

Regulatory Impact Statement

Legislative changes to increase the professionalism of the social work workforce

Ministry of Social Development

1 May 2017

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Social Development. It provides an analysis of options to achieve a legislative framework via amendments to the Social Workers Registration Act 2003 (SWR Act) that will increase the professionalism of the social work workforce.

The Social Services Committee (the Select Committee) inquired into the operation of the SWR Act at the request of Minister Tolley, reporting back to the House of Representatives on 2 December 2016. The Government Response, presented to the House on 21 March 2017, acknowledged the overall intent of the Select Committee's recommendations and the case made by the Committee for some form of increased regulation of social workers. The proposals analysed in this RIS are those referred to in that Response and are the result of further work undertaken by the Ministry of Social Development in February to April 2017.

The proposals are expected to be considered by the Cabinet Social Policy Committee (SOC) in May 2017. The proposals in this RIS address the options of increased regulation of social work and social workers, and make recommendations to:

- expand the coverage of the current voluntary certification approach by moving to a mandatory certification and broader title protection regime so that only those who are registered are able to call themselves "social workers"
- support the efficient operation of the regulatory regime through various changes aimed at improving regulatory coherence and efficiency; and
- support wider moves towards improving the professionalism and quality of social work services in New Zealand.

There are various legislative changes of a technical, short and non-controversial nature which will be referred to in the paper to be considered by SOC which have not undergone regulatory impact analysis.

The key constraint on the analysis presented in this paper is a lack of comprehensive information about the numbers and roles of social workers practising in the non-governmental organisation (NGO) sector.

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Executive summary

- 1 The SWR Act establishes the legislative framework for the current voluntary registration system for social workers. Under this system, individual social workers can choose whether they become registered or not. Anyone can call themselves a “social worker” at present, whether they have qualifications or not. If they are not registered they can use the title “social worker”, but not the title “registered social worker”.
- 2 In 2016, the Select Committee undertook an inquiry into the operation of the SWR Act in order to identify how the standard of the social work workforce could be lifted so that vulnerable clients are protected from poor practice. The Select Committee released its Inquiry Report on 2 December 2016. The Select Committee concluded that legislative reform is needed to: strengthen the regulatory framework for the sector; to increase the professionalism and competence of social workers; and provide greater protection for the public.
- 3 The immediate problem is that approximately two thousand non-registered social workers (estimated to be around a quarter of the profession) practise outside the regulatory regime designed to protect clients and the public, and ensure competent, effective and accountable social work services. This means that the quality of social work services in New Zealand is not as good as it should be, and that the regulatory regime is not as effective as it could be in ensuring quality and addressing risks and failures. There are a range of reasons why a significant number of social workers are choosing not to register, including unwillingness to be accountable or undertake training, financial and time costs, and concerns about some features of the current regime.
- 4 The Government Response to the Select Committee’s Report was presented to the House on 21 March 2017. That Response acknowledged the overall intent of the Select Committee’s recommendations, and the case made by the Select Committee for some form of increased regulation of social workers and noted that further policy work was required.
- 5 To effectively deliver the interventions that form part of the Government’s social investment approach, a competent and skilled social work workforce is essential. Legislative reform is required to increase and cement the professionalism of the social work workforce.
- 6 Based on the Government Response to the Select Committee Inquiry, the reform proposals considered in this RIS address the following aspects of what is needed to increase the professionalism of the social work workforce:
 - Part One: the regulatory (registration) system for social workers and social work students
 - Part Two: other amendments to the SWR Act to improve its effectiveness and reduce compliance costs, including the pathways to registration and the checks and balances on the Board needed in association with a particular registration system, including assessment of the competence of social workers; fitness to practice social work; complaints and disciplinary processes for social workers.

- 7 It is considered that the recommended proposals will provide a strong and enduring framework for the social work profession that will increase public safety by:
- extending the coverage of the existing regulatory regime to cover all social workers
 - improving the functioning of the SWR Act, and
 - supporting wider moves towards improving the professionalism and quality of social work services in New Zealand.

Status quo and problem definition

Social Work in New Zealand

- 8 Social work is a profession that provides support and services to individuals and families who are vulnerable for a number of reasons. Social workers routinely work with individuals at risk including women and children escaping family violence, victims of sexual assault, people suffering mental illness or addictions, and people with severe disabilities. They increasingly deal with children and adults who are highly vulnerable, who present with very complex issues, and may be living in dangerous situations.
- 9 Social workers deliver interventions that impact on all aspects of a client's life including their physical, psychological, social and economic wellbeing. In many cases, social workers are trusted with sensitive personal information about their clients, and commonly provide services to clients in their homes without another person present. Social workers in New Zealand are on the frontline across the child protection, health, education, and justice sectors and work with a wide range of vulnerable children and adults.
- 10 There is a small but significant risk of serious harm to clients from incompetent social work because of the nature and circumstances of the client group and the range of interventions delivered by social workers. Incompetent practice can cause immediate harm and the impact may also be long lasting. That is why skilled, well trained professionals are required. A social worker who does not recognise the limits of their expertise can place an individual and community at risk if, for example, a client is at risk of harming themselves or others. Even in less extreme situations, preventable harm can arise when individuals or families are not given the expert help that they need and go on to develop more serious problems.
- 11 The Government has adopted a social investment approach to ensure interventions and services are effective and targeted to the right place. This focus requires a highly professional and capable workforce to undertake assessments, to provide therapeutic interventions, and to provide referrals to other services.
- 12 Social workers (employed directly by government agencies or by NGOs on government contracts) are frequently the brokers of services for individuals, families and communities with high levels of needs, and are uniquely placed to make a significant difference for their clients' long term outcomes. A high quality social work workforce is a vital component in achieving the Government's goals in the social sector, particularly for vulnerable children, and in the health sector.

Overview of current regulatory regime for social workers

- 13 Social workers currently work under a voluntary registration system that was introduced in 2003 by the SWR Act. The system protects the title "registered social worker" by making it an offence for people to hold themselves out as a registered

social worker when they are not¹. Individual social workers can choose whether or not to become registered. If they are not registered, they can use the title "social worker", but not "registered social worker".

- 14 Registration is the process by which a social worker is assessed and determined as qualified, competent, experienced, and a fit and proper person to practise social work. Established by the SWR Act², the Social Workers Registration Board (the Board) oversees the registration process. Once registered, registered social workers are subject a review process to renew their annual practising certificate and, if there are concerns about their competency, are subject to complaints and disciplinary processes.
- 15 The Board is a Crown entity with a responsible Minister (the Minister for Social Development) and a monitoring department (the Ministry of Social Development). The Ministry of Social Development's (MSD) role includes assisting the responsible Minister, administering appropriations and legislation as required, and assisting with planning, monitoring and reporting organisational performance.
- 16 The Board comprises 10 members (six registered social workers and four other people)³, members are appointed by the Minister for Social Development (the Minister) after consultation with organisations and individuals that, in the Minister's opinion, represent various sectors of the social work profession.⁴
- 17 In addition to overseeing the registration process, authorising the registration of social workers and maintaining the Social Workers register, other functions of the Board⁵ include to:
 - review the competence of social workers
 - establish and maintain a code of conduct for social workers
 - promote and set standards for social work education and training in New Zealand
 - promote the benefits of registration
 - promote and encourage high standards of practice and professional conduct among registered social workers and the employers of social workers
 - issue Annual Practising Certificates
 - advise, and make recommendations to, the Minister regarding the regulation of social work.
- 18 The SWR Act also establishes the Social Workers Complaints and Disciplinary Tribunal (the Tribunal)⁶, some members of which are appointed by the Board. The Minister is also required to appoint at least one member⁷. The Tribunal administers the complaints process and also exercises the disciplinary powers over registered social workers. As part of the complaints process, the chair of the Tribunal (in

¹ Section 148(2).

² Section 97.

³ Section 106.

⁴ Schedule 1, clause 2. Clause 2 also requires the Minister, in appointing members, to take all reasonable steps to ensure the Board will be representative of the social work profession, advocates for consumers of services provided by social workers, social work educators, Māori, and different ethnic and cultural groups in New Zealand.

⁵ Section 99.

⁶ Section 114.

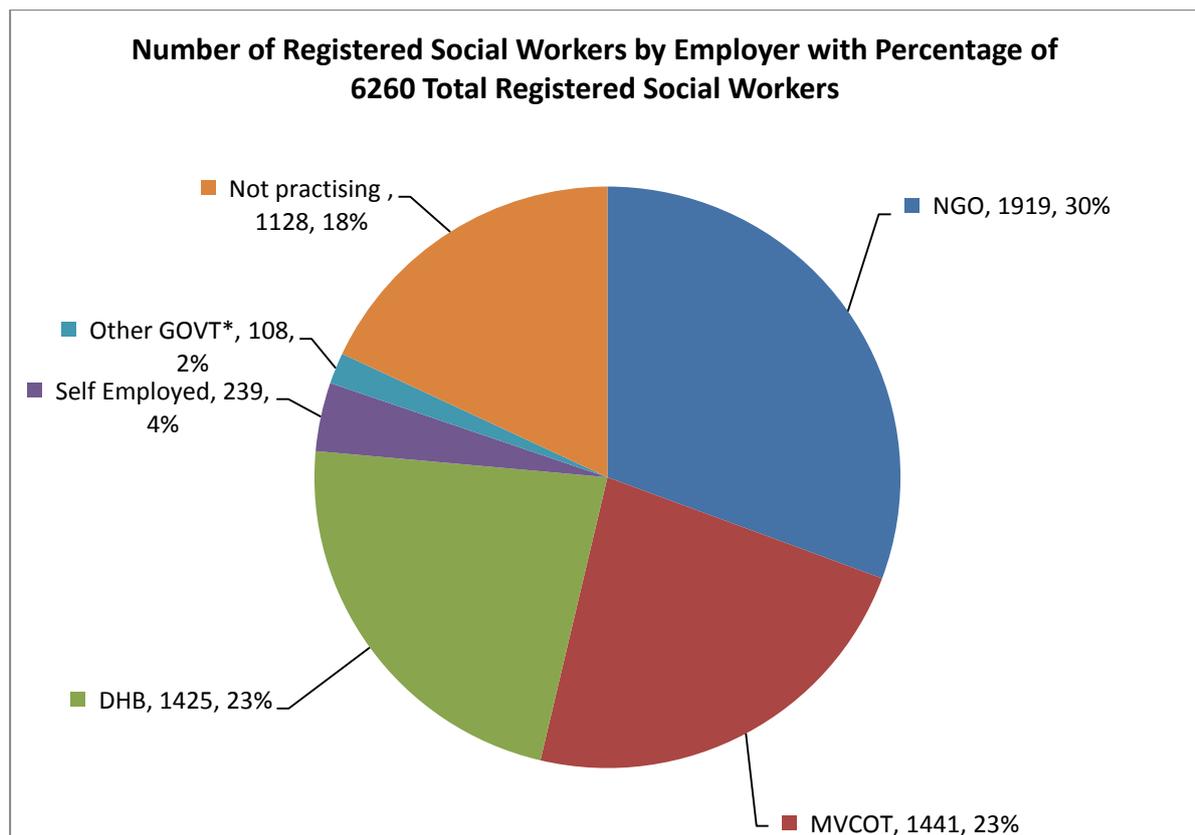
⁷ Section 99(1)(m), section 116(1).

consultation with some members of the Board) may appoint a complaints assessment committee to consider cases⁸.

Social workers in New Zealand

- 19 Based on Census data, the Board estimates a workforce of around 8,000 who should be registered, meaning that approximately 2,000 people who are not currently registered are working in social work roles.⁹
- 20 The Select Committee noted that the 2013 Census showed 6,128 people who identified themselves as social workers, but that around 18,000 people identified with a wider definition that covered occupations such as community, family support, and youth workers, and health promotion and disabilities services officers. It is possible that some of these people may be undertaking social work tasks or have social work qualifications.
- 21 This means they have not been certified as having the requisite social work qualifications, and are not subject to on-going professional development, supervision and disciplinary processes. Many of these people are likely to be appropriately qualified but choosing not to register for various reasons.

Registered Social Workers by Employer to 31 March 2017¹⁰



*Other GOVT includes various agencies such as ACC, Department of Corrections, Ministry of Social Development, New Zealand Police, and local government.

⁸ Section 66.

⁹ The Board's estimate of 8,000 from census data was made by counting the number of people with relevant job titles and tertiary level qualifications. However it was not possible to confirm how many had social work qualifications.

¹⁰ Social Workers Registration Board –Third Quarter Report 2016/17

- 22 The number of registered social workers now stands at just under 6,300. The Ministry for Vulnerable Children, Oranga Tamariki (MVCOT) and the District Health Boards (DHBs) are the two largest government employer groups, each employing 23% of registered social workers. The highest proportion (30%) of social workers are employed by NGOs, but most of these are employed to provide social work services under government contracts, primarily from MVCOT, MSD and DHBs.
- 23 Government agencies report that 95% of their directly employed social workers are registered. Government agencies have existing employment practices in place that ensure new social work employees will be registered, or are able to become registered within a reasonable period. In addition, many government contracts with NGOs for social work services specify that the social workers employed should be registered, or are “registrable”, meaning that they sufficiently qualified and experienced to enable them to be registered.
- 24 It is the “registrable” aspect that gives rise to the ambiguity that allows unregistered social workers to currently operate. After investigating contracts that allow for “registrable” as well as registered social workers, we estimate that only 70% of NGO employed social workers are registered. This shows that government agencies have capacity to further encourage the registration of social workers in NGOs by being more explicit in their contracting, requiring that all social workers providing services are appropriately qualified and registered.
- 25 This 70% estimate was based on information sourced from various government agencies showing that of the 500 NGOs known to be employing registered social workers, the 13 largest NGO employers have over 700 registered social workers between them (over a third of all the NGO employed registered social workers). These same organisations have almost 310 unregistered social workers, which equates to 30% of their social work staff being unregistered.
- 26 Information from smaller NGOs shows even higher levels of unregistered social workers, including more without a formal or recognised social work qualification. There are 485 NGOs known to employ around 900 registered social workers, most of which only have one or two registered social workers on staff. For some of these NGOs, that one registered social worker is overseeing between two and five unregistered staff providing social worker services, and some of those are also unqualified in social work. Although anecdotal, this suggests some NGOs have more than 50% of their social work staff being unregistered.
- 27 On the basis of estimates derived from available information (provided by the Board, Aotearoa New Zealand Association of Social Workers (ANZASW), government agencies and some NGOs), officials consider that there are approximately 2,000 people likely to be operating as social workers who are not currently registered.
- 28 Information from the ANZASW advises as at 31 March 2017 that of the 24% of their members not registered with the Board:
- 59% have appropriate qualifications to be registered but are not¹¹
 - 16% have no qualification, but are likely to have sufficient experience to qualify for registration via the section 13 route¹²

¹¹ This has been calculated from the proportion of ANZASW members who have a tertiary qualification but are not registered.

- 6% have no qualification, and are unlikely to have sufficient experience to qualify for registration via the section 13 route
- 19% about whom it is unknown whether they have the necessary qualifications or experience for registration.

29 Assuming the ANZASW proportions are indicative of the total population of practising social workers, the estimated 2,000 unregistered social worker population would consist of:

- 1176 (59%) with tertiary qualifications likely to be able to be registered – unfortunately because of lack of detail from the census data we cannot be sure how many have social work qualifications
- 329 (16%) may have no qualification, but likely to have sufficient experience to qualify for registration via the section 13 route
- 118 (6%) may have no qualification, and unlikely to have sufficient experience to qualify for registration via the section 13 route
- 376 (19%) about whom it is unknown whether they have the necessary qualifications or experience for registration.

Select Committee Inquiry

30 The Board is required to review the operation of the SWR Act, and its own operations, at least every five years¹³. As part of this review process, the Board must consider whether the SWR Act, and the system of voluntary registration it provides for, are achieving the purposes of protecting public safety and enhancing the professionalism of social workers. The last review was completed in 2015. This review (as did the 2012 review) concluded that it was time to move to a mandatory system of social work registration to ensure that the public is protected from those individuals who are not competent, qualified, and experienced social workers.

31 In 2016 the Minister asked the Select Committee to undertake an inquiry into the issues that had been raised by the Board. The Board served as advisors to the Select Committee.

32 The Select Committee released its Report on 2 December 2016 concluding that legislative reform is needed to: strengthen the regulatory framework for the sector, to increase the professionalism and competence of social workers, and provide greater protection for the public. Overall, the Select Committee found that:

- registration should be mandatory for social workers and social work students
- the present requirement for a competence assessment in addition to a qualification, repeated every five years, should be removed
- social workers with a recognised New Zealand qualification should be presumed to be competent, but the Board may still require assessments as needed
- strengthening of vetting, on-going fitness to practice, and complaints and disciplinary processes

¹² Section 13 enables the Board to register a social worker who does not have a recognised social work qualification but does have the requisite degree of practical experience and meets the other registration criteria.

¹³ Section 104.

- social work registration on the basis of practice experience should be phased out
- 33 Cabinet approved the Government Response to the Select Committee’s Report on 13 March 2017 (CAB-17-MIN-0090) and the Government Response was presented to the House on 21 March 2017. That Response acknowledged the overall intent of the Select Committee’s recommendations, and the case made by the Select Committee for some form of increased regulation of social workers. It also noted that the Government would carry out further work to identify possible policy and legislative changes that could best give effect to the intent of the Select Committee’s recommendations to increase the professionalism of the social work workforce.
- 34 When approving the Government Response, Cabinet agreed to further work to identify the best options to increase the professionalism of the social work workforce; and invited the Minister to report back to SOC by 3 May 2017 with reform proposals (including any legislative proposals) (CAB-17-MIN-0090).

Problem definition and proposed response

- 35 Simply stated, the immediate problem is that approximately two thousand non-registered social workers (estimated as around a quarter of the whole profession) practise outside the regulatory regime designed to protect clients and the public, and ensure competent, effective and accountable social work services. This means that the quality of social work services in New Zealand is not as good as it should be, and that the regulatory regime is not as effective as it could be in ensuring quality and addressing risks and failures.
- 36 The types of harm that can be caused by social workers fall into the following categories:
- criminal (dishonesty, theft, violence, sexual assault)
 - abusive (abuse of trust or power)
 - inappropriate in nature (including relationship boundary violations)
 - poor professional judgement or poor practice (including failure to properly investigate reports of risk to vulnerable people, inadequate or incorrect assessments, and breaches of confidentiality).¹⁴
- 37 Risks to the public may also be exacerbated when social workers:
- are unqualified or incompetent
 - have a physical or mental health condition which affects their ability to practice
 - have a criminal history, falsified identity or false qualification
 - place their own interests above those of their clients.
- 38 While there is information about the nature of complaints raised about registered social workers available from the Board’s records, there is a lack of centralised information available about complaints raised about non-registered social workers, and any resultant disciplinary or employment outcomes. There are a number of examples where the actions of social workers have been investigated and found to have caused harm to clients. Examples include:

¹⁴ See generally Gloria Kirwan and Brian Melaugh “Taking Care: Criticality and reflexivity in the context of social work registration” (2015) 45(3) British Journal of Social Work 1050.

- inadequate assessments and poor judgement leading to physical or emotional harm – leaving children in dangerous living situations, or not detecting risks of self-harm or suicide
 - forming inappropriate relationships with clients
 - financial harm from either dishonesty or taking advantage of a vulnerable client
 - failure to liaise with client’s family members and collaborate with other case workers leading to a serious lack of proper care.
- 39 The findings of these cases routinely outline the lack of adequate training, poor decision making, or failure to follow established protocols – and essentially amount to the social worker failing to adequately or appropriately discharge their duties towards, or on behalf of the client. Registration cannot guarantee to prevent such failures but it will reduce the likelihood by requiring proper qualifications and on-going training, and providing a mechanism whereby individuals whose practise is inadequate can be called to account, hopefully before irreversible harm has occurred.
- 40 Under the current voluntary regime, non-registered social workers are practising in an environment where serious misconduct and incompetence cannot be adequately addressed, and those social workers who cause serious harm can potentially continue to practice without appropriate penalty or sanction. The full disciplinary power of deregistration is ineffective in a voluntary system as those who have had their registration cancelled because of professional misconduct can still practise social work. Unregistered social workers with serious complaints lodged against them can continue to practice if they change employment and do not disclose that complaints have been raised.
- 41 Outside of the registration system, the responsibility for detecting harmful practise or addressing misconduct falls to the employer. In particular, smaller NGOs would benefit from an external mechanism. Requiring all social workers to be registered provides a mechanism for any employer to check the status of any potential new employee and to address serious misconduct, as well as supporting continuing professional development.
- 42 Legislative reform offers an opportunity to clearly articulate the change needed to increase the professionalism of the workforce and ensure an appropriate level of competence, and protections for vulnerable clients from inappropriate and potentially harmful social work practice. The effectiveness of Board processes and powers over registered social workers is also undermined by the current voluntary system, and therefore a move to a mandatory regime is recommended. There are also a number of ways in which the current legislation could be reformed to improve its efficiency and effectiveness.
- 43 Regulatory and non-regulatory options have been considered to address the problem. There are many non-regulatory initiatives underway to address the fundamental need for an improvement in the quality of social work but have not taken us far enough. A more effective regulatory regime will complement and strengthen other initiatives such as the new operating model to improve outcomes for vulnerable children and young people being led by the Ministry for Vulnerable Children, Oranga Tamariki.

- 44 The reform proposals considered in this RIS address various aspects of what is needed to increase the professionalism of the social work workforce. Detailed analysis of the possible options and proposed changes have been grouped together under the following headings:
- Part One: registration of social workers
 - Part Two: amendments to the SWR Act to increase transparency and professionalism:
 - checks and balances
 - experienced based pathway to registration
 - ensuring competence
 - ensuring fitness to practice
 - complaints and disciplinary processes.
- 45 With respect to the vehicle for legislative change, the Select Committee noted the following options for achieving its recommendations:
- amending the SWR Act
 - repealing and replacing the SWR Act
 - repealing the SWR Act and incorporating social work into the Health Practitioners Competence Assurance Act 2003 (HPCA Act)
 - amending the SWR Act and incorporating social work partially into the HPCA Act.
- 46 MSD has considered the best means of implementing the legislative reform proposals in this RIS. On the basis of the scale and scope of the recommended legislative changes, MSD recommends a Bill amending the SWR Act as the most appropriate vehicle for legislative reform.
- 47 Officials and the Board consider that, as suggested by the Select Committee, the HPCA Act is a good model for the recommended amendments to the SWR Act. The nature of social work better aligns with the range of professions included in the HPCA Act than other regulated professions in New Zealand. Overseas jurisdictions, including Ireland and Australia, include social work in their health regulatory regimes.
- 48 The Ministry of Health supports the approach of amending the SWR Act, using the HPCA Act as a model.

Objectives and Criteria

- 49 The immediate objective of these proposals is to increase the coverage of the regulatory regime so that it will cover all social workers. This objective is recommended on the basis that:
- There is a small but significant risk to the public of harm from incompetent, reckless or dishonest practice of social workers, which could result in significant harm to one person or moderate harm to a larger number. This harm could be irreversible, such as death in the case of vulnerable children, or permanent physical or psychological disability.
 - These risks can be addressed by increasing the professionalism of the social work workforce so that employers, clients, and the public can be confident

that a social worker has certain standards of qualifications, skills, knowledge and experience, and is subject to professional disciplines including supervision, continuing professional development and that there is an accessible and effective complaints and disciplinary process for clients independent of employer systems.

- Increasing the professionalism of the social work workforce will also contribute to the Government’s goals for social investment, which relies on improving the quality of social work services in undertaking casework and making assessments and referrals for vulnerable children, young people and adults who are at risk of serious long-term difficulties requiring on-going government support unless they receive appropriate help and preventative services.

50 These assumptions are supported in more detail below. Analysis has included the criteria specified in the Policy Framework for Occupational Regulation.¹⁵

51 The following table provides a more detailed breakdown of how proposals will be assessed against the objectives and additional criteria.

| Objective | How proposals will be assessed against the objectives |
|--|---|
| Immediate objective: increasing the coverage of the regulatory regime so that it will cover all social workers | The extent to which proposals ensure that all practising social workers are registered. |
| Underlying objective: protecting the public from harm by increasing the professionalism of the social worker workforce | The extent to which proposals increase the protection to the public from the risk of harm from social work practice in the government and NGO sectors, and the confidence that employers and the public have in the profession. |
| Underlying objective: improving the contribution of social workers to the Social Investment approach by increasing the professionalism of the social worker workforce | The extent to which proposals improve the quality and effectiveness of social workers in the government and NGO sectors. |

| Additional criteria | How these additional criteria will be assessed |
|----------------------|---|
| Effectiveness | The analysis will consider the extent to which proposals minimise an identified risk of significant harm to the clients of social workers or the public. |
| Efficiency | The analysis will consider the extent to which the benefits of the proposals exceed the costs of regulation. In particular, the analysis will consider the following impacts, and will favour proposals that achieve the objectives above while minimising the fiscal and operational impact of: <ul style="list-style-type: none"> • compliance costs of implementing the proposal across government agencies, and for other organisations • operational implications of implementing the proposals for government agencies, and any other affected organisations, including the scope and magnitude of organisational change required to implement proposals. |

¹⁵ Policy Framework for Occupational Regulation, CO (99) 6
<https://www.dpmc.govt.nz/cabinet/circulars/co99/6>

| | |
|----------------------|---|
| Equity | <p>The analysis will consider the extent to which proposals are fair (ie treat individuals in similar situations similarly and individuals in different situations differently).</p> <p>In the case of those options relating complaints and disciplinary processes consideration has also been given to the objectives of natural justice and due process.</p> |
| Transparency | <p>The analysis will consider the extent to which the proposals support regulatory processes and requirements that are transparent to both the decision-makers and those affected by the decisions.</p> |
| Clarity | <p>The analysis will consider the extent to which the proposals support regulatory processes and requirements that are understandable and accessible as practicable.</p> |
| Institutional | <p>The analysis will consider the extent to which the proposals raise a risk that the regime might function to protect the profession rather than the public.</p> |

Specific proposals and options

Part One: Registration of social workers

What is the argument for the regulation of social work?

- 52 Government is investing in a systematic approach to lifting the quality and effectiveness of social services. Social investment is about improving the lives of New Zealanders by applying rigorous and evidence-based investment practice to social services. It recognises that vulnerable New Zealanders have complex needs that span multiple agencies and require collaboration to address the underlying drivers of dysfunction rather than just responding to symptoms. Critical to the success of this initiative is having a highly skilled social work workforce to deliver interventions and services to a consistent and competent level, because social workers frequently provide the frontline social service interventions - assessments, casework and referrals.
- 53 Good quality social work also matters to the individual. Its immediate value is in addressing serious problems faced by individuals and communities, and protecting the vulnerable. Social workers have a critical role in the delivery of effective social services – interventions that mitigate and prevent harm that could otherwise have long term adverse consequences for individuals and society. Most social work is government funded, either directly through government agencies, or via contracts with NGOs.
- 54 Social work is a complex set of tasks and approaches, involving relationships and professional judgements, informed by a body of knowledge and experience. There are a range of recognised methodologies and tools which social workers use, and various specialist areas of practice. It is frequently practiced in a collaborative way, in a multidisciplinary context.
- 55 Social work has the potential to be a moderate to high risk occupation in terms of causing harm. Harm can be physical, emotional, psychological, material, financial or social. Harm from social work can arise via misconduct (improper behaviour and breach of professional standards, improper relationships,) or incompetence (failure to act, wrong assessments, wrong judgements).

- 56 There can also be a risk of harm to others (including the wider public) in some extreme situations, for example poor social work practice might lead to a client harming to others which could have been prevented.
- 57 Harm may consist of clients not having received the help or protection they needed and which it could have been expected that a social worker should have provided. In such cases the service provided has not achieved what it should have, or has not been cost effective. This is an opportunity cost to society in the case of government funded services.
- 58 Clients are frequently highly vulnerable and often powerless to complain – they generally have little or no choice about who is providing the service, or whether they want to receive the service at all – possibly even being under legal compulsion to accept the service.
- 59 Many other jurisdictions including the United Kingdom, Canada, many European countries as well as countries throughout Africa, the Middle East and Asia have chosen to implement some form of social worker registration (Australian Association of Social Workers, 2014). Canada, England, Scotland, Iceland, Wales, Northern Ireland, the Republic of Ireland and the majority of states in the United States of America have introduced mandatory social worker registration. Compulsory registration for people wishing to practise as social workers in England began in April 2003 and made “social worker” a protected title.
- 60 In countries where social work is registered, unethical and unsafe social workers can be brought to account and prevented from continuing to practice. Currently, under the voluntary regime, the New Zealand public is not offered the same level of protection as social work service users in other countries, or the same level of statutory protection provided by the regulatory regimes applying to similar professions such as nursing or teaching.
- 61 A comprehensive system of statutory regulation for all social workers is now needed to ensure consistency of practice and rapid and effective resolution of complaints and disciplinary issues. This was the conclusion reached by the Select Committee Inquiry, supported by all the major submissions including those of the Aotearoa New Zealand Association of Social Workers, and the Board. The major government agencies that employ social workers, either directly or via contracts with NGOs, also support this view.

What is the nature of the current system in New Zealand?

- 62 The SWR Act establishes a system of voluntary “certification”. Under this system, individuals can choose to apply to the Board to be registered as social workers. Only those that successfully meet the statutory criteria (which cover qualifications, assessment of competence, fitness to practice and practical experience) are entitled to be registered and use the title “Registered Social Worker”.
- 63 The current voluntary certification regime offers a number of features:
- Voluntary certification and title protection provides assurance to the public and prospective employers that someone who calls themselves a “registered” social worker has meet certain standards of skills, knowledge and experience and is subject to on-going professional disciplines (annual practicing certification and complaints processes).
 - Voluntary certification provides smaller employers (NGOs) quality assurance of skills that are otherwise hard to assess, including on-going quality assurance from the annual practicing certificate process, and complaints and disciplinary processes.

- Government is the predominant employer and funder of social work services and can therefore influence quality and safety issues directly. However Government agencies as employers have to manage scarce resources, so having a regulatory authority as an independent accountability mechanism helps ensure that the right trade-offs are being made.
- Further, a distinct regulatory authority can provide a complaints process independent of the employer, who may have a conflict of interest in assessing complaints about its staff. This is a useful safeguard for the public in a situation where government is the dominant employer.
- Registration supports practitioners who must exercise professional autonomy and judgement in their work. The ready uptake of registration amongst social workers in the New Zealand health sector, where professional registration for occupations are widely required and valued, illustrates this.

64 Making this system mandatory was considered when the SWR Act was being developed in 2003 but, given the proportion of practicing social workers at that time who would not have met the requirements, a system of voluntary registration was instituted. This voluntary approach allowed for the social work sector to adapt gradually to increased standards over time. The number of training places increased, and agencies supported their existing staff to gain qualifications. Registration is substantially encouraged by employment requirements, especially in the government sector and by major NGO employers.

What effect has the current system of voluntary registration had in New Zealand?

65 In 2000, it was estimated approximately 80% of social workers would not be registrable (ie hold social work qualifications or have otherwise been formally assessed as competent).¹⁶ Sixteen years later, an estimated 75% of the profession have met that standard and are now registered. Estimates are that 2,000 social workers remain outside the system, but a majority of them are thought to be able to be registered. So a number of initiatives, including the significant efforts of the Board, have brought about a dramatic increase in the proportion of social workers who have formal qualifications, and can be expected to have a better base of social work skills and knowledge.

66 Ascertaining what benefits have arisen from the increasing proportion of registered social workers is challenging as many social workers continue to practice outside of the system and we have limited knowledge of what they are doing. It is therefore not possible to properly compare registered versus unregistered social workers (see also the discussion of complaints below).

67 A further difficulty in assessing the impact of the voluntary regime arises from the many policy and resourcing changes in the sectors in which social workers operate since 2003. For example, justice sector responses to family violence and community based approaches to mental health needs. And beyond this, changes in the social and economic environment, such as housing need and availability of employment, affect families and communities and, in turn, what is demanded and what can be expected from social workers.

68 Expected benefits include:

- a clear, transparent and consistent complaints and disciplinary process for clients

¹⁶ Social Workers Registration Board "Issues Paper: Proposed legislative reform of the Social Workers Registration Act 2003" (advice to the Social Services Committee Inquiry, June 2016).

- those working with vulnerable people are suitably qualified and trained, providing a consistency of practice
- a mandatory regulation system shifts the burden from the NGO sector to individually assess and maintain professional competency of staff and manage complaints
- a coherent framework for the social work profession that lifts its status to a level with comparable professions, supporting the shift to multidisciplinary working.

Why is current system of voluntary registration insufficient?

69 Under the current voluntary regime, it is possible to practice using the title “social worker” without being registered. The SWR Act’s competence and fitness requirements and the complaints and disciplinary processes do not apply to social workers who are not registered. The Board and the Social Workers Complaints and Disciplinary Tribunal have no jurisdiction over un-registered social workers. The Board’s 2015 Review of the SWR Act concluded “... there are many substantiated examples of unregistered social workers, or alternatively, individuals using the title “social worker” without qualifications or competence, who have been convicted of serious offences or found responsible for the delivery of unethical, incompetent and often dangerous social work services.”¹⁷

70 Complaints may raise concerns about social workers conduct, competence or fitness to practice. There is a lack of centralised information available about complaints raised about non-registered social workers, and any resultant disciplinary or employment outcomes. The Board can only consider matters that fall within its statutory jurisdiction concerning registered social workers, and does not have any power to award compensation. This means that unregistered social workers with criminal convictions may go undetected.

71 The Board receives a number of complaints about social workers who are not registered but is unable to act on the complaint. Identifying the number of these complaints is difficult as often complainants will call to ask if a particular social worker is registered and when told they are not, do not continue with the discussion or else they find out the social worker is not registered as they do not appear on the public register.

| Complaints received by the Board ¹⁸ | | | | | | |
|--|------|------|------|------|------|------|
| | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 |
| Complaints about registered SW | 12 | 29 | 33 | 36 | 24 | 58 |
| Complaints about unregistered SW | 5 | 5 | 23 | 17 | 4 | 16 |

72 There are a range of other bodies which receive complaints about social workers: Aotearoa New Zealand Association of Social Workers (ANZASW), the Health and Disability Commissioner (HDC), the Children's Commissioner, and social workers’

¹⁷ Social Workers Registration Board, *2015 Review of the Social Workers Registration Act 2003*, page 13

¹⁸ <http://www.swrb.govt.nz/doc-man/publications-1/346-annual-report> (page 16)

employers including Child, Youth and Family (now MVCOT), District Health Boards, and a significant number of NGOs.

- 73 The HDC (which has jurisdiction where the complainant is receiving a health or disability service) has dealt with complaints about 35 different social workers between 2012 and 2016. The ANZASW investigates formal complaints about its members who are not registered (they refer complaints about registered social workers to the Board). Since 2009 there have been 12 such complaints that have been upheld.
- 74 Unregistered social workers who are not subject to the HDC may only be disciplined via employment law, which is a crude instrument for these purposes and may not stop them working elsewhere. Small employers especially may not be in a position to adequately discipline staff. While misconduct or poor performance of a social worker may be dealt with by their employer, some of these situations may be so serious that there is a wider public interest in the person not being allowed to practice elsewhere, and this is not able to be reliably enforced under a voluntary registration system.
- 75 Police can bring criminal charges if the nature of the misconduct is a criminal offence. However even a criminal conviction may not prevent someone recommencing social work practice if their new employer does not undertake police checks or decides to disregard the offence.
- 76 In practice, it is possible for a non-registered social worker with serious complaints lodged against them to continue to practice if they change employment and do not disclose that complaints have been raised. Significant concerns continue as to the safety of clients from inadequate or dangerous social work practice, and the voluntary regime can do little address this. Requiring all social workers to be registered would provide a comprehensive mechanism for employers to check the registration status of any potential new employee.
- 77 Even sanctions against registered social workers do not necessarily have the impact they should because they cannot be reliably enforced, since deregistration may have little impact on someone's career under the voluntary system. The possibility of facing disciplinary or accountability systems currently provides an incentive not to register in the first place.
- 78 Two other concerns arise from the current system:
- an equity and efficiency concern in that the cost of registration is higher than it should be because up to 25% of the workforce are not registered. This allows "free riding" by employers and social workers who take advantage of the Board's work by using the concept of "registrable" (ie could register but choose not to) to provide assurance of a certain level of quality practice, but do not contribute to the cost. The Board is self-funding, and receives no direct support from government.
 - given the high proportion of social workers who are registered, clients and the public may wrongly assume that all social workers are and unfairly discredit the value of the registration system on the basis of the behaviour of unregistered social workers.
- 79 The voluntary approach began the transition to a more professional workforce but nearly 14 years later it is time to move to a stronger footing. A voluntary system is no longer adequate to ensure the level of professionalism now needed in the social work sector. Bringing the remaining practicing social workers into the regime, along with all new entrants, will ensure that the regime is better able to provide assurance to employers and clients, as well as promoting a positive professional

identity to support high quality social work practice. As noted previously, having a competent, effective social work workforce is also a core component of the Government's social investment approach.

Why do social workers choose not to register?

80 We have identified a range of reasons why social workers do not register, based on an analysis of possible disincentives as well as information from various observers. Some of these reasons may be a cause for concern about the practise of unregistered social workers, while others reflect on the system as it is operating currently.

- **Avoiding accountability:** Some individuals prefer not to be accountable if they can avoid it. The system can be seen as complex and punitive, and not supportive of individuals or their employers.
- **Inability or unwillingness to undertake training:** This may be because of a lack of academic ability; the cost of training (direct cost and loss of income); a lack of interest or the nearness of retirement.
- **Lack of benefit from registration:** Social workers are able to be employed without being registered, and the salary premium for registration is modest and not paid by all employers.
- **Cost:** Although the Board have succeeded in reducing fees, the current cost of applying for registration (\$345) as well as on-going fees (\$368 for the annual practising certificate and \$255 for the five yearly competence assessment) can be unaffordable, particularly for NGOs and individuals.
- **Length of process:** Competency must be assessed within two years of registration and then at five-yearly intervals in order to retain a practising certificate. This is perceived by some as a lengthy and burdensome process.
- **Difficulty in "opting out":** Once registered, individuals are required to maintain a current practicing certificate if they are "employed or engaged as a social worker". Disputes have arisen between the Board and individuals, and the Board and employers as to whether a registered social worker who has changed roles should be maintaining their practicing certificate. These include situations where registered social workers have moved into management or supervisory roles, or moved to other roles such as probation officer, youth worker, or a social work education role. A Crown Law opinion in 2013 provided guidance to the Board and the Social Workers Complaints and Disciplinary Tribunal relating to managers and supervisors of social workers, but noted "the section is somewhat opaque and it is not possible to state with any certainty the approach that a court would take in interpreting it." There is concern from some individuals and employers that registered social workers face difficulties "opting out" after making career changes to roles that are not social work roles but may include tasks and skills common to social work.
- **Ideological objections:** some social workers refuse to register as a matter of personal and political principle. There are also reports of individuals who are clear they will not register until they have to.

Options for the registration system

81 We have identified and investigated four options:

- 1) No change to the Status Quo
- 2) Non regulatory change
- 3) Legislative “tidy up” but no change to the coverage of the regulatory regime
- 4) Extension of the coverage of the regulatory regime.

Option 1: No change to the Status Quo

82 As detailed above, the Status Quo is not meeting the immediate objective of registering all practising social workers. Nor is it meeting the underlying objectives of increasing the professionalism of the social work workforce in order to increase public confidence in the profession and protect the public from harm, or contribute to the Government’s goals for the social investment approach.

Option 2: Non regulatory change

83 There are various non-regulatory initiatives that meet the immediate objective of bringing more social workers under the registration regime, and address the underlying concerns of improving the quality of social work in New Zealand. The following are grouped into initiatives that are within the mandate of the Board, and things that can be done by government, as a major employer and funder of social work services. All of these approaches are underway to varying extents, either as part of normal business-as-usual by the Board and various government agencies, or are being substantially reformed in the case of CYF moving to become the Ministry for Vulnerable Children, Oranga Tamariki.

Actions by the Board

- Active marketing by the Board to promote themselves to non-registered social workers.
- Increased information and promotion to the public and clients about standards to be expected and ways to complain.
- Investigating and promoting the quality of training to improve the skills and knowledge social workers gain from their initial qualifications and from on-going continuing professional development (government also has a role here via the Tertiary Education Commission and the Ministry of Education who fund and monitor tertiary training).
- Investigating and promoting training pathways for social workers with fewer qualifications.

Actions by the Government as employer and funder of social services

- Increased information and promotion to the public and clients about standards to be expected and ways to complain.
- Additional specification by Government about the standards it requires of social workers working in Government agencies.
- Ensuring the requirements in Government contracts for registered social workers.
- Reviewing the working conditions for social workers, eg raising salary levels for better qualified and registered social workers, and ensuring appropriate supervision and caseloads.

- Several other initiatives are also addressing workforce capability, for example Family Violence initiatives and Children’s Action Plans.

84 All of these initiatives will be positive steps in meeting the primary objective of improving the skill and quality of the profession, to varying degrees, but they would be complementary to a mandatory regime rather than alternatives. Some of these options would be easier to implement or enforce under a mandatory regime.

85 None of these options would improve the functioning of the SWR Act. Trying to manage and improve the quality of social workers operating outside the registration regime would continue to be more difficult than under a mandatory regime. This is particularly the case for small NGOs for whom the registration system fulfils the roles of certification and ongoing assurance that larger employers could potentially undertake for themselves. The fact that all government agencies, and the largest NGOs, have policies that support or require social workers to be registered – and all have a majority of their social workers registered - shows that the sector/industry accepts registration as being of value.

Option 3: Legislative “tidy up” but no change to the coverage of the regulatory regime

86 This option would entail implementing the Select Committee’s recommendations, except for the shift from voluntary system to a mandatory regime (these recommendations are described in detail below). It would entail minor legislative change, and is expected to improve the cost-effectiveness of the functioning of the SWR Act which could be expected to reduce the costs of registration. It might also provide a boost to the voluntary uptake of registration, given reduced costs and a less cumbersome system of competency assessment.

87 This option would also go some way to achieving the subsidiary objective of improving the functioning of the SWR Act, but does not address the undermining of its effectiveness because social workers could still continue to practice outside the regime. It is possible that the improvement gains may not be worth the cost of legislative change. It would certainly be regarded as a missed opportunity by the sector. It also does not resolve the disconnect between the public perception of all persons claiming to be social workers as certified professionals and the reality, that any person can practice as a “social worker” at present.

Option 4: Extension of the coverage of the regulatory regime

88 Under Option 4 we have considered three levels of regulation which would progressively extend the current regime. These are linked to levels three to five of the Policy Framework for Occupational Regulation (the Policy Framework) [Cabinet Office Circular (99) 6 refers] which sets the following five levels of statutory occupational regulation:

- 1) *Disclosure:* Providers of a service are required to disclose specified information to prospective users of the service
- 2) *Registration:* There are no restrictions to entry to the occupation apart from the requirement to be on the register if a person wishes to enter, or continue to practise, a particular occupation
- 3) *Certification:* an agency is given the power to legally certify that certain people are competent and professional practitioners of a given profession, having satisfied particular requirements that indicate their competence in a particular field. Certified practitioners have an exclusive right to use a protected title – non-certified people can still practice in the field but may not call themselves by that title

- 4) *Licensing tasks*: This involves enacting legislation to grant an exclusive right to perform certain tasks to defined groups of people, such as statutory social work tasks
- 5) *Licensing workers in an occupation*: This regime explicitly prohibits all but licensed persons from offering certain services, and practicing in the specified field.

Extension to Level Three: Certification and title protection

- 89 This change would move to title protection of the wider title "social worker", rather than the present protection of "registered social worker". This is primarily the same level of regulation that applies to health practitioners who are registered under the Health Practitioners Competence Assurance Act 2003 (HPCA Act). Only they are able to use the titles protected by the HPCA Act eg "Nurse" or claim to be practising a profession that is regulated by the HPCA Act. However, any non-registered person may carry out those activities as long as they do not use the protected titles. Once registered, a registered health practitioner must operate within an approved scope of practice. Scopes of practice are not specifically outlined in the Cabinet framework, but developing them allows the regulating authority to develop more detailed requirements for specialist practitioners, and to stop practitioners working in a field they are not qualified in eg a neurosurgeon practicing cardiothoracic surgery.
- 90 Making such a change to the SWR Act would be expected to bring in most of the estimated 2,000 currently practicing social workers who are choosing not to register. (At least 1,200 are thought to be immediately able to meet current registration requirements, and there are ways forward for most others.) The primary mechanism would be the requirement arising from current job titles and contracts, as well as any statutory references to "social workers". The only people who could call themselves social workers, or undertake a role with the job title "social worker", would be people who were registered with the Board. It would be an offence to represent oneself as a social worker unless registered with the Board. No legislative definition of the term "social work" would be required, but the Board could establish scopes of practice which allow for specialised social work roles with different training requirements eg for child and family social workers.
- 91 An immediate efficiency gain would occur for the Board in terms of economies of scale, allowing for lower costs for currently registered individual social workers or their employers where they cover employees professional fees. This would be an equity improvement in that the costs of administering the regime would be shared across all social workers, with no more free-riding by social workers or their employers using the term "registrable" as a proxy, without actually being registered.
- 92 This change would lead to an increase in the standing of the profession, and an improvement in transparency, given it would be clear that anyone calling themselves a social worker had actually met certain standards and was subject to professional disciplines. This would accord with public understanding – currently members of the public are unlikely to realise the distinction between a social worker, and a registered social worker, and may well assume that any "social worker" is a properly qualified professional.
- 93 Current social workers who were still unwilling to register could lose their livelihoods. They may choose to respond by changing their title eg to community worker, and likewise employers may choose to change job titles to retain non-registered staff. Some social workers and employers might also do this in order to avoid the costs of registration, but indications from the sector (based on submissions made to the Select Committee) are that employers and social workers

want to become part of the proposed regime but would need financial support from government to do that. In the case of the many NGOs with government contracts they are likely to seek to add the extra cost to their existing contracts

- 94 There is a possible risk of unfair loss of livelihood for currently competent but unqualified social workers – this possibility can be covered by appropriate transitional provisions discussed below under the heading of “Experience based pathways to Registration”. Under such a regime it is also important to ensure that entry to the profession is not unreasonably restricted: strategies to address this possibility are also discussed below.
- 95 The effectiveness of this regime would depend on the specification of a requirement for a “social worker” in job titles, contracts or in tasks specified in legislation or regulations. It is on this basis that we expect that this option would achieve the immediate objective of ensuring that all current practicing social workers would have to become registered.
- 96 This is our preferred option for regulatory reform.

Extension to Level Four: Task Licencing

- 97 The major concern with simply extending title protection to “social worker” is whether it goes far enough. While it offers a substantial improvement in clarity on the question of who is a social worker, it does not specify what particular tasks should be undertaken by a social worker (outside of specific provisions in other statutes), which was something the Select Committee supported.
- 98 A move to the level of Task Licencing requires specification of what constitutes social work tasks, and excludes anyone other than Social Workers being allowed to undertake those tasks. Professions which use this approach by means of specified tasks include Electricians, and Plumbers.
- 99 Public protection for any particularly high risk activity can be addressed under such a regime, by having certain tasks deemed as “restricted activities”. Under the HPCA Act these restricted activities may only be carried out by specified health practitioners who specifically have those tasks identified within their scopes of practice. No unregistered person or registered person who does not have that activity included within their scope of practice may carry out these tasks.
- 100 The title “social worker” is already used in in other legislation which specifically defines tasks for “social workers”. For example: the Contraception, Sterilisation, and Abortion Act 1977; the Victims’ Rights Act 2002; the Family Proceedings Act 1980; and the Adoption Act 1955. If left unamended, these statutory references would become “restricted activities” which could only be undertaken by a social worker, and thereby operate as a form of task licencing. These references will each need to be assessed by the government agencies which administer these Acts.

The challenge of defining Social Work and Social Workers

- 101 Social work and social work tasks are particularly difficult to define in an exclusive way. In 2014, the two bodies representing international social work - the International Federation of Social Workers (IFSW) and the International Association of Schools of Social Work (IASSW) - agreed the following global definition:

Social work is a practice-based profession and an academic discipline that promotes social change and development, social cohesion, and the empowerment and liberation of people. Principles of social justice, human rights, collective responsibility and respect for diversities are central to social

work. Underpinned by theories of social work, social sciences, humanities and indigenous knowledge, social work engages people and structures to address life challenges and enhance wellbeing.¹⁹

- 102 The same report also concludes "It is particularly difficult to distinguish social work from related professions in terms of task. Definitions of social work are contested and evolving; while the tasks that social workers undertake vary across different countries and different types of welfare regime."²⁰ Other professions, for example nursing and various health professionals, which use the task licencing approach are generally able to more clearly define their reserved tasks. An example under regulations made under the HPCA Act is "surgical or operative procedures below the gingival margin or the surface of the skin, mucous membranes or teeth", which provides a boundary between non-invasive cosmetic treatments, and those which can only be undertaken by an appropriately registered person. Finding equivalent clear boundaries that distinguish social work tasks from related professional tasks is difficult on a generic basis. We therefore have concerns with taking a broad approach to task licencing for social work.
- 103 Particular concerns about broader, more generic task licencing, arise from legal advice about recent changes made to the Children, Young Persons, and their Families Act 1989 (CYPF Act). The CYPF Act now allows the Chief Executive of MVCOT (CE) to delegate most of the functions and powers previously performed by social workers under the CYPF Act to a broader range of appropriately qualified professionals, both inside and outside the state sector. These delegations are likely to be to particular roles in organisations, not to named individuals or organisations. Amendments to the CYPF Act are intended to enable flexibility for a multi-disciplinary approach to child protection work and decision-making, and to allow the new Ministry to deliver services via strategic partners rather than its own direct employees. The changes were recommended by the Expert Panel that reviewed CYF, and are designed to enable a broader range of professionals to perform a wider set of functions under the CYPF Act to help identify and meet the needs of vulnerable children and young people.
- 104 Moves towards broader task licencing in the SWR Act would run counter to these changes. Many of the statutory functions previously vested in CYF social workers, are not specific to social work, and conversely many functions currently performed by MVCOT social workers are not currently limited to social workers for example, writing plans and reports for the court and acting on behalf of the CE as the person who has care of a child or young person.
- 105 It is intended that social workers will continue to make up a key part of the workforce for vulnerable children, but the functions that may be delegated to other professionals under the CYPF Act include receiving reports of concerns, initiating investigations and applying for warrants to remove children. The CYPF Act had already allowed for a CYF social worker to arrange for another person to undertake an investigation.
- 106 We anticipate this problem will be a wider issue than the immediate issue for the Ministry for Vulnerable Children, Oranga Tamariki. Multidisciplinary approaches are increasingly seen as more effective for complex personal, family and community situations where social work practice is undertaken, and commonly used in the health and education sectors. A generic legal specification based on tasks could cause significant problems, in that it could inadvertently restrict the practice of other professions providing services to vulnerable clients in a social services or

¹⁹ Jo Moriarty, Mary Baginsky and Jill Manthorpe *Literature Review of roles and issues within the social work profession in England* (Professional Standards Authority UK, March 2015), page 4.

²⁰ Ibid, page 3.

health context. Allowing employers and operational policy managers to specify where social workers are required will facilitate collaborative approaches.

- 107 Task based specification on a generic, statutory basis could result in people currently working in related areas being shut out because their work overlaps too much with tasks defined as Social Work Tasks (for example probation officers or Whanau Ora navigators). It could also result in having to use social workers, at greater cost, for tasks that could be undertaken by less specialised staff.
- 108 In the context of a regime of certification and title protection for social workers (as described above as *Extension to Level 3*), employers and funding agencies could implement their own form of task licencing by specifying "social worker" in job titles and contracts. They will be able to precisely identify where social workers are needed, and to enforce this via their employment and contracting policies.
- 109 A move to task licencing is not expected to add significantly greater costs than mandatory certification.
- 110 We do not recommend this approach for regulatory reform.

Extension to Level Five: Licencing of Occupation

- 111 Occupational licencing is the most restrictive form of occupational regulation. This is the type of regime applying to teachers and real estate agents. For social work, it would mean that only social workers were able to practise social work. Although the Select Committee Inquiry did not describe its recommendations in the terms of the policy framework used in this RIS, it recommended that "Government permit only registered social workers to practise social work, as defined in a legislative instrument". This is occupational licencing in terms of the policy framework.
- 112 The difficulties described above with regard to task licencing would be greater under this option because implementing a definition of "social work" in generic, statutory terms would introduce ambiguity and likely overreach. Additionally, the definition would have to be put into the SWR Act; it is not appropriate to delegate the power to define social work to the Board or another regulatory authority as this would contravene fundamental legal norms about the role of Parliament.
- 113 For the purposes of occupational regulation, teachers are people who hold "teaching positions" (positions involving instructing students in the general education system, as defined by the Education Act 1964). Requirements to register as teachers and be certificated prior to employment apply only to teaching positions. This is an example of an occupation being defined by the employer as well as the role. Similarly, real estate agents are people, not being certificated lawyers or conveyancers, who work in trade for the purpose of effecting any of a specific list of transaction types listed in the Real Estate Agents Act 2008. This is an example of a clearly delineated role that is defined by use of well-established legal terms.
- 114 Social work is like neither of these occupations. It is a contestable field whose outer edges are hard to define, like teaching, but without an obvious way to limit the application of the regulatory regime (for example, by selecting on basis of the employer). Social work, in addition to being ill-defined, is spread widely across government and non-government employers and across sectors like health, education, and justice. On this basis, it is not possible to propose a workable definition of social work for the purposes of occupational licencing.
- 115 Lastly, this approach is out of step with the regulatory settings that apply to health professions, which have been identified as the most appropriate general comparator

for social work. Health professions are regulated by a combination of certification (level three) and task licensing (level four).

Summary and Conclusion about registration options

| Options | Increase registration | Professionalism | Public Safety | Effectiveness | Efficiency | Equity | Transparency | Clarity | Institutional |
|--|-----------------------|-----------------|---------------|---------------|------------|--------|--------------|---------|---------------|
| <i>Option 1: No change to Status Quo</i> | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| <i>Option 2: Non regulatory change</i> | | | | | | 0 | | 0 | |
| <i>Option 3: Legislative "tidy up"</i> | | 0 | 0 | 0 | | 0 | | | |
| <i>Option 4: Level three Certification</i> | | | | | | | | | |
| <i>Option 4: Level four Task Licencing</i> | | | | | | 0 | | | |
| <i>Option 4: Level five Occupational Licencing</i> | | | 0 | 0 | | | 0 | | |

[--] = Much worse [-] = Worse [0] = Neutral [+] = Better [++] = Much Better

116 Level three certification (highlighted in yellow) is the preferred option because it will avoid inadvertently affecting related occupations (for example school guidance counsellors, probation officers and Whanau Ora navigators) by protecting the title "social worker". This will mean that for areas where there are various occupations that are closely related to social work, it will be for employers (or contracting agencies) to make the call as to whether they will require employees to hold the title "social worker". We think that this approach is preferable to imposing registration requirements for types of tasks, which would reduce clarity and efficiency in the multidisciplinary environment where social workers practice. It does allow for the reservation of certain tasks where these can specified in legislation or contracts, venturing into level four, but in a very precise way. A registration regime also allows for the development of scopes of practice covering specialist practice. The implementation phase should support employers to make good decisions about whether and where they require a "social worker".

117 As illustrated in the summary table, options 2 and 3 both offer gains across many objectives. Amongst the non-regulatory options are various current initiatives which are expected to make a real difference in effectiveness. The quality of training seems to be an area of particular concern, along with working conditions. Nevertheless, making the registration regime work effectively and equitably will make a distinct and important contribution, particularly in ensuring that deregistration will be an effective sanction and that the public will be protected from social workers who have been found to be incompetent or unfit to practice.

118 The benefits of Level three certification can be gained without the risks by the specification of restricted tasks. Level five, occupational licencing, offers few gains and many disadvantages. It is likely to be highly disruptive within the sectors in which social workers operate. Legislating that only social workers can do social work when the field of social work cannot be clearly defined risks reducing effectiveness and public safety by fencing off areas of work which cannot be the exclusive practice of social workers. Effort is best directed to ensuring all workers in the social services sectors are properly qualified and competent in their field of practice, and subject to oversight and accountability mechanisms that protect the public. Trying to licence "social work" as an occupation runs the risk of effort going into professional patch protection and boundary disputes rather than multidisciplinary and collaborative practice.

Anticipated effect of shift to mandatory certification on current reasons for not being registered

119 Returning to the reasons identified above for not being registered, we anticipate the follow effects from the recommended shift to mandatory certification:

| | |
|--|--|
| Avoiding accountability | This reason will rightly cease to be an option. In addition, changes set out in Part Two below will ensure the accountability system will function more effectively and transparently. |
| Inability or unwillingness to undertake training | Unregistered social workers with insufficient qualifications will need to proceed with a s.13 application, or gain provisional registration while undertaking the necessary training (as provided for in s.10 of the SWR Act). People not willing or able may choose to retire or change job titles and some responsibilities. |
| Lack of benefit from registration | Social workers will no longer be able to be employed as social workers without being registered, so there will not be a sense of disadvantage from registration. The Board will be better placed to provide a positive lead for the profession rather than the current focus on compliance. |
| Cost | The Board have estimated that fees will be able to be reduced by 30% because of economies of scale. Newly registered social workers may look to their employers to cover their costs. In the case of NGOs with government contracts this may become a matter of negotiation with government. |
| Length of process | Changes recommended in Part Two below will reduce the complexity compliance costs of the assessment of competency |
| Difficulty in "opting out" | The recommended changes to the registration system provide the opportunity to clarify the intent that the requirement for registration and a practising certificate arises only if the job title or statutory position title is "social worker", or if a person is claiming to be a social worker, or if a person is undertaking "restricted tasks" that can only be undertaken by a social worker |
| Ideological objections | Those who have been waiting for legal compulsion will register, and others will have to reassess their stance in the light of the new regime. |

Part Two: Amendments to the Social Workers Registration Act to increase effectiveness and transparency

120 The proposals outlined in this section can be progressed in conjunction with a change to the registration regime or on their own in order to improve the effectiveness and efficiency of the SWR Act. These proposals are likely to have negligible cost impact.

Regulation of the Board

121 The Board is a self-funding Crown entity established under the SWR Act. It comprises of ten members appointed by the Responsible Minister (the Minister for Social Development) under the Crown Entities Act 2004. Before making an appointment the Minister must consult with organisations and individuals that, in the Minister's opinion, represent various sectors of the social work profession. As a Crown entity the Board is accountable to the Minister and must report regularly to Parliament. It is subject to the Official Information Act 1982, Crown entity planning and budgeting requirements (preparation of Statement of Intent, Government budgetary processes), and is audited by the Office of the Auditor General. Its actions are also subject to judicial review.

122 The Board has considerable power over social workers who have chosen to register. This will significantly increase with mandatory registration so there must be adequate checks and balances to ensure the Board is accountable to the public and the private social work sector, and is effective and efficient.

123 In most instances, the recommendations with respect to specific amendments proposed below include an assessment of whether there are appropriate checks and balances eg does the recommended approach enable judicial review of decisions?; is the threshold for a sanction at the right level? However we have identified two distinct areas where we recommend some higher level change to maintain an overall sense of transparency and appropriate checks and balances.

Board membership

124 Mandatory registration of social workers will constrain the flexibility that employers of social workers have had in making appointments, and will affect aspects of their employees' working conditions (eg continuing professional development requirements). We therefore recommend that the criteria for appointment to the Board be amended to explicitly include someone who can represent the interests of employers of social workers.

125 Additionally, we note the reorganisation of CYF into the Ministry for Vulnerable Children, Oranga Tamariki means that the new Ministry could be represented on the Board. This has not been possible while responsibility for care and protection social work fell within MSD, because its position as administrator of the SWR Act was justifiably seen as presenting a conflict of interest.

126 Reduction of the size of the Board from ten to seven members has been proposed – this reflects good governance principles.

Introduction of qualification principles

127 A risk which can occur with occupational regulation is that of "over-credentialing" - setting too high an entry level which unnecessarily restricts entry to a profession. Currently the Board's practice is to consult widely before setting the qualification

criteria for registration, but a shift to mandatory registration may give rise to concerns about over-credentialing or lack of transparency.

- 128 The HPCA Act provides a possible model to address such concerns. It has three key principles to govern prescription of qualifications. Prescribed qualifications must: be necessary to protect members of the public; not unnecessarily restrict the registration of persons as health practitioners; and not impose undue costs on practitioners or the public. These principles would be intended to guide the exercise of the Board's discretion and ensure a full range of factors relevant to the sector were taken into account.

Experience based pathway to registration (Section 13)

Status quo

- 129 Section 13 of the SWR Act provides an experience-based pathway to registration for social workers who are competent and fit to practice social work but who do not have a qualification which is recognised by the Board. An applicant is required to show their experience is "enough to compensate" for the lack of an acceptable qualification.²¹
- 130 In 2003, section 13 was intended reduce the risk of serious workforce disruption, particularly for Child, Youth and Family and some Crown entities such as district health boards and schools. It provided a pathway to registration for practising social workers who were sufficiently competent based on experience but who could not reasonably be expected to undertake formal training to gain qualifications. (Other sections of the SWR Act allow provisional registration for practising social workers who are in the process of completing social work qualifications.)
- 131 One hundred and twenty-four people have been registered under section 13 since 2003. Although the Board considers applicants on a case-by-case basis, it generally expects applicants to have been practising since before 2003 to be considered eligible, on the basis that section 13 is a grand-parenting provision. The Board policy reflects an expectation that anyone who began practising after 2003 should hold appropriate qualifications. Assessment of experience has also been rigorous to ensure applicants do have the necessary depth and breadth of skills.
- 132 In order to reflect the growing expectation that social workers be professionally qualified, the Select Committee recommended the repeal of section 13 with a one year transition period. Officials have also considered whether an alternative grand-parenting provision designed to address unique issues facing the NGO sector, for up to two years, would be useful to minimise workforce disruption. Neither option is intended to affect the validity of registrations on the basis of section 13.
- 133 A transitional period of two years is recommended to allow for those social workers currently eligible to register under section 13. Up to 100 practising social workers are known to be preparing section 13 applications, and we have estimated there may be up to 230 others eligible for section 13 registration who have not commenced the process, particularly in the NGO sector.

²¹ "Enough" practical experience is defined in policy set by the Board and includes, for example, the length and quality of work experience; see Policy Statement: *Criteria for section 13 registration- enough practical experience without a recognised social work qualification*, <http://www.swrb.govt.nz/policy>.

Repealing section 13

- 134 Repealing section 13 with a transitional effect will reflect the expectation of increasing skill levels for the social work profession over time, while allowing registration for the remaining group of experienced and competent older practitioners for whom significant further education might be unrealistic.
- 135 A possible risk of repealing section 13 is that there will be no further route to registration based on experience alone. Section 13 was primarily intended to help transition government social workers practising in 2003 and it may not have been the best means of transitioning NGO workers, due to the more specialist focus of some non-government agencies. Additionally, some concern remains that there may be a small number of practising social workers in the government and NGO sectors who have high levels of specialised competence but who do not meet the criteria for section 13 because they have insufficient breadth of experience. This may result in an unnecessary loss to the workforce and an unfair loss of livelihood for those individuals.
- 136 Although the magnitude of this risk is hard to assess it would crystallise under a mandatory regime. We have considered whether there is need for a newly targeted set of criteria, which would expire after the appropriate period. However we expect this concern could be met by existing powers the Board has to register social workers with restrictions on their area of practice where they have specialist rather than broad experience.

Recognition of prior learning

- 137 While the current experience-based pathway to registration under Section 13 of the Act is to be phased out, opportunities should remain for people to gain credit towards the required academic qualifications through recognition of prior learning in their professional practice. This will help ensure that people currently working in roles that will require registration, but who do not meet the SWRB's proposed qualification requirements, have sufficiently flexible pathways to registration.
- 138 The Ministry for Social Development and the Social Workers Registration Board will work closely with the NZ Qualifications Authority, Tertiary Education Providers, and the Tertiary Education Commission as appropriate, to ensure that the Board's registration requirements take account of applicants' prior learning and provide flexible learning opportunities. The opportunity provided by section 10 to continue working while studying to complete the required qualifications will also ease the transition to a more highly qualified workforce.

Competence requirements

Status quo

- 139 Social workers must be competent in terms of Part 3 of the SWR Act in order to be registered or issued an annual practising certificate. Specified competences include an ability to work with different ethnic and cultural groups in New Zealand, and with Māori. In the case of applicants with overseas qualifications the Board must also be satisfied that the applicant "can speak and write English reasonably effectively, and understand spoken and written English reasonably well."
- 140 The content of competence assessments is determined by the Board. It has discretion to accept assessments from other providers as part of competence recertification programmes, and has done so for competence assessments offered by the Aotearoa New Zealand Association of Social Workers. Currently there are ten Core Competence Standards that the Board uses for the purposes of assessing

competence. The Board has been working with the Ministry for Vulnerable Children, Oranga Tamariki to incorporate its shared core competency framework into the Board's core competencies. Once completed, the Board will also work with the Ministry of Justice on the addition of new competencies in relation to family and sexual violence. Māori principles of kaitiakitanga can contribute to the assessment of competency, and have already been included in Board's core competencies.

- 141 The SWR Act requires competence to be assessed at registration (unless an applicant has graduated a social work degree within the past two years, in which case at the end of that period), and every five years. It is a general condition of annual practising certificates that social workers also complete 20 hours of continuing professional development per year. The Board is also entitled to review competence at any time on its own initiative.
- 142 The current statutory process of recertification is expensive for the Board and practitioners and more burdensome than comparable professions. It is also not necessarily timely – five years between assessments is a long period.

Streamlining competence assessments

- 143 Officials have considered the recommendations made by the Select Committee and concluded that the costs imposed by the five-year recertification process are not cost-effective. Although incompetent social work can pose appreciable risk of serious harm to clients, it would be more efficient to streamline competence assurance processes by assuming competence of practitioners until the contrary is alleged. It is intended that this would be backed up by a system of continuing professional development enforced by periodic audits of training logs. This will provide more responsive and timely oversight of social workers.
- 144 Officials recommend the requirements to recertify social workers every five years and to assess initial competency of New Zealand-educated social work graduates be removed. For each pathway to registration the Board conducts quality assurance of qualifications or, if under section 13, on-the-job experience. To also require competence assessments of new graduates from these programmes is effectively assessing their competence twice. This is inefficient. The Board already has the power to withdraw recognition of academic programs that produce graduates who consistently do not meet competence expectations. Additionally, assessing competence at registration is out of step with other professional regimes which focus on training received and generally assume initial competence on registration.
- 145 Although the Board will retain the power to review competency at any time, only overseas-educated graduates and persons about whom concerns have been raised—for example, through the complaints process—will be subject to the currently applicable competence assessment process.
- 146 In particular, it is not intended to raise any additional barrier to overseas-trained social workers, who are at the required standards of professionalism, from practising in New Zealand. Proposals relating to competence are not intended to affect the process by which foreign-trained social workers register.
- 147 Making the Board's power to require social workers to carry out continuing professional development and to demonstrate its on-going relevance to their practice more explicit in the SWR Act will improve the clarity and effectiveness of the regulatory regime.
- 148 This package of amendments will better align the competence assurance processes with those of other professions, and reflects a move from periodic competency review to continuous development of competency. It improves effectiveness of the

current system by encouraging social workers to pay attention to emerging trends and best practice. It is also likely to be more efficient and cheaper for both the Board and applicants.

Fit and proper person to practise

Status quo

- 149 A person may not be registered to practice social work unless the Board is satisfied they are a fit and proper person to practice social work. Currently, the only ground for finding an applicant unfit to practice social work is if, and only if, the Board is satisfied there are grounds on which a reasonable person would conclude the applicant was not a fit and proper person to practise social work. An applicant for registration must be declined registration if the Board considers them to be unfit.
- 150 The SWR Act provides some examples of reasonable grounds: a conviction for an offence punishable by three months or more imprisonment which reflects adversely on fitness to practice; inability to perform social work functions; or that the subject is not of good character and reputation. However, the power to consider somebody as being unfit to practice is highly discretionary, and out of step with other occupational legislation. The transparency and clarity of the legislation would be improved by more explicit criteria.
- 151 Fitness to practice social work is assessed at registration. The Board must also assess fitness to practice if directed to by a complaints assessment committee and may assess fitness if, at the point of applying for an annual practising certificate, the Registrar suspects on reasonable grounds that an applicant is not fit to practice social work.
- 152 The Board has also required a satisfactory Police vet as part of the 5-year competence recertification. The status quo allows for regular periodic vetting but, for this to continue following the replacement of five-year recertification, some minor amendments will be required.
- 153 *(redacted)*
- 154 Vetting conducted for the Board as part of the registration regime are distinct from vets conducted under the Vulnerable Children Act 2014, which are intended to be conducted at the point of employment. Vetting under the Vulnerable Children Act will be required if the social worker will be employed by certain publicly funded services and their work involves regular or overnight contact with children without parent or guardians being present. Because Police will only release information relevant to the role being vetted for, a new vet may be required for each new role. Therefore, there is good reason to keep these checks separate.

Clarifying fitness to practice

- 155 The definition of fitness to practice should be amended in order to adopt an approach analogous to the HPCA Act. It is proposed to adopt criteria similar to those outlined in that Act. This would mean that a person could not be registered as a social worker if one of those grounds applied. Such an amendment would reflect a choice to expand the status quo without delegating the power to define fitness to practice social work. It also improves transparency of the definition by including a fuller description in primary legislation.

Assessing fitness to practice when renewing annual practising certificates

- 156 Following initial registration, and in the absence of expressed concerns, a periodic review of fitness to practice social work will still be necessary to ensure that the Board, profession and public can have confidence that social workers continue to be fit to practice. The current vehicle for periodic assessment of fitness to practice, the five-yearly competence recertification, is proposed to be removed. An obvious alternative vehicle is as part of the application for the annual practising certificate.
- 157 Assessing fitness to practice annually when issuing a practising certificate is contingent on an amendment stipulating the Board must accept a satisfactory Police vet conducted within the past three years when assessing fitness to practice for the purpose of annual practising certificates. This would not affect situations where the vet is being carried out at registration or in response to a concern about fitness to practice as raised by a complaints assessment committee. This is to avoid unnecessary inefficiencies in Police vetting practices and is in line with vetting practices that apply to teachers.

Assessing fitness to practice at will

- 158 The Select Committee recommended that the Board be allowed to assess fitness to practice on its own initiative. This was to allow the Board to be assured at any time that a social worker was of the appropriate character and trustworthiness for their role.
- 159 The ability to assess fitness to practice at will appears to be an unnecessary power. It is also inefficient because of the likely increases in Police vetting that would result, with a negligible associated increase in public safety. Fitness to practice addresses matters of probity and character, not just the absence of physical or mental conditions affecting a social worker's practice. If there is any reason for concern, the appropriate place to address concerns about fitness to practice is through the complaints process if misconduct is suspected or by using the existing power to request a medical examination if there is concern about a social worker's health and its possible impact on their practice. If no specific concerns have arisen then only a periodic review of fitness will be necessary.

Notifications of conditions affecting ability to practise social work

- 160 There is currently an exclusion from liability for persons who, in good faith only, report concerns about a social worker's ability to practice. This is a whistle-blower protection clause, distinct in function and effect from the Protected Disclosures Act 2000. Because the protection is narrow and reporting is optional, the Board has been concerned that it is ineffective in ensuring they receive information needed to protect the public.
- 161 There is no specific requirement in section 51 of the SWR Act on any class of persons to report concerns and the class of protected disclosures is restricted to concerns about a social worker's ability to perform social work functions adequately. In context, the scheme of the relevant subpart of the SWR Act suggests this notification power is aimed at mental or physical stressors which affect the social worker's role. This is too narrow to protect all types of complaints that are made to the Board about a social worker's suitability to perform social work.
- 162 There is also no requirement to report relevant concerns. Without a mandatory requirement, there is a risk that registered social workers or other interested and proximate parties will not disclose risks to the Board. Stronger information-sharing requirements would encourage a more effective regulatory approach by giving the Board more timely notice of potential problems.

- 163 Those practising other professions are subject to mandatory notification requirements. In health for example, practitioners, employers, and persons running health services are obliged to notify the relevant authority when concerned about the performance of another health practitioner due to a mental or physical condition. Employers of practitioners must report dismissals for reasons relating to competence. In education, employers of teachers are required to report dismissals of their teaching staff and complaints against teachers formerly employed by the school. Individual teachers are obliged to report qualifying convictions entered against them, in addition to the notification requirements that apply to court registrars.
- 164 Officials recommend widening the scope of protected disclosures and strengthening obligations on employers to report certain matters. This could mean, for example, ensuring that employers are required to report to the Board concerns about serious misconduct, the failure of an employee to reach required standards of competence or any competence-related dismissals. The Education Act 1989 presents a useful model for how to proceed in terms of employer obligations.
- 165 Means of enforcing these obligations must be considered. The Education Act 1989 creates a criminal offence; the HPCA Act, however, does not.
- 166 An obligation, enforceable through the disciplinary process, could also be placed on social workers to report any suspicions or beliefs, based on reasonable grounds, that another social worker cannot perform their role due to a mental or physical condition.
- 167 This change in scope is generally appropriate to reflect public expectations of the social work profession and proposed changes in the definition of fitness to practice, and would improve the clarity and transparency of the protection clause. Requiring employers to report poor behaviour and performance of social workers and placing obligations on social workers to report misconduct reflect the responsibilities and privileges of being a member of a profession. These improvements will also improve the effectiveness of the notification regime.

Complaints and disciplinary processes

Status quo and problem

- 168 The Social Workers Complaints and Disciplinary Tribunal (the Tribunal) was established under the SWR Act to administer the complaints process and to exercise disciplinary powers. The Board appoints eight members of the Tribunal and the Minister appoints one lay person. It is unusual for a regulatory body to appoint members of a disciplinary Tribunal (most members of Tribunals are appointed by a Minister or the Governor-General). It could be perceived as the Tribunal having a lack of independence from the body responsible for regulating the profession, and this risk would be more acute under a mandatory regime.
- 169 Under the SWR Act, the chair of the Tribunal is responsible for screening all complaints and must decide whether to refer it to a complaints assessment committee for further investigation, or to take no further action. A notification of a conviction (punishable by imprisonment of 3 months or longer) must be referred directly to a complaints assessment committee.
- 170 The current process is inefficient. The chair of the Tribunal cannot adequately screen a complaint based on the information provided at the initial stage. With a lack of an informed assessment, complaints can be referred to committees unnecessarily. The cost of this process ranges from \$1,500 to \$60,000, averaging around \$8,000. Referring a conviction notification directly to a committee (without

screening to assess whether it warrants a further process) is also inefficient and costly.

- 171 The Tribunal is a judicial body and should not have an inquisitorial role in screening complaints and notifications of convictions. The Board has also identified a potential conflict of interest for the chair of the Tribunal who may preside over a charge in which they have already seen prejudicial information through the screening process.
- 172 The chair of the Tribunal is responsible for appointing, dissolving and reconstituting complaints assessment committees. These committees make determinations about complaints, including whether to frame a charge and progress to the Tribunal. These committees have the power to carry out or arrange for any investigations they think necessary. These investigatory powers are vague. Clarifying this provision and strengthening the ability of committees to assess all relevant information would increase efficiencies under the complaints process, enable them to more accurately determine the appropriate course of action and prevent charges being laid before the Tribunal unnecessarily.
- 173 Relative to other professional disciplinary bodies, the options available to the complaints assessment committees and the Tribunal when determining the outcomes of investigations or hearings are limited. Expanding these options would provide these bodies with greater flexibility to resolve complaints with the most effective response.
- 174 Legislative provisions relating to the definition of professional misconduct and the Tribunal's power to cancel registration are narrow and restrict the Tribunal's ability to appropriately sanction some forms of misconduct. The definition should include conduct that has discredited or likely to discredit the profession.

Proposed amendments

- 175 The Select Committee has made recommendations for legislative reform in relation to the complaints and disciplinary process to address the problems described above. We consider that the majority of the recommendations improve efficiency and effectiveness of the complaints and disciplinary process and will support better resolution of complaints. Aligning processes with other occupational regulatory regimes will enhance the professionalism required to practise as a registered social worker.
- 176 We have considered these recommendations in relation to the objectives of the SWR Act and criteria set out in this RIS. For the complaints and disciplinary process, we have also considered additional objectives of natural justice and due process.
- 177 Recommendations and analysis are set out below.

Administering the complaints process

- 178 Select Committee recommendations:
- Assign responsibility for receiving and assessing complaints and notifications of convictions and whether to appoint a complaints assessment committee to the Board. Additionally, assign responsibility for appointing and reconstituting complaints assessment committees, to the Board.
 - Require the Board to screen notifications of criminal convictions against social workers and decide whether to refer them to a complaints assessment committee.

- 179 The Board is more informed than the Tribunal to undertake complaints screening tasks. Efficiencies will be created by the Board triaging complaints before directing them to the right process. The Board currently funds the Tribunal's operations so transferring these powers would have nil financial impact.
- 180 Transferring the complaints process administration to the Board removes a potential conflict of interest for the Tribunal and creates greater transparency in the process.
- 181 A triaging process that enables screening of complaints will help to protect social workers from unnecessary disciplinary processes in the case of unfounded complaints.

Powers of the Complaints Assessment Committees

- 182 Select Committee recommendations:
- Expand the investigative powers of complaints assessment committees to include powers to request and require documents or information to be provided to them.
 - Expand the options available to complaints assessment committees when determining the outcome of their investigations, to also include:
 - directing an apology from the social worker to the complainant
 - appointing an independent person to act as a conciliator or mediator, including in the Employment Relations Authority process
 - referring the subject matter of the complaint to the New Zealand Police
 - censuring the social worker
 - directing the social worker to undergo training, counselling, or mentoring.
- 183 Expanded powers of investigation would assist committees to perform their functions and make effective and informed assessments. It will allow more information to come to light so the committee may make a more targeted and appropriate determination. Additional powers to require information will assist the committee assess whether a charge should be laid or if some other course of action is appropriate. With respect to due process, conditions of relevancy for requesting information would need to apply, as is standard for comparable professional complaints processes. These expanded powers will not require a person to provide any information or produce any document that would be privileged in a court of law or would breach a statutory obligation (other than the Privacy Act or the Official Information Act) of secrecy or non-disclosure. The Privacy Commission has advised that they have no comment to make at this time, observing that the proposal is based on the HPCA Act and is unlikely to cause any issues.
- 184 Expanding options available to committees when determining outcomes ensures that committees can choose the most effective option for the wide range of circumstances they consider, whether that be a situation where serious harm has occurred and must be remedied, simply poor practice which the social worker can be supported to improve, or a situation where no further action is needed.

Professional misconduct

185 Select Committee recommendations:

- Widen the definition of “professional misconduct” in section 82(2) of the SWR Act to include any conduct that has brought or that is likely to bring discredit on the social work profession.
- Allow the Tribunal to cancel a social worker’s registration on any ground of discipline, including removing the threshold of “gross or severe” professional misconduct before registration can be cancelled for professional misconduct.

186 A definition of professional misconduct that includes discrediting the profession aligns with comparable professional standards and indicates the importance of trust to the public. A refined definition would align the definition with principle 9 of the social worker Code of Conduct (to maintain public trust and confidence in the social work profession), and would align with the approach taken in other professions, such as health practitioners and lawyers.

187 Cancelling the current threshold for cancelling registration would increase the power of Tribunal to cancel a social worker's registration in light of risk of harm to the public. We consider that the threshold for cancelling registration on the grounds of professional misconduct could be lowered rather than removed entirely. The Education Act 1989 contains a comparable model that will be considered during the legislative drafting process to ensure there are the appropriate checks and balances on the Tribunal's powers when it comes to cancelling registration.

188 We recommend that the Tribunal have the power to cancel a registration for other types of serious misconduct (for example, a serious conviction).

Interim suspension powers

189 Select Committee recommendation:

- Allow immediate interim suspension or conditions to be imposed by the Board on a social worker when there are reasonable grounds to believe that:
 - (a) the social worker is not competent or fit to practise social work or is not able (for example, because of a physical or mental condition) to perform adequately the functions required to practise social work satisfactorily, and
 - (b) the suspension or conditions are reasonably necessary in light of the purposes of the SWR Act.

190 The grounds proposed for interim suspension are broad and could be perceived as giving too much power to the Board. We propose that any changes generally align with provisions under the HPCA Act which specify when an interim suspension can be imposed by the regulatory body. This would ensure the Board has specific grounds to impose an immediate interim suspension when necessary, but ring-fences its application to ensure due process.

191 Select Committee recommendation:

- Remove from legislation the 10-day time limit for interim extensions.

192 An unlimited timeframe for interim suspension could be perceived as not aligned with natural justice standards to give the resolution procedure priority and respond in a timely manner. A specific timeframe will be particularly important if the Board is provided with the additional suspension powers described above. We recommend that the interim suspension period be amended to include the power to extend the length on reasonable grounds.

193 As with the HPCA Act, there will be requirements on the Board to only make an order for interim suspension if it has informed the social worker on the grounds and

given the social worker reasonable opportunity to respond and be heard on the proposed suspension.

Powers and status of the Social Workers Complaints and Disciplinary Tribunal

194 Select Committee recommendation:

- Expand the sanctions available to the Tribunal, to include powers to:
 - suspend a social worker for a period of up to three years
 - take any course of action that is available to a complaints assessment committee.

195 Increasing the sanction powers of the Tribunal provides greater flexibility in resolving complaints.

196 In addition to the Inquiry recommendations, we recommend that the power to appoint Tribunal members be transferred from the Board to the Minister. This approach is consistent with best practice for disciplinary Tribunals. A Tribunal should be independent from the regulatory body – an independent appointment process is an important signal of that.

Financial and operational implications of preferred options

197 Implementation of mandatory certification and title protection will have financial and economic implications for government, NGOs and individual social workers and prospective social workers. Ultimately most of these costs will fall back to government as the primary employer and funder of social work services, but individuals and NGOs who are not contracted to government will bear some additional costs. These additional costs will result in an increase in quality and value from social work services, but this cannot be realistically quantified. Further extension to the levels of task licencing or occupational licencing is not expected to cause significant additional financial costs but will have economic costs in terms of compliance issues and efficiency losses (over and above the shift from voluntary to mandatory certification).

198 Costs will arise in three ways:

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

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

200 Based on our earlier estimates of unregistered social workers, up to 1,200 practising social workers are likely to be tertiary qualified already. Many may already have Board recognised social work qualifications and have chosen not to register as a social worker for various reasons. However, a proportion of these tertiary qualified people may have other qualifications (such as a Bachelor of Arts in psychology, sociology, or anthropology) that may be “cross creditable” and only require completion of a reduced length social work qualification before they can

register as social workers. These people are “registrable” on the basis that they could qualify for provisional registration under section 10.²²

- 201 Around 330 are likely to be able to qualify via section 13, so will not require additional training to gain registration. However, it is possible that some of these people may elect to up-skill anyway, to formalise their knowledge and gain peer recognition.
- 202 Of the remaining 470, some may have no tertiary qualification, and will need to undertake a four year tertiary course if they want to be employed as registered social workers. For others, we simply do not know and have to presume they will require tertiary training.
- 203 Indicative cost estimates have been based on 500 full-time equivalent social work students per year who need to up-skill by taking a tertiary course of study, either for a full four years or for a reduced two year programme. Some students may choose to study part time and take longer to up-skill.
- 204 Educational costs of up to \$5 million per year are estimated in the first few years until up-skilling of the currently practising insufficiently qualified social workers is complete.²³ Options to recognise and accredit work experience and previous study toward the required qualifications may reduce costs.
- 205 On-going cost increases will arise from new registrations, annual practising certificates and continuing professional development. At present rates, an additional 2,000 registrations would give rise to a total of \$690,000 in new registration fees, and \$736,000 in annual practicing certificate fees. However the Board has estimated a 30% reduction in annual practicing certificate costs to individuals, because of economies of scale. Employers may also have to meet extra costs from staff taking time away from core social work activities for the proposed 20 hours per year of continuing professional development.

Impacts of cost increases

- 206 Increased training costs for both currently practising social workers and future social workers will fall primarily in the education sector, to tertiary training providers, student allowances and the student loan scheme. It would require additional funding or reprioritisation within the sector.
- 207 Increased annual costs will immediately be met by individual social workers, but ultimately flow to their employers. There will be a financial impact on the NGO sector, and they are likely to look to government agencies to support them financially to make this transition.
- 208 However a possible risk to NGOs arising from the proposed changes is not from the payment of the registration fee or even annual practicing certificate, but rather the increasing cost of paying for better qualified staff, including providing them with time for Continuing Professional Development. These costs, if not met, may lead to staff leaving, going to larger NGOs or government agencies who can afford to pay better rates and offer the professional support required.

²² Section 10 enables the Board to provisionally register a social worker who is working towards a recognised social work qualification and meets the other registration criteria.

²³ The Ministry of Education confirmed the basis for the cost estimates. There have recently been training capacity constraints because of a limit on the number of field placements across public and private sectors, but this is not expected to be such an issue for social work students who are already employed in the sector.

- 209 A move to mandatory registration could leave smaller NGOs having to either recruit inexperienced staff, or being unable to meet the requirement for holding government contracts (typically either MSD or DHB contracts). Some smaller NGOs may need to reassess their approach, for example they could consider whether to amalgamate with other NGOs.
- 210 There will also be some costs for government funded employers in reviewing employment contracts and contracts for services to ensure they understand the implications under the new regime, but these are unlikely to add materially to the expected cost contract renewal processes.
- 211 The overwhelming majority of social workers are women and there is currently a pay equity claim on behalf of social workers employed by the Ministry for Vulnerable Children, Oranga Tamariki. However, as the nature of the work performed will not be changed, the proposals are unlikely to have a material impact on assessing pay equity claims.

Consultation

- 212 Preparation of the RIS has been informed by reviewing the submissions made to the Select Committee as part of its inquiry. Thirty submissions were received 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).
- 213 Officials have consulted on the proposals with: the Ministry for Vulnerable Children, Oranga Tamariki; the Accident Compensation Corporation; the Departments of Corrections, and Internal Affairs; the Ministries for Pacific Peoples, and Women; the Ministries of Business Innovation and Employment, Defence, Education, Health, and Justice; the New Zealand Police; the New Zealand Qualifications Authority; Te Puni Kōkiri, the Tertiary Education Commission; the State Services Commission; and the Treasury.
- 214 The Board was also consulted during the development of the proposals.

Conclusions and recommendations

- 215 The recommended form of occupational regulation to achieve the objectives is one of mandatory certification and title protection so that only those who are registered are able to call themselves “social workers”. Under this approach, it would be an offence to represent oneself as a social worker unless registered with the Board. This will allow employing and contacting agencies to specify where and when social workers and social work skills are required, ensuring a precise form of task licencing as and where appropriate. In contrast our analysis indicates that generic task or occupational licencing would be highly disruptive to the social services sector because of the difficulties in distinctly defining social work, and run counter to the multidisciplinary environment in which most social work happens.
- 216 The amendments recommended in Part Two are expected to improve the effective functioning of the SWR Act and reducing compliance costs. They would be of value even if the recommended changes to registration are not accepted.

Implementation plan

- 217 The majority of amendments proposed in Part Two could come into effect immediately on the passing of the new legislation and will ease the transition to

mandatory social worker registration recommended in Part One. Mandatory social worker registration will be phased in over a two year period from the time the amended legislation comes into force. The Board has stated that it has the capacity to successfully handle the projected increase in registration. MSD will work with the Board to ensure the social work sector is aware of the change to mandatory registration, and provide guidance to unregistered social workers, in particular the NGO sector, on how to gain registration. This will include providing information about up-skilling and gaining a Board recognised qualification or equivalent experience.

Monitoring, evaluation and review

- 218 As described previously, the Board is subject to Crown Entity reporting requirements and publishes quarterly reports covering trends and activities (eg membership trends, Tribunal findings). MSD will work with the Board to ensure that these reports are adapted, where necessary, to monitor the impact of the proposals on the public, social workers, and social work employers.
- 219 Section 104 of the SWR Act provides for regular reviews of the SWR Act. At intervals of not more than 5 years, the Board must review the operation of the SWR Act, and its own operations. Under the current review process the Board must consider:
- the extent to which the SWR Act (and the system of voluntary registration it provides for) are achieving the purposes of protecting public safety and enhancing the professionalism of social workers
 - whether any amendments to the SWR Act are necessary or desirable.
- 220 The Board is required to report its findings to the responsible Minister, and the responsible Minister must also present a copy of the report to the House of Representatives.
- 221 This existing review process will be used by the Board to review the implementation of the recommended proposals. MSD will also monitor wider trends in the social workforce.