

# Social Workers Registration Bill

Government Bill

## Explanatory note

### General policy statement

This Bill establishes a regulatory framework for the registration of social workers in New Zealand. The framework will apply across all the sectors where social workers are employed – in government and non-government agencies, and in private practice.

The measures in the Bill are designed to protect the safety of members of the public by introducing a system for the registration of social workers. Registration will improve the quality of social work services, as fitness and competence to practise are key prerequisites to registration, and registered social workers will be made accountable for their practice through a new complaints and disciplinary process.

Provisions of the Bill relating to the proposed new Social Workers Registration Board (the **Board**) will come into force 12 months after assent, to allow time for its establishment. After the Board has been established, and an implementation period during which it will set standards and establish processes for registration and competence assessments, it will be in a position to accept and process applications for registration, and eventually to appoint a Complaints and Disciplinary Tribunal (the **Tribunal**) to consider complaints made against registered social workers.

The other operative provisions of the Bill will then be brought into force by Order in Council.

The Bill—

- establishes a regulatory framework for registration of all social workers in New Zealand based on an individual's competence and fitness to practise:

- establishes a disciplinary process, including a process for making complaints about a registered social worker:
- establishes a process for appealing against decisions relating to the registration of social workers:
- establishes a board to register social workers and promote the registration system:
- establishes a tribunal to consider complaints about registered social workers:
- establishes a register of social workers:
- provides for the promotion of the benefits of registration to government departments, other instruments of the Crown, other bodies and organisations that employ social workers, and the public, and among people practising as social workers.

### **Clause by clause analysis**

#### **Part 1**

##### **Preliminary**

*Clause 1* relates to the Bill's Title.

*Clause 2* provides for the Bill's commencement.

*Clauses 95 to 111 and Schedule 1* come into force 12 months after assent.

*Clauses 3 to 94 and 112 to 147, and Schedules 2 and 3,* will be brought into force by Order in Council.

The rest of the Bill comes into force on the day after assent.

*Clause 3* states the Bill's purpose, which is—

- to protect the safety of members of the public, by prescribing or providing for mechanisms to ensure that social workers are competent to practise, and accountable for how they practise:
- to create a framework for the registration of social workers in New Zealand, and establish a board to register social workers and a tribunal to consider complaints about registered social workers:
- to provide for the Board to promote the benefits of registration of social workers to departments of State, other instruments of the Crown, other bodies and organisations that employ social workers, and the public, and among social workers:

- to enhance the professionalism of social workers.

*Clause 4* defines certain terms used in the Bill.

*Clause 5* provides that the Bill binds the Crown.

## **Part 2**

### **Registration and practising certificates**

#### *Entitlement to registration*

*Clause 6* states the entitlement to registration of New Zealand-qualified social workers. A person who has a New Zealand qualification recognised by the Board is entitled to be registered if the Board is satisfied that he or she—

- has enough practical experience in practising social work; and
- is competent to practise social work; and
- is a fit and proper person to practise social work.

*Clause 7* states the entitlement to registration of overseas-qualified social workers. A person who does not have a New Zealand qualification recognised by the Board is entitled to be registered if the Board is satisfied that he or she—

- has an overseas qualification equivalent to a recognised New Zealand qualification; and
- either is registered or licensed as a social worker overseas, or has good reasons for not being registered or licensed overseas; and
- has satisfactorily completed training ensuring that he or she is competent to practise social work with different ethnic groups in New Zealand; and
- can speak and write English reasonably effectively, and understand spoken and written English reasonably well; and
- has enough practical experience in practising social work; and
- is competent to practise social work; and
- is a fit and proper person to practise social work; and
- intends to live and practise social work in New Zealand.

### *Applications*

*Clause 8* provides for the making of applications for registration.

*Clause 9* requires the Board to consider applications for registration, and decide—

- whether applicants should be registered; and
- if so, whether they should be registered fully, provisionally, or temporarily and whether they should be registered with or without restrictions or conditions.

*Clause 10* relates to provisional registration and its duration.

*Clause 11* relates to temporary registration and its duration. People registered temporarily must always be registered subject to restrictions relating to the institution or place where they intend to work.

### *Criteria*

*Clause 12* provides that applicants should be registered fully only if they meet the criteria in *clause 6 or clause 7*.

*Clause 13* is an exception to *clause 12*, and provides that applicants who do not have a recognised New Zealand qualification or an overseas equivalent may be registered fully if the Board is satisfied that—

- their practical experience in practising social work in New Zealand is enough to compensate for the lack of such qualifications; and
- they are competent to practise social work; and
- they are fit and proper people to practise social work.

*Clause 14* provides that applicants may be registered provisionally if they—

- are competent to practise social work; and
- are fit and proper people to practise social work; and
- meet some of the other criteria in *clause 6 or clause 7*, and are in the process of working towards meeting the rest of them; and
- in the case of applicants who have previously held a provisional certificate of registration, have already made satisfactory progress in working towards meeting all the criteria in *clause 6 or clause 7*, or have good reasons for not having made satisfactory progress in doing so.

*Clause 15* provides that applicants may be registered temporarily if they—

- are fit and proper people to practise social work; and
- can speak and write English reasonably effectively, and understand spoken and written English reasonably well; and
- will be visiting New Zealand temporarily, and wish to practise social work at a particular institution or place in New Zealand; and
- have enough knowledge and practical experience of social work to practise social work at the institution or place concerned.

*Clause 16* requires that if in the past the Tribunal has imposed conditions that a person must meet before being re-registered, those conditions must also be satisfied.

*Clause 17* requires the Board to give reasons if it decides that an applicant should be registered subject to restrictions or conditions, or should not be registered.

#### *Registration generally*

*Clause 18* requires the Registrar to register successful applicants.

*Clause 19* requires the Registrar to notify unsuccessful applicants of the Board's decision that they should not be registered, and its reasons for the decision.

*Clause 20* requires the Registrar to give successful applicants certificates of registration, on application and payment of the prescribed fee.

*Clause 21* provides that if a registered social worker's registration is cancelled or suspended his or her certificate of registration is cancelled, and must be given to the Registrar. Also, if a registered social worker is notified that restrictions or conditions (or varied restrictions or conditions) have been placed on his or her registration—

- the certificate of registration must be given to the Registrar; and
- a new certificate, containing the appropriate restrictions or conditions, must be issued in its place.

*Limited registration*

*Clause 22* provides for the renewal of limited registration (that is to say, provisional or temporary registration).

*Clause 23* states the criteria for the renewal of limited registration. Provisional registration will not be renewed unless the Board is satisfied,—

- in the case of an applicant who was a professional social worker when *clause 14* came into force, that he or she still intends to work towards meeting the criteria in *clause 6 or clause 7* within the time frame originally set by the Board (or still intends to work towards meeting those criteria, but within a longer time frame, and has good reasons for needing the longer time frame); and
- in the case of any other applicant, that he or she is still in the process of working towards meeting the criteria in *clause 6 or clause 7*, and has made satisfactory progress in doing so (or has good reasons for not having made satisfactory progress in doing so).

Temporary registration will not be renewed unless the Board is satisfied that the applicant still meets the criteria in *clause 15*.

*Clause 24* states a maximum period of 6 years for limited registration.

*Clause 25* gives the Board an absolute discretion to cancel any registered social worker's limited registration.

*Practising certificates*

*Clause 26* provides for the making of applications for practising certificates.

*Clause 27* provides that if an application for a practising certificate complies with *clause 26*, the applicant is treated as holding one until the Registrar issues one, or notifies the applicant that he or she refuses to issue one.

*Clause 28* provides that if an application for a practising certificate complies with *clause 26*, the Registrar must issue one unless *clause 29* applies, or the applicant has not paid a fine or fee, or costs.

*Clause 29* requires the Registrar to refer an application for a practising certificate to the Board if he or she believes on reasonable grounds that—

- the applicant has not undertaken a competence assessment required by the Bill; or
- the applicant has undertaken a competence assessment required by the Bill, but the results are not yet available; or
- the applicant has undertaken a competence assessment required by the Bill, and the results seem unsatisfactory; or
- the applicant has not held a practising certificate within the 3 years before the application.

The Registrar must also refer an application for a practising certificate to the Board if he or she suspects on reasonable grounds that the applicant—

- has failed to maintain a reasonable standard of professional competence; or
- has not been practising social work as a profession at any time within the 3 years before the application; or
- is not a fit and proper person to practise social work.

The Registrar may refuse to issue a practising certificate if satisfied that any information included in the application for it is false or misleading.

*Clause 30* requires the Board to consider applications referred to it by the Registrar, and either—

- direct the Registrar to issue a practising certificate without conditions; or
- consider whether to direct the Registrar to issue a practising certificate subject to conditions, or refuse to issue a practising certificate.

*Clause 31* prescribes the process the Board is to use in considering whether to direct the Registrar to issue a practising certificate subject to conditions, or to direct the Registrar to refuse to issue a practising certificate. It must give the applicant a reasonable opportunity to make written submissions and to be heard (either personally or by a representative).

The Registrar must give the applicant written notice—

- stating that the Board is considering whether to direct the Registrar to issue a practising certificate subject to conditions, or to direct the Registrar to refuse to issue a practising certificate; and

- stating the substance of the grounds on which the Board is considering whether to act; and
- stating that the applicant has a reasonable opportunity to make written submissions and to be heard on the matter.

The Registrar must also give the applicant a copy of any information on which the Board is relying.

*Clause 32* provides that, where the Registrar has referred an application for a practising certificate to the Board,—

- the Board must direct the Registrar to issue a practising certificate without restrictions or conditions, if satisfied that the applicant is competent to practise as a social worker without them;
- the Board must direct the Registrar to issue a practising certificate to the applicant subject to restrictions or conditions, if satisfied that the applicant is competent to practise as a social worker only subject to those restrictions or conditions;
- in any other case, the Board must direct the Registrar—
  - to refuse to issue a practising certificate to the applicant until he or she has met conditions stated by the Board, if the Board is satisfied that the applicant will be competent to practise as a social worker only subject to those conditions; or
  - to refuse to issue a practising certificate to the applicant at all.

If the Board directs the Registrar to refuse to issue a practising certificate until conditions are met, or to refuse to issue a practising certificate at all, the applicant must be notified of the direction and the reasons for it.

If the Board directs the Registrar to refuse to issue a practising certificate until conditions are met, it may also direct the Registrar to issue an interim practising certificate to the applicant.

*Clause 33* provides that a practising certificate is in force for a period decided by the Board, and stated in the certificate.

The period must be—

- no longer than 4 months, in the case of an interim practising certificate; and
- no longer than 1 year, in any other case.

*Clause 34* requires a practising certificate to state any restrictions or conditions to which it, or its holder's registration, is subject.

*Clause 35* requires the holder of a practising certificate to give it to the Registrar if it is cancelled or suspended or required for endorsement, or its holder's registration is cancelled or suspended.

*Clause 36* provides that interim practising certificates—

- may only be issued pursuant to a direction under *clause 32(3)*; and
- may be issued subject to any conditions the Board thinks fit; and
- may be cancelled at any time.

### **Part 3**

#### **Competence and fitness**

##### *Competence*

*Clause 37* states when a person is competent to practise social work. A person is competent to practise social work if, in the Board's opinion, he or she—

- has the skill and knowledge required to practise social work; and
- meets the professional standards reasonably expected of a registered social worker.

*Clause 38* requires the Board to review a person's competence to practise social work—

- after receiving his or her application for registration from the Registrar; and
- after being notified of a determination under *clause 69(1)(a)* that the Board should review his or her competence; and
- at least every 5 years after he or she was last found competent to practise social work.

*Clause 39* states the form of a review of a person's competence to practise social work. The Board must—

- give the person notice—
  - describing any relevant information it has; and
  - stating that he or she has a reasonable opportunity to make written submissions and to be heard, personally or by a representative; and

- give him or her a reasonable opportunity to make written submissions and to be heard.

If the review is being undertaken under *clause 38(b)*, the notice must also state why the person's competence is being reviewed.

A person exercising his or her right to be heard personally may be accompanied by 1 person of his or her choice who agrees to attend.

*Clause 40* states what happens if the Board reviews a person's competence, and has reason to believe that it may be unsatisfactory.

The Board—

- may direct the Registrar to arrange for the person to undertake a competence assessment; and
- if the person is a registered social worker, may also direct the Registrar to place conditions on the person's registration or practising certificate.

#### *Competence assessments*

*Clause 41* empowers the Board to set programmes (**competence assessments**) to help it decide whether applicants for practising certificates or registration—

- have the skill and knowledge required to practise social work; and
- meet the professional standards reasonably expected of social workers.

The Registrar must publish in newspapers in Auckland, Wellington, Christchurch, and Dunedin notice of—

- the setting and application of any competence assessments; and
- details of where copies may be obtained.

*Clause 42* requires the Board to ensure that copies of all competence assessments in force are available at its offices for purchase and inspection during ordinary business hours.

*Clause 43* states what happens if a registered social worker fails (or fails to undertake) a competence assessment.

The Registrar must notify the Board, and the Board may direct the Registrar to—

- make the person's registration or practising certificate subject to conditions; or

- suspend his or her registration or practising certificate.

If the Board proposes to give such a direction, it must give the social worker—

- a notice stating—
  - why the Board proposes to give the direction; and
  - that he or she has a reasonable opportunity to make written submissions and to be heard on the matter, personally or by a representative; and
- a copy of any information on which the Board is relying.

The direction remains in effect until the social worker has—

- satisfied all the requirements of the competence assessment (in the case of a failure of a competence assessment); or
- undertaken the competence assessment (in the case of a failure to undertake a competence assessment).

Failing a competence assessment is not in itself grounds for taking disciplinary action.

*Clause 44* makes certain information confidential.

A person who, for the purposes of a competence assessment, examines records made or kept by the person assessed (the **subject**) must not disclose any information about an identifiable individual other than the subject (the **other person**) obtained from the records, except—

- to report to the Board in relation to the subject; or
- for the purposes of a criminal investigation of, or criminal proceedings taken against, the subject; or
- to disclose the information to the other person, if the Board has directed that the information be disclosed to the other person or the other person has asked for it.

*Subclause (4)* applies to information relating to the conduct of a person undertaking a competence assessment that—

- is obtained from the person during the assessment; and
- is not part of records made or kept by the person before the assessment was undertaken.

Information to which *subclause (4)* applies—

- may not be used or disclosed for any purpose other than the competence assessment during which it was obtained; and

- is not admissible against the person who disclosed or made it, or any other person, in any court proceedings.

### *Fitness*

*Clause 45* provides that the Board may find a person is not a fit and proper person to practise social work only if it is satisfied that there are grounds on which a reasonable person would conclude that he or she is not a fit and proper person to practise social work. But *subclause (2)* provides that Board may be satisfied that there are such grounds if—

- he or she has been convicted of an offence punishable by imprisonment for 3 months or more, and the Board is satisfied that the nature and circumstances of the offence reflect adversely on his or her fitness to practise social work; or
- the Board is satisfied he or she is unable to perform adequately the functions required to practise social work satisfactorily; or
- the Board is satisfied on reasonable grounds that he or she is not of good character and reputation.

In the case of an applicant for registration, the Board may reserve its decision on whether he or she is a fit and proper person to practise social work, if it is satisfied—

- that—
  - professional disciplinary proceedings are being taken against him or her; or
  - a licensing or registration organisation is making investigations that may lead to the taking of professional disciplinary proceedings against him or her; or
  - the Health and Disability Commissioner is making investigations that may lead to the taking of professional disciplinary proceedings against him or her; and
- that the circumstances suggest a reasonable possibility that he or she is not a fit and proper person to practise social work.

*Clause 46* states when the Board must consider whether a person is a fit and proper person to practise social work. The Board must consider whether a person is a fit and proper person to practise social work—

- after receiving an application for registration; and

- after being notified of a determination under *clause 69(1)(a)* that the Board should review his or her fitness.

*Clause 47* states the action that the Board may take if, after being notified of a determination under *clause 69(1)(a)* that the Board should review the fitness of a registered social worker, the Board determines that he or she may not be a fit and proper person to practise social work.

The Board may—

- make a complaint against the social worker under *clause 57*;  
or
- direct the Registrar to suspend the social worker's registration or practising certificate.

If the Board proposes to direct the Registrar to suspend the social worker's registration or practising certificate, it must first give the social worker—

- notice stating—
  - why the Board proposes to give the direction; and
  - that he or she has a reasonable opportunity to make written submissions and to be heard on the matter; and
- a copy of any information on which the Board is relying.

The Board must not direct the Registrar to suspend the social worker's registration or practising certificate unless—

- it has given the social worker a reasonable opportunity to make written submissions and to be heard on the matter; and
- it is satisfied that the social worker is not a fit and proper person to practise social work.

*Clause 48* requires the Board, in order to help determine whether a person is a fit and proper person to practise social work, to—

- ask the New Zealand Police to check if he or she has any criminal convictions; and
- consider any criminal convictions disclosed to the Board by the New Zealand Police, or otherwise known to the Board.

#### *Conditions affecting ability to practise social work*

*Clause 49* empowers any person who considers that a registered social worker may be unable to perform adequately the functions

required to practise social work satisfactorily to give the Registrar notice of the circumstances.

No civil, criminal, or disciplinary proceedings may be taken against the person who gives the Registrar the notice, unless he or she has acted in bad faith.

*Clause 50* empowers a person who is considering notifying the Registrar under *clause 49* to seek medical or psychiatric advice to help him or her form an opinion.

A notice under *clause 49* must state any medical advice obtained.

*Clause 51* provides that the Registrar must promptly put a notice under *clause 49* before the chairperson of the Board, and the chairperson must put it before the Board at its next meeting.

*Clause 52* empowers the chairperson of the Board to give the Registrar a direction to suspend the registration of a registered social worker (for not more than 10 working days), if the chairperson—

- considers that the social worker may be unable to perform adequately the functions required to practise social work satisfactorily; and
- after consulting with 2 other members of the Board (of whom at least 1 must be a registered social worker), is satisfied that it is desirable to do so, having regard to the need to protect the health and safety of members of the public.

The direction must be in writing, and state why it has been given, and that the social worker may respond to it.

The suspension does not take effect until the social worker is given a copy of the direction.

*Clause 53* provides that if the Board thinks that a registered social worker may be unable to perform adequately the functions required to practise social work satisfactorily, it may give him or her written notice requiring him or her to submit himself or herself for examination by a medical practitioner chosen by the Board.

The Board must first consult the social worker as to who should undertake the examination, unless it is impracticable to do so or the social worker refuses to be consulted.

The Board must pay for the examination.

*Clause 54* relates to the conduct and consequences of an examination under *clause 53*.

The Board must give the medical practitioner notice of its reasons for requiring the examination, and of the fields of social work in which the social worker usually practises.

The social worker may have another medical practitioner attend the examination as an observer.

The medical practitioner who examines the social worker must give the Registrar a report on the social worker's mental and physical condition (so far as it affects his or her ability to practise social work satisfactorily).

The Registrar must put the report before the Board, and send a copy to the social worker.

*Clause 55* applies if registered social worker has been given a notice under *clause 53*, and—

- either—
  - the social worker submitted himself or herself for examination, and the Registrar has received a written report on the social worker's mental and physical condition from the medical practitioner; or
  - the social worker did not submit himself or herself for examination; and
- the Registrar has given the social worker notice that he or she has a reasonable opportunity to make written submissions and to be heard, personally or by a representative; and
- the Board has given the social worker that opportunity; and
- the Board considers that the matter should be dealt with urgently.

The clause empowers the Board to give the Registrar a direction to—

- make the social worker's registration or practising certificate subject to conditions; or
- suspend the social worker's registration or practising certificate.

The Board must consider all the relevant circumstances of the case (including any report received from the medical practitioner), and must not give a direction unless—

- it is satisfied that—

- the social worker is unable to perform adequately the functions required to practise social work satisfactorily; and
- it is necessary to do so, having regard to the need to protect the health and safety of members of the public; or
- it has been unable to decide whether the social worker is able to practise social work satisfactorily, because he or she did not submit himself or herself for examination.

*Clause 56* provides that a direction under *clause 52 or clause 55* may be revoked if the Board is satisfied that the social worker—

- was in fact able to practise social work satisfactorily; or
- is again able to practise social work satisfactorily.

Conditions imposed under *clause 55* may be revoked if the Board is satisfied that they are no longer necessary.

## **Part 4** **Discipline**

### *Complaints*

*Clause 57* empowers any person to make a complaint against a registered social worker.

The complaint may be made to the Health and Disability Commissioner or the Registrar if it is about the provision of health services or disability services. Otherwise, it must be made to the Registrar.

*Clause 58* provides that the Registrar must notify the chairperson of the Tribunal of all complaints.

*Clause 59* provides that the Registrar must notify the Health and Disability Commissioner of all complaints about the provision of health services or disability services made to the Registrar.

*Clause 60* empowers the Health and Disability Commissioner to notify the chairperson of the Tribunal of every complaint about the provision of health services or disability services received under Part IV of the Health and Disability Commissioner Act 1994 that is made against or directly involves a registered social worker.

*Clause 61* requires the registrar of a Court in which a person whom the registrar knows is a registered social worker is convicted of an offence punishable by imprisonment for a term of 3 months or

longer to send a notice of the conviction to the chairperson of the Tribunal, unless the Court expressly orders otherwise.

*Clause 62* provides that no action may be taken under *Part 4* about a complaint that has been notified or referred to the Health and Disability Commissioner until—

- the Commissioner notifies the chairperson of the Tribunal that the complaint is not to be investigated, or investigated further, under the Health and Disability Commissioner Act 1994, or has been resolved, or has been investigated and is not to be referred to the Director of Proceedings; or
- the Director of Proceedings notifies the chairperson that the Director of Proceedings has decided not to lay a charge under this Act in relation to the complaint.

*Clause 62* provides that the chairperson of the Tribunal must refer a complaint to a complaints assessment committee, unless—

- the chairperson 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 Tribunal and the Commissioner both have jurisdiction); or
- the chairperson is satisfied that it does not need to be pursued (in any other case).

The chairperson must refer every notice of conviction given under *clause 61* to a complaints assessment committee.

#### *Complaints assessment committees*

*Clause 64* empowers the chairperson of the Tribunal to appoint, dissolve, and reconstitute complaints assessment committees. Each committee is to comprise 2 registered social workers and 1 person who is not a registered social worker.

*Clause 65* provides that complaints assessment committees regulate their procedures as they think fit, subject to—

- the rules of natural justice; and
- the Bill; and
- any regulations made under the Bill.

*Clause 66* empowers a complaints assessment committee to appoint a legal adviser, who—

- may be present at meetings; and

- may advise the committee on matters of law, procedure, or evidence; but
- must not be present during the committee's deliberations.

*Clause 67* provides that when a complaint about, or a notice of conviction of, a registered social worker is referred to a complaints assessment committee,—

- the social worker must be given notice of the particulars of the complaint or notice, and the intended membership of the complaints assessment committee that is to consider it; and
- if there is a complaint, the complainant must also be given notice of the intended membership of the committee.

*Clause 68* provides that a social worker or complainant may request changes in the membership of a complaints assessment committee.

The chairperson of the Tribunal must consider the request, and may reconstitute the committee.

*Clause 69* requires a complaints assessment committee to consider a complaint or notice about a registered social worker referred to it, and determine whether—

- the Board should review the social worker's competence or fitness; or
- in the case of a complaint, the committee should submit it to conciliation; or
- the committee should submit the complaint or conviction to the Tribunal; or
- no further steps should be taken.

The committee—

- must give the social worker an opportunity to make a written explanation or statement; and
- may give the social worker an opportunity to appear before it to make an explanation or statement.

In the case of a complaint, the committee—

- must also give the complainant an opportunity to make a written statement; and
- may give the complainant an opportunity to appear before it to make a statement.

*Clause 70* provides that if a complaints assessment committee determines that a social worker's competence or fitness to practise should

be reviewed, or that a complaint should be submitted to conciliation, it must give notice of the determination, and the reasons for it, to the Registrar and the social worker (and in the case of a complaint, to the complainant).

If a complaints assessment committee makes a determination to submit a complaint or conviction to the Tribunal, it must—

- frame an appropriate charge; and
- lay it before the Tribunal; and
- give notice of it to the social worker (and in the case of a complaint, to the complainant).

*Clause 71* provides that if a complaints assessment committee has decided that it should submit a complaint to conciliation, it must try to help the social worker and complainant to resolve the complaint by agreement.

If the complaint is resolved by agreement, the committee must notify the chairperson of the Tribunal.

If the complaint is not resolved by agreement, the committee must decide whether—

- it should submit the complaint or conviction to the Tribunal; or
- no further steps should be taken.

If it decides to submit the complaint to the Tribunal, the committee must—

- frame an appropriate charge; and
- lay it before the Tribunal, together with a notice stating the matters on which the social worker and complainant did and did not reach agreement during conciliation; and
- give a copy of the charge and notice to the social worker and the complainant.

If the committee decides that no further steps should be taken,—

- no further steps may be taken under the Bill in relation to the complaint; and
- the committee must notify the social worker and complainant of the determination and the committee's reasons.

*Clause 72* empowers a complaints assessment committee that lays a charge before the Tribunal to recommend to the Tribunal that, pending the determination of the charge,—

- the registration of the social worker concerned be suspended; or
- restrictions be imposed on the practice of social work by that social worker.

#### *Procedure and decisions of Tribunal*

*Clause 73* relates to charges against registered social workers.

A charge may be laid before the Tribunal by the Director of Proceedings under the Health and Disability Commissioner Act 1994 if—

- the Health and Disability Commissioner has conducted an investigation under Part IV of that Act and notified the Tribunal of a complaint involving the provision of health and disability services by the social worker; and
- the Director of Proceedings decides that proceedings should be taken against the social worker under *Part 4* of the Bill.

A charge may be laid before the Tribunal by a complaints assessment committee.

The charge must contain—

- a statement to the effect that the Director of Proceedings or complaints assessment committee has reason to believe that grounds exist entitling the Tribunal to exercise its powers under *Part 4*; and
- enough detail to inform the social worker clearly of the substance of the grounds.

As soon as is reasonably practicable after a charge is laid before the Tribunal, a hearing must be convened, at which whoever laid it (the Director of Proceedings or a complaints assessment committee) must prosecute it.

Except to the extent that *Part 4* provides otherwise, the Tribunal may determine its own procedure, but it must observe the rules of natural justice.

*Clause 74* requires the chairperson of the Tribunal hearing a charge against a registered social worker to give the social worker written notice—

- stating that the Director of Proceedings or a complaints assessment committee has reason to believe that grounds exist entitling the Tribunal to exercise its powers under *Part 4*; and
- giving particulars of the charge; and

- specifying the date on which the Tribunal intends to hear the charge.

A copy of the notice must also be given to any complainant.

The notice must require the social worker to inform the Tribunal whether he or she wishes to be heard by the Tribunal, either personally or by a representative.

If the social worker fails to notify the Tribunal, he or she is still entitled to appear and to be heard, but only on conditions (as to payment of costs and expenses or otherwise) imposed by the Tribunal.

*Clause 75* empowers the Tribunal to give a direction that, until a charge against a registered social worker has been disposed of,—

- the social worker's registration be suspended; or
- the social worker may practise as a social worker only in accordance with restrictions imposed by the Tribunal.

The Tribunal may give the direction only if it is satisfied that it is necessary or desirable to do so to protect the health or safety of members of the public.

*Clause 76* empowers a social worker to apply to the Tribunal to have a direction under *clause 75* revoked.

*Clause 77* provides that, in general, hearings of the Tribunal should be held in public.

*Subclause (2)* provides that the Tribunal can, however, if satisfied that it is desirable to do so,—

- order that all or part of a hearing must be held in private; or
- prohibit the publication of any report or account of any part of a hearing; or
- prohibit the publication of all or part of any books, papers, or documents produced at a hearing; or
- prohibit the publication of the name, or any particulars of the affairs, of any person.

*Clause 78* gives special protection to a witness at a hearing of a charge against a registered social worker in relation to the giving of oral evidence that relates to or involves a sexual matter, or some other matter that may require the witness to give intimate or distressing evidence.

Before the witness begins to give the evidence, the presiding officer must tell the witness that he or she has a right to give the evidence in private, and ask if the witness wishes to give the evidence in private.

If the witness wishes to give the evidence in private, the presiding officer must—

- ensure that only certain people are present in the room in which the hearing is being held; and
- tell the witness that he or she has a right to request the presence of a person of his or her choice; and
- tell the social worker that he or she has a right to request the presence of a person of his or her choice.

The people who may be present while the witness is giving the evidence are—

- members and officers of the Tribunal; and
- the social worker; and
- the person prosecuting; and
- any barristers or solicitors engaged in the proceedings; and
- the social worker's representative, if not a barrister or solicitor; and
- any person recording the proceedings for the Tribunal; and
- accredited news media reporters; and
- 1 person of the witness' choice; and
- any other person expressly permitted by the Tribunal.

One person of the social worker's choice may also be present, unless the witness objects.

*Clause 79* empowers any person to apply to the Tribunal for the revocation of an order under *clause 77*.

*Clause 80* states the grounds on which the Tribunal may impose a penalty on a registered social worker under *clause 81*.

They are that the social worker—

- has been guilty of professional misconduct; or
- has been guilty of conduct that is unbecoming of a social worker, and reflects adversely on the social worker's fitness to practise as a social worker; or
- has been convicted by a court (in New Zealand or overseas) of an offence, punishable by imprisonment for 3 months or

longer, committed in circumstances that reflect adversely on the social worker's fitness to practise as a social worker; or

- has failed to comply with restrictions on his or her registration, or restrictions stated under *clause 75(1)(b)*.

A registered social worker is guilty of professional misconduct if he or she—

- breaches the code of conduct; or
- claims to be registered while not holding a current practising certificate.

The Tribunal must not penalise a registered social worker in respect of a conviction before he or she was registered if, when the Board decided he or she should be registered, it was aware of the conviction and adequately informed of the circumstances of the offence.

*Subclause (4)* makes clear that a registered social worker is not guilty of a disciplinary offence just because he or she has practised honestly and in good faith a theory of social work that is not in conflict with the code of conduct.

*Clause 81* states the penalties that may be imposed on a registered social worker if the Tribunal is satisfied of a matter referred to in *clause 80(1)*. The Tribunal may order that—

- his or her registration be cancelled or suspended; or
- for a period of not more than 3 years, he or she may practise as a social worker only in accordance with stated restrictions; or
- he or she is censured; or
- he or she must pay a fine of up to \$10,000; or
- he or she undergo additional training, professional development, or both; or
- he or she must pay part or all of the costs and expenses of—
  - any investigation made by the Health and Disability Commissioner in relation to the subject matter of any charge concerned; or
  - any inquiry made by a complaints assessment committee in relation to the subject matter of any charge concerned; or
  - the prosecution of a charge by the Director of Proceedings or complaints assessment committee; or
  - the hearing.

The Tribunal must not make an order that the social worker's registration be cancelled unless it finds him or her guilty of gross or severe professional misconduct.

The Tribunal must not impose a fine in respect of a matter that constitutes an offence for which the social worker has been convicted by a court.

The Tribunal must have regard to the amount of any damages awarded against the social worker under the Health and Disability Commissioner Act 1994 in respect of the conduct concerned, when determining—

- whether to impose a fine; or
- the amount of any fine.

*Clause 82* provides that, when making an order that the registration of a registered social worker be cancelled, the Tribunal may fix a date before which he or she may not apply for registration again, or impose conditions that he or she must satisfy before applying for registration again.

Conditions may include a condition that the social worker—

- undertake a course of education or training; or
- undergo medical examination and treatment; or
- undergo psychological or psychiatric examination, counselling, or therapy; or
- attend a course of treatment or therapy for alcohol or drug abuse.

The Tribunal must not impose a condition relating to examination, treatment, counselling, or therapy unless the social worker consents.

*Clause 83* requires an order of the Tribunal to be in writing, and to contain a statement of the reasons for it.

A copy of the order must be given to the person or body who laid the charge, the social worker, and any complainant.

*Clause 84* requires the Board to fund the costs of the Tribunal and all complaints assessment committees, and empowers the Board to impose a levy under *clause 107* in order to do so.

*Clause 85* relates to the recovery of fines and costs. It—

- empowers the Health and Disability Commissioner to recover costs and expenses of the Health and Disability Commissioner or Director of Proceedings ordered to be paid under

*subparagraph (i) or subparagraph (iii) of clause 81(1)(e)* as a debt due to the Health and Disability Commissioner; and

- empowers the Board to recover all other fines, costs, and expenses ordered to be paid under *clause 81(1)* as a debt due to the Board.

## Part 5

### Appeals

*Clause 86* gives rights of appeal to a District Court.

*Subclause (1)* gives any person a right of appeal against a decision or direction of the Board that adversely affects him or her (other than a decision or direction affecting the person only as a member of a class).

*Subclause (2)* gives any person a right of appeal against a decision or order made in relation to him or her under *Part 4* (other than a determination of a complaints assessment committee).

*Clause 87* requires the Registrar, when notifying a person of a decision or order against which *clause 86* gives a right of appeal to notify the person of the right of appeal, and the time within which an appeal must be lodged.

*Clause 88* provides that a decision or order that is appealed against continues in force until the appeal is determined, unless a court orders otherwise.

*Clause 89* relates to procedure on appeal.

Appeals must be heard as soon as is reasonably practicable after being lodged.

A District Court—

- may confirm, reverse, or modify the decision or order appealed against; and
- may make any other decision or order that the person or body that made the decision or order appealed against could have made.

*Clause 90* provides that a District Court's decision on an appeal is final, except for appeals on questions of law under *clause 94*.

*Clause 91* empowers a District Court, instead of determining an appeal, to direct the person or body whose decision or order is appealed against to reconsider all or part of it.

The court must give reasons for the direction, and may give any other directions it thinks just.

*Clause 92* empowers a District Court to order either party to an appeal (the person or body whose decision or order is appealed against or the appellant) to pay the costs of the other party.

*Clause 93* empowers a District Court to prohibit the publication of the name or particulars of the affairs of a registered social worker or any other person.

In deciding whether to prohibit publication, the Court must have regard to both the interests of particular people and the public interest.

*Clause 94* gives a party to an appeal a right to appeal on a question of law to the High Court against a decision of the District Court.

## Part 6

### Social Workers Registration Board and Social Workers Complaints and Disciplinary Tribunal

#### *Social Workers Registration Board*

*Clause 95* establishes the Social Workers Registration Board.

*Clause 96* states the Board's powers. It is a body corporate and a Crown entity for the purposes of the Public Finance Act 1989. It has full capacity to carry on activities, do acts, and enter into transactions, and full rights, powers, and privileges. But it may exercise its powers only for performing its functions.

*Clause 97* states the Board's functions. They are—

- to receive applications for registration:
- to authorise the registration of social workers:
- to maintain the Register:
- to consider applications for practising certificates referred to it by the Registrar:
- to recognise New Zealand educational qualifications for the purposes of the Bill:
- to review the competence of social workers:
- to establish and maintain a code of conduct for registered social workers:
- to promote and set standards for social work education and training in New Zealand for the purposes of the Bill:

- to promote the benefits of registration:
- to advise the Minister on matters relating to the regulation of the social work profession:
- to appoint the members of the Tribunal:
- to promote and encourage high standards of practice and professional conduct among registered social workers and the employers of social workers:
- to consider the cases of registered social workers who may be unable to perform adequately the functions required to practise social work satisfactorily:
- to give employers or prospective employers of social workers information it has obtained under the Bill relating to people who are or have been applicants for registration or registered social workers:
- to provide administrative and related services for the Tribunal.

The function of promoting and setting standards for social work education and training in New Zealand must be performed in consultation with providers of such education and training.

The function of giving employers or prospective employers of social workers information does not apply to information required by the Bill to be kept confidential.

*Clause 98* provides that, in the exercise and performance of its powers and functions, the Board must ensure that the following matters are integral and ongoing priorities:

- the aims and aspirations of Māori, and the need for the appropriate involvement of Māori, as tangata whenua; and
- the aims and aspirations of Pacific people, and the need for the appropriate involvement of Pacific people in the social work profession; and
- the employment requirements of Māori and Pacific people.

*Clause 99* requires the Board to maintain mechanisms (for example, appointing advisory committees or forming separate caucuses) to ensure that at all times it has ready access to—

- the views of Māori as tangata whenua; and
- the views of Pacific people.

*Clause 100* gives the Minister power to require the Board to give effect to the policy of the Government.

The power may not be exercised—

- in relation to any matter concerning the registration of social workers; or
- in relation to any matter in respect of which an enactment other than the Bill expressly requires the Board to act independently; or
- so as to require the Board to act in a particular way about a particular person.

*Clause 101* contains other provisions about requirements under *clause 100*.

Copies of notices requiring the Board to give effect to a policy of the Government must be published in the *Gazette*, and presented to the House of Representatives.

If required to give effect to a policy of the Government, the Board must prepare and give to the Minister for approval a draft plan stating how it proposes to do so.

After approving a draft plan, the Minister must present a copy of the plan as approved to the House of Representatives.

*Clause 102* requires the Board, 3 years after the commencement of *Part 6*, and then at intervals of not more than 5 years, to—

- review the operation of the Bill, and its own operations; and
- consider the extent to which the Bill is achieving the purposes stated in *paragraphs (a) and (e) of clause 3*, and whether any amendments are necessary or desirable; and
- report its findings to the Minister.

The Minister must present copy of the report to the House of Representatives.

*Clause 103* requires the Board to issue and maintain a code of conduct covering the minimum standards of integrity and conduct that are to apply to registered social workers, and should apply generally in the social work profession.

Before issuing or amending the code, the Board must consult representatives of social workers and the employers of social workers.

*Clause 104* provides that the Board is to comprise 6 registered social workers and 4 other people.

*Clause 105* requires the Board to prepare an annual report on its operations, and any other matters affecting the social work profession it thinks fit.

The Minister must present a copy of the report to the House of Representatives.

*Clause 106* empowers the Board to set fees for—

- applications for registration:
- additions or alterations to the Register:
- the issue of practising certificates:
- the issue of other certificates:
- the issue of copies of certificates:
- the supply of a copy of an entry in the Register:
- inspecting the Register, or any other document kept by the Board that is open for inspection:
- supplying to any registered social worker any document required for the purpose of seeking registration overseas:
- sitting any examination set or approved by the Board:
- the conduct of competence assessments:
- any other matter relating to anything the Board is required to do in order to carry out its functions.

*Clause 107* empowers the Board to impose on registered social workers a levy for the purpose of investigations and other proceedings concerning discipline under the Bill.

*Clause 108* contains administrative provisions relating to the fees and levy set or imposed under *clause 106* or *clause 107*.

*Clause 109* requires the Board to apply all fees, levies, fines, and other money it receives to the performance of its functions and duties and the exercise of its powers.

*Clause 110* requires directions and resolutions of the Board to be in writing.

*Clause 111* provides that other provisions relating to the Board are set out in *Schedule 1*.

#### *Social Workers Complaints and Disciplinary Tribunal*

*Clause 112* establishes the Social Workers Complaints and Disciplinary Tribunal.

*Clause 113* states the Tribunal's functions. They are—

- to administer the complaints process established by the Bill; and
- to exercise the disciplinary powers conferred by the Bill; and
- any other functions conferred or imposed on it by or under the Bill or any other enactment.

*Clause 114* states the Tribunal's membership. It comprises—

- a chairperson, 1 or more deputy chairpersons, at least 1 barrister or solicitor of the High Court, and 5 other members, all appointed by the Board; and
- at least 1 lay person appointed by the Minister.

Members of the Board are not eligible to be members of the Tribunal.

*Clause 115* states the matters to which the Board must have regard in considering a person's suitability to be appointed to the Tribunal. It must—

- have regard not only to his or her qualifications but also to his or her knowledge and experience of matters likely to come before the Tribunal; and
- have regard to the need to ensure that the Tribunal has enough members who are registered social workers and enough members who are not; and
- have regard to the need to ensure that the Tribunal has enough people who represent Māori, and enough people who represent other ethnic groups.

*Clause 116* provides for the removal of members from the Tribunal. The Board must remove a person from the Tribunal if—

- he or she is adjudged bankrupt; or
- 5 years has elapsed since he or she was appointed to the Tribunal; or
- he or she asks to be removed from the Tribunal.

The Board may remove a person from the Tribunal if the chairperson recommends his or her removal—

- because the person is unable to perform his or her duties adequately; or
- for neglect of duty or misconduct, proved to the chairperson's satisfaction.

*Clause 117* relates to hearings of the Tribunal.

For the purposes of a particular hearing, the Tribunal comprises—

- as presiding officer, the chairperson of the Tribunal or a deputy chairperson chosen by the chairperson; and
- the barrister or solicitor of the High Court (or, if there are 2 or more, one of them chosen by the chairperson); and
- of the 5 other members appointed by the Board, 2 chosen by the chairperson; and
- the lay person appointed by the Minister (or, if there are 2 or more, one of them chosen by the chairperson).

A hearing of the Tribunal—

- must be held at times and places the Tribunal or the presiding officer appoints; and
- may be adjourned from time to time and from place to place by the Tribunal or the presiding officer.

All members of the Tribunal for a particular hearing must be present for the hearing; but the Tribunal makes its decisions by majority.

*Clause 118* provides that other provisions relating to the Tribunal are set out in *Schedule 2*.

## Part 7

### Register and Registrar

#### *Register of Social Workers*

*Clause 119* requires the Board to maintain a register of social workers (the **Register**).

*Clause 120* requires the Register to be maintained in 3 parts—

- 1 for information relating to people who do not hold a provisional or temporary certificate of registration; and
- 1 for information relating to people who hold a provisional certificate of registration; and
- 1 for information relating to people who hold a temporary certificate of registration.

*Clause 121* provides that the information to be entered in the Register in respect of a person is—

- the person's name;
- the person's home or work address;

- details of the person's qualifications:
- the type of registration the person holds:
- the date on which the Board decided that the person should be registered:
- the date of registration:
- any matters prescribed by regulation:
- any other matters the Board thinks appropriate.

The home or work address must be the physical address of the premises concerned.

The following information must also be entered in the Register in respect of a person who is registered:

- any conditions subject to which the person is registered:
- if the person's registration is suspended,—
  - the fact that it is suspended; and
  - any conditions relating to its suspension:
- details of all practising certificates issued to the person:
- any conditions subject to which the person's current practising certificate was issued:
- if the person's current practising certificate is suspended,—
  - the fact that it is suspended; and
  - any current conditions relating to its suspension.

*Clause 122* requires the Registrar to issue to an applicant who pays the prescribed fee a certificate—

- stating all the current information entered in the Register in relation to a particular person (other than his or her home address); and
- stating that it is all the current information then entered in the Register in relation to the person (other than his or her home address).

*Clause 123*—

- requires a registered social worker whose home address is entered in the Register and who moves home to notify the Registrar of his or her new home address, or his or her work address; and

- requires a registered social worker whose work address is entered in the Register and who starts working at a new address to notify the Registrar of his or her new work address, or his or her home address.

*Clause 124* empowers the Board to direct the Registrar to correct the entry in the Register relating to a registered social worker if the social worker has changed his or her name, or his or her name is wrongly entered in the Register.

*Clause 125* allows the entry in the Register relating to a registered social worker to be cancelled on the social worker's application. The entry may not be cancelled if disciplinary action against the social worker has begun or is pending.

*Clause 126* requires a registrar under the Births, Deaths, and Marriages Registration Act 1995 to notify the Registrar of any doctor's certificate received that relates to the death of a person who appears to have been a registered social worker.

If there is an entry in the Register relating to the person, the Registrar must cancel it.

Also, the Board may direct the Registrar to cancel the entry in the Register relating to a registered social worker if it believes (on reasonable grounds other than having received a doctor's certificate) that a registered social worker has died.

*Clause 127* relates to the revision of the Register.

The Registrar may ask a registered social worker by registered letter whether he or she has stopped practising social work, or for some other reason wishes to have the entry in the Register relating to him or her cancelled.

If the social worker tells the Registrar that he or she has stopped practising social work, or for some other reason wishes to have the entry cancelled, the entry must be cancelled.

If the Registrar does not receive a reply to the letter within 6 months, or if it is returned undelivered, the entry may be cancelled.

*Clause 128* enables the restoration of an entry cancelled because—

- the Board believed that a registered social worker had died; or
- a registered social worker told the Registrar that he or she had stopped practising social work or for some other reason wished to have the entry cancelled; or

- the Registrar did not receive a reply to a registered letter sent under *clause 127* within 6 months, or if it was returned undelivered.

*Clause 129* empowers the Board to direct the Registrar to cancel the entry in the Register relating to a registered social worker who is registered by virtue of an overseas qualification, if it believes that he or she—

- has since being registered lived outside New Zealand for 6 consecutive months in any period of 3 consecutive years (otherwise than while undertaking certain post-graduate study); and
- intends to continue to reside overseas.

The entry may be restored if the Board is satisfied that the social worker intends to reside in New Zealand.

*Clause 130* enables the cancellation of the entry in the Register relating to a registered social worker who—

- obtained registration by making a false or misleading representation or declaration; or
- was not entitled to be registered.

*Clause 131* empowers the Board to review the registration of a registered social worker who is registered by virtue of an overseas qualification, if satisfied that—

- the educational establishment that gave him or her the overseas qualification has cancelled or suspended it; or
- an overseas authority that maintains a register of people registered or licensed as social workers (or as practitioners of an equivalent profession) has removed his or her name from that register, or suspended his or her registration, or taken some equivalent action.

After the review, the Board—

- may direct the Registrar to note the cancellation, suspension, or removal in the Register; and
- may either suspend the registered social worker's registration or direct the Registrar to cancel the entry in the Register relating to him or her.

*Clause 132* provides that—

- the cancellation of the entry in the Register relating to a registered social worker does not affect his or her liability for any act or default that occurred before the cancellation; and
- the suspension of a registered social worker's registration does not affect his or her liability for any act or default that occurred before the suspension.

*Clause 133* requires the Board to publish the Register from time to time, in any form it thinks fit.

The publication must not contain the home addresses of registered social workers.

*Clause 134* requires the Registrar to—

- keep the published form of the Register open for public inspection at the offices of the Board during office hours; and
- ensure that copies, or suitable facilities for obtaining print-outs, are available at the offices of the Board during office hours.

A fee may be charged.

#### *Registrar*

*Clause 135* requires the Board to appoint a Registrar. The Registrar may be the same person as the secretary of the Board.

*Clause 136* requires the Registrar to carry out the Board's decisions and comply with directions of the Board and Tribunal.

*Clause 137* empowers the Registrar to refuse to issue a certificate of registration or practising certificate to a registered social worker who has not paid—

- a fine imposed on him or her under the Bill; or
- any costs or expenses payable by him or her under an order made under the Bill; or
- the fee for a practising certificate.

The Board may review the Registrar's decision.

*Clause 138* empowers the Board to direct the Registrar to give to any person who employs a registered social worker or practises in association with a registered social worker written notice of any restriction or conditions imposed on his or her registration or certificate of registration.

**Part 8**  
**Miscellaneous, transitional, and**  
**consequential provisions**

*Miscellaneous provisions*

*Clause 139* relates to the evidential status of certificates purporting to be signed by the Registrar.

*Clause 140* provides that nothing in the Bill requires the Board to make available information that could be withheld under the Official Information Act 1982.

*Clause 141* grants certain immunities.

*Subclause (1)* applies to—

- the Board, complaints assessment committees, and committees appointed under *clause 41 of Schedule 1*; and
- members, officers, legal advisers, agents, and employees of any of those bodies.

Unless it or he or she has acted in bad faith or without reasonable care, a body or person to which or whom *subclause (1)* applies has no criminal or civil liability for—

- any act done or omitted in the course of performing or exercising any function, duty, or power under the Bill; or
- any words spoken or written for the purposes of the hearing of any inquiry or other proceedings under the Bill; or
- anything in any notice given under the Bill.

Unless a person has acted in bad faith or without reasonable care, he or she has no civil liability in respect of anything done or omitted, or for any words spoken or written, in the course of conducting or assisting in conducting a competence assessment.

Unless a person has acted in bad faith or without reasonable care, no civil, criminal, or disciplinary proceedings lie against him or her in respect of—

- any notice he or she gives under *clause 49*; or
- any report he or she makes under *clause 54(3)*.

*Clause 142* provides that no act or proceeding of the Board, a complaints assessment committee, or the Tribunal, or of any of its members, is invalid because—

- there was a defect in the appointment of a person acting as a member of that body, or

- a person acting as a member of that body was incapable of being, or had ceased to be, a member of it.

*Clause 143* relates to notice and service of documents.

*Clause 144* relates to the publication of certain notices.

The Board may direct the Registrar to publish a notice stating—

- the effect of any order it has made under the Bill in respect of a social worker; and
- the name of the social worker.

If the Tribunal makes an order under the Bill in respect of a social worker, the Registrar must publish a notice stating—

- the effect of the order; and
- the name of the social worker; and
- a summary of the proceedings in which the order was made.

If a court makes an order under the Bill in respect of a social worker, the Registrar must publish a notice stating—

- the effect of the order; and
- the name of the social worker; and
- a summary of the proceedings in which the order was made.

*Clause 145* provides for the making of regulations. They must be made on the advice of the Minister, who must not recommend the making of any regulations without consulting the Board.

*Clause 146* creates offences relating to registration.

It is an offence, for the purpose of obtaining registration or a practising certificate, for a person to—

- make a declaration or representation that, to his or her knowledge, is false or misleading in a material particular; or
- produce a document to the Board, or otherwise use a document, knowing that it contains a declaration or representation that, to his or her knowledge, is false or misleading in a material particular; or
- produce a document to the Board, or otherwise use a document, knowing that it is not genuine.

It is an offence for a person to hold himself or herself out as a registered social worker when—

- he or she is not a registered social worker; or

- his or her registration is suspended.

It is an offence for a registered social worker to—

- hold himself or herself out as holding a current practising certificate when—
  - he or she does not hold a current practising certificate; or
  - his or her current practising certificate is suspended; or
- fail or refuse to comply with—
  - a restriction or condition on his or her registration; or
  - a condition on his or her practising certificate.

#### *Consequential amendments*

*Clause 147* effects consequential amendments.

*Schedule 1* contains administrative provisions relating to the Board. The following are of particular importance.

*Clause 2* states the criteria for appointment as a member of the Board.

Members are appointed by the Minister after consultation with organisations and individuals representing the various sectors of the social work profession.

The Minister may appoint only people who, in the Minister's opinion, have appropriate skills and experience to enable the Board to carry out its functions and powers, but in appointing members must take all reasonable steps to ensure that the Board will be representative of—

- the social work profession (including social workers employed by Government and non-Government organisations); and
- advocates for consumers of services provided by social workers; and
- social work educators; and
- Māori; and
- other ethnic groups.

*Clause 20* states the duties of members.

A member must act—

- in good faith; and

- with reasonable care, diligence, and skill; and
- with honesty and integrity.

Collectively, the members must—

- ensure that the Board—
  - operates consistently with any agreement as to outputs or statement of intent under the Public Finance Act 1989; and
  - operates efficiently and effectively; and
  - prudently manages its assets and liabilities; and
- try to ensure that the Board—
  - maintains its long-term financial viability; and
  - covers all of its annual costs (including the cost of capital) from its net annual income.

*Schedule 2* contains provisions relating to the Tribunal.

*Schedule 3* contains consequential amendments.

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Hon Steve Maharey

# Social Workers Registration Bill

Government Bill

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## Social Workers Registration

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## Social Workers Registration

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Social Workers Registration Act **2001**.

**Part 1  
Preliminary****2 Commencement**

- (1) **Sections 95 to 111 and Schedule 1** come into force on the day 12 months after the date on which this Act receives the Royal assent.
- (2) **Sections 3 to 94, sections 112 to 147, and Schedules 2 and 3** come into force on a date appointed by the Governor-General by Order in Council; and different dates may be appointed for different provisions.
- (3) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

**3 Purpose**

The purpose of this Act is—

- (a) to protect the safety of members of the public, by prescribing or providing for mechanisms to ensure that social workers are—
  - (i) competent to practise; and
  - (ii) accountable for the way in which they practise; and
- (b) for the purposes of **paragraph (a)**, to create a framework for the registration of social workers in New Zealand, and establish—
  - (i) a board to register social workers, and provide for its powers; and
  - (ii) a tribunal to consider complaints about registered social workers; and
- (c) to provide for the Board to promote the benefits of registration of social workers—
  - (i) to departments of State, other instruments of the Crown, other bodies and organisations that employ social workers, and the public; and
  - (ii) among people practising social work; and
- (d) to enhance the professionalism of social workers.

#### 4 Interpretation

In this Act, unless the context otherwise requires,—

**Board** means the Social Workers Registration Board established by **section 95**

**certificate of registration** means a certificate given under **section 20**

**code of conduct** means the code issued and maintained under **section 103**

**competence assessment** means an assessment set under **section 41**

**direction** means written direction

**Director of Proceedings** means the person for the time being designated under section 15(1) of the Health and Disability Commissioner Act 1994 as the Director of Proceedings

**Health and Disability Commissioner** means the Health and Disability Commissioner appointed under section 8 of the Health and Disability Commissioner Act 1994

**health services or disability services** means health services or disability services within the meaning of the Health and Disability Commissioner Act 1994

**limited registration** means provisional or temporary registration

**Minister** means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of this Act

**practising certificate**—

- (a) means a practising certificate issued under **section 28(1)**; and
- (b) includes an interim practising certificate issued under **section 36**

**recognised New Zealand qualification** means a New Zealand educational qualification for the time being recognised by the Board as appropriate for social workers working in New Zealand

**Register** means the register of social workers kept under **section 119**

**registered social worker** means a person in respect of whom the information stated in **section 121(1)** is entered in the Register

**Registrar** means the Registrar of the Register of Social Workers for the time being holding office under **section 135(1)**

**registration** means the entry in the Register of the information stated in **section 121(1)** in respect of a person; and **re-registration** has a corresponding meaning

**Tribunal** means the Social Workers Complaints and Disciplinary Tribunal established by **section 112**

**working day** means a day that—

- (a) is not Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, Labour Day, or the Sovereign's birthday; and
- (b) does not fall in a period commencing on 20 December in one year and ending with 15 January in the next year.

## **5 Act binds the Crown**

This Act binds the Crown.

## **Part 2**

### **Registration and practising certificates**

#### *Entitlement to registration*

## **6 Entitlement to registration of New Zealand-qualified social workers**

A person who has a recognised New Zealand qualification is entitled to be registered if the Board is satisfied that—

- (a) he or she has enough practical experience in practising social work; and
- (b) his or her competence to practise social work has been found satisfactory under **Part 3**; and
- (c) he or she is a fit and proper person to practise social work.

## **7 Entitlement to registration of overseas-qualified social workers**

A person who does not have a recognised New Zealand qualification is entitled to be registered if the Board is satisfied that—

- (a) he or she has an overseas qualification equivalent to a recognised New Zealand qualification; and
- (b) either—

- (i) he or she is registered or licensed as a social worker, or as the practitioner of a profession equivalent to that of a social worker, in a State other than New Zealand (whether the State in which the equivalent qualification was obtained or some other State); or
- (ii) there are good reasons for his or her not being so registered or licensed; and
- (c) he or she has satisfactorily completed a course of training ensuring that he or she is competent to practise social work with different ethnic groups in New Zealand; and
- (d) he or she can speak and write English reasonably effectively, and understand spoken and written English reasonably well; and
- (e) he or she has enough practical experience in practising social work; and
- (f) his or her competence to practise social work has been found satisfactory under **Part 3**; and
- (g) he or she is a fit and proper person to practise social work; and
- (h) he or she intends to live and practise social work in New Zealand.

### *Applications*

#### **8 Applications for registration**

- (1) An application for registration must be made to the Registrar on a form provided by the Board.
- (2) The application must be accompanied by—
  - (a) the application fee (if any) set by the Board; and
  - (b) any evidence of the matters referred to in **section 6** or **section 7** the Board requires.
- (3) The application may be accompanied by any other material relating to the matters referred to in **section 6** or **section 7** the applicant wishes.
- (4) Promptly after receiving a valid application for registration, the Registrar must give it to the Board.
- (5) **Section 82(4)** overrides **subsection (4)**.

**9 Consideration of applications by Board**

Promptly after receiving a valid application for registration from the Registrar, the Board must consider it, and decide—

- (a) whether the applicant should be registered; and
- (b) if it decides that the applicant should be registered,—
  - (i) whether he or she should be registered fully, provisionally, or temporarily; and
  - (ii) whether he or she should be registered without restrictions or conditions, or subject to restrictions or conditions (or both).

**10 Provisional registration**

- (1) A person registered provisionally—
  - (a) must always be registered subject to conditions appropriate to his or her circumstances; and
  - (b) may also be registered subject to restrictions.
- (2) The duration of provisional registration—
  - (a) must not be more than 6 years, in the case of a person to whom **section 14(2)** applies; and
  - (b) must not be more than 2 years, in any other case.

**11 Temporary registration**

- (1) A person registered temporarily—
  - (a) must always be registered subject to restrictions relating the institution or place where he or she intends to practise social work; and
  - (b) may also be registered subject to conditions, other restrictions, or both.
- (2) The duration of temporary registration must not be more than 6 months.

*Criteria***12 Criteria for full registration**

The Board must decide that the applicant should be registered fully if, and only if, he or she meets the criteria in **section 6 or section 7**.

**13 Board may relax educational requirements in certain cases**

- (1) The Board may decide that the applicant should be registered fully if—
  - (a) he or she has neither a recognised New Zealand qualification nor an overseas qualification equivalent to a recognised New Zealand qualification; but
  - (b) the Board is satisfied that—
    - (i) his or her practical experience in practising social work in New Zealand is enough to compensate for the lack of such a qualification; and
    - (ii) his or her competence to practise social work has been found satisfactory under **Part 3**; and
    - (iii) he or she is a fit and proper person to practise social work.
- (2) **Subsection (1)** overrides **section 12**.

**14 Criteria for provisional registration**

- (1) The Board must decide that the applicant should be registered provisionally if, and only if, satisfied—
  - (a) that the applicant's competence to practise social work has been found satisfactory under **Part 3**; and
  - (b) that he or she is a fit and proper person to practise social work, meets some of the other criteria in **section 6 or section 7**, and—
    - (i) is in the process of working towards meeting the rest of them; or
    - (ii) if in the Board's opinion **subsection (2)** applies to him or her, intends to work towards meeting the rest of them within a time frame set by the Board; 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.
- (2) This subsection applies to an applicant for registration if—
  - (a) he or she applied for registration within 3 months after the commencement of this section; and

- (b) immediately before that commencement, he or she was practising social work, in any occupation or profession, in New Zealand.
- (3) The Board may consult an applicant's employer before setting a time frame under **subsection (1)(b)(ii)**.

### **15 Criteria for temporary registration**

The Board must decide that the applicant should be registered temporarily if, and only if, satisfied that he or she—

- (a) is a fit and proper person to practise social work; and
- (b) can speak and write English reasonably effectively, and understand spoken and written English reasonably well; and
- (c) is or will be visiting New Zealand temporarily, and wishes to practise social work at a particular institution or place in New Zealand; and
- (d) has enough knowledge and practical experience of social work to practise social work at the institution or place.

### **16 Applications by certain people previously registered**

- (1) If the Tribunal has under **section 82(1)(b)** imposed conditions that a person must meet before being re-registered, the Board must not decide that the person should be registered unless satisfied that he or she has met the conditions.
- (2) **Subsection (1)** overrides **sections 6, 7, and 12 to 15**.

### **17 Board to give reasons**

- (1) If the Board decides that the applicant should be registered subject to restrictions, it must state—
  - (a) the restrictions; and
  - (b) its reasons for imposing them.
- (2) If the Board decides that the applicant should be registered subject to conditions, it must state—
  - (a) the conditions; and
  - (b) the time within which each of them must be met; and
  - (c) its reasons for imposing them.
- (3) If the Board decides that the applicant's registration should be provisional or temporary, it must state—
  - (a) its reasons; and

- (b) the duration of the registration.
- (4) If the Board decides that the applicant should not be registered, it must state its reasons.

*Registration generally*

**18 Registrar to register successful applicants**

Promptly after the Board has decided that a person should be registered, the Registrar must register him or her, and give him or her written notice stating that he or she has been registered, and—

- (a) any restrictions or conditions to which his or her registration is subject; and
- (b) in the case of conditions, the time within which each of them must be satisfied; and
- (c) the Board's reasons for imposing the restrictions or conditions; and
- (d) if his or her registration is provisional or temporary,—
  - (i) the fact that it is provisional or temporary; and
  - (ii) its duration; and
  - (iii) the Board's reasons for directing provisional or temporary registration.

**19 Registrar to notify unsuccessful applicants**

Promptly after the Board has decided that a person should not be registered, the Registrar must give him or her written notice stating—

- (a) that the Board has decided that he or she should not be registered; and
- (b) the Board's reasons for its decision.

**20 Certificates of registration**

- (1) On payment of the fee (if any) set by the Board, the Registrar must give a registered social worker who asks for it a certificate of registration—
  - (a) stating in respect of him or her as much of the information the Board then requires for certificates of registration as the Registrar has; and
  - (b) signed and dated by the Registrar.
- (2) If the social worker has only provisional or temporary registration, the certificate must say so.

**21 Surrender of certificate of registration**

- (1) The cancellation or suspension of a registered social worker's registration cancels any certificate of registration he or she holds.
- (2) A person must deliver to the Registrar the certificate of registration he or she holds, within 14 days after the Registrar—
  - (a) gives him or her notice that his or her registration has been cancelled or suspended; or
  - (b) gives him or her—
    - (i) notice that restrictions or conditions (or varied restrictions or conditions) have been placed on his or her registration; and
    - (ii) a new certificate of registration containing the appropriate restrictions or conditions.

*Limited registration***22 Renewal of limited registration**

- (1) A registered social worker with limited registration may give the Board a written application to renew that registration.
- (2) If the application is accompanied by the application fee (if any) set by the Board, the Board may direct the Registrar to—
  - (a) renew the registration until a day (not more than 6 months after the day on which it would otherwise expire) stated in the notice; and
  - (b) give a further certificate of registration.
- (3) **Subsection (2)** is subject to **sections 10(2), 24, and 137(1)**.

**23 Criteria for renewal of limited registration**

- (1) The Board must not direct the renewal of provisional registration unless satisfied—
  - (a) in the case of an applicant to whom **section 14(2)** applies, that he or she—
    - (i) still intends to work towards meeting the criteria in **section 6 or section 7** within the time frame originally set by the Board; or
    - (ii) still intends to work towards meeting the criteria in **section 6 or section 7**, but within a time frame longer than that originally set by the Board, and has good reasons for needing the longer time frame; and

- (b) in any other case, that the applicant is still in the process of working towards meeting the criteria in **section 6 or section 7**, and—
  - (i) has made satisfactory progress in doing so; or
  - (ii) has good reasons for not having made satisfactory progress in doing so.
- (2) The Board must not direct the renewal of temporary registration unless satisfied that the applicant still meets the criteria in **section 15**.

#### **24 Maximum period for limited registration**

The Board must not direct the giving or renewal of limited registration if the applicant—

- (a) has already held provisional registration or temporary registration for a period of more than 6 years; or
- (b) has already held limited registration (whether provisional registration, temporary registration, or a combination of both) for 2 or more periods of more than 6 years in total.

#### **25 Cancellation of limited registration**

The Board may at any time, in its absolute discretion, cancel any registered social worker's limited registration; and in that case the Registrar must—

- (a) cancel it by noting against the entry of the holder's name in the Register under **section 136** the fact and date of the cancellation; and
- (b) make reasonable efforts to give the holder written notice, signed and dated by the Registrar, stating—
  - (i) that the certificate has been cancelled; and
  - (ii) the reasons for the cancellation; and
  - (iii) that the holder is required by **section 21(2)(a)** to surrender the certificate.

#### *Practising certificates*

#### **26 Applications for practising certificates**

- (1) A registered social worker may apply to the Registrar for a practising certificate.
- (2) The application must—
  - (a) be made on a form provided by the Board for the purpose; and

- (b) be accompanied by the fee (if any) set by the Board.
- (3) The form may require any information the Board thinks appropriate, including a statement specifying whether the applicant is, at the date of the application, employed as a social worker.

#### **27 Effect of making compliant application**

If an application for a practising certificate complies with **section 26**, the registered social worker who made it must be treated as holding a practising certificate between the time the Registrar receives the application and the earlier of—

- (a) the time the Registrar issues a practising certificate; and
- (b) the time the Registrar notifies the applicant in writing that he or she refuses to issue a practising certificate.

#### **28 Issue of practising certificates**

- (1) On receiving an application that complies with **section 26**, the Registrar must issue a practising certificate to the applicant.
- (2) **Sections 29 and 137** override **subsection (1)**.

#### **29 Restrictions on issue of practising certificates**

- (1) The Registrar must refer an application for a practising certificate to the Board if he or she—
  - (a) believes on reasonable grounds that—
    - (i) the applicant has not undertaken a competence assessment required by this Act; or
    - (ii) the applicant has undertaken a competence assessment required by this Act, but the results are not yet available; or
    - (iii) the applicant has undertaken a competence assessment required by this Act, and the results seem unsatisfactory; or
    - (iv) the applicant has not held a practising certificate within the 3 years immediately before the date of the application; or
  - (b) suspects on reasonable grounds that the applicant—
    - (i) has at any time failed to maintain a reasonable standard of professional competence; or
    - (ii) has not been practising social work as a profession at any time within the 3 years immediately before the date of the application; or

- (iii) is not a fit and proper person to practise social work.
- (2) The Registrar may refuse to issue a practising certificate if satisfied that any information included in the application for it is false or misleading.

### **30 Board to consider certain applications**

Promptly after the Registrar refers an application for a practising certificate to the Board, the Board must consider it in the light of the requirements of **section 32**, and either—

- (a) direct the Registrar to issue a practising certificate to the applicant without conditions; or
- (b) decide to consider whether to direct the Registrar to—
  - (i) issue a practising certificate to the applicant subject to conditions; or
  - (ii) refuse to issue a practising certificate to the applicant.

### **31 Procedure for consideration**

- (1) **Subsections (2) and (3)** apply if the Board decides that it should consider whether to direct the Registrar to—
  - (a) issue a practising certificate subject to conditions; or
  - (b) refuse to issue a practising certificate.
- (2) The Board must give the applicant concerned a reasonable opportunity to make written submissions and to be heard on the matter, either personally or by a representative.
- (3) The Registrar must give the applicant—
  - (a) written notice that—
    - (i) the Board is considering whether to direct the Registrar to issue a practising certificate subject to conditions, or to direct the Registrar to refuse to issue a practising certificate; and
    - (ii) the applicant has a reasonable opportunity to make written submissions and to be heard on the matter, either personally or by a representative; and
  - (b) a copy of any information on which the Board is relying.
- (4) The notice must also state the substance of the grounds on which the Board is considering whether to act.

**32 Decisions of Board as to practising certificates**

- (1) Where the Registrar has referred an application for a practising certificate to the Board,—
  - (a) the Board must direct the Registrar to issue a practising certificate to the applicant without restrictions or conditions, if it is satisfied that the applicant is competent to practise as a social worker in accordance with his or her registration without restrictions or conditions;
  - (b) the Board must direct the Registrar to issue a practising certificate to the applicant subject to restrictions or conditions (or both), if it is satisfied that the applicant is competent to practise as a social worker in accordance with his or her registration only subject to those restrictions or conditions;
  - (c) in any other case, the Board must direct the Registrar—
    - (i) to refuse to issue a practising certificate to the applicant until he or she has met conditions stated by the Board (and must also direct the Registrar to issue any practising certificate to the applicant subject to conditions), if it is satisfied that the applicant will be competent to practise as a social worker in accordance with his or her registration only subject to those conditions; or
    - (ii) to refuse to issue a practising certificate to the applicant at all.
- (2) If the Board gives a direction under **subsection (1)(c)**,—
  - (a) the direction must state the Board's reasons; and
  - (b) the Registrar must give the applicant notice of the direction and reasons.
- (3) If the Board gives a direction under **subsection (1)(c)(i)**,—
  - (a) it may also direct the Registrar to issue an interim practising certificate to the applicant; and
  - (b) if the conditions stated by the Board are later met, the Registrar may issue a practising certificate to the applicant and cancel the interim practising certificate.

**33 Currency of practising certificates**

- (1) A practising certificate is in force for a period decided by the Board (generally or in any particular case).
- (2) The period must be stated in the certificate, and must be—

- (a) no longer than 4 months from the day the certificate is issued, in the case of an interim practising certificate; and
  - (b) no longer than 1 year from the day the certificate is issued, in any other case.
- (3) If the holder of a practising certificate ceases to be a registered social worker, the certificate is cancelled.

### **34 Conditions on practising certificates**

- (1) If a practising certificate relates to a person whose registration is subject to restrictions or conditions, the Registrar—
- (a) must note the conditions on it; or
  - (b) must—
    - (i) note on it that the person’s registration is subject to the restrictions or conditions (or both) stated in the notice attached to it; and
    - (ii) attach to it a notice stating all the restrictions and conditions.
- (2) If a practising certificate is subject to restrictions or conditions, the Registrar—
- (a) must note the restrictions or conditions on it; or
  - (b) must—
    - (i) note on it that it is subject to the restrictions or conditions (or both) stated in the notice attached to it; and
    - (ii) attach to it a notice stating all the restrictions and conditions.

### **35 Surrender of practising certificates**

- (1) This subsection applies to a practising certificate if—
- (a) it is cancelled or suspended; or
  - (b) it is required for endorsement under **Part 3**; or
  - (c) its holder’s registration is—
    - (i) cancelled under any of **sections 25, 81(1)(a)(i), 125, 126, 127, 129, 130, and 131(4)(b)(ii)**; or
    - (ii) suspended under any of **sections 43(1)(b)(ii), 47(2)(b), 52, 55(2)(b)(ii), 75(1)(a), 81(1)(a)(i), and 131(4)(b)(i)**.
- (2) If **subsection (1)** applies to the holder of a practising certificate, he or she (or, in the case of a holder who has died, his or her personal representative) must deliver it to the Registrar within

14 days of receiving from the Registrar notice of the cancellation, suspension, or requirement for endorsement.

### **36 Interim practising certificates**

- (1) An interim practising certificate—
  - (a) may only be issued pursuant to a direction under **section 32(3)(a)**; and
  - (b) may be issued subject to any conditions the Board thinks fit.
- (2) An interim practising certificate is cancelled by the issue to its holder of a practising certificate that is not an interim practising certificate.
- (3) The Board may, at any time and for any reason, direct the Registrar to give the holder of an interim practising certificate notice of—
  - (a) the cancellation of the certificate; and
  - (b) the reasons for the cancellation.
- (4) The cancellation takes effect when the holder receives the notice.

## **Part 3 Competence and fitness**

### *Competence*

### **37 Competence to practise social work**

The Board must find a person's competence to practise social work satisfactory for the purposes of this Act if, and only if, in the Board's opinion, he or she—

- (a) has the skill and knowledge required to practise social work in accordance with his or her registration (or proposed registration); and
- (b) meets the professional standards reasonably to be expected of a registered social worker.

### **38 Reviews of competence to practise social work**

The Board must review a person's competence to practise social work—

- (a) promptly after receiving from the Registrar a valid application for registration made by the person; and

- (b) promptly after being notified of a determination under **section 69(1)(a)** that the Board should review his or her competence; and
- (c) at some time no later than 5 years after his or her competence to practise social work was last found satisfactory under this Part.

### **39 Form of review**

- (1) When reviewing a person's competence to practise social work, the Board must—
  - (a) give the person written notice—
    - (i) describing any information relating to his or her competence to practise social work it has in its possession; and
    - (ii) stating that he or she has a reasonable opportunity to make written submissions and to be heard on the review, either personally or by a representative; and
  - (b) give him or her a reasonable opportunity to make written submissions and to be heard on the review, either personally or by a representative.
- (2) In the case of a review under **section 38(b)**, the notice must also state why the person's competence to practise social work is being reviewed.
- (3) A statement under **subsection (2)** must contain enough detail to inform the person clearly of the particular grounds for the review.
- (4) A person exercising his or her right to be heard personally may be accompanied by 1 person of his or her choice who agrees to attend.
- (5) Except as provided in **subsections (1) to (4) and clause 32(1) of Schedule 1**, the review may be conducted as the Board thinks fit.

### **40 Actions if outcome of review of competence not satisfactory**

- (1) If, after reviewing a person's competence to practise social work, the Board has reason to believe that his or her competence may be unsatisfactory, it may direct the Registrar to arrange for the person to undertake a competence assessment.

- (2) If the person is a registered social worker, the Board may also direct the Registrar to place conditions on his or her registration, practising certificate, or both.
- (3) The Board may give a direction under **subsection (2)**—
  - (a) when directing the Registrar to arrange for the person to undertake a competence assessment; or
  - (b) at any later time before the person has undertaken a competence assessment.
- (4) Within 5 working days after the Board gives a direction under this section, the Registrar must ensure that the person concerned is given a copy.
- (5) A direction under this section takes effect on the day on which the person receives the copy, or on any later date stated in it.

#### *Competence assessments*

#### **41 Competence assessments**

- (1) The Board may from time to time set programmes for the purpose of helping it decide whether applicants for practising certificates or registration—
  - (a) have the skill and knowledge required to practise social work in accordance with their registration (or proposed registration); and
  - (b) meet the professional standards reasonably to be expected of a social worker.
- (2) A competence assessment may comprise 1 or a combination of 2 or more of the following:
  - (a) elements entirely set by the Board; or
  - (b) elements set by some other person or body, and recognised by the Board without modification; or
  - (c) elements set by some other person or body, and recognised by the Board in a modified form.
- (3) At least 1 competence assessment must apply to all social work.
- (4) Any other competence assessment—
  - (a) may apply to all social work; or
  - (b) may apply only to social work of a stated description; or
  - (c) may apply to all social work other than social work of a stated description.
- (5) Within 20 working days after the Board sets a competence assessment, the Registrar must publish in daily newspapers

circulating in Auckland, Wellington, Christchurch, and Dunedin notice of—

- (a) its setting and application; and
- (b) details of where copies may be obtained.

#### **42 Copies of competence assessments to be available**

The Board must take all practicable steps to ensure that copies of all competence assessments in force are available at its offices during ordinary business hours, both—

- (a) for purchase at a reasonable price; and
- (b) for inspection free of charge.

#### **43 Actions if registered social worker fails assessment**

- (1) If a registered social worker fails a competence assessment, or fails or refuses to undertake a competence assessment,—
  - (a) the Registrar must notify the Board; and
  - (b) the Board may direct the Registrar to—
    - (i) make the social worker's registration or practising certificate, or both, subject to conditions stated by the Board; or
    - (ii) suspend the social worker's registration or practising certificate.
- (2) If the Board proposes to give a direction under **subsection (1)(b)**, it must give to the registered social worker concerned—
  - (a) notice stating—
    - (i) why the Board proposes to give the direction; and
    - (ii) that he or she has a reasonable opportunity to make written submissions and to be heard on the matter, either personally or by a representative; and
  - (b) a copy of any information on which the Board is relying in proposing to give the direction.
- (3) The statement under **subsection (2)(a)(i)** must contain enough detail to inform the person clearly of the particular grounds for the proposal to give the direction.
- (4) A direction under **subsection (1)(b)** remains in effect until the person concerned has—
  - (a) satisfied all the requirements of the competence assessment (in the case of a failure of a competence assessment); or

- (b) undertaken a competence assessment (in the case of a failure or refusal to undertake a competence assessment).
- (5) The Board may extend the period within which a social worker is required to satisfy the requirements of a competence assessment.
- (6) Failing a competence assessment is not in itself grounds for the taking of disciplinary action.

#### **44 Confidentiality of information**

- (1) A person who, for the purposes of a competence assessment, examines any records made or kept by the person being assessed (**subject**) must not disclose any information about an identifiable individual other than the subject (**other person**) obtained from the records, except—
  - (a) for the purpose of making a report to the Board in relation to the subject; or
  - (b) for the purposes of a criminal investigation of, or criminal proceedings taken against, the subject; or
  - (c) by disclosing the information to the other person, if—
    - (i) the Board has directed that the information be disclosed to the other person; or
    - (ii) the other person has asked for it.
- (2) **Subsection (1)** does not affect the Privacy Act 1993.
- (3) **Subsection (4)** applies to all information, statements, and admissions relating to the conduct of a person undertaking a competence assessment (whether that conduct occurred before or during the assessment) that—
  - (a) are supplied, disclosed, or made by the person during the assessment; and
  - (b) are not records made or kept by the person before the assessment is undertaken, and disclosed in the course of or for the purposes of the assessment.
- (4) No information, statement, or admission to which this subsection applies—
  - (a) may be used or disclosed for any purpose other than the purposes of the competence assessment during which it was disclosed or made; or
  - (b) is admissible against the person who disclosed or made it, or any other person, in any proceedings in any court or before a person acting judicially.

*Fitness***45 Fitness to practise social work**

- (1) The Board may find a person (the **subject**) is not a fit and proper person to practise social work if, and only if, it is satisfied that there are grounds on which a reasonable person would conclude that the subject is not a fit and proper person to practise social work.
- (2) For the purposes of **subsection (1)**, the Board may be satisfied that there are grounds on which a reasonable person would conclude that the subject is not a fit and proper person to practise social work if—
  - (a) the subject has been convicted, in New Zealand or overseas, of an offence punishable by imprisonment for 3 months or more, and the Board is satisfied that the nature and circumstances of the offence reflect adversely on his or her fitness to practise social work; or
  - (b) the Board is satisfied that the subject is unable to perform adequately the functions required to practise social work satisfactorily; or
  - (c) the Board is satisfied on reasonable grounds that the subject is not of good character and reputation.
- (3) In the case only of an applicant for registration, the Board may reserve its decision on whether he or she is a fit and proper person to practise social work if it is satisfied—
  - (a) that—
    - (i) professional disciplinary proceedings are being taken against him or her (whether in New Zealand or overseas); or
    - (ii) a licensing or registration organisation (whether in New Zealand or overseas) is making investigations that may lead to the taking of professional disciplinary proceedings against him or her; or
    - (iii) the Health and Disability Commissioner is making investigations that may lead to the taking of professional disciplinary proceedings against him or her; and
  - (b) that the circumstances suggest a reasonable possibility that he or she is not a fit and proper person to practise social work.

**46 Consideration of fitness to practise social work**

The Board must consider whether a person is a fit and proper person to practise social work—

- (a) promptly after receiving from the Registrar a valid application for registration made by the person; and
- (b) promptly after being notified of a determination under **section 69(1)(a)** that the Board should review his or her fitness.

**47 Action if Board considers registered social worker not fit and proper**

- (1) This section applies to a registered social worker if, after being notified of a determination under **section 69(1)(a)** that the Board should review his or her fitness, the Board—
  - (a) has considered whether he or she is a fit and proper person to practise social work; and
  - (b) determines that he or she may not be a fit and proper person to practise social work.
- (2) If this section applies to a registered social worker, the Board may—
  - (a) make a complaint against the social worker under **section 57**; or
  - (b) direct the Registrar to suspend the social worker's registration or practising certificate.
- (3) If the Board proposes to give a direction under **subsection (2)(b)**, it must give to the registered social worker concerned—
  - (a) notice stating—
    - (i) why the Board proposes to give the direction; and
    - (ii) that he or she has a reasonable opportunity to make written submissions and to be heard on the matter, either personally or by a representative; and
  - (b) a copy of any information on which the Board is relying in proposing to give the direction.
- (4) The statement under **subsection (3)(a)(i)** must contain enough detail to inform the person clearly of the particular grounds for the proposal to give the direction.
- (5) The Board must not direct the Registrar to suspend the social worker's registration or practising certificate unless—

- (a) it 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
  - (b) it is satisfied that the social worker is not a fit and proper person to practise social work.
- (6) 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 possible after it is given.
- (7) The suspension does not take effect until the social worker is given a copy of the direction.

#### **48 Police vetting**

In order to help determine whether a person is a fit and proper person to practise social work for the purposes of this Act, the Board must—

- (a) ask the New Zealand Police to check if he or she has any criminal convictions; and
- (b) consider any criminal convictions (whether in New Zealand or overseas) disclosed to the Board by the New Zealand Police, or otherwise known to the Board.

#### *Conditions affecting ability to practise social work*

#### **49 Notification of conditions affecting ability to practise social work**

- (1) Any person who considers that a registered social worker may be unable to perform adequately the functions required to practise social work satisfactorily may give the Registrar notice of all the circumstances.
- (2) No civil, criminal, or disciplinary proceedings may be taken against a person who, believing that a registered social worker may be unable to perform adequately the functions required to practise social work satisfactorily, has given the Registrar notice of all the circumstances, unless the person has acted in bad faith.
- (3) **Subsection (2)** applies even if the notice contains information relating to a person other than the registered social worker.

#### **50 Power to seek medical advice**

- (1) A person who is considering notifying the Registrar under **section 49** may seek any medical advice, whether psychiatric

or otherwise, he or she thinks appropriate to help him or her form an opinion.

- (2) A notice under **section 49** must state any medical advice obtained.

### **51 Notice to be put before chairperson**

When the Registrar receives a notice under **section 49**,—

- (a) he or she must promptly put it before the chairperson of the Board; and
- (b) the chairperson must put it before the Board at its next meeting.

### **52 Interim suspensions**

- (1) The chairperson of the Board may give the Registrar a direction to suspend the registration of a registered social worker 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, if the chairperson—
- (a) considers (whether or not as a result of a notice under **section 49**) that the social worker may be unable to perform adequately the functions required to practise social work satisfactorily; and
  - (b) after consulting with 2 other members of the Board (of whom at least 1 must be a registered social worker), is satisfied that it is desirable to do so, having regard to the need to protect the health and safety of members of the public.
- (2) The chairperson does not have to give the social worker notice that the chairperson intends to give the direction.
- (3) The direction 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
  - (d) be signed by the chairperson.
- (4) 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 possible after it is given.
- (5) The suspension does not take effect until the social worker is given a copy the direction.

- (6) The deputy or other acting chairperson may act under this section, **section 51, or section 55** if there is no chairperson of the Board or the chairperson is unavailable.

### **53 Power to order medical examination**

- (1) If (whether or not as a result of a notice under **section 49**) the Board considers that a registered social worker may be unable to perform adequately the functions required to practise social work satisfactorily, it may give him or her written notice requiring him or her to submit himself or herself for examination by a medical practitioner chosen by the Board.
- (2) The Board must first consult the social worker as to who should undertake the examination, unless—
- (a) it is impracticable to do so; or
  - (b) the social worker refuses to be consulted.
- (3) The notice must—
- (a) state—
    - (i) the name and address of the medical practitioner; and
    - (ii) the date by which the examination is to be conducted (being a date at least 5 working days after the date on which the notice is given to the social worker); and
  - (b) be signed by the chairperson of the Board or the Registrar.
- (4) The Board must pay for the examination.

### **54 Conduct and consequences of examination**

- (1) The Board must give a medical practitioner who undertakes an examination under **section 53** notice of—
- (a) its reasons for requiring the examination; and
  - (b) the fields of social work in which the social worker usually practises.
- (2) The social worker may have another medical practitioner, chosen by him or her, attend the examination as an observer.
- (3) The medical practitioner who examines the social worker must, as soon as reasonably practicable after the examination, give the Registrar a written report on the social worker's mental and physical condition (so far as it affects his or her ability to practise social work satisfactorily).

- (4) Promptly after receiving the report, the Registrar must—
  - (a) put it before the Board; and
  - (b) send a copy to the social worker.

**55 Restrictions may be imposed because of condition**

- (1) **Subsection (2)** applies if a registered social worker has been given a notice under **section 53**, and—
  - (a) either—
    - (i) the social worker submitted himself or herself for examination as required by the notice, and the Registrar has received a written report on the social worker's mental and physical condition from the medical practitioner named in it; or
    - (ii) the social worker did not submit himself or herself for examination as required by the notice; and
  - (b) the Registrar has given the social worker notice that he or she has a reasonable opportunity to make written submissions and to be heard on the matter, either personally or by a representative; and
  - (c) the Board has given the social worker that opportunity; and
  - (d) the Board considers that the matter should be dealt with urgently.
- (2) If this subsection applies, the Board—
  - (a) must consider all the relevant circumstances of the case (including any report received from the medical practitioner named in the notice, whether or not the social worker attended for examination within the time required by the notice); and
  - (b) may give the Registrar a direction to—
    - (i) make the social worker's registration or practising certificate, or both, subject to conditions stated by the Board; or
    - (ii) suspend the social worker's registration or practising certificate.
- (3) The Board must not give a direction unless—
  - (a) it is satisfied that—
    - (i) the social worker is unable to perform adequately the functions required to practise social work satisfactorily; and

- (ii) it is necessary to do so, having regard to the need to protect the health and safety of members of the public; or
  - (b) it has been unable to decide whether the social worker is able to practise social work satisfactorily, because he or she did not submit himself or herself for examination as required by the notice concerned.
- (4) The direction must—
  - (a) be in writing; and
  - (b) state why it has been given; and
  - (c) be signed by the chairperson.
- (5) The Registrar must take all reasonably practicable steps to ensure that a copy of the direction is given to the social worker within 5 working days after the day on which it is given.
- (6) The direction does not take effect until—
  - (a) the day on which the social worker is given a copy; or
  - (b) a later day stated in it.

#### **56 Revocation of restrictions**

- (1) The Board may give the Registrar a direction to revoke a suspension imposed under **section 52 or section 55** if it is satisfied that the social worker concerned—
  - (a) was in fact able to practise social work satisfactorily; or
  - (b) is again able to practise social work satisfactorily.
- (2) The Board may give the Registrar a direction to revoke any conditions imposed under **section 55** if it is satisfied that they are no longer necessary.
- (3) The Registrar must take all reasonably practicable steps to ensure that a copy of the direction is given to the social worker within 5 working days after the day on which it is given.
- (4) The direction takes effect immediately.

## **Part 4 Discipline**

### *Complaints*

#### **57 Complaints against registered social workers**

- (1) Any person may make a complaint against a registered social worker—

- (a) to the Health and Disability Commissioner or the Registrar, if the complaint is about the provision of health services or disability services; or
  - (b) to the Registrar.
- (2) The complaint may be oral or written.
- (3) A complaint may be made by—
- (a) the Minister; or
  - (b) the Commissioner for Children; or
  - (c) any other person in the service of the Crown acting in an official capacity; or
  - (d) any member of the Board or the Tribunal.
- (4) **Subsection (3)** does not limit the generality of **subsection (1)**.

**58 Registrar to notify Tribunal of complaints**

The Registrar must notify the chairperson of the Tribunal in writing of a complaint under **section 57(1)(b)**.

**59 Registrar to notify Health and Disability Commissioner of certain complaints**

The Registrar must promptly notify the Health and Disability Commissioner in writing of a complaint about the provision of health services or disability services made to the Registrar under **section 57(1)**.

**60 Health and Disability Commissioner may notify Tribunal of complaints**

The Health and Disability Commissioner may under section 38 of the Health and Disability Commissioner Act 1994 notify the chairperson of the Tribunal in writing of a complaint about the provision of health services or disability services received under Part IV of that Act that is made against or directly involves a registered social worker.

**61 Notification of convictions**

The registrar of a Court in New Zealand in which a person whom the registrar knows is a registered social worker is convicted of an offence punishable by imprisonment for a term of 3 months or longer must send a notice of the conviction to the chairperson of the Tribunal, unless the Court expressly orders otherwise.

**62 Suspension of action while Health and Disability Commissioner investigates**

- (1) No action may be taken under this Part about a complaint that has been notified or referred to the Health and Disability Commissioner until—
  - (a) the Health and Disability Commissioner notifies the chairperson of the Tribunal in writing—
    - (i) that the complaint is not to be investigated, or investigated further, under the Health and Disability Commissioner Act 1994; or
    - (ii) that the complaint has been resolved; or
    - (iii) that the complaint has been investigated under the Health and Disability Commissioner Act 1994 and the complaint is not to be referred to the Director of Proceedings under section 45(f) of that Act; or
  - (b) the Director of Proceedings notifies the chairperson of the Tribunal in writing that the Director of Proceedings has decided under section 49 of the Health and Disability Commissioner Act 1994 not to lay a charge under this Act in relation to the complaint.
- (2) **Subsection (1)** overrides **section 63**.

**63 Referral of complaints and notices of convictions to complaints assessment committee**

- (1) As soon as is reasonably practicable after receiving a complaint, the chairperson of the Tribunal must refer it to a complaints assessment committee, unless—
  - (a) the chairperson 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 Tribunal and the Commissioner both have jurisdiction); or
  - (b) the chairperson is satisfied that it does not need to be pursued (in any other case).
- (2) The chairperson of the Tribunal must refer a notice of conviction given under **section 61** to a complaints assessment committee as soon as is reasonably practicable after receiving it.

*Complaints assessment committees***64 Complaints assessment committees**

- (1) The chairperson of the Tribunal—
  - (a) may from time to time appoint, in relation to a particular case or cases of a particular class, 2 registered social workers and 1 person who is not a registered social worker to be a complaints assessment committee; and
  - (b) may at any time dissolve or reconstitute a complaints assessment committee.
- (2) Before appointing, dissolving, or reconstituting a complaints assessment committee, the chairperson of the Tribunal must consult with at least 3 members of the Board (including at least 1 member who is not a registered social worker).
- (3) No member of the Board or the Tribunal may be a member of a complaints assessment committee.
- (4) The chairperson must appoint 1 of the members of each complaints assessment committee to preside at its meetings.

**65 Committees may regulate own procedure**

- (1) A complaints assessment committee may regulate its procedure as it thinks fit.
- (2) **Subsection (1)** is subject to—
  - (a) the rules of natural justice; and
  - (b) this Act; and
  - (c) any regulations made under this Act.

**66 Committees may appoint legal advisers**

- A complaints assessment committee may appoint a legal adviser, who—
- (a) may be present at meetings of the committee; and
  - (b) may at any time advise the committee on matters of law, procedure, or evidence; but
  - (c) must not be present during the deliberations of the committee.

**67 Information to be given to social worker and complainant**

As soon as is practicable after a complaint about, or a notice of conviction of, a registered social worker is referred to a complaints assessment committee, the chairperson of the Tribunal must ensure—

- (a) that the social worker is given written notice of—
  - (i) the particulars of the complaint or notice of conviction; and
  - (ii) the intended membership of the complaints assessment committee that is to consider it; and
- (b) in the case of a complaint, that the complainant is given written notice of the intended membership of the complaints assessment committee that is to consider it.

**68 Social workers and complainants may request changes in membership of complaints assessment committee**

- (1) Within 5 working days after being informed of the intended membership of the complaints assessment committee that is to consider a complaint about, or conviction of, a registered social worker, the social worker or, in the case of a complaint, the complainant may give the chairperson of the Tribunal notice—
  - (a) requesting that any or all of the intended members not be appointed as members of that committee; and
  - (b) stating the reasons for the request.
- (2) The chairperson—
  - (a) must consider the request; and
  - (b) may reconstitute the committee.

**69 Determination of complaint by complaints assessment committee**

- (1) As soon as is reasonably practicable after a complaint or notice of conviction is referred to a complaints assessment committee, it must determine whether—
  - (a) the Board should review the competence or fitness of the social worker to practise as a social worker (or both); or
  - (b) in the case of a complaint, the committee should submit it to conciliation; or

- (c) the committee should submit the complaint or conviction to the Tribunal; or
  - (d) no further steps should be taken under this Act in relation to the complaint or conviction.
- (2) The committee may undertake or arrange for any investigation it thinks necessary to make its determination.
- (3) Before making its determination,—
- (a) the committee—
    - (i) must give the social worker concerned a reasonable opportunity to make a written explanation or statement in relation to the complaint or conviction; and
    - (ii) may, on the social worker's application or of its own motion, give him or her a reasonable opportunity to appear before it to make an explanation or statement in relation to the complaint or conviction; and
  - (b) in the case of a complaint, the committee—
    - (i) must give the complainant a reasonable opportunity to make a written statement in relation to it; and
    - (ii) may, on the complainant's application or of its own motion, give the him or her a reasonable opportunity to appear before it to make a statement in relation to it.
- (4) The committee may require a complaint referred to it to be supported by a statutory declaration.

#### **70 Procedure after committee makes determination**

- (1) This subsection applies to a determination by a complaints assessment committee that—
- (a) the Board should review the competence or fitness of a social worker to practise as a social worker; or
  - (b) the committee should submit a complaint to conciliation.
- (2) If it makes a determination to which **subsection (1)** applies, a complaints assessment committee must give written notice of the determination, and the reasons for it, to—
- (a) the Registrar; and
  - (b) the social worker concerned; and
  - (c) in the case of a complaint, the complainant.

- (3) If it makes a determination to submit a complaint or conviction to the Tribunal, a complaints assessment committee must—
  - (a) frame an appropriate charge; and
  - (a) lay it before the Tribunal; and
  - (b) give written notice of it to the social worker concerned and, if there is a complaint, to the complainant.
- (4) On receiving notice under **subsection (2)(a)** of a determination to which **subsection (1)(a)** applies, the Registrar must promptly put the notice before the Board.

### **71 Settlement of complaint by conciliation**

- (1) If a complaints assessment committee has decided that it should submit a complaint to conciliation, it must try to help the social worker and complainant concerned to resolve the complaint by agreement.
- (2) If the committee thinks that the complaint has been successfully resolved by agreement, it must promptly give the chairperson of the Tribunal written notice to that effect.
- (3) If the committee thinks that the complaint has not been successfully resolved by agreement, it must promptly determine whether—
  - (a) the committee should submit the complaint or conviction to the Tribunal; or
  - (b) no further steps should be taken under this Act in relation to the complaint.
- (4) If it makes a determination to submit the complaint to the Tribunal, the committee must—
  - (a) frame an appropriate charge; and
  - (b) lay it before the Tribunal, together with a notice stating—
    - (i) the matters on which the social worker and complainant reached agreement during conciliation; and
    - (ii) the matters on which the social worker and complainant did not reach agreement during conciliation; and
  - (c) give a copy of the charge and notice to the social worker and the complainant.
- (5) If the committee makes a determination that no further steps should be taken under this Act in relation to the complaint,—

- (a) no further steps may be taken under this Act in relation to the complaint; and
- (b) the committee must give the social worker and complainant written notice of—
  - (i) the determination; and
  - (ii) the committee's reasons.

**72 Committee may recommend suspension of registration or imposition of conditions**

A complaints assessment committee that lays a charge before the Tribunal may recommend to the Tribunal that, pending the determination of the charge,—

- (a) the registration of the social worker concerned be suspended under **section 75**; or
- (b) restrictions be imposed on the practice of social work by that social worker under **section 75**.

*Procedure and decisions of Tribunal*

**73 Laying of charge before Tribunal**

- (1) A charge against a registered social worker may be laid before the Tribunal—
  - (a) by the Director of Proceedings under the Health and Disability Commissioner Act 1994 if,—
    - (i) after conducting an investigation under Part IV of that Act, the Health and Disability Commissioner notifies the Tribunal of a complaint involving the provision of health and disability services by the social worker; and
    - (ii) under section 49 of that Act, the Director of Proceedings decides that proceedings should be taken against the social worker under this Part; or
  - (b) by a complaints assessment committee under this Part.
- (2) The charge must contain—
  - (a) a statement to the effect that the Director of Proceedings or complaints assessment committee has reason to believe that grounds exist entitling the Tribunal to exercise its powers under this Part; and
  - (b) enough detail to inform the social worker clearly of the substance of the grounds.

- (3) As soon as is reasonably practicable after a charge is laid before the Tribunal, its chairperson must convene a hearing to consider the charge.
- (4) If the charge was laid by the Director of Proceedings, it must be prosecuted at the hearing by the Director of Proceedings.
- (5) If the charge was laid by a complaints assessment committee, it must be prosecuted at the hearing by that committee.
- (6) The Director of Proceedings or a complaints assessment committee may be represented, by counsel or otherwise, in prosecuting the charge.
- (7) Except as otherwise provided in this Part, the Tribunal—
  - (a) may determine its own procedure; but
  - (b) must observe the rules of natural justice.

#### **74 Notice of disciplinary proceedings to be given to social worker**

- (1) Before convening a hearing of the Tribunal to consider a charge against a registered social worker, the chairperson of the Tribunal must give the social worker written notice—
  - (a) stating that the Director of Proceedings or a complaints assessment committee (as the case may be) has reason to believe that grounds exist entitling the Tribunal to exercise its powers under this Part; and
  - (b) specifying the particulars of the charge; and
  - (c) specifying a date (being not less than 20 working days, and not more than 60 working days, after the date on which the notice is received by the social worker) on which the Tribunal intends to hear the charge.
- (2) The chairperson must also give a copy of the notice to any complainant.
- (3) The notice must require the social worker to inform the Tribunal in writing, not later than a date specified in it (being not less than 10 working days after the date on which the social worker receives the notice), whether he or she wishes to be heard by the Tribunal, either personally or by a representative.
- (4) If the social worker fails to notify the Tribunal as required by **subsection (3)**, the social worker is entitled to appear and to be heard at the hearing, but only on conditions (as to payment of costs and expenses or otherwise) that the Tribunal thinks fit and orders.

**75 Interim suspension of registration or imposition of restrictions on practice**

- (1) At any time after a notice has been given to a social worker under **section 74(1)**, the Tribunal may, if it is satisfied that it is necessary or desirable to do so having regard to the need to protect the health or safety of members of the public, direct that, until the charge to which that notice related has been disposed of,—
  - (a) the registration of that social worker be suspended; or
  - (b) that social worker may practise as a social worker only in accordance with restrictions stated in the order.
- (2) The Tribunal may make an order under this section on the recommendation of the Director of Proceedings or a complaints assessment committee, or of its own motion.
- (3) The Tribunal does not have to give the social worker notice that it intends to give the direction.
- (4) The direction must—
  - (a) be in writing; and
  - (b) state the reasons for it; and
  - (c) state clearly the social worker's right to apply to the Tribunal to have it revoked; and
  - (d) be signed by the chairperson or a deputy chairperson of the Tribunal.
- (5) The Registrar must ensure that a copy of the direction is given to the social worker, and any employer of the social worker, as soon as is reasonably practicable.
- (6) The direction takes effect from the day on which the copy is given to the social worker.

**76 Social worker may apply for revocation of direction**

- (1) A social worker may at any time apply to the Tribunal for the revocation of a direction under **section 75(1)**.
- (2) The application must be in writing and delivered to the Registrar.
- (3) The Tribunal—
  - (a) must hear the application within 10 working days after it is received by the Registrar; and
  - (b) the Tribunal may, as it thinks fit,—
    - (i) grant or refuse the application; or

- (ii) in the case of restrictions imposed under **section 75(1)(b)**, amend or replace the restrictions.
- (4) The Registrar must promptly give the social worker notice of the Tribunal's decision.
- (5) The Tribunal may revoke a direction under **section 75(1)** of its own motion.
- (6) The Tribunal's decision takes effect immediately.

#### **77 Hearings of Tribunal to be public**

- (1) Except as provided in this section and in **section 78**, every hearing of the Tribunal must be held in public.
- (2) If, after having regard to the interests of any person (including, without limitation, the privacy of any complainant) and to the public interest, the Tribunal is satisfied that it is desirable to do so, it may (on application by any of the parties or of its own motion) make any 1 or more of the following orders:
  - (a) an order that the whole or any part of a hearing must be held in private:
  - (b) an order prohibiting the publication of any report or account of any part of a hearing, whether held in public or in private:
  - (c) an order prohibiting the publication of the whole or any part of any books, papers, or documents produced at a hearing:
  - (d) an order prohibiting the publication of the name, or any particulars of the affairs, of any person.
- (3) An application to the Tribunal for an order under **subsection (2)** must be heard in private; but the other parties to the proceedings and any complainant are entitled to be present and to make submissions on it.
- (4) If the Tribunal of its own motion proposes to make an order under **subsection (2)**, it must consider the matter in private; but the parties to the proceedings and any complainant are entitled to be present and to make submissions.
- (5) Even if a hearing of the Tribunal is otherwise held in private, the Tribunal may allow any particular person to attend it if satisfied that he or she has a particular interest in the matter to be heard.
- (6) An order made under this section continues in force—
  - (a) until a time specified in it; or

- (b) if no time is specified, until revoked under **section 79**.
- (7) This section does not prevent the Tribunal from deliberating in private as to its decision, or as to any question arising in the course of a hearing.
- (8) Orders cannot be made under **paragraph (c) or paragraph (d) of subsection (2)** in respect of—
  - (a) any communication made by or on behalf of the Health and Disability Commissioner under the Health and Disability Commissioner Act 1994 that does not contain information identifying, or capable of identifying, an individual; or
  - (b) the publication of the effect of any order.

### **78 Special protection for certain witnesses**

- (1) This section applies to evidence to be given by a witness at a hearing by the Tribunal that—
  - (a) relates to or involves a sexual matter; or
  - (b) in the Tribunal's opinion, relates to or involves some other matter that may require the witness to give intimate or distressing evidence.
- (2) Before a witness at a hearing by the Tribunal begins to give oral evidence to which this section applies, the presiding officer must—
  - (a) tell the witness that he or she has a right to give the evidence in private; and
  - (b) ask if the witness wishes to give the evidence in private.
- (3) If the witness wishes to give the evidence in private, the presiding officer must—
  - (a) ensure that only people referred to in **subsection (4)** are present in the room in which the hearing is being held; and
  - (b) tell the witness that he or she has a right to request the presence of any person of his or her choice who agrees to be present; and
  - (c) tell the social worker that he or she has a right to request the presence of any person of his or her choice who agrees to be present.
- (4) If the witness wishes to give the evidence in private, only the following people may be present in the room while the witness is giving the evidence:
  - (a) a member or officer of the Tribunal:

- (b) the social worker concerned:
  - (c) the person prosecuting the charge:
  - (d) any barrister or solicitor engaged in the proceedings:
  - (e) if the social worker's representative is not a barrister or solicitor, the representative:
  - (f) any person responsible to the Tribunal for recording the proceedings:
  - (g) any accredited news media reporter:
  - (h) 1 person of the witness' choice who agrees to be present:
  - (i) 1 person of the social worker's choice who agrees to be present:
  - (j) any other person expressly permitted by the Tribunal to be present.
- (5) The witness may object to the presence of a person of the social worker's choice (or a particular person of the social worker's choice); and in that case a person of the social worker's choice (or the particular person) may not be present in the room while the witness is giving the evidence.
- (6) If it thinks that the interests of the witness require it to do so, the Tribunal may make an order under **section 77(2)(b)** forbidding publication of any report or account of any part of the evidence relating to acts—
- (a) that are alleged to have been performed on or in respect of the witness; or
  - (b) that the witness is alleged to have been compelled or induced to perform.
- (7) This section does not limit or affect **section 77**.

**79 Application for revocation of order under section 77**

- (1) Any person may apply to the Tribunal that made an order under **section 77** for the revocation of the order.
- (2) The application may be made by a person who was a party to the proceedings in which the order was made, or any other person.
- (3) The Tribunal may grant or refuse the application as it thinks fit.

**80 Grounds on which Tribunal may make order**

- (1) The Tribunal may make an order under **section 81** in respect of a registered social worker if, after conducting a hearing on a charge laid against the social worker, it is satisfied that the social worker—
  - (a) has been guilty of professional misconduct; or
  - (b) has been guilty of conduct that—
    - (i) is unbecoming of a social worker; and
    - (ii) reflects adversely on the social worker's fitness to practise as a social worker; or
  - (c) has been convicted by a court (in New Zealand or elsewhere) of an offence that—
    - (i) is punishable by imprisonment for a term of 3 months or longer; and
    - (ii) was committed in circumstances that reflect adversely on the social worker's fitness to practise as a social worker; or
  - (d) has failed to comply with restrictions on his or her registration, or restrictions stated under **section 75(1)(b)**.
- (2) A registered social worker is guilty of professional misconduct if he or she—
  - (a) breaches the code of conduct; or
  - (b) claims or holds himself or herself out to be registered while not holding a current practising certificate.
- (3) The Tribunal must not make an order under **section 81** in respect of an offence for which a registered social worker was convicted if, when the Board decided he or she should be registered, it was—
  - (a) aware of the conviction; and
  - (b) adequately informed of the circumstances of the offence.
- (4) A registered social worker is not guilty of a disciplinary offence just because he or she has practised honestly and in good faith a theory of social work that is not in conflict with the code of conduct.

**81 Penalties**

- (1) If satisfied of any matter referred to in **section 80(1)**, the Tribunal may make any or all of the following orders:
  - (a) an order that—

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- (i) the registration of the registered social worker concerned be cancelled, or suspended for a period of not more than 12 months; or
  - (ii) for a period of not more than 3 years, he or she may practise as a social worker only in accordance with stated restrictions (as to employment, supervision, or otherwise):
  - (b) an order that he or she is censured:
  - (c) an order that he or she pay a fine of not more than \$10,000 to the Board:
  - (d) an order that he or she undergo stated additional training, professional development, or both:
  - (e) an order that he or she pay part or all of the costs and expenses of and incidental to any or all of the following:
    - (i) any investigation made by the Health and Disability Commissioner under the Health and Disability Commissioner Act 1994 in relation to the subject matter of any charge concerned:
    - (ii) any inquiry made by a complaints assessment committee in relation to the subject matter of any charge concerned:
    - (iii) the prosecution of any charge concerned by the Director of Proceedings or complaints assessment committee:
    - (iv) the hearing concerned.
- (2) The Tribunal must not make an order that the social worker's registration be cancelled unless it finds him or her guilty of gross or severe professional misconduct.
- (3) In dealing with a matter that constitutes an offence for which the social worker has been convicted by a court, the Tribunal must not impose a fine.
- (4) The Tribunal must have regard to the amount of any award of damages against the social worker under section 57 of the Health and Disability Commissioner Act 1994 in respect of the conduct concerned, when determining—
- (a) whether to make an order that he or she pay a fine; or
  - (b) the amount of any fine.

**82 Orders as to restoration of registration**

- (1) When making an order that the registration of a registered social worker be cancelled, the Tribunal may do either or both of the following things:
  - (a) fix a date before which he or she may not apply for registration again;
  - (b) impose 1 or more conditions that he or she must satisfy before he or she may apply for registration again.
- (2) 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
    - (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 cancellation of the person's registration.
- (3) The Tribunal must not impose a condition under **paragraph (b) or paragraph of (c) subsection (2)**, unless the person consents to the examination, treatment, counselling, or therapy concerned.
- (4) If the Tribunal fixes a date before which the person may not apply for registration again, no application for registration from him or her may be received or considered before that date.
- (5) **Subsection (2)** does not limit **subsection (1)(b)**.

**83 Orders of Tribunal**

- (1) An order of the Tribunal must—
  - (a) be in writing; and
  - (b) contain a statement of the reasons for it; and
  - (c) be signed by the presiding officer at the hearing.
- (2) The Registrar must ensure that a copy of the order is given to—
  - (a) the person or body who laid the charge; and
  - (b) the social worker concerned; and
  - (c) any complainant.

- (3) The order takes effect from the day on which a copy is given to the social worker, or any later date specified in it.

#### **84 Funding**

- (1) The Board—
  - (a) must pay—
    - (i) all the costs of the Tribunal; and
    - (ii) all the costs of every complaints assessment committee; and
    - (iii) all costs of and incidental to any hearing before the Tribunal; but
  - (b) may use any money paid to it under an order under **section 81(1)** to reimburse itself for its payments.
- (2) To fund the costs referred to in **subsection (1)(a)** (less any payments made to it), the Board may impose a levy, to be called the disciplinary levy, under **section 107**.

#### **85 Recovery of fines and costs**

- (1) All costs and expenses of the Health and Disability Commissioner or Director of Proceedings ordered to be paid under **subparagraph (i) or subparagraph (iii) of section 81(1)(e)**, are recoverable by the Health and Disability Commissioner as a debt due to the Health and Disability Commissioner.
- (2) All other fines, costs, and expenses ordered to be paid under **section 81(1)** are recoverable by the Board as a debt due to the Board.

### **Part 5 Appeals**

#### **86 Rights of appeal**

- (1) A person may appeal to a District Court against any decision or direction of the Board under this Act that adversely affects him or her (not being a decision or direction affecting a person only because he or she is a person of a particular kind or description).
- (2) A person may appeal to a District Court against the whole or any part of a decision or order made in relation to him or her under **Part 4** (other than a determination of a complaints assessment committee).
- (3) For the purposes of **subsection (2)**,—

- (a) a decision or order includes a decision to decline to make an order; and
  - (b) a decision or order made in relation to a charge laid by the Director of Proceedings or a complaints assessment committee is made in relation to the Director of Proceedings or a complaints assessment committee (as well as any other person).
- (4) The appeal—
- (a) must be brought by way of notice of appeal in accordance with rules of court; and
  - (b) must be lodged within 20 working days after notice of the decision or order is communicated to the appellant, or within any further time a District Court Judge allows on application made before or after the period expires.

#### **87 Notice of right of appeal**

When notifying a person under this Act of any decision or order against which **section 86** gives him or her a right of appeal, the Registrar must also notify the him or her in writing of the right of appeal, and the time within which an appeal must be lodged.

#### **88 Orders to have effect pending determination of appeal**

A decision or order against which an appeal is lodged under this Part continues in force until the appeal is determined, unless the District Court appealed to or the High Court orders otherwise.

#### **89 Procedure on appeal**

- (1) An appeal under this Part must be heard as soon as is reasonably practicable after it is lodged.
- (2) On hearing the appeal, a District Court—
  - (a) may confirm, reverse, or modify the decision or order appealed against; and
  - (b) may make any other decision or order that the person or body that made the decision or order appealed against could have made.
- (3) The District Court must not review—
  - (a) any part of a decision or order not appealed against; or
  - (b) any decision or order not appealed against at all.

**90 Court's decision final**

- (1) A District Court's decision on an appeal under this Part is final.
- (2) **Subsection (1)** is subject to **section 94**.

**91 Court may refer matter back for reconsideration**

- (1) Instead of determining an appeal under this Part, a District Court may direct the person or body whose decision or order is appealed against to reconsider, either generally or in respect of any specified aspect, the whole or any part of it.
- (2) The court—
  - (a) must state its reasons for its direction; and
  - (b) may give any other directions it thinks just as to the matter referred back for reconsideration.
- (3) The person or body—
  - (a) must reconsider the matter; and
  - (b) in doing so, must—
    - (i) take the court's reasons into account; and
    - (ii) give effect to the court's directions.

**92 Orders as to costs**

On any appeal under this Part, a District Court may order the person or body whose decision or order is appealed against, or the appellant, to pay the costs incurred in respect of the appeal by the other party to the appeal.

**93 Orders as to publication of names**

- (1) On any appeal under this Part, a District Court may, if in its opinion it is proper to do so, prohibit the publication of the name or particulars of the affairs of a registered social worker or any other person.
- (2) In deciding whether to make an order under **subsection (1)**, the Court must have regard to—
  - (a) the interests of any person (including, without limitation, the privacy of any complainant); and
  - (b) the public interest.

**94 Appeal on question of law**

- (1) A party to an appeal under this Part may appeal to the High Court on a question of law only, if dissatisfied with any decision of the District Court as being erroneous in law.
- (2) The appeal must be heard and determined in accordance with rules of court.
- (3) Part IV of the Summary Proceedings Act 1957 (together with the other provisions of that Act that are applied in that Part) applies to the appeal—
  - (a) so far as it is applicable and with all necessary modifications; but
  - (b) only so far as it relates to appeals on questions of law.
- (4) **Subsection (3)** overrides **subsection (2)**.

**Part 6****Social Workers Registration Board and Social Workers Complaints and Disciplinary Tribunal***Social Workers Registration Board***95 Social Workers Registration Board established**

This section establishes the Social Workers Registration Board.

**96 Powers of Board**

- (1) The Board—
  - (a) is a body corporate; and
  - (b) is a Crown entity for the purposes of the Public Finance Act 1989.
- (2) Subject to this Act, any other enactment, and the general law, the Board—
  - (a) has full capacity to carry on any activity, do any act, or enter into any transaction; and
  - (b) for the purposes of **paragraph (a)**, has full rights, powers, and privileges.
- (3) The Board may exercise its powers only for performing its functions.

**97 Functions of Board**

- (1) The functions of the Board are—
  - (a) to receive applications for registration:

- (b) to authorise the registration of social workers:
  - (c) to maintain the Register:
  - (d) to consider applications for practising certificates referred to it by the Registrar:
  - (e) to recognise New Zealand educational qualifications for the purposes of this Act:
  - (f) to review the competence of social workers:
  - (g) to establish and maintain a code of conduct for registered social workers:
  - (h) in consultation with providers of social work education and training in New Zealand, to promote and set standards for such education and training for the purposes of this Act:
  - (i) to promote the benefits of registration—
    - (i) to departments of State, other instruments of the Crown, other bodies and organisations that employ social workers, and the public; and
    - (ii) among people practising as social workers:
  - (j) to advise, and make recommendations to, the Minister in respect of matters relating to the regulation of the social work profession:
  - (k) to appoint the members of the Tribunal:
  - (l) to promote and encourage high standards of practice and professional conduct among registered social workers and the employers of social workers:
  - (m) to consider the cases of registered social workers who may be unable to perform adequately the functions required to practise social work satisfactorily:
  - (n) subject to this Act, to disclose to the employers or prospective employers of social workers information it has obtained under this Act relating to people who are or have been—
    - (i) applicants for registration; or
    - (ii) registered social workers:
  - (o) to provide administrative and related services for the Tribunal:
  - (p) any other functions conferred or imposed on it by or under this Act or any other enactment.
- (2) **Subsection (1)(g)** does not limit or affect the functions or powers of any department of State.

- (3) **Subsection (1)(n)** does not apply to information required by this Act to be kept confidential.

**98 Māori and Pacific people**

In the exercise and performance of its powers and functions, the Board must ensure that the following matters are integral and ongoing priorities:

- (a) the aims and aspirations of Māori, and the need for the appropriate involvement of Māori, as tangata whenua; and
- (b) the aims and aspirations of Pacific people, and the need for the appropriate involvement of Pacific people in the social work profession; and
- (c) the employment requirements of Māori and Pacific people.

**99 Mechanisms for obtaining views of Māori and Pacific people**

The Board must maintain mechanisms (for example, appointing advisory committees or forming separate caucuses) to ensure that there are at all times readily accessible to it—

- (a) the views of Māori as tangata whenua; and
- (b) the views of Pacific people.

**100 Board may be required to give effect to Government policy**

- (1) The Minister may require the Board to give effect to the policy of the Government, by giving it written notice that it is required to give effect to a policy stated in the notice.
- (2) The Board must give effect to any applicable policy of the Government (as required under **subsection (1)**) in exercising its powers and performing its functions (whether under this Act or any other enactment).
- (3) The Minister must consult the Board before requiring it to give effect to a policy of the Government.
- (4) In requiring the Board to give effect to a policy of the Government, the Minister must not give the Board a notice—
  - (a) relating to the registration of social workers; or

- (b) relating to a matter in respect of which an enactment other than this Act expressly requires it to act independently; or
- (c) requiring it, in respect of a particular person, to—
  - (i) make a particular decision, do or refrain from doing a particular act, or bring about a particular result; or
  - (ii) make a decision of a particular kind, do or refrain from doing an act of a particular kind, or bring about a result of a particular kind.

### **101 Other provisions relating to requirements**

- (1) Promptly after requiring the Board to give effect to a policy of the Government, the Minister must publish a copy of the notice in the *Gazette*.
- (2) Within 12 sitting days after requiring the Board to give effect to a policy of the Government, the Minister must present a copy of the notice to the House of Representatives.
- (3) If given notice under **section 100** requiring it to give effect to a policy of the Government, the Board must prepare and give to the Minister for approval a draft plan stating how it proposes to give effect to the policy.
- (4) Within 12 sitting days after approving a draft plan given under **subsection (3)**, the Minister must present a copy of the approved plan to the House of Representatives.

### **102 Review of operation of Act**

- (1) As soon as is practicable after the expiry of the period of 3 years beginning on the commencement of this Part, and then at intervals of not more than 5 years, the Board must—
  - (a) review the operation of this Act, and its own operations, since—
    - (i) the commencement of this Part (in the case of the first review carried out under this paragraph); and
    - (ii) the date of the last review carried out under this paragraph (in the case of every later review); and
  - (b) consider—
    - (i) the extent to which this Act is achieving the purposes stated in **paragraphs (a) and (e) of section 3**; and
    - (ii) whether any amendments to this Act are necessary or desirable; and

- (c) report its findings to the Minister.
- (2) Within 12 sitting days after receiving the report, the Minister must present a copy to the House of Representatives.

### **103 Code of conduct**

- (1) The Board must issue and maintain a code of conduct covering the minimum standards of integrity and conduct that—
  - (a) are to apply to registered social workers; and
  - (b) should apply generally in the social work profession.
- (2) Before it issues or amends the code of conduct, the Board must consult—
  - (a) organisations and individuals that, in its opinion, represent social workers; and
  - (b) organisations and individuals that, in its opinion, represent employers of social workers.

### **104 Membership**

- (1) The Board comprises—
  - (a) 6 registered social workers; and
  - (b) 4 other people.
- (2) Before the commencement of **Parts 2 to 4**, the references in **subsection (1)(a)**, **section 52(1)(b)**, and **clause 36(a) of Schedule 1** to registered social workers must be read as references to people practising social work.

### **105 Annual report**

- (1) As soon as is practicable after the end of each financial year, the Board must give the Minister a report on its operations for that year, and on any other matters affecting the social work profession it thinks fit.
- (2) The report must—
  - (a) for each member, the total value of the remuneration and other benefits received by the member from the Board in the financial year; and
  - (b) the number of employees who, during the financial year, received remuneration and other benefits in their capacity as employees, the total value of which exceeded \$100,000, and the number of those employees in brackets of \$10,000; and

- (c) for each member of a committee of the Board who is neither a member nor an employee of the Board, the total value of the remuneration and other benefits received by the committee member from the Board in the financial year; and
  - (d) the number of members of the Board, members of a committee of the Board, and employees of the Board who, during the financial year, received any compensation or other benefits on termination, and the total value of the compensation or other benefits.
- (3) The Minister must present a copy of the report to the House of Representatives in accordance with section 44A of the Public Finance Act 1989.

#### **106 Board may set fees**

- (1) The Board may from time to time, by notice in the *Gazette*, set fees payable in respect of the following matters:
- (a) applications for registration:
  - (b) additions or alterations to the Register:
  - (c) the issue of practising certificates:
  - (d) the issue of other certificates:
  - (e) the issue of copies of certificates:
  - (f) the supply of a copy of an entry in the Register:
  - (g) inspecting the Register, or any other document kept by the Board that is open for inspection:
  - (h) supplying to any registered social worker any document, other than a certificate of registration, required by him or her for the purpose of seeking registration overseas:
  - (i) sitting any examination set or approved by the Board:
  - (j) the conduct of competence assessments:
  - (k) any other matter relating to anything the Board is required to do in order to carry out its functions.
- (2) The notice may exempt people of any kind or description from liability to pay any fee, and may provide for the waiver or refund of any fee.

#### **107 Disciplinary levy**

- (1) The Board may from time to time, by notice in the *Gazette*, impose on every registered social worker a levy of any

amount it thinks fit for the purpose of investigations and other proceedings concerning discipline under this Act.

- (2) The notice may exempt people of any kind or description from liability to pay the levy, and may provide for the waiver or refund of the levy.

### **108 Further provisions relating to fees and levy**

- (1) The Board may at any time, by notice in the *Gazette*, amend or revoke any notice published under **section 106 or section 107**.
- (2) Every notice published under **section 106, section 107**, or this section comes into force on a day stated in it, being a day at least 28 days after the date of publication of the notice.
- (4) Every notice published under **section 106, section 107**, or this section is a regulation for the purposes of the Regulations (Disallowance) Act 1989, but not for the purposes of the Acts and Regulations Publication Act 1989.
- (5) Every fee set under **section 106** and every levy imposed under **section 107** is payable to the Board, and recoverable by the Board as a debt due to the Board.
- (6) The Registrar may decline to do or permit to be done any act in respect of which a fee is payable to the Board under this Act, until the fee is paid.

### **109 Application of income**

The Board must apply all fees, levies, fines, and other money it receives as it considers appropriate to the performance of its functions and duties and the exercise of its powers.

### **110 Directions and resolutions to be in writing**

Every direction and resolution of the Board must be in writing, and—

- (a) signed by the person who presided at the meeting, or over the telephone conference, where the resolution to give it was passed; or
- (b) in the case of a resolution assented to under **clause 39 of Schedule 1**, signed by the members who assented to it.

### **111 Other provisions relating to Board**

The provisions set out in **Schedule 1** apply to the Board.

*Social Workers Complaints and Disciplinary Tribunal***112 Social Workers Complaints and Disciplinary Tribunal established**

This section establishes the Social Workers Complaints and Disciplinary Tribunal.

**113 Function of Tribunal**

The Tribunal's functions are—

- (a) to administer the complaints process concerning registered social workers established by this Act; and
- (b) to exercise the disciplinary powers over registered social workers conferred by this Act; and
- (c) any other functions conferred or imposed on it by or under this Act or any other enactment.

**114 Membership of Tribunal**

(1) The Tribunal comprises—

- (a) the following members appointed by the Board:
  - (i) a chairperson and 1 or more deputy chairpersons; and
  - (ii) at least 1 barrister or solicitor of the High Court of not less than 7 years' practice (whether or not he or she holds or has held judicial office); and
  - (iii) 5 other members; and
- (b) at least 1 lay person appointed by the Minister.

(2) A member of the Board is not eligible to be a member of the Tribunal.

**115 Suitability of certain people to be appointed**

In considering the suitability of any person to be appointed to the Tribunal under **section 114(1)(a)(iii)**, the Board must—

- (a) have regard not only to his or her qualifications but also to his or her knowledge and experience of matters likely to come before the Tribunal; and
- (b) have regard to the need to ensure that the Tribunal has—
  - (i) enough members who are registered social workers; and
  - (ii) enough members who are not registered social workers; and

- (c) have regard to the need to ensure that the Tribunal has—
  - (i) enough people who represent Māori; and
  - (ii) enough people who represent other ethnic groups.

### **116 Removal of members**

- (1) The Board must remove a person from the Tribunal if—
  - (a) he or she is adjudged bankrupt under the Insolvency Act 1967; or
  - (b) 5 years has elapsed since the date on which he or she was appointed to the Tribunal; or
  - (c) he or she gives the Board written notice asking to be removed from the Tribunal.
- (2) The Board may remove a person from the Tribunal if the chairperson recommends his or her removal—
  - (a) because the person is unable to perform his or her duties adequately; or
  - (b) for neglect of duty or misconduct, proved to the chairperson's satisfaction.
- (3) A person may not be removed from the Tribunal under **paragraph (b) or paragraph (c) of subsection (1)** until any hearings in respect of which that person was appointed to the Tribunal have concluded.
- (4) No person is entitled to compensation for removal from the Tribunal.

### **117 Hearings by Tribunal**

- (1) For the purposes of a particular hearing, the Tribunal comprises,—
  - (a) as presiding officer, the chairperson of the Tribunal or (if the chairperson so decides) a deputy chairperson chosen by the chairperson; and
  - (b) the member of the Tribunal appointed under **section 114(1)(a)(ii)** (or, if 2 or more members are appointed, 1 of those members chosen by the chairperson); and
  - (c) of the 5 members of the Tribunal appointed under **section 114(1)(a)(iii)**, 2 members chosen by the chairperson; and

- (d) the member of the Tribunal appointed under **section 114(1)(b)** (or, if 2 or more members are appointed, 1 of those members chosen by the chairperson).
- (2) A hearing of the Tribunal—
  - (a) must be held at times and places the Tribunal or the presiding officer appoints for it; and
  - (b) may be adjourned from time to time and from place to place by the Tribunal or the presiding officer.
- (3) A hearing of the Tribunal must not take place unless all its members for the hearing are present; but a decision of a majority of those members is the decision of the Tribunal for the purposes of the hearing.

**118 Other provisions relating to Tribunal**

The provisions set out in **Schedule 2** apply to the Tribunal.

**Part 7**  
**Register and Registrar**

*Register of Social Workers*

**119 Register of social workers**

The Board must maintain a register of social workers.

**120 Register to be maintained in parts**

The Registrar must maintain the Register in 3 separate parts—

- (a) 1 for information relating to people who do not hold a limited certificate; and
- (b) 1 for information relating to people who hold a provisional certificate of registration; and
- (c) 1 for information relating to people who hold a temporary certificate of registration.

**121 Information to be registered**

- (1) The information to be entered in the Register in respect of a person is—
  - (a) the person's name;
  - (b) the person's home or work address;
  - (c) particulars of the qualifications by virtue of which the person is registered;
  - (d) the type of registration the person holds;

- (e) the date on which the Board decided that the person should be registered;
  - (f) the date of registration;
  - (g) any other matters prescribed by regulations made under this Act;
  - (h) any other matters the Board thinks appropriate.
- (2) The home or work address must be the physical address of the premises concerned.
- (3) The following information must also be entered in the Register in respect of a person who is registered:
- (a) any current conditions subject to which the person is registered;
  - (b) if the person's registration is suspended,—
    - (i) the fact that it is suspended; and
    - (ii) any current conditions relating to its suspension;
  - (c) particulars of all practising certificates issued to the person;
  - (d) any conditions subject to which the person's current practising certificate was issued;
  - (e) if the person's current practising certificate is suspended,—
    - (i) the fact that it is suspended; and
    - (ii) any current conditions relating to its suspension.
- (4) The Registrar must make all amendments to the Register necessary to reflect—
- (a) any changes in the information referred to in **subsection (1)(d)** or **subsection (3)**;
  - (b) any changes notified to the Registrar in any other information referred to in **subsection (1)**.

## **122 Certificates of registered information**

On payment of the fee (if any) set by the Board, the Registrar must give a person who asks for it a certificate—

- (a) stating all the current information then entered in the Register in relation to a particular person (other than his or her home address); and
- (b) stating that it is all the current information then entered in the Register in relation to the person (other than his or her home address); and
- (c) signed and dated by the Registrar.

**123 Social workers to notify changes of address**

- (1) A registered social worker whose home address is entered in the Register must, within 1 month after starting to live at some other place, give the Registrar written notice of—
  - (a) his or her new home address; or
  - (b) his or her work address.
- (2) A registered social worker whose work address is entered in the register must, within 1 month after starting to work at some other place, give the Registrar written notice of—
  - (a) his or her new work address; or
  - (b) his or her home address.

**124 Changes of name**

If satisfied that a registered social worker has changed his or her name, or that it is wrongly entered in the Register, the Board must direct the Registrar to correct the entry in the Register relating to the social worker.

**125 Social worker may ask for registration to be cancelled**

- (1) On the written application of a registered social worker, the Board may direct the Registrar to cancel the entry in the Register relating to the social worker.
- (2) The Board must not direct the Registrar to cancel the entry in the Register relating to a registered social worker if disciplinary action against the social worker under this Act has begun or is pending.

**126 Entry to be cancelled on death of social worker**

- (1) Promptly after receiving a doctor's certificate relating to the death of a person who appears to have been a registered social worker, a registrar under the Births, Deaths, and Marriages Registration Act 1995 must give the Registrar written notice of the death, with particulars of its date and place.
- (2) If there is an entry in the Register relating to the person, the Registrar must, as soon as is practicable after receiving the notice, cancel it.
- (3) The Board may direct the Registrar to cancel the entry in the Register relating to a registered social worker if it believes on reasonable grounds (other than having received a doctor's certificate) that a registered social worker has died.

- (4) In **subsection (1), doctor's certificate** has the meaning given to that term by section 2 of the Births, Deaths, and Marriages Registration Act 1995.

### **127 Revision of Register**

- (1) The Registrar may at any time, and must if the Board directs, ask whether a registered social worker—
- (b) has stopped practising social work; or
  - (a) for some other reason wishes to have the entry in the Register relating to him or her cancelled.
- (2) The Registrar must ask by registered letter addressed to the registered social worker at his or her last known address.
- (3) If the registered social worker tells the Registrar in writing that he or she has stopped practising social work, or for some other reason wishes to have the entry in the Register relating to him or her cancelled, the Board must direct the Registrar to cancel the entry in the Register relating to the social worker.
- (4) If the Registrar does not receive a reply to the letter within 6 months after it was posted, or if the letter is returned to the Registrar undelivered, the Board may direct the Registrar to cancel the entry in the Register relating to the social worker.

### **128 Restoration of entries**

- (1) This section applies to a person if the entry in the Register relating to him or her has been cancelled under **section 126(3)**, or **subsection (3) or subsection (4) of section 127**.
- (2) On the written application of a person to whom this section applies, the Board must direct the Registrar to restore the entry in the Register relating to the person.

### **129 Cancellation of registration of overseas qualified person for non-residence in New Zealand**

- (1) The Board may direct the Registrar to cancel the entry in the Register relating to a registered social worker who is registered by virtue of being entitled to registration under **section 7**, if it believes on reasonable grounds that he or she—
- (a) has in any period of 3 consecutive years since being registered resided outside New Zealand for a period of 6 consecutive months; and
  - (b) intends to continue to reside overseas.

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- (2) This section does not apply to—
- (a) a period before the commencement of this section during which a person resided outside New Zealand; or
  - (b) any period of not more than 3 years during which a person resided outside New Zealand while undertaking post-graduate study in social work or a subject related to social work.
- (3) The Board must direct the Registrar to restore the entry in the Register relating to a registered social worker whose entry has been cancelled under this section if—
- (a) the social worker applies to the Board in writing to have the entry restored; and
  - (b) the Board is satisfied that he or she intends to reside in New Zealand.
- (4) The direction to restore the entry may be made subject to the person's competence to practise social work being found satisfactory under **Part 3**.

### **130 Cancellation of registration on Board's direction**

- (1) The Board may direct the Registrar to cancel the entry in the Register relating to a registered social worker, and give him or her notice of the cancellation, if it is satisfied that he or she—
- (a) obtained registration by making a false or misleading representation or declaration (whether oral or written); or
  - (b) was not entitled to be registered.
- (2) If no appeal against the order has been made within the time provided by this Act, the Board may direct the Registrar to notify the cancellation in any publications the Board directs.

### **131 Removal of qualifications, or cancellation of registration, overseas**

- (1) The Board may review the registration of a registered social worker who is registered by virtue of being entitled to registration under **section 7**, if satisfied that—
- (a) the educational establishment that gave him or her the overseas qualification equivalent to a recognised New Zealand qualification has cancelled or suspended it (or taken action equivalent to cancelling or suspending it); or

- (b) an overseas authority that maintains a register of people registered or licensed as social workers (or as practitioners of a profession equivalent to that of a social worker) has—
    - (i) removed his or her name from that register; or
    - (ii) suspended his or her registration; or
    - (iii) taken action equivalent to removing his or her name from that register or suspending his or her registration.
- (2) The Board must take all reasonably practicable steps to ensure that the registered social worker is given—
  - (a) written notice containing enough details to inform him or her clearly of the substance of the grounds on which the Board has decided to carry out the review; and
  - (b) any information in the Board’s possession relating to the cancellation, suspension, or removal concerned; and
  - (c) a reasonable opportunity to make written submissions and be heard on the matter, either personally or by a representative.
- (3) Except as provided in **subsection (2)**, the form of the review is at the Board’s discretion.
- (4) After the review, the Board, if it thinks it appropriate to do so,—
  - (a) may direct the Registrar to note in the Register the cancellation, suspension, or removal concerned; and
  - (b) may either—
    - (i) suspend the registered social worker’s registration for any period it thinks fit, and direct the Registrar to note the suspension in the Register; or
    - (ii) direct the Registrar to cancel the entry in the Register relating to the registered social worker.
- (5) The Registrar must take all reasonably practicable steps to ensure that the registered social worker is given a copy of any order under **subsection (4)**.

### **132 Cancellation or suspension not to affect existing liabilities**

- (1) The cancellation of the entry in the Register relating to a registered social worker does not affect his or her liability for any act or default occurring before the cancellation.

- (2) The suspension of a registered social worker's registration does not affect his or her liability for any act or default occurring before the suspension.

### **133 Board to publish Register**

- (1) The Board must from time to time publish the Register, in any form it thinks fit.
- (2) The publication must not contain the home addresses of registered social workers.
- (3) Publication may be in printed or electronic form.
- (4) The Board may publish the Register with some of the information it contains abbreviated, so long as all abbreviations are explained or easily understandable.
- (5) **Subsections (3) and (4)** do not limit the generality of **subsection (1)**.

### **134 Inspection of Register**

- (1) The Registrar must keep the published form of the Register open for public inspection at the offices of the Board during its ordinary office hours.
- (2) The Registrar must ensure that there are available at the offices of the Board during its ordinary office hours—
  - (a) copies of the published form of the Register; or
  - (b) suitable facilities for obtaining print-outs of the published form of the Register.
- (3) The Registrar—
  - (a) may refuse to allow a person to inspect the published form of the Register if the person does not pay the fee (if any) set by the Board for inspecting it; and
  - (b) may refuse to give a copy or print-out of the published form of the Register or any part of it to any person who does not pay the fee (if any) set by the Board for such a copy or print-out.

### *Registrar*

### **135 Board to appoint Registrar**

- (1) The Board must ensure that there is at all times a Registrar of the Register of Social Workers appointed under **clause 48 of Schedule 1**.

- (2) The Registrar may be the same person as the secretary of the Board.

**136 Registrar to carry out Board's decisions and comply with directions of Board and Tribunal**

- (1) The Registrar must make the appropriate entry in the Register if—
- (a) the Board—
    - (i) cancels or suspends a registered social worker's registration; or
    - (ii) cancels the suspension of a registered social worker's registration; or
    - (iii) imposes conditions or restrictions on a registered social worker's registration; or
    - (iv) cancels or varies any conditions or restrictions imposed on a registered social worker's registration; or
    - (v) imposes conditions on a registered social worker's practising certificate; or
    - (vi) cancels or varies any conditions imposed on a registered social worker's practising certificate; or
  - (b) the Tribunal makes an order that—
    - (i) a registered social worker's registration be cancelled or suspended; or
    - (ii) for a stated period, he or she may practise as a social worker only in accordance with stated restrictions.
- (2) If the Board or the chairperson of the Board gives the Registrar a direction under this Act, he or she must promptly comply with it.
- (3) **Section 137** overrides **subsection (2)**.

**137 Registrar may refuse to issue certificate if fine or costs outstanding, or fee not paid**

- (1) The Registrar may refuse to issue a certificate of registration or practising certificate to a registered social worker who has not paid—
- (a) a fine imposed on him or her under this Act; or
  - (b) any costs or expenses payable by him or her under an order made under this Act; or

- (c) in the case of a practising certificate, any fee set by the Board.
- (2) A registered social worker who has been refused a certificate of registration or practising certificate under **paragraph (a) or paragraph (b) of subsection (1)** may, by written application to the Board, ask the Board to review the Registrar's decision; and in that case, the Board—
  - (a) must promptly review the Registrar's decision; and
  - (b) must either confirm it or direct the Registrar to issue a certificate of registration or practising certificate (as the case may be) to the registered social worker.

**138 Notice of restrictions or conditions imposed on registration or certificate of registration**

The Board may direct the Registrar to give to any person who employs a registered social worker or practises in association with a registered social worker written notice of any restriction or conditions imposed on his or her registration or certificate of registration.

**Part 8**  
**Miscellaneous, transitional, and**  
**consequential provisions**

*Miscellaneous provisions*

**139 Certificate of Registrar to be evidence**

- (1) In the absence of proof to the contrary, a certificate purporting to be signed by the Registrar is for all purposes sufficient evidence of—
  - (a) whether any person was or was not registered, or was or was not the holder of a practising certificate, at a time or during a period stated in the certificate;
  - (b) any entry in the Register;
  - (c) any act or proceeding of the Board, a committee of the Board, or a complaints assessment committee.
- (2) In the absence of proof to the contrary, a certificate purporting to be signed by the Registrar is for all purposes sufficient evidence of any matter stated in the certificate relating to the proceedings of the Tribunal.

**140 Board may withhold information in certain circumstances**

Nothing in this Act requires the Board to make available to any person any information that could be withheld under the Official Information Act 1982.

**141 Exclusion of liability**

- (1) This subsection applies to—
  - (a) the Board, a complaints assessment committee, and a committee appointed under **clause 41 of Schedule 1**; and
  - (b) a member, officer, legal adviser, agent, or employee of any of those bodies.
- (2) Unless it or he or she has acted in bad faith or without reasonable care, no body or person to which or whom **subsection (1)** applies is under any criminal or civil liability in respect of—
  - (a) any act done or omitted in the course of performing or exercising any function, duty, or power under this Act; or
  - (b) any words spoken or written for the purposes of the hearing of any inquiry or other proceedings under this Act; or
  - (c) anything contained in any notice given under this Act.
- (3) Unless a person has acted in bad faith or without reasonable care, he or she is not under any civil liability in respect of anything done or omitted, or for any words spoken or written, in the course of conducting or assisting in conducting a competence assessment.
- (4) Unless a person has acted in bad faith or without reasonable care, no civil, criminal, or disciplinary proceedings lie against him or her in respect of any report he or she makes under **section 54(3)**.

**142 Proceedings not invalid because of defect in appointment**

- (1) This section applies to the Board, a complaints assessment committee, and the Tribunal.
- (2) No act or proceeding of a body to which this section applies, or of a person acting as a member of a body to which this section applies, is invalid because—
  - (a) there was a defect in the appointment of a person acting as a member of the body, or

- (b) a person acting as a member of the body was incapable of being, or had ceased to be, a member of it.

### 143 Notice and service of documents

- (1) Unless this Act provides otherwise, if a provision of this Act or of any regulations made under it requires or authorises any notice or other document, or any notification, to be given to a person, the notice, document, or notification must be given in writing to the person—
  - (a) by delivering it personally to the person; or
  - (b) by sending it by pre-paid post addressed to the person at the person's usual or last known place of residence or business; or
  - (c) in any other manner a District Court Judge directs.
- (2) In the absence of proof to the contrary, a notice, document, or notification sent by post to a person in accordance with **subsection (1)(b)** must be treated as having been given to the person when it would have been delivered in the ordinary course of the post; and in proving the delivery, it is enough to prove the letter was properly addressed and posted.
- (3) If a person is absent from New Zealand, a notice, document, or notification given to the person's agent in New Zealand in accordance with **subsection (1)** must be treated as having been given to him or her.
- (4) If a person has died, the notice, document, or notification may be given, in accordance with **subsection (1)**, to his or her personal representative.

### 144 Publication of orders

- (1) The Board may direct the Registrar to publish, in any publications it directs, a notice stating—
  - (a) the effect of any order it has made under this Act in respect of a social worker; and
  - (b) the name of the social worker.
- (2) If the Tribunal makes an order under this Act in respect of a social worker, the Registrar must publish, in any publications the Tribunal directs, a notice stating—
  - (a) the effect of the order; and
  - (b) the name of the social worker; and
  - (c) a summary of the proceedings in which the order was made.

- (3) If a court makes an order under this Act in respect of a social worker, the Registrar must publish, in any publications the court directs, a notice stating—
  - (a) the effect of the order; and
  - (b) the name of the social worker; and
  - (c) a summary of the proceedings in which the order was made.
- (4) There must not be published under **subsection (2) or subsection (3)** anything in respect of which an order has been made under **section 77(2) or section 78(6)**.
- (5) **Subsections (2) and (3)** are subject to any order of a court.

#### **145 Regulations**

- (1) The Governor-General may, by Order in Council made on the advice of the Minister, make regulations for either or both of the following purposes:
  - (a) regulating the procedure of the Board, the Tribunal, or complaints assessment committees:
  - (b) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- (2) The Minister must not recommend the making of regulations without consulting the Board.

#### **146 Offences relating to registration**

- (1) Every person commits an offence, and is liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding \$10,000, who, for the purpose of obtaining registration or a practising certificate (for himself or herself or for any other person),—
  - (a) makes an oral or written declaration or representation that, to his or her knowledge, is false or misleading in a material particular; or
  - (b) produces a document to the Board, or otherwise uses a document, knowing that it contains a declaration or representation that, to his or her knowledge, is false or misleading in a material particular; or
  - (c) produces a document to the Board, or otherwise uses a document, knowing that it is not genuine.
- (2) Every person commits an offence, and is liable on summary conviction to imprisonment for a term not exceeding 3 months

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- or a fine not exceeding \$10,000, who holds himself or herself out as a registered social worker when—
- (a) he or she is not a registered social worker; or
  - (b) his or her registration is suspended.
- (3) Every registered social worker commits an offence, and is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding \$10,000, who—
- (a) holds himself or herself out as holding a current practising certificate when—
    - (i) he or she does not hold a current practising certificate; or
    - (ii) his or her current practising certificate is suspended; or
  - (b) fails or refuses to comply with—
    - (i) a restriction or condition on his or her registration; or
    - (ii) a condition on his or her practising certificate.

*Consequential amendments*

**147 Consequential amendments**

The enactments specified in **Schedule 3** are amended in the manner indicated in that schedule.

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## Schedule 1

### Provisions applying to Social Workers Registration Board

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**1 Interpretation**

In this schedule, unless the context otherwise requires,—

**member** means a member of the Board

**quorum** means the quorum necessary for transacting business provided for in **clause 36**

**transaction** means a matter stated in **clause 22(2)**.

*Members' appointments***2 Criteria for appointment**

- (1) Members must be appointed by the Minister after consultation with organisations and individuals that, in the Minister's opinion, represent various sectors of the social work profession.
- (2) The Minister—
  - (a) may appoint as a member only a person who, in the Minister's opinion, has appropriate skills and experience to enable the Board to carry out its functions and powers; but
  - (b) in appointing members, must take all reasonable steps to ensure that the Board will be representative of—
    - (i) the social work profession (including social workers employed by Government and non-Government organisations); and
    - (ii) advocates for consumers of services provided by social workers; and
    - (iii) social work educators; and
    - (iv) Māori; and
    - (v) other ethnic groups.

**3 Restrictions on people who may be members**

The following persons are disqualified from being appointed or from holding office as a member:

- (a) a person who is under 18 years of age;
- (b) a person who is an undischarged bankrupt;
- (c) a person who is prohibited from being a member or promoter of, or being concerned or taking part in the management of, a company under any of sections 382, 383, and 385 of the Companies Act 1993;
- (d) a person who is subject to a property order made under any of sections 10, 11, 12, 30, and 31 of the Protection of Personal and Property Rights Act 1988, or whose

property is managed by a trustee Board under section 32 of that Act:

- (e) a person who has been convicted of an offence punishable by imprisonment for a term of 2 years or more, and who has not obtained a pardon, or served the sentence, or otherwise suffered the penalty imposed:
- (f) a person who is subject to a sentence of imprisonment for an offence punishable by a term of imprisonment of less than 2 years:
- (g) a person who has failed to disclose all interests under **clause 5(2)**:
- (h) a person who is not a natural person:
- (i) a person employed by a department of State responsible for advising the Minister on the Board's performance.

#### **4 Method of appointment**

- (1) The Minister appoints a member by sending written notice to the member and a copy to the Board.
- (2) The Minister must not send the notice and copy unless **clause 5** has been complied with.
- (3) Promptly after sending the notice, the Minister must publish a copy in the *Gazette*.

#### **5 Members must consent and certify to appointment and disclose interests**

- (1) A person must not be appointed as a member unless he or she has—
  - (a) consented in writing to be a member; and
  - (b) certified that he or she is not disqualified from being a member.
- (2) A person must not be appointed as a member unless he or she has first disclosed to the responsible Minister the details of any interest that the person would, if he or she were a member, have to disclose under **clauses 22 to 24**.

#### *Term of office*

#### **6 Term of office**

- (1) A member—
  - (a) takes office from the date stated in the notice of appointment; and

- (b) holds office for a term, not exceeding 3 years, stated in the notice; and
  - (c) is eligible for re-appointment from time to time.
- (2) **Paragraphs (b) and (c) of subclause (1)** are subject to **clause 7**.

**7 Limit on term**

- (1) No person may be a member for more than 6 consecutive years.
- (2) A member whose term of office has expired or who has resigned from office may continue in office for the purpose of completing any proceedings heard by the Board before the expiry or resignation concerned, whether or not his or her successor has come into office.
- (3) **Subclause (2)** overrides **subclause (1)**.

**8 Position where concurrent office**

A person may hold office as a member concurrently with any other office.

*Resignation and removal of members*

**9 Resignation**

- (1) A member may resign from office by sending a written notice to the Minister and a copy to the Board.
- (2) Unless the Minister earlier removes the member from office, the notice takes effect on the later of—
  - (a) the day the Minister receives it;
  - (b) a day the member states in it for the purpose.

**10 Removal from office**

The Minister may remove a member from office at any time, without compensation, by written notice to the member.

*Vacancies in Board's membership*

**11 Effect of vacancy in membership**

The functions and powers of the Board are not affected by any vacancy in its membership.

*Remuneration***12 Remuneration of members**

Every member, and every member of any committee, is entitled to be paid, out of the Board's funds,—

- (a) remuneration fixed by the Minister, by way of fees or allowances, for the member's services as a member of the Board or committee:
- (b) actual and reasonable costs incurred as travelling or other expenses in performing duties as a member of the Board or committee.

*Chairperson and deputy chairperson***13 Election**

- (1) The Board must elect a member to be its chairperson, and another to be its deputy chairperson, at its first meeting in every year.
- (2) The Board must elect a member to be its chairperson, or deputy chairperson, at the next meeting held after the holder of that office is removed, resigns, or ceases to be a member.

**14 Term of office**

The chairperson or deputy chairperson of the Board holds office until—

- (a) his or her successor is elected under **clause 13(2)**; or
- (b) he or she sooner is removed, resigns, or ceases to be a member.

**15 Removal**

The Board may at any time remove the chairperson or deputy chairperson from office.

**16 Resignation**

The chairperson or deputy chairperson of the Board may resign that office by written notice to the Registrar.

**17 Exercise of chairperson's functions, duties, and powers during vacancy, etc**

During a vacancy in the office of chairperson, or while the chairperson is for any reason unable to perform and exercise

the functions, duties, and powers of the chairperson, the deputy chairperson has and may exercise all of the functions, duties, and powers of the chairperson.

*Acts not to be called into question*

**18 Acts not to be called into question**

- (1) No person may in any proceedings question any of the following on any of the grounds stated in **subclause (2)**:
  - (a) the appointment of a person as chairperson, deputy chairperson, or a member:
  - (b) an act done as chairperson, deputy chairperson, or a member by a person appointed as such:
  - (c) an act done by the Board while a person is appointed as chairperson, deputy chairperson, or a member.
- (2) The grounds are that—
  - (a) the occasion for the appointment had not arisen or had ceased:
  - (b) the appointment was defective:
  - (c) the appointee was not eligible to be appointed.

*Members representing other members*

**19 Members representing other members**

- (1) A member of the Board (the **appointing member**) may give the Registrar notice appointing another member of the Board (the **representative**) to represent him or her at one or more meetings of the Board stated in the notice.
- (2) The appointment of the representative ceases if—
  - (a) the appointing member—
    - (i) gives the Registrar notice revoking the appointment; or
    - (ii) ceases to be a member of the Board; or
  - (b) the representative ceases to be a member of the Board.
- (3) A notice may be given in writing, or by mail or electronic transmission.
- (4) At a meeting of the Board stated in the notice appointing him or her (other than a meeting that the appointing member in fact attends), the representative may vote on behalf of the appointing member, as well as voting on his or her own behalf.
- (5) The representative—

- (a) may not, in his or her capacity as a representative,—
  - (i) act as chairperson or deputy chairperson of the Board; or
  - (ii) cast a casting vote; or
  - (ii) witness the affixing of the Board’s seal; and
- (b) must be counted only once in determining whether the quorum necessary for transacting business at a meeting of the Board is present; and
- (c) may not assent twice to a resolution under **clause 39**; and
- (d) may not vote twice on a matter being considered by a teleconference meeting.

*Duties of members*

**20 Duties of members**

- (1) A member, when exercising powers or performing duties as a member, must act—
  - (a) in good faith; and
  - (b) with reasonable care, diligence, and skill; and
  - (c) with honesty and integrity.
- (2) Collectively, the members must—
  - (a) ensure that the Board—
    - (i) operates consistently with any agreement as to outputs (however described) or statement of intent under the Public Finance Act 1989; and
    - (ii) operates efficiently and effectively; and
    - (iii) prudently manages its assets and liabilities; and
  - (b) try to ensure that the Board—
    - (i) maintains its long-term financial viability; and
    - (ii) covers all of its annual costs (including the cost of capital) from its net annual income.

*Liability of members*

**21 Liability of members and committee members**

- (1) A member, and a member of any committee of the Board, is not personally liable, in an action taken against him or her, for any liability of the Board, or for any act done or omitted to be done by the Board or by any person acting under a delegation of the Board’s functions and powers, provided the member acted in good faith in pursuance or intended pursuance of the functions or powers of the Board.

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- (2) Every member, and every member of any committee of the Board, is indemnified by the Board—
- (a) for costs and damages for any civil liability arising from any action brought by a third party, provided the member was acting in good faith and in pursuance or intended pursuance of the functions or powers of the Board; and
  - (b) for costs arising from any successfully defended criminal action relating to actions or omissions in his or her capacity as a member or a member of a committee of the Board.

*Disclosure of interest*

**22 Obligation to disclose interest**

- (1) A member who (otherwise than as a member) is interested, directly or indirectly, in any of the matters listed in **subclause (2)** must, as soon as practicable after the member knows about the relevant facts, disclose the nature of the interest in accordance with **clause 24**.
- (2) The matters are—
- (a) the Board's performance of its functions or exercise of a power;
  - (b) an arrangement, agreement, or contract, made or entered into, or proposed to be made or entered into, by the Board.

**23 Meaning of interested**

- (1) A member is interested in a transaction to which the Board is a party if, and only if, the member—
- (a) is a party to, or will or may derive a material financial benefit from, the transaction; or
  - (b) has a material financial interest in another party to the transaction; or
  - (c) is a director, officer, member, or trustee of another party to the transaction; or
  - (d) is a person who will or may derive a material financial benefit from the transaction; or
  - (e) is the parent, child, or spouse of another party to, or person who will or may derive a material financial benefit from, the transaction; or

- (f) is otherwise directly or indirectly materially interested in the transaction.
- (2) A member not is interested in a transaction to which the Board is a party just because he or she is a registered social worker.

## **24 Disclosure of interest**

- (1) The Board must maintain an interests register.
- (2) Immediately after becoming aware that he or she is interested in a transaction or proposed transaction, a member must—
  - (a) cause the matters stated in **subclause (3)** to be entered in the interests register; and
  - (b) disclose them to the Board, and—
    - (i) where the member is chairperson, to the Minister; or
    - (ii) where the member is deputy chairperson,—
      - (A) to the chairperson; or
      - (B) if there is no chairperson, to the Minister; or
    - (iii) where the member is neither chairperson nor deputy chairperson,—
      - (A) to the chairperson; or
      - (B) if there is no chairperson, to the deputy chairperson; or
      - (C) if there is no chairperson or deputy chairperson, to the Minister.
- (3) The matters are—
  - (a) the nature of the member’s interest; and
  - (b) either—
    - (i) its monetary value, if that value can be quantified; or
    - (ii) its extent, if that value cannot be quantified.
- (4) A general notice entered in the interests register or disclosed to the Board to the effect that a member is a shareholder, director, officer, member, or trustee of a named company or other person and is to be regarded as interested in any transaction that may, after the date of the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction.

## **25 Consequences of disclosure**

- (1) A member who discloses his or her interest under **clause 24**—

- (a) must not take part in any deliberation or decision of the Board relating to the matter; and
  - (b) must be disregarded for the purpose of forming a quorum for a meeting of the Board during which a deliberation or decision relating to the matter occurs or is made.
- (2) **Subclause (1)** is subject to **clause 27**.

## **26 Matters to be delegated to committee**

- (1) The Board must delegate a deliberation or decision to a committee if the effect of **clause 25** is that there is not a quorum of members able to take part in the deliberation or decision, or to form a quorum.
- (2) The committee—
- (a) must comprise at least 2 people; and
  - (b) must not include any person who is interested in the transaction.
- (3) Members of the committee who are not members of the Board must be appointed by the Board with the agreement of the Minister.
- (4) **Subclause (1)** is subject to **clause 27**.

## **27 Exceptions**

- (1) **Clause 25** does not apply—
- (a) to any deliberation or decision of the Board that is made in accordance with any existing contract that governs the way in which the deliberation or decision is to be made; or
  - (b) to any deliberation or decision of the Board to establish a committee, and to delegate the matter to a committee of the Board, under **clause 26**.
- (2) **Existing contract** means a contract of the Board that the person, or a majority of the people, who made the decision to enter into it were not interested in.

## **28 Effect of non-compliance**

The validity of a transaction entered into by the Board is not affected by the fact that a member fails to comply with the requirements of **clauses 22 to 27**.

*Use of information***29 Restrictions on disclosure or use of information**

- (1) A member must not disclose to any person, or make use of or act on, any information that is available to the member only in his or her capacity as a member.
- (2) **Subclause (1)** does not prevent the member from—
  - (a) disclosing, or using or acting on, the information when required or authorised by this Act or any other enactment to do so; or
  - (b) disclosing, or using or acting on, the information for the purposes of the Board or the requirements of the general law; or
  - (c) disclosing the information to the Minister.
- (3) A member must not disclose to the Minister any information that is personal information about an identifiable individual person unless—
  - (a) its disclosure is in response to a general or particular written request to the Board from the Minister under subsection (1) of section 45B of the Public Finance Act 1989; or
  - (b) the member—
    - (i) has considered the matters in subsection (2) of that section; and
    - (ii) is satisfied on reasonable grounds that the disclosure of the information to that Minister is in the public interest.
- (4) **Subclause (3)** does not limit or affect the application of section 45B of the Public Finance Act 1989 to the Board.

**30 When member may rely on certain information and advice**

- (1) A member, when exercising powers or performing duties as a member, may rely on reports, statements, financial data, and other information prepared or supplied, and on professional or expert advice given, by any of the persons listed in **subclause (2)**.
- (2) The persons are—
  - (a) any person whom the member believes on reasonable grounds to be reliable and competent in relation to the matters concerned; or

- (b) any other member or committee on which the member did not serve in relation to matters within the member's or committee's designated authority; or
- (c) the Minister.

### **31 When clause 30 applies**

**Clause 30** applies to a member only if the member—

- (a) acts in good faith; and
- (b) makes proper inquiry if the need for inquiry is indicated by the circumstances; and
- (c) has no knowledge that the reliance is unwarranted.

#### *Procedure of Board: general*

### **32 Procedure generally**

- (1) In relation to a matter concerning a particular person, the Board must observe the rules of natural justice.
- (2) The Board may receive as evidence any statement, document, information, or matter, whether or not it would be admissible in a court of law.
- (3) Subject to this Act and any regulations made under it, the Board may regulate its procedure as it thinks fit.

#### *Procedure of Board: meetings*

### **33 Ordinary meetings**

The Board must appoint the times and places for all its ordinary meetings.

### **34 Special meetings**

- (1) The Chairperson, or any 2 members, may at any time call a special meeting of the Board by giving each member for the time being in New Zealand a written notice stating—
  - (a) the time and place of the meeting; and
  - (b) the business to be transacted at it.
- (2) The members must be given—
  - (a) at least 7 days' notice of the meeting; or
  - (b) if they are satisfied that the business to be transacted is urgent, any shorter period of notice all members entitled to be notified agree.
- (3) The notice must be either given to a member or sent to the member's last known address in New Zealand.

- (4) Only the business stated in the notice may be transacted at the meeting.

**35 Telephone conference meetings**

- (1) The contemporaneous linking together by telephone of members who constitute a quorum must be treated as a meeting of the Board if—
- (a) notice has been given, by telephone or any other means of communication, to every member of the Board entitled to receive notice of a meeting of the Board; and
  - (b) each member taking part in the meeting by telephone or other means or communication—
    - (i) is directly linked to the others; and
    - (ii) at the start of the meeting, acknowledges to all the other members taking part that he or she is present for the purposes of a meeting of the Board; and
    - (iii) is able throughout the meeting to hear each of the other members taking part; and
    - (iv) on any matter being considered, individually expresses his or her vote to the other members.
- (2) A member must not leave a meeting held under this clause by disconnecting the member's telephone or other means of communication unless he or she has previously obtained the express consent of the member presiding.
- (3) A minute of the proceedings certified as correct by the member presiding at the meeting is sufficient evidence of those proceedings, and the observance of all necessary formalities.
- (4) The meeting may be held whether or not 1 or more members of the Board is out of New Zealand.

**36 Quorum**

At any meeting of the Board, the quorum necessary for transacting business is 5 members, of whom—

- (a) at least 3 must be registered social workers; and
- (b) at least 2 must not be registered social workers.

**37 Chairperson to preside at meetings**

At a meeting of the Board,—

- (a) the chairperson must preside if present:

- (b) if the chairperson is not present, the deputy chairperson must preside if present:
- (c) if neither the chairperson nor the deputy chairperson is present, the members present must elect 1 of their number to preside.

### **38 Voting**

- (1) All questions arising at any meeting of the Board must be decided by a majority of the votes cast by the members present.
- (2) The person presiding at the meeting has a deliberative vote, and, in the case of an equality of votes, also has a casting vote.
- (3) A member of the Board must not be present or vote or otherwise participate (as a member of the Board or a representative under **clause 19**) at any part of a meeting of the Board where any matter relating to the member's registration, suspension, competence, fitness to practise, or discipline under this Act is being considered.

### **39 Resolution assented to by members**

- (1) The chairperson of the Board may circulate, by letter or electronic transmission, to each member of the Board a document setting out a draft resolution and requesting each member to assent to the resolution within a stated period of at least 3 clear days.
- (2) A resolution circulated under **subclause (1)** is as valid and effectual as if it had been passed at a meeting of the Board duly called and constituted, if all the members of the Board who are in New Zealand—
  - (a) sign the resolution, or assent to it by letter or electronic transmission; and
  - (b) together would constitute a quorum of the Board.
- (3) The resolution may consist of several documents that are similar in form, each signed or appearing to have been sent by 1 or more members.
- (4) If assented to, the resolution must be tabled at the next meeting of the Board held after it was assented to.

**40 Method of contracting**

- (1) A contract or other enforceable obligation may be entered into by the Board as stated in **subclauses (2) to (5)**.
- (2) An obligation that, if entered into by an individual, would be required to be by deed may be entered into on behalf of the Board in writing, signed under the name of the Board by 2 or more of its members.
- (3) An obligation that, if entered into by an individual, is required to be in writing may be entered into on behalf of the Board in writing by a person acting under the Board's express or implied authority.
- (4) An obligation that, if entered into by an individual, is not required to be in writing may be entered into on behalf of the Board in writing or orally by a person acting under the Board's express or implied authority.
- (5) The Board may, in addition to complying with **subclauses (2) to (4)**, affix its common seal to the contract or document containing the enforceable obligation.
- (6) This clause applies to a contract or other obligation—
  - (a) whether or not that contract or obligation was entered into in New Zealand; and
  - (b) whether or not the law governing the contract or obligation is the law of New Zealand.

*Committees and delegations***41 Committees**

- (1) The Board may appoint specialist committees of the Board.
- (2) A committee may include or consist of people who are not members of the Board, but must include at least 1 member of the Board.
- (3) A committee may be constituted to ensure that the views of Māori and Pacific people are at all times readily accessible to the Board.
- (4) The Board may regulate the procedure of any committee as it thinks fit.
- (5) The Board may at any time discharge, alter, or reconstitute a committee.

**42 Delegations to committees**

The Board may from time to time, by written notice, delegate to any committee of the Board any of its functions, duties, or powers other than—

- (a) its functions, duties, and powers relating to registration; and
- (b) this power of delegation.

**43 Effect of delegation**

- (1) A committee to which any functions or powers are delegated under **clause 42** may carry out those functions or exercise those powers in the same manner and with the same effect as if they had been conferred on the person directly by this Act and not by delegation.
- (2) **Subclause (1)** is subject to any direction given or condition imposed by the Board.

**44 Presumption of acting in accordance with delegation**

A committee that appears to act under a delegation under **clause 42** is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.

**45 Other matters relating to delegation**

A delegation under **clause 42**—

- (a) is revocable at will, but the revocation does not take effect until it is communicated to the committee; and
- (b) continues in force according to its terms until it is revoked; and
- (c) does not prevent the Board from performing the functions or exercising the power.

**46 Expenses of Board**

All expenses of the Board and its committees must be paid out of its own funds.

*Employees***47 Appointment of secretary**

- (1) The Board may from time to time appoint a secretary.
- (2) The Board—
  - (a) must not appoint any member to be secretary; and

- (b) must not determine or modify the secretary's remuneration or other terms and conditions of appointment without having consulted the State Services Commissioner; and
- (c) if the remuneration or other terms and conditions of appointment proposed to be determined or modified by the Board is or are not in accordance with the guidance given by the State Services Commissioner during consultation under **paragraph (b)**, must not determine or modify it or them without having consulted the Minister.

**48 Appointment of other employees**

- (1) The Board may appoint those employees, in addition to the secretary, that it thinks necessary for the efficient performance of its functions, and may negotiate their terms and conditions of employment.
- (2) Subject to the terms and conditions of employment, the Board may at any time terminate or suspend the employment of any of the Board's employees.

**49 Liability of employees**

- (1) If an employee of the Board acted in good faith in pursuance or intended pursuance of the Board's functions or powers, he or she is not personally liable, in an action taken against him or her, for—
  - (a) any liability of the Board; or
  - (b) any act done or omitted to be done by—
    - (i) him or her; or
    - (ii) the Board; or
    - (iii) any member, or member of a committee of the Board; or
    - (iv) any other person acting under a delegation of the Board's functions or powers; or
    - (v) any other employee of the Board acting in his or her capacity as an employee of the Board.
- (2) Every employee of the Board is indemnified by the Board—
  - (a) for costs and damages for any civil liability arising from an action brought by a third party, if he or she acted in good faith in pursuance or intended pursuance of the Board's functions or powers; and

- (b) for costs arising from any successfully defended criminal action relating to actions or omissions in his or her capacity as an employee of the Board.

#### **50 Personnel policy**

- (1) The Board must, if it appoints employees, operate a personnel policy that complies with the principle of being a good employer.
- (2) For the purposes of this clause, **good employer** means an employer who operates a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions requiring—
  - (a) good and safe working conditions; and
  - (b) an equal employment opportunities programme; and
  - (c) the impartial selection of suitably qualified persons for appointment; and
  - (d) recognition of—
    - (i) the aims and aspirations of Māori; and
    - (ii) the employment requirements of Māori; and
    - (iii) the need for involvement of Māori as employees; and
  - (e) opportunities for the enhancement of the abilities of individual employees; and
  - (f) recognition of the aims and aspirations, and the cultural differences, of ethnic or minority groups; and
  - (g) recognition of the employment requirements of women; and
  - (h) recognition of the employment requirements of people with disabilities.

#### **51 Equal employment opportunities**

- (1) The Board must, if it appoints employees,—
  - (a) develop in each year an equal employment opportunities programme; and
  - (b) ensure in each year that the programme for that year is complied with, and reported on in the Board's annual report.
- (2) For the purposes of this clause, **equal employment opportunities programme** means a programme that is aimed at the

identification and elimination of all aspects of policies, procedures, and other institutional barriers that cause or perpetuate, or tend to cause or perpetuate, inequality in respect of the employment of any persons or group of persons.

**52 Superannuation or retiring allowances**

For the purpose of providing a superannuation fund or retiring allowances for its employees, the Board may from time to time pay sums by way of subsidy or contribution into any superannuation scheme that is registered under the Superannuation Schemes Act 1989.

**53 Application of certain Acts to members and employees**

No person is deemed to be employed in the service of the Crown for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 by reason only of that person's appointment under **clause 47 or clause 48**.

**54 Legal advisers**

- (1) The Board may appoint a legal adviser, who—
  - (a) may be present at any proceedings of the Board; and
  - (b) may at any time advise the Board on matters of law, procedure, or evidence.
- (2) The legal adviser must not be present during any deliberations of the Board.

**55 Common seal**

- (1) The Board must provide for the safe custody of its common seal, which may be in any form the Board decides.
  - (2) The seal must only be used by the authority of a resolution of the Board, or of a committee of the Board authorised in that behalf, and every document to which the common seal is affixed must be signed by 2 persons, each of whom is—
    - (a) a member of the Board; or
    - (b) a person appointed by the Board for the purpose of signing that document or documents of that kind.
  - (3) All courts, and all persons acting judicially, must take judicial notice of the seal for all purposes.
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## Schedule 2

### Provisions applying to Social Workers Complaints and Disciplinary Tribunal

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#### 1 Deputy chairperson

- (1) The deputy chairperson of the Tribunal has and may perform and exercise all the functions, duties, and powers of its chairperson if—
  - (a) the chairperson becomes incapable of acting as chairperson because of illness, absence, or any other reason; or
  - (b) there is a vacancy in the office of chairperson.
- (2) While acting for or in the place of the chairperson, the deputy chairperson must be treated as the chairperson.
- (3) No act done by the deputy chairperson while acting for or in the place of the chairperson, and no act done by the Tribunal while the deputy chairperson is acting for or in the place of the chairperson, may be questioned in any proceedings on the ground that the occasion for the deputy chairperson's so acting had not arisen or had ceased.
- (4) If there are 2 or more deputy chairpersons of the Tribunal—
  - (a) the Board must from time to time, by written notice, nominate which of them is to perform and exercise the functions, duties, and powers of the chairperson of the Tribunal in the circumstances stated in **subclause (1)**; and
  - (b) references in this clause to the deputy chairperson are references to the deputy chairperson for the time being nominated.

**2 Term of office**

- (1) The chairperson and each deputy chairperson of the Tribunal—
  - (a) is appointed for a term not exceeding 3 years; and
  - (b) takes office from the date of the notice of appointment or any later date specified in it; and
  - (c) is eligible for re-appointment.
- (2) No person may hold office as chairperson or deputy chairperson of the Tribunal for more than 6 consecutive years.
- (3) A person whose term of office as chairperson or deputy chairperson of the Tribunal has expired or who has resigned from office as chairperson or as deputy chairperson of the Tribunal may continue in office for the purpose of completing any proceedings heard by the Tribunal before the expiry or resignation concerned, whether or not his or her successor has come into office.
- (4) **Subclause (1)(c)** is subject to **subclause (2)**.
- (5) **Subclause (3)** overrides **subclauses (1) and (2)**.

**3 Vacation of office**

- (1) The chairperson or a deputy chairperson of the Tribunal may resign by written notice to the Board.
- (2) The chairperson or a deputy chairperson of the Tribunal vacates office if he or she—
  - (a) is adjudged bankrupt under the Insolvency Act 1967; or
  - (b) becomes a member of the Board.
- (3) The Board may, by written notice to the chairperson or a deputy chairperson of the Tribunal, remove him or her from office—
  - (a) because, in the Board's opinion, he or she is unable to perform his or her duties adequately; or
  - (b) for neglect of duty, or misconduct, proved to the Board's satisfaction.

**4 Expenses of Tribunal**

- (1) There may be paid to the members of the Tribunal, and to any Registrar or other officer of the Tribunal, any remuneration (by way of fees, salary, or otherwise) and allowances and expenses the Board from time to time determines.

- (2) The remuneration, allowances, and expenses must be paid out of the funds of the Board.

## **5 Procedure of Tribunal**

- (1) In relation to a matter concerning a particular person, the Tribunal must observe the rules of natural justice.
- (2) The Tribunal may receive as evidence any statement, document, information, or matter, whether or not it would be admissible in a court of law.
- (3) Subject to this Act and any regulations made under it, the Tribunal may—
  - (a) regulate its procedure in any manner it thinks fit; and
  - (b) prescribe or approve forms for the purposes of hearings.
- (4) The Tribunal must publish any rules of procedure it makes.

## **6 Evidence**

- (1) The Tribunal may receive in evidence any statement, document, information, or matter that may in its opinion assist it to deal effectively with the matters before it, whether or not it would be admissible in a court of law.
- (2) The Tribunal may take evidence on oath, and for that purpose any of its members or officers may administer an oath.
- (3) The Tribunal may permit a person appearing as a witness before it to give evidence by—
  - (a) submitting a written statement; and
  - (b) if the Tribunal thinks fit, verifying it by oath.
- (4) The Evidence Act 1908 applies to the Tribunal as if it were a court within the meaning of that Act.
- (5) **Subclause (4)** is subject to **subclauses (1) to (3)**.

## **7 Powers of investigation**

- (1) For the purposes of dealing with the matters before it, the Tribunal or any person authorised by it in writing to do so may—
  - (a) inspect and examine any papers, documents, records, or things; or
  - (b) require any person to produce for examination any papers, documents, records, or things in his or her possession or under his or her control, and to allow copies of or extracts from any of them to be made; or

- (c) require any person to—
  - (i) provide, in a form approved by or acceptable to the Tribunal, any information or particulars that it may require; or
  - (ii) provide copies of or extracts from any papers, documents, or records in his or her possession or under his or her control.
- (2) The Tribunal may, if it thinks fit, require that any written information or particulars or any copies or extracts furnished under this clause be verified, by statutory declaration or otherwise as the Tribunal requires.
- (3) For the purposes of its proceedings, the Tribunal may, of its own motion or on the application of any party to the proceedings, order that any information or particulars, or a copy of the whole or any part of any paper, document, or record, provided or produced to it be supplied to any person appearing before the Tribunal, and in the order impose such terms and conditions as it thinks fit in respect of such supply and of the use that is to be made of the information, particulars, or copy.

## **8 Witness summons**

- (1) The Tribunal may, of its own motion or on the application of a party to any proceedings, issue to any person a witness summons requiring that person to attend before the Tribunal to give evidence at the hearing of the proceedings.
- (2) The summons must state—
  - (a) the place where the person is to attend; and
  - (b) the date and time when the person is to attend; and
  - (c) the papers, documents, records, or things that the person is required to bring and produce to the Tribunal; and
  - (d) the entitlement to be tendered or paid a sum in respect of allowances and travelling expenses; and
  - (e) the penalty for failing to attend.
- (3) The power to issue a witness summons may be exercised by the Tribunal, the chairperson, a deputy chairperson, or by any officer of the Tribunal purporting to act by the direction or with the authority of the Tribunal, the chairperson, or a deputy chairperson.

## **9 Service of witness summons**

- (1) A witness summons may be served—

- (a) by delivering it personally to the person summoned; or
  - (b) by posting it by registered letter addressed to the person summoned at his or her usual place of residence or business.
- (2) If it is served personally, the summons must be served at least 24 hours before the attendance of the witness is required.
  - (3) If it is served by posting, the summons must be served at least 10 days before the day on which the attendance of the witness is required.

#### **10 Witnesses' allowances**

- (1) A witness attending before the Tribunal to give evidence pursuant to a summons is entitled to be paid witnesses' fees, allowances, and travelling expenses according to the scales for the time being prescribed by regulations under the Summary Proceedings Act 1957, and those regulations (with any necessary modifications) apply accordingly.
- (2) Each time the Tribunal issues a witness summons, it must fix an amount that, on the service of the summons or at some other reasonable time before the day on which the witness is required to attend, must be paid or tendered to the witness.
- (3) The amount fixed must be the estimated amount of the allowances and travelling expenses to which, in the opinion of the Tribunal, the witness will be entitled according to the prescribed scales if the witness attends at the time and place specified in the summons.
- (4) If a party to the proceedings has requested the issue of the witness summons, the fees, allowances, and travelling expenses payable to the witness must be paid by that party.
- (5) If the Tribunal has issued the witness summons of its own motion, it may direct that the amount of the fees, allowances, and travelling expenses—
  - (a) form part of the costs of the proceedings; or
  - (b) be paid out of the funds of the Board.

#### **11 Privileges and immunities**

- (1) Every person has the same privileges in relation to giving information to the Tribunal, answering questions put by the Tribunal, and the production of papers, documents, records, and things to the Tribunal as witnesses have in courts of law.

- (2) Witnesses and counsel appearing before the Tribunal have the same privileges and immunities as witnesses and counsel have in proceedings in a District Court.

## **12 Non-attendance or refusal to co-operate**

- (1) Every person commits an offence who, after being summoned to attend to give evidence before the Tribunal, without reasonable excuse,—
- (a) fails to attend in accordance with the summons; or
  - (b) refuses to be sworn or to give evidence, or, having been sworn, refuses to answer any question that the person is lawfully required by the Tribunal or any member of it to answer concerning the proceedings.
- (2) Every person commits an offence who, after being summoned to produce to the Tribunal any papers, documents, records, or things, without reasonable excuse, fails to produce them.
- (3) Every person commits an offence who—
- (a) wilfully obstructs or hinders the Tribunal or any member of it or any authorised person in any inspection or examination of papers, documents, records, or things pursuant to **clause 7(1)(a)**; or
  - (b) without reasonable excuse, fails to comply with any requirement of the Tribunal or any authorised person made under **paragraph (b) or paragraph (c) of clause 7(1)**; or
  - (c) without reasonable excuse, acts in contravention of, or fails to comply with, any order made by the Tribunal under **clause 7(3)** or any term or condition of such an order.
- (4) Every person who commits an offence against this clause is liable on summary conviction to a fine not exceeding \$1,500.
- (5) No person summoned to attend before the Tribunal may be convicted of an offence against **subclause (1)** unless travelling expenses were tendered or paid to him or her in accordance with **clause 10**.

## **13 Contempt of Tribunal**

- (1) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$2,000 who assaults, threatens, or intimidates, or intentionally insults, the Tribunal or any

member of it or any special adviser to or officer of the Tribunal, during a sitting of the Tribunal, or in going to, or returning from, any sitting.

- (2) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who—
  - (a) intentionally interrupts the proceedings of the Tribunal or otherwise misbehaves while the Tribunal is sitting; or
  - (b) intentionally and without lawful excuse disobeys an order or direction of a member of the Tribunal in the course of any proceedings before the Tribunal.
- (3) A member of the Tribunal may order the exclusion from a sitting of the Tribunal of any person whose behaviour, in the member's opinion, constitutes an offence against this section, whether or not the person is charged with the offence or any other offence; and any member of the police may take any steps reasonably necessary to enforce the exclusion.

#### **14 Power to amend charges**

The Tribunal may, at any time during the hearing of any charge laid under **section 73**, amend the charge in any way.

#### **15 Adjournments**

If the Tribunal is of the opinion that the registered social worker concerned would be embarrassed in his or her defence by reason of an amendment made or proposed to be made under **clause 14**, it may, at his or her request, adjourn the hearing.

#### **16 Legal and medical advisers**

- (1) The Tribunal may from time to time appoint a legal adviser, who—
  - (a) may be present at any hearing of the Tribunal; and
  - (b) may at any time advise the Tribunal on matters of law, procedure, or evidence.
- (2) The Tribunal may from time to time appoint a medical adviser, who—
  - (a) may be present at any hearing of the Tribunal; and
  - (b) may at any time advise the Tribunal on medical matters.

- (3) A legal or medical adviser must not be present during any deliberations of the Tribunal.

**17 Immunity of members of Tribunal**

A member of the Tribunal is not personally liable for any act or omission done in pursuance or intended pursuance of the Tribunal's functions, unless the act or omission was done in bad faith.

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### Schedule 3

## Consequential amendments

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**Health and Disability Commissioner Act 1994** (1994 No 88)

Insert in section 4(1), after paragraph (l):

“(la) a social worker, which for the purposes of this Act means a registered social worker within the meaning of the Social Workers Registration Act **2001**:”.

Insert in section 38(2), after paragraph (k):

“(ka) in the case of a registered social worker, the Social Workers Registration Board established by **section 85** of the Social Workers Registration Act **2001**:”.

**Ombudsmen Act 1975** (1975 No 9)

Insert in Part II of the First Schedule, before the item relating to Solid Energy New Zealand Limited:

“The Social Workers Registration Board”.

**Privacy Act 1993** (1993 No 28)

Add to the Second Schedule:

“Social Workers Registration Act **2001**”.

**Public Finance Act 1989** (1989 No 44)

Insert in the Fourth, Fifth, and Sixth Schedules, in its appropriate alphabetical order:

“Social Workers Registration Board”.