

Social Workers Registration Legislation Bill

Government Bill

As reported from the Social Services and Community Committee

Commentary

Recommendation

The Social Services and Community Committee has examined the Social Workers Registration Legislation Bill and recommends by majority that it be passed with the amendments shown.

About the bill as introduced

The bill is an omnibus bill which mainly seeks to amend the Social Workers Registration Act 2003. Part 2 of the bill would also amend the Criminal Records (Clean Slate) Act 2004, and make consequential amendments to the Health and Disability Commissioner Act 1994.

The bill aims to increase the professionalism of the social work profession and protect the public from harm by:

- making the registration system compulsory for all social workers
- protecting the use of the title “social worker”
- ensuring that social workers are competent and fit to practise
- providing an appropriate complaints and disciplinary process.

The bill would require all social workers to be registered within 2 years after the bill is enacted.

At present, section 13 of the Social Workers Registration Act provides a pathway to registration for social workers with sufficient experience but without a recognised social work qualification. The bill would remove that pathway 5 years after its enactment. The bill would allow for people who are likely to meet the criteria in section 13 to remain in the social work profession while their application for registration based on previous experience is considered. At the end of the 5-year period, people who are

registered under section 13 based on previous experience would be treated as having been registered under section 12 of the Act (Criteria for full registration).

The bill would also amend existing provisions to improve the Act's effectiveness and transparency. They include:

- amending the composition of the Social Workers Registration Board
- replacing the existing 5-yearly competence assessments with processes that allow for continuous professional development for practising social workers
- requiring vetting by the Police as part of the Board's assessment of whether a person is a fit and proper person to practise as a social worker
- requiring social workers' employers to report to the Board any reasonable belief that a social worker is not competent, has engaged in serious misconduct, or is unable to perform their functions due to a mental or physical condition
- requiring social workers to report to the Board any reasonable belief that another social worker is unable to perform their functions due to a mental or physical condition
- aligning the complaints and disciplinary processes with similar regulatory regimes
- expanding the situations where the Board can suspend a social worker's registration or impose conditions
- setting out the principles that the Board should use when setting any required educational qualifications and professional development.

The bill would also amend the Criminal Records (Clean Slate) Act 2004 to ensure that criminal convictions could not be concealed from the Police vetting for considering whether a person was a fit and proper person.

Recommended amendments

The rest of this commentary covers the main amendments that we recommend to the bill. It does not discuss minor, technical, or consequential amendments.

Definition of practising as a social worker

Clause 8 of the bill as introduced, inserting new section 6AAB, would define when a person would be considered to be practising as a social worker. The definition includes roles that use the title or description of social worker, and situations where a person claims to be a social worker, or undertakes restricted work as defined in clause 5 of the bill as introduced.

We consider that, under the bill as introduced, employers could avoid the requirements for registration by removing references to "social worker" in job titles or position descriptions. Therefore, we recommend amending new sections 6AAB(a), (c), and (d) to include the term "social work". For sections 6AAB(a) and (c), this could be contained in a person's job description, contract, job title, or anything else. For section 6AAB(d), this would be as described in an enactment.

We recommend inserting new section 6AAB(2) to make it clear that the definition in new section 6AAB does not apply to positions or roles where being a social worker is not specified as a requirement—that is, the position or role could be performed by a social worker or another type of person—and the person is not claiming to be a social worker.

Offence provisions

Clause 8, inserting new section 6AAA(3), would prohibit anyone from claiming that another person is practising as a social worker, unless that other person is registered as a social worker and holds a current practising certificate. Clause 63, amending sections 148(2) and (4), would set the penalties for contravening section 6AAA(3) as a prison term not exceeding 3 months, a fine not exceeding \$10,000, or both.

We consider that a breach of new section 6AAA(3) should only relate to a person who knowingly contravenes that section. We therefore recommend amending clause 63, to insert new section 148(2A) requiring that a person must knowingly commit an offence to contravene section 6AAA(3).

We also recommend amending clause 63 by inserting new section 148(2A) removing the prison term as a penalty for breaching section 6AAA(3).

Fitness to practise

Clause 27, amending section 47(2), would add additional grounds on which the Board must be satisfied before deciding that a person is not a fit and proper person to practise. Given these additional grounds, we recommend inserting a new function for the Board in a new section 99(1)(ga) of the Act: to review the fitness of social workers to practise. This would be similar to section 99(1)(g) of the Act which provides that a function of the Board is to review the competence of social workers.

Clause 53 of the bill as introduced, inserting a new section 99(1)(oa), would introduce a new function for the Board to set criteria for reporting serious misconduct and to report on competence issues. We recommend that this section be amended to require that the Board must also set criteria for reporting on fitness to practise. We consider that this would align with the bill's objective of protecting the public from harm.

Professional development programmes

The bill would replace the existing five-yearly competence assessments with processes that allow for continuous professional development programmes for practising social workers.

Clause 15, amending section 29, would replace “continuing professional development” with “undertaking professional development programmes” and clause 22, inserting new section 38A, would allow the Board to set or recognise professional development programmes for practising social workers.

We are concerned that the term “programme” could be considered too narrowly and could imply a specific course rather than an ongoing process that can be developed

and tailored. We recommend deleting all references to “programme” in clause 15, section 29(2)(b) and clause 22, new section 38A.

Commencement of the bill

We recommend amending the commencement clause of the bill as introduced (clause 2) to include provisions that need delayed commencement because they relate to new sections 6AAA and 6AAB and so need to come into force at the same time—that is, 2 years after the date on which the bill receives Royal assent.

Clause 55, replacing section 106(1) of the Act, would reduce the composition of the Board from 6 registered social workers and 4 other people to 4 social workers and 3 other people. We recommend amending clause 2 (commencement) to delay the commencement of clause 55 until 3 months after the legislation came into force. This would give the Minister time to schedule and appoint members to the Board.

Moving definition of restricted work

We recommend moving the definition of “restricted work” in clause 5, section 4, to clause 8, new section 6AAB because the term is only used in this place in the bill.

Replacing “social workers” with “applicants”

We recommend replacing references to “social workers” with “applicants” in clause 9, amending section 6 (Entitlement to registration of New Zealand-qualified social workers) and clause 9A, amending section 7 (Entitlement to registration of overseas-qualified social workers). A person who is seeking registration would be considered an applicant, rather than a social worker.

Restrictions on issuing practising certificates

Clause 16, inserting new section 30(2A), would allow the Registrar to refer any application for a practising certificate to the Board to decide whether the person is a fit and proper person to practise as a social worker.

We recommend amending this section by adding the words “if the Registrar has reason to suspect that the applicant is not a fit and proper person to practise social work”. This would guide the Registrar on the factors to consider when deciding whether to refer an application to the Board.

Competence to practise social work

Clause 22, inserting new section 38B, would impose a mandatory requirement for employers to report to the Board if they believe a social worker is not competent to practise. Under the bill as introduced, the report must state the reasons why the employer believes that the social worker is not competent to practise or cannot perform satisfactorily the function required to practise as a social worker. We recommend removing the words “cannot perform satisfactorily the functions required to practise as a social worker” because this clause relates to competency to practise social work. The removed words relate to fitness to practise.

Reporting concerns to the Board

At present, there is no specific obligation in the Act for any person to report concerns to the Board about a social worker's ability to practise. Clause 32, amending sections 51(1A) and 51(1C), sets out mandatory reporting obligations on social workers and employers. Because these are mandatory reporting requirements, for consistency we recommend amending these sections to require that the report must be in writing and contain certain information. This would align with the reporting requirements in other provisions of the bill.

Cases of serious misconduct

Clause 28 of the bill as introduced, inserting new section 47A, would require an employer to report to the Board if they reasonably believe that a social worker has engaged in serious misconduct. Section 47A(3) defines what is serious misconduct.

Clause 38, inserting new section 57A, would allow the Board to direct the Registrar to suspend the registration of a social worker, in specified circumstances, if the Board was alerted to issues of competence, fitness to practise, or misconduct. We recommend amending the reference to "misconduct" in section 57(1) and the heading above it to "serious misconduct". This would make it clear that the Board could suspend or impose conditions on a social worker when an employer reports an issue of serious misconduct to the Board under new section 47A.

We considered whether employers should only be required to report proven serious misconduct or serious professional misconduct to the Board. We were advised that there is a risk of harm to a social worker's clients if an employer has to prove the case before reporting it.

We received advice that new section 47A is not intended to cover employment issues that could be dealt with through usual employment procedures unless they met the definition of serious misconduct. We were also advised that changing "serious misconduct" to "serious professional misconduct" could create confusion because "professional misconduct" is used in section 82 of the Act with a different defined meaning.

Referring complaints to professional conduct committees

In the interests of natural justice, we recommend amending clause 43, replacing section 65, to ensure that a social worker is notified when the Board refers a notice of conviction to the professional conduct committee.

Professional conduct committees

Clause 45, amending section 66, would replace "Complaints assessment committees" with "Professional conduct committees". We recommend inserting transitional provisions in Schedule 2, inserting new Schedule 1AA, as a new Part 2A. These provisions would allow any complaints assessment committee in existence before the changes came into force to be deemed professional conduct committees. Any proceedings, de-

terminations, charges laid, and recommendations of those committees would also continue in force.

Conciliation and mediation

Clause 48 would amend section 73 of the Act to include a reference to mediation, along with conciliation, and provide new procedural requirements relating to both of these.

For consistency, we recommend amending section 73(1B) to ensure that a conciliator, if appointed, would be obliged to report back to the Board.

We also recommend amending section 73(1A) to ensure that a mediator, if appointed, is independent. This would be consistent with the requirement in section 73(1)(a)(ii) that the conciliator be an independent person.

Continuation of the Social Workers Complaints and Disciplinary Tribunal

We note that the transitional provisions of the bill as introduced do not allow for the continuation of the Social Workers Complaints and Disciplinary Tribunal. We recommend inserting a new clause 4 into new Schedule 1AA, which is contained in Schedule 2 of the bill, to continue the membership of the tribunal. We suggest that this be similar to the clause 3 of new Schedule 1AA which allows for continuation of membership of the Board.

Scopes of practice

We discussed whether providing for the authorisation of scopes of practice should be included in the bill to provide a clearer definition of social work outside of the Act. The majority of submitters supported having scopes of practice, with many proposing the Health Practitioners Competence Assurance Act 2003 as an appropriate model. Under section 11 of that Act, authorities must describe the contents of a health profession in terms of one or more scopes of practice in any way the authority thinks fit.

We heard that scopes of practice could help to future-proof the social work profession. They could also recognise the skills of social workers who operate and develop at a more advanced level in specific areas, such as mental health, and could provide professional development opportunities for those operating in supporting roles, such as social service workers and social work assistants.

We recognise that there are benefits in the scopes of practice model. For example, scopes could be developed in consultation with the profession, they could be more easily adapted than a description of social work in primary legislation, and they could link to social workers' competency and professional development. However, we were advised that defining "social work" in a scope of practice would be difficult, and would only apply to social workers already registered.

The majority of us consider that the bill's objectives can be achieved through protecting the title "social worker". However, some of us consider that scopes of practice should have been explored further.

Disclosure

Given that the objectives of the bill are to increase the professionalism of the social work profession and to protect the public from harm, we considered whether social workers should be required to disclose that they are social workers to the users of their services. We discussed whether disclosure requirements could be in primary legislation, regulations, or in Board-level instruments. We recommend that a disclosure regime should be developed through an Order in Council. To enable this, we recommend inserting new clause 62A which would amend section 147 of the Act by inserting a new paragraph (aa) that would regulate the use of identification by social workers when dealing with members of the public.

Costs to the sector

The Regulatory Impact Statement for the bill estimated educational costs of up to \$5 million each year for the first few years until practising social workers who are insufficiently qualified completed their upskilling.

We note concerns expressed by NGOs about the costs to the sector from registration, annual practising certificates, supervision, continuing professional development, and the increased remuneration costs associated with a registered workforce. We were advised that these costs could be factored into contracts for services.

We have not made any recommendations about transitional grants to help offset the initial cost of registering social workers because we consider that this matter is best dealt with outside of legislation.

We acknowledge the sector's concerns, particularly given that people would need to be registered within two years and that the costs would need to be accepted as variations to contracts that have already been negotiated. We encourage the Government to address the implementation issues and to consider making provisions for NGOs for funding and support for workforce planning.

Workforce planning

We note concerns expressed by submitters about the implications the bill would have on workforce planning. This includes the ability for organisations to recruit trained staff and remunerate registered social workers, and the effect on other social work support roles.

We are interested in the Health and Disability Kaiāwhina Workforce Action Plan developed by Health Workforce New Zealand and Careerforce: Te toi pūkenga. The plan focuses on non-regulated roles in the health and disability sector.

We encourage the Government to develop a workforce strategy to support training, qualifications (including recognition of prior learning), and career pathways for non-regulated social support workers to:

- reduce risks to public safety
- retain and use skilled workers in the field
- ensure meaningful career pathways and fair employment conditions for regulated and non-regulated social workers.

National Party minority view

The National members of the committee were concerned that, given the restricted timeframe, the committee was unable to address fully submitters' concerns and, had an extension of time been granted, we would have been able to fully consider submitters' issues.

Appendix

Committee process

The Social Workers Registration Legislation Bill was referred to the Social Services Committee of the 51st Parliament on 17 August 2017. The bill was reinstated with the Social Services and Community Committee of the 52nd Parliament. The closing date for submissions was 31 January 2018. We received and considered 63 unique and 59 form submissions from interested groups and individuals. We heard oral evidence from 19 submitters at hearings in Wellington.

We received advice from the Ministry of Social Development.

Committee membership

Gareth Hughes (Chairperson)

Darroch Ball

Simeon Brown (until 21 March 2018)

Hon Judith Collins (from 21 March 2018)

Hon Kris Faafoi

Hon Alfred Ngaro

Greg O'Connor

Maureen Pugh (from 21 March 2018)

Priyanca Radhakrishnan

Hon Louise Upston

Hon Michael Woodhouse (until 21 March 2018)

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Carmel Sepuloni

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Schedule 1

Consequential amendments to principal Act

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New Schedule 1AA inserted

35

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Social Workers Registration Legislation Act **2017**.

2 Commencement

- (1) **Section 8**~~Sections 4, 7, 8, 13, 63(1) and (1A), and 65(2)~~ comes into force on the day that is 2 years after the date on which this Act receives the Royal assent. 5
- (2) **Section 10** comes into force on the day that is 5 years after the date on which this Act receives the Royal assent.
- (2A) **Section 55** comes into force on the day that is 3 months after the date on which this Act receives the Royal assent. 10
- (3) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

Part 1

Amendments to Social Workers Registration Act 2003

- 3 Principal Act**
This Part amends the Social Workers Registration Act 2003 (the **principal Act**). 5
- 4 Section 3 amended (Purpose)**
Repeal section 3(c).
- 5 Section 4 amended (Interpretation)**
- (1) In section 4, repeal the definition of **registered social worker**.
- (2) In section 4, insert in ~~their~~its appropriate alphabetical order: 10
- ~~**restricted work** means any task or activity that is described in an enactment with words to the effect that it can only be undertaken by a social worker~~
- social worker** means a person who is registered under this Act as a social worker
- 6 New section 4A inserted (Transitional, savings, and related provisions)** 15
After section 4, insert:
- 4A Transitional, savings, and related provisions**
The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.
- 7 Cross-heading above section 6 replaced** 20
Replace the cross-heading above section 6 with:
- Social workers required to be registered*
- 8 New sections 6AAA and 6AAB inserted**
- (1) Before section 6, insert:
- 6AAA Unregistered person must not claim to be social worker** 25
- (1) A person may ~~only~~ use names, words, titles, initials, abbreviations, or descriptions stating or implying that he or she is a social worker only if he or she is registered as a social worker under this Act (and his or her registration is not suspended).
- (2) No person may claim to be practising as a social worker, or state or do anything 30 that is calculated to suggest that he or she practises or is willing to practise as a social worker, unless he or she—
- (a) is registered as a social worker under this Act (and his or her registration is not suspended); and

(b)	holds a current practising certificate as a social worker.	
(3)	No person may make an express or implied statement about another person that the other person is prohibited by this section from making about himself or herself.	
(4)	The prohibitions under this section do not apply to a person who states that he or she is willing to practise as a social worker for the purpose of seeking employment if the person would, on obtaining employment, be entitled to—	5
(a)	be registered as a social worker; and	
(b)	hold a current practising certificate as a social worker.	
6AAB Definition of practising as a social worker		10
(1)	A person is practising as a social worker for the purposes of this Act (and practises and willing to practise as a social worker have corresponding meanings) if that person—	
(a)	is employed or engaged by another person in a position that is described using the words “social worker” or “social work”:	15
(b)	in undertaking any work for gain or reward, holds himself or herself out to be a social worker:	
(c)	holds a position, in a voluntary capacity or as a member of any body or organisation, that is described using the words “social worker” or “social work”:	20
(d)	holds a position or performs a role described in an enactment using the words “social worker” or “social work”:	
(e)	undertakes restricted work:	
(f)	in any other way claims to be a social worker.	
(2)	<u>A person (A) is not practising as a social worker—</u>	25
(a)	<u>if A is employed in, engaged in, or holds a position that is described using the words “social worker” and—</u>	
(i)	<u>being a social worker is not specified as a requirement for the position and is instead expressed as an alternative qualification to 1 or more other qualifications for the position; and</u>	30
(ii)	<u>A is not and does not hold himself or herself out to be a social worker and holds at least 1 of the alternative qualifications; or</u>	
(b)	<u>if an enactment describes a position or role using the words “social worker” and—</u>	
(i)	<u>the enactment specifies that the position or role may be held or performed by either a social worker or another type of person (who is not a social worker); and</u>	35
(ii)	<u>A is not and does not hold himself or herself out to be a social worker and is that other type of person.</u>	

- (3) In this section,—
qualifications is not limited to formal qualifications
restricted work means any task or activity that is described in an enactment with words to the effect that it can be undertaken only by a social worker.
- (2) ~~See **section 2(1)**, which provides for delayed commencement of this section.~~ 5
- 9 Section 6 amended (Entitlement to registration of New Zealand-qualified social workers)**
- (1AA) In the heading to section 6, replace “**social workers**” with “**applicants**”.
- (1) In section 6, insert as subsection (2):
- (2) **Subsection (1)(a)** applies to a person only if— 10
- (a) the Board has received information about that person; and
- (b) the information raises doubt about his or her competence to practise as a social worker.
- 9A Section 7 amended (Entitlement to registration of overseas-qualified social workers)** 15
- In the heading to section 7, replace “**social workers**” with “**applicants**”.
- 9B Section 12 amended (Criteria for full registration)**
- In section 12, delete “, and only if.”.
- 10 Section 13 repealed (Board may recognise practical experience in certain cases)** 20
- (1) Repeal section 13.
- (2) ~~See **section 2(2)**, which provides for delayed commencement of this section, and the related transitional provisions in **Schedule 1AA** set out in **Schedule 2**.~~
- 11 Section 14 replaced (Criteria for provisional registration)** 25
- Replace section 14 with:
- 14 Criteria for provisional registration**
- The Board must decide that the applicant should be registered provisionally if satisfied—
- (a) that the applicant’s competence to practise as a social worker has been 30
found satisfactory under Part 3; and
- (b) that he or she is a fit and proper person to practise as a social worker, meets some of the other criteria in section 6 or ~~section 7~~, and is in the process of working towards meeting the rest of them; and

- (c) in the case of an applicant who has previously held a provisional certificate of registration, that he or she—
- (i) has already made satisfactory progress in working towards meeting all the criteria in section 6 or ~~section 7~~; or
 - (ii) has good reasons for not having made satisfactory progress in doing so. 5

11A Section 15 amended (Criteria for temporary registration)

In section 15, delete “, and only if,”.

12 Section 24 amended (Cancellation of limited registration)

In section 24, insert as subsections (2) and (3): 10

- (2) The Board must not cancel a social worker’s limited registration unless—
- (a) it is satisfied that the Registrar has made reasonable efforts to give that social worker—
 - (i) written notice of the Board’s reasons for proposing to do so; and
 - (ii) a copy of any written information on which the Board is relying; 15
 - and
 - (iii) a written ~~statements~~summary of any other information on which the Board is relying; and
 - (iv) written notice ~~that giving~~ the social worker ~~has a~~ reasonable opportunity to make written submissions and to be heard on the matter, either personally or by a representative; and 20
 - (b) ~~if the Registrar has succeeded,~~ the Board has then—
 - (i) ~~has~~ given the social worker a reasonable opportunity to make written submissions and to be heard on the matter, either personally or by a representative; and 25
 - (ii) ~~has~~ considered any written or oral submissions that were made to it ~~within a reasonable time after the social worker was given the notice under~~ **paragraph (a)(iv)**.
- (3) A person exercising his or her right to be heard personally is entitled to be accompanied by 1 person of his or her choice who agrees to attend. 30

12A Section 25 amended (Practising registered social workers to hold practising certificates)

In section 25, replace “No registered social worker may be employed or engaged as a social worker unless” with “A person registered as a social worker under this Act may be employed or engaged as a social worker only if”. 35

13	Section 25 repealed (Practising registered social workers to hold practising certificates)	
	Repeal section 25.	
14	Section 27 amended (Effect of making compliant application)	
	Repeal section 27(3)(b).	5
15	Section 29 amended (Board may adopt general conditions)	
	In section 29(2)(b), replace “continuing professional development” with “ undertaking professional development programmes professional development (see section 38A)”.	
16	Section 30 amended (Restrictions on issue of practising certificates)	10
	<u>(1A) In section 30(1)(b)(ii), delete “as a profession”.</u>	
	(1) After section 30(2), insert:	
	(2A) <u>The Registrar may refer any application for a practising certificate to the Board for it to decide whether the person is a fit and proper person to practise as a social worker, if the Registrar has reason to suspect that the applicant is not a fit and proper person to practise social work.</u>	15
	(2) Repeal section 30(4).	
17	Section 31 replaced (Board to consider certain applications)	
	Replace section 31 with:	
31	Board to consider certain applications	20
	(1) Promptly after the Registrar refers an application for a practising certificate to the Board, the Board must consider,—	
	(a) unless the referral is made under section 30(1)(b)(iii) or (2A) , whether the applicant is competent to practise as a social worker under section 38; or	25
	(b) if the referral is made under section 30(1)(b)(iii) or (2A) , whether the applicant is fit to practise as a social worker under section 48.	
	(2) The Board must then consider the requirements of section 33 and <u>direct the Registrar to—</u>	
	(a) direct the Registrar to issue a practising certificate to the applicant without particular conditions; or	30
	(b) decide to consider whether to direct the Registrar to—	
	(i) issue a practising certificate to the applicant subject to particular conditions; or	
	(ii) refuse to issue a practising certificate to the applicant.	35

(b)	<u>issue a practising certificate to the applicant subject to particular conditions; or</u>	
(c)	<u>refuse to issue a practising certificate to the applicant.</u>	
18	Section 33 amended (Decisions of Board as to practising certificates)	
(1)	In section 33(1)(a), after “competent to practise as a social worker”, insert “or is fit to practise as a social worker (as relevant)”.	5
(2)	After section 33(1)(b), insert:	
(ba)	the Board must direct the Registrar to issue a practising certificate to the applicant, subject to restrictions or particular conditions (or both), if it is satisfied that the applicant is fit to practise as a social worker in accordance with his or her registration only subject to those restrictions or conditions:	10
(3)	In section 33(1)(c)(i), after “competent to practise as a social worker”, insert “or be fit to practise as a social worker (as relevant)”.	
19	Section 34 amended (Currency of practising certificates)	15
	In section 34(3), replace “ceases to be a registered social worker” with “has his or her registration cancelled or suspended (other than on an interim basis under section 57A) ”.	
20	Section 36 amended (Surrender of practising certificates)	
(1)	In section 36(1)(a), delete “or suspended”.	20
(2)	In section 36(1)(c)(ii), delete “54,”.	
(3)	In section 36(1)(c)(ii), after “57(2)(b)(ii),”, insert “ 57A, ”.	
(4)	In section 36(2), after “endorsement”, insert “(unless any of the things referred to in that subsection have been lifted or revoked)”.	
21	Section 38 amended (Competence to practise social work)	25
(1)	In section 38(1), replace “social work” with “as a social worker is”.	
(2)	In section 38(1), delete “, and only if,”.	
(3)	Replace section 38(1)(a) with:	
(a)	he or she has completed a competence assessment required by the Board for the purpose of determining whether his or her competence to practise as a social worker is satisfactory for the purposes of this Act; and	30
(4)	After section 38(2), insert:	
(2A)	In the case of an applicant to whom section 6 applies, the Board can give a direction under subsection (2) only if section 6(2) applies.	
22	New sections 38A and 38B inserted	35
	After section 38, insert:	

38A Professional development programmes for practising social workers	
(1) For the purpose of maintaining, examining, or improving the competence of all practising social workers, the Board may, from time to time, set or recognise <u>professional development programmes, ways of undertaking professional development, including any of the following ways:</u>	5
(a) <u>passing any examinations or assessments, or both:</u>	
(b) <u>completing a period of practical training:</u>	
(c) <u>completing a period of practical work experience:</u>	
(d) <u>undertaking a period of supervised practice:</u>	
(e) <u>undertaking a course of instruction:</u>	10
(f) <u>undertaking a systematic process for ensuring that the social worker's practice, or the practice of each of the social workers in the class, meets the required standard of competence.</u>	
(2) A professional development programme may apply to <u>The Board may require</u> a specified social worker, a specified class of social workers, or all social workers to <u>undertake a particular form of professional development, for example, a particular course of instruction.</u>	15
(3) A professional development programme may require a specified social worker, a specified class of social workers, or all social workers to do 1 or more of the following, within a period, or at intervals, prescribed in the programme:	20
(a) pass any examinations or assessments, or both:	
(b) complete a period of practical training:	
(c) complete a period of practical work experience:	
(d) undertake a period of supervised practice:	
(e) undertake a course of instruction:	25
(f) adopt and undertake a systematic process for ensuring that the practice of a social worker meets the required standard of competence.	
(4) The Board may exempt any social worker or class of social workers from any professional development programmerequirement <u>requirement under subsection (2).</u>	
(5) When setting or recognising professional development programmes <u>ways of undertaking professional development, or when requiring that a particular form of professional development be undertaken</u> , the Board must be guided by the principle that professional development should not impose undue costs on practising social workers or their employers.	30
38B Mandatory requirement for employers to report to Board if social worker believed not to be competent	35
(1) An employer who employs 1 or more social workers and who believes on reasonable grounds that a particular social worker is not competent to practise	

	must, after fulfilling his or her duty under subsection (2) , promptly report that belief to the Board.	
(1)	<u>An employer who employs 1 or more social workers and who, after fulfilling his or her duty under subsection (2), believes on reasonable grounds that a social worker is not competent to practise must promptly report that belief to the Board.</u>	5
(2)	Before reporting to the Board, the employer must take reasonable steps to assist the social worker to improve his or her competency, including by way of professional development.	
(3)	A report to the Board must—	10
	(a) be in writing; and	
	(b) state the reasons why the employer believes that the social worker is not competent to practise or cannot perform satisfactorily the functions required to practise as a social worker; and	
	(c) describe the action (if any) the employer has taken to assist the social worker and the outcome of this the assistance.	15
(4)	No civil, criminal, or disciplinary proceedings may be taken against a person who makes a report under this section, unless that person has acted in bad faith.	
23	Section 39 amended (Reviews of competence to practise social work)	
	In section 39(1), after “social work”, insert “, including if the Board receives information that reflects adversely on the social worker’s competence, for example, a report under section 38B ”.	20
24	Section 44 repealed (Registered social workers to complete assessments every 5 years)	
	Repeal section 44.	25
25	Section 45 amended (Actions if registered social worker fails assessment)	
	In section 45(1)(b)(ii), delete “or practising certificate”.	
26	Cross-heading above section 47 replaced	
	Replace the cross-heading above section 47 with:	
	<i>Fitness to practise and serious misconduct</i>	30
27	Section 47 amended (Fitness to practise social work)	
	Replace section 47(1) and (2) with:	
(1)	The Board may find a person (A) is not a fit and proper person to practise as a social worker only if it is satisfied that there are grounds on which a reasonable person would conclude that A is not a fit and proper person to practise as a social worker.	35

- (2) The Board may be satisfied that those grounds exist if 1 or more of the following circumstances occur:
- (a) A has not satisfied the Board that he or she is able to communicate effectively for the purposes of practising as a social worker: 5
 - (b) A has not satisfied the Board that his or her ability to communicate in and comprehend English is sufficient to protect the health and safety of the public: 5
 - (c) A has been convicted, in New Zealand or overseas, of an offence punishable by imprisonment of 3 months or more, and the Board is satisfied that the nature and circumstances of the offence reflect adversely upon his or her fitness to practise as a social worker: 10
 - (d) the Board is satisfied that A is unable to ~~perform satisfactorily~~ satisfactorily perform the functions required to practise as a social worker because of a mental or physical condition: 10
 - (e) the Board is satisfied on reasonable grounds that A is not of good character or reputation: 15
 - (f) professional disciplinary proceedings are being taken against A in New Zealand or overseas, and the Board considers on reasonable grounds that those proceedings reflect adversely upon ~~his or her~~ A's fitness to practise as a social worker: 20
 - (g) A is subject to an investigation in New Zealand or overseas (for example, an investigation by the Health and Disability Commissioner) relating to any matter that may lead to the taking of professional disciplinary proceedings against ~~him or her~~ A, and the Board considers on reasonable grounds that the investigation reflects adversely upon ~~his or her~~ A's fitness to practise as a social worker: 25
 - (h) a finding or an order has been made against A in professional disciplinary proceedings or an investigation, and ~~he or she~~ A has not satisfied the Board that the finding or order does not reflect adversely upon ~~his or her~~ A's fitness to practise as a social worker: 30
 - (i) the Board is satisfied on reasonable grounds that A may endanger the health or safety of a member or members of the public.

28 New section 47A inserted (Mandatory requirement for employers to report serious misconduct allegations to Board)

After section 47, insert:

47A Mandatory requirement for employers to report serious misconduct allegations to Board

- (1) An employer who employs 1 or more social workers and who believes on reasonable grounds that a social worker has engaged in serious misconduct must, promptly, report that belief to the Board. 40

- (2) A report to the Board must—
- (a) be in writing; and
 - (b) state the circumstances of the alleged serious misconduct; and
 - (c) describe the action (if any) the employer has taken in relation to the allegation. 5
- (3) In this section, **serious misconduct** means conduct by a social worker that—
- (a) has an unduly adverse ~~effect~~effect, or is likely to have an unduly adverse ~~effect~~effect, on the well-being of any person with whom the social worker comes into contact in the course of his or her ~~practise~~practice as a social worker; or 10
 - (b) reflects adversely on the social worker’s fitness to be a social worker; or
 - (c) may bring the social work profession into disrepute.
- (4) No civil, criminal, or disciplinary proceedings may be taken against a person who makes a report under this section, unless that person has acted in bad faith.
- 29 Section 48 amended (Consideration of fitness to practise social work) 15**
- (1) After section 48(a), insert:
- (aa) promptly after receiving an application by the person for a practising certificate that has been referred by the Registrar under section 30(1)(b)(iii) or **(2A)**; and
- (2) In section 48(b), after “promptly after”, insert “receiving a report under **section 47A** or”. 20
- 30 Section 49 amended (Action if Board considers registered social worker not fit and proper)**
- (1) In section 49(1), after “after”, insert “receiving a report under **section 47A** or”. 25
- (2) In section 49(2)(b) and (5), delete “or practising certificate”.
- 31 Section 50 amended (Board to ask Police for information, and consider convictions)**
- (1) Replace the heading to section 50 with “**Board to ask for Police vet, and consider convictions and other information**”. 30
- (2) In section 50, delete “must”.
- (3) Replace section 50(a) and (b) with:
- (a) must obtain a Police vet from the Police Vetting Service; and
 - (aa) may require the person to comply with Police requirements for that purpose; and 35

- (b) must consider any criminal convictions (whether in New Zealand or overseas) and other information disclosed to the Board by the Police; or otherwise known to the Board.
- (4) In section 50, insert as subsection (2):
- (2) ~~However, if an application for a practising certificate is referred to the Board by the Registrar under section 30(1)(b)(iii) or **(2A)**, the Board may not request a Police vet under section 50—~~ 5
- (a) ~~if a Police vet of the applicant has been done within the preceding 3 years; and~~
- (b) ~~unless other concerns about the person’s fitness to practise have been raised with the Board.~~ 10
- (2) However, if an application for a practising certificate is referred to the Board under section 30(1)(b)(iii) or **(2A)**, the Board may not request a Police vet if a Police vet of the applicant under this section has been done within the preceding 3 years, unless other concerns about the person’s fitness to practise have been raised with the Board. 15
- 32 Section 51 amended (Notification of conditions affecting ability to practise social work)**
- (1AA) In the heading to section 51, replace “Notification” with “Reporting”.
- (1) Replace section 51(1) with: 20
- (1) A person who believes that a social worker may be unable to ~~perform satisfactorily~~satisfactorily perform the functions required to practise as a social worker may report that belief to the Board.
- (1A) A social worker who believes on reasonable grounds that another social worker is unable to ~~perform satisfactorily~~satisfactorily perform the functions required to practise as a social worker because of a mental or physical condition must, promptly, report that belief to the Board. 25
- (1B) A failure to report under **subsection (1A)** may constitute professional misconduct and be the subject of a complaint to the Board under section 59.
- (1C) An employer who employs 1 or more social workers and who believes on reasonable grounds that a particular social worker may be unable to ~~perform satisfactorily~~satisfactorily perform the functions required to practise as a social worker because of a mental or physical condition must, promptly, report that belief to the Board. 30
- (1D) A report to the Board under **subsection (1A) or (1C)** must— 35
- (a) be in writing; and
- (b) state the reasons for the social worker’s or employer’s belief; and
- (c) if the report is made under **subsection (1C)**, describe the action (if any) the employer has taken in relation to the allegation.

- (2) Replace section 51(2) and (3) with:
- (2) No civil, criminal, or disciplinary proceedings may be taken against a person who makes a report under this section, unless that person has acted in bad faith.
- (3) **Subsection (2)** applies even if the report contains information relating to a person other than the social worker. 5
- 33 Section 52 amended (Power to seek medical advice)**
- (1AA) In section 52(1), replace “notifying” with “reporting to”.
- (1) Replace section 52(2) with:
- (2) A ~~notice~~report under section 51 must include a copy or (if a copy is not available) a description of any medical advice obtained. 10
- 33A Section 53 amended (Notice to be put before chairperson)**
- (1) In the heading to section 53, replace “Notice” with “Report”.
- (2) In section 53, replace “notice” with “report”.
- 34 Section 54 repealed (Interim suspensions)**
- Repeal section 54. 15
- 35 Section 55 amended (Power to order medical examination)**
- (1AA) In section 55(1), replace “a notice” with “a report”.
- (1) In section 55(1), replace “perform adequately the functions required to practise social work satisfactorily” with “~~perform satisfactorily~~satisfactorily perform the functions required to practise as a social worker”. 20
- 36 Section 56 amended (Conduct and consequences of examination)**
- In section 56(3), replace “practise social work satisfactorily” with “practise satisfactorily as a social worker”.
- 37 Section 57 amended (Restrictions may be imposed because of condition)**
- (1) In section 57(2)(b)(ii), replace “or practising certificate” with “for a period that the Board considers is reasonably necessary to protect the public”. 25
- (2) In section 57(3)(a)(i), replace “perform adequately the functions required to practise social work satisfactorily” with “~~perform satisfactorily~~satisfactorily perform the functions required to practise as a social worker”.
- (3) In section 57(3)(b), replace “practise social work satisfactorily” with “practise satisfactorily as a social worker”. 30
- 38 New sections 57A and 57B and cross-heading inserted**
- After section 57, insert:

Interim suspension of registration or imposition of conditions on registration or practising certificate while Board considers competence, fitness, or serious misconduct issue

- 57A Interim suspension of registration or imposition of conditions on registration or practising certificate** 5
- (1) This section applies whenever and however an issue of competence, fitness, or serious misconduct comes to the attention of the Board unless, in the particular case, a medical examination is ordered under section 55.
- (2) The Board may direct the Registrar to suspend the registration of a social worker if the Board considers on reasonable grounds that,— 10
- (a) because of competence issues, the social worker’s practice poses a risk of serious harm to the public; or
- (b) the social worker may be unable to ~~perform satisfactorily~~satisfactorily perform the functions required to practise as a social worker because of a mental or physical condition; or 15
- (c) an investigation under this Act or the Health and Disability Commissioner Act 1994, or a criminal proceeding, relating to the social worker is underway and a reasonable doubt is raised about that person’s competence or whether the person is a fit and proper person to practise as a social worker. 20
- (3) The Board may, if the requirements of **subsection (2)** are met, instead of directing the suspension of a social worker’s registration, direct the Registrar to make the social worker’s registration or practising certificate, or both, subject to conditions stated by the Board.
- (4) The registration of the social worker may be suspended or conditions may be imposed on the social worker’s registration or practising certificate, or both,— 25
- (a) for a period of not more than 10 working days from the date on which a copy of the direction is given to the social worker; and
- (b) for a further period of 10 days, if that is reasonable and necessary to allow either further investigation or a medical examination to take place. 30
- 57B Requirements for direction under section 57A**
- (1) A direction under **section 57A** must—
- (a) be in writing; and
- (b) state why it has been given; and
- (c) state that the social worker may respond to the direction; and 35
- (d) be signed by the chairperson.

- (2) The Registrar must take all reasonably practicable steps to ensure that a copy of the direction is given to the social worker as soon as is practicable after it is given.
- (3) The interim suspension or imposition of conditions does not take effect until the social worker is given a copy of the direction. 5

39 Section 58 amended (Revocation of restrictions)

- (1) Replace the heading to section 58 with “**Revocation of suspension or restrictions**”.
- (2) In section 58(1), replace “section 54 or section 57” with “section 57 or **57A**”.
- (3) In section 58(1)(a) and (b), replace “practise social work satisfactorily” with “practise satisfactorily as a social worker”. 10
- (4) In section 58(2), replace “section 57” with “section 57 or **57A**”.

40 New section 58A and cross-heading inserted

After section 58, insert:

Setting conditions on revocation of suspension of registration 15

58A Conditions on revocation of suspension of registration

- (1) This section applies if a social worker’s registration has been suspended under section 45(1)(b)(ii), 49(2)(b), 57(2)(b)(ii), or 133(6)(b)(i).
- (2) The Board may set conditions that must be satisfied by the social worker before the Board will consider revoking the suspension. 20
- (3) The conditions may include any or all of the following:
- (a) a condition that the person undertake a specified course of education or training;
 - (b) a condition that the person undergo—
 - (i) any specified medical examination and treatment; or 25
 - (ii) any specified psychological or psychiatric examination, counselling, or therapy;
 - (c) a condition that the person attend any specified course of treatment or therapy for alcohol or drug abuse;
 - (d) any other condition designed to address the matter that gave rise to the suspension of the person’s registration. 30
- (4) The Board must not impose a condition under **paragraph subsection (3)(b) or (c)** unless the person consents to the examination, treatment, counselling, or therapy concerned.
- (5) **Subsection (3)** does not limit **subsection (2)**. 35

41	Section 60 replaced (Registrar to notify Tribunal of complaints)	
	Replace section 60 with:	
60	Registrar to notify Board of complaints	
	The Registrar must notify the Board in writing of a complaint under section 59(1)(b).	5
42	Section 63 replaced (Notification of convictions)	
	Replace section 63 with:	
63	Notification of convictions	
(1)	This section applies to the Registrar of a court in New Zealand in which a person; whom the Registrar knows is a social worker registered under this Act; is convicted of an offence punishable by imprisonment for a term of 3 months or longer.	10
(2)	The Registrar must send a notice of the conviction to the Board, unless the court expressly orders otherwise.	
43	Section 65 replaced (Referral of complaints and notices of conviction to complaints assessment committee)	15
	Replace section 65 with:	
65	Referral of complaints and notices of conviction to professional conduct committees	
(1)	As soon as is reasonably practicable after being notified of a complaint, the Board must refer it to a professional conduct committee, unless—	20
(a)	the Board and the Health and Disability Commissioner agree that it does not need to be pursued (in the case of a complaint relating to a matter over which the Board and the Commissioner both have jurisdiction); or	
(b)	the Board is satisfied that it does not need to be pursued (in any other case).	25
(2)	The Board must refer a notice of conviction given under section 63 to a professional conduct committee as soon as is reasonably practicable after receiving it.	
(3)	As soon as is reasonably practicable after the Board has decided whether to refer a complaint to a professional conduct committee, the Registrar must give the social worker concerned written notice of—	30
(a)	the Board's decision; and	
(b)	the particulars of the complaint.	
(2)	<u>As soon as is reasonably practicable after the Board has decided whether to refer a complaint to a professional conduct committee, the Registrar must give the social worker concerned written notice of—</u>	35
(a)	<u>the Board's decision; and</u>	

	(b) <u>the particulars of the complaint.</u>	
(3)	<u>As soon as is reasonably practicable after receiving a notice of conviction given under section 63, the Board must refer it to a professional conduct committee.</u>	
(3A)	<u>As soon as is reasonably practicable after the Board has referred a notice of conviction to a professional conduct committee, the Registrar must give the social worker concerned written notice that the Board has done so.</u>	5
(4)	If the Board receives more than 1 complaint or notice of conviction relating to the same social worker (whether at the same time or at different times), the Board may refer both or all of the complaints or notices of conviction to the same professional conduct committee.	10
44	Cross-heading above section 66 replaced	
	Replace the cross-heading above section 66 with:	
	<i>Professional conduct committees</i>	
45	Section 66 amended (Complaints assessment committees)	15
(1)	Replace the heading to section 66 with “ Professional conduct committees ”.	
(2)	In section 66(1) and (3), replace “chairperson of the Tribunal”, with “Board”.	
(3)	Repeal section 66(2).	
(3A)	<u>In section 66(3)(a), replace “committee’s” with “committee”.</u>	
(4)	In section 66(5), replace “chairperson” with “Board”.	20
46	New sections 68A and 68B inserted	
	After section 68, insert:	
68A	Power to call for information or things	
(1)	If the requirements in subsection (2) are satisfied <u>met</u> , a professional conduct committee may, by notice in writing, require any person to produce to the committee any papers, documents, records, or things.	25
(2)	Those requirements are <u>The requirements are that—</u>	
(a)	the members of the committee believe on reasonable grounds that the exercise of the power is necessary to enable the committee to carry out its functions; and	30
(b)	the person has failed to comply with a previous request to produce to the committee, within a reasonable time, the papers, documents, records, or things; and	
(c)	the members of the committee believe on reasonable grounds that—	
(i)	it is not reasonably practicable to obtain the information from another source; or	35

- (ii) for the purposes of performing its functions, it is necessary to obtain the papers, documents, records, or things to verify or refute information obtained from another source.
- (3) The production notice may specify a date by which the papers, documents, records, or things must be produced to the committee, which must not be less than 10 working days after the notice is given to the person. 5
- 68B Compliance with production notice**
- (1) A person who receives a production notice under **section 68A** must comply with the notice in the manner and by the date specified in the notice.
- (2) No charge may be made for complying with a production notice. 10
- (3) ~~However, a~~ person who receives a production notice is not required to produce any paper, document, record, or thing—
- (a) if it would be privileged in a court of law; or
- (b) if disclosure would breach an obligation of secrecy or non-disclosure imposed on the person by an enactment (other than the Official Information Act 1982 or the Privacy Act 1993). 15
- 47 Section 71 amended (Determination of complaint by complaints assessment committee)**
- (1) In the heading to section 71, after “**complaint**”, insert “**or notice of conviction**”. 20
- (2) Replace section 71(1)(b) with:
- (b) in the case of a complaint, the committee should—
- (i) submit it to conciliation or mediation; or
- (ii) recommend that the Board direct the social worker to apologise to the complainant; or 25
- (iii) recommend that the Board censure the social worker; or
- (iv) recommend that the Board refer the allegations to the Police for investigation; or
- (v) recommend that the Board direct the social worker to undertake 1 or more of the following: 30
- (A) training;
- (B) mentoring;
- (C) counselling; or
- 48 Section 73 amended (Conciliation)**
- (1) Replace the heading to section 73 with “**Conciliation and mediation**”. 35
- (2) Replace section 73(1) with:

- (1) If a professional conduct committee has decided that it should submit a complaint to conciliation,—
- (a) it may—
 - (i) act as the conciliator; or
 - (ii) appoint an independent person (who must not be a member of the committee or of the Board) to act as the conciliator; and
 - (b) it, or the conciliator (if one is appointed), must try to help the social worker and the complainant to resolve the complaint by agreement.
- (1A) If a committee refers a case to mediation, it must appoint an independent mediator. 5
- (1B) ~~The~~A conciliator (if the committee is not acting as the conciliator) or a mediator must report back to the committee on the outcome of the conciliation meeting or mediation. 10
- 49 Section 79 amended (Hearings of Tribunal to be public)**
- After section 79(2), insert: 15
- (2A) An application need not be made for, and, except as provided in **section 80(6A)**, an order must not be made to vary, the automatic suppression of certain evidence under **section 80(6)**.
- 50 Section 80 amended (Special protection for certain witnesses)**
- (1) Replace section 80(1) with: 20
- (1) This section applies to evidence to be given at a hearing of the Tribunal by—
- (a) a witness (including a complainant) aged under 18 years; or
 - (b) any other witness (including a complainant) if the evidence—
 - (i) relates to or involves a sexual matter; or
 - (ii) in the Tribunal’s opinion, relates to or involves some other matter that may require the witness to give intimate or distressing evidence. 25
- (2) In section 80(3) and (4), replace “If the witness” with “If the witness is aged under 18 years, or is a witness described in **subsection (1)(b)** and”.
- (3) Replace section 80(6) with: 30
- (6) No person may publish—
- (a) any particulars likely to lead to the identification of a witness described in **subsection (1)**; or
 - (b) an account or a report of the evidence of the witness, including the whole or any part of any books, papers, documents, or other things produced at the hearing relating to that evidence. 35

- (6A) However, the Tribunal may make an order allowing publication of the matters described in **subsection (6)** if—
- (a) a complainant—
 - (i) is aged 18 years or over (whether or not he or she was under 18 years when the matters that are the subject of his or her evidence occurred or when he or she gave evidence); and
 - (ii) applies to the Tribunal for the order; and
 - (b) the Tribunal is satisfied that the complainant understands the nature and effect of the application.
- (4) Repeal section 80(7). 10
- 51 Section 82 amended (Grounds on which Tribunal may make order)**
- (1) In section 82(2)(b), replace “employed or engaged as a social worker” with “practising as a social worker”.
 - (2) In section 82(2)(b), after “practising certificate”, insert “; or”.
 - (3) After section 82(2)(b), insert: 15
 - (c) fails to report to the Board as required by **section 51(1A)**; or
 - (d) commits an act or omission that, in the opinion of the Tribunal, has brought or is likely to bring discredit to the social work profession.
- 52 Section 83 amended (Penalties)**
- (1) In section 83(1)(a)(i), replace “12 months” with “3 years”. 20
 - (2) After section 83(1)(c), insert:
 - (ca) an order that he or she apologise to the complainant:
 - (3) Replace section 83(2) with:
 - (2) The Tribunal must not make an order cancelling a social worker’s registration unless it has first considered suspension or the imposition of conditions on the person’s registration. 25
- 53 Section 99 amended (Functions of Board)**
- (1AA) After section 99(1)(g), insert:
- (ga) to review social workers’ fitness to practise:
- (1AB) Repeal section 99(1)(m). 30
- (1) In section 99(1)(o), replace “perform adequately the functions required to practise social work satisfactorily” with “~~perform satisfactorily~~ satisfactorily perform the functions required to practise as a social worker”.
 - (2) After section 99(1)(o), insert:

- (oa) to set criteria for reporting ~~serious misconduct and for reporting on competence issues~~ serious misconduct or issues of competence or fitness to practise:
- (ob) to consider recommendations of professional conduct committees under section 71 relating to particular social workers and, if the Board agrees with the recommendation or recommendations in any case (as relevant), do 1 or more of the following: 5
- (i) direct the social worker to apologise to the complainant:
- (ii) censure the social worker:
- (iii) refer the allegations to the Police for investigation: 10
- (iv) direct the social worker to undertake 1 or more of the following:
- (A) training:
- (B) mentoring:
- (C) counselling:
- (3) After section 99(1), insert: 15
- (1A) When recognising educational qualifications under subsection (1)(f), the Board must be guided by the following principles:
- (a) the qualification must be necessary to protect members of the public; and
- (b) the number and types of qualifications recognised must not be so limited as to unnecessarily restrict the registration of persons as social workers; and 20
- (c) undue costs should not be imposed on persons seeking to be registered as social workers or on the public.
- (4) Repeal section 99(1)(m). 25
- 54 Section 104 amended (Review of operation of Act)**
- Replace section 104(1)(b) with:
- (b) consider whether any amendments to this Act are necessary or desirable; and
- 55 Section 106 amended (Membership)** 30
- (1) Replace section 106(1) with:
- (1) The Board comprises—
- (a) 4 social workers (not being social workers whose registration is suspended); and
- (b) 3 other people. 35
- (2) Repeal section 106(2).

56 Section 116 amended (Membership of Tribunal)

Replace section 116(1) with:

- (1) The Tribunal comprises the following members appointed by the Minister:
 - (a) a chairperson and a deputy chairperson (who must each be a barrister or solicitor of the High Court of not less than 7 years' practice, whether or not the person holds or has held judicial office); and 5
 - (b) 5 social workers; and
 - (c) at least 1 layperson.

57 Section 117 amended (Suitability of certain people to be appointed)

- (1) In section 117, replace “section 116(1)(a)(iii)”, with “**section 116(1)(b)**”. 10
- (2) In section 117, replace “Board” with “Minister”.
- (2A) In section 117(a), replace “his or her qualifications” with “the person’s qualifications”.
- (3) Repeal section 117(b).

58 Section 118 amended (Removal of members)

15

- (1) In section 118(1) and (2), replace “Board” with “Minister” in each place.
- (2) In section 118(2), replace “his or her removal” with “the person’s removal”.

59 Section 119 amended (Hearings by Tribunal)

Replace section 119(1) with:

- (1) For the purposes of a particular hearing, the Tribunal comprises,— 20
 - (a) as presiding officer, the chairperson of the Tribunal or a deputy chairperson chosen by the chairperson; and
 - (b) of the 5 members who are social workers appointed under **section 116(1)(b)**, 3 members chosen by the chairperson; and
 - (c) the layperson appointed under **section 116(1)(c)** or, if 2 or more persons are appointed, 1 of those persons chosen by the chairperson. 25

60 Section 129 amended (Revision of Register)

Replace section 129(2) with:

- (2) The Registrar must ask by letter addressed to the social worker at his or her last known address and sent by any form of prepaid delivery service that requires an acknowledgement of receipt of delivery from the person to whom it is addressed. 30

61 Section 132 amended (Cancellation of registration on Board’s direction)

After section 132(1), insert:

- (1A) The Board must not give a direction unless— 35

- (a) it is satisfied that the Registrar has made reasonable efforts to give the social worker—
- (i) written notice of the Board’s reasons for proposing to ~~do so~~ give the direction; and
 - (ii) a copy of any written information on which the Board is relying; and
 - (iii) a written ~~statement~~ summary of any other information on which the Board is relying; and
 - (iv) written notice ~~that~~ giving the social worker ~~has a~~ reasonable opportunity to make written submissions and to be heard on the matter, either personally or by a representative; and
- (b) ~~if the Registrar has succeeded,~~ the Board has then—
- (i) ~~has~~ given the social worker a reasonable opportunity to make written submissions and to be heard on the matter, either personally or by a representative; and
 - (ii) ~~has~~ considered any written or oral submissions that were made to it ~~within a reasonable time after the social worker was given the notice under~~ **paragraph (a)(iv)**.
- (1B) A person exercising his or her right to be heard personally is entitled to be accompanied by 1 person of his or her choice who agrees to attend.

62 Section 146 amended (Publication of orders)

In section 146(4), replace “or subsection (3) anything in respect of which an order has been made under section 79(2) or section 80(6)”, with “or (3) anything that is the subject of an order under section 79(2) or the particulars or evidence described in **section 80(6)**”.

62A Section 147 amended (Regulations)

- (1) In section 147(1), delete “either or both of”.
- (2) After section 147(1)(a), insert:
 - (aa) regulating the use of identification by social workers when dealing with members of the public:

63 Section 148 amended (Offences)

- (1) Replace section 148(2) and (3) with:
- (2) A person who contravenes **section 6AAA(1) or (2)** commits an offence and is liable on conviction to a term of imprisonment not exceeding 3 months or a fine not exceeding \$10,000, or both.
- (1A) After section 148(2), insert:
- (3) A person who knowingly contravenes **section 6AAA(3)** commits an offence and is liable on conviction to a fine not exceeding \$10,000.

- (2) Replace section 148(4) with:
- (4) A person commits an offence, and is liable on conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding \$10,000, or both, if the person holds an employee or a professional associate out as a social worker, knowing that the employee or associate— 5
- (a) is not a social worker registered under this Act; or
 - (b) is a social worker registered under this Act—
 - (i) whose registration is suspended; or
 - (ii) who does not hold a current practising certificate; or
 - (iii) who holds a current practising certificate that is suspended. 10
- (3) In section 148(5), replace “Every registered social worker” with “A social worker”.
- (4) After section 148(5), insert:
- (6) A person commits an offence, and is liable on conviction to a fine not exceeding \$2,000, if the person receives a production notice under **section 68B** and— 15
- (a) refuses or fails without reasonable excuse to comply with the notice; or
 - (b) knowingly or recklessly provides information that is false or misleading in any material particular.
- (7) A person commits an offence, and is liable on conviction to a fine not exceeding \$2,000, if the person intentionally and without lawful excuse publishes any information in breach of a suppression order made under section 79(2)(b) to (d) or in breach of **section 80(6)**. 20
- 64 New section 148A inserted (Failure by employer to report to Board not offence)** 25
- After section 148, insert:
- 148A Failure by employer to report to Board not offence**
- An employer who fails to report to the Board as required by **section 38B, 47A, or 51(1C)** does not commit an offence.
- 65 Consequential amendments to principal Act** 30
- ~~Amend the provisions of the principal Act as set out in **Schedule 1**.~~
- (1) Amend the provisions in the principal Act as set out in **Parts 1, 3, and 4 of Schedule 1**.
 - (2) Amend the provisions in the principal Act as set out in **Part 2 of Schedule 1**.

66 New Schedule 1AA inserted

Insert the **Schedule 1AA** set out in **Schedule 2** of this Act as the first schedule to appear after the last section of the principal Act.

67 Schedule 1 amended

- (1) In Schedule 1, after clause 2(2)(b)(i), insert: 5
- (ia) employers of social workers; and
- (1A) In Schedule 1, replace clause 10(1) with:
- (1) A member who was a social worker registered under this Act when last appointed vacates office if his or her registration is cancelled or suspended.
- (2) In Schedule 1, replace clause 37(1) with: 10
- (1) At any meeting of the Board, the quorum necessary for transacting business is 4 members, of whom—
- (a) at least 2 must be social workers; and
- (b) at least 1 must not be a social worker.

68 Schedule 2 amended

- (1) In ~~Schedule 2~~, clause 3(1), ~~(2)~~, and (3), replace “Board” with “Minister”. 15
- (2) In ~~Schedule 2~~, clause 3(3)(a) and (b), replace “Board’s” with “Minister’s”.
- (3) ~~R~~In Schedule 2, replace clause 9(1)(b) with:
- (b) by posting it by letter addressed to the social worker at his or her usual place of residence or business and sent by any form of prepaid delivery service that requires an acknowledgement of receipt of delivery from the person to whom it is addressed. 20

Part 2**Amendments to other Acts****69 Consequential amendment to Health and Disability Commissioner Act 1994** 25

- (1) This section amends the Health and Disability Commissioner Act 1994.
- (2) In section 2(1), definition of **health practitioner**, replace paragraph (b) with:
- (b) includes—
- (i) a former health practitioner within the meaning of that section; 30
- and
- (ii) a person who was conditionally or unconditionally registered, or has held a certificate of registration, under a former health registration enactment; and

- (iii) a person who is receiving training or gaining experience under the supervision of a health practitioner; and
- (iv) a social worker within the meaning of the Social Workers Registration Act 2003

- 70 Amendment to Criminal Records (Clean Slate) Act 2004** 5
- (1) This section amends the Criminal Records (Clean Slate) Act 2004.
 - (2) After section 19(3)(d), insert:
 - (da) the Social Workers Registration Board is considering whether the eligible individual is a fit and proper person to be registered or to practise as a social worker under the Social Workers Registration Act 2003; or 10

Schedule 1
Consequential amendments to principal Act

s 65

Part 1

**Amendments consequential on change of term registered social
worker to social worker** 5

Subpart 1—Replacing “registered social worker” with “social worker”

Replace “registered social worker” with “social worker” in the following provisions:

Section 4, definition of particular condition	10
Section 20(1) in each place	10
Section 22(1) and (3)	
Section 26(1)	
Section 27(3)(a)	
Section 38(1)(b)(ii)	
The section 45 heading <u>Heading to section 45</u>	15
Section 45(1) and (2)	
The section 49 heading <u>Heading to section 49</u>	
Section 49(1), (2), and (3)	
Section 55(1)	
Section 57(1)	20
Section 59(1)	
Section 62	
Section 66(1)(a) and (2)	
Section 69	
Section 70(1)	25
Section 71(1)(a)	
Section 72(1)(a)	
Section 75(1)	
Section 76(1)	
Section 77(1)	30
Section 78(1)	
Section 82(1), (2), (3), and (4)	
Section 83(1)(a)(i)	

Section 84(1)	
Section 95(1)	
Section 108(1)(h)	
Section 109(1)	
Section 125(1) and (2)	5
Section 126	
Section 127(1)	
Section 128(1) and (3) in each place	
Section 129(1) and (3)	
Section 131(1) and (7)	10
Section 132(1)	
Section 133(1), (2), (6)(b)(ii), and (7)	
Section 140 in each place	
Schedule 1, clause 10(1), (1)(a), (2), (3), and (4) in each place	
Schedule 2, clause 15	15
Subpart 2—Replacing “registered social workers” with “social workers”	
Replace “registered social workers” with “social workers” in the following provisions:	
Section 3(b)(ii)	
Section 4, definition of particular condition	20
Section 29(1)	
The section 59 heading <u>Heading to section 59</u>	
Section 66(1)(a)	
Section 99(1)(d), (h), (n), (o), and (p)(ii)	
Section 105(1)(a)	25
Section 115(a) and (b)	
Section 135(2)	
Subpart 3—Replacing “registered social worker’s” with “social worker’s”	
Replace “registered social worker’s” with “social worker’s” in the following provisions:	
Section 21(1)	
Section 24	
Section 39(1) and (2)	

Section 40(1)	
Section 41(1)	
Section 133(6)(b)(i)	
Section 134	
Section 138(1)(a)(i), (ii), (iii), (iv), (v), and (vi) and (b)(i)	5

Part 2

Amendments consequential on change to mandatory registration for social workers

Subpart 1—Replacing “practise social work” with “practise as a social worker”	10
Replace “practise social work” with “practise as a social worker” in the following provisions:	
Section 6(a), (b), and (c)(i) and (ii)	
Section 7(a)(i) and (ii), (c)(i) and (ii), (f), (g), and (h)	
Section 11(1)(a)	15
Section 13(1)(b)(ii), (iii), and (iv)(A) and (B)	
Section 15(a), (c), and (d)	
Section 30(1)(b)(iii) and (2A)	
The section 38 heading <u>Heading to section 38</u>	
Section 38(1)(b)(i) and (3)	20
The section 39 heading <u>Heading to section 39</u>	
Section 39(1) and (2) in each place	
Section 40(1) and (1)(a)(i) and (ii)	
Section 41(1)	
Section 42(1)(a)	25
The section 47 heading <u>Heading to section 47</u>	
Section 47(3) and (3)(b)	
The section 48 heading <u>Heading to section 48</u>	
Section 48	
Section 49(1)(a) and (b) and (5)(b)	30
Section 50	
The e <u>Cross-heading above section 51</u>	
The section 51 heading <u>Heading to section 51</u>	
Section 71(1)(a)	

Section 131(8)

Subpart 2—Replacing “practising social work” with “practising as a social worker”

Replace “practising social work” with “practising as a social worker” in the following provisions: 5

Section 6(d)

Section 7(e)

Section 13(1)(b)(i) and (iv)

Section 30(1)(b)(ii)

Section 129(1)(a) and (3) 10

Part 3

Amendments consequential on change in name of complaints assessment committees to professional conduct committees

Subpart 1—Replacing “complaints assessment committee” with “professional conduct committee” 15

Replace “complaints assessment committee” with “professional conduct committee” in the following provisions:

Section 66(1)(a) and (b), (3), (4), and (5)

Section 67(1)

Section 68 20

Section 69 in each place

~~The section 70 heading~~ Heading to section 70

Section 70(1)

~~The section 71 heading~~ Heading to section 71

Section 71(1) 25

Section 72(1), (2), and (3)

Section 74

Section 75(1)(b), (2)(a), (5), and (6)

Section 76(1)(a)

Section 77(2) 30

Section 83(1)(e)(ii) and (iii)

Section 86(1)(a)(ii)

Section 88(2) and (3)(c) in each place

Section 141(1)(c)

Section 143 in each place

Section 144(1)

Subpart 2—Replacing “complaints assessment committees” with
“professional conduct committees”

Replace “complaints assessment committees” with “professional conduct committees” in the following provisions: 5

~~The section 143 heading~~ Heading to section 143

Section 147(1)(a)

Part 4

Amendments consequential on transfer of functions from Tribunal to Board 10

Subpart 1—Replacing “Tribunal” with “Board”

~~R~~In the heading to section 62, replace “Tribunal” with “Board” in the following provision:

~~The heading to section 62~~ 15

Subpart 2—Replacing “chairperson of the Tribunal” with “Board”

Replace “chairperson of the Tribunal” with “Board” in the following provisions:

Section 62

Section 64(1)(a) and (b)

Section 69

20

Section 70(1)

Subpart 3—Replacing “chairperson” with “Board”

~~R~~In section 70(2), replace “chairperson” with “Board” in the following provision:

~~Section 70(2)~~

Schedule 2
New Schedule 1AA inserted

s 66

Schedule 1AA
Transitional, savings, and related provisions

5

s 4A

Part 1
Provisions relating to Social Workers Registration Legislation Act 2017

- 1 Registration based on practical experience under section 13 following commencement of mandatory registration provisions and before repeal of section 13** 10
- (1) For the purpose of this clause, **commencement date** means the date on which **section 8** of the Social Workers Registration Legislation Act **2017** comes into force. (That section inserts new **sections 6AAA and 6AAB** into this Act, which require mandatory registration for social workers.) 15
- (2) This clause applies to a person who makes an application to be registered as a social worker based on practical experience under section 13 of this Act on or after the commencement date if the Board considers that— 20
- (a) the criteria in section 13 are likely to be met by the applicant; but
- (b) it cannot make a final decision about full registration until further information is provided to it by 1 or both of the following means: 25
- (i) the production of additional evidence on any matter relevant to the application by the applicant:
- (ii) the completion of a competence assessment by the applicant.
- (3) The Board may decide that the applicant can be registered temporarily while further information is obtained and provided to the Board, and—
- (a) section 11 of this Act applies; and
- (b) section 15 of this Act does not apply.
- 2 Registration of persons based on practical experience under section 13 following repeal of section 13** 30
- (1) For the purpose of this clause, **commencement date** means the date on which **section 10** of the Social Workers Registration Legislation Act **2017** comes into force. (That section repeals section 13 of this Act.)

- (2) **Subclause (3)** applies to a person who was registered as a social worker based on practical experience under section 13 of this Act before the commencement date.
- (3) The person's registration continues to have effect on and after the commencement date as if the person had been registered under section 12 of this Act, subject to the other provisions of this Act (as the Act reads on and after the commencement date). 5
- (4) **Subclause (5)** applies to a person who makes an application to be registered as a social worker based on practical experience under section 13 before the commencement date but the application has not been decided by the Board by the commencement date. 10
- (5) The application must be considered on or after the commencement date under the criteria in section 13 as it read immediately before the commencement date.
- 2A Complaints assessment committees**
- (1) For the purpose of this clause, **commencement date** means the date on which **section 45** of the Social Workers Registration Legislation Act 2017 comes into force. 15
- (2) This clause applies to a complaints assessment committee that has been appointed but has yet to make a determination about a complaint or notice of conviction that has been referred to it, or is considering any other matter, immediately before the commencement date. 20
- (3) Despite anything to the contrary in this Act, a complaints assessment committee is to be treated on and after the commencement date as a professional conduct committee under this Act.
- (4) A complaint or notice of conviction that is being considered by a complaints assessment committee and is yet to be determined immediately before the commencement date must be determined under section 71 as it reads on and after the commencement date. 25
- (5) Any other matter being considered by a complaints assessment committee and that is yet to be concluded immediately before the commencement date must be dealt with under the provisions of this Act as those provisions read on and after the commencement date. 30
- (6) Any determination made and any other thing done by a complaints assessment committee before the commencement date is to be treated as if it were done by a professional conduct committee under this Act. 35
- 3 Continuation of membership of Board**
- (1) For the purpose of this clause, **commencement date** means the date on which **section 55** of the Social Workers Registration Legislation Act **2017** comes into force.

- (2) This clause applies to a person who is a member of the Board immediately before the commencement date.
- (3) Despite anything to the contrary in this Act, including in section 106 as it reads on and after the commencement date, the person continues as a member of the Board until the expiry of his or her term or until the occurrence of any of the events described in section 45 of the Crown Entities Act 2004. 5
- 4 Continuation of membership of Tribunal**
- (1) For the purpose of this clause, **commencement date** means the date on which **section 56** of the Social Workers Registration Legislation Act **2017** comes into force. 10
- (2) This clause applies to a person who is the chairperson, a deputy chairperson, or other member of the Tribunal immediately before the commencement date.
- (3) Despite anything to the contrary in this Act, including in section 116 as it reads on and after the commencement date, the person—
- (a) continues as the chairperson or a deputy chairperson until his or her term of appointment expires; or 15
- (b) continues as a member until 5 years has elapsed since the date on which he or she was appointed in accordance with section 118(1)(b) of this Act.

Legislative history

9 August 2017
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 8 November 2017

Introduction (Bill 297–1)
 First reading and referral to Social Services Committee
 Reinstated before Social Services and Community Committee