Office of the Minister for Social Development

Chair

Cabinet Legislation Committee

social workers rEGISTRATION LEGISLATION bILL – sUPPLEMENTARY ORDER PAPER: aPPROVAL FOR RELEASE

# Proposal

1. This paper seeks Cabinet approval for the release of a Supplementary Order Paper (SOP) that amends the Social Workers Registration Legislation Bill (SWRL Bill). The SOP introduces into the SWRL Bill provision for scopes of practice for social workers and makes other minor policy and technical changes.

# Policy

1. The Social Workers Registration Act 2003 (SWR Act) established a statutory framework for the voluntary registration of social workers in New Zealand. While registration has not been mandatory, over time there has been a steady increase in the proportion of social workers who have sought registration. This has reflected the growth in social workers with professional qualifications and the fact that registration is now increasingly a standard expectation of major employers and government contracts.
2. In May 2017, Cabinet agreed to support this growing professional norm of registration and the need to protect public safety with the introduction of the SWRL Bill [CAB-17-MIN-0234 refers]. Once enacted, any person who wishes to use names, words, titles, initials, or otherwise imply they are a social worker will be required to be registered with the Social Workers Registration Board (the Board), effectively making registration mandatory.
3. The SWRL Bill was introduced in August 2017 [CAB-17-MIN-0416 refers], and referred to the Social Services Committee. On 8 November 2017, the SWRL Bill was reinstated before the Social Services and Community Committee, which reported back to the House in April 2018. The Bill currently awaits a Second Reading in Parliament.
4. Following consideration by the Social Services and Community Committee and subsequent consultation with the Social Work Alliance[[1]](#footnote-1) (a cross-sector representative body of social workers), Cabinet agreed on 6 August 2018 [CAB-18-MIN-0370.01 refers] that a SOP propose the following amendments to the SWRL Bill that:
	1. introduce provisions requiring social workers to practise within scopes of practice determined by the Board, including incidental and related provisions generally in line with the legislative framework of the Health Practitioners Competence Assurance Act 2003 (HPCA Act)
	2. make it an offence to breach the confidentiality obligations relating to a person’s information in section 46 of the SWR Act, punishable on conviction by a fine not exceeding $2,000
	3. require that employers of social workers report to the Board if a social worker resigns or is dismissed for reasons relating to their competence
	4. insert the word “individual” before “social workers” in section 102 of the SWR Act to make it clear that this section prevents the use of a ministerial direction concerning individuals
	5. empower the department responsible for administration of the SWR Act to:
		1. require any person to provide information or produce documents necessary to enforce the offence provisions relating to title protection
		2. make it an offence to refuse or fail to comply with such a requirement, punishable on conviction by a fine not exceeding $2,000.
	6. make a number of other minor and technical changes (see Appendix 1), including those:
		1. equivalent to relevant amendments in the Health Practitioners Competence Assurance Amendment Bill
		2. that recalibrate the SWR Act to be more in line with the HPCA Act.

# Proposed removal of requirement to cancel registration if a social worker is not practising

1. I propose an additional policy change to remove the requirement that non-practising social workers can be required to cancel their registration.
2. Currently, if a registered social worker informs the Board that they have stopped practising as a social worker, then the Board must cancel the social worker’s registration. I consider this requirement to be unnecessary. People stop practising for a number of reasons, such as due to illness or to have children or travel, but they may wish to return to practise at a later time. Cancellation of registration would mean they would need to apply afresh for registration with its accompanying costs.
3. I propose amending section 129 so that removal from the register under that section can only occur if the social worker tells the Registrar in writing that he or she wishes to have their registration cancelled.
4. This does not affect other provisions relating to the cancellation or interim suspension of registration.

# Ongoing professional development by social workers has been strengthened

1. A minor amendment has been made in the SOP to clarify that the new function of the Board to recognise ways of undertaking professional development by social workers will be a mandated function of the Board. This change gives effect to the Cabinet agreement on 15 May 2017 [CAB-17-MIN-0234 refers] that the five-yearly competency assessments of social workers required by the SWR Act be replaced with ongoing professional development.
2. Currently, domestically trained social workers are assessed for their competence at registration (or within two years if newly graduated). Once registered, social workers must recertify their competence every five years by undertaking an assessment and paying a fee set by the Board. Issuing of the annual practising certificate is conditional on a social worker having completed the competence assessment and having been confirmed as competent to practise social work.
3. Cabinet agreed that requiring five-yearly recertification assessments is inflexible and may not reflect best practice in occupational regulation. While the Board has been able to require 20 hours of continuing professional development per year as part of its power to place general conditions on social workers’ practising certificates, there is no specific requirement in the SWR Act for continuing professional development by social workers.
4. Section 38A(1) of the SWRL Bill provides a new function for the Board to recognise and monitor ways of undertaking professional development. Allowing the Board to recognise and accredit ways of providing professional development will help ensure ongoing competence of social workers. Also, removing the five-yearly assessment will reduce the cost on social workers.
5. Through consultation on the SOP, however, it became apparent that the new function in section 38A(1) needed to be strengthened. A change has been made in the SOP that makes it a required function by the Board (rather than discretionary as presently worded), so that the Board must, from time to time, recognise ways of providing professional development for example through practical training or work experience.
6. In carrying out this proposed mandated function, section 38A(4) in the SWRL Bill requires the Board to be guided by the principle that professional development should not impose undue costs on practising social workers or their employers.
7. As a part of this proposed mandated function, the Board will be able to assess and recognise professional development courses and programmes. The Board will be able to set fees for this assessment to the providers of proposed professional development courses and programmes using the power in section 108(1)(k) of the SWR Act. The fee setting will be on a cost-recovery basis, which is what it currently does when assessing educational qualifications for social workers. This is also consistent with the practice by other regulatory authorities such as the Medical Council of New Zealand and the Nursing Council of New Zealand, and follows Treasury and Office of the Auditor-General guidelines.

# Impact analysis

1. A Regulatory Impact Statement (RIS) and disclosure statement were prepared in accordance with the relevant requirements for and considered by Cabinet when it agreed to the drafting of the Bill in 2017 [CAB-17-MIN-0234 refers]. The RIS included a risk and impact assessment of effects from the introduction of ‘mandatory certification’ as required by the Policy Framework for Occupational Regulation. The Regulatory Impact Analysis Team at the Treasury assessed the RIS as partially meeting quality assurance criteria.
2. The changes proposed through the SOP have only minor effects on the original regulatory assessment. In agreement with the Treasury’s Regulatory Impact Assessment Team, supplementary material was added to the original RIS where necessary ahead of recent Cabinet consideration of the SOP in August 2018. The Regulatory Impact Analysis Team at the Treasury assessed the supplementary information at the time as partially meeting quality assurance criteria, because of some ongoing uncertainty about impacts on the wider sector. Ongoing consultation with the sector and the two year lead-in before mandatory registration applies will allow for mitigating actions if unexpected problems emerge.

# Compliance

1. The SOP complies with each of the following:
* the principles of the Treaty of Waitangi
* the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993
* the principles and guidelines set out in the Privacy Act 1993
* relevant international standards and obligations
* Legislation Guidelines, which are maintained by the Legislation Design and Advisory Committee.

# Consultation

1. The following government agencies were consulted in the development of the SOP: the Ministries for Children-Oranga Tamariki, Pacific Peoples, Women, Business, Innovation and Employment, Defence, Education, Health, and Justice; the Departments of Corrections, Internal Affairs, and Prime Minister and Cabinet; New Zealand Police; the Accident Compensation Corporation; the New Zealand Qualifications Authority; Te Puni Kōkiri, the Tertiary Education Commission; the State Services Commission; the Office of the Privacy Commissioner; and the Treasury.
2. The SOP has been reviewed by the Ministry of Justice as being consistent with the New Zealand Bill of Rights Act 1990.
3. As agreed by Cabinet [CAB-18-MIN-0370.01 refers], the Ministry of Social Development consulted with the Social Work Alliance on the SOP. The Social Work Alliance provided useful feedback into the SOP development based on current social worker practice and the reality of the profession. The Social Work Alliance is supportive of the SOP proceeding and is keen to see the SWRL Bill progress.

# Binding on the Crown

1. A decision by Cabinet that the SOP will bind the Crown is not required, as the SWRL Bill will amend the SWR Act which is already binding on the Crown.
2. The SOP does not create new agencies or Crown entities, affect the application of the Ombudsmen Act 1975 or the Official Information Act 1982, or separate existing agencies from the Crown.

**Allocation of decision making powers**

1. The SOP does not include the allocation of decision-making powers between the executive, the courts and tribunals.

# Associated regulations

1. There are no associated regulations required to bring the SWRL Bill into operation. Regulations are not required because the SWRL Bill contains fixed commencement provisions and the relevant transitional provisions have fixed expiry periods.
2. Regulations may be required in relation to the use of identification by social workers when dealing with members of the public.

# Other instruments

1. The Board will be required to publish notices defining applicable scopes of social work practice and prescribed qualifications in the New Zealand Gazette within two years of commencement. These notices would be disallowable instruments but not legislative instruments for the purposes of the Legislation Act 2012.

# Definition of Minister/department

1. The SOP does not provide any new definitions of Minister, department or chief executive of a department.

# Commencement of legislation

1. The SWRL Bill is currently before Parliament waiting for its Second Reading.
2. The SWRL Bill holds a category three priority on the 2018 Legislation Programme (to be passed if possible in 2018). A bid has been submitted for the 2019 Legislation Programme which proposes a category two priority (must be passed in the year) for the SWRL Bill.
3. Once the SWRL Bill receives Royal assent (expected in 2019), changes to social worker registration will be implemented in stages, as follows:
* some of the SWRL Bill will enter into force the day following Royal assent, including changes to professional development for social workers, new mandatory reporting requirements to the Board for employers of social workers, and various administrative and efficiency improvements
* three months following Royal assent, reduction in the number of Board members (section 106)
* two years following Royal assent (expected to be in 2021), provisions for mandatory registration (including protection of the use of the terms “social worker” and “social work”) and registration within applicable scopes of social work practice will enter into force, after which point all practising social workers must be registered within a scope of practice
* five years after Royal assent (expected to be in 2024) the experience-based pathway to registration (section 13) will be repealed, which will complete the legislative changes.

# Parliamentary stages

1. I propose that the SWRL Bill has a Second Reading in the House in the December 2018 House sitting block.
2. I propose that the SOP is released before the Second Reading.

# Communications

1. I proposed to proactively release this Cabinet paper publicly alongside the release of the SOP. This action will ensure full information is available to social workers, their representatives and employers.
2. As previously agreed by Cabinet [CAB-18-MIN-0370.01 refers], the August 2018 paper *Social Workers Registration Legislation Bill: Additional policy decisions for inclusion in a supplementary order paper* will also be released at the same time.
3. My office will work with the Ministry of Social Development and the Board to ensure consistent communications supporting the SOP release and publication of the Cabinet papers.

# Recommendations

1. It is recommended that the Committee:
2. **note** that the Social Workers Registration Legislation Bill (SWRL Bill) holds a category three priority on the 2018 Legislation Programme (to be passed if possible in 2018).
3. **note** that a bid has been submitted to include the SWRL Bill in the 2019 Legislation Programme with a category two priority (must be passed in the year)
4. **note** that the Supplementary Order Paper will amend the SWRL Bill to:
	1. introduce provisions requiring social workers to practise within scopes of practice determined by the Social Workers Registration Board (Board), including incidental and related provisions generally in line with the legislative framework of the Health Practitioners Competence Assurance Act 2003 (HPCA Act)
	2. make it an offence to breach the confidentiality obligations relating to a person’s information of section 46 of the Social Workers Registration Act 2003 (SWR Act), punishable on conviction by a fine not exceeding $2,000
	3. require that employers of social workers report to the Board if a social worker resigns or is dismissed for reasons relating to their competence
	4. insert the word “individual” before “social workers” in section 102 of the SWR Act to make it clear that this section prevents the use of a ministerial direction concerning individuals
	5. empower the department responsible for administration of the SWR Act to:
		1. require any person to provide information or produce documents necessary to enforce the offence provisions relating to title protection
		2. make it an offence to refuse or fail to comply with such a requirement, punishable on conviction by a fine not exceeding $2,000
	6. make a number of other minor and technical changes (see Appendix 1), including those:
		1. that recalibrate the SWR Act to be more in line with the HPCA Act
		2. equivalent to relevant amendments in the Health Practitioners Competence Assurance Amendment Bill
5. **agree** to one further policy change that removes the requirement for the Board to remove from the register a social worker who notifies the Board that he or she has stopped practising
6. **agree** to the minor change to amend the recognition of professional development by the Board from a discretionary function to a required function of the Board
7. **approve** the Supplementary Order Paper for release on the basis that Cabinet agrees to the amendments in recommendations 4 and 5
8. **note** that minor and technical changes may be made by the Parliamentary Counsel Office in finalising the Supplementary Order Paper
9. **note** that the Minister for Social Development intends to proactively publish this Cabinet paper on the Ministry of Social Development’s website following the release of the Supplementary Order Paper.

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| Authorised for lodgement |
| Hon Carmel SepuloniMinister for Social Development |

**Appendix 1 – Minor and technical changes included in the SOP**

Minor and technical changes proposed by the SOP to the SWRL Bill include:

* adjust cross-references in section 10 of the SWR Act for amendments in the SWRL Bill
* in new section 38B, ensure employers take steps to improve a social worker’s competency as soon as practicable
* ensure the obligation in section 43 of the SWR Act to make all competency assessments in force available does not apply to competence assessments about individual social workers
* ensure that the requirement in new section 47A for an employer to report serious misconduct to the Board applies only for misconduct that meets the Board’s criteria for reporting serious misconduct and does not include bringing the social work profession into disrepute
* clarify that the Board cannot deal with issues of misconduct under both section 49 and new section 57A of the SWR Act
* clarify the procedure where a social worker responds to an interim suspension direction under new section 57B of the SWR Act
* move the new paragraph (ob) inserted by the SWRL Bill in the functions of the Board to a more appropriate location relating to the Board’s powers in the SWR Act
* remove a paragraph from section 115 of the SWR Act consequently on the SWRL Bill removing administration of the complaints process from the Tribunal
* require persons applying for registration to provide their email addresses for administrative purposes – the address would not be published on the register
* remove the requirement for a direction of the Board before the Registrar can update the register for changes notified by the social worker
* update an obsolete reference to registered letter to an equivalent form of delivery
* make technical changes to the consequential amendments in Schedule 1 where simply replacing “registered social worker” with “social worker” may not be appropriate.
1. The Alliance is convened by the Board, and includes: Aotearoa New Zealand Association of Social Workers, Careerforce, Council for Social Work Education Aotearoa New Zealand, District Health Boards’ Health Social Work Leaders’ Councils, Ministry for Children-Oranga Tamariki, New Zealand Council of Christian Social Services, Social Service Providers Aotearoa, Social Workers Registration Board, Tangata Whenua Social Workers Association, and the New Zealand Public Service Association. [↑](#footnote-ref-1)