral of complaints and notices of conviction to complaints assessment committees
66	<p>Complaints assessment committees</p> <p>References throughout the SWRA to a person who is “not a registered social worker” could in many places be more appropriately replaced with reference to a “lay person”.</p>
67	Committees may regulate own procedure
68	Committees may appoint legal advisers
69	<p>Information to be given to social worker and complainant</p> <p>This, too, is an administrative function and would be more properly managed by the Board rather than the Tribunal chairperson.</p>
70	<p>Social workers and complainants may request changes in membership of complaints assessment committee</p> <p>Again, consequential amendment to this provision will be necessary if, as suggested above, the Board is to appoint the committees.</p>
71	<p>Determination of complaint by complaints assessment committee</p> <p>Section 71(1)(a) refers to “fitness” of a social worker, which presumably is a reference to his or her fitness to practise social work. This should be referred to consistently throughout the SWRA.</p> <p>Section 71(2) sets out what the committee may do “In making its determination”; s 71(3) sets out what the committee must do “Before making its determination”.</p>

Section	Issues and comments
	Logically the investigation provided for in s 71(2) would be carried out “before” making its determination, rather than “in” making its determination. Consistency between the two subsections would be desirable.
72	Procedure after committee makes determination
73	Conciliation
74	<p>Committee may recommend suspension of registration or imposition of conditions</p> <p>The language of s 74(b) differs from the usual expression in the SWRA of conditions or restrictions on a person’s practising certificate or registration. It is not clear whether “restrictions ... on the practise of social work” refers to restrictions on a practising certificate or registration (or either). This section should be amended to use language consistent with the rest of the SWRA.</p>
75	Laying of charge before Tribunal
76	Notice of disciplinary proceedings to be given to social worker
77	Interim suspension of registration or imposition of restrictions on practise
78	Social worker may apply for revocation of direction
79	<p>Hearings of Tribunal to be public</p> <p>The SWRA does not contain any provision to enforce suppression orders made under s 79(2) except the general provision in cl 13 of sch 2: the offence of intentionally disobeying a Tribunal order, punishable by conviction and a fine of \$1,000. By contrast, under ss 95 and 98 of the HPCAA, breach of a suppression order made by the Tribunal is punishable by a fine of up to \$10,000 and the offence is included in the same provision as the suppression power: so that it is clearly identifiable.</p>
80	<p>Special protection for certain witnesses</p> <p>In contrast to the option of suppression under s 80(6), suppression of the names of complainants in sexual cases is mandatory and automatic under the HPCAA (s 98) and the Criminal Procedure Act 2011 (s 203). The SWRA should be amended to afford the same standard of protection. Moreover, some means of enforcing suppression – by a criminal offence, for example – is required.</p>
81	Application for revocation of order under section 79
82	<p>Grounds on which Tribunal may make order</p> <p>The heading “Grounds on which social workers may be disciplined” would better reflect the content of the provision.</p>
83	Penalties
84	<p>Orders as to restoration of registration</p> <p>Like s 74, s 83(1)(a)(ii) fails to distinguish between conditions on a practising certificate or registration.</p> <p>A matter of legislative drafting: s 89(1)(d) refers to “training” and “professional development”. Elsewhere, the SWRA refers to “education and training”. Consistent</p>

Section	Issues and comments
	language should be used throughout.
85	Orders of Tribunal
86	Funding
87	Recovery of fines and costs
88	Rights of appeal
89	Notice of right of appeal
90	Orders to have effect pending determination of appeal
91	Procedure on appeal
92	Court's decision final
93	Court may refer matter back for reconsideration
94	Orders as to costs
95	Orders as to publication of names
96	Appeal on question of law
97	<p>Social Workers Registration Board established</p> <p>The Board is established as a crown entity. By contrast, under the HPCAA, regulatory authorities are bodies corporate. Likewise, the New Zealand Law Society is a body corporate, funded by the profession. Consideration should be given to whether the independence of the Board would not be improved if it were re-established as a body corporate funded by the profession.</p>
99	<p>Functions of Board</p> <p>If some of the options discussed above are taken up, the functions of the Board should be amended, for example, to refer to its roles administering the complaints process and to remove preference to the promotion of registration if it were to become mandatory. These are examples of consequential amendments.</p>
100	Obligations of Board in relation to Māori
101	Obtaining views of ethnic and cultural groups
102	Restriction on Ministerial direction
104	<p>Review of operation of Act</p> <p>If mandatory registration were to be introduced, it could be useful to again provide for a review of the legislation.</p>
105	<p>Code of conduct</p> <p>Section 105(1)(b) refers to a code of conduct that “should apply generally in the social work profession”. In the voluntary registration environment, the code of conduct cannot have any meaningful application to the profession beyond those who are registered. It is not altogether clear what effect it is intended to have but at most it can be aspirational.</p>
106	Membership

Section	Issues and comments
	This requires 10 members of the Board: 6 registered social workers and 4 lay people. Under the HPCAA, a regulating authority may have between 5 and 14 members and a majority must be members of the profession. If there are fewer than 8 members, there must be 2 laypeople; if there are 9 or more, there must be 3 laypeople. More flexibility of this kind could be added to the SWRA.
107	Additional information in annual report
108	Board may set fees
109	Disciplinary levy
110	Further provisions relating to fees and levy
113	Other provisions relating to Board
114	Social Workers Complaints and Disciplinary Tribunal established
115	Function of Tribunal In accordance with the discussion above, the Tribunal should not administer the complaints process and s 115(a) should be deleted.
116	Membership of Tribunal Possible changes to the membership of the Tribunal have been discussed above. Consideration should be given to whether this provision could not be replaced by a system like ss 86 to 88 of the HPCAA, which provides for the Minister to appoint a panel of members of the Tribunal.
117	Suitability of certain people to be appointed
118	Removal of members
119	Hearings by Tribunal
120	Other provisions relating to Tribunal
121	Register of social workers
122	Register to be maintained in parts
123	Information to be registered It may be appropriate to require both home and work address details.
124	Certificates of registered information This is a very broad provision that requires the Board to make personal details available to any member of the public, particularly as the information on the register can go beyond that required by the terms of s 123(1) – (h) provides that the Board may record other matters it considers appropriate. It may be appropriate to alter the nature of this provision so that it sets out and confines what particular information may be available to the public, which could be limited, for example, to the social worker’s name, work address, type and date of registration and practising certificate, and any conditions applicable to that person.
125	Social workers to notify changes of address

Section	Issues and comments
126	<p>Changes of name</p> <p>This seems a very administrative function to require the Board to carry out. As the Registrar has the responsibility for maintaining the Register and keeping it up to date, this function could be delegated (or reallocated) to the Registrar.</p>
127	<p>Social worker may ask for registration to be cancelled</p> <p>Section 127(1) provides that the Board may cancel a social worker’s registration on his or her application. On the other hand, s 129(3) provides that the Board <i>must</i> cancel a social worker’s registration if he or she advises the Board, after an inquiry by the Registrar, that he or she is no longer practising social work.</p> <p>The best interpretation at present is that s 129(3) should be read in the context of s 129 as a whole: it is cancellation that follows on from an administrative function of the Registrar, essentially. Section 127 is a more general provision that the Board has a discretion but not an obligation to cancel registration if a person requests it to be cancelled: this is what applies in all contexts other than when the administrative process under s 129 has been followed.</p> <p>This still leaves an element of inconsistency or arbitrariness, given that whether or not a person can deregister depends on whether he or she contacts the Registrar first, or the Registrar makes contact. Accordingly, the relationship between these two provisions could be clarified.</p> <p>In the context of mandatory registration, voluntary ‘deregistration’ may be less problematic because a person who is not registered would be prohibited from practising social work and, if an ex-registered social worker did so, this would be an offence.</p> <p>On a different note, pending criminal proceedings (as well as disciplinary proceedings) may also be an appropriate basis to refuse to cancel registration, given that certain criminal conviction could result in disciplinary proceedings.</p>
128	<p>Entry to be cancelled on death of social worker</p> <p>Section 128(4) may be unnecessary.</p>
129	<p>Revision of Register</p> <p>It should be open to the Registrar to contact a registered social worker by other means, for example, email or a normal letter. The requirement of registered post is intended to provide some protection to a social worker – by ensuring that the letter was delivered – seeing as a failure to reply can result in cancellation. It may be more appropriate, however, to provide this protection by requiring the Registrar to make use of all contact details that it has for the social worker in order to get in touch. In any event, a normal rather than registered letter suffices in this context under s 144 of the HPCAA.</p>
130	<p>Restoration of entries</p>
131	<p>Cancellation of registration of overseas qualified person for non-residence in New Zealand</p> <p>The purpose of this provision, and the reasons for its scope, are not clear. If the</p>

Section	Issues and comments
	<p>purpose is to prevent persons with no recent connection to New Zealand from maintaining registration (to prevent, for example, people using registration here as a marker of their legitimacy even though they are not subject to any meaningful regulation because they are not in the country), there would be no reason to confine its application to persons who are registered based on overseas qualifications; the basis of registration would seem irrelevant. The lack of clarity behind this is not helped by the fact that the provision does not contain any criteria to assist the Board in making its determination.</p> <p>Proceeding on the basis of the apparent purpose identified above, the time frames seem very short: it is enough that the person has, within three years of registration, resided overseas for 6 consecutive months and intends to continue residing overseas. A longer time frame may be more appropriate – such as extending the time the person needs to have resided overseas to at least a year.</p>
132	Cancellation of registration on Board’s direction
133	<p>Removal of qualifications, or cancellation of registration, overseas</p> <p>This provision applies when a person has obtained registration on the basis of an overseas qualification or registration under s 7 and the validity of that qualification or registration is called into question. Because the overseas or professional registration was the basis of registration in New Zealand, it is sensible that, when that basis changes, the Board can review registration. The social worker in question has a right to be heard on the matter.</p> <p>It is not clear why the Board’s ability to review registration is not triggered where a New Zealand qualification on which registration under s 6 is based is invalidated. This situation should also be included in the scope of s 133.</p>
134	Cancellation or suspension not to affect existing liabilities
135	Board to publish Register
136	Inspection of Register
137	Board to appoint Registrar
138	Registrar to carry out Board’s decisions and comply with directions of Board and Tribunal
139	Registrar may refuse to act if fine or costs outstanding, or fee not paid
140	<p>Notice of restrictions or conditions imposed on registration or practising certificate</p> <p>This is another more administrative task that might appropriately be reassigned or delegated to the Registrar, particularly as the Registrar will be required to implement the conditions in other ways anyway (eg. entering them on the register).</p>
141	Certificate of Registrar to be evidence
142	<p>Board may withhold information in certain circumstances</p> <p>The Privacy Act 1993 is also applicable to the Board and may provide grounds to withhold information. This section should be amended to also refer to the Privacy</p>

Section	Issues and comments
	Act.
143	Immunity of members and legal advisers of CACs and other from civil liability to third parties
144	Proceedings not invalid because of defect in appointment
145	Notice and service of documents
146	Publication of orders
147	Regulations
148	<p>Offences</p> <p>The kinds of offences that would be appropriate if registration were to become mandatory have already been referred to above: some consequential amendment to this provision may be needed, such as a generally applicable offence of practising social work (or reserved areas of social work) while not registered.</p> <p>Sections 148(3) and (5) are criminal offences that only apply to registered social workers. They relate to conduct that will also be within the scope of the CAC and Tribunal processes. It could therefore be appropriate for them to be exclusively dealt with through the disciplinary process – as they are in the nature of professional misconduct – rather than by criminal charges. Or the option of criminal charges could be retained in the case of repeated or egregious misconduct: but again, the Tribunal process and cancellation of registration may be appropriate.</p> <p>The SWRA does not provide who is to lay charges for these offences. The provisions of the Criminal Procedure Act 2011 will apply, so that anyone can lay charges, but it may be appropriate for this function to be allocated within the SWRA. The Board would perhaps be the most appropriate decision-maker, seeing as the offences primary function is in relation to people who are <i>not</i> registered social workers (and who therefore are beyond the proper oversight of the CAC and Tribunal processes).</p> <p>A consistent approach to prosecution</p> <p>The Board is currently developing a prosecution policy that relates to when criminal charges should be laid.</p> <p>If, as suggested above, the Board (in the place of the chairperson of the Tribunal) assumes responsibility for screening all complaints and determining whether they should be referred to a CAC, the prosecution policy will need to address when the Board would pursue criminal charges rather than the disciplinary process. For example, even if the public interest test set out in the Solicitor-General’s Prosecution Guidelines were not met in a particular case so as to warrant criminal prosecution, disciplinary proceedings may well be appropriate.</p> <p>On the other hand, if the chairperson of the Tribunal retains responsibility for screening complaints, the Board’s prosecution policy will not have direct application to the decision to refer a matter to the CAC and follow the disciplinary process. If the Board were to defer the decision to lay criminal charges pending consideration of a matter by the a CAC and/or the Tribunal, the six month time limit for laying</p>

Section	Issues and comments
	charges (under the Criminal Procedure Act) may well expire. Another option would be for the Board and the chairperson of the Tribunal to enter a memorandum of understanding to ensure a consistent approach.
149	Consequential amendments
Schedule 1	
2	Criteria for appointment While cl 2(4) is presumably intended to avoid any (appearance of a) conflict of interest, it also precludes any person employed by the Ministry of Social Development from being on the Board. The Ministry, particularly the Department of Child, Youth and Family, is a significant provider of social work services and the representativeness of the Board might be hampered by this exclusion.
7	Limit on term
10	Vacation of office if status changes
20	Members representing other members
33	Procedure generally
37	Quorum
39	Voting
43	Restriction on delegation
55	Legal advisers
Schedule 2	
1	Deputy chairperson
2	Term of office
3	Vacation of office
4	Expenses of Tribunal
5	Procedure of Tribunal
6	Evidence
7	Powers of investigation
8	Witness summons
9	Service of witness summons
10	Witness' allowances
11	Privileges and immunities
12	Non-attendance or refusal to co-operate
13	Contempt of Tribunal
14	Power to amend charges
15	Adjournments
16	Legal and medical advisers

Section	Issues and comments
17	Immunity of members of Tribunal