

Social work and social justice: The relationship between fitness to practise and criminal convictions for non-violent activism

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ABSTRACT

INTRODUCTION: Social work as a profession is underpinned by ideas of social justice and human rights, and that social workers have an ethical obligation to uphold these ideas. Social workers have a history of engagement in non-violent social justice activism (NVSJA), and a proud record of achieving social change in Aotearoa New Zealand. However, having a criminal conviction for engaging in NVSJA can be a barrier to social work registration in Aotearoa New Zealand.

APPROACH: An exploration of current research around NVSJA and social work registration was conducted. Along with an examination of the Social Workers Registration Board's (SWRB's) *Fit and Proper Person Policy Statement*, with a consideration on the reporting of acts of NVSJA and social workers by the media.

CONCLUSION: Those who engage in NVSJA are often likely to gain criminal convictions. This creates a potential barrier for social workers who go beyond the rhetoric and fight for social justice, in a macro and practical sense, from gaining registration. This has become additionally important since the Social Workers Registration Legislation Act (2019) passed and with registration becoming mandatory two years after the Act gained royal assent. There is a need for a change to the *Fit and Proper Person Policy Statement* so that the SWRB is better able to support social workers who are standing for what social work is all about, or at least, what social work is stated to be all about.

KEYWORDS: social justice; activism; convictions; fit and proper

Promoting social justice and human rights by challenging discrimination and institutional oppression is a core aspect of the social work profession, and a core ethical responsibility for individual social workers (Aotearoa New Zealand Association of Social Workers [ANZASW], 2014; International Federation of Social Workers [IFSW], 2018). This is often done through acts of non-violent social justice activism (NVSJA), such as protesting, with the aim of bringing social justice and human rights issues to the attention of policymakers, employers, and the general public (Noble, 2015; Ostrander, Lane, McClenden,

Hayes, & Smith, 2017). However, there is a disjunction between the Social Workers Registration Board's (SWRB) *Fit and Proper Person Policy Statement* and this idea. As it is not uncommon for social workers to engage in acts of NVSJA (Schrader, 2010). It, also, is not uncommon for those involved to be at risk of getting arrested for such acts, with Māori at higher levels of risk of gaining a conviction after arrest (Duarte, 2017; Eketone, 2015; Keane, 2012; Schrader, 2010). This currently could lead to a barrier in registration and employment as a social worker in Aotearoa New Zealand (Dennett & Pratt, 2016; SWRB, 2018).

AOTEAROA
NEW ZEALAND SOCIAL
WORK 31(2), 64–68.

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The current fit and proper person policy statement

In Aotearoa New Zealand, the Social Workers Registration Legislation Act 2019 states the SWRB is required to consider any criminal convictions to help determine whether an applicant meets the criteria to be deemed a fit and proper person to practise social work. This is done on a case-by-case basis, where the board will review the nature of the criminal offence. As a part of this consideration, the circumstances of the offence, when and where the offence occurred, any rehabilitation undertaken by the applicant, the conduct of the applicant since the offence, along with a range of other factors are explored (SWRB, 2018). There is, however, no mention of criminal convictions for NVSJA in the SWRB's *Fit and Proper Person Policy Statement*.

What does being fit and proper mean?

The Social Workers Registration Legislation Act 2019 lays out three criteria that can lead to a social worker being deemed an unfit and improper person to practise social work in Aotearoa New Zealand. The first of these criteria is if the applicant has a conviction for an offence punishable by imprisonment of at least three months. The other two conditions concerning fit and proper status are whether the board is satisfied that the applicant is unable to adequately perform the actions required to be a social worker, or if there are reasonable grounds for the board to consider the applicant not to be of good character or reputation (Social Workers Registration Legislation Act, 2019). However, does being fit and proper go beyond this? Staniforth and Fouché (2006) argue that the most important factor to consider whether an applicant is a fit and proper person to practise social work is their potential liability to *ngā kiritaki* (service users). Research conducted by Appleton, Rankine, and Hare (2014) reflects the views from social work academics and fieldwork educators. These views deemed fit and proper to include aspects such as the

social worker's honesty, integrity, ability to know and work within their limits; ability to give and receive feedback; their capability to work interpersonally with *ngā kiritaki*; and their capacity to uphold the principles in the ANZASW's *Code of Ethics* (Appleton et al., 2014). Additionally, the research conducted by Appleton et al. (2014) showed that adherence to the principles of social justice and human rights; an ability to make ethical decisions; being culturally respectful and the ability to bring evidence into practice were all important in being considered fit and proper. In reality, the second and third criteria of the Social Workers Registration Legislation Act 2019 around an applicant being a fit and proper person to practise social work relate to the findings presented from Staniforth and Fouché (2006), and Appleton et al. (2014).

The relationship between social work and social justice

Ostrander et al. (2017) reported that part of being a social worker is to challenge unjust social systems, social injustices, and human rights violations. Social workers engaging in macro practice, which involves a push for social change, challenges to social inequalities and other social justice action (Austin, Anthony, Knee, & Mathias, 2016), can create change for social workers in micro practice and for *ngā kiritaki* (McBeath, 2016; Reisch, 2016; Rothman & Mizrahi, 2014). There is a strong belief across the social work profession that social workers have a responsibility to fight for social justice and social change, at both macro and micro levels (Clark, 2006; Duarte, 2017; Grodofsky & Makaros, 2016; Hamilton & Fauri, 2001; Morgaine, 2014; Payne, 2002; Rothman & Mizrahi, 2014; Thompson, 2002). Standing up for social justice is more than rhetoric or an idealistic view of what social workers should aim to achieve. As Ostrander et al. (2017) reported, social workers have been on the front-lines fighting for social justice and social change historically in various circumstances through NVSJA. In fighting for social justice, a social worker's

practice can, and often does, extend beyond their job description (Payne, 2000, as cited in Thompson, 2002). Engagement in NVSJA is often labelled *radical social work* in contemporary times, but historically, social workers have had a strong presence in social movements, in challenging social injustices in the political arena, and standing up for oppressed population groups (Noble, 2015; Reisch, 2016). Ostrander et al. (2017) acknowledge that participating in protests, marches, rallies, or joining civic organisations and political parties can be an effective method for social workers to meet the ethical obligations around social justice and human rights set out by the IFSW (2018).

The Aotearoa New Zealand social justice activism context

Participating in social activism is not foreign to New Zealanders. Our nation's history has been defined by acts of social activism, such as the Springbok Tour protests, 1984 Waitangi Day hīkoi, Vietnam War protests, anti-nuclear marches, and the homosexual reform marches (Keane, 2012; Schrader, 2010). More recently in Aotearoa New Zealand, we have had the foreshore and seabed hīkoi, the anti-mining rally, and the anti-TPPA protests (Fagan & Bath, 2016; Gagné, 2008; Nippert, 2010). Many of these social protests, hīkoi, and marches have led to heavy police involvement (Keane, 2012). From this engagement in social justice activist events, there have been multiple arrests of New Zealanders (Baker, 2007; Schrader, 2010). As reported by Noble (2015) and Ostrander et al. (2017), social workers are often involved in these acts of NVSJA. Duarte (2017) refers to the social movements of the 1960s and 1970s and states that many social workers had heavy involvement in these social justice movements, fighting for social change. Having social workers heavily involved in these events, while many in attendance are arrested, indicates that a number of social workers are likely to have gained criminal convictions as a result of standing and fighting for social justice.

International responses to regulating social workers with criminal convictions for NVSJA

The policies of social work regulators and associations in the United States, Australia, Canada, Northern Ireland, and England all had similar responses: that decisions on criminal convictions are made on a case-by-case basis relative to social work regulation (British Columbia College of Social Workers [BCCSW], 2018; Health and Care Professions Council [HCPC], 2012a, 2012b; New York State Education Department [NYSED], 2013; Northern Ireland Social Care Council [NISCC], 2017). In most cases, international social work regulators conduct a criminal record check on applicants (HCPC, 2012a; Social Workers Act, 2008). In policies available to the public from the international social work regulators community, there is no mention of criminal convictions in relation to NVSJA (BCCSW, 2018; HCPC, 2012b; NYSED, 2013; NISCC, 2017).

Looking at fitness to practice, CORUⁱ (2010), the social work regulator for the Republic of Ireland reported that applicants must satisfy the registration board that they are a fit and proper person to practise social work by providing information on their character, health, knowledge, and skills. However, much like the other international regulators, CORU (2010) requires information on any criminal convictions of the applicant. The Northern Ireland Social Care Council (NISCC) (2015) outlines the values required by social workers to underpin their standards of conduct and practice. These include being respectful of individuals, working in a person-centred way, promoting the autonomy of *ngā kiritaki*, (though of course the NISCC uses the term 'service users') acting in the best interests of *ngā kiritaki*, promoting equality and inclusiveness, and their ability to provide safe and effective care (NISCC, 2015). None of these international regulators had anything around NVSJA written into their publicly available policies on fitness to practise social work.

Criminal convictions and social workers

The Ministry of Justice's *Request for Criminal Conviction History* form is something all social workers and social work students will be familiar with (Apaitia-Vague, Pitt, & Younger, 2011). As social workers are regularly required to disclose their criminal convictions, the effects of their convictions can be felt across the entirety of their career. Dennett and Pratt (2016) reported on a community social worker who could not find employment as a social worker despite being qualified and applying for numerous positions, due to a conviction from 34 years earlier. Apaitia-Vague et al. (2011) published the difficulties of finding a position for students with criminal convictions in a generally risk-averse environment. When considering the effects of having a criminal conviction can have within the social work profession, we need to consider differences in conviction rates in Aotearoa New Zealand. In Aotearoa New Zealand, Māori are more likely to be arrested, convicted, denied diversion, or imprisoned than Pākehā for the same crimes (Department of Corrections, 2007; Eketone, 2015). As the SWRB's *Fit and Proper Person Policy Statement* considers applicants' criminal convictions, the fact that Māori are more likely to gain criminal convictions for the same crimes as Pākehā could lead to a potential barrier for Māori in becoming social workers registered with the SWRB.

Conclusion

There appears to be a disconnect between what research shows being fit and proper is, the ANZASW's *Code of Ethics*, and the SWRB's *Fit and Proper Person Policy Statement* (ANZASW, 2014; SWRB, 2018). While the current *Fit and Proper Person Policy Statement* does allow for case-by-case consideration, where the offence is explored in detail, it must be questioned whether this is enough. Does this accurately reflect the SWRB's view on the relationship between social work and social justice, and the ethical responsibility of social workers? With the longevity of the impacts of a criminal conviction on one's social work career, the

likelihood of Aotearoa New Zealand social workers gaining convictions, and the cultural bias of our justice system, shouldn't the SWRB set an example for the social work profession around criminal convictions for NVSJA?

Do the professional bodies of social work in Aotearoa New Zealand, such as the ANZASW and SWRB, believe that social workers should stand up for social justice in a practical sense? If they do, why not let it be known in their policy statements or other publicly available documents? Acts of NVSJA have had such positive effects in Aotearoa New Zealand historically, and those involved should not be punished for taking a stand. Social workers are supposed to value macro practice, positive change, and social justice. If this is more than rhetoric, this should be reflected in the policy statements of the professional bodies for social work in Aotearoa New Zealand.

Acknowledgement

The author would like to thank and acknowledge Jan Duke and the Social Workers Registration Board for their guidance and supervision.

Endnotes

- i The name **CORU** originates from an Irish word, 'cóir' meaning fair, just and proper. These are values that resonate deeply within the organisation, and reflect commitment to protecting the public by regulating health and social care professionals. **CORU** is not an acronym.

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