

Chair  
Cabinet Social Policy Committee

## **INCREASING THE PROFESSIONALISM OF THE SOCIAL WORK WORKFORCE**

### **Proposal**

- 1 This paper seeks Cabinet Social Policy Committee's agreement to reform proposals to increase the professionalism of the social work workforce.

### **Executive summary**

- 2 In 2016, the Social Services Committee (the Select Committee) inquired into the operation of the Social Workers Registration Act 2003 (the SWR Act) and concluded that legislative reform was needed to introduce mandatory registration for social workers. Government presented its response to the House of Representatives (the House) on 21 March 2017, noting that further work would be done to identify possible changes that could best give effect to the intent of the Select Committee's recommendations to increase the professionalism of the social work workforce.
- 3 Anyone can call themselves a "social worker" at present, whether they have qualifications or not. Individuals are only required to register if they wish to use the title "registered social worker". Unregistered social workers are not subject to statutory competence and fitness requirements, nor do the complaints and disciplinary processes set out in the SWR Act apply to them.
- 4 The voluntary nature of the current regulatory regime undermines its effectiveness and does not support on-going efforts to improve the quality of social work services. I propose an extension and strengthening of the current regime by protecting the title of "social worker", limiting its use to people who are registered and certified as competent. This would mean that any employment contract or contract for services which uses the title "social worker" could only be filled by a registered social worker, and likewise with any statutory reference to a social worker.
- 5 It is expected that a change to 'mandatory certification' would bring into the regime most of the estimated 2,000 currently practising social workers who are choosing not to be registered, while avoiding definitional issues that would be presented by occupational licensing. This approach will also avoid inadvertently affecting related occupations such as school guidance counsellors and Whānau Ora navigators and avoids undermining moves to facilitate multidisciplinary practice in the health and social services sectors, such as the recent enabling of delegations to suitably qualified people under the revised Children, Young Persons and their Families Act 1989<sup>1</sup>.
- 6 Having a competent, effective social work workforce is a core component of the Government's social investment approach. Bringing remaining practising social workers into the regime (alongside new entrants) will ensure that the regime is better able to provide assurance to employers and clients of social workers' skill and qualifications. It will also

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<sup>1</sup> Changes made by the Children, Young Persons, and Their Families (Advocacy, Workforce, and Age Settings) Amendment Act 2016.

promote a positive professional identity to support high quality social work practice and help to make assurance processes more effective.

- 7 This paper also contains proposals intended to support the proposed shift in the regulatory approach, to ensure social workers are competent and fit to practise, and that there are appropriate and efficient complaints and disciplinary processes in place. Some technical changes to further clarify or improve processes in the SWR Act are also recommended.

## Background

- 8 At my request, the Select Committee undertook an inquiry into the operation of the SWR Act in order to identify how the standard of the social work workforce could be lifted so that vulnerable clients are protected from poor practice and receive the support they need.
- 9 The Select Committee released its Inquiry Report on 2 December 2016.<sup>2</sup> The Select Committee concluded that legislative reform is needed to: strengthen the regulatory framework for the sector, to increase the professionalism and competence of social workers, and provide greater protection for the public. Overall, the Select Committee found that:
- registration should be mandatory for social workers and social work students
  - the present requirement for a competence assessment in addition to a qualification, repeated every five years, should be removed
  - social workers with a recognised New Zealand qualification should be presumed to be competent, but the Social Workers' Registration Board (the Board) may still require assessments as needed
  - strengthening and recalibration of vetting, on-going fitness to practice, and complaints and disciplinary processes was needed
  - social work registration on the basis of practical experience should be phased out.
- 10 The Government Response to the Select Committee's Report, presented to the House on 21 March 2017, acknowledged the overall intent of the Select Committee's recommendations and the case made by the Select Committee for some form of increased regulation of social workers. It also noted that the Government would carry out further work to identify possible policy and legislative changes that could best give effect to the intent of the Select Committee's recommendations to increase the professionalism of the social work workforce.
- 11 When approving the Government Response, Cabinet invited me to report to Cabinet Social Policy Committee by 3 May 2017 with reform proposals that will fulfil the intent of the Select Committee's recommendations (including any legislative proposals) [CAB-MIN-17-0090].
- 12 I have used the Health Practitioners Competence Assurance Act 2003 (HPCA Act) as a model for my proposal because that Act also uses an approach centred on certification and title protection. Additionally, the nature of social work aligns better with health professions over other professions like law or plumbing; and overseas jurisdictions such as Ireland and the United Kingdom include social work in their health regulatory regimes. Where I have considered the occupational regime for health practitioners as unsuitable for regulating any distinct issues facing social workers, I have referred to licensing of teachers under the Education Act 1989.

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<sup>2</sup> Report of the Social Services Committee *Inquiry into the operation of the Social Workers Registration Act 2003* (2 December 2016, AJHR I.12B).

## Comment

### *The level of social work professionalism needs to increase*

- 13 Social workers in New Zealand are on the frontline across the child protection, health, education, and justice sectors and work with a wide range of vulnerable children and adults. They are increasingly dealing with children and adults who are highly vulnerable, who present with very complex issues, and may be living in dangerous situations.
- 14 Individuals and families experiencing family violence, drug and alcohol addiction, and mental health issues require and deserve skilled and well trained professionals to work effectively with them. In such situations, incompetent practice may cause harm with a long lasting impact. Even in less extreme situations, preventable harm can arise when individuals or families are not given the expert help that they need and go on to develop more serious problems.
- 15 There are a number of examples where the actions of social workers have been investigated and found to have caused harm to clients. Examples include:
  - inadequate assessments and poor judgement leading to serious physical or emotional harm by leaving children in dangerous living situations, or not detecting risks of self-harm or suicide
  - forming inappropriate relationships with clients
  - financial harm from either dishonesty or taking advantage of a vulnerable client
  - failure to liaise with client's family members and collaborate with other case workers leading to a serious lack of proper care.
- 16 The findings of these cases routinely outline the lack of adequate training, poor decision making, or failure to follow established protocols, and essentially amount to the social worker failing to adequately or appropriately discharge their duties towards, or on behalf of the client. Registration cannot guarantee to prevent such failures but it will reduce the likelihood by requiring proper qualifications and on-going training, and providing a mechanism whereby individuals whose practise is inadequate can be called to account.
- 17 A high quality social work workforce is a vital component in achieving the Government's goals in the social sector. The Government has adopted a social investment approach to ensure interventions and services are effective and targeted to the right place. This focus requires a highly professional and capable social worker workforce to undertake effective assessments, to provide therapeutic interventions, and to provide timely referrals to other services. Social workers, whether employed by government directly or by groups contracted with government, are frequently the brokers of services for individuals, families and communities with high levels of need. This means social workers are uniquely placed to make a significant difference for their clients' long term outcomes.
- 18 Improved occupational regulation is expected to provide a number of benefits to social worker professionalism, such as:
  - a clear, transparent and consistent complaints and disciplinary process for clients that is independent from employers and social workers
  - consistency of practice, including ensuring that those who work with vulnerable people are suitably qualified and trained

- shifting some of the responsibility for individual assessment, maintenance of competence and an effective complaints systems from non-governmental organisation (NGO) to a central regulator
- a coherent overall framework for the social work profession that lifts its status to that of similar professions, which will support a shift to multidisciplinary practice
- supporting the autonomous exercise of independent professional judgment of social worker.

*A quarter of the workforce is unregistered and uncertified*

- 19 The number of registered social workers now stands at almost 6,300. The majority of social workers in the state sector are registered. Government agencies have employment practices in place that ensure new social work employees will be registered, or are able to become registered within a reasonable period (are “registrable”).<sup>3</sup> There are higher proportions of unregistered social workers in the NGO sector, often without a formal or recognised social work qualification.
- 20 The Select Committee’s Report notes that the 2013 Census showed 6,128 people who identified themselves as social workers, but that around 18,000 people identified with a wider definition that covered occupations such as community workers, family support workers, youth workers, and health promotion and disabilities services officers. It is possible that some of these people may be undertaking social work tasks or have social work qualifications. Based on this data, the Board estimates a workforce of around 8,000 who should be registered, meaning that approximately 2,000 people who are not currently registered are working in social work roles.<sup>4</sup>
- 21 The Aotearoa New Zealand Association of Social Workers had a membership of 3,382 as at 31 March 2017. While 79% of their members are registered with the Board, 513 (15%) have sufficient qualifications to be registered but are not, and a further 191 (6%) are not known to have the necessary qualifications for registration. Of these, 56 people are working to be registered on the basis of their experience via the current section 13 pathway.<sup>5</sup>
- 22 On the basis of these estimates, officials consider that there are approximately 2,000 people (representing about one quarter of the profession) who are unregistered but operating as social workers. This means they have not been certified as having the requisite social work qualifications and are not subject to on-going professional development, supervision and disciplinary processes which are designed to protect the public and improve professionalism. Most of these people are likely to be appropriately qualified but choosing to practise outside the current regulatory regime for various reasons.
- 23 Given that the existing system does not fully cover the social work profession, legislative reform offers an opportunity to clearly articulate changes needed to increase professionalism of the workforce, ensure competence of social workers, and improve protections for vulnerable clients from inappropriate and potentially harmful social work practice.

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<sup>3</sup> It is currently common when contracting for social work services for the contract to specify that social workers are either registered or capable of being registered (are registrable). Recommended changes in title protection to protect the title of “social worker” will mean that social workers must be registered: see paragraphs 29 - 31.

<sup>4</sup> The Board’s estimate of 8,000 was from census data and made by counting the number of people with relevant job titles and tertiary level qualifications. However it was not possible to confirm how many had recognised social work qualifications.

<sup>5</sup> Section 13 is a pathway in the SWR Act which allows competent persons with sufficient practical experience (enough to compensate for the lack of a recognised social work qualification) to register if they meet the other appropriate criteria such as fitness and competence.

## Registration of social workers

- 24 The current system of certification was introduced in 2003 by the SWR Act.<sup>6</sup> It protects the title of “registered social worker” by making it an offence for unregistered persons to hold themselves out as a registered social worker. Therefore registration is mandatory for any person wishing to use the protected title.<sup>7</sup> The current regime does not protect the title of “social worker”.
- 25 The SWR Act’s standards and processes do not apply to unregistered social workers. This means that unregistered social workers are not subject to competence requirements or assessed for their fitness to practice social work. Additionally, unregistered social workers are able to practise in an environment where serious misconduct and incompetence cannot be adequately and independently addressed, and unregistered social workers who cause serious harm can potentially continue to practice without appropriate penalty or sanction. While clients can complain to a social worker’s employer, this may not be sufficiently independent to impartially assess complaints about competence or conduct. Other bodies, such as the Health and Disability Commissioner, only apply to social workers working in specific areas.
- 26 Social workers currently choose not to register despite practising social work for a number of reasons. The registration process is seen by some as onerous, with a competence assessment at registration and at five-yearly intervals. This creates costs for individuals of about \$450 per year over each five-year recertification cycle, which some employers see as a ‘voluntary’ expense that they are reluctant to pay for. This reflects a perception that independent assurance of social worker competence is not a professional requirement, indicating the regime needs to be strengthened.
- 27 Additionally, the lack of clarity around what is ‘social work’ has given rise to confusion and disputes over whether social workers can leave the profession when no longer employed in a social work position. Based on a Crown Law opinion on the interpretation of section 25 of the SWR Act, formerly registered social workers who have become probation officers and youth workers have been fined by the Social Workers Complaints and Disciplinary Tribunal for conduct unbecoming of a registered social worker on the basis that they were employed or engaged as a social worker without an annual practising certificate.<sup>8</sup> It is also unclear whether the regime is applicable to persons who are employed in positions that do not have direct client contact. This uncertainty, with a perceived lack of support for employers and individuals, has led some social workers to avoid the system entirely and operate outside the regime.
- 28 The ‘voluntary’ approach began the transition to a more professional workforce but, nearly 14 years later, it is time to move to a more robust footing. Without a comprehensive system of regulation for all social workers, the New Zealand public is not offered the same level of protection as social work service users in other countries or the same level of statutory protection provided by the regulatory regimes applying to similar professions such as nursing or teaching.

## Recommendations to extend the registration regime

- 29 I have considered the options on the most appropriate form of occupational regulation to achieve the outcomes sought by the Select Committee [CAB-17-MIN-0090]. On balance, I propose an extension and strengthening of the current regime by protecting the title of “social worker”, limiting its use to people who have been registered by the Board and certified as

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<sup>6</sup> “Certification” means registration, where being on the register certifies the registrant is suitable to provide the services of the occupation that is regulated. It is often associated with a protected title that only certified persons may use.

<sup>7</sup> Section 148(2).

<sup>8</sup> These professions are not presently required to have a social work degree.

competent. This represents level three of the Policy Framework for Occupational Regulation<sup>9</sup> (Policy Framework). This shift to 'mandatory certification' will be more inclusive of the social work profession by requiring someone to register if they wish to practice as a social worker. It would be an offence to represent oneself as a "social worker" unless registered with the Board.

- 30 It is expected that this change would bring into the regime most of the estimated 2,000 currently practising social workers who are choosing not to be registered. At least 1,200 are thought to be immediately able to meet current registration requirements, and there are ways forward for most others (discussed further below). Bringing the remaining practising social workers into the regime, along with new entrants, will ensure that the regime is better able to provide assurance to employers and clients, as well as promoting a positive professional identity that will support high quality social work practice. A shift to mandatory certification will also avoid inadvertently affecting related occupations such as school guidance counsellors and Whānau Ora navigators that could be caught by definitional problems associated with task or occupational licensing (levels four and five of the Policy Framework).
- 31 Mandatory certification and title protection will also provide a basis to clarify the intention of the SWR Act and allow social workers who wish to change career paths to leave the profession if they wish to. I propose that the SWR Act be clarified to reflect the intent that the requirement for registration arises only if the job title is "social worker", or if a person is claiming to be a social worker, or if a person is undertaking 'restricted tasks' that can only be undertaken by a social worker. This will additionally prevent current contracting practice which allows social service providers to employ unregistered social workers in "social worker" roles so long as they are "registrable".
- 32 The 'mandatory' nature of the proposed approach will provide a mechanism for employers to more easily check the status of any potential new employee. Certification provides assurance to the public and prospective employers that someone who calls themselves a social worker has met certain standards of skills, knowledge and experience and is subject to on-going professional disciplines (e.g. continuing professional development and complaints and disciplinary processes). This will be especially useful for smaller employers, such as NGOs, for whom independently vetting for fitness or verifying competence assurance can be difficult or costly.
- 33 A key advantage of the proposed reform is that it does not conflict with existing policy settings designed to enable multidisciplinary practice in the health and social services sectors. These policies allow for the chief executive of the Ministry for Vulnerable Children, Oranga Tamariki to delegate social work functions to non-social workers under certain circumstances. This is intended to allow for teams of professionals to make the best possible care decisions and is a move to team-based regulation. A task licensing approach, which is level four of the Policy Framework where certain tasks would be reserved exclusively for social workers, might well conflict with delegations under the Children, Young Persons and their Families Act 1989. Therefore, I am not recommending that the SWR Act be moved to a generic task licensing approach. Rather where existing statutes already use the term "social worker" the recommended changes will ensure that only properly registered social workers can undertake the statutory role or task.
- 34 Additionally, one of the major difficulties with adopting either task or occupational licensing approaches (level five of the Policy Framework), as advocated by the Board and the Select Committee, is defining social work. To shift to these levels of regulation it would be necessary to define "social work" in statute to comply with fundamental legal norms. However, the

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<sup>9</sup> Policy Framework for Occupational Regulation, CO (99) 6  
<https://www.dPMC.govt.nz/cabinet/circulars/co99/6>

boundaries of what is and is not social work are not distinct from many other social service and health sector occupations, so it would be impossible to define social work without affecting a wide range of related occupations, which undertake similar tasks and require similar skills. As outlined in the Regulatory Impact Statement (RIS), licensed occupations such as real estate agents and teachers can be defined narrowly or by reference to an employer. In the health field, various tasks requiring particular skills can be defined with great precision. None of these approaches are transferable to the social work profession. Therefore, I do not recommend this approach.

- 35 Overseas-trained social workers will continue to be able to register under section 7. This section meets our obligations under the Trans-Tasman Mutual Recognition Act 1997 and other international agreements. For the avoidance of doubt, I do not propose to change the policy settings affecting overseas-trained social workers in a way which would limit compliance with these obligations.

### *Impacts on the NGO Sector*

- 36 The major uncertainty around the recommended change is the effect it will have on the social workers that least is known about, those in the NGO sector, especially those not employed under government contracts. Officials have consulted with the Aotearoa New Zealand Association of Social Workers, reviewed the submissions made by NGOs to the Select Committee, and sought information from the major NGOs that employ social workers.
- 37 On the basis of these inquiries, officials have estimated a group of up to 400 – 500 currently practising social workers who may not be able to proceed immediately through any of the main registration pathways. There are a range of possible ways forward for these people:
- some will be undertake study while working, and may be able to cross credit prior learning, reducing the extra study they need to undertake (section 10 of the SWR Act allows people to be provisionally registered for up to 8 years while studying)
  - some employers may choose to respond by changing job titles and expectations, eg to community or social services worker, so that existing staff can be retained
  - some will need to move to a role that does not require the skill level of a social worker
  - some will be near retirement age.
- 38 The need for increasing professionalism has been clearly signalled for over a decade, so I expect most NGOs will accept the need for change, and be able to adapt in a way that continues to utilise the skills of people who do not meet the requirements to be social workers in more appropriate roles.

### *Implementation timeframe*

- 39 I am proposing a two year timeframe for the implementation of mandatory registration, to allow for a smooth transition that minimises any disruption. Other changes to the SWR Act as outlined below should be able to be applied immediately. The phasing will be confirmed in the recommendations to Legislation Committee. MSD will work with the Board and other stakeholders in the sector to monitor the impacts of the proposed changes, and respond as needed.

## Other changes

- 40 I am recommending, alongside a move to mandatory certification and improved title protection, the amendment of various other processes in the SWR Act to increase the effectiveness and transparency of the way the SWR Act functions. In particular, that:
- the criteria and method of appointing Board members should be enhanced
  - the experience-based pathway to registration (section 13) should be phased out
  - competence assurance processes should be streamlined to allow for continuous review of professional development
  - the definition, mode and timing of assessing whether a person is fit and proper to practise social worker should be clarified
  - notification requirements for social workers and employers should be made mandatory in some circumstances
  - complaints and disciplinary process should be realigned with similar regimes in health and education
  - interim suspension powers should be altered to fit the new policy settings.
- 41 Other consequential or technical changes are noted at the end of this paper.

### *Enhancing Board membership*

- 42 The current criteria for appointment to the Board do not include a reference to representation of the interests of the employers of social workers. The shift to mandatory registration for all social workers will place more constraints on the employers of social workers. I am therefore recommending that the criteria for appointment to the Board be changed to include someone to represent the interests of the employers of social workers.
- 43 Additionally, at the Board's request, I also propose to reduce the number of members from ten to seven, to improve the efficiency of governance of the Board.

### *Registering social work students is unnecessary*

- 44 The Select Committee recommended that a new form of registration (with appropriate criteria and restrictions) be introduced for social work students, as this would help to protect public safety during student placements.<sup>10</sup> At present, client safety is provided via the supervision practices of the agency providing the student placement. This is supported and enforced by:
- the agreement between the tertiary education provider and the placement provider
  - standards for field education set out in the Board's Programme Recognition Standards,<sup>11</sup> which specify what will be covered in student learning opportunities and require appropriate supervision of the student.
- 45 I am satisfied that these arrangements provide appropriate public safeguards. I also note that comparable jurisdictions such as the United Kingdom have moved away from additional student registration requirements in favour of clear expectations on regulators and education providers.

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<sup>10</sup> Social work students are required to undertake a minimum of 120 days of field education in the final two years of a Board approved four year full-time bachelor's degree.

<sup>11</sup> <http://www.swrb.govt.nz/policy>.



- 46 I consider effective use of non-statutory means such as the withdrawal of recognition of qualifications by the Board as sufficient to deal with concerns around inconsistencies in pre-enrolment vetting and quality of placements provided to students.

*The experience-based pathway to registration should be phased out*

- 47 Section 13 of the SWR Act allows the Board to recognise prior social work experience and competency in lieu of formal academic qualifications. The rationale for its inclusion in the SWR Act in 2003 was to avoid workforce disruption particularly for Child, Youth and Family and some Crown entities such as district health boards and schools. Since 2003, 124 people have registered under the experience-based pathway.
- 48 Sufficient time has now passed for an academic qualification to be the professional norm for social workers. However, there are still a small number of practising social workers, generally later in their career, who have high levels of specialised competence, but for whom training is unrealistic, and who would be a loss to the workforce if required to retire. For these people, a suitable transitional pathway should be provided, but with a “sunset” clause.
- 49 I propose that the current section 13 pathway be phased out over either a two year period or over a longer timeframe of five years. During that time it may be necessary to give extra consideration to practitioners who have specialised experience in a particular area of social work, rather than a range of social work experience, and the need to register them under the existing section 13 requirements. The Board has the power to issue limited practising certificates to such specialised people and, on that basis, I am recommending that the section 13 pathway continue for two further years only.
- 50 Removal of the current section 13 pathway will not affect the validity of the registration of those social workers who have already obtained, or will obtain, registration via section 13.

*Limited scope registration based on experience*

- 51 While the Board requires depth and breadth of skills for full registration, the Board also has the ability to grant restricted registration with a limited scope of practice (see Appendix A).
- 52 This option would allow those with specialist experience in one or two areas become registered and continue practising, in their areas of expertise or with a specified employer, without having to undertake further training. Full registration would require further training.

*Recognition of prior learning*

- 53 While the current experience-based pathway to registration under Section 13 of the Act is to be phased out, opportunities should remain for people to gain credit towards the required academic qualifications through recognition of prior learning in their professional practice. This will help ensure that people currently working in roles that will require registration, but who do not meet the SWRB’s proposed qualification requirements, have sufficiently flexible pathways to registration.
- 54 Current social workers who have relevant tertiary qualification (such as a Bachelor of Arts in psychology, sociology, or anthropology) can go directly to a two year Applied Masters in

Social Work. Once enrolled, they can be provisionally registered under section 10, and have up to 8 years to meet the full requirements.<sup>12</sup>

- 55 The Ministry for Social Development and the Social Workers Registration Board will work closely with the NZ Qualifications Authority, Tertiary Education Providers, and the Tertiary Education Commission as appropriate, to ensure that the Board's registration requirements take account of applicants' prior learning and provide flexible learning opportunities.<sup>13</sup> The opportunity provided by the current section 10 to continue working while studying to complete the required qualifications will also ease the transition to a more highly qualified workforce.

#### *Moving to continuous review of social work competence*

- 56 For a person to be entitled to be registered as a social worker, the SWR Act requires the Board to be satisfied that the applicant is competent to practice social work (in accordance with Part 3 of the SWR Act), competent to practice social work with Māori, and competent to practice social work with different ethnic and cultural groups in New Zealand. There are additional requirements for overseas-trained social workers relating, among other things, to English language competency.
- 57 Currently, the competencies of domestically trained social workers are assessed at registration (or within two years if newly graduated). Once registered, social workers must complete competence assessments every five years to retain their practising certificates. The Board has ten Core Competence Standards which it uses for the purposes of assessment and re-certification.<sup>14</sup> Other professions generally assume that workers are initially competent on the basis that their recent qualification has conferred the necessary initial competencies through its academic programme. Monitoring of on-going competency is then a process of periodically checking requirements such as continuing professional development and endorsement from colleagues.
- 58 As such, existing competence requirements for social workers are out of step. The Board is able to withdraw recognition from academic programmes that produce graduates who consistently do not meet competence expectations (including those that relate to cultural competence and any new Core Competence standards), so it is possible to ensure the competence of domestically trained social workers without the need to require separate competence assessments at registration.
- 59 Additionally, requiring five-yearly recertification assessments is inflexible and may not reflect best practice in occupational regulation. There is no specific requirement in the SWR Act for continuing professional development. However, the Board has been able to require 20 hours of continuing professional development per year as part of their power to place general conditions on social work practising certificates.<sup>15</sup> The Board's power to set professional development requirements could be clearer. Allowing the Board to recognise, accredit and set programmes to ensure on-going competence, instead of a fixed five-yearly assessment, will reduce the cost and paperwork involved in registration.

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<sup>12</sup> Section 10 enables the Board to provisionally register a social worker who is working towards a recognised social work qualification and meets the other registration criteria.

<sup>13</sup> As a Crown Agent the Board is required to implement Government policy.

<sup>14</sup> The Core Competence Standards include competency to practise social work with Māori and other different ethnic and cultural groups in New Zealand. This includes, among other things, kaitiakitanga framework within social work education and social work practice to assess and strengthen social workers' competence to work with Māori, and proposals for support and assessment in the first year of practice to further educate, supervise, and mentor new social workers. The Board also intends to incorporate work currently being developed by the Ministry of Justice to raise the level of skills in family and sexual violence into the core competencies.

<sup>15</sup> Section 29.

- 60 I propose that the current competence assessment requirements in the SWR Act be replaced with the following:
- the Board only require social workers to carry out competence programmes or assessments at the point of first registration if they have an overseas qualification, or if concerns have been raised with the Board about their competence
  - that each year, social workers must complete professional development requirements to ensure competency, the nature of which are set by and monitored the Board.
- 61 Separately, I also propose the introduction of 'qualification principles' to guide the Board's recognition of social work qualifications, to ensure the prescribed qualifications are necessary to protect the public and not too costly to practitioners or the public. A similar provision exists in the HPCA Act and other statutes to prevent over-credentialing. This is an appropriate safeguard given the Board's expanded role.
- 62 I further propose that the Board retain its discretionary power to set programmes or competence assessments for the purposes of evaluating competence. This process provides the flexibility needed to allow the profession to adapt quickly to reflect new best practice developments in all areas (including those of particular interest to the Select Committee). It is also the means by which competency would be assessed for overseas-trained social workers.

#### *Clarifying fitness to practice social work*

- 63 A person's fitness to practise social work is assessed by the Board at registration. The Board can also assess a person's fitness to practise social work if and when concerns are raised through the disciplinary process, and when applying for annual practising certificates (if the Registrar suspects there are grounds an applicant will not be fit and proper to practise).
- 64 The current touchstone for a finding of unfitness is whether a reasonable person would consider that a person whose fitness is being assessed is not fit and proper to practise, and three examples of unfitness are contained in section 47(2).<sup>16</sup> Where the person being assessed is applying for registration, the Board is able to reserve its decision on fitness if it is satisfied there are disciplinary issues or the circumstances suggest a reasonable possibility that the subject is not a fit and proper person to practise.<sup>17</sup>
- 65 The Board's *Fit and Proper* Policy Statement provides further detail of the factors the Board considers in the exercise of its discretion.<sup>18</sup> These factors fall into five categories: character, communication, professional background, criminal history and health. Many of these factors are similar to those explicitly listed in other professional legislation such as in the HPCA Act. Given the significance of these other factors, transparency of what is considered in the fitness assessment, and what is grounds to be found unfit, is essential as a matter of natural justice.
- 66 To improve the transparency of the process, I propose that the SWR Act adopt a similar approach to the HPCA Act and provide a more comprehensive list of the factors the Board can consider in the exercise of its discretion (including an assessment of any mental or physical health issues and disciplinary history).<sup>19</sup>

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<sup>16</sup> These are that: (1) the person being assessed has been convicted of an offence punishable by imprisonment for three months or more, the nature and circumstances of which reflect adversely on fitness to practise; (2) the person being assessed is unable to perform adequately the functions required to practice satisfactorily; or (3) the person being assessed is not of good character and reputation.

<sup>17</sup> Section 47(3).

<sup>18</sup> <http://www.swrb.govt.nz/policy>.

<sup>19</sup> Other criteria that the Select Committee noted the Board should consider include: whether the person practised social work in breach of obligations to register or to hold a practising certificate; public safety; whether they display respect towards people, the cultural and social values of New Zealand, the law, and the views of others; whether they uphold the

67 As the HPCA Act model includes language competence in its assessment of fitness, it is not necessary to amend the SWR Act, as recommended by the Select Committee, to require the Board to only recognise qualifications which produce graduates who can communicate appropriately in English. In any case, the Board already uses its powers consistently to ensure that this occurs.

*Requiring notification of conditions affecting ability to practise social work*

68 The SWR Act currently protects from liability those who, in good faith, report concerns about a social worker's ability to practice. However there is no specific requirement in the SWR Act on any class of persons to report concerns and the class of protected disclosures is restricted to concerns about a social worker's inability "to perform adequately the functions required to practise social work satisfactorily".<sup>20</sup> This notification power is aimed at mental or physical stressors which affect the social worker's role.

69 I consider that the scope of this notification provision should be expanded in some circumstances. Requiring employers to report serious misconduct and continued incompetence of social workers is another way of ensuring that the public is not put at risk by their activities. Similarly, placing obligations on social workers to report misconduct reflects the responsibilities and privileges of being a member of a profession. This change in scope is generally appropriate to reflect public expectations of the social work profession and proposed changes in the definition of fitness to practice, and would improve the clarity and transparency of the notification protection clause.

70 I propose that provisions similar to those that apply to employers of teachers in the Education Act 1989, are applied to employers of social workers. They would be required to notify the Board if:

- a social worker, despite undertaking remedial competency procedures, continues to practise below the required standard of competence
- the employer believes on reasonable grounds that because of a mental or physical condition, a social worker may be unable to perform the functions required to practise social work
- the employer believes on reasonable grounds that a social worker has engaged in serious misconduct, meaning conduct that adversely affects or is likely to adversely affect the well-being of a client, reflects adversely on the social worker's fitness to practise social work, or which may bring the social work profession into disrepute.

71 Employers' obligations could be enforceable in the civil courts, for example in tort, in addition to their obligations already established under the Health and Safety at Work Act 2015. I note that the HPCA Act does not create a criminal offence and accordingly do not propose a criminal sanction. There should also be a minimum threshold of some kind, limiting the duty to report, so as to prevent enforcement actions that are without merit.

72 An obligation, enforceable through the standard disciplinary process, should also be placed on social workers to report any suspicions or beliefs, based on reasonable grounds, that another social worker cannot perform their required functions due to a mental or physical condition. This is consistent with health practitioners and is a component of professional workforce regulation. It is also consistent with social workers' existing ethical obligations.

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public and professional reputation of social workers; and their reliability and trustworthiness in carrying out duties. These are consistent with the criteria that are set out in the Board's current *Fit and Proper* Policy Statement.

<sup>20</sup> Section 51.

- 73 I propose that, as is the case with the SWR Act's current 'whistle-blower' protection, those who disclose their concerns in good faith should be protected from liability.
- 74 Following a notification, the Board will continue to have the options of making a complaint to a complaints assessment committee or, if appropriate in the circumstances, requiring a medical examination to assess whether a physical or mental condition is limiting a social worker's ability to practise. The availability or otherwise of interim suspension in some circumstances is discussed below at paragraphs 93 - 97.

*Aligning complaints and disciplinary processes under SWR Act with other professional regulatory bodies to improve regulatory coherence and independence of the Social Workers Complaints and Disciplinary Tribunal*

- 75 The Social Workers Complaints and Disciplinary Tribunal (the Tribunal) currently administers the complaints process and also exercises the disciplinary powers over registered social workers. As part of the complaints process, complaints assessment committees are appointed, dissolved or reconstituted by the chair of the Tribunal (the Chair) in consultation with at least three members of the Board.
- 76 The Chair is responsible for assessing complaints. If the Chair decides a complaint is to be pursued, it is referred to a complaints assessment committee. A notification of a conviction against a registered social worker punishable by imprisonment of three months or longer must be referred by the Chair directly to such a committee.
- 77 I propose that these complaint screening tasks be undertaken by the Board instead of the Tribunal. The current approach is inconsistent with the approach taken in comparable professions and there is a conflict of interest risk. For example, the Chair could preside over a charge for which they have already seen prejudicial information through the screening process. The Board is also well-placed to make an initial assessment of convictions before they are referred to a complaints assessment committee, as the Board is already required to assess convictions in the context of fitness to practice.
- 78 I also propose that the current power of the Board to appoint members of the Tribunal be removed and vested in the Minister responsible for the SWR Act.<sup>21</sup> This approach aligns with the membership appointment of other professional regulatory bodies (most members of Tribunals are appointed by the responsible Minister or by the Governor-General). A Tribunal should be clearly seen as being independent from its regulatory body.

*Powers of complaints assessment committees*

- 79 In making its determination of a complaint, a complaints assessment committee "may undertake or arrange for any investigations it thinks necessary".<sup>22</sup> The information that they obtain will form the evidence against a social worker in any Tribunal proceedings. Expanding and clarifying the investigative powers of these committees would assist them to make more informed assessments about conduct and improve decision-making. The current process is also inefficient – enabling them to get more information could reduce unnecessary recommendations to lay a charge.
- 80 I propose that, as for similar occupations, complaints assessment committee investigative powers be expanded to include powers to request and require documents or information to be provided to them on the condition that such powers are only used if the committee believes on reasonable grounds the information required is relevant to its investigation.

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<sup>21</sup> Section 99(1)(m), section 116(1). At present, the Minister is only required to appoint at least one lay member.

<sup>22</sup> Section 71.

- 81 There will sometimes be legitimate circumstances for withholding information from complaints assessment committees. In recognition of this, I propose the power to require documents should only be available as a last resort and where there are reasonable grounds for believing that the information sought is necessary for the investigation. I additionally propose that this power not require a person to provide any information or produce any document that would be privileged in a court of law, or that would breach an obligation of secrecy or non-disclosure (other than obligations arising under the Official Information Act 1982 or the Privacy Act 1993).
- 82 The options currently available to a complaints assessment committee when determining the outcome of a complaint or a notification of conviction are to decide that:
- the Board review the competence or fitness to practise (or both) of the social worker concerned
  - the complaint be submitted to conciliation
  - the complaint or conviction be submitted to the Tribunal
  - no further steps should be taken.
- 83 I propose that the options available to complaints assessment committees be expanded to include:
- recommending the Board direct an apology from the social worker to the complainant
  - appointing an independent person to act as a conciliator (as part of the current conciliation process set out in the Social Workers Registration Act)
  - directing the complaint to mediation
  - recommending the Board refer the subject matter of the complaint to the New Zealand Police
  - recommending the Board censure the social worker
  - recommending the Board direct the social worker to undergo training, counselling, and/or mentoring.
- 84 This approach will enable complaints assessment committees to have a more tailored response to the wide range of circumstances they consider and reduce the number of complaints being unnecessarily referred to the Tribunal.

*Powers of Social Workers Complaints and Disciplinary Tribunal (the Tribunal) to be clarified and expanded*

- 85 Section 82 of the SWR Act sets out the grounds under which the Tribunal can make a disciplinary order. One ground is professional misconduct.
- 86 Professional misconduct is defined as a social worker who breaches the social worker code of conduct or someone who is employed or engaged as a social worker and claims to be registered while not holding a current practising certificate.<sup>23</sup> The current definition of professional misconduct is too narrow.

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<sup>23</sup> Section 82(2).

- 87 I propose that professional misconduct include conduct that has discredited or is likely to discredit the profession. This approach aligns with other professions, including lawyers and health practitioners. This approach would encourage professionalism by indicating the importance of public trust in the social work profession.
- 88 Section 83(2) provides that the Tribunal cannot cancel a social worker's registration "unless it finds him or her guilty of gross or severe professional misconduct". The Select Committee noted that this can be interpreted to mean that the Tribunal only has the power to cancel a social worker's registration if the social worker is found guilty of gross or severe professional misconduct, but cannot cancel registration on any of the other disciplinary grounds.
- 89 I propose that the Tribunal be able to cancel registration on any of the disciplinary grounds in section 82. There is no clear reason for the distinction. As for an appropriate threshold for the cancellation of registration, the HPCA Act does not have a threshold provision for cancelling registration specifically on the grounds of professional misconduct. The Education Act 1989 contains a comparable model that should be considered during the legislative drafting process to ensure there are the appropriate checks and balances on the Tribunal's powers when it comes to cancelling registration on the grounds of professional misconduct. This approach will ensure the Tribunal is able to make a comprehensive assessment of the appropriate penalty for the particular behaviour being considered.
- 90 Section 83 of the SWR Act sets out disciplinary orders the Tribunal can impose. The Tribunal may make an order:
- to cancel the social worker's registration, including to set a time period which must pass or conditions which must be satisfied before an application for re-registration is accepted
  - that the social worker may only practise social work in accordance with certain restrictions, for a period of up to three years
  - to censure the social worker
  - that the social worker must pay a fine of up to \$10,000 to the Board
  - that the social worker must undergo stated additional training, professional development, or both
  - that the social worker must pay part or all of the costs and expenses related to the matter.
- 91 The strength and range of orders available to the Tribunal are more limited than in other professions. I propose that the sanctions available to the Tribunal be expanded to include the power to:
- suspend a social worker for a period of up to three years. This longer time period is in keeping with sanctions available in other similar professions.
  - direct an apology from the social worker to the complainant .
- 92 The current appeal processes in the SWR Act are an important safeguard against the Tribunal imposing penalties that are disproportionate. A social worker can appeal to the District Court.<sup>24</sup>

#### *Interim suspension powers need recalibration*

- 93 The Board's current interim suspension power is limited, both in the circumstances in which it is available and the length of time that it applies for. Under section 54, the Board can suspend

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<sup>24</sup> Section 88.

a social worker's registration for a period of not more than 10 working days if the chair considers that the social worker may be unable to adequately undertake the functions required to practise satisfactorily, and having regard to the need to protect the health and safety of members of the public.

- 94 A section 54 suspension can occur upon receipt of a notification of conditions affecting ability to practise social work (discussed in paragraphs 68 - 74 above) but it does not have to. Depending on the circumstances, if the Board considers that the relevant matter should be dealt with urgently, it may suspend the social worker's registration or practising certificate (or both), or make them subject to conditions. There is no requirement to notify the social worker in advance. Section 54 is an emergency suspension power.
- 95 However, the current timeframe of 10 days is not sufficient to resolve complex issues. I propose that the Board be able to extend the timeframe of a section 54 suspension for a further period where that extension is reasonable to allow further investigation or medical examination. As per the HPCA Act, I propose that there be requirements on the Board to only make an order for interim suspension if it has informed the social worker of the grounds and given the social worker reasonable opportunity to respond and be heard on the proposed suspension.
- 96 I also propose that the Board's current interim suspension powers be expanded to enable the Board to impose interim suspension or impose conditions:
- where there are reasonable grounds for believing that a social worker poses a risk of serious harm to the public by practising below the required standard of competence; or
  - if the Board considers that a social worker may be unable to perform the functions required to practise social work because of some mental or physical condition; or
  - if a social worker is alleged to have engaged in conduct that:
    - is relevant to a criminal proceeding that is pending against the social worker, or an investigation about the social worker is pending under the SWR Act or under the Health and Disability Commissioner Act 1994; and
    - in the opinion of the Board held on reasonable grounds, casts doubt on the appropriateness of the social worker's conduct in his or her professional capacity.
- 97 This approach is intended to be broadly consistent with that taken in the HPCA Act and to enable complaints assessment committees to investigate serious complaints. Expanding the Board's ability to suspend registration on an interim basis or impose conditions would enable immediate risks to be addressed while concerns about serious misconduct, incompetence, or a person's ability to perform the functions required to practise social work are considered.

### **Technical changes to improve processes under the SWR Act**

- 98 There are also opportunities to improve the efficiency of, or clarify, processes under the SWR Act which are consistent with the outcomes sought by the Select Committee. These include:
- clarifying that the Board is required to conduct Police vets when assessing fitness to practice social work and that these are conducted on a clean slate exempt basis
  - empowering the Board to assess fitness to practice when issuing practising certificates
  - clarifying the role and nature of complaints assessment committees
  - changing the composition of the Tribunal to reflect necessary expertise
  - improving the consistency of sanctions under the SWR Act.



*Police vets to be mandatory and on a clean slate exempt basis*

99 (redacted)

100 (redacted)

101 (redacted)

*Timing of fitness to practice assessments to be more regular*

102 The Board is required to consider fitness to practice on registration and when asked to do so by a complaints assessment committee. The Board also has the power to review fitness to practice when issuing practising certificates if the Registrar believes or suspects on reasonable grounds that a person is not fit to practise social work. However, when this could occur is unclear. Transparency around the powers of the Board is essential to ensure public and professional trust in the regulatory regime.

103 I propose that the Board be expressly empowered to consider the question of fitness to practice when considering an application for a practising certificate whether or not they suspect a social worker may be unfit to practise social work. This is clearer than the status quo and preserves a means to periodically review fitness to practice, as the current means (five-yearly competence assessments) is proposed to be removed.

104 I also propose that the Board be allowed to rely on a previous satisfactory vet conducted within the previous three years for the purposes of assessing fitness to practice where no other concerns have been raised. This approach to vetting is similar to that applying to teachers.<sup>25</sup> It strikes the right balance between public protection, efficiency, and the interests of social workers.

*Complaints assessment committees' roles to be clarified*

105 If a matter concerning a social worker is under consideration by a complaints assessment committee, and the Board considers that a further matter should form part of the committee's consideration, I propose that the Board be expressly permitted to refer this further matter to the same complaints assessment committee.

106 I also propose that the current name 'complaints assessment committee' be changed to 'professional conduct committee'. This name more properly reflects the issues they consider and also reflects the policy intention to increase the professionalism of the social work workforce.

*Membership of Tribunal to include appropriate expertise*

107 The Tribunal currently consists of a chairperson, a deputy chairperson, a lawyer with not less than seven years' practising experience, and five other members appointed by the Board. There must also be at least one layperson appointed by the Minister responsible for the SWR Act.<sup>26</sup> As noted at paragraph 75 above, I am proposing that all members of the Tribunal be appointed by the responsible Minister.

108 Additionally, I propose that the membership of the Tribunal be amended so that the chairperson and deputy chairperson are required to be lawyers with not less than seven

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<sup>25</sup> Section 361, Education Act.

<sup>26</sup> Section 116.

years' practising experience. These people play a central role in the regulation of Tribunal proceedings which often involve issues of law and must be conducted in accordance with the legal principles of natural justice. Tribunal decisions are also similar to court judgments. A working legal knowledge is essential. This proposed change will mean the current requirement that at least one member be a lawyer is no longer required.

109 I also propose that the membership requirements of the Tribunal panel convened to hear and determine any particular matter are amended to comprise the chairperson or deputy chairperson, three social workers, and one layperson. These amendments provide an on-going balance of social work knowledge and lay person involvement.

### *Improving consistency of sanctions*

110 The options to cancel or suspend registration or a practising certificate or to impose conditions as alternatives are not approached consistently throughout the SWR Act. I consider that the Board and Tribunal should have a clear hierarchy of options available to them when considering what to do about a social worker's misconduct or incompetence. I also consider that the sanctions available should be logical and consistent. I propose that:

- wherever cancellation of registration is available, the Tribunal should also have the power to impose the lesser sanctions of suspension and imposition of conditions
- it be made clear that cancellation or suspension (other than in interim situations) affects registration rather than a social worker's practising certificate and that cancellation or suspension of registration automatically cancels or suspends a practising certificate.
- the Board and the Tribunal be able to impose, in conjunction with suspension, conditions on a social worker's return to practise.

## **Consultation**

111 This paper was prepared by the Ministry of Social Development. The following government agencies have been consulted on proposals: the Ministry for Vulnerable Children, Oranga Tamariki; the Accident Compensation Corporation; the Departments of Corrections, and Internal Affairs; the Ministries for Pacific Peoples, and Women; the Ministries of Business Innovation and Employment, Defence, Education, Health, and Justice; the New Zealand Police; the New Zealand Qualifications Authority; Te Puni Kōkiri, the Tertiary Education Commission; the State Services Commission; and the Treasury.

112 The Board was also consulted during the development of the proposals, and drafting of the Cabinet paper and Regulatory Impact Statement. Information and opinion was also sought from the Aotearoa New Zealand Association of Social Workers in their capacity as the professional body representing social workers.

## **Financial implications**

113 Implementation of extended certification and title protection will have financial and economic implications for government, NGOs and individual social workers and prospective social workers. Ultimately most of these costs will fall back to government as the primary employer and funder of social work services, but individuals and NGOs who are not contracted to government will bear some additional costs. These additional costs are expected to result in an increase in quality and value from social work services, but this cannot be realistically quantified.

114 Costs will arise in three ways:

- a one-off transitional cost of up-skilling current social workers who will need to obtain a recognised social work qualification
- on-going cost increases from registration, annual practicing certificate renewals, continuing professional development and supervision for newly registered social workers
- increased professionalism and expectations of increasing quality may lead to pressures to increase salary levels, particularly in the NGO sector.

115 Because we have incomplete information about the numbers and circumstances of the estimated 2,000 unregistered social workers, it is very difficult estimate how many are likely to need to undertake training.

116 Based on our best estimates of the characteristics of unregistered social workers, up to 1,200 practising social workers are likely to be tertiary qualified already. Many may already have Board recognised social work qualifications and have chosen not to register as a social worker for various reasons. However, a proportion of these tertiary qualified people may have other qualifications (such as a Bachelor of Arts in psychology, sociology, or anthropology) that may be “cross creditable” and only require completion of a reduced length social work qualification before they can register as social workers. These people are “registrable” on the basis that they could qualify for provisional registration under section 10.<sup>27</sup>

117 Around 330 are likely to be able to qualify via section 13, so will not require additional training to gain registration. However, it is possible that some of these people may elect to up-skill anyway, to formalise their knowledge and gain peer recognition.

118 Of the remaining 470, some may have no tertiary qualification, and will need to undertake a four year tertiary course if they want to be employed as registered social workers. For others, we simply do not know and have to presume they will require tertiary training.

119 Indicative cost estimates have been based on 500 full-time equivalent social work students per year who need to up-skill by taking a tertiary course of study, either for a full four years or for a reduced two year programme. Some students may choose to study part time and take longer to up-skill.

120 Educational costs of up to \$5 million per year are estimated in the first few years until up-skilling of the currently practising insufficiently qualified social workers is complete.<sup>28</sup> Options to recognise and accredit work experience and previous study toward the required qualifications may reduce costs.

121 On-going cost increases will arise from new registrations, annual practising certificates and continuing professional development. At present rates, an additional 2,000 registrations would give rise to a total of \$690,000 in new registration fees, and \$736,000 in annual practicing certificate fees. However the Board has estimated a 30% reduction in annual practicing certificate costs to individuals, because of economies of scale and the streamlining of competency assessment processes. This would offset the direct costs to employers for registration. However employers may also have to meet extra costs from staff taking time away from core social work activities for the proposed 20 hours per year continuing professional development.

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<sup>27</sup> Section 10 enables the Board to provisionally register a social worker who is working towards a recognised social work qualification and meets the other registration criteria.

<sup>28</sup> The Ministry of Education confirmed the basis for the cost estimates. There have recently been training capacity constraints because of a limit on the number of field placements across public and private sectors, but this is not expected to be such an issue for social work students who are already employed in the sector.

### *Impacts of cost increases*

- 122 Increased training costs for both currently practising social workers and future social workers will fall primarily in the education sector, to tertiary training providers, student allowances and the student loan scheme. It would require additional funding or reprioritisation within the sector.
- 123 Increased annual costs will immediately be met by individual social workers, but ultimately flow to their employers. There will be a financial impact on the NGO sector, and they are likely to look to government agencies to support them financially to make this transition. Some smaller NGOs may need to reassess their approach, for example they could consider whether to amalgamate with other NGOs.
- 124 There will also be some costs for government funded employers in reviewing employment contracts and contracts for services to ensure they understand the implications under the new regime, but these are unlikely to add materially to the expected cost contract renewal processes.

### **Human rights implications**

- 125 Draft legislation will be assessed comprehensively for compliance with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

### **Legislative implications**

- 126 The legislative proposals in this paper will be included in a Social Workers Registration Amendment Bill. The Select Committee noted that options for achieving legislative reform including amending or repealing the SWR Act and incorporating social work partially or completely into the HPCA Act.
- 127 The HPCA Act is a good model of occupational regulation and I propose that the SWR Act be restructured in a way that is more in line with the HPCA, particularly in the areas of: competence and fitness to practise, and complaints and discipline. On the basis of the scale and scope of the proposed legislative change, the Ministry of Social Development considers that a Bill amending the SWR Act is the most appropriate vehicle for legislative reform. The Ministry of Health supports this approach.
- 128 The Social Workers Registration Bill currently holds a category 6 priority on the 2017 Legislation Programme (drafting instructions to be issued in the year), but I am requesting that it be reprioritised to category 5 (to be referred to a select committee in the year) so that it can be introduced in the House on 24 July 2017 [CAB-MIN-17-0090].

### **Regulatory impact and compliance cost statement**

- 129 The Regulatory Impact analysis requirements apply to the proposals in this paper. A RIS has been prepared by the Ministry of Social Development, and is attached. This RIS also includes an impact assessment to support the case for increased occupational regulation (as required by the Policy Framework for Occupational Regulation).
- 130 The Regulatory Impact Analysis Team at the Treasury provided the following assessment:

“The Regulatory Impact Analysis Team at the Treasury has reviewed the Regulatory Impact Statement “Legislative changes to increase the professionalism of the social

workforce” produced by the Ministry for Social Development and dated 1 May 2017. The joint review team considers that the RIS **partially meets** the QA criteria.

The RIS clearly establishes the conceptual nature of the problem, while acknowledging the limitations of the empirical evidence. It demonstrates a careful and systematic consideration of possible alternative approaches and sets out the reasoning for its conclusions. However, consultation does not appear specifically to have included the smaller non-Governmental organisations who appear to be the main employers of non-registered social workers, and so it is difficult to be confident as to the likely impacts on them, and their employees, of the proposed approach.

It will be important, if the proposed approach is adopted, to monitor the impacts in practice and to consider ways of obtaining better information about the less formal, quasi-social work sector. This should help to enable a well-informed approach to the proposed development of scopes of specialist practice by the Board and any future proposals for the reservation of certain tasks.”

## Gender implications

131 There are no direct gender implications arising from the proposals in this paper. However, an overwhelming majority of social workers are women. Nevertheless, the State Services Commission has advised that it considers that compulsory registration of social workers is unlikely to have a material effect on pay equity claims as it does not change the nature of the work and therefore the potential comparator groups.

## Disability perspective

132 The proposals in this paper are expected to respond to the needs and interests of people with disabilities who receive social work services.

## Publicity

133 The Select Committee’s Inquiry Report was released on 2 December 2016. The Government Response was presented to the House on 21 March 2017.

134 Any specific announcements about the introduction of a Social Workers Registration Amendment Bill will be co-ordinated by the Office of the Minister for Social Development.

## Recommendations

I recommend that the Cabinet Social Policy Committee:

- 1 **note** that the government response to the Social Services Committee report entitled *Inquiry into the operation of the Social Workers Registration Act 2003* was approved by Cabinet, and presented to the House on 21 March 2017 [CAB-17-MIN-0090]
- 2 **note** that Cabinet agreed to further work to identify the best options to increase the professionalism of the social work workforce and invited the Minister for Social Development to report to Cabinet Social Policy Committee by 3 May 2017 with reform proposals (including any legislative proposals) [CAB-17-MIN-0090]
- 3 **note** that to protect vulnerable clients and effectively deliver the interventions that form part of the Government’s social investment approach, a competent and skilled social work workforce

is essential, and legislative reform is required to increase and cement the professionalism of the social work workforce

### *Registration of social workers*

- 4 **note** that the current regulatory regime provided for in the Social Workers Registration Act 2003 (SWR Act) is primarily one of voluntary certification that protects the title of “registered social worker”
- 5 **note** that the proposed extension to mandatory certification and title protection to protect the title of “social worker” is expected to extend the coverage of the registration regime to include the estimated 2,000 practising social workers not currently registered, effectively ensuring mandatory registration for social workers
- 6 **note** that extending the SWR Act to include forms of task or occupational licensing is not recommended because of the difficulty in defining social work in ways that will not risk disruption across the social service and health sectors, or undermine the multidisciplinary approach being advanced by the new delegation regime in the Children, Young Persons and their Families Act 1989
- 7 **agree** that the regulatory regime provided for in the SWR Act become one of mandatory certification and broader title protection so that only those who register are able to call themselves ‘social workers’
- 8 **agree** that the SWR Act be clarified to reflect the intent that the requirement for registration and holding a practising certificate arises only if the job title or statutory position title is “social worker”, or if a person is claiming to be a social worker, or if a person is undertaking ‘restricted tasks’ that can only be undertaken by a social worker
- 9 **note** to minimise disruption to the social services sector a two year timeframe for implementation of the reforms proposed in this paper is recommended unless otherwise specified

### *Further changes*

- 10 **agree** to change the criteria for appointment to the Social Workers Registration Board (the Board) to include someone to represent the interests of the employers of social workers
- 11 **agree** to reduce the number of members of the Board from ten to seven, to improve the efficiency of governance of the Board
- 12 **note** that section 13 of the Social Workers Registration Act allows the Board to register those social workers who have achieved a sufficient depth and breadth of experience in social work but do not have a recognised social work qualification
- 13 **note** that the Board has the ability to grant restricted registration with a limited scope of practice that enables social workers with deep on the job experience to practice in a particular field of work
- 14 **agree** that the current section 13 pathway be phased out over time during which the Board will consider registration with restrictions on the area of practice for social workers with specialist rather than broad experience
- 15 **note** the removal of the current section 13 pathway will not affect validity of the registration of those social workers who have already obtained registration via section 13

- 16 **agree** that the phase out period for the section 13 pathway is either:
- 16.1 two years or
  - 16.2 five years
- 17 **note** that the Ministry for Social Development and the Social Workers Registration Board will work closely with the NZ Qualifications Authority, Tertiary Education Providers, and the Tertiary Education Commission as appropriate, to ensure that the Board's registration requirements take account of applicants' prior learning and provide flexible learning opportunities
- 18 **agree** that the current competence assessment processes in the Social Workers Registration Act be replaced with the following:
- 18.1 the Social Workers Registration Board (the Board) only require social workers to carry out competence programmes or assessments at the point of registration if they have an overseas qualification, or if concerns have been raised with the Board about their competence
  - 18.2 in place of the current formal five yearly reviews, each year social workers must complete professional development requirements to ensure competency, the nature of which are set by and monitored the Board
- 19 **agree** to the inclusion of 'qualification principles' such as are included in the Health Practitioners Competency Assessment Act (HPCA Act) to guide the Board's recognition of social work qualifications, to ensure the prescribed qualifications are necessary to protect the public and not too costly to practitioners or the public
- 20 **agree** that the Board's discretionary power to set programmes or competence assessments for the purposes of evaluating competence be retained
- 21 **agree** that, to provide a clear signal of the significance of other factors that the Board takes into account when assessing a person's fitness to practice social work, the Social Workers Registration Act be amended to provide a more comprehensive list of the factors the Board currently considers in the exercise of its discretion (including mental or physical health issues and disciplinary history)
- 22 **agree** that employers of social workers should be required to notify the Board if:
- 22.1 a social worker, despite undertaking remedial competency procedures, continues to practise below the required standard of competence
  - 22.2 the employer believes on reasonable grounds that because of a mental or physical condition, a social worker may be unable to perform the functions required to practise social work
  - 22.3 the employer believes on reasonable grounds that a social worker has engaged in serious misconduct, meaning conduct that adversely affects or is likely to adversely affect the well-being of a client, reflects adversely on the social worker's fitness to practise social work, or which may bring the social work profession into disrepute
- 23 **agree** to an obligation, enforceable through the standard disciplinary process, being placed on social workers to report any suspicions or beliefs, based on reasonable grounds, that another social worker cannot perform their required functions due to a mental or physical condition

- 24 **agree** that any notification required as a result of recommendations 22 and 23 will not attract civil or criminal liability if given in good faith
- 25 **agree** that the following tasks be reassigned from the Social Workers Complaints and Disciplinary Tribunal (the Tribunal) to the Board, so that the Board is required to:
- 25.1 receive and assess complaints, appoint or reconstitute complaints assessment committees
  - 25.2 receive and assess notifications of criminal convictions against social workers
- 26 **agree** that the current power of the Board to appoint members of the Tribunal be removed and vested in the Minister responsible for the Social Workers Registration Act
- 27 **agree** that the investigative powers of complaints assessment committees be expanded to include powers to request and require documents or other information to be provided to them on the condition that:
- 27.1 there are reasonable grounds for exercising such powers
  - 27.2 persons are not required to provide any information or produce any document that would be privileged in a court of law or would breach an obligation of secrecy or non-disclosure other than one arising under the Privacy Act 1993 or Official Information Act 1982
- 28 **agree** that the options available to complaints assessment committees on determination of a complaint be expanded to include:
- 28.1 recommending the Board direct an apology from the social worker to the complainant
  - 28.2 appointing an independent person to act as a conciliator (as part of the current conciliation process set out in the Social Workers Registration Act)
  - 28.3 directing the complaint to mediation
  - 28.4 recommending the Board refer the subject matter of the complaint to the New Zealand Police
  - 28.5 recommending the Board censure the social worker
  - 28.6 recommending the Board direct the social worker to undergo training, counselling, and/or mentoring
- 29 **agree** that the current definition of professional misconduct in the Social Workers Registration Act be amended to include any conduct that has brought or is likely to bring discredit to the profession
- 30 **agree** that the sanctions available to the Tribunal be expanded to include the power to:
- 30.1 suspend a social worker for a period of up to three years
  - 30.2 direct an apology from the social worker to the complainant
- 31 **agree** that the Tribunal be able to cancel registration on any of the grounds of discipline in section 82 of the Social Workers Registration Act and, where the issue is about professional



misconduct, that an appropriate threshold for cancellation be considered during the legislative drafting process

- 32 **agree** that the Board's current interim suspension power be recalibrated in line with the HPCA Act to enable the Board to impose interim suspension or impose conditions:
- 32.1 where there are reasonable grounds for believing that a social worker poses a risk of serious harm to the public by practising below the required standard of competence
  - 32.2 if the Board considers that a social worker may be unable to perform the functions required to practise social work because of some mental or physical condition
  - 32.3 if a social worker is alleged to have engaged in conduct that:
    - 32.3.1 is relevant to a criminal proceeding that is pending against the social worker, or an investigation about the social worker is pending under the Social Workers Registration Act or under the Health and Disability Commissioner Act 1994; and
    - 32.3.2 in the opinion of the Board held on reasonable grounds, casts doubt on the appropriateness of the social worker's conduct in his or her professional capacity
- 33 **agree** that the Board be able to extend the current 10 day timeframe for interim suspensions for a further period where that extension is reasonable to allow further investigation or medical examination

#### *Technical changes*

- 34 **note** that there is an opportunity to improve or clarify some of the processes in the Social Workers Registration Act
- 35 **agree** that the Social Workers Registration Act be restructured and recalibrated in a way that is more in line with the HPCA Act, particularly in the areas of: competence and fitness to practise, and complaints and discipline
- 36 *(redacted)*
- 37 **agree** that the Board be expressly empowered to consider the question of fitness to practice when considering an application for a practising certificate but that a Police vet will not be required if the applicant has passed the vetting process within the previous three years unless additional concerns about fitness have been raised
- 38 **agree** that, if a matter concerning a social worker is under consideration by a complaints assessment committee and the Board considers that a further matter should form part of the committee's consideration, the Board be able to refer this matter to that committee
- 39 **agree** that the name of complaints assessment committees be changed to 'professional conduct committees' and that:
- 39.1 the membership of the Social Workers Complaints and Disciplinary Tribunal be amended so that the chairperson and deputy chairperson are required to be lawyers with not less than seven years' practical experience

39.2 the membership requirements of the Tribunal panel convened to hear and determine any particular matter are amended to comprise the chairperson or deputy chairperson, three social workers, and one layperson

39.3 as a consequential change, the current requirement that at least one member (of the Tribunal and of the Tribunal panel convened to hear and determine any particular matter) be a lawyer be removed

40 **agree** that:

40.1 wherever cancellation of registration is available, the Tribunal should also have the power to impose the lesser sanctions of suspension and imposition of conditions

40.2 it be made clear that cancellation or suspension (other than in interim situations) affects registration rather than a social worker's practising certificate and that cancellation or suspension of registration automatically cancels or suspends a practising certificate

40.3 the Board and the Tribunal be able to impose, in conjunction with suspension, conditions on a social worker's return to practise

#### *Social Workers Registration Bill*

41 *(redacted)*

42 *(redacted)*

43 **invite** the Minister for Social Development to issue drafting instructions to the Parliamentary Counsel Office to draft the proposed Social Workers Registration Amendment Bill, to give effect to Cabinet decisions on recommendations 7 to 40 above

44 **authorise** the Minister for Social Development to make any minor technical and administrative changes required to finalise the Bill, in consultation with other Ministers as appropriate.

Authorised for lodgement:

Hon Anne Tolley  
Minister for Social Development

\_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

**Appendix A:  
Pathways to registration for current social workers without social work qualifications**

<p><b>Section 13</b></p>	<p><i>Mr Kingi is a Kaumatua at his local Marae, and has more than 40 years of experience in working with young people. He is employed as a social worker by the Marae Trust Board to work with disengaged young people and their families, often dealing with local schools, WINZ and with local Police and Courts. He has no formal qualifications but is highly regarded by government agencies for his case work and advocacy skills.</i></p> <p>Section 13 is an experience-based pathway to registration for social workers who are competent and fit to practice social work but who do not have a recognised qualification. It was intended in 2003 as a transitional stage for those who became social workers before qualifications became the norm, not as an on-going pathway for new applicants - therefore a two year phase out of section 13 was proposed.</p> <p>Inquiries have suggested that most people who are likely to be able to register on this pathway have already done so, or are already in the process of doing so. Employers, the Aotearoa New Zealand Association of Social Workers, and the Board have all been promoting and assisting social workers to apply for this pathway.</p> <p>However extending the phase out of this pathway from two to five years would give some reassurance that any competent but unqualified people have been given every opportunity to meet the professional requirements.</p>
<p><b>Limited scope registration based on experience</b></p>	<p><i>Ms Brown has a Diploma in Youth Studies, and a Certificate in Alcohol and Drug Counselling. She has been working with an NGO providing social work services for 15 years.</i></p> <p>While the Board requires depth and breadth of skills for full registration, the Board also has the ability to grant restricted registration with a limited scope of practice.</p> <p>This would allow those with specialist experience in one or two areas become registered and continue practising, in their areas of expertise or with a specified employer, without having to undertake further training. Full registration would require further training.</p>
<p><b>Section 10</b></p>	<p><i>Mr Jones is working for a local NGO as a social worker, although he has no formal qualifications. He has just enrolled to begin a Bachelor of Social Work part time so he can continue working.</i></p> <p>Section 10 allows provisional registration for someone practicing social work, while they are studying to become appropriately qualified, assuming they also meet other registration criteria (such as fitness to practice).</p> <p>This provisional registration can be granted for up to 8 years, in two year blocks, allowing for breaks for other life events.</p>
<p><b>Recognition of prior learning</b></p>	<p><i>Mrs Smith has recently graduated with a BA in sociology and anthropology, and has 5 years' experience working in a peer advocacy NGO. She wants to do social work, but doesn't want to spend another 4 years of study.</i></p> <p>While the current experience-based pathway via section 13 is to be phased out, opportunities will remain for people to gain credit towards the required academic qualifications through recognition of prior learning.</p> <p>Current social workers who have relevant tertiary qualifications (such as a Bachelor of Arts in psychology, sociology, or anthropology) can go directly to a two year Applied Masters in Social Work. Once enrolled, they can be provisionally registered under section 10, and up to 8 years to meet the full requirements. 50 people are presently on this pathway.</p>