

HPCA Consultation Oct 2007 – Submission from Capital & Coast DHB Regional Mental Health
Social Workers Network

Firstly we thank the Ministry of Health, Health and Disability Strategy Directorate for the opportunity to comment through this review and consultation. As Social Workers working in the field of mental health, we feel very strongly about offering some perspectives on how the current formulation of the Act has served to impede the work of competent Social Work professionals in this area. As the Act currently stands, only certain sections are directly connected with the Social Work profession and practice, and so this submission only comments in points below related to those areas.

We recognise and applaud the intent of the Act to assure all New Zealanders that the health professionals employed in these areas are competent and qualified to practice and to encourage continuous skill improvement for all health practitioners.

1. Is the Act achieving its purpose? Please explain.
2. What evidence supports your answer?
3. What, if any, comments do you have on the adequacy of evidence available about the success of the Act and any changes needed – including, for example, any reporting requirements that might ensure more open access to evidence that the Act is being effective.
4. Are the provisions in section 7 of the Act operating in a way that ensures that non-qualified persons do not claim or imply to be qualified practitioners and what, if any, changes do you recommend (note that issues around enforcing breaches are dealt with in the section titled 'Enforcement of the Act' which is set out below)?

Social Workers are currently not included in the definition of health practitioners under the HPCA Act. We understand the range of historical reasons for this related to the enactment of this and the Social Work Registration Act 2003, many of which were disputed at the time and remain contested by the Aotearoa New Zealand Association of Social Workers (ANZASW), this network of mental health social workers and individual practitioners. Many have expressed consternation and have a sense of betrayal that this

Act has effectively belittled the significant, conscientious and professional work undertaken by Social Workers in health settings for which they are more than adequately qualified. It is unfair to allege that because Social Workers are not compulsorily registered professionals or recognised under this Act that they are any less qualified to engage in psychosocial interventions for which they have trained and in which they are competent. This is the unfortunate outcome of the structure and provisions of this Act in its current form as regards social workers, particularly but not exclusively those working in the area of mental health. We suggest that this represents a significant flaw in the Act as it stands.

Legal opinion sought by the ANZASW confirmed that the current structure of the HPCA Act meant that there was a question mark regarding the legality of social workers undertaking the work for which they were employed and in which they were qualified to engage by virtue of their professional training. It is understood by this network that some Mental Health Services were considering placing competent mental health social workers under the supervision of other professionals in order that the organisation not be liable for censure under this Act. It is anathema to consider that a well established and recognised profession such as Social Work be placed under supervision by other professions in carrying out their professional duties for any reason, let alone the fact that they are not included in the definition of health professionals under this piece of legislation.

5. Are the provisions in section 8 operating effectively and what, if any, changes would you recommend?

6. Are the provisions in section 9 and the current list of restricted activities operating effectively and what, if any, changes, amendments or additions would you recommend?

We wish to register with you our strongest concern regarding the manner in which the HPCA Act in its current form unduly restricts the legitimate practice of social work in the health setting, and more specifically in the area of mental health. Psychosocial assessments and interventions are at the heart of social work training and practice and form an integral component of the scopes of practice for social workers developed internationally and currently under development in New Zealand, in health and in other areas of practice. Social workers in mental health are employed by District Health Board Mental Health Services to treat people experiencing serious mental illness utilising psychosocial interventions for which they have the competence to perform.

It is clear that the HPCA Act as it stands applies these restrictions to any person – it does not only govern the activities of registered health professionals specified in the Act. This has created specific problems in relation to health social work, and most specifically mental health social work. Social workers have historically pioneered many psychosocial interventions, and remain at the forefront of many innovative and evidence-based psychosocial interventions with people experiencing severe mental health problems and mental illness. We feel it is unfortunate that the situation at the time of the drafting of the HPCA Act has had the undesirable result that highly competent social work professionals have had their practice effectively either curtailed or inappropriate

supervision imposed due to the wording of the restricted activities segment of the Act. It seems clear that organisations who undertook these actions did so as a result of the above interpretation of the provisions of the restricted activities section of the Act. It is unacceptable to expect that social work professionals be supervised by other health professionals

It is crucial for social workers, mental health service users and their families/whanau that the Minister and the Parliament ensure a safe legal and professional environment for social workers to practice in the health care system.

7. Is the Ministry approach to enforcement of the Act in keeping with the purpose of the Act and what, if any, changes would you recommend?
8. Are scopes of practice achieving their intent? Please explain.
9. What, if any, comments do you have on the operation of the powers that registration authorities hold to allow conditions or authorisations on individuals' scopes of practice?
10. Is the process for developing scopes of practice operating well (eg, are there suitable mechanisms for ensuring scopes of practice reflect service need) and what, if any, changes would you recommend?
11. Do prescribed qualifications reflect scopes of practice? Please explain with reference to particular scopes of practice and considering whether a) the levels of qualification are too low or too high when considering their purpose of assuring public safety, and b) whether they meet the requirements of section 13.
12. With regard to their purpose of assuring the competence of registered professionals, how well are the current recertification regimes working (where possible refer to particular professions)?

13. What changes, if any, are needed to improve the evidence available to answer the previous question?

14. Where recertification arrangements are in place, what issues arise and what changes, if any, would you suggest (eg, in respect of the nature of the programmes, the level of compliance, monitoring practitioners' compliance, the costs and other impacts on practitioners employers etc)?

15. Where recertification programmes have not been introduced how do the authorities assure competence, and are there ways that these processes could be improved?

16. What would be the gains or problems associated with requiring all authorities to institute recertification programmes?

17. Registration authorities have to judge when a practitioner 'may pose a risk of harm to the public' and trigger notification: is this working effectively and what, if any, suggestions do you have to improve effectiveness?

18. Is it appropriate that authorities must notify a particular set of agencies: what changes, if any, are needed?

19. At what times, if any, other than when there is a concern of a risk of harm to the public, should a registration authority exercise its power to review the competence of a health practitioner?

20. Is voluntary reporting by practitioners of possibly unfit practitioners working, on what do you base this opinion, and, in the light of experience, what are your views on making it a requirement to report concerns about a possibly unfit practitioner?

21. Is compulsory reporting by employers of possibly unfit practitioners working, on what do you base this opinion?
22. Are the interests of the public and of practitioners being balanced when dealing with the risk of harm from practitioners who are deemed to fail to meet required standards of competence? Please explain.
23. In practice, do competence and recertification programmes differ, are both sets of provisions needed or should changes be made?
24. Should any other parties be obliged to inform the registrar of a practitioner's inability to perform their required functions because of a mental or physical condition?
25. Are the interests of the public and of practitioners being balanced when dealing with fitness to practise issues? Please explain.
26. Are protected QAAs operating in areas you are familiar with: are they valuable, are there any problems, are the reporting requirements appropriate, should there be any changes to the QAA arrangements, should QAAs continue? Please explain.
27. Are PCCs being used by the registration authorities you are familiar with, how often and for what reasons?
28. To what extent is the suspension of an annual practising certificate and referral of a practitioner to the HPDT effective in protecting the public?
29. What, if any, additional steps should be taken into account when determining to suspend an annual practising certificate?

30. What, if any, benefits or problems have arisen from having a single tribunal for all regulated professions and what, if any, changes would you recommend?
31. Is the current membership structure of the HPDT operating and are there any changes you would recommend (for example, the mix, the selection and appointment processes, training of members)?
32. Is there a need for the HPDT to have the capacity to deal with multi-practitioner/ team-based disciplinary matters and, if so, how should this be organised?
33. Are the current arrangements for financing and supporting the HPDT, appropriate and what, if any, changes would you recommend (including the costs of taking cases to the tribunal and sustaining the operation of the tribunal)?
34. Are the appeal provisions operating well and what, if any, changes would you recommend?
35. How do you think the current number and mix of professions and authorities is operating and what, if any, changes do you think should be made?
36. Are the provisions for adding new professions or health services working and what, if any, changes would you make?

As a network of mental health social workers, we urge the Minister and this review to investigate the manner in which Social Work is affected by the Act in its current form. The temporary suspension of section 9 clause (e) provided some relief to the uncertainty created by the Act for mental health social workers however we recognise that this was a temporary suspension and requires a more permanent solution. We recognise that the current non-compulsory nature of registration for social workers under the Social Work Registration Act 2003 creates some challenges regarding recognition of social workers as health professionals under this Act.

Social Work is the largest single profession within the Allied Health grouping in Mental Health Services. Social work forms a key component of Multidisciplinary Team work in mental health and supports the wholistic treatment of mental health problems. We are acutely aware of the legitimate concerns regarding the non-compulsory nature of registration for Social Work in New Zealand and the challenge this presents in the context of the function of this Act. We as a network believe there are equitable solutions that can be

reached easily to overcome this, and we would encourage this opportunity not be missed to do so.

This review of the Act provides an opportunity to address the unintended consequences created by its current form. As social workers whose core practice is psychosocial interventions whose work is located within the area of mental health, we feel that it is essential that this compromise of our work and professional integrity be removed. Further, that consultation with Social Workers in Mental Health Services nationwide and the Aotearoa New Zealand Association of Social Workers will be a crucial part of identifying equitable solutions to this untenable situation. We would propose that the HPCA Act needs to include social workers as health practitioners and cross-reference the amended Act with the Social Work Registration Board Act to legitimise and support the practice of accredited social workers in health settings.

37. Are the current membership and appointment provisions working (eg, is the size and mix right, are people with the best skills being appointed, should the power to hold elections be retained and/or used, are lay and professional members appropriately trained and supported) and what changes, if any, would you recommend?
38. What deletions, amendments or additions, if any, do you recommend to the list of functions – and why?
39. How well are authorities carrying out their functions and what changes, if any, do you recommend?
40. Are there any specific legislative requirements that regulatory authorities are currently subject to that they should not be? Please explain.
41. Are there any specific legislative requirements that regulatory authorities should be subject to that they are currently not? Please explain.
42. To what extent are the current powers of the Minister of Health appropriate to the purpose and effectiveness of the Act and what changes, if any, do you recommend?
43. What changes, if any, do you recommend to matters covered by the provisions of Part 7 of the Act?

44. What changes, if any, do you recommend to specific wording in the Act in order to clarify or address technical issues not otherwise covered already?

45. What, if any, other matters are you aware of in respect of the operation of the Act and what changes do you recommend?