

# **Entitlement to Registration: Criteria**

## **Fit and Proper Person**

### **A position paper**

**June 2004**

**Social Workers Registration Board  
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# Entitlement to Registration: Fit and Proper Person

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## 1. Introduction

The Social Workers Registration Act 2003 requires the Social Workers Registration Board (SWRB) to establish clear criteria for registration. Section 6 entitles a person who has a recognised NZ qualification to be registered if the Board is satisfied

- a) that his or her competence to practice social work has been found satisfactory under Part 3; and
- b) that he or she is a fit and proper person to practice social work; and
- c) that (whether because of the inclusion of an appropriate component in that qualification, or else as a result of his or her satisfactory completion of a separate course or courses of training) he or she is:
  - i) competent to practise social work with Maori; and
  - ii) competent to practise social work with different ethnic and cultural groups in New Zealand; and
- d) that he or she has enough practical experience.

This paper addresses the Board's responsibilities in respect of '*fit and proper person*' requirements under the act.

Other elements of the requirements for registration such as

- ❖ competence
  - ❖ enough practical experience
  - ❖ a recognized New Zealand qualification
- are defined in other position papers published by the Board.

There has been considerable interest in, and a range of opinion expressed to the Board on this matter. Most concern has centred on a range of certain criminal convictions such as; abuse of all kinds, domestic violence, serious alcohol and drug related incidents, protection orders, child molestation, violent offending, certain offences involving fire-arms, manslaughter or murder. Opinions and views have been expressed from throughout the profession and also in the media and in other public forums.

Similarly, the Board has received a number of comments regarding medical factors, whether psychiatric or not, that could affect a person's ability to practise social work.

## **2. Obligations of the Board**

Sections 47 and 50 of the SWR Act outline specific factors to be taken into account when considering a person's fitness to be registered..

Section 47(1) provides the grounds on which the Board may find that an applicant for registration is not a fit and proper person to practise social work, if it is satisfied that a reasonable person would conclude this.

The grounds stated in S47(2) take into account;

- conviction for an offence that is punishable by imprisonment for 3 months or more;
- inability to perform the functions of social worker;
- that a person is not of good character and reputation.

The grounds stated in S47(3) take into account

- any professional disciplinary proceedings in New Zealand or overseas,
- any licensing or registration organization investigation that may lead to the taking of disciplinary proceedings,
- any investigations being conducted by the Health and Disability Commissioner,

Section 50 requires the Board, in order to help determine whether a person is a fit and proper person to practise social work, to check with the NZ Police for criminal convictions in NZ or overseas,.

Section 51 empowers the Board to consider conditions which may affect a persons ability to practice social work.

Section 54 empowers the Board to direct that the registration of a social worker may be suspended in cases where

- a) a social worker is unable to adequately perform the functions of a social worker satisfactorily, and
- b) where there is a need to protect the health and safety of members of the public

Further, in section 82(1)(b) the act empowers the disciplinary tribunal to make a determination of 'fit and proper' on the basis that a person has been guilty of conduct that –

- i. is unbecoming of a social worker
- ii. reflects adversely on the social worker's fitness to practice as a social worker

### **3. Discussion**

The scope of this paper is to discuss the considerations associated with the 'fit and proper person' requirements that would allow the Board to proceed with registering social workers as at 1 October 2004.

It is recognised that the Disciplinary Tribunal, once it is established, will have a strong interest in these considerations. Therefore, the Board will not attempt to finalise discussion on the matter. Evolving considerations of the Tribunal, as it proceeds with its responsibilities, will provide precedents for future reference. In addition the rulings and experiences of authorities such as the Human Rights Commission, the Commissioner for Children, the Health and Disabilities Commission, the Law

Commission, the Ombudsmen Office, and the Mental Health Commission, will also serve to inform the Board.

Points at which 'fit and proper person' determinations are most likely to be made are;

- a) at the time of application S48
- b) as a result of a notification of a conviction S63
- c) as a result of a notification from any person S51(1)
- d) as a result of the board being notified of an investigation by any of the groups referred to in section 47
- e) as the outcome of an investigation by a Complaints Assessment Committee S71(1)(a)
- f) as the outcome of an investigation by the Disciplinary Tribunal S82(1)(b)
- g) at the discretion of the Board upon notification and of medical or other substantiated condition that could reasonably be expected to impede a practitioners ability to meet the responsibilities of their position S57 (2)&(3)

The Board will consider the intent of sections 100 and 101 of the act in determining the application of 'fit and proper person' criteria by taking into account any particular factors that are pertinent for Maori, Pacific Peoples, and other ethnic groups.

The SWR Act states S(47)(1) that fitness to practice requires an assessment/judgement "that there are grounds on which a reasonable person would conclude that the subject is not a fit and proper person to practise social work".

The SWR Act focuses on the factors that the Board may, or shall, take into account in determining when a social worker is not a 'fit and proper person' to be a registered social worker. The Board wishes to give some guidance towards considerations on what characteristics a 'fit and proper person' could demonstrate.

The Board is of the view that social work practitioners must be persons who possess the attributes of honesty, integrity and objectivity appropriate for the professional position they hold. The requirements for registration, together with the accepted ethical and disciplinary codes of the profession, are regulatory tools whereby the

Board controls the suitability of persons for registration and their subsequent professional behaviour. Once registered, social workers have an obligation to maintain a standard of attitude and behaviour that can be identified as appropriate to the responsibilities they have to the public, clients, colleagues, employers and the profession.

#### **4. Principles**

It is suggested that the following key principles apply when considering the application of fit and proper person requirements;

1. it is the responsibility of the Board to undertake Police checks on all applicants for registration S50
2. it is the responsibility of the applicant to demonstrate that he/she is of good character and a 'fit and proper person' to be registered.
3. the applicant is responsible for the provision of any additional information the board may require in order to make a determination on 'fit and proper'
4. that 'good character' requirements may be met by an appropriate form of attestation
5. that accumulated determinations may become 'case law' for the purposes of the Board and the Disciplinary Tribunal
6. that advanced professional/clinical expertise and advice would be sought to assist in the determination of 'reasonable' expectations in any situation of medical or any other infirmity that would impede an individual's capacity to undertake normal responsibilities

#### **5. Offences**

The Board considers that conviction for offences of the nature listed below would lead to a reasonable person concluding that a person is not a 'fit and proper' person to practice social work. S47(1)

- I. Death including manslaughter, murder.
- II. Sexual offending including pornography.
- III. Violence against a person.
- IV. Fraud.
- V. Sexual, emotional or physical abuse towards children.

VI. Serious alcohol and drug related offences.

VII. Weapons or firearms.

The Board may make further enquiries about any conviction that could include

- Judgement or sentencing notes from the court at which the applicant's case was heard.
- Summary of facts presented by the Police to the court.
- A solicitor's report of the circumstances relating to the conviction.

When considering the matter of convictions the Board will take into account the following factors:

- Nature of the crime or offence and relevance to the behavioural and attitudinal qualities expected of a member of the profession.
- Repetition of offending or evidence of disregard for the law.
- Penalty imposed by the court.
- Age of the applicant at the time of the offence.
- Period of time over which the offence took place.
- Time that has elapsed since the offence took place. A person may be considered as fit and proper if they have completed their sentence and not re-offended in the last seven years, unless the offence is of one of the listed categories.
- Extent to which, if at all, others suffered as a result of the wrongdoing.
- Likely level of culpability of the applicant.
- The level of the applicant's contrition and, if appropriate, rehabilitation since the offence.
- Likelihood of the applicant re-offending.

## **6. Health Factors**

The Board anticipates that it will, from time to time, be required to make determinations regarding fitness to practice on the grounds of medical or psychiatric conditions. It has a responsibility to ensure that appropriate advice and assessment is sought. Provisions in the act ensure the rights of individuals are protected under such circumstances.

Rather than becoming prescriptive in such situations the Board considers it will be necessary to view each situation on a case by case basis.

## **7. Consultative Group**

It is the intention of the Board to establish an Advisory Group that would be available to the Board for consultation and advice on any matter pertaining to the 'fit and proper person' status of an applicant in circumstances when this may be in doubt.

## **8. S47(1) Views of a 'Reasonable Person'**

In considering information and resource available to the Board regarding current trends or precedents, the Board intends to consult, from time to time, with the profession, public, key stakeholders, other professional groups, and Parliament, to ensure its 'fit and proper person' considerations are in keeping with acceptable and reasonable expectations, of the time, for registered social workers.

## **9. Submissions and Comments**

This paper has been circulated to key stakeholders.

The SWRB invites comment on the following:

- The nature of offences listed.
- The factors that will be taken into account when considering the offences.
- Factors that may be taken into account in relation to medical or psychiatric conditions.
- Any particular considerations for Maori, Pacific Peoples and those from other ethnic groups
- Any other aspects of fit and proper person requirements.

**Either:**

**Please post your feedback to us at**

**Social Worker Registration Board  
Kāhui Whakamana Tauwhiro  
P.O. Box 10-150,  
The Terrace,  
Wellington 10- 014**

**Or**

**Email to: [swrb@clear.net.nz](mailto:swrb@clear.net.nz)**

**Date for feedback: 16 July 2004**