



**Social Workers
Registration Board**
Kāhui Whakamana Tauwhiro

Aotearoa New Zealand's social worker regulator

Social Workers Registration Act (2003) Review

December 2020

Background

Legislative requirements

1. Section 104 of the Social Workers Registration Act (the Act), states that at intervals of not more than 5 years, since the last review, the Social Workers Registration Board (SWRB) must:
 - a. review the operation of this Act, and its own operations;
 - b. consider whether any amendments to this Act are necessary or desirable and;
 - c. report its findings to the Minister.

Last review of the operation of the Act in 2015

2. The most recent review of the Act was in 2015, at the request of Anne Tolley, the then Social Development Minister.
3. The timing of the 2015 review was to coincide with her reviews of the then Child, Youth and Family and the Social Security Act.
4. The 2015 review was a substantial piece of work involving considerable external legal support from Luke Cunningham Clare.

Ongoing Parliamentary involvement in the operation of the Act

5. The 2015 review of the Act prompted ongoing Parliamentary involvement, with the SWRB, and the subsequent 2016 Social Services Select Committee Inquiry into the operation of the Act.
6. As a result of the Select Committee Inquiry, further regular and detailed interaction between the SWRB and the Ministry of Social Development (MSD) has ensued.

Social Workers Registration Legislation Act 2019

7. As a result of the ongoing involvement and increased collaboration between the SWRB and MSD further changes to the Act were proposed and subsequently included in the Social Workers Registration Legislation Act (SWRLA) 2019, which was enacted on 27 February last year.
8. Following the enactment of the SWRLA there is a two-year transition period until 27 February 2021, to allow the SWRB and the social work sector to prepare for the legislative changes. The single most significant shift in the legislation is to mandate the registration of social workers.

Usual expectations for a full review of the operation of the Act

9. Under usual circumstances, and to meet the 5-year review requirement of the Act, the SWRB would normally be expected to undertake a full review of the operation of the Act by the end of this calendar year.
10. However, given the extensive and collaborative involvement of MSD with the SWRB, from 2015 onwards, and the ongoing legislative changes that both the SWRB and the social work sector are operationalizing, it was proposed this year that the review of the Act would be brief.

Current MSD advice regarding the 5-Year review of the Act

11. On the advice from MSD the review this year has been brief.
12. This gives time for legislative changes from 27 February 2021 to bed in, and any unintended consequences, or anomalies to present themselves.

Next steps

13. This year's brief review will be followed by a more substantive review within three years of mandatory registration of social workers being enacted (27 February 2024).

Social Workers Registration Act (2003) 2020 Brief Review

Review work so far

14. Review work to date has included an assessment of those aspects of the Act that are no longer fit for purpose. This assessment has been done as a modern regulator, through the public safety lens, and as a Crown Entity, through the value for money lens.
15. This assessment has resulted in the compilation of a schedule of thirteen suggested legislative amendments.
16. These amendments have been discussed and prioritized in collaboration with MSD (see Appendix).

Possible MSD Omnibus Bill

17. As part of this approach, MSD has signaled it may develop an Omnibus Bill (Social Security Legislative vehicle), which may enable several small amendments to the Social Worker Registration Act 2003 to be progressed.
18. If agreed, an Omnibus Bill is a vehicle that enables various technical level amendments to be made, without the need for additional and substantive policy work, or the need for a separate and new legislative proposal.
19. MSD has indicated that any inclusions in a possible Omnibus Bill will need to meet several criteria. The basis of these criteria is to ensure that any included changes have merit and warrant legislative change. This includes ensuring that the proposed amendments are:
 - a. straightforward, pose no or little risk of unintended consequences or widening of statutory powers;
 - b. are clear on their intention and in line with the original policy intent and;
 - c. do not require substantive additional policy work.

MSD response to date

20. SWRB initially put forward thirteen suggestions to MSD for consideration.
21. The thirteen suggested amendments were categorized into three groupings.

22. Group one - Those amendments which the SWRB considers to be matters of urgency, either because the efficiency of the SWRB is being compromised (for example, the Registrar's lack of delegated authority) or public safety is at risk (for example, the cap of five social work members on the Social Worker's Complaints and Disciplinary Tribunal, which is meaning that Tribunal hearings for the most serious of complaints against social workers are being deferred, because Tribunal Panels cannot be constituted) are numbered 1-3 in Appendix 1.
23. Group two – Those amendments which on initial consideration, MSD regards as minor technical adjustments, which meet the criteria required of a possible Omnibus Bill, numbered 4-7 in Appendix 1.
24. Group Three - MSD is now undertaking additional policy work on the third group of proposed amendments. During this process, an external legal opinion was sought to clarify the SWRB role in social worker education. As a result, the overall number of suggestions for amendment have been reduced to twelve.

Next steps

Collaborative work between MSD and the SWRB will continue

25. MSD and the SWRB will continue their collaborative work to determine which and how best, any legislative amendments can be made.
26. MSD will signal the outcome of its additional policy work in due course, to determine the need for a separate, and new legislative proposal for the Act.
27. Notwithstanding the ongoing outcomes from this Brief Review of the Act this year, a further more comprehensive review will be planned for by 27 February 2024, within three years of enacting mandatory registration for social workers.

Appendix 1: Social Workers Registration Act proposed changes

Social Workers Registration Act proposed changes		
	Issue	Proposed change and impact
Group One – SWRB Matters of Urgency		
1.	Remove restriction on delegation by the SWRB Board to staff.	Repeal section 43(1) to enable the SWRB Board to delegate its registration duties, functions and powers to its staff.
2.	Professional Conduct Committees should be able to make more than one determination.	Amend each of the subsections by replacing the “or” at the end of each paragraph with “and/or” to give the Professional Conduct Committee greater flexibility in choosing actions in s71(1)(b).
3.	Remove the cap on Social Work members of the Social Workers Complaints and Disciplinary Tribunal.	Amend s116 to remove the number of social workers on the Social Workers Complaints and Disciplinary Tribunal (SWC&DT) from five. With three out of five of the appointed social workers being required for all hearings, it is increasingly difficult to meet the rapidly increasing demand. This amendment would bring the SWC&DT into line with the HPDT, under the HPCA.
Group Two – MSD classified as minor technical adjustments that meet the criteria of a possible Omnibus Bill		
4.	Chairperson of the SWRB Board should be notified of outcomes of conciliation and mediation rather than chairperson of the Tribunal.	In section 73(2), substitute “chairperson of the Tribunal” with “chairperson of the Board”. In the Social Workers Registration Legislation Act 2019, some amendments were made that transferred some references to ‘the chairperson of the Tribunal’ with the ‘Board’. There appears to have been an omission to similarly change s73(2).
5.	The use of “different” in reference to ethnic and cultural groups.	It is proposed that the term “different” is removed when discussing ethnic and cultural groups in New Zealand in the Act. The use of the term “different” implies that some ethnic and cultural groups are considered ‘other.’
6.	Change the name of the tribunal.	Amend all references in the Social Workers Registration Act 2003 to the “Social Workers Complaints and Disciplinary Tribunal” to instead be the “Social Workers Disciplinary Tribunal”. The SWC&DT does not hear complaints; therefore, the title is misleading.
7.	Change from using the word “allegation.”	Amend s 51(1D) (c) – Reporting of conditions affecting ability to practise social work, by replacing the word ‘allegation’ with ‘report’, so that it reads: (c) if the report is made under subsection (1C), describe the action (if any) the employer has taken in relation to the report.

Group Three – Amendments requiring additional policy work to determine next legislative steps		
8.	Amend grounds for interim suspension.	Remove the words “because of competence issues” to align the suspension provisions with the public safety requirements and purpose provided for in the Act in s 57A(2)(a).
9.	Interim suspension time period is too short.	Increase the maximum number of days that a social worker can be suspended under s57A(4)(b). This will ensure that the SWRB has the flexibility to investigate and respond to serious concerns about a social worker’s ability to practice. This will also ensure protection to the public where a case is investigated and/or considered by the SWRB.
10.	Remove requirement to obtain a Police vet for fit and proper considerations.	Amend 50(1)(a) by replacing “must” with “may”. This would allow the SWRB to consider fitness under s48 without having to obtain a Police vet if the nature of the issue is such that a Police vet would not contain any relevant information, thus avoiding unnecessary delays.
11.	The SWRB as the regulator of social work and the agency that sets standards for social work programmes does not have the ability to monitor and recognise those programmes or to revoke programmes where compliance with SWRB social work education standards is not met.	Amend s 5B or s 99(1) to add an ability for the SWRB to monitor social work programmes and revoke recognition of the same, where compliance with SWRB social work education standards is not met.
12.	Possible error in use of ‘recognise’ in relation to New Zealand educational qualification	<p>The proposed amendments are:</p> <ul style="list-style-type: none"> • Replace ‘recognised’ with ‘prescribed’ in section 13(1)(a) • Remove recognise from section 99(1)(f) and replace with ‘to prescribe New Zealand educational qualifications for the purposes of this Act’ • Replace ‘recognised’ with ‘prescribed’ in section 133(1)(a). <p>The Board raises for discussion whether there has been an error in not amending the use of ‘recognise’ to become ‘prescribed’ in sections 13(1)(a), 99(1)(f), and 133(1)(a), as has been done for other provisions in the Social Workers Registration Act. More work is required to consider the correct use of terminology in relation to both New Zealand qualifications and those gained overseas.</p>