

# Departmental Disclosure Statement

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Social Workers Registration Legislation Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Social Development.

The Ministry of Social Development certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

28 July 2017

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## Part One: 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 one 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 two 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 five 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 five-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 five-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 seven:
- streamlining competence assurance processes to allow for continuous professional development programmes for practising social workers in place of competence assessment programmes every five 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.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>YES</b>
<p>The policy to be given effect by the Bill follows a 2016 select committee inquiry into the operation of the Social Workers Registration Act. The Social Services Committee's report is available at: <a href="https://www.parliament.nz/en/pb/sc/reports/document/51DBSCH_SCR71955_1/inquiry-into-the-operation-of-the-social-workers-registration">https://www.parliament.nz/en/pb/sc/reports/document/51DBSCH_SCR71955_1/inquiry-into-the-operation-of-the-social-workers-registration</a></p> <p>Government presented its response to the report to the House of Representatives on 21 March 2017. The Government Response is available here: <a href="https://www.parliament.nz/en/pb/papers-presented/current-papers/document/PAP_72661/government-response-to-the-report-of-the-social-services">https://www.parliament.nz/en/pb/papers-presented/current-papers/document/PAP_72661/government-response-to-the-report-of-the-social-services</a></p>	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<p>To inform the main policy decisions taken by the Government relating to the contents of this Bill, the Ministry of Social Development produced a Regulatory Impact Statement (RIS): <i>Legislative changes to increase the professionalism of the social work workforce</i> – 1 May 2017 available at:</p> <ul style="list-style-type: none"><li>• <a href="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">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</a></li><li>• <a href="http://www.treasury.govt.nz/publications/informationreleases/ris">http://www.treasury.govt.nz/publications/informationreleases/ris</a></li></ul> <p>Some text has been withheld from the RIS, in line with the Official Information Act 1982, as it refers to material that is currently under active consideration. The full text will be available when the Bill is introduced.</p>	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>YES</b>
<p>The opinion provided by the RIA Team for Cabinet on that RIS is set out in full below:</p> <p>“The Regulatory Impact Analysis Team at the Treasury has reviewed the Regulatory Impact Statement “Legislative changes to increase the professionalism of the social workforce” produced by the Ministry for Social Development and dated 1 May 2017. The joint review team considers that the RIS <b>partially meets</b> the QA criteria.</p> <p>The RIS clearly establishes the conceptual nature of the problem, while acknowledging the limitations of the empirical evidence. It demonstrates a careful and systematic consideration of possible alternative approaches and sets out the reasoning for its conclusions. However, consultation does not appear specifically to have included the smaller non-Governmental organisations who appear to be the main employers of non-registered social workers, and so</p>	

it is difficult to be confident as to the likely impacts on them, and their employees, of the proposed approach.

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

**2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?**

**NO**

### Extent of impact analysis available

**2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?**

**NO**

**2.5. For the policy to be given effect by this Bill, is there analysis available on:**

**(a) the size of the potential costs and benefits?**

**YES**

**(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?**

**NO**

(a) Analysis on the size of the potential costs and benefits of the provisions is available in the RIS (at pages 38–40). The RIS can be accessed through the links above in section 2.3.

**2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:**

**(a) the level of effective compliance or non-compliance with applicable obligations or standards?**

**YES**

**(b) the nature and level of regulator effort put into encouraging or securing compliance?**

**YES**

High levels of non-compliance would lead to higher than expected enforcement costs, and reduced benefits. However this is not expected to occur. The compliance costs of registration are expected to be reduced, for individual social workers and their employers.

As described in the RIS and Cabinet paper, Government is the predominant employer of social workers in New Zealand, both directly in the major government health and welfare agencies and indirectly via contracts with non-government agencies. Government in its role as an employer and purchaser of social work services is therefore in a strong position to ensure compliance.

Compliance will be promoted and enforced by the Social Worker Registration Board, for whom this is a primary function and objective.

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
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During development of the proposals, the policy to be given effect by this Bill was assessed to ensure that it did not affect the registration of Australian-trained social workers, who will continue to be able to be registered under section 7 of the Social Workers Registration Act 2003. The Trans-Tasman Mutual Recognition Act 1997 (TTMR) does not currently apply to social workers because of differences in the regulatory regimes. If Australian jurisdictions adopt a registration system for social workers, meeting the obligations of the overall occupational cross-recognition arrangement with Australia, the TTMR will apply for social workers.

No other relevant international obligations were identified.

### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
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Te Puni Kōkiri was consulted on the policy proposals to be included in the Bill, and the draft Bill itself. The Bill does not amend provisions of the Act relating to the Board's obligations to Māori.

### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>	<b>YES</b>
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Advice provided to the Attorney-General by the Ministry of Justice is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice (or reports) is accessible at <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/>.

### Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
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<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>YES</b>
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<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>YES</b>
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- (a) Clause 63 amends section 148 of the Social Workers Registration Act to:
- update language of the offence prohibiting unregistered persons from claiming to be a social worker
  - create a new offence of refusing or failing without reasonable excuse to comply with a notice to produce information for a professional conduct committee, or for knowingly or recklessly giving information which is false or misleading in a material particular in response to such a notice
  - create a new offence of intentionally and without lawful excuse publishing information in breach of a suppression order made under section 79(2)(b) to (d).

(b) A number of changes affect the jurisdiction of the Social Workers Complaints and Disciplinary Tribunal:

- Clause 43 replaces section 65 of the Act and moves the responsibility for appointing professional conduct committees from the Tribunal to the Board.
- Clause 52 amends section 83 of the Act and allows the Board to order a social worker apologises to a complainant, as well as extending the maximum possible suspension period from one year to three years' duration.
- Clause 52 also provides that the Tribunal's jurisdiction to cancel a social worker's registration is limited by a requirement to first consider alternative lesser punishments.

**3.4.1. Was the Ministry of Justice consulted about these provisions?**

**YES**

The Ministry of Justice was consulted on these provisions. The Ministry raised no concerns, provided that the level of penalties remains consistent across the wider Act. The final level of penalties set for new offences meets that criterion.

## Privacy issues

**3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?**

**YES**

The Bill amends provisions relating to nature and timing of Police checks the Board is to undertake when assessing whether a person is a fit and proper person to practise as a social worker. The Bill requires such checks to involve a Police vet and on a clean slate exempt basis. This confirms existing practice.

The Bill also includes a new power for professional conduct committees to require documents, in line with the powers available to similar professional committees under the Health Practitioners Competence Assurance Act 2003.

The Bill also includes new notification requirements for employers and social workers (see 4.5 below).

**3.5.1. Was the Privacy Commissioner consulted about these provisions?**

**YES**

The Office of the Privacy Commissioner was consulted on the new power of a professional conduct committee to compel release of certain information relevant to its investigations. It reported no concerns.

The Office of the Privacy Commissioner was not consulted on proposed limitations to the effect of the Criminal Records (Clean Slate) Act 2004. Consultation was instead carried out with New Zealand Police and the Ministry of Justice, who reported no concerns.



## External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>An inquiry on this Bill was carried out by the Social Services Committee in 2016. The Select Committee received 30 submissions from a range of agencies and individuals, including NGO employers of social workers, individual social workers, training providers, and agencies which have a mandate to advocate for social work clients (including the NZ Council of Christian Social Services and the Children's Commissioner). The policy proposals were informed by reviewing these submissions.</p> <p>The Social Workers Registration Board was consulted during the development of the proposals and on the Bill. Information and opinion was also sought from the Aotearoa New Zealand Association of Social Workers in their capacity as the professional body representing social workers.</p> <p>Please refer to the RIS referred to in 2.3 above for more information.</p>	

## Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>Proposals were consulted on with operational staff at the Ministry for Vulnerable Children, Oranga Tamariki and other key agencies that would have a role in implementing the provisions, with their commentary used to guide development of the Bill. The Board has also advised on workability of provisions.</p>	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>
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### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>
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### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
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### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>NO</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>YES</b>
<p>Clause 64 of the Bill inserts a new section 148A of the Social Workers Registration Act so that those employers of social workers who report serious misconduct or continued incompetence of social workers (under clauses 22 and 28), in good faith, are protected from criminal liability.</p> <p>Clause 32 of the Bill amends section 51 of the Social Workers Registration Act to provide immunity from civil, criminal and professional liability for any person who reports in good faith that a social worker they employ may be unable to perform their functions as a social worker due to a mental or physical condition.</p> <p>The protection afforded by these provisions is essential to encourage the sharing of information with the Board. The conditions attached to the reporting requirements, the duty to report being limited to reporting to the Board, and that reports must also be made in good faith, together suggest that the risk of misuse is narrow.</p>	

### Significant decision-making powers

<b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	<b>YES</b>
<p>The Bill will give the Board significant decision making power that could affect an individual social worker's career and livelihood, given that it will no longer be possible to practise as a social worker unless registered.</p> <p>This extension of power has been balanced through a number of clauses which introduce procedural certainty and protections for affected social workers, such as tests of reasonableness in some of the Board's powers.</p> <ul style="list-style-type: none"><li>• Clauses 12 and 61 introduce an opportunity for a social worker to comment on a proposed cancellation of their registration by the Board.</li><li>• Clause 52 provides that the Tribunal may not cancel a social worker's registration as part of the disciplinary process unless it has first considered suspension or the imposition of conditions on the persons' registration.</li></ul> <p>The purpose of these changes is to ensure that natural justice concerns are more likely to be addressed prior to making a determination about a social worker's registration, and therefore to increase the likelihood that the right decision is made in the first instance. This reduces the likelihood of needing to appeal decisions to the District Court or through judicial review.</p>	

### Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>NO</b>
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<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>NO</b>
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### Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>
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