

Social Workers Registration Legislation Bill

Government Bill

Explanatory note

General policy statement

This Bill is an omnibus Bill introduced under Standing Order 263(a). That Standing Order states that an omnibus Bill to amend more than 1 Act may be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy.

Introduction

The Social Workers Registration Act 2003 (the **Act**) currently sets out a voluntary registration system for social workers and protects the term registered social worker. The Act also establishes the Social Workers Registration Board (the **Board**) and the Social Workers Complaints and Disciplinary Tribunal. The Act aims to protect the safety of members of the public (through mechanisms to ensure that registered social workers are competent to practise and accountable for the way in which they practise) and to enhance the professionalism of social workers.

The objective of this Bill is to increase the professionalism of the social work profession and ensure the public is protected from harm. It aims to do this by—

- increasing coverage of the regulatory regime so that it will cover all social workers:
- ensuring social workers are competent and fit to practise and that there are appropriate and efficient complaints and disciplinary processes in place:
- increasing the effectiveness and transparency of the way the Act functions.

Extension of registration regime

The existing regime does not fully cover the social work profession. While the Act protects the title of registered social worker by making it an offence for unregistered persons to hold themselves out as a registered social worker, it does not protect the

title of social worker. Anyone can call themselves a social worker whether they have qualifications or not and individual social workers can choose whether they become registered or not. Those who are not registered are not subject to the standards and processes set out in the Act.

This Bill will amend the Act so that the title social worker is protected. This extends the scope of current occupational regulation so that anyone practising as a social worker or doing a job with that title must be registered and have a current practising certificate. This includes if a person is claiming to be a social worker, or holds a position or performs a role described using the words social worker, or if the person is undertaking restricted work. Expanded title protection will provide 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 ongoing professional oversight (such as continuing professional development and complaints and disciplinary processes). The changes in the Bill will also promote a positive professional identity that will support high-quality social work practice.

To allow for a smooth transition to the extended registration regime, the amendments that will require all social workers to be registered will come into force 2 years after the Bill is enacted.

Section 13 of the Act currently provides an experience-based pathway to registration for social workers who the Board accepts have achieved a sufficient breadth of experience but who do not have a recognised social work qualification. This Bill will remove that pathway 5 years after the Bill is enacted. The Bill provides for the temporary registration of people likely to be able to meet the criteria in section 13 so that those people can remain in the profession while their applications for registration based on their previous experience under section 13 are considered. It is intended that during the 5-year transition period the Board will consider restrictions on the area of practice for social workers with specialist rather than broad experience.

The Bill also provides that those who are registered at the end of the 5-year period on the basis of previous experience under section 13 will, from that time, be treated as having been registered under section 12 of the Act.

Other changes

This Bill also makes amendments to existing provisions to increase the effectiveness and transparency of the way the Act functions. These include—

- amending the criteria for appointment to the Board to include someone to represent the interests of the employers of social workers:
- reducing the number of members of the Board from 10 to 7:
- streamlining competence assurance processes to allow for continuous professional development programmes for practising social workers in place of competence assessment programmes every 5 years:
- clarifying that a Police vet is required as part of the Board's assessment of whether a person is a fit and proper person to practise as a social worker:

- requiring employers of social workers to report to the Board any reasonable belief that a social worker is not competent (if this has not been able to be addressed), has engaged in serious misconduct, or may be unable to perform his or her functions due to a mental or physical condition:
- requiring social workers to report to the Board any reasonable belief that another social worker is unable to perform his or her functions due to a mental or physical condition:
- aligning the complaints and disciplinary processes under the Act with similar regulatory regimes:
- expanding the situations where the Board can suspend a social worker's registration or impose conditions:
- setting out principles that the Board must be guided by in setting any required educational qualifications.

The Bill will amend the Criminal Records (Clean Slate) Act 2004 to ensure that no criminal convictions can be concealed from Police vets required for the consideration of whether a person is a fit and proper person.

Departmental disclosure statement

The Ministry of Social Development is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2017&no=297>

Regulatory impact statement

The Ministry of Social Development produced a regulatory impact statement on 1 May 2017 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/regulatory-impact-statement-legislative-changes-to-increase-the-professionalism-of-the-social-work-workforce.html>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause, which provides that the Act will come into force on the day after it receives the Royal assent, with 2 exceptions. The exceptions are—

- *clause 8*, which inserts *new sections 6AAA and 6AAB*, which provide for mandatory registration of social workers under the Act;
- *clause 10*, which repeals section 13, which provides the experience pathway for registration as a social worker.

Clause 8 comes into force 2 years after the Act receives the Royal assent and *clause 10* comes into force 5 years after the Act receives the Royal assent.

Part 1

Amendments to Social Workers Registration Act 2003

Clause 3 states that the principal Act amended by *Part 1* is the Social Workers Registration Act 2003.

Clause 4 amends the purpose section in the Act by repealing section 3(c), which relates to the current voluntary registration regime under the Act. Registration of social workers will become mandatory under *clause 8* of the Bill.

Clause 5 amends section 4 (the interpretation section in the Act). The definition of registered social worker is repealed as a consequence of the change to mandatory registration, and new definitions of restricted work and social worker are inserted.

Clause 6 inserts *new section 4A*, which is the operative provision for transitional, savings, and related provisions in *new Schedule 1AA* (set out in *Schedule 2*).

Clause 7 replaces the cross-heading above section 6 to recognise the change to mandatory registration.

Clause 8 inserts *new sections 6AAA and 6AAB*. *New section 6AAA* provides for mandatory registration of social workers under the Act by prohibiting specified actions by a person unless he or she is registered under the Act. Those actions are—

- using names, words, titles, abbreviations, or descriptions that state or imply the person is a social worker;
- claiming, stating, or doing anything calculated to suggest that the person practises or is willing to practise as a social worker, unless he or she is registered and holds a current practising certificate.

No person may make a statement about another person if that second person could not make that statement about themselves.

The prohibitions do not apply in specified circumstances relating to the seeking of employment as a social worker. *New section 6AAA* is largely based on section 7 of the Health Practitioners Competence Assurance Act 2003. A new offence is created in section 148 of contravening *new section 6AAA*.

New section 6AAB gives a definition of practising as a social worker for the purposes of the Act, including for *new section 6AAA*.

Clause 8 is subject to delayed commencement under *clause 2(1)* and on coming into force triggers a transitional provision relating to section 13 in *clause 1(1)* of *new Schedule 1AA* (set out in *Schedule 2*).

Clause 9 amends section 6 to remove the requirement for New Zealand-qualified social workers to be assessed for competence under Part 3 when applying for registration. A competence assessment will only be required if the Social Workers Registration Board (the **Board**) has received information about the applicant that raises doubt about his or her competence to practise.

Clause 10 repeals section 13 to remove the experience pathway for registration as a social worker. *Clause 10* is subject to delayed commencement under *clause 2(2)* and to transitional provisions in *clauses 1 and 2* of *new Schedule 1AA* (set out in *Schedule 2*).

Clause 11 replaces section 14 to remove spent transitional provisions.

Clause 12 amends section 24 by inserting *new subsections (2) and (3)*. Those subsections provide new procedural requirements that must be followed before the Board can cancel a social worker's limited registration.

Clause 13 repeals section 25, which prohibits a social worker from being employed or engaged as a social worker without a practising certificate. That requirement is in effect replaced by *new section 6AAA(2)(b)*.

Clause 14 repeals section 27(3)(b), which refers to the existing requirement that an applicant complete a competence assessment every 5 years. That requirement is removed by the Bill.

Clause 15 updates terminology in section 29.

Clause 16 amends section 30 by inserting *new subsection (2A)*, which permits the Registrar to refer any application for a practising certificate to the Board to consider whether the applicant is a fit and proper person to practise as a social worker. *Clause 16* also repeals section 30(4), which refers to the existing requirement that an applicant complete a competence assessment every 5 years. That requirement is removed by the Bill.

Clause 17 replaces section 31 by adding references to referrals of applications for practising certificates by the Registrar to the Board under section 30(1)(b)(iii) or *new section 30(2A)*. Both of these relate to fitness to practise.

Clause 18 amends section 33 to add references to the Board's consideration of fitness to practise when considering whether to issue a practising certificate.

Clause 19 amends section 34(3) to update terminology and to add a reference to a practising certificate being suspended. A practising certificate is cancelled either if a social worker's registration is cancelled or if it is suspended (other than on an interim basis under *new section 57A*).

Clause 20 amends section 36, which relates to surrender of practising certificates. A practising certificate no longer needs to be surrendered if it is suspended. A reference to *new section 57A* relating to interim suspension is added, and an amendment is made to clarify that a practising certificate need not be surrendered if any of the things listed in the section are lifted or revoked.

Clause 21 amends section 38(1) to clarify wording and to remove a paragraph referring to the existing requirement that an applicant complete a competence assessment every 5 years. That requirement is removed by the Bill. *New subsection (2A)* is inserted to recognise that New Zealand-qualified applicants for registration are not required to complete a competence assessment unless *new section 6(2)* (inserted by *clause 9*) applies. Only where *new section 6(2)* applies can the Board direct the Registrar to arrange for those applicants to complete a competence assessment.

Clause 22 inserts *new sections 38A and 38B*. *New section 38A* allows the Board to set or recognise professional development programmes for practising social workers. When doing so, the Board must be guided by the principle that professional development should not impose undue costs on practising social workers or their employers. *New section 38A* is based on section 40 of the Health Practitioners Competence Assurance Act 2003.

New section 38B places a requirement on employers of social workers to report to the Board if they believe a social worker is not competent (after taking reasonable steps to improve the social worker's competence). This new reporting requirement is based on section 45 of the Health Practitioners Competence Assurance Act 2003. Under *new section 148A* it will not be an offence to fail to report as required by *new section 38B*.

Clause 23 inserts into section 39 a reference to the new requirement for employers to report competence issues to the Board under *new section 38B*. Following receipt of a report the Board can review the competence of the social worker.

Clause 24 repeals section 44 to remove the requirement that registered social workers complete a competence assessment every 5 years.

Clause 25 deletes a redundant reference to practising certificate in section 45.

Clause 26 replaces the cross-heading above section 47 to include a reference to serious misconduct.

Clause 27 amends section 47 to update terminology and to add further grounds on which the Board may be satisfied that a person is not a fit and proper person to practise. The new grounds are taken from section 16 of the Health Practitioners Competence Assurance Act 2003.

Clause 28 inserts *new section 47A*, which places a requirement on employers of social workers to report to the Board if they believe on reasonable grounds that a social worker has engaged in serious misconduct. This new reporting requirement is based on section 45 of the Health Practitioners Competence Assurance Act 2003 and sections 378 and 394 of the Education Act 1989. Under *new section 148A* it will not be an offence to fail to report as required by *new section 47A*.

Clause 29 amends section 48 to include references to—

- referrals of applications for a practising certificate by the Registrar to the Board relating to fitness to practise:

- the new requirement for employers to report serious misconduct to the Board under *new section 47A*.

Clause 30 amends section 49 to include a reference to the new requirement for employers to report serious misconduct to the Board under *new section 47A*. After having considered a report and made a determination about the social worker's fitness to practise, the Board can make a complaint about the social worker or suspend his or her registration or practising certificate. Redundant references to practising certificates are also removed.

Clause 31 amends section 50 to update terminology and to allow the Board to require an applicant for a practising certificate to comply with Police requirements for Police vetting. *New subsection (2)* states that a Police vet may not be requested in specified circumstances.

Clause 32 amends section 51, which currently allows any person who believes that a social worker may be unable to perform adequately the functions required to practise social work satisfactorily, to give the Registrar notice of the circumstances. The amendments update terminology and—

- place a new requirement on social workers who believe that another social worker is unable to perform satisfactorily because of a mental or physical condition to promptly report this belief to the Board (in *new section 51(1A)*);
- place a new requirement on employers of social workers who believe that a social worker employed by them may be unable to perform satisfactorily because of a mental or physical condition to promptly report this belief to the Board (in *new section 51(1C)*).

The threshold for social workers to report to the Board is higher than for persons generally or for employers of social workers. This is because *clause 32* also provides that failure by a social worker to report to the Board may constitute professional misconduct and may be the subject of a complaint to the Board. These new reporting requirements are based on section 34 of the Health Practitioners Competence Assurance Act 2003.

Under *new section 148A* it will not be an offence for employers to fail to report as required by *new section 51(1C)*.

Clause 33 amends section 52 to clarify how medical advice must be communicated to the Board.

Clause 34 repeals section 54 relating to interim suspensions and the content of that section is now dealt with in *new section 57A*.

Clause 35 updates terminology in section 55.

Clause 36 updates terminology in section 56.

Clause 37 updates terminology in section 57.

Clause 38 inserts *new sections 57A and 57B* and a new cross-heading relating to interim suspensions. *New section 57A* is largely based on section 54 (which is repealed by the Bill) and section 48 of the Health Practitioners Competence Assurance Act

2003. *New section 57A* allows the Board to direct the Registrar to suspend the registration of a social worker if issues of competence, fitness to practise, or misconduct come to the attention of the Board, but only if specified circumstances apply. As well, the Board may, instead of directing that a social worker be suspended, direct the Registrar to impose conditions on the social worker's registration or practising certificate, or both. A suspension or imposition of conditions can apply only for specified periods.

New section 57B provides procedural requirements for a direction under *new section 57A*.

Clause 39 amends section 58 so that the ability to revoke a suspension or conditions applies whether the revocation is done under section 57 or *new section 57A*.

Clause 40 inserts *new section 58A* providing for the Board to set conditions on the revocation of a suspension of registration. The conditions that may be imposed are the same as those in section 84 of the Act.

Clause 41 replaces section 60 to replace references to the Tribunal and the chairperson of the Tribunal with references to the Board. This, along with the same changes to sections 63 and 65 (in *clauses 42 and 43*), has the effect of transferring to the Board the functions of receiving and assessing complaints about social workers, as well as the function of referring those complaints to professional conduct committees.

Clause 42 replaces section 63 to replace a reference to the chairperson of the Tribunal with a reference to the Board to give effect to the transfer of the functions of receiving and assessing complaints to the Board.

Clause 43 replaces section 65 to replace references to the Tribunal and the chairperson of the Tribunal with references to the Board to give effect to the transfer of the functions of receiving and assessing complaints to the Board. *New subsection (4)* is inserted to clarify that more than 1 complaint or notice of conviction concerning the same social worker can be referred to the same professional conduct committee.

Clauses 44 and 45 amend the cross-heading above section 66 and section 66 to replace the term complaints assessment committees with the term professional conduct committees. *Clause 45* also amends section 66 by replacing references to the chairperson of the Tribunal with references to the Board to give effect to the transfer of the function of appointing professional conduct committees to the Board.

Clause 46 inserts *new sections 68A and 68B*, which give professional conduct committees a new power to call for information or things. This will be done by way of a production notice and failure to comply with a production notice becomes an offence under section 148. Exceptions are specified so that information or a thing need not be produced if it would be privileged in a court of law or if disclosure would breach an obligation of secrecy or disclosure under an enactment (other than the Official Information Act 1982 or the Privacy Act 1993). *New sections 68A and 68B* are based on sections 77 and 78 of the Health Practitioners Competence Assurance Act 2003.

Clause 47 amends section 71 to add new actions that a professional conduct committee may take in relation to a complaint.

Clause 48 amends section 73 to include a reference to mediation in addition to conciliation and to provide new procedural requirements relating to both of these.

Clause 49 amends section 79 to state that an application need not be made for, and an order must not be made to vary (except as provided in *new section 80(6A)*), the automatic suppression of certain evidence under *new section 80(6)*.

Clause 50 amends section 80, which relates to special protections for certain witnesses who give evidence to the Social Workers Complaints and Disciplinary Tribunal (the **Tribunal**). Section 80 currently provides protection for witnesses who give evidence of a sexual nature or a matter that may require the witness to give intimate or distressing evidence. Under *new section 80(6)* identifying particulars and the evidence of those witnesses and any witness who is aged under 18 years will be automatically suppressed. Publication in breach of *new section 80(6)* will be an offence under section 148. Under *new section 80(6A)*, the Tribunal may order that the evidence can be published if the complainant is aged 18 years or over and applies to the Tribunal for the order, and if the Tribunal is satisfied that the complainant understands the effect and nature of the order.

Clause 50 also amends section 80(3) and (4) so that witnesses aged under 18 years will be automatically entitled to give their evidence in private.

Clause 51 amends section 82(2) to update terminology and to add 2 new matters that constitute professional misconduct. These are failing to report under *new section 51(1A)* or acting in a manner that has brought or is likely to bring discredit to the social work profession.

Clause 52 amends section 83, which relates to penalties that may be imposed by the Tribunal. The period for which the registration of a social worker may be cancelled or suspended is increased from 12 months to 3 years. The Tribunal may also order that a social worker apologise to a complainant. Subsection (2) is replaced, thereby removing the existing requirement that the Tribunal must find a social worker guilty of gross or severe professional misconduct before cancelling the social worker's registration. Under *new subsection (2)*, the Tribunal may not cancel a social worker's registration unless it has first considered suspension or the imposition of conditions on that person's registration.

Clause 53 adds 2 new functions for the Board to section 99(1). *New paragraph (oa)* allows the Board to set criteria for reporting serious misconduct and competence issues. *New paragraph (ob)* gives the Board a wider range of actions to take following its consideration of recommendations by professional conduct committees. *New subsection (1A)* requires the Board to be guided by specified principles when recognising educational qualifications for the purposes of the Act. These principles are taken from section 13 of the Health Practitioners Competence Assurance Act 2003.

Clause 54 amends section 104 to remove a paragraph referring to the existing voluntary registration regime because registration of social workers will become mandatory under the amendments in *clause 8* of the Bill.

Clause 55 amends section 106 to change the composition of the Board's membership and repeals a spent transitional provision. A new transitional provision in *clause 3* of *new Schedule 1AA* (set out in *Schedule 2*) will allow current members of the Board to remain on the Board until their term expires.

Clause 56 amends section 116 to change the composition of the membership of the Tribunal and to place new requirements on the qualifications for the chairperson and deputy chairperson. Appointment of members of the Tribunal will now be by the Minister rather than the Board.

Clause 57 makes consequential amendments to section 117.

Clause 58 makes consequential amendments to section 118.

Clause 59 amends section 119 consequential on the amendments to section 116.

Clause 60 amends section 129 to remove a redundant reference to registered post.

Clause 61 amends section 132 to add new procedural requirements that the Board must follow before directing the Registrar to cancel a social worker's registration.

Clause 62 makes a consequential amendment to section 146 relating to prohibition on publication of certain information under *new section 80(6)*.

Clause 63 amends the offence provisions in section 148, including by updating terminology. *New subsection (2)* replaces existing offences relating to a social worker holding him or herself out as a registered social worker or being engaged or employed as a social worker without a practising certificate. Those offences are replaced by an offence of contravening *new section 6AAA*. The penalty is a fine not exceeding \$10,000 or a term of imprisonment not exceeding 3 months, or both.

New subsections (6) and (7) add 2 new offences to section 148. The first is failing to comply with a production notice under *new section 68B*. The second offence is intentionally publishing information in breach of a suppression order under section 79(2)(b) to (d) or in breach of the automatic suppression of certain particulars and evidence under *new section 80(6)*. The penalty for both offences is a fine not exceeding \$2,000.

Clause 64 inserts *new section 148A*, which provides that an employer does not commit an offence if he or she fails to report to the Board as required under *new sections 38B, 47A, or 51(1C)*.

Clause 65 is the operative provision for the consequential amendments to the principal Act listed in *Schedule 1*.

Clause 66 inserts *new Schedule 1AA* (set out in *Schedule 2*), for transitional, savings, and related provisions. *New Schedule 1AA* contains 3 transitional provisions. Two of those provisions relate to the repeal of section 13 (which will bring an end to the experience pathway for registration). The first of those provisions is triggered by the bringing into force of *new sections 6AAA and 6AAB* (which provide for mandatory

registration for social workers). Both the repeal of section 13 and the bringing into force of *new sections 6AAA and 6AAB* are subject to delayed commencement by *clause 2*.

The first transitional provision in *clause 1* of *new Schedule 1AA* deals with registration based on previous experience under section 13 in the period after *new sections 6AAA and 6AAB* come into force but before section 13 is repealed. New rules will allow for temporary registration of applicants under section 13 during this period.

The second transitional provision in *clause 2* of *new Schedule 1AA* deals with registration based on previous experience under section 13 after that section is repealed. If a person has been registered on the basis of previous experience under section 13 before its repeal, their registration will continue to have effect following repeal. If a person applies for registration under section 13 before its repeal and their application has not yet been decided on its repeal, the application will be decided on the grounds in section 13 as it read before repeal.

The third transitional provision in *clause 3* of *new Schedule 1AA* provides for continuation of the current membership of the Board after the amendment to section 106 (in *clause 55*) comes into force. Despite a change in the composition of the Board under section 106 (as amended), current members will remain members until their term expires.

Clause 67 amends Schedule 1 of the principal Act. When making appointments to the Board, the Minister must take reasonable steps to ensure that the Board is representative of specified groups of people. Employers of social workers are added to the list of groups listed in *clause 2(2)*. *Clause 37(1)* of Schedule 1 is also amended to change the quorum of the Board from 3 social workers and 2 persons who are not social workers to 2 social workers and 1 person who is not a social worker.

Clause 68 amends Schedule 2 of the principal Act by making consequential amendments and updating a redundant reference to registered post.

Part 2

Amendments to other Acts

Clause 69 consequentially amends section 2(1) of the Health and Disability Commissioner Act 1994. A reference to registered social worker is replaced by a reference to social worker.

Clause 70 amends section 19 of the Criminal Records (Clean Slate) Act 2004. The effect of the amendment is that, despite the provisions of that Act, convictions and other information may be disclosed to the Social Workers Registration Board in a Police vet obtained for the purpose of considering whether an eligible individual is a fit and proper person to be registered, or to practise, as a social worker under the Social Workers Registration Act 2003.

Hon Anne Tolley

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Government Bill

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Part 2

Amendments to other Acts

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Schedule 1

Consequential amendments to principal Act

Schedule 2

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The Parliament of New Zealand enacts as follows:

1 Title

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

2 Commencement

- (1) **Section 8** comes into force on the day that is 2 years after the date on which this Act receives the Royal assent. 5
- (2) **Section 10** comes into force on the day that is 5 years after the date on which this Act receives the Royal assent.
- (3) The rest of this Act comes into force on the day after the date on which it receives the Royal assent. 10

Part 1

Amendments to Social Workers Registration Act 2003

3 Principal Act

This Part amends the Social Workers Registration Act 2003 (the **principal Act**).

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4 Section 3 amended (Purpose)

Repeal section 3(c).

5 Section 4 amended (Interpretation)

- (1) In section 4, repeal the definition of **registered social worker**.
- (2) In section 4, insert in their appropriate alphabetical order:

restricted work means any task or activity that is described in an enactment with words to the effect that it can only be undertaken by a social worker

5

social worker means a person who is registered under this Act as a social worker

6 New section 4A inserted (Transitional, savings, and related provisions)

After section 4, insert:

4A Transitional, savings, and related provisions

10

The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

7 Cross-heading above section 6 replaced

Replace the cross-heading above section 6 with:

Social workers required to be registered

15

8 New sections 6AAA and 6AAB inserted

- (1) Before section 6, insert:

6AAA Unregistered person must not claim to be social worker

- (1) A person may only use names, words, titles, initials, abbreviations, or descriptions stating or implying that he or she is a social worker if he or she is registered as a social worker under this Act (and his or her registration is not suspended).

20

- (2) No person may claim to be practising as a social worker, or state or do anything that is calculated to suggest that he or she practises or is willing to practise as a social worker, unless he or she—

25

(a) is registered as a social worker under this Act (and his or her registration is not suspended); and

(b) holds a current practising certificate as a social worker.

- (3) No person may make an express or implied statement about another person that the other person is prohibited by this section from making about himself or herself.

30

- (4) The prohibitions under this section do not apply to a person who states that he or she is willing to practise as a social worker for the purpose of seeking employment if the person would, on obtaining employment, be entitled to—

(a) be registered as a social worker; and

35

- (b) hold a current practising certificate as a social worker.

6AAB Definition of practising as a social worker

A person is **practising as a social worker** for the purposes of this Act (and **practises** and **willing to practise as a social worker** have corresponding meanings) if that person—

- (a) is employed or engaged by another person in a position that is described using the words social worker: 5
- (b) in undertaking any work for gain or reward, holds himself or herself out to be a social worker:
- (c) holds a position, in a voluntary capacity or as a member of any body or organisation, that is described using the words social worker: 10
- (d) holds a position or performs a role described in an enactment using the words social worker:
- (e) undertakes restricted work:
- (f) in any other way claims to be a social worker. 15

- (2) See **section 2(1)**, which provides for delayed commencement of this section.

9 Section 6 amended (Entitlement to registration of New Zealand-qualified social workers)

In section 6, insert as subsection (2):

- (2) **Subsection (1)(a)** applies to a person only if— 20
- (a) the Board has received information about that person; and
- (b) the information raises doubt about his or her competence to practise as a social worker.

10 Section 13 repealed (Board may recognise practical experience in certain cases) 25

- (1) Repeal section 13.
- (2) See **section 2(2)**, which provides for delayed commencement of this section, and the related transitional provisions in **Schedule 1AA** set out in **Schedule 2**.

11 Section 14 replaced (Criteria for provisional registration) 30

Replace section 14 with:

14 Criteria for provisional registration

The Board must decide that the applicant should be registered provisionally if satisfied—

- (a) that the applicant's competence to practise as a social worker has been found satisfactory under Part 3; and 35

- (b) that he or she is a fit and proper person to practise as a social worker, meets some of the other criteria in section 6 or section 7, and is in the process of working towards meeting the rest of them; and
- (c) in the case of an applicant who has previously held a provisional certificate of registration, that he or she— 5
- (i) has already made satisfactory progress in working towards meeting all the criteria in section 6 or section 7; or
- (ii) has good reasons for not having made satisfactory progress in doing so.
- 12 Section 24 amended (Cancellation of limited registration) 10**
- In section 24, insert as subsections (2) and (3):
- (2) The Board must not cancel a social worker’s limited registration unless—
- (a) the Registrar has made reasonable efforts to give that social worker—
- (i) written notice of the Board’s reasons for proposing to do so; and
- (ii) a copy of any written information on which the Board is relying; 15
- and
- (iii) a written statement of any other information on which the Board is relying; and
- (iv) written notice that the social worker has a reasonable opportunity to make written submissions and to be heard on the matter, either 20
- personally or by a representative; and
- (b) if the Registrar has succeeded, the Board—
- (i) has given the social worker a reasonable opportunity to make written submissions and to be heard on the matter, either personally or by a representative; and 25
- (ii) has considered any written or oral submissions that were made to it within a reasonable time after the social worker was given the notice under **paragraph (a)(iv)**.
- (3) A person exercising his or her right to be heard personally is entitled to be accompanied by 1 person of his or her choice who agrees to attend. 30
- 13 Section 25 repealed (Practising registered social workers to hold practising certificates)**
- Repeal section 25.
- 14 Section 27 amended (Effect of making compliant application)**
- Repeal section 27(3)(b). 35

- 15 Section 29 amended (Board may adopt general conditions)**
- In section 29(2)(b), replace “continuing professional development” with “undertaking professional development programmes (*see* **section 38A**)”.
- 16 Section 30 amended (Restrictions on issue of practising certificates)**
- (1) After section 30(2), insert: 5
- (2A) The Registrar may refer any application for a practising certificate to the Board for it to decide whether the person is a fit and proper person to practise as a social worker.
- (2) Repeal section 30(4).
- 17 Section 31 replaced (Board to consider certain applications)** 10
- Replace section 31 with:
- 31 Board to consider certain applications**
- (1) Promptly after the Registrar refers an application for a practising certificate to the Board, the Board must consider,—
- (a) unless the referral is made under section 30(1)(b)(iii) or **(2A)**, whether the applicant is competent to practise as a social worker under section 38; or 15
- (b) if the referral is made under section 30(1)(b)(iii) or **(2A)**, whether the applicant is fit to practise as a social worker under section 48.
- (2) The Board must then consider the requirements of section 33 and— 20
- (a) direct the Registrar to issue a practising certificate to the applicant without particular conditions; or
- (b) decide to consider whether to direct the Registrar to—
- (i) issue a practising certificate to the applicant subject to particular conditions; or 25
- (ii) refuse to issue a practising certificate to the applicant.
- 18 Section 33 amended (Decisions of Board as to practising certificates)**
- (1) In section 33(1)(a), after “competent to practise as a social worker”, insert “or is fit to practise as a social worker (as relevant)”.
- (2) After section 33(1)(b), insert: 30
- (ba) the Board must direct the Registrar to issue a practising certificate to the applicant subject to restrictions or particular conditions (or both), if it is satisfied that the applicant is fit to practise as a social worker in accordance with his or her registration only subject to those restrictions or conditions: 35
- (3) In section 33(1)(c)(i), after “competent to practise as a social worker”, insert “or be fit to practise as a social worker (as relevant)”.

- 19 Section 34 amended (Currency of practising certificates)**
 In section 34(3), replace “ceases to be a registered social worker” with “has his or her registration cancelled or suspended (other than on an interim basis under **section 57A)**”.
- 20 Section 36 amended (Surrender of practising certificates)** 5
- (1) In section 36(1)(a), delete “or suspended”.
- (2) In section 36(1)(c)(ii), delete “54,”.
- (3) In section 36(1)(c)(ii), after “57(2)(b)(ii),”, insert “**57A,**”.
- (4) In section 36(2), after “endorsement”, insert “(unless any of the things referred to in that subsection have been lifted or revoked)”.
- 21 Section 38 amended (Competence to practise social work)** 10
- (1) In section 38(1), replace “social work” with “as a social worker is”.
- (2) In section 38(1), delete “, and only if,”.
- (3) Replace section 38(1)(a) with:
- (a) he or she has completed a competence assessment required by the Board for the purpose of determining whether his or her competence to practise as a social worker is satisfactory for the purposes of this Act; and
- (4) After section 38(2), insert:
- (2A) In the case of an applicant to whom section 6 applies, the Board can give a direction under subsection (2) only if **section 6(2)** applies.
- 22 New sections 38A and 38B inserted**
- After section 38, insert:
- 38A Professional development programmes for practising social workers**
- (1) For the purpose of maintaining, examining, or improving the competence of all practising social workers, the Board may from time to time set or recognise professional development programmes.
- (2) A professional development programme may apply to a specified social worker, a specified class of social workers, or all social workers.
- (3) A professional development programme may require a specified social worker, a specified class of social workers, or all social workers to do 1 or more of the following, within a period, or at intervals, prescribed in the programme:
- (a) pass any examinations or assessments, or both:
- (b) complete a period of practical training:
- (c) complete a period of practical experience:
- (d) undertake a period of supervised practice:
- (e) undertake a course of instruction:

- (f) adopt and undertake a systematic process for ensuring that the practice of a social worker meets the required standard of competence.
- (4) The Board may exempt any social worker or class of social workers from any professional development programme.
- (5) When setting or recognising professional development programmes, the Board must be guided by the principle that professional development should not impose undue costs on practising social workers or their employers. 5
- 38B Mandatory requirement for employers to report to Board if social worker believed not to be competent**
- (1) An employer who employs 1 or more social workers and who believes on reasonable grounds that a particular social worker is not competent to practise must, after fulfilling his or her duty under **subsection (2)**, promptly report that belief to the Board. 10
- (2) Before reporting to the Board, the employer must take reasonable steps to assist the social worker to improve his or her competency, including by way of professional development. 15
- (3) A report to the Board must—
- (a) be in writing; and
- (b) state the reasons why the employer believes that the social worker is not competent to practise or cannot perform satisfactorily the functions required to practise as a social worker; and 20
- (c) describe the action (if any) the employer has taken to assist the social worker and the outcome of this assistance.
- (4) No civil, criminal, or disciplinary proceedings may be taken against a person who makes a report under this section, unless that person has acted in bad faith. 25
- 23 Section 39 amended (Reviews of competence to practise social work)**
- In section 39(1), after “social work”, insert “, including if the Board receives information that reflects adversely on the social worker’s competence, for example, a report under **section 38B**”.
- 24 Section 44 repealed (Registered social workers to complete assessments every 5 years)** 30
- Repeal section 44.
- 25 Section 45 amended (Actions if registered social worker fails assessment)**
- In section 45(1)(b)(ii), delete “or practising certificate”.
- 26 Cross-heading above section 47 replaced** 35
- Replace the cross-heading above section 47 with:

*Fitness to practise and serious misconduct***27 Section 47 amended (Fitness to practise social work)**

Replace section 47(1) and (2) with:

- (1) The Board may find a person (A) is not a fit and proper person to practise as a social worker only if it is satisfied that there are grounds on which a reasonable person would conclude that A is not a fit and proper person to practise as a social worker. 5
- (2) The Board may be satisfied that those grounds exist if 1 or more of the following circumstances occur:
- (a) A has not satisfied the Board that he or she is able to communicate effectively for the purposes of practising as a social worker: 10
- (b) A has not satisfied the Board that his or her ability to communicate in and comprehend English is sufficient to protect the health and safety of the public:
- (c) A has been convicted, in New Zealand or overseas, of an offence punishable by imprisonment of 3 months or more, and the Board is satisfied that the nature and circumstances of the offence reflect adversely upon his or her fitness to practise as a social worker: 15
- (d) the Board is satisfied that A is unable to perform satisfactorily the functions required to practise as a social worker because of a mental or physical condition: 20
- (e) the Board is satisfied on reasonable grounds that A is not of good character or reputation:
- (f) professional disciplinary proceedings are being taken against A in New Zealand or overseas, and the Board considers on reasonable grounds that those proceedings reflect adversely upon his or her fitness to practise as a social worker: 25
- (g) A is subject to an investigation in New Zealand or overseas (for example, an investigation by the Health and Disability Commissioner) relating to any matter that may lead to the taking of professional disciplinary proceedings against him or her, and the Board considers on reasonable grounds that the investigation reflects adversely upon his or her fitness to practise as a social worker: 30
- (h) a finding or an order has been made against A in professional disciplinary proceedings or an investigation, and he or she has not satisfied the Board that the finding or order does not reflect adversely upon his or her fitness to practise as a social worker: 35
- (i) the Board is satisfied on reasonable grounds that A may endanger the health or safety of a member or members of the public.

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

After section 47, insert:

- 47A Mandatory requirement for employers to report serious misconduct to Board** 5
- (1) An employer who employs 1 or more social workers and who believes on reasonable grounds that a social worker has engaged in serious misconduct must, promptly, report that belief to the Board.
- (2) A report to the Board must— 10
- (a) be in writing; and
- (b) state the circumstances of the alleged serious misconduct; and
- (c) describe the action (if any) the employer has taken in relation to the allegation.
- (3) In this section, **serious misconduct** means conduct by a social worker that— 15
- (a) has an unduly adverse affect, or is likely to have an unduly adverse affect, on the well-being of any person with whom the social worker comes into contact in the course of his or her practise as a social worker; or
- (b) reflects adversely on the social worker’s fitness to be a social worker; or
- (c) may bring the social work profession into disrepute. 20
- (4) No civil, criminal, or disciplinary proceedings may be taken against a person who makes a report under this section, unless that person has acted in bad faith.

29 Section 48 amended (Consideration of fitness to practise social work)

- (1) After section 48(a), insert: 25
- (aa) promptly after receiving an application by the person for a practising certificate that has been referred by the Registrar under section 30(1)(b)(iii) or **(2A)**; and
- (2) In section 48(b), after “promptly after”, insert “receiving a report under **section 47A** or”.

30 Section 49 amended (Action if Board considers registered social worker not fit and proper) 30

- (1) In section 49(1), after “after”, insert “receiving a report under **section 47A** or”.
- (2) In section 49(2)(b) and (5), delete “or practising certificate”.

31 Section 50 amended (Board to ask Police for information, and consider convictions)

- (1) Replace the heading to section 50 with “**Board to ask for Police vet, and consider convictions and other information**”.
- (2) In section 50, delete “must”. 5
- (3) Replace section 50(a) and (b) with:
- (a) must obtain a Police vet from the Police Vetting Service; and
 - (aa) may require the person to comply with Police requirements for that purpose; and
 - (b) must consider any criminal convictions (whether in New Zealand or overseas) and other information disclosed to the Board by the Police, or otherwise known to the Board. 10
- (4) In section 50, insert as subsection (2):
- (2) However, if an application for a practising certificate is referred to the Board by the Registrar under section 30(1)(b)(iii) or **(2A)**, the Board may not request a Police vet under section 50— 15
- (a) if a Police vet of the applicant has been done within the preceding 3 years; and
 - (b) unless other concerns about the person’s fitness to practise have been raised with the Board. 20

32 Section 51 amended (Notification of conditions affecting ability to practise social work)

- (1) Replace section 51(1) with:
- (1) A person who believes that a social worker may be unable to perform satisfactorily the functions required to practise as a social worker may report that belief to the Board. 25
- (1A) A social worker who believes on reasonable grounds that another social worker is unable to perform satisfactorily the functions required to practise as a social worker because of a mental or physical condition must, promptly, report that belief to the Board. 30
- (1B) A failure to report under **subsection (1A)** may constitute professional misconduct and be the subject of a complaint to the Board under section 59.
- (1C) An employer who employs 1 or more social workers and who believes on reasonable grounds that a particular social worker may be unable to perform satisfactorily the functions required to practise as a social worker because of a mental or physical condition must, promptly, report that belief to the Board. 35
- (2) Replace section 51(2) and (3) with:
- (2) No civil, criminal, or disciplinary proceedings may be taken against a person who makes a report under this section, unless that person has acted in bad faith.

- (3) **Subsection (2)** applies even if the report contains information relating to a person other than the social worker.
- 33 Section 52 amended (Power to seek medical advice)**
Replace section 52(2) with:
- (2) A notice under section 51 must include a copy or (if a copy is not available) a description of any medical advice obtained. 5
- 34 Section 54 repealed (Interim suspensions)**
Repeal section 54.
- 35 Section 55 amended (Power to order medical examination)**
In section 55(1), replace “perform adequately the functions required to practise social work satisfactorily” with “perform satisfactorily the functions required to practise as a social worker”. 10
- 36 Section 56 amended (Conduct and consequences of examination)**
In section 56(3), replace “practise social work satisfactorily” with “practise satisfactorily as a social worker”. 15
- 37 Section 57 amended (Restrictions may be imposed because of condition)**
- (1) In section 57(2)(b)(ii), replace “or practising certificate” with “for a period that the Board considers is reasonably necessary to protect the public”.
- (2) In section 57(3)(a)(i), replace “perform adequately the functions required to practise social work satisfactorily” with “perform satisfactorily the functions required to practise as a social worker”. 20
- (3) In section 57(3)(b), replace “practise social work satisfactorily” with “practise satisfactorily as a social worker”.
- 38 New sections 57A and 57B and cross-heading inserted**
After section 57, insert: 25
- Interim suspension of registration or imposition of conditions on registration or practising certificate while Board considers competence, fitness, or misconduct issue*
- 57A Interim suspension of registration or imposition of conditions on registration or practising certificate** 30
- (1) This section applies whenever and however an issue of competence, fitness, or misconduct comes to the attention of the Board unless, in the particular case, a medical examination is ordered under section 55.
- (2) The Board may direct the Registrar to suspend the registration of a social worker if the Board considers on reasonable grounds that,— 35

- (a) because of competence issues, the social worker’s practice poses a risk of serious harm to the public; or
- (b) the social worker may be unable to perform satisfactorily the functions required to practise as a social worker because of a mental or physical condition; or 5
- (c) an investigation under this Act or the Health and Disability Commissioner Act 1994, or a criminal proceeding, relating to the social worker is underway and a reasonable doubt is raised about that person’s competence or whether the person is a fit and proper person to practise as a social worker. 10
- (3) The Board may, if the requirements of **subsection (2)** are met, instead of directing the suspension of a social worker’s registration, direct the Registrar to make the social worker’s registration or practising certificate, or both, subject to conditions stated by the Board.
- (4) The registration of the social worker may be suspended or conditions may be imposed on the social worker’s registration or practising certificate, or both,— 15
- (a) for a period of not more than 10 working days from the date on which a copy of the direction is given to the social worker; and
- (b) for a further period of 10 days, if that is reasonable and necessary to allow either further investigation or a medical examination to take place. 20
- 57B Requirements for direction under section 57A**
- (1) A direction under **section 57A** must—
- (a) be in writing; and
- (b) state why it has been given; and
- (c) state that the social worker may respond to the direction; and 25
- (d) be signed by the chairperson.
- (2) The Registrar must take all reasonably practicable steps to ensure that a copy of the direction is given to the social worker as soon as is practicable after it is given.
- (3) The interim suspension or imposition of conditions does not take effect until the social worker is given a copy of the direction. 30
- 39 Section 58 amended (Revocation of restrictions)**
- (1) Replace the heading to section 58 with “**Revocation of suspension or restrictions**”.
- (2) In section 58(1), replace “section 54 or section 57” with “section 57 or **57A**”. 35
- (3) In section 58(1)(a) and (b), replace “practise social work satisfactorily” with “practise satisfactorily as a social worker”.
- (4) In section 58(2), replace “section 57” with “section 57 or **57A**”.

40 New section 58A and cross-heading inserted

After section 58, insert:

Setting conditions on revocation of suspension of registration

58A Conditions on revocation of suspension of registration

- (1) This section applies if a social worker's registration has been suspended under section 45(1)(b)(ii), 49(2)(b), 57(2)(b)(ii), or 133(6)(b)(i). 5
- (2) The Board may set conditions that must be satisfied by the social worker before the Board will consider revoking the suspension.
- (3) The conditions may include any or all of the following:
- (a) a condition that the person undertake a specified course of education or training: 10
- (b) a condition that the person undergo—
- (i) any specified medical examination and treatment; or
- (ii) any specified psychological or psychiatric examination, counselling, or therapy: 15
- (c) a condition that the person attend any specified course of treatment or therapy for alcohol or drug abuse:
- (d) any other condition designed to address the matter that gave rise to the suspension of the person's registration.
- (4) The Board must not impose a condition under **paragraph (3)(b) or (c)** unless the person consents to the examination, treatment, counselling, or therapy concerned. 20
- (5) **Subsection (3)** does not limit **subsection (2)**.

41 Section 60 replaced (Registrar to notify Tribunal of complaints)

Replace section 60 with:

25

60 Registrar to notify Board of complaints

The Registrar must notify the Board in writing of a complaint under section 59(1)(b).

42 Section 63 replaced (Notification of convictions)

Replace section 63 with:

30

63 Notification of convictions

- (1) This section applies to the Registrar of a court in New Zealand in which a person, whom the Registrar knows is a social worker registered under this Act, is convicted of an offence punishable by imprisonment for a term of 3 months or longer. 35

- (2) The Registrar must send a notice of the conviction to the Board, unless the court expressly orders otherwise.

43 Section 65 replaced (Referral of complaints and notices of conviction to complaints assessment committee)

Replace section 65 with:

5

65 Referral of complaints and notices of conviction to professional conduct committee

- (1) As soon as is reasonably practicable after being notified of a complaint, the Board must refer it to a professional conduct committee, unless—

- (a) the Board and the Health and Disability Commissioner agree that it does not need to be pursued (in the case of a complaint relating to a matter over which the Board and the Commissioner both have jurisdiction); or
(b) the Board is satisfied that it does not need to be pursued (in any other case).

10

- (2) The Board must refer a notice of conviction given under section 63 to a professional conduct committee as soon as is reasonably practicable after receiving it.

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- (3) As soon as is reasonably practicable after the Board has decided whether to refer a complaint to a professional conduct committee, the Registrar must give the social worker concerned written notice of—

- (a) the Board’s decision; and
(b) the particulars of the complaint.

20

- (4) If the Board receives more than 1 complaint or notice of conviction relating to the same social worker (whether at the same time or at different times), the Board may refer both or all of the complaints or notices of conviction to the same professional conduct committee.

25

44 Cross-heading above section 66 replaced

Replace the cross-heading above section 66 with:

Professional conduct committees

45 Section 66 amended (Complaints assessment committees)

- (1) Replace the heading to section 66 with “**Professional conduct committees**”.
(2) In section 66(1) and (3), replace “chairperson of the Tribunal”, with “Board”.
(3) Repeal section 66(2).
(4) In section 66(5), replace “chairperson” with “Board”.

30

46 New sections 68A and 68B inserted

After section 68, insert:

35

68A Power to call for information or things

- (1) If the requirements in **subsection (2)** are satisfied, a professional conduct committee may, by notice in writing, require any person to produce to the committee any papers, documents, records, or things.
- (2) Those requirements are— 5
- (a) the members of the committee believe on reasonable grounds that the exercise of the power is necessary to enable the committee to carry out its functions; and
- (b) the person has failed to comply with a previous request to produce to the committee, within a reasonable time, the papers, documents, records, or things; and 10
- (c) the members of the committee believe on reasonable grounds that—
- (i) it is not reasonably practicable to obtain the information from another source; or
- (ii) for the purposes of performing its functions, it is necessary to obtain the papers, documents, records, or things to verify or refute information obtained from another source. 15
- (3) The production notice may specify a date by which the papers, documents, records, or things must be produced to the committee, which must not be less than 10 working days after the notice is given to the person. 20

68B Compliance with production notice

- (1) A person who receives a production notice under **section 68A** must comply with the notice in the manner and by the date specified in the notice.
- (2) No charge may be made for complying with a production notice.
- (3) However, a person who receives a production notice is not required to produce any paper, document, record, or thing— 25
- (a) if it would be privileged in a court of law; or
- (b) if disclosure would breach an obligation of secrecy or non-disclosure imposed on the person by an enactment (other than the Official Information Act 1982 or the Privacy Act 1993). 30

47 Section 71 amended (Determination of complaint by complaints assessment committee)

- (1) In the heading to section 71, after “**complaint**”, insert “**or notice of conviction**”.
- (2) Replace section 71(1)(b) with: 35
- (b) in the case of a complaint, the committee should—
- (i) submit it to conciliation or mediation; or

<ul style="list-style-type: none"> (ii) recommend that the Board direct the social worker to apologise to the complainant; or (iii) recommend that the Board censure the social worker; or (iv) recommend that the Board refer the allegations to the Police for investigation; or (v) recommend that the Board direct the social worker to undertake 1 or more of the following: <ul style="list-style-type: none"> (A) training; (B) mentoring; (C) counselling; or 	<p>5</p> <p>10</p>
48 Section 73 amended (Conciliation)	
(1) Replace the heading to section 73 with “ Conciliation and mediation ”.	
(2) Replace section 73(1) with:	
(1) If a professional conduct committee has decided that it should submit a complaint to conciliation,—	15
(a) it may—	
(i) act as the conciliator; or	
(ii) appoint an independent person (who must not be a member of the committee or of the Board) to act as the conciliator; and	
(b) it, or the conciliator (if one is appointed), must try to help the social worker and the complainant to resolve the complaint by agreement.	20
(1A) If a committee refers a case to mediation, it must appoint a mediator.	
(1B) The mediator must report back to the committee on the outcome of the mediation.	
49 Section 79 amended (Hearings of Tribunal to be public)	25
After section 79(2), insert:	
(2A) An application need not be made for, and, except as provided in section 80(6A) , an order must not be made to vary, the automatic suppression of certain evidence under section 80(6) .	
50 Section 80 amended (Special protection for certain witnesses)	30
(1) Replace section 80(1) with:	
(1) This section applies to evidence to be given at a hearing of the Tribunal by—	
(a) a witness (including a complainant) aged under 18 years; or	
(b) any other witness (including a complainant) if the evidence—	
(i) relates to or involves a sexual matter; or	35

- (ii) in the Tribunal’s opinion, relates to or involves some other matter that may require the witness to give intimate or distressing evidence.
- (2) In section 80(3) and (4), replace “If the witness” with “If the witness is aged under 18 years, or is a witness described in **subsection (1)(b)** and”. 5
- (3) Replace section 80(6) with:
- (6) No person may publish—
- (a) any particulars likely to lead to the identification of a witness described in **subsection (1)**:
- (b) an account or a report of the evidence of the witness, including the whole or any part of any books, papers, documents, or other things produced at the hearing relating to that evidence. 10
- (6A) However, the Tribunal may make an order allowing publication of the matters described in **subsection (6)** if—
- (a) a complainant— 15
- (i) is aged 18 years or over (whether he or she was under 18 years when the matters that are the subject of his or her evidence occurred); and
- (ii) applies to the Tribunal for the order; and
- (b) the Tribunal is satisfied that the complainant understands the nature and effect of the application. 20
- (4) Repeal section 80(7).
- 51 Section 82 amended (Grounds on which Tribunal may make order)**
- (1) In section 82(2)(b), replace “employed or engaged as a social worker” with “practising as a social worker”. 25
- (2) In section 82(2)(b), after “practising certificate”, insert “; or”.
- (3) After section 82(2)(b), insert:
- (c) fails to report to the Board as required by **section 51(1A)**; or
- (d) commits an act or omission that, in the opinion of the Tribunal, has brought or is likely to bring discredit to the social work profession. 30
- 52 Section 83 amended (Penalties)**
- (1) In section 83(1)(a)(i), replace “12 months” with “3 years”.
- (2) After section 83(1)(c), insert:
- (ca) an order that he or she apologise to the complainant:
- (3) Replace section 83(2) with: 35

- (2) The Tribunal must not make an order cancelling a social worker’s registration unless it has first considered suspension or the imposition of conditions on the person’s registration.

53 Section 99 amended (Functions of Board)

- (1) In section 99(1)(o), replace “perform adequately the functions required to practise social work satisfactorily” with “perform satisfactorily the functions required to practise as a social worker”. 5
- (2) After section 99(1)(o), insert:
- (oa) to set criteria for reporting serious misconduct and for reporting on competence issues: 10
- (ob) to consider recommendations of professional conduct committees under section 71 relating to particular social workers and if the Board agrees with the recommendation or recommendations in any case (as relevant) do 1 or more of the following:
- (i) direct the social worker to apologise to the complainant: 15
- (ii) censure the social worker:
- (iii) refer the allegations to the Police for investigation:
- (iv) direct the social worker to undertake 1 or more of the following:
- (A) training: 20
- (B) mentoring:
- (C) counselling:
- (3) After section 99(1), insert:
- (1A) When recognising educational qualifications under subsection (1)(f), the Board must be guided by the following principles: 25
- (a) the qualification must be necessary to protect members of the public; and
- (b) the number and types of qualifications recognised must not be so limited as to unnecessarily restrict the registration of persons as social workers; and
- (c) undue costs should not be imposed on persons seeking to be registered as social workers or on the public. 30
- (4) Repeal section 99(1)(m).

54 Section 104 amended (Review of operation of Act)

Replace section 104(1)(b) with:

- (b) consider whether any amendments to this Act are necessary or desirable; and 35

55 Section 106 amended (Membership)

(1) Replace section 106(1) with:

- (1) The Board comprises—
- (a) 4 social workers (not being social workers whose registration is suspended); and
 - (b) 3 other people.

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(2) Repeal section 106(2).

56 Section 116 amended (Membership of Tribunal)

Replace section 116(1) with:

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

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

- (1) In section 117, replace “section 116(1)(a)(iii)”, with “**section 116(1)(b)**”.
- (2) In section 117, replace “Board” with “Minister”.
- (3) Repeal section 117(b).

58 Section 118 amended (Removal of members)

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In section 118(1) and (2), replace “Board” with “Minister” in each place.

59 Section 119 amended (Hearings by Tribunal)

Replace section 119(1) with:

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

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60 Section 129 amended (Revision of Register)

Replace section 129(2) with:

- (2) The Registrar must ask by letter addressed to the social worker at his or her last known address and sent by any form of prepaid delivery service that requires

an acknowledgement of receipt of delivery from the person to whom it is addressed.

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

After section 132(1), insert:

- (1A) The Board must not give a direction unless— 5
- (a) it is satisfied that the Registrar has made reasonable efforts to give the social worker—
- (i) written notice of the Board’s reasons for proposing to do so; and
- (ii) a copy of any written information on which the Board is relying; and 10
- (iii) a written statement of any other information on which the Board is relying; and
- (iv) written notice that the social worker has a reasonable opportunity to make written submissions and to be heard on the matter, either personally or by a representative; and 15
- (b) if the Registrar has succeeded, the Board—
- (i) has given the social worker a reasonable opportunity to make written submissions and to be heard on the matter, either personally or by a representative; and
- (ii) has considered any written or oral submissions that were made to it within a reasonable time after the social worker was given the notice under **paragraph (a)(iv)**. 20
- (1B) A person exercising his or her right to be heard personally is entitled to be accompanied by 1 person of his or her choice who agrees to attend.

62 Section 146 amended (Publication of orders) 25

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

63 Section 148 amended (Offences) 30

- (1) Replace section 148(2) and (3) with:
- (2) A person who contravenes **section 6AAA** commits an offence and is liable on conviction to a term of imprisonment not exceeding 3 months or a fine not exceeding \$10,000, or both.
- (2) Replace section 148(4) with: 35
- (4) A person commits an offence, and is liable on conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding \$10,000, or both, if the

- person holds an employee or professional associate out as a social worker, knowing that the employee or associate—
- (a) is not a social worker registered under this Act; or
 - (b) is a social worker registered under this Act—
 - (i) whose registration is suspended; or
 - (ii) who does not hold a current practising certificate; or
 - (iii) who holds a current practising certificate that is suspended.
- (3) In section 148(5), replace “registered social worker” with “social worker”.
- (4) After section 148(5), insert:
- (6) A person commits an offence, and is liable on conviction to a fine not exceeding \$2,000, if the person receives a production notice under **section 68B** and—
- (a) refuses or fails without reasonable excuse to comply with the notice; or
 - (b) knowingly or recklessly provides information that is false or misleading in any material particular.
- (7) A person commits an offence, and is liable on conviction to a fine not exceeding \$2,000, if the person intentionally and without lawful excuse publishes any information in breach of a suppression order made under section 79(2)(b) to (d) or in breach of **section 80(6)**.
- 64 New section 148A inserted (Failure by employer to report to Board not offence)**
- After section 148, insert:
- 148A Failure by employer to report to Board not offence**
- An employer who fails to report to the Board as required by **section 38B, 47A, or 51(1C)** does not commit an offence.
- 65 Consequential amendments to principal Act**
- Amend the provisions of the principal Act as set out in **Schedule 1**.
- 66 New Schedule 1AA inserted**
- Insert the **Schedule 1AA** set out in **Schedule 2** of this Act as the first schedule to appear after the last section of the principal Act.
- 67 Schedule 1 amended**
- (1) In Schedule 1, after clause 2(2)(b)(i), insert:
 - (ia) employers of social workers; and
 - (2) In Schedule 1, replace clause 37(1) with:

- (1) At any meeting of the Board, the quorum necessary for transacting business is 4 members, of whom—
- (a) at least 2 must be social workers; and
 - (b) at least 1 must not be a social worker.

68 Schedule 2 amended 5

- (1) In clause 3(1), (2), and (3), replace “Board” with “Minister”.
- (2) In clause 3(3)(a) and (b), replace “Board’s” with “Minister’s”.
- (3) Replace clause 9(1)(b) with:
 - (b) by posting it by letter addressed to the social worker at his or her usual place of residence or business and sent by any form of prepaid delivery service that requires an acknowledgement of receipt of delivery from the person to whom it is addressed. 10

Part 2

Amendments to other Acts

69 Consequential amendment to Health and Disability Commissioner Act 1994 15

- (1) This section amends the Health and Disability Commissioner Act 1994.
- (2) In section 2(1), definition of **health practitioner**, replace paragraph (b) with:
 - (b) includes—
 - (i) a former health practitioner within the meaning of that section; and 20
 - (ii) a person who was conditionally or unconditionally registered, or has held a certificate of registration, under a former health registration enactment; and
 - (iii) a person who is receiving training or gaining experience under the supervision of a health practitioner; and 25
 - (iv) a social worker within the meaning of the Social Workers Registration Act 2003

70 Amendment to Criminal Records (Clean Slate) Act 2004

- (1) This section amends the Criminal Records (Clean Slate) Act 2004. 30
- (2) After section 19(3)(d), insert:
 - (da) the Social Workers Registration Board is considering whether the eligible individual is a fit and proper person to be registered or to practise as a social worker under the Social Workers Registration Act 2003; or

Schedule 1
Consequential amendments to principal Act

s 65

Part 1

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

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

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

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

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

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

Part 2

Amendments consequential on change to mandatory registration for social workers

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

Section 131(8)

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

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

Section 6(d)

Section 7(e)

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

Section 30(1)(b)(ii)

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

Part 3

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

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

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

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

Section 67(1)

Section 68 20

Section 69 in each place

The section 70 heading

Section 70(1)

The section 71 heading

Section 71(1) 25

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

Section 74

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

Section 76(1)(a)

Section 77(2) 30

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

Section 86(1)(a)(ii)

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

Section 141(1)(c)

Section 143 in each place

Section 144(1)

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

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

The section 143 heading

Section 147(1)(a)

Part 4

Amendments consequential on transfer of functions from Tribunal to Board 10

Subpart 1—Replacing “Tribunal” with “Board”

Replace “Tribunal” with “Board” in the following provision:

The heading to section 62

Subpart 2—Replacing “chairperson of the Tribunal” with “Board” 15

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

Section 62

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

Section 69

Section 70(1) 20

Subpart 3—Replacing “chairperson” with “Board”

Replace “chairperson” with “Board” in the following provision:

Section 70(2)

Schedule 2
New Schedule 1AA inserted

s 66

Schedule 1AA
Transitional, savings, and related provisions

5

s 4A

Part 1
Provisions relating to Social Workers Registration Legislation Act 2017

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

- (2) **Subclause (3)** applies to a person who was registered as a social worker based on practical experience under section 13 of this Act before the commencement date.
- (3) The person's registration continues to have effect after the commencement date as if the person had been registered under section 12 of this Act, subject to the other provisions of this Act (as the Act reads on and after the commencement date). 5
- (4) **Subclause (5)** applies to a person who makes an application to be registered as a social worker based on practical experience under section 13 before the commencement date but the application has not been decided by the Board by the commencement date. 10
- (5) The application must be considered under the criteria in section 13 as it read immediately before the commencement date.
- 3 Continuation of membership of Board**
- (1) For the purpose of this clause, **commencement date** means the date on which **section 55** of the Social Workers Registration Legislation Act **2017** comes into force. 15
- (2) This clause applies to a person who is a member of the Board immediately before the commencement date.
- (3) Despite anything to the contrary in this Act, including in section 106 as it reads after the commencement date, the person continues as a member of the Board until the expiry of his or her term or until the occurrence of any of the events described in section 45 of the Crown Entities Act 2004. 20