



# **Inquiry into the operation of the Social Workers Registration Act 2003**

Report of the Social Services Committee

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(Alfred Ngaro, Chairperson)  
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*Presented to the House of Representatives*

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# Inquiry into the operation of the Social Workers Registration Act 2003

## Summary of recommendations

The Social Services Committee makes the following recommendations to the Government:

- 1 That it make registration mandatory for social workers (page 12).
- 2 That it permit only registered social workers to practise social work, as defined in a legislative instrument (Order in Council or regulations) (page 13).
- 3 That it permit only registered social workers to use the title “social worker” (page 13).
- 4 That it introduce a particular form of registration for social work students (page 13).
- 5 That it require social workers to practise in accordance with scopes of practice to be developed by the Social Workers Registration Board and as prescribed by notice in the Gazette (page 13).
- 6 That it:
  - (a) retain, for a one-year transitional period only, registration on the basis of practical experience under section 13 of the Social Workers Registration Act 2003, and
  - (b) confirm that the removal of section 13 after a transitional period would not affect the validity of the registration of social workers who, before that section is removed, have obtained full registration on the basis of section 13 (page 15).
- 7 That it remove the requirement for social workers who have a recognised New Zealand qualification to carry out competence assessments when applying for registration and at five-year intervals (page 16).
- 8 That it enable the Social Workers Registration Board to require social workers to carry out competence programmes or assessments in specified circumstances, such as where concerns have been raised about their competence, or for social workers with overseas qualifications (page 16).
- 9 That it require social workers to complete, each year, a number of hours as specified in regulations of continuing professional development approved by the Social Workers Registration Board. We recommend that this continuing

- professional development include a proportion of cultural competence development, as appropriate (page 16).
- 10 That it require the Social Workers Registration Board to recognise only qualifications that produce graduates with the cultural competence required to practise social work in New Zealand (page 17).
  - 11 That, in light of recommendation 9, the Government remove the requirement for social workers who have a recognised New Zealand qualification to complete cultural competence assessments (page 17).
  - 12 That it additionally enable the Social Workers Registration Board to require social workers to carry out cultural competence programmes or assessments in specified circumstances, such as where concerns have been raised about their cultural competence, or for social workers with overseas qualifications (page 17).
  - 13 That it require the Social Workers Registration Board to recognise only qualifications that produce graduates with the communication skills required to practise social work in New Zealand (page 17).
  - 14 That it enable the Social Workers Registration Board to assess a social worker's communication skills in specified circumstances, such as where concerns have been raised about their communication skills, or for social workers with overseas qualifications that were not in English (page 17).
  - 15 That it expand and clarify the definition of fitness to practise by removing the current partial prescription from legislation and empowering the Social Workers Registration Board to prescribe criteria or prerequisites to assess whether someone is a fit and proper person to practise social work (page 20).
  - 16 That it require the Social Workers Registration Board, when determining an applicant's fitness to practise social work, to do a full Police check, including convictions normally withheld under the Criminal Records (Clean Slate) Act 2004, discharges without conviction, and family violence reports (page 20).
  - 17 That it empower the Social Workers Registration Board to review a social worker's fitness to practise at any time (page 24).
  - 18 That it empower the Social Workers Registration Board to take the following actions where, after review, concerns are identified about a social worker's fitness to practise:
    - (a) refuse to issue a practising certificate
    - (b) impose conditions on a social worker's practising certificate
    - (c) if the review was carried out on direction from a complaints assessment committee, refer the matter back to the same complaints assessment committee

- (d) if the review was not carried out on direction from a complaints assessment committee, refer the matter to a complaints assessment committee (page 24).
- 19 That it require the Social Workers Registration Board to assess social workers' fitness to practise both at the time of applying for registration and on applying for practising certificates (page 25).
- 20 That it empower the Social Workers Registration Board to choose from the following actions, in addition to its existing options, when notified of concerns about a social worker's ability to perform their work adequately:
- (a) suspend or impose conditions on the social worker's practising certificate or registration on an interim basis until the concerns are addressed
- (b) review the social worker's fitness to practise
- (c) refer the matter to a complaints assessment committee (page 25).
- 21 That it require registered social workers and their employers to notify the Social Workers Registration Board when they have reason to believe that:
- (a) because of a mental or physical condition, a registered social worker cannot adequately perform the functions needed to satisfactorily practise social work
- (b) a registered social worker is not a fit and proper person to practise social work
- (c) a registered social worker may pose a risk of harm to the public because they do not have the competence required to practise social work
- (d) a registered social worker has breached the social workers' code of conduct or has committed another disciplinary offence or a criminal offence under the Social Workers Registration Act 2003 (page 26).
- 22 That it change the name "complaints assessment committee" in the Social Workers Registration Act 2003 to "professional conduct committee" (page 27).
- 23 That it assign responsibility for receiving and assessing complaints, and appointing and reconstituting complaints assessment committees, to the Social Workers Registration Board (page 27).
- 24 That it require the Social Workers Registration Board to screen notifications of criminal convictions against social workers and decide whether to refer them to a complaints assessment committee (page 28).
- 25 That it expand the investigative powers of complaints assessment committees to include powers to request and require documents or information to be provided to them (page 29).

- 26 That it empower complaints assessment committees to consider other conduct or matters relating to social workers that come to their attention during their investigation (page 29).
- 27 That it expand the options available to complaints assessment committees when determining the outcome of their investigations, to include:
- (a) directing an apology from the social worker to the complainant
  - (b) appointing an independent person to act as a conciliator
  - (c) directing mediation of the complaint, including to the Employment Relations Authority mediation process
  - (d) referring the subject matter of the complaint to the New Zealand Police
  - (e) censuring the social worker
  - (f) directing the social worker to undergo training, counselling, or mentoring (page 29).
- 28 That it require that the chairperson and deputy chairperson of the Social Workers Complaints and Disciplinary Tribunal are lawyers (page 31).
- 29 That it require Social Workers Complaints and Disciplinary Tribunal panels to be made up of the chairperson or deputy chairperson of the tribunal, three members who are registered social workers, and one lay member (page 31).
- 30 That it widen the definition of “professional misconduct” in section 82(2) of the Social Workers Registration Act 2003 to include any conduct that has brought or that is likely to bring discredit on the social work profession (page 32).
- 31 That it amend the Social Workers Registration Act 2003 to allow the Social Workers Complaints and Disciplinary Tribunal to cancel a social worker’s registration on any ground of discipline, including removing the threshold of “gross or severe” professional misconduct before registration can be cancelled for professional misconduct (page 33).
- 32 That it expand the sanctions available to the Social Workers Complaints and Disciplinary Tribunal, to include powers to:
- (a) suspend a social worker for a period of up to three years
  - (b) take any course of action that is available to a complaints assessment committee (page 33).
- 33 That it make it clear that, except in interim situations, cancellation or suspension affects a social worker’s registration rather than their practising certificate and that cancellation or suspension of registration automatically cancels or suspends a practising certificate (page 34).

- 34 That it ensure that, whenever cancellation of registration is available against a social worker, the lesser sanctions of suspension and imposition of conditions are also available (page 34).
- 35 That it empower the Social Workers Registration Board and/or the Social Workers Complaints and Disciplinary Tribunal to impose, in conjunction with suspension, conditions on a social worker's return to practise (page 34).
- 36 That it allow immediate interim suspension or conditions to be imposed on a social worker when there are reasonable grounds to believe that:
- (a) the social worker is not competent or fit to practise social work or is not able (for example, because of a physical or mental condition) to perform adequately the functions required to practise social work satisfactorily, and
  - (b) the suspension or conditions are reasonably necessary in light of the purposes of the Social Workers Registration Act 2003 (page 35).
- 37 That it remove from legislation the 10-day time limit for interim extensions (page 35).
- 38 That it examine the legislative options to determine which would be the best means for implementing these recommendations (page 36).
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# 1 Introduction

As part of a wider ministerial review of the operation of the Social Workers Registration Act 2003, the Minister for Social Development presented an issues paper to us. The paper identified and discussed key issues with the current operation of the Act, including its relationship with other legislation, such as the Vulnerable Children Act 2014.

The Minister asked us to consider these issues and the options for addressing them, with a view to making recommendations to the Government for legislative reform.

In this context, the terms of reference for this inquiry were to consider:

- whether registration of social workers should be mandatory, and the potential challenges to registration at present
- the adequacy of current competence assessments and other prerequisites for registration
- how fitness to practise social work is assessed by the Social Workers Registration Board
- the level of oversight of social workers by the board
- the process and powers of the complaints assessment committee
- the adequacy of grounds of discipline and sanctions available to the Social Workers Complaints and Disciplinary Tribunal
- the appropriateness of suspension and cancellation of registration and practising certificates as sanctions for non-compliance.

## Current process for registering social workers

The Act enables a person to apply to the Social Workers Registration Board to be registered as a social worker. The board must decide whether the person is competent and a fit and proper person to practise social work.

Registered social workers must hold a practising certificate to practise social work. In certain circumstances, the board can put conditions on a social worker's registration or practising certificate. Practising certificates must be renewed every year.

Registered social workers are subject to oversight and discipline from the board, the tribunal, and, in some cases, the Health and Disability Commissioner.

Registering as a social worker is voluntary. Anybody can use the title "social worker", and statistics show that people do.

According to the board, there were almost 6,000 registered social workers in November 2016. Census information from 2013 shows that about 18,000 people identified as "social workers" in a wide definition that includes occupations such as health promotion officer,

community worker, family support worker, youth worker, and disabilities services officer. The number of people who identified as “social workers” in 2013, based on a narrower definition, was 6,128.<sup>1</sup>

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<sup>1</sup> The 2013 census figure of 18,330 social workers was based on the wide NZSCO99 (New Zealand Standard Classification of Occupations 1999) definition of social work. The narrow definition of “social worker” was based on ANSCO (Australian and New Zealand Standard Classification of Occupations).

## 2 Mandatory registration

For the reasons outlined below, we agree with most submitters that social worker registration should be mandatory.

### Registration in other professions

We were advised on how other professions approach registration. We particularly looked at health practitioners, teachers, and lawyers, who, like social workers, interact with children and adults needing personal help. Members of these professions must be registered before they may carry out certain work.

#### Health practitioners

Doctors, nurses, chiropractors, dieticians, dentists, dental hygienists and therapists, medical radiation technologists, medical laboratory scientists, midwives, occupational therapists, optometrists, osteopaths, pharmacists, physiotherapists, podiatrists, and psychologists are among the professions regulated by the Health Practitioners Competence Assurance Act 2003.

Each of these professions is governed by an authority as set out in the Health Practitioners Competence Assurance Act. The authorities' role includes defining the scope of their profession.

Registered health practitioners only may use titles and descriptions identifying them as that kind of professional. They may perform only services that are in their "scope of practice", and they must have a practising certificate to practise.

Certain activities (for example, surgical procedures) can be practised only by registered practitioners. It is an offence for an unregistered person to perform them or to imply that they are willing to do so.

#### Teachers

In order to be engaged in a teaching position (as defined in the Education Act 1989), teachers must be registered and must hold a practising certificate. Teachers are subject to the disciplinary oversight of the Education Council.

#### Lawyers

Under the Lawyers and Conveyancers Act 2006, it is an offence for lawyers who do not hold a practising certificate to provide legal services or to hold themselves out to be lawyers.

#### Social workers

In 2003, when Parliament was considering the Social Workers Registration Bill, relatively few social workers had formal qualifications. We believe that, 13 years later, there are

enough professional social workers with formal qualifications to support mandatory registration.

Mandatory registration provides an assurance of competence, accountability, and fitness to practise. It would help to protect public safety, and it would enhance the professionalism of social workers. These are two purposes of the Act.

### **Who should be registered?**

A major question is who should have to register as a social worker.

It would make sense to require registration of those doing certain defined work, rather than just those with the title “social worker”. This would remove the ability to circumvent the requirement to register by simply changing job title while doing the same job. Also, it would prevent people in non-social-work roles, which should not be covered, from using the title “social worker”.

We are aware that many people use the title “social worker” even though they are not performing what we consider should be defined as social work. If registration becomes mandatory, these people would have to start using different titles, such as “social service worker” or “support worker”, to better describe their occupation.

Reserving the title “social worker” for registered social workers would help make sure that only those who meet the criteria for registration can purport to be a social worker.

Also, some people working in positions that would be defined as social work do not use the title “social worker”. These people should be required to register.

We consider that social work students should also be registered. A special student registration, with appropriate criteria and restrictions, would help to protect public safety during student placements.

### **Defining social work**

The tribunal has developed a body of case law about whether a person is considered to be practising social work. This could be continued if registration becomes mandatory.

Alternatively, legislation could set out the definition. This would have the advantage of being seen as more easily accessible to the public than case law. However, we do not consider a statutory definition of social work to be essential; we would be comfortable if the definition continued to develop under case law.

It would be useful if the board could prescribe general and specialist scopes of practice within the definition of social work, similar to the authorities’ role in health professions. This would allow for additional prerequisites in certain areas of social work, such as social workers exercising statutory powers or performing statutory functions. It would also allow for specialisation after further post-qualification education.

## **Recommendations**

1 We recommend that the Government make registration mandatory for social workers.

2 We recommend that the Government permit only registered social workers to practise social work, as defined in a legislative instrument (Order in Council or regulations).

3 We recommend that the Government permit only registered social workers to use the title “social worker”.

4 We recommend that the Government introduce a particular form of registration for social work students.

5 We recommend that the Government require social workers to practise in accordance with scopes of practice to be developed by the Social Workers Registration Board and as prescribed by notice in the *Gazette*.

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## 3 Competence and other prerequisites for registration

### Current registration process

Applicants are entitled to be registered as social workers under the Act if the board is satisfied that they:

- have a recognised New Zealand or overseas qualification
- are competent to practise social work
- are fit and proper to practise social work
- are competent to practise social work with Māori and other ethnic and cultural groups
- have gained enough practical experience, which the board has prescribed as 2,000 hours of supervised social work practice.

The first three points (qualification, competence, and fitness to practise) are the core prerequisites. We discuss qualifications, competence, and other prerequisites in this chapter and fitness in the next.

### Practical experience instead of formal qualifications

If a social worker does not have an appropriate qualification, section 13 of the Act provides that they can be registered if their “practical experience in practising social work in New Zealand is enough to compensate for the lack of such a qualification”.

We find it acceptable for social workers to rely on their practical experience if they entered the profession before the Act came into force and before social work qualifications were readily available.

However, it is time to remove this protection for new social workers. It is now good practice for organisations hiring social workers who have recently entered the profession to choose those who have a recognised tertiary qualification in social work.

We consider it appropriate to gradually phase out the recognition of practical experience. It is fair to allow a transitional period during which social workers could apply for registration under section 13. This would clarify the expectation that those who are newly entering the profession should have a qualification, while allowing a limited time for those with practical social work experience to register.

## Recommendation

6 We recommend that the Government:

- (a) retain, for a one-year transitional period only, registration on the basis of practical experience under section 13 of the Social Workers Registration Act 2003, and
- (b) confirm that the removal of section 13 after a transitional period would not affect the validity of the registration of social workers who, before that section is removed, have obtained full registration on the basis of section 13.

### Competence assessments should be removed

The requirement under Part 3 of the Act to complete a competence assessment is in addition to having an appropriate qualification. Social workers must repeat the competence assessment every five years to keep their practising certificates.

This requirement is peculiar to social work. Other regulated professions, such as health practitioners, teachers, and lawyers, have no practical assessment as a prerequisite to registration (or admission to the bar in the case of lawyers).

When deciding which qualifications to recognise, the board assesses the professional competence that is taught in social work courses. If a social worker has passed a course that the board recognises, we consider it prudent to assume that they are competent. We note that, since 2008, the board has not required new graduates to do the separate competence assessment before they apply for registration. However, new graduates must complete a competence assessment within two years of completing their qualification.

We are aware that the board intends to replace five-yearly competence re-certification with a process based on the social worker's critical reflection in their continuing professional development (CPD) log. As discussed below (see recommendation 9), CPD should be a requirement for all social workers. The board intends to audit CPD hours along with critical reflection. The yearly CPD hours requirement would ensure that registered social workers address their competence on an ongoing basis rather than once every five years.

We note also that the board is developing proposals to strengthen its oversight of new social workers. We mention this below, under cultural competence, although it also applies here because the proposals aim to improve social worker competence generally.

Further, the board's oversight of registered social workers, including disciplinary and complaints processes, means that the board can review the competence of a social worker at any time.

We believe that it would be appropriate to assume that a formally qualified social worker is competent until cause for concern arises, in which case the relevant processes would be engaged.

We note, too, that, if registration becomes mandatory, competence assessments would take up much of the board's time and resources because of the increase in applications.

## Recommendations

7 We recommend that the Government **remove the requirement for social workers who have a recognised New Zealand qualification to carry out competence assessments when applying for registration and at five-year intervals.**

8 We recommend that the Government enable the Social Workers Registration Board to require social workers to carry out competence programmes or assessments in specified circumstances, such as where concerns have been raised about their competence, or for social workers with overseas qualifications.

## Continuing professional development

As with other professions, it is good practice for social workers to continue to develop professionally as their career progresses. CPD maintains and enhances a person's knowledge, expertise, and competence. It takes into account the needs of the individual, their employer, the profession, and society. It is related to current work and to future career development.

Social workers should be required to complete at least 20 hours of CPD per year. We support continuing the current requirement for registered social workers to record their CPD activities.

## Recommendation

9 **We recommend that the Government require social workers to complete, each year, a number of hours as specified in regulations of continuing professional development approved by the Social Workers Registration Board. We recommend that this continuing professional development include a proportion of cultural competence development, as appropriate.**

## Cultural competence

Currently, the board assesses every applicant's competence to practise social work with Māori and other ethnic and cultural groups. This is called cultural competence.

We are aware that the board is examining competence assessment, including cultural competence, as part of the wider review of the Act. It is developing proposals for:

- a kaitiakitanga<sup>2</sup> framework within social work education and social work practice to assess and strengthen, at a deeper level than prescribed in the Act, social workers' competence to work with Māori
- support and assessment in the first year of practice to further educate, supervise, and mentor new social workers.

We look forward to learning about the board's final proposals for the kaitiakitanga framework and extra oversight of new social workers. We expect the proposals to help raise the level of cultural competence so that all social workers can work comfortably and successfully with families and children from all ethnicities.

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<sup>2</sup> Guardianship, taking care of.



We consider that, in combination with these proposals and recommendation 9 above about CPD, it would be enough for the board to consider, in deciding which qualifications it recognises, whether a qualification includes components that would mean a graduate would have cultural competence.

The board should still be able to require formal cultural competence assessments for people without a recognised New Zealand qualification—especially those with overseas qualifications.

We note that applicants under section 13 have their cultural competence assessed as part of that process.

### Recommendations

10 We recommend that the Government require the Social Workers Registration Board to recognise only qualifications that produce graduates with the cultural competence required to practise social work in New Zealand.

11 In light of recommendation 9, we recommend that the Government remove the requirement for social workers who have a recognised New Zealand qualification to complete cultural competence assessments.

12 We recommend that the Government additionally enable the Social Workers Registration Board to require social workers to carry out cultural competence programmes or assessments in specified circumstances, such as where concerns have been raised about their cultural competence, or for social workers with overseas qualifications.

### Communication skills

The board considers communication skills to be an aspect of being a fit and proper person to practise social work. We consider that communication skills fit better with competence than with fitness to practise.

The board presumes that applicants have good communication skills if their qualification was taught and assessed in the English language. Other applicants must satisfy the board that they can communicate well in English.

We find that the best way to assess communication skills is the same as that recommended for cultural competence: for the board, in assessing qualifications, to consider whether a course will produce graduates with the appropriate communication skills and to recognise only those courses.

### Recommendations

13 We recommend that the Government require the Social Workers Registration Board to recognise only qualifications that produce graduates with the communication skills required to practise social work in New Zealand.

14 We recommend that the Government enable the Social Workers Registration Board to assess a social worker's communication skills in specified circumstances, such as

where concerns have been raised about their communication skills, or for social workers with overseas qualifications that were not in English.

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## 4 Fitness to practise

Fitness to practise is another prerequisite for social worker registration. We have chosen to discuss fitness in a chapter of its own because it goes to the foundation of a person's character and suitability for social work. This is in contrast to competence, which, as mentioned in the previous chapter, can often be ascertained from the fact that a person has gained a recognised social work qualification.

### Better defining fitness to practise

The concept of fitness to practise is complicated by the way it is partially prescribed in the Act. Under section 47, the board may find a person not fit and proper to practise social work if they:

- have been convicted of an offence punishable by imprisonment for three months or more, the nature and circumstances of which reflect adversely on their fitness to practise
- are unable to perform adequately the functions required to practise social work satisfactorily, or
- are not of good character and reputation.

We believe that the legislation should provide a more complete definition of fitness to practise. Either it could be entirely detailed in legislation or the legislation could provide an overarching definition, with details set out by the board.

We note that health practitioners are considered unfit for registration if they have mental or physical health issues that make it inappropriate for them to practise. Under the Health Practitioners Competence Assurance Act, a person is unfit for registration if they are “unable to perform the functions required for the practice of that profession because of some mental or physical condition”.<sup>3</sup>

This is a good starting point for fitness to practise social work, and it should be expanded beyond just physical or mental health. In examining whether an applicant is a fit and proper person to practise social work, the board should consider:

- any mental or physical health issues
- their criminal history (discussed below)
- whether they have been professionally disciplined, here or overseas, at work or at an educational institution, in a way that reflects adversely on their fitness to practise
- whether they have practised social work in breach of obligations to register or to hold a practising certificate
- public safety

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<sup>3</sup> Health Practitioners Competence Assurance Act 2003, section 16(d).

- whether they display respect towards
  - people
  - the cultural and social values of New Zealand
  - the law
  - the views of others
- whether they uphold the public and professional reputation of social workers
- their reliability and trustworthiness in carrying out duties.

### **Recommendation**

15 We recommend that the Government expand and clarify the definition of fitness to practise by removing the current partial prescription from legislation and empowering the Social Workers Registration Board to prescribe criteria or prerequisites to assess whether someone is a fit and proper person to practise social work.

### **Criminal offences**

To help the board decide whether a person is fit to practise, section 50 of the Act requires the board to ask the New Zealand Police whether the person has any criminal convictions.

It would be useful for the board to be informed of convictions normally withheld under the Criminal Records (Clean Slate) Act 2004 and family violence reports. This would allow it to be properly informed when assessing an applicant's fitness to practise social work. The information would be helpful because social work roles frequently involve interacting with children and other vulnerable people.

### **Recommendation**

16 We recommend that the Government require the Social Workers Registration Board, when determining an applicant's fitness to practise social work, to do a full Police check, including convictions normally withheld under the Criminal Records (Clean Slate) Act 2004, discharges without conviction, and family violence reports.

### **Safety checking under the Vulnerable Children Act 2014**

A person's ability to work safely with children is part of being fit to practise social work.

Part 3 of the Vulnerable Children Act is about checking that those who work with children are appropriate to do that work. "Safety checking" is required for children's workers who have regular or overnight contact with a child without a parent or guardian being present. These workers must be safety checked before they start work, then every three years.

Safety checking is limited to people working in certain publicly funded services, including

- care and protection coordination
- services arising out of decisions made at family group conferences
- social or support services

- home-based or residential disability support services.

The components of a safety check are set out in the Vulnerable Children (Requirements for Safety Checks of Children’s Workers) Regulations 2015. The safety check includes:

- confirming the identity of the person
- obtaining relevant information, including:
  - a police record
  - a chronological summary of work history for the last five years
  - the name of any professional organisation, licence, or registration that the person belongs to or holds, if relevant to the proposed children’s work
  - the name of at least one independent referee
- an interview with the person
- contacting at least one referee to ask for relevant information
- contacting at least one professional organisation that the person belongs to or holds a licence or registration from, to ask for relevant information
- an assessment of the risk that 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.

A periodic safety check is completed every three years after the first check. It requires:

- confirming whether the person has changed their name since the last safety check
- obtaining a police record
- obtaining the name of relevant professional organisations that the person belongs to or holds a licence or registration from
- contacting at least one such organisation to ask for relevant information
- performing the same risk assessment as for the initial safety check.

A “core worker” is a children’s worker who could be present alone with a child or who has primary responsibility for the child. Nobody may be a core worker if they have been convicted of a specified offence, including a child sex offence or a serious violence offence. However, a departmental chief executive may grant an exemption if they are satisfied that the worker will not pose an undue risk to the safety of children.

#### **Could safety checking be combined with the fitness assessment?**

The Vulnerable Children Act requirement on employers to check police records overlaps with the board’s requirement to check for convictions when determining a social worker’s fitness to practise.

We considered whether the safety-checking role and the role of assessing fitness to practise could be combined to increase efficiency. Could a social worker who is assessed as fit to practise also be considered to have passed a safety check under the Vulnerable Children

Act? Should fitness-to-practise checks be expanded so that they cover the Vulnerable Children Act checks?

We found that there are good reasons to keep these two checks separate.

Under the Vulnerable Children Act, safety checks are made with a particular employment role in mind. The employer is best placed to check a person's safety because they know the day-to-day activities needed in the particular role.

Also, not all social workers would come within the scope of the Vulnerable Children Act. Not every social worker will be a "children's worker" under the Vulnerable Children Act, either because of the kind of work they do or because of their employment situation. For example, the Vulnerable Children Act applies only to services that are provided or funded by State or local authorities.

Requiring the board to do Vulnerable Children Act checks would duplicate checks that employers should do and make the social worker registration process unnecessarily complex.

We conclude that it is better to keep the checks required for social worker registration separate from those required under the Vulnerable Children Act.

## 5 Oversight of social workers

### The board's oversight role

As well as registering social workers and issuing practising certificates, the roles of the board include:

- reviewing a registered social worker's competence at any time
- reviewing a registered social worker's fitness to practise when a complaints assessment committee decides it should
- receiving notifications of concern about a social worker's performance.

### Complaints process

The Act establishes the tribunal to process complaints against registered social workers and to administer discipline. The tribunal is made up of at least eight board-appointed members and one person appointed by the Minister. Board members are not allowed to be members of the tribunal.

Complaints assessment committees are appointed from time to time to examine complaints, convictions, or concerns about a social worker. Each committee consists of three people appointed by the chairperson of the tribunal in consultation with the board. Two of them are registered social workers. The other is a layperson.<sup>4</sup>

We examine the committee and tribunal processes in the following two chapters. In this chapter, we look at the board's role.

### Competence

When a social worker's competence is at issue, the board may review their competence. Under the Act, the board may do this at any time.

If necessary, the board may follow this with a formal competence assessment. If it finds that a social worker is no longer competent, the board may impose conditions on or suspend their registration or practising certificate.

### Fitness to practise

The board must assess a person's fitness to practise either when they apply for registration or when a complaints assessment committee directs the board to do so. This would happen after a complaint has been made against the social worker or they have received a conviction.

If fitness is assessed under the direction of a complaints assessment committee and concerns are identified, the board has two options: either it generates a new complaint or it

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<sup>4</sup> Social Workers Registration Act 2003, section 66.

suspends the social worker's registration or practising certificate. The board does not have the power to put conditions on the person's registration or practising certificate, or to refer the matter back to the original complaints assessment committee for further action. We think that these options should be available to the board because they may be the best course of action in some cases.

We note the circularity of making a complaint for a matter that was originally referred to the board by a complaints assessment committee. We make recommendations below to address this (recommendation 18(c) and (d)). See also recommendation 26, about enabling a complaints assessment committee to consider any concerns that come to its attention during an investigation.

### **Recommendations**

17 We recommend that the Government empower the Social Workers Registration Board to review a social worker's fitness to practise at any time.

18 We recommend that the Government empower the Social Workers Registration Board to take the following actions where, after review, concerns are identified about a social worker's fitness to practise:

- (a) refuse to issue a practising certificate
  - (b) impose conditions on a social worker's practising certificate
  - (c) if the review was carried out on direction from a complaints assessment committee, refer the matter back to the same complaints assessment committee
  - (d) if the review was not carried out on direction from a complaints assessment committee, refer the matter to a complaints assessment committee.
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### **Practising certificates**

Registered social workers apply to the board's registrar for practising certificates. The registrar issues the certificate, refuses to issue one, or refers the application to the board. If the application is referred, the board decides whether to issue a certificate or not and can impose conditions as it sees fit.

When a registered social worker applies for a practising certificate, the board is not required to consider whether the person is fit to practise social work. Under section 30 of the Act, the registrar must refer an application to the board if he or she suspects that the applicant is not a fit and proper person to practise social work. However, we believe that it would be proper to require the board (or its registrar) to expressly consider the question of fitness to practise for every application for a practising certificate.

Fitness to practise is essential for protecting public safety and for upholding professional standards. It should be assessed regularly, and the board should be able to act appropriately to ensure that registered social workers are fit and proper to practise. The opportune time to assess fitness is when social workers apply for their practising certificates.



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**Recommendation**

19 We recommend that the Government require the Social Workers Registration Board to assess social workers' fitness to practise both at the time of applying for registration and on applying for practising certificates.

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**Reporting concerns about a social worker**

A person who believes that a registered social worker is not able to adequately perform the functions necessary to practise social work satisfactorily may tell the registrar of the board. The registrar gives the information to the chairperson of the board for consideration at the board's next meeting.

If appropriate, the board may then suspend the social worker's registration for up to 10 days. It may also require the social worker to have a medical examination. Depending on the circumstances, if the board then considers that the matter should be dealt with urgently, it may suspend the social worker's registration or practising certificate (or both), or make them subject to conditions.

We consider that the options when suspending a registration or practising certificate should be expanded. For example, it would be useful if the board could state how long a suspension will be for. This would help to increase public safety and professional standards.

We discuss interim suspension further in chapter 8.

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**Recommendation**

20 We recommend that the Government empower the Social Workers Registration Board to choose from the following actions, in addition to its existing options, when notified of concerns about a social worker's ability to perform their work adequately:

- (a) suspend or impose conditions on the social worker's practising certificate or registration on an interim basis until the concerns are addressed
  - (b) review the social worker's fitness to practise
  - (c) refer the matter to a complaints assessment committee.
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**Mandatory reporting**

Social workers do not have to inform the board if they are concerned about a colleague's performance or conduct. We believe that such reporting should be mandatory.

We note that it is mandatory for health practitioners to tell their relevant authority when they are concerned about the performance of another health practitioner because of a mental or health condition. Lawyers are required to tell their governing body if they have concerns about the misconduct of another lawyer.

We consider that social workers should be subject to similar standards.

It should be mandatory for a social worker to swiftly inform the board of concerns about the suitability, competence, or conduct of a registered social worker. This would contribute to public safety and the maintenance of professional standards.

### **Recommendation**

21 We recommend that the Government require registered social workers and their employers to notify the Social Workers Registration Board when they have reason to believe that:

- (a) because of a mental or physical condition, a registered social worker cannot adequately perform the functions needed to satisfactorily practise social work
  - (b) a registered social worker is not a fit and proper person to practise social work
  - (c) a registered social worker may pose a risk of harm to the public because they do not have the competence required to practise social work
  - (d) a registered social worker has breached the social workers' code of conduct or has committed another disciplinary offence or a criminal offence under the Social Workers Registration Act 2003.
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## 6 Complaints assessment committees

Complaints assessment committees are appointed as and when needed. Their role is to look into complaints and convictions against a social worker. A new complaints assessment committee is established for each case.

### **Name of complaints assessment committees**

Complaints assessment committees are about more than just complaints. They consider complaints, convictions, or notifications from employers about alleged professional misconduct.

In our opinion, the name of these committees should properly reflect their scope. Health practitioners use “professional conduct committees”, and we think that this name would be appropriate in the social work profession.

### **Recommendation**

22 We recommend that the Government change the name “complaints assessment committee” in the Social Workers Registration Act 2003 to “professional conduct committee”.

### **Administration of the complaints process**

Complaints assessment committees are mainly administered by the tribunal. The chairperson of the tribunal:

- is notified of complaints by the registrar or by the Health and Disability Commissioner
- screens complaints before they are referred to a complaints assessment committee
- appoints complaints assessment committees and reconstitutes them if necessary.

Although the tribunal is primarily a judicial body, these tasks are largely administrative. We consider that it would be more appropriate for the board to be responsible for these tasks.

Also, some matters that go to a complaints assessment committee will end up being considered by the tribunal as a charge against the social worker. This raises the potential for conflicts of interest, because the chairperson of the tribunal has already received and screened the complaint. In doing so, they may have seen prejudicial information that is not presented to the tribunal when it later considers the charge.

### **Recommendation**

23 We recommend that the Government assign responsibility for receiving and assessing complaints, and appointing and reconstituting complaints assessment committees, to the Social Workers Registration Board.

**Screening convictions before they are referred**

Under section 63 of the Act, every conviction against a social worker punishable by three months' imprisonment or more is referred to the chairperson of the tribunal.

As noted above, complaints are screened before they are referred to a complaints assessment committee. However, notifications of convictions are referred to a complaints assessment committee without any screening.

We consider that convictions should be screened too. This would improve efficiency, because convictions that do not warrant referring would not go through the complaints assessment committee process.

Having the board, rather than the tribunal, screen convictions would be consistent with our recommendation that the board screen complaints. The board already assesses convictions in the context of fitness to practise. This positions it well to assess whether a conviction is of a nature or gravity that would warrant a complaints assessment committee considering it.

**Recommendation**

24 We recommend that the Government require the Social Workers Registration Board to screen notifications of criminal convictions against social workers and decide whether to refer them to a complaints assessment committee.

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**Preliminary investigation powers**

We considered whether investigative powers should be granted to the body in charge of screening complaints and convictions before they are referred to a complaints assessment committee.

Options included powers to contact and request information from the complainant, the social worker, or the employer.

We note that legislation regulating other professions does not include such detail.

We do not consider it necessary to specially grant investigative powers to the board in screening complaints and convictions. Too much specification could confine the board in its preliminary consideration of a matter.

**Complaints assessment committee powers**

A complaints assessment committee must consider and decide on a complaint or a conviction as soon as reasonably practicable after it is received. Committees have powers under section 71 of the Act:

- to carry out or arrange for any investigations they think necessary
- to take into account any investigations or assessments that have already been carried out
- to require a complaint to be supported by a statutory declaration.

Committees must give parties an opportunity to provide a written statement, and they may allow parties to appear in person.

We consider that the investigative powers of complaints assessment committees should be expanded. These powers would assist committees to perform their functions properly and make effective and informed assessments of the conduct or concerns referred to them.

They should include powers to require documents or information.

Committees should also be empowered to consider other matters about social workers that come to their attention during their investigation. This would allow concerns to be addressed properly and would also prevent the circular process of a case being sent back to the committee later.

### **Recommendations**

25 We recommend that the Government expand the investigative powers of complaints assessment committees to include powers to request and require documents or information to be provided to them.

26 We recommend that the Government empower complaints assessment committees to consider other conduct or matters relating to social workers that come to their attention during their investigation.

### **Possible outcomes of committee investigations**

Under section 71, complaints assessment committees have four options available to them when considering cases. They can decide:

- that the board should review the competence or fitness of the social worker
- that a complaint should be submitted to conciliation
- that a complaint or conviction should be submitted to the tribunal (in which case, the committee must frame an appropriate charge and lay it before the tribunal)
- that no further steps should be taken.

Expanding these options would be consistent with other professions and would ensure that committees can choose the best option for the wide range of circumstances they consider.

### **Recommendation**

27 We recommend that the Government expand the options available to complaints assessment committees when determining the outcome of their investigations, to include:

- (a) directing an apology from the social worker to the complainant
- (b) appointing an independent person to act as a conciliator
- (c) directing mediation of the complaint, including to the Employment Relations Authority mediation process

- (d) referring the subject matter of the complaint to the New Zealand Police
  - (e) censuring the social worker
  - (f) directing the social worker to undergo training, counselling, or mentoring.
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## 7 Social Workers Complaints and Disciplinary Tribunal

Functions of the tribunal include administering the complaints process and exercising disciplinary powers over registered social workers.<sup>5</sup>

Charges before the tribunal can come from a complaints assessment committee or from the Director of Proceedings under the Health and Disability Commissioner Act 1994.

Hearings convene as soon as reasonably practicable after charges are laid and are generally held in public.<sup>6</sup>

### Membership of tribunal

The tribunal consists of a chairperson, a deputy chairperson, a lawyer, and five other members appointed by the board, plus at least one layperson appointed by the responsible Minister.

Each charge is heard by a group of five members: the chairperson or deputy chairperson, the lawyer, two of the board-appointed members, and the Minister-appointed member.

The chairperson and deputy chairperson play a central role in regulating proceedings of the tribunal. Proceedings often involve issues of law, and decisions are similar to court judgments. A working legal knowledge is central to the process and outcomes of the tribunal.

The importance of legal knowledge leads us to conclude that the tribunal chairperson should be a lawyer. Having a lawyer as chairperson would help to ensure that hearings are conducted fairly and properly.

For the same reasons, we consider that the deputy chairperson should also be a lawyer.

### Recommendations

28 We recommend that the Government require that the chairperson and deputy chairperson of the Social Workers Complaints and Disciplinary Tribunal are lawyers.

29 We recommend that the Government require Social Workers Complaints and Disciplinary Tribunal panels to be made up of the chairperson or deputy chairperson of the tribunal, three members who are registered social workers, and one lay member.

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<sup>5</sup> Social Workers Registration Act 2003, section 115.

<sup>6</sup> Social Workers Registration Act 2003, sections 75(3) and 79.

### **Grounds for disciplining a social worker**

Under section 82 of the Act, the tribunal can penalise a social worker if it finds that the social worker has:

- been guilty of professional misconduct (discussed below)
- been guilty of conduct unbecoming of a social worker and reflecting adversely on their fitness to practise
- been convicted in court of an offence punishable by at least three months' imprisonment that was committed in circumstances that reflect adversely on their fitness to practise
- not complied with restrictions on their registration.

### **Professional misconduct**

Section 82(2) defines professional misconduct as

- breaching the code of conduct
- while working as a social worker, holding oneself out to be registered while not holding a current practising certificate.

In our view, this definition is too narrow. Professional conduct should be more broadly defined, to include conduct that has discredited or that is likely to discredit the profession. We note that this aligns with principle 9 of the social worker code of conduct, which is to maintain public trust and confidence in the social work profession.

The ability to interpret “professional misconduct” more broadly would align with the approach taken in other professions, such as health practitioners and lawyers.

### **Recommendation**

30 We recommend that the Government widen the definition of “professional misconduct” in section 82(2) of the Social Workers Registration Act 2003 to include any conduct that has brought or that is likely to bring discredit on the social work profession.

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### **Sanctions available to the tribunal when disciplining a social worker**

Under section 83 of the Act, the tribunal can choose one or more of the following penalties against a social worker whom it finds grounds for disciplining:

- cancelling registration (and requiring that certain conditions be satisfied before the social worker can reapply for registration)
- suspending registration for up to 12 months
- making an order that the social worker may work only in accordance with stated restrictions (such as employment restrictions or supervision) for up to three years
- censuring the social worker
- fining the social worker up to \$10,000
- requiring them to do additional training and/or professional development



- paying part or all of the costs and expenses related to the matter.

### **Drafting ambiguity**

We were advised of a drafting issue in section 83(2), which prohibits the tribunal from cancelling a social worker's registration "unless it finds him or her guilty of gross or severe professional misconduct".

One interpretation of this could be that the tribunal may cancel a social worker's registration only if it has found the social worker guilty of (gross or severe) professional misconduct: it may not cancel a registration on any of the other grounds of discipline in section 82. This interpretation inappropriately confines the tribunal's assessment of suitable penalties for particular misconduct.

We prefer the interpretation that gives better effect to the intent of sections 82 and 83: that, where a social worker has been found guilty of professional misconduct, their registration can be cancelled only if that misconduct was "gross or severe".

### **Recommendation**

31 We recommend that the Government amend the Social Workers Registration Act 2003 to allow the Social Workers Complaints and Disciplinary Tribunal to cancel a social worker's registration on any ground of discipline, including removing the threshold of "gross or severe" professional misconduct before registration can be cancelled for professional misconduct.

### **More sanctions should be available to the tribunal**

The strength and range of sanctions available to the tribunal are more limited than in other professions, such as health practitioners, teachers, and lawyers. We believe that they should be expanded.

The tribunal should be able to take any of the actions that we recommend be available to complaints assessment committees (see recommendation 27).

The tribunal should be able to suspend registration for longer than 12 months. Three years would be in line with sanctions available in other similar professions.

### **Recommendation**

32 We recommend that the Government expand the sanctions available to the Social Workers Complaints and Disciplinary Tribunal, to include powers to:

- (a) suspend a social worker for a period of up to three years
- (b) take any course of action that is available to a complaints assessment committee.

## 8 Suspending and cancelling practising certificates and registration

In this chapter, we discuss the provisions in the Act about suspending and cancelling either or both of registration or practising certificates. We look at the consistency of these provisions, including the appropriateness of suspension powers pending the assessment and determination of a complaint or charge against a social worker.

### Consistency needed for suspension and cancellation powers

There are many situations in which registration and practising certificates can be cancelled, be suspended, or become subject to conditions.<sup>7</sup> These are dotted throughout the Act, but the approach is inconsistent. For example, under section 49, the board can suspend registration or a practising certificate if it determines that a social worker is not fit to practise, but it does not have the option of imposing conditions.

We consider that the law relating to suspension and cancellation should be clearer. The board and the tribunal should have the full hierarchy of options open to them when considering what to do about misconduct or incompetence.

It would be useful if they could impose conditions, such as supervision requirements, to take effect at the end of a suspension period. Appropriate conditions would help to manage the social worker back into their role successfully.

Sanctions on registration and on practising certificates should be logical and consistent. For example, it should be clear that suspending a social worker's registration necessarily suspends their practising certificate.

### Recommendations

33 We recommend that the Government make it clear that, except in interim situations, cancellation or suspension affects a social worker's registration rather than their practising certificate and that cancellation or suspension of registration automatically cancels or suspends a practising certificate.

34 We recommend that the Government ensure that, whenever cancellation of registration is available against a social worker, the lesser sanctions of suspension and imposition of conditions are also available.

35 We recommend that the Government empower the Social Workers Registration Board and/or the Social Workers Complaints and Disciplinary Tribunal to impose, in conjunction with suspension, conditions on a social worker's return to practise.

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<sup>7</sup> They are listed in paragraph 281 of the Minister's Issues Paper.

### **Interim suspension**

We note that the board has a very limited interim suspension power. Essentially, it can make an interim suspension only when a person cannot practise social work satisfactorily because of a mental or physical health issue.

This does not cover all the situations it should. For example, immediate interim suspension should be available as a response to notification of a very serious criminal conviction or if a complaints assessment committee discovers information that could put public safety at risk.

We believe that the board and the tribunal should be able to impose immediate suspension when needed to protect public safety and maintain professional standards. This would enable immediate risks to be addressed while the complaints and disciplinary processes carry on.

Another flaw is that interim suspensions apply only for 10 days. This is not enough time for a complaint or concern about a social worker to be properly resolved. Interim suspensions should apply until the board is satisfied that the issue has been dealt with.

### **Recommendations**

36 We recommend that the Government allow immediate interim suspension or conditions to be imposed on a social worker when there are reasonable grounds to believe that:

- (a) the social worker is not competent or fit to practise social work or is not able (for example, because of a physical or mental condition) to perform adequately the functions required to practise social work satisfactorily, and
- (b) the suspension or conditions are reasonably necessary in light of the purposes of the Social Workers Registration Act 2003.

37 We recommend that the Government remove from legislation the 10-day time limit for interim extensions.

## 9 Summary and conclusion

We have inquired into the operation of the Act and its interaction with other legislation such as the Vulnerable Children Act 2014. We have concluded that there is need for legislative reform.

Our main recommendations for change are:

- that registration should be mandatory for social workers and social work students
- that social workers with a recognised New Zealand qualification should be presumed to be competent
- that social work registration on the basis of practical experience be phased out
- that a social worker's fitness to practise be assessed regularly
- that social workers and employers be required to notify the board if they have concerns about, among other things, a social worker's fitness to practise
- that the board's options be expanded when dealing with concerns about a social worker
- changes relating to complaints assessment committees and the tribunal.

We do not recommend any changes relating to safety checking under the Vulnerable Children Act 2014.

We note the need to ensure that cultural competence is a core requirement for social workers, and we encourage the board to continue developing its policies and processes in this area to improve current arrangements. In our view, this represents moving from a "tick box" exercise to more meaningful assessment.

### **Best means for achieving reform**

We note that there will be advantages and disadvantages in each of the main options for achieving our recommendations:

- amending the Social Workers Registration Act
- repealing and replacing the Social Workers Registration Act
- repealing the Social Workers Registration Act and incorporating social work into the Health Practitioners Competence Assurance Act
- amending the Social Workers Registration Act and incorporating social work partially into the Health Practitioners Competence Assurance Act.

### **Recommendation**

38 We recommend that the Government examine the legislative options to determine which would be the best means for implementing these recommendations.

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## **Appendix A**

### **Committee procedure**

The committee met between 1 June and 30 November 2016 to consider the inquiry. We called for public submissions with a closing date of 13 July 2016. We received 29 submissions from the organisations and individuals listed in Appendix B and heard oral evidence from seven submitters.

We received advice from the Ministry of Social Development and the Social Workers Registration Board.

### **Committee members**

Alfred Ngaro (Chairperson)

Darroch Ball

Matt Doocey

Hon Paul Goldsmith

Jan Logie

Jono Naylor

Dr Parmjeet Parmar

Maureen Pugh

Carmel Sepuloni

Phil Twyford

**Appendix B****List of submitters**

Anglican Trust for Women and Children  
Aotearoa New Zealand Social Workers Association  
Arthur J Curson (aka Buster)  
Barnardos NZ  
Barry Maher  
Birthright New Zealand  
Child, Youth and Family Services  
Corina Alipate  
Department of Social Work of the University of Auckland  
Emily Jones  
Erica Henderson  
Erin Meehan  
Fiona Gleeson  
Josephine Burgi  
Kieran O'Donoghue  
National Collective of Independent Women's Refuges  
New Zealand Council of Christian Social Services  
NZ Public Service Association  
Office of the Children's Commissioner  
Ray Calver  
Riripeti Halbert  
Robert William Walker  
Roger Ngahooro  
Sarah Boeh  
Social Service Providers Aotearoa  
Stand Children Services Tu Maia Whānau  
Susanne Croft  
Te Pūtahitanga o Te Waipounamu  
Whitireia Community Polytechnic