In Confidence

Office of the Minister for Social Development

Chair

Cabinet Social Wellbeing Committee

Social Workers Registration Legislation Bill: Additional Policy Decisions for Inclusion in a Supplementary Order Paper

# Proposal

1. This paper seeks Cabinet agreement to several policy changes to the Social Workers Registration Legislation Bill (the SWRL Bill), to be introduced via a Supplementary Order Paper (SOP).
2. The key change proposed is the insertion of provisions for social workers to practice within scopes of practice determined by the Social Workers Registration Board (the Board), modelled on the legislative framework of the Health Practitioners Competence Assurance Act 2003 (the HPCA Act).
3. Three relatively minor changes also require Cabinet approval, where I propose to introduce:
	1. an offence provision to enforce already-existing obligations of confidentiality in relation to information concerning a social worker's competence assessment
	2. a requirement for an employer to report to the Board concerns about a social worker’s competency where the employee resigns or is dismissed for reasons of competency
	3. a new power authorising the department responsible for administering the Act to require people to supply information needed to enforce offences relating to title protection.

# Executive Summary

1. Registration of social workers aims to protect the safety of the public, by providing and prescribing mechanisms to ensure that social workers are competent and fit to practise as social workers, and accountable for the ways in which they practise.
2. To that end the Social Workers Registration Act 2003 established a statutory framework for the registration of social workers in New Zealand. Though recognising the importance of a professional workforce, the registration regime was not mandatory because, at that time, it was estimated that only 20 per cent of practising social workers had the necessary level of formal educational qualifications required for registration.
3. Since then, there has been a steady increase in the proportion of social workers who have professional qualifications, and registration is now a standard expectation of all major employers and government contracts. In May 2017, Cabinet agreed to support this growing professional norm of registration by extending title protection to “social worker”. Following the passage of the SWRL Bill, any person who wishes to use names, words, titles, initials, or otherwise imply they are a social worker will be required to be registered with the Board.
4. Taking into account public submissions to the Social Services and Community Committee (the Committee) and subsequent consultation with sector representatives, I propose to make the following policy changes to the SWRL Bill to strengthen the regime by:
	1. inserting provisions, generally in line with the HPCA Act's legislative framework, for social workers to practise within scopes of practice that are determined by the Board
	2. creating a new offence to enforce already-existing obligations of confidentiality in relation to information concerning a social worker's competence assessment
	3. requiring employers of social workers to report concerns about a social worker’s competence to the Board if the employee resigns or is dismissed for reasons relating to their competence
	4. inserting a new power authorising the department responsible for administering the Act to require people to supply information necessary to enable enforcement of the offences relating to title protection.
5. If you agree, these changes will be made via a SOP to be circulated for consideration by the Committee of the Whole House. I also intend to make a number of other changes necessary to improve the operation of the SWR Act or to restructure and to recalibrate the SWR Act in a way this is more in line with the HPCA Act. I will make these changes under the authorisation Cabinet has given me to make minor or technical amendments [CAB-17-MIN-0234 recommendations 35 and 44 refer].
6. A Health Practitioners Competence Assurance Amendment Bill (the HPCAA Bill) is currently before the Health Committee, with the Health Committee's report due on 20 August 2018. In line with the policy decision that the SWR Act be more aligned with the HPCA Act [CAB-17-MIN-0234 refers], the SOP is intended to include equivalent amendments to those proposed in the HPCAA Bill.

# Background

1. In 2016, the Social Services Committee inquired into the operation of the SWR Act, concluding that legislative reform was needed to strengthen occupational regulation for social workers. The Government's response to the Inquiry acknowledged the intent of the Social Services Committee’s recommendations and accepted the case for strengthening the regulatory framework.
2. The sector has been advocating for a move to a full and comprehensive regulatory regime since 1975.

### Strengthening the regulatory regime to cover all social workers

1. In 2003, recognising the need to ensure a professional workforce, the SWR Act established a statutory basis for professional registration of social workers. This initial registration regime was voluntary because, at that time, it was estimated that only 20 per cent of practising social workers had the necessary level of qualifications. Since then there has been a steady increase in the proportion of social workers who have professional qualifications, and registration is now a growing expectation of all major employers and increasing numbers of government contracts.
2. Under the current regime, there is no certainty that serious misconduct or incompetence by an unregistered social worker will be effectively addressed. Unregistered social workers who cause serious harm can potentially continue to practice without appropriate penalty or sanction. While clients can complain to a social worker’s employer, this may not be an effective process to properly assess and respond to complaints about competence or conduct.
3. Officials estimate that as of mid-2017 there are up to 2,000 people (representing about one quarter of the social worker profession) who are unregistered but practising as social workers. The SWRL Bill is intended to ensure all practising social workers are covered by the regulatory regime, thereby increasing the professionalism and competence of the workforce, and improving protections for the public from inappropriate and harmful social work practice.
4. The SWRL Bill also makes a number of changes to increase the effectiveness and transparency of the way the SWR Act functions, based on recommendations from the Board's five-yearly reviews, as well as those from the 2016 Social Services Committee Inquiry.
5. The Bill was introduced and read for a first time in August 2017, and referred to the Committee. The Committee reported back to the House in April 2018. Most of the Committee’s proposed amendments are technical changes and will improve practical operation of the SWR Act. The Bill currently awaits a second reading in Parliament.

### Government has preferred an approach based on title protection and certification

1. In May 2017, Cabinet agreed to introduce ‘mandatory certification’ by extending and strengthening protection of the title to “social worker” [CAB-17-MIN-0234 refers]. This will require any person who wishes to call themselves a social worker, or is employed as a social worker, or who performs tasks required by law (including by contract) to be carried out by a social worker, to be certified as appropriately qualified and registered by the Board. Strengthening title protection means that employers and the public can be confident that the training and competence of any social worker has been certified by the Board, and that they are subject to on-going professional requirements and disciplinary measures.
2. Title protection is not simply about job titles, as it also prevents the use of names, words, titles, initials, or anything that implies that someone is a social worker. No person can do anything to suggest a person is practising as a social worker unless that person is registered and holds a current practising certificate.
3. A title protection approach allows for appropriately qualified individuals to continue to be registered, even if they are employed in other related occupations such as school guidance counselling or the probation service.

### Position of current social workers who have no or insufficient qualifications for registration

1. The risk of forcing or discouraging experienced and competent social workers who have insufficient formal qualifications out of the workforce was a major concern in designing the original Bill. Currently section 13 of the Act provides an experienced based pathway to registration for such people, but it is widely agreed across the sector that this pathway should come to an end, because professional qualifications should now be the professional norm. Nevertheless, there is understood to be a small but significant group of older workers (primarily in the NGO sector) who cannot be realistically expected to undertake training, but who cannot be readily replaced at this point. The previous Government therefore agreed to allow keep section for a further five years after mandatory registration comes in to force.
2. The Bill as it stands will allow such people to continue to undertake social work tasks, as long as they do not in any way claim to be a “social worker”. Unqualified people who do want to continue to call themselves social workers and practise as such, will be required to register when the mandatory registration provisions come into force.
3. The Board will, as now, be able to assess (under section 13 of the Social Workers Registration Act) whether their practical experience is sufficient to compensate for the lack of a formal social work qualification and grant registration on that basis. There is a transitional provision allowing the Board to grant limited registration while their applications under section 13 are considered. This means they could keep working while their application is being assessed, and will be under Board coverage.
4. However, the Bill provides that section 13 is repealed five years after Royal assent, reflecting the fact that appropriate qualifications will be required as the professional standard into the future. It is likely that ancillary roles will be developed for less formally qualified people, similar to enrolled nurses compared to registered nurses.

# Proposed changes

1. I propose several amendments to the SWRL Bill which require Cabinet approval, as they are outside the scope of previous Cabinet decisions [CAB-17-MIN-0234 and CAB-17-MIN-0416 refer]:
	1. inserting provisions, generally in line with the HPCA Act's legislative framework, for social workers to practice within scopes of practice that are determined by the Board
	2. creating a new offence to enforce already-existing obligations of confidentiality applying to persons assessing the competence of social workers
	3. requiring employers of social workers to report concerns about a social worker’s competence to the Board if the employee resigns or is dismissed for reasons relating to their competence
	4. inserting a new power authorising the department responsible for administering the Act to require people to supply information necessary to enable enforcement of the offences relating to title protection.
2. These proposals to strengthen the regime have primarily arisen out of public submissions in the select committee process, and subsequent consultation with sector representatives.

# Introducing scopes of practice as an alternative means to define who is practising as a social worker

1. The Bill currently inserts new section 6AAB which defines the meaning of "practising as a social worker". Taken with new section 6AAA, the Bill requires a person who is claiming to be, or to be practising as, a social worker to be registered and to hold a current annual practising certificate. This approach puts an emphasis on the profession choosing to self-identify as social workers.
2. I propose introducing scopes of practice as an alternative means of defining who is practising as a social worker, and must therefore hold an annual practising certificate. This approach is generally in line with the HPCA Act's legislative framework as it applies to scopes of practice.

### Scopes of practice are a way to define who is practising as a social worker

1. A scope of practice describes the content of practice carried out within the relevant profession. A practitioner covered by a scope may only practice in areas in which they are deemed competent, by reference to their scope. Assessment of competency in relation to the scope is made on the basis of education, training and experience. Over time, some employment situations may demand that a professional be covered by a specialist scope of practice requiring that a social worker obtain further education or training.
2. This table summarises what scopes of practice under the HPCA Act do and do not achieve:

|  |  |
| --- | --- |
| **Scopes of practice:**  | **Scopes of practice do not:** |
| Give employers, professionals and members of the public a clear picture of the skills, knowledge, professional standards and range of services they can expect of a member of a profession. This provides clarity about boundaries on what is within and outside a professional’s area of competence.  | Control or require entry into a profession.Membership of a profession is determined by registration requirements, as specified by the appropriate regulatory authority e.g. the Nursing Council or Medical Council. (This would be the Social Workers Registration Board in the case of social work.) |
| Provide a reference point for on-going competence assessment and complaints about lack of competence:Scopes of practice can be used in disciplinary actions against a professional, i.e. professional misconduct, working outside of a scope of practice etc.  | Provide a way of determining whether particular tasks belong to one profession or another. For example, a significant proportion of a medical practitioner’s role could be undertaken by a registered nurse who is operating at the top of their scope. The overlap is entirely appropriate, and is overseen by the respective regulatory authorities. |
| Provide a reference point for an employer or funder of a service when deciding what skill set and competence they need. |  |
| Provide clarity about different specialisations within a profession, and illustrate career progression pathways. A specialist scope is already being developed for social workers in the health sector. |  |

### The initial SWRL Bill did not include scopes of practice because they were assessed as not necessary to protect the public, and as presenting some regulatory risk

1. The Select Committee Inquiry recommended the Government require social workers to practise in accordance with scopes of practice developed by the Board. Following the Committee’s recommendation, scopes were considered during the early development of the Bill, but were not seen as necessary to meet the objectives of the Bill. Furthermore, the Board was in the process of developing a scope of practice already, which could have achieved many of the expected benefits without statutory recognition.
2. A key reason for not including definitions of social work in the original Bill, or allowing scopes of practice to be used as definitions, was to avoid establishing a licensing regime (meaning only social workers can do social work). Such a regime would limit unregistered people from performing tasks commonly associated with social work even if they did not hold themselves out as qualified and registered professional social workers.
3. Although a licensing regime was an option recommended by the Select Committee Inquiry, after careful consideration the previous government concluded this would not be a workable approach because of the risk of affecting related occupations such as school guidance counsellors, Whanau Ora navigators and probation officers. This decision, including its reasons, has been publicly communicated in the past and I consider it still sound. [CAB-17-MIN-0234 refers].
4. Certification and title protection of social workers (only people accepted by the Board as meeting qualification, competence, and fit and proper person standards can claim to be social workers) remains the best mechanism for identifying who should be registered because social work tasks cannot always be easily distinguished from those undertaken by related social service occupations. However, after careful consideration, I am now persuaded that provision for scopes of practice will offer some important benefits to support the certification and title protection regime, without posing the risks previously anticipated. This will mirror the approach that is well established and accepted across the health sector, and is compatible with multidisciplinary work such as that enabled by the new delegation powers in the Oranga Tamariki/Children's and Young People's Well-being Act 1989 (formerly known as the Children, Young Persons and Their Families Act 1989).

### Many submitters were concerned about an apparent ability of employers to determine who is a social worker under the Bill as introduced

1. A large number of submitters at Select Committee expressed the concern that the framing of new section 6AAB (which defined “practising as a social worker”) would effectively mean that employers determine who is and is not practising as a social worker. In particular, many submitters were concerned that employers of social workers would change job titles and descriptions in order to avoid registration.
2. I recognise that social workers and their employers have incentives to avoid registration for cost reasons, but there are several important factors that encourage registration:
* Government is the main purchaser of social worker services, either directly or through contracts with providers. The government is well positioned to limit regulatory avoidance through its own employment practices and by ensuring its contracting practice supports organisations that employ registered social workers.
* The SWRL Bill does not prevent individuals from being registered as a social worker if they have the appropriate qualifications, regardless of their formal job title, and many will wish to maintain a professional identity.
* There are strong reputational incentives to maintain registration across government and among major social service providers.
1. Other professions have similar risks but have an established professional norm of regulation. I am confident that the social work profession will, in time, evolve in a similar way.

### Including provision for scopes of practice will address sector concerns and contribute to the Bill's object of raising social worker professionalism

1. After considering the concerns of the sector, I propose adding provision to the SWRL Bill for social workers to practise within scopes of practice, using the approach adopted in the HPCA Act. Certification and title protection would remain the main regulatory mechanism but provision for scopes of practice would replace new section 6AAB (the definition of practising as a social worker).
2. Scopes of practice serve an important range of functions in regulating professions. Although a statutory basis is not vital to achieve these purposes, it ensures clarity and transparency for all stakeholders, provides a lever for ensuring the accountability of social workers. It will also add to the status of the profession, which often aligns itself with health professionals who operate within scopes that have a statutory basis.
3. The HPCA model allows for regulation around scopes of practice by notice published in the Gazette,[[1]](#footnote-1) rather than embedding them in the legislation. Including scopes of practice themselves in the legislation would be inflexible and hinder the development of specialist scopes, something that is already under discussion across the sector.
4. The HPCA model requires the regulatory authority to prescribe the qualifications required for each of the scopes of the practice it describes, by notice published in the Gazette. I propose that the Board should similarly prescribe the qualifications for its scopes of practice by notice in the Gazette.
5. The inclusion of provision for scopes and prescribed qualifications will offer some important benefits and encourage greater sector ownership of the legislation. Given the strength of feeling expressed across the sector, a careful response is required to ensure the successful implementation of the legislation is not compromised. My officials will continue to work closely with the sector representatives on the details of the SOP to ensure the objectives of the Bill are realised in practice.

### Clarifying related aspects of the registration regime to address other concerns

1. Several submitters expressed concern about when a registered person would be required to hold an annual practising certificate. One example considered at Committee was the situation of skilled volunteers who are retired social workers no longer wishing to be “practising as social workers” but who might be compelled to maintain their registration, or censured for practising without a practising certificate. I am also aware of earlier concerns that the Board has acted in an overly assertive manner when engaging with registered people who did not have annual practising certificates, some of whom had moved to related social service occupations and were arguably no longer practising social work.
2. One of the intentions of the SWRL Bill is to make it much clearer to all parties the requirements of the regime, and the circumstances and criteria that determine when enforcement action should be taken. As part of minor and technical changes, I intend to clarify a requirement that social workers who wish to leave the profession can be deregistered at their request, unless they are facing disciplinary action, or are trying to evade the regime.
3. A clearer ability to 'de-register' would also address the concerns of some social workers who wish to leave the profession and take up a different career, but could be forced to maintain social work registration if their new work has elements in common with social work. The current Board has already expressed its willingness to address these concerns, and my official will work with them to achieve the best balance of statutory requirements and discretionary policy.
4. In addition, concerns have been raised that statutory provision for scopes of practice might be used in a way that is not consistent with the Government’s intentions of allowing employers to decide on their workforce needs. As described above, following the HPCA Act model will greatly reduce this risk. Furthermore, the Board is a Crown agent and is obliged to give effect to government policy. Available mechanisms to ensure this consistency are:
	1. setting specific deliverables across the Board’s annual work programme through the annual Statement of Performance Expectations
	2. giving ministerial direction on government policy to the Board as allowed for under the Crown Entities Act 2004
	3. ensuring appointed Board members have a clear understanding of government priorities.
5. Since its establishment in 2003, successive governments have largely left it to the Board's discretion to determine the details of social worker registration policy within the framework provided by legislation. I am mindful that any actions taken to manage the Board's performance and implementation of these reforms should respect its legislative role and status. It is also important to be careful and transparent because government has conflicting interests as the major employer and funder of social workers, as well as the power to regulate the sector.

# Enforcing confidentiality of competence assessments

1. Cabinet approval is required for a minor policy change to introduce a new criminal offence, required to recalibrate the SWR Act in line with the HPCA Act.
2. People who are assessing the competence of a social worker may examine the records made or kept by that social worker for the purpose of assessing their competence. Such records are likely to contain client information and other sensitive matters and are subject to a statutory obligation of confidentiality under the SWR Act. Currently there is no specific criminal offence to enforce these obligations if they are breached.
3. I am proposing that a new offence is created on terms similar to the corresponding offence in the HPCA Act, namely that it is an offence for a person to disclose information obtained by examining records except for an authorised purpose. The offence would be punishable on conviction by a fine of not more than $2,000 (rather than the $10,000 maximun fine under the HPCA Act). This change does not affect social work practice because it relates solely to competence assessments and does not change existing obligations of client confidentiality.

# Extending the obligation on employers to report issues of competence

1. As currently drafted in the Bill, new section 38B is a mandatory requirement for employers to report to the Board a reasonable belief that a social worker is not competent to practise, after first taking reasonable steps to improve the social worker’s competency. It does not include a requirement to report to the Board where a social worker resigns or is dismissed for reasons of competence, as is the case for health practitioners. This creates the risk an employee can avoid being reported to the Board by an employer, by leaving a position.
2. I propose to extend the requirement for employers of social workers to report concerns to the Board about a social worker employee's competence to be similar. This provision is focused on issues of competence and is not intended to address matters that relate to employment disputes.
3. Though only a minor change, this extends the obligation placed on employers beyond the original Cabinet decision. As such, it requires Cabinet approval to be included in the SOP.

# Power to require information for enforcement purposes

1. Cabinet approval is also required for a new power to require people to supply information to enable enforcement of the offences relating to title protection, for example, to document claims by an unregistered person that they were a social worker.
2. The HPCA Act has powers of search and surveillance for enforcement purposes, but I consider such powers would be unnecessarily intrusive in a social work context. Instead I am recommending a narrower power based on section 11 of the Social Security Act 1964 that authorises the department responsible for administering the Act to require people to supply information or produce documents necessary for enforcement purposes, and which includes an offence provision for failure or refusal to provide any required information or document.

# Maintaining comparability with the HPCA Act 2003

1. The HPCAA Bill is currently before the Health Committee, with the report back due on 20 August 2018. In line with the policy decision that the Social Workers Registration Act be restructured and recalibrated in a way that is more in line with the HPCA Act [CAB-17-MIN-0234 refers], it is important that the SOP include equivalents to any relevant amendments to the HPCA Act proposed in the HPCAA Bill. The HPCAA Bill includes minor amendments to the HPCA Act which need to be replicated in the SWR Act for scopes of practice to work in a comparable manner.

# Minor technical and administrative changes

1. I will also use a SOP to make a number of other minor and technical changes, and changes to recalibrate the SWR Act to be more consistent with the HPCA Act, under the authorisation Cabinet has given me [CAB-17-MIN-0234 refers]. These are necessary to ensure the smooth functioning of the new registration regime.
2. Further minor amendments may be included in the SOP following feedback from the Parliamentary Counsel Office (PCO), the Board and a small sector expert group on the suitability of proposed amendments.

# Implementation

1. The Bill holds a category three priority on the 2018 Legislation Programme (to be passed in 2018 if possible). Assuming the Bill receives Royal Assent in 2018, changes to social worker registration will be implemented as follows:
* most of the Bill will enter into force immediately, including the commencement of transitional provisions, and various administrative and efficiency improvements;
* in 2020, provisions for mandatory registration (including protection of the use of the terms “social worker” and “social work”, and registration within applicable scopes of social work practice) will enter into force, after which point all practising social workers must be registered;
* in 2023, the experience-based pathway to registration (section 13) will be repealed, which will complete the legislative changes.
1. Recent consultations have not identified any need to revise these time frames.
2. Detailed cross-sector implementation planning has not yet begun but will involve input from a range of stakeholders including the Board, sector representatives and major employers. I intend to report to Cabinet on implementation issues arising later this year, including:
* information and promotion of the new requirements and timeframes to current social workers and employers, as well as training providers and current and prospective students
* funding implications for the sector, as detailed in the Financial Implications section of this paper
* enforcement capability and resourcing to investigate concerns of people claiming to be social workers when they are not registered and, where necessary, to prosecute those individuals
* any linkages with related policy work currently being scoped by the New Zealand Qualifications Authority looking at social work education and training needs, and workforce planning issues.

# Consultation

1. The following government agencies were consulted during the development of this paper: the Ministries for Children Oranga Tamariki, Pacific Peoples, and Women; the Ministries of Business, Innovation and Employment, Defence, Education, Health, and Justice; the Departments of Corrections, Internal Affairs and Prime Minister and Cabinet; New Zealand Police; the Accident Compensation Corporation; the New Zealand Qualifications Authority; Te Puni Kokiri, the Tertiary Education Commission; the State Services Commission; the Privacy Commission; and the Treasury.
2. The Board has been consulted on the contents of the Bill throughout the policy and drafting processes, and also during the Select Committee stage with approval from the Social Services and Community Committee.
3. The Select Committee received over 100 submissions from a range of agencies and individuals, including NGO employers of social workers, individual social workers, training providers, and agencies who have a mandate to advocate for social work clients. Those submissions informed the proposals in this paper.
4. In addition, officials have consulted with the "Social Work Alliance" as a cross-sector representative body, specifically in relation to the utility and design of a 'scopes of practice' approach to social worker registration. The Alliance is convened by the Board, and includes: Aotearoa New Zealand Association of Social Workers, Careerforce, Council for Social Work Education Aotearoa New Zealand, District Health Boards’ Health Social Work Leaders’ Council s, Ministry for Children/Oranga Tamariki, New Zealand Council of Christian Social Services, Social Service Providers Aotearoa, Social Workers Registration Board, Tangata Whenua Social Workers Association, and The New Zealand Public Service Association.

### Further consultation with the sector will be needed

1. I seek Cabinet agreement to Ministry of Social Development officials consulting the Board and sector on specific technical details of the SOP, to ensure the SOP will work as intended and with the confidence of the social work profession.

# Financial Implications

1. The proposals in this paper do not have additional financial implications beyond those identified for the original Bill.
2. The Regulatory Impact Statement and Cabinet paper for the original Bill concluded that costs for the whole package of changes were primarily expected to arise in three ways:
	1. a one-off transitional cost of up-skilling current social workers who will need to obtain a recognised social work qualification
	2. on-going cost increases from registration, annual practicing certificate renewals, continuing professional development and supervision for newly registered social workers
	3. increased professionalism and expectations of increasing quality may lead to pressures to increase salary levels, and contract rates, particularly in the NGO sector.
3. As detailed below, the direct costs of the change across the whole sector could be in the order of $20 million over the four years following implementation, including up-skilling costs, registration and practicing certificate costs; Board communications and infrastructure costs and professional development release costs. The most substantial cost is the most uncertain to estimate, namely the educational costs of up-skilling insufficiently qualified social workers. Indirect costs are also hard to quantify and potentially larger, but should result in quality improvements. However they will combine with and add to existing pressures on contracted NGO social services.
4. The submissions process and further consultation with stakeholders has not identified any new financial implications, or provided additional information which would significantly change the initial cost estimates, other than possible transitional costs for the Board. Most of these costs will ultimately 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.

### Details of cost estimates and impacts

1. The one-off transitional costs of up-skilling current social workers who will need to obtain a recognised social work qualification will depend very much on the number of social workers who undertake further training, and what courses they take. This could range from some final papers, a full four year degree course or a two year post graduate programme. Costs of up to $5 million per year in the first few years were estimated, based on 500 extra full-time equivalent social work students until up-skilling is complete. 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.
2. On-going costs for additional registrations, offset by the ending of current competency assessments. At present rates, an additional 2,000 registrations would give rise to a total cost of $690,000 in new registration fees, and $736,000 in annual practicing certificate fees. However, current social workers (or their employers) will benefit from the ending of the current requirement for a separate competency assessment, a saving of $255 per person on initial assessment, and $155 every five years after that. The total cost of competency assessments currently is around $230,000 per year.
3. There may be some one-off transitional costs for the Board to cover communication and implementation issues, as well as the cost of new registration database. This may be the subject of a Budget bid in 2019 (the Board currently is funded entirely by fees, and receives no separate government funding). The SWRB is undertaking a Funding Model Review in Q3 of 2018/19, including a review of their fee structure and which would inform any bid. However, in the longer term, overall cost reductions are expected because of economies of scale and the streamlining of competency assessment processes.
4. The intended effect of the changes to increase professionalism and raise quality may well lead to pressures to increase salary levels, and contract rates. Salary levels in the NGO sector are distinctly lower than for direct government employees. Additionally, employers may also have to meet extra costs from staff taking time away from core social work activities for the proposed 20 hours per year continuing professional development. These increased cost pressures were raised by a number of submissions to the Select Committee, and NGOs are likely to look to government agencies to support them financially to make this transition. This is part of the wider picture of serious funding pressures for NGOs contracted to deliver social services, which need to be considered in implementation planning.

# Legislative Implications

1. Proposals in this paper will be implemented by a SOP amending the SWRL Bill, which is currently before Parliament for its consideration. The SWRL Bill holds a category three priority on the 2018 Legislation Programme (to be passed if possible in 2018).
2. Regulations are not required to bring the SWRL Bill as amended into operation because the Bill contains fixed commencement provisions and, where relevant and appropriate, transitional provisions have fixed expiry periods. However, under a new provision in the Bill recommended by the Social Services and Community Committee, regulations may be made regulating the use of identification by social workers when dealing with members of the public.
3. The Board will be required to publish notices defining applicable scopes of social work practice and prescribed qualification in the New Zealand Gazette within two years of commencement. These notices would be disallowable instruments but not legislative instruments for the purposes of the Legislation Act 2012.

# Regulatory Impact Analysis

1. A Regulatory Impact Statement (RIS) was prepared in accordance with the relevant requirements for and considered by Cabinet when it agreed to the drafting of the Bill in 2017 [CAB-17-MIN-0234 refers]. The RIS included a risk and impact assessment of effects from the introduction of ‘mandatory certification’ as required by the Policy Framework for Occupational Regulation. The Regulatory Impact Analysis Team at the Treasury assessed the RIS as partially meeting quality assurance criteria.
2. The changes proposed within this paper have only minor effects on the original regulatory assessment. In agreement with the Treasury’s Regulatory Impact Assessment Team, supplementary material has been added to the original RIS where necessary. The Regulatory Impact Analysis Team at the Treasury assessed the supplementary information as partially meeting quality assurance criteria.

# Human Rights

1. The Ministry of Justice vetted the SWRL Bill for compliance with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. The Ministry of Justice concluded that the SWRL Bill's effects on freedom of expression and freedom from discrimination were justified in the circumstances.[[2]](#footnote-2) As such, the SWRL Bill appears to be consistent with fundamental freedoms in a free and democratic society.
2. The SOP will be vetted prior to seeking Cabinet approval for lodgement, to ensure the SWLR Bill's compliance is not undermined by proposals in this paper. No issues of compliance are anticipated at this time.

# Gender Implications

1. Nothing in this paper or the SWRL Bill has a different effect on basis of gender. However, as social workers are overwhelmingly women, moves to increase their professional status may result in better work conditions for social workers and, indirectly, an improvement in the working conditions of women.
2. A pay equity claim has been lodged on behalf of social workers employed by the Ministry for Children Oranga Tamariki. The State Services Commission has previously advised it considers mandatory registration of social workers is unlikely to materially affect pay equity claims. A change in the obligation to register does not change the nature of social work and therefore does not affect the potential comparator groups for social workers as a whole.

# Disability Perspective

1. The SWRL Bill, as amended by the proposals in this paper, is expected to respond to the needs and interests of people with disabilities who receive social work services.

# Publicity and Proactive Release

1. The SWRL Bill has been the subject of significant sector advocacy and public comment supporting a 'scopes of practice' approach to social worker registration. The proposals in this paper are a direct response to that campaign and subsequent consultation with a range of sector representatives and government agencies. It is likely there will be significant sector interest in the decision to adopt the proposals in this paper.
2. Proactive messaging about these proposals is important to ensure sector confidence in the wider SWRL Bill. Accordingly I propose to proactively release this paper (with appropriate redactions as if it were released under the Official Information Act 1982) with an accompanying press release when the SOP is tabled in the House.

# Recommendations

The Minister for Social Development recommends that the Social Wellbeing Committee:

1. **note** that in 2016 the Social Services Committee inquired into the operation of the Social Workers Registration Act 2003, concluding that legislative reform was needed to strengthen occupational regulation for social workers
2. **note** that public submissions on the Social Workers Registration Legislation Bill and social work sector representatives have strongly supported the introduction of provision for scopes of practice
3. **note** that I propose introducing a Supplementary Order Paper to make amendments to the Social Workers Registration Legislation Bill
4. **agree** to the following policy changes for inclusion in a Supplementary Order Paper to amend the Social Workers Registration Legislation Bill to:
	1. introduce provisions requiring social workers to practise within scopes of practice determined by the Social Workers Registration Board, including incidental and related provisions generally in line with the legislative framework of the Health Practitioners Competence Assurance Act 2003
	2. make it an offence to breach the confidentiality obligations of section 46 of the Social Workers Registration 2003, punishable on conviction by a fine not exceeding $2,000
	3. require that employers of social workers report to the Board if a social worker resigns or is dismissed for reasons relating to their competence
	4. empower the department responsible for administration of the Social Workers Registration Act 2003 to:
		1. require any person to provide information or produce documents necessary to enforce the offence provisions relating to title protection; and
		2. make it an offence to refuse or fail to comply with such a requirement, punishable on conviction by a fine not exceeding $2,000
5. **note** that on 15 May 2017 Cabinet agreed to a number of recommendations to the Social Workers Registration Act 2003 to make registration mandatory for practising social workers. [CAB-17-MIN-0234, recommendation 8 refers]
6. **note** that changes contained in the detail of the title protection provisions recommendation referred to in recommendation 5 above prevents the adoption of a scopes of practice approach as described in recommendation 3.1 above
7. **agree** to recommend to Cabinet that it rescinds recommendation 8 in CAB-17-MIN-0234 (which is given effect in new section 6AAB in the Bill) in order to enable provision of a scopes of practice approach
8. **note** that minor and technical changes, including changes made to recalibrate the Social Workers Registration Act 2003 to be more in line with the Health Practitioners Competence Assurance Act 2003, will be made to support drafting of the Supplementary Order Paper for the Social Workers Registration Legislation Bill
9. **invite** the Minister for Social Development to issue drafting instructions to the Parliamentary Counsel Office for the development of a Supplementary Order Paper to the Social Workers Registration Legislation Bill giving effect to the recommendations in paragraphs 2 to 7 above
10. **note** a Health Practitioners Competence Assurance Amendment Bill is currently being considered by Parliament
11. **agree** the Supplementary Order Paper can include equivalents to relevant amendments in the Health Practitioners Competence Assurance Amendment Bill
12. **agree** that the Ministry of Social Development may consult with the "Social Work Alliance" in developing drafting instructions, and drafting of the Supplementary Order Paper, for the purpose of ensuring the workability of these proposals
13. **note** that the Supplementary Order Paper to the Social Workers Registration Legislation Bill will be reviewed for a Bill of Rights Act Assessment before it is considered by Cabinet Legislation Committee
14. **note** that the Social Workers Registration Legislation Bill holds a category three priority on the 2018 Legislation Programme (to be passed if possible in 2018) [CAB-18-MIN-0174 refers]
15. **agree** to proactively publish this Cabinet paper on the Ministry of Social Development’s website following the circulation of the Supplementary Order Paper
16. **note** that the Minister for Social Development will report back to Cabinet on mechanisms for investigating and prosecuting breaches of title protection and other arising implementation issues.

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| Authorised for lodgement |
| Hon Carmel SepuloniMinister for Social Development |

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1. The HPCA Act specifies that notices of scopes of practice and prescribed qualifications are disallowable instruments for the purpose of the Legislation Act 2012. Therefore, they are regulations as defined in the Interpretation Act 1999 and are subject to review by the Regulations Review Committee of Parliament. [↑](#footnote-ref-1)
2. Freedom from discrimination because of the provision relating to 18 years olds getting special protections as witnesses; freedom from expression due to the limitations on speech around the use of the term "social worker" [↑](#footnote-ref-2)