

**This determination
contains an order at
paragraph [2] prohibiting
publication of certain
information**

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2026] NZERA 341
3418146

BETWEEN	TVI Applicant
AND	THE TRUST First Respondent
AND	SOCIAL WORKERS REGISTRATION BOARD Second Respondent

Member of Authority:	Rachel Larmer
Representatives:	Allan Halse, advocate for the Applicant Rani Amaranathan, counsel for the First Respondent Isabella Cronin-Stone and Renee Butler, counsel for the Second Respondent
Submissions and Other Information:	17 and 20 February and 30 March 2026 from the Applicant 23 March 2025 from the First Respondent 23 March 2026 from the Second Respondent
Date of Determination:	2 June 2026

PRELIMINARY DETERMINATION OF THE AUTHORITY

Non-publication order

[1] These matters involve the terms of a confidential Record of Settlement, which was signed off in accordance with s 149 of the Employment Relations Act 2000 (the Act) by a mediator from Mediation Services on 24 December 2024 (the RoS).

[2] Pursuant to the Authority's power in clause 10 of Schedule 2 of the Act, an interim non-publication order has been made regarding the names of the Applicant and First Respondent, who are the parties to the RoS. The interim order remains in force until further order of the Authority or Employment Court. The parties have leave to revert to the Authority to vary this interim non-publication order if necessary.

[3] This interim non-publication order has been made subject to the condition that it does not apply to:

- (a) The Social Workers Registration Board (the Board), as the statutory registration body, so it is not limited in carrying out its statutory functions.
- (b) The employment institutions.
- (c) Any other court in New Zealand.
- (d) Any enforcement action and/or proceedings, associated with the Board recovering the costs it has been awarded in this determination from the Applicant.

[4] This determination has identified the Applicant by three randomised letters and the First Respondent has been referred to as "The Trust" in order to avoid disclosing their names. The parties' real names will be used in any Certificate of Determination that may need to be issued.

[5] The Board was not a party to the RoS, and given its role as a professional registration body, there was no need to prohibit publication of its name.

Employment relationship problem

[6] This determination determines the disputed jurisdiction issues involving the Board. A separate determination will be issued regarding the disputed jurisdiction issues involving the First Respondent, as this determination has not addressed those issues.

- [7] The Applicant asked the Authority (among other things) to compel the Board to:
- (a) Withdraw the mandatory report it received from the First Respondent under s 47A of the Social Workers Registration Act 2003 (the SWR Act).
 - (b) Cease its instigation into the Applicant's fitness to practice (i.e its investigation relevant to his current social worker registration application).
 - (c) Reinstate his social worker practising certificate.

[8] The Authority accepted the Board's affidavit evidence that it cannot simply disregard the mandatory report made by the First Respondent, as to do so would be inconsistent with its statutory duties.

[9] The Board disputed the Authority's jurisdiction over the claims the Applicant had made, and the remedies he had sought, against it. The Applicant required the disputed jurisdiction issues to be determined by the Authority.

Social Workers Registration Act 2003

[10] The Board is established under section 97 of the SWR Act. It is the regulatory body for social workers in New Zealand, whose work often includes close engagement with vulnerable people.

[11] The functions of the Board are set out in s 99 of the SWR Act. These functions include receiving and considering applications for social work registration, authorising the registration of social workers, and maintaining that register.¹ As part of fulfilling this responsibility, the Board also reviews the competence of social workers, and their fitness to practise, ensuring the integrity of the social working profession is maintained.²

Mandatory reporting to the Board

[12] Section 47A of the SWR Act compels an employer of a social worker, who believes on reasonable grounds that a social worker has engaged in serious misconduct, to promptly report that belief to the Board.

¹ SWR Act, ss 99(1)(a)-(c).

² SWR Act, ss 99(1)(g)-(ga).

[13] For the purposes of the mandatory reporting required by s 47A, serious misconduct is defined in s 47A(3) of the SWR Act as conduct that is of a character and severity that meets the Board's reporting criteria for reporting misconduct, and that:

- (a) has, or is likely to have, an unduly adverse effect on the wellbeing of any person with whom the social worker comes into contact in the course of their practice as a social worker; or
- (b) reflects adversely on the social worker's fitness to be a social worker.

[14] Complaints alleging sexual misconduct by a social worker would fall within the mandatory s 47A reporting required by an employer. It was understandable the Board would not ignore such an issue simply because a social worker and their employer had entered into a RoS that had resulted in the social worker immediately leaving their employment without notice.

[15] Section 47A(4) of the SWR Act bars any civil, criminal or disciplinary proceedings being brought against a person who makes a report under s 47A, unless the report was made in bad faith. This encouraged employers to report genuine concerns about social workers, to ensure that the Board has the appropriate information to comply with its statutory obligations.

[16] Section 47A of the SWR Act does not provide for the withdrawal of a mandatory report. After receiving the s 47A report, s 48 of the SWR Act required the Board to consider whether the Applicant is a fit and proper person to practise as a social worker.

[17] Because the Board is yet to make a final decision about the Applicant's practicing certificate, he appeared to have taken issue with two procedural decisions the Board had made, namely that the Board:

- (a) Did not agree to destroy the mandatory s 47A report it had received; and
- (b) Decided it should consider his application for a practicing certificate, rather than the Registrar.

[18] The process followed by the Board may be challenged by judicial review in the High Court. However, the Applicant has not done that. He can also appeal the Board's decisions to the District Court, but has not done so.

Relevant facts

[19] On 1 September 2024 the First Respondent employed the Applicant as a registered social worker.

[20] On 13 December 2024 the First Respondent informed the Applicant that a formal complaint had been made about his conduct. On 15 December 2024 the Applicant raised an unjustified disadvantage personal grievance claim with the First Respondent.

[21] On 16 December 2024 the First Respondent's counsel wrote to the Applicant's advocate denying that the Applicant had been unjustifiably disadvantaged, and advising that since the Applicant had gone on sick leave:

employees have come forward with some serious and concerning allegations against him. We can confirm that the initial performance concerns have been overtaken by some more serious concerns.

By late last week the organisation had identified that [the Applicant] appears to pose a potential risk to the organisation and the organisation needed to move swiftly to protect itself.

[22] On 17 December 2024 the First Respondent made a mandatory report under s 47A of the SWR Act which apparently claimed it had reasonable grounds to believe that the Applicant had engaged in misconduct and serious misconduct (the s 47A report).

[23] On 18 December 2024 the Applicant raised further personal grievances with the First Respondent.

[24] On 20 December 2024 the Applicant and the First Respondent signed the RoS, which included the following clauses:

The Employee's employment will end for reason of his resignation and his last day of employment will be 20 December 2024 with his notice period being waived.

...

The Employer agrees not to make a report to the Social Workers Registration Board.

[25] On 20 December 2024 the First Respondent emailed the Board stating:

We regretfully remove our mandatory complaint as a result of a without prejudice agreement being reached asking that the s 47A report be removed on the basis it was bound by a term in a RoS.

The person is now resigned from our organisation.

We are legally unable to formally continue with the complaint and ask that no further action be taken, or we will be in breach of our agreement.

[26] On 24 December 2024 the RoS was certified by a mediator from Mediation Services.

[27] On 24 February 2025 the Board notified the First Respondent that it was unable to close or withdraw the mandatory s 47A report made about the Applicant. The RoS had no effect on the Board's processes because the legal obligation on an employer to provide a mandatory s 47A report overrode any privacy and employment obligations, provided it was made in good faith.

[28] On 24 February 2025 the Board emailed the First Respondent asking it to provide further information under s 47A(2) of the SWR Act by 14 March 2025. The Board's email referred to the fact that the s 47A report had referred to the First Respondent having a written complaint from [redacted] alleging sexual assault and coercion by the social worker, alongside other allegations of misconduct, such as falsifying documentation and misrepresenting their location during work hours while using the organisation's vehicle.

[29] The First Respondent declined to provide the Board with information about the s 47A report it made, stating that it was sent in error due to a genuine misunderstanding of the reporting requirements. Notwithstanding that advice, the Board believed it had an obligation to continue its investigation into the s 47A report it had received, which it considered was relevant to its process regarding the Applicant's application for registration as a social worker.

[30] On 8 May 2025 the First Respondent advised the Board that it (the First Respondent) had reviewed the complaints it had received about the Applicant's conduct and determined that there was insufficient evidence to substantiate the concerns it had raised, because it had not investigated the complaints that had been made about the Applicant.

[31] On 24 July 2025 the Board reiterated to the First Respondent that it had to continue with the mandatory report process. The Board advised it would not seek any further information from the First Respondent, but that it (the Board) would continue its process.

[32] On 30 July 2025 the First Respondent again attempted to withdraw the mandatory report from the Board. The Board received a letter from the First Respondent's counsel reiterating its position that no action should be taken in relation to the s 47A report and that it should not be notified to, or shared with, the Applicant.

[33] On 7 August 2025 the Applicant applied to the Board for a practising certificate.

[34] On 28 August 2025 the Board informed the Applicant that his application for a practising certificate had been referred to it for consideration because there were reasonable grounds to suspect he was not a fit and proper person to practice.

[35] On 30 August 2025 the Applicant's advocate sent the Board a copy of the clause in the RoS that said, "The Employer agrees not to make a report to the [Board]" and he asked for the s 47A report about the Applicant to be destroyed. This was the first time the Board had been made aware of any specific term in the RoS.

[36] On 1 September 2025 the Board's Acting Registrar responded to Mr Halse advising that the mandatory report would not be destroyed and would follow the normal process. The Board was under no obligation to disregard or destroy the mandatory s 47A report because the Applicant and his former employer had entered into a RoS. The Board's internal process of assessing registration applications was central to it performing its statutory function, so it could not abdicate that.

[37] On 2 September 2025 the Board wrote to the Applicant advising it had a clear requirement to follow up on the s 47A report where an application for a practising certificate had been made. Accordingly, the Board advised that the Applicant's application for a practising certificate would follow the normal process.

[38] The Board informed the Authority that, as at 23 March 2026, a final decision regarding the Applicant's registration had not been made, and that (as at that date) its process was still ongoing. Once the Board made a decision about the Applicant's practising certificate, then he was free to challenge that in the District Court.

The Authority's investigation

[39] It was unclear what specific claims the Applicant wanted to pursue against the Board or why he believed the Authority had jurisdiction over them. The Board disputed the Authority's jurisdiction over any claims the Applicant may have made against it, on the basis it was never in an employment relationship with him. Nor was the Board a party to the RoS.

[40] The Board applied to the Authority to exercise its discretion under s 221(a) of the Act to strike it out as a party to these proceedings. The First Respondent agreed the Authority did not have jurisdiction over any claims that the Applicant may have made against the Board.

[41] When this matter was first allocated to the Member, the Authority informed the parties via email that it did not look like it had jurisdiction over all of the claims the Applicant had made against each respondent in the SoP.

[42] If the Applicant accepted the Authority did not have jurisdiction over the claims he wanted to make against the Board, then he was asked to withdraw the Board from being a respondent in this matter. If the Applicant believed the Authority had jurisdiction over any claims he wanted to pursue against the Board, then was required to clarify what specific claims he was making and explain why the Authority had jurisdiction.

[43] The information the Applicant's advocate provided on 20 January 2025 in response to the Authority's request did not resolve the jurisdictional problems. However, the Applicant still maintained that he wanted to pursue the claims he had made against the Board, and he wanted it to remain a respondent in these proceedings.

[44] The jurisdictional problems were raised during the CMC. Because the Applicant declined to withdraw his claims against the Board, that meant the disputed jurisdiction issues had to be determined by the Authority. It was therefore agreed at the CMC the disputed jurisdiction issues would be determined 'on the papers', as that was the most timely and cost effective way of addressing those issues.

[45] The Board provided the Authority with a chronology, which the Applicant had previously been asked to have input into, but did not do so.

[46] The Applicant lodged an affidavit which did not identify what claims he was making against the Board or explain why the Authority had jurisdiction over them. The Chief Executive

lodged an affidavit for the First Respondent. Mr Scott McLew, Registrar of the Social Workers Registration Board, lodged an affidavit for the Board.

[47] Each party lodged written submissions.

[48] Although it remained unclear from the SoP and Mr Halse's memorandum dated 20 January 2026 what specific claims the Applicant was making against the Board, the Authority set out in the DoA what claims it had understood the Applicant wanted determined based on the information that was available at that time. The parties were invited to provide their feedback on the draft proposed issues the Authority had recorded in the DoA, but no changes were suggested by any of the parties.

[49] The DoA recorded that the triangular employment relationship issue was not before the Authority. Clause 9A of the Employment Relations Authority Regulations 2000 (the Regulations) required an application under s 103B of the Act for joining a controlling third party to a proceeding to resolve a personal grievance to be lodged in Form 4. That has not occurred.

Issues to be determined

[50] The issues to be determined was whether the Authority had jurisdiction over any claims the Applicant had made in the statement of problem (the SoP) against the Board. This required the Authority to determine whether the Applicant and Board were or had been in an employment relationship.

[51] If not, then the Authority had to identify whether the SoP included any claims that the Applicant could make against a party that he was not and had never been in an employment relationship with.

Was there an employment relationship between the Applicant and Board?

[52] With some limited exceptions that do not apply to this matter, the Authority only has jurisdiction over parties that are, or were, in an employment relationship. Section 4(2) of the Act sets out the types of employment relationships that are covered by the Act. This does not include a social worker who is/was not employed by the Board.

The Applicant's submissions

[53] The Applicant did not provide any evidence to support a claim or submission that he had been, or was, in an employment relationship with the Board. Mr Halse's submissions stated:

- (a) The duty of good faith in s 4 of the Act applies to employment relationships.
- (b) The Applicant and Board were not in an employment relationship.
- (c) The Board was not a party to the RoS.
- (d) The Authority does not exercise appellate jurisdiction over the Board's regulatory decisions or directions, as pursuant to s 88 of the SWR Act, as the District Court does that.

The Board's submissions

[54] The Board asked the Authority to dismiss the Applicant's claims against it because they were not "employment relationship problems", as defined by s 5 of the Act. In particular, the Board submitted that:

- (a) There was no employment relationship, as defined in s 4(2) of the Act.
- (b) The Authority does not have jurisdiction to hear matters that do not concern employment relationships.
- (c) The Board is empowered by statute to make decisions as to the registration of individuals as social workers, and the decisions that it makes in this regard are not subject to review by the Authority.
- (d) The appropriate forum to challenge a decision it had made was through the District Court.
- (e) It's decisions are statutory powers which are reviewable by judicial review.

Triangular employment relationship?

[55] Although Mr Halse's memorandum dated 20 January 2026 and submissions dated 17 February 2026 referred to a "triangular employment relationship", that issue was not before the Authority for determination.

[56] The SoP did not include an application under s 103B of the Act, the Board did not consent to being joined as a controlling third party, the Applicant's memorandum dated 20 January 2026 did not meet the requirements of s 103B and/or s 115A of the Act, and no leave application has been lodged with the Authority to join a controlling third party. No Form 4 application has been lodged.

[57] The Applicant was put on notice during the case management conference held on 9 February 2026 (the CMC), and in the Directions of the Authority dated 11 February 2026 issued after the CMC (the DoA), that no application had been made by him to join the Board as a controlling third party to his personal grievance proceedings. The Board has not agreed to be joined as a controlling third party in these proceedings.

[58] The Board is a statutory registration body, so its role was limited to considering registration issues (and associated matters) that involved the Applicant's social worker registration. The Board did not employ the Applicant and he did not do any work for the Board.

[59] Even if the appropriate application (Form 4) had been made to join the Board as a controlling third party (which had not occurred), it could not have succeeded. The requirements of s 103B(1)(b) of the Act did not apply, because the Applicant was not working under the control or direction of the Board, and it had not engaged in any actions or caused or contributed to the personal grievance claim the Applicant had made against the First Respondent.

Finding

[60] There is no legal basis on which the Board should be a respondent in these proceedings.

[61] The Board does not fall within any of the possible employment relationships identified in s 4(2) of the Act. Nor did the Board ever employ the Applicant, so there has never been an employment relationship between the Board and the Applicant. The Board was not a controlling third party and it was not involved in any breach of employment standards or the RoS.

[62] The Board's only relationship with the Applicant was limited to assessing his application for a practicing certificate. That merely involved the Board performing its statutory duties, so did not create an employment relationship under the Act.

[63] The Applicant has the right to challenge the Board's decisions to the District Court, so he has a mechanism to address any errors he claims have occurred regarding its registration process.

Claims the Applicant appeared to have made against the Board

[64] The Applicant's claims against the Board were unclear, but appeared to be as follows:

- (a) The Board unjustifiably disadvantaged the Applicant by accepting the mandatory report of serious misconduct his employer made to it under s 47A of the SWR Act.
- (b) A penalty should be imposed on the Board under s 149(4) of the Act for breaching the RoS.
- (c) The Board is a Person Conducting a Business or Undertaking (PCBU) under the Health and Safety at Work Act 2015 (the HSWA) and it has breached its obligations under s 17 of the HSWA.
- (d) The Board breached its statutory duty of good faith in s 4 of the Act that it had to the Applicant.

Unjustified disadvantage claim

[65] The Authority did not have jurisdiction over any personal grievance claims the Applicant had, made or wanted to make, against the Board because there was no employment relationship between them.

[66] Section 88 of the SWR Act gave the Applicant the right to appeal to the District Court any decision or direction of the Board that adversely affected him.³

Penalty claim for alleged breach of the RoS

[67] One of the Board's purposes is to ensure that social worker misconduct is appropriately responded to, to protect the safety of the public and to enhance the professionalism of social workers. Under s 47A(1) of the SWRA employers have a legal obligation to report serious

³ SWR Act, section 88(1).

misconduct. Attempting to contract out of these obligations in a RoS directly undermines the Board's role.

[68] Section 149(4) of the Act provides that any person who breaches a RoS is liable to a penalty imposed by the Authority. However, the person or entity must know about the terms in the RoS in order to breach it.

[69] There was no RoS in place when the Board received the s 47A report from the First Respondent on 17 December 2024. Accordingly, the Board cannot have breached a non-existent RoS by receiving the s 47A report.

[70] The Board was not a party to the RoS, nor was it aware the Applicant and the First Respondent had entered into a RoS that stated no report would be made to the Board until Mr Halse informed the Board of that on 30 August 2025. The 'no report' clause in the RoS did not bind the Board to the terms of the RoS. The Board cannot contract out of its statutory registration obligations under the SWR Act.

[71] Accordingly, the Board was therefore not capable of breaching the RoS by exercising its statutory obligations, as alleged by the Applicant, so no penalty could be imposed on it under s 149(4) of the Act.

Breach of HSWA claim

[72] In the absence of an employment relationship, any alleged breach(es) of health and safety obligations the Board may have had to the Applicant could only be brought under the Health and Safety at Work Act 2015 (the HSWA), which the Authority does not have jurisdiction to determine.

[73] Not only did the Applicant fail to identify any alleged breach by the Board of the HSWA, but such allegations involved potential criminal offences, which had to be pursued, in the first instance, in the District Court.

Breach of good faith

[74] The statutory duty of good faith in s 4 of the Act applies to parties in an employment relationship. Because there was no employment relationship between the Applicant and Board, the Authority did not have jurisdiction over that claim.

Costs

[75] The Board as the successful party has sought costs of \$4,500.00. Its actual legal costs as at the date it had lodged submissions on the preliminary jurisdiction issues were \$7,000.00.

[76] The Board has been required to communicate with the other parties and Authority about this matter, it has lodged a statement in reply, it has lodged a strike out application, it attended the CMC and has participated in this 'on the papers' investigation of the disputed jurisdiction issues by lodging affidavit evidence and submissions.

[77] The appropriate starting point for assessing costs in this 'on the papers' matter is \$2,250.00, which is the equivalent of half a day of investigation meeting time, given the notional daily tariff is currently \$4,500.00.

[78] The parties did not identify any grounds to warrant decreasing the notional starting tariff, and the Authority was not aware of any. Accordingly, no decrease to the notional starting tariff was to be made.

[79] The Board submitted the following factors justified a \$2,250.00 uplift being made to the notional starting tariff, resulting in a costs award in its favour of \$4,500.00. These included that the Applicant:

- (a) Was asked to clarify what claims he was making against the Board and what the jurisdiction basis of them were, but he failed to do so, leaving the Board to infer what his claims were from the unclear information he had put in his SoP and memorandum lodged on 20 January 2026.
- (b) Was given the opportunity prior to, and during the CMC, to agree to the Board being removed as a respondent in these proceedings, but he declined to agree to that.
- (c) Lodged an affidavit that did not address the disputed jurisdiction issues raised by the Board.
- (d) Deliberately required the Board to incur time and costs by lodging affidavit evidence and submissions regarding the disputed jurisdiction issues.

- (e) Admitted in his submissions on the preliminary issues, that there was no employment relationship between him and the Board, and that the Authority lacked jurisdiction to determine the claims he had made against the Board.
- (f) Accepted that he was not employed by the Board and that there was no contract of service between them.
- (g) Accepted that the Board was not a party to the RoS between him and the First Respondent, so it was not bound by it.
- (h) Accepted that the statutory good faith obligations only applied to employment relationships.
- (i) Acknowledged that the Authority does not have jurisdiction over the Board's regulatory decisions.

[80] The Authority informed the parties in email dated 14 January 2026 that looked like it did not have jurisdiction over all of the claims the Applicant had made against each respondent in the SoP. The Applicant was asked to address that, but failed to do so, while refusing to allow the Board to be withdrawn as a respondent in these proceedings.

[81] The Applicant's obvious jurisdiction problems were discussed at the CMC held on 9 February 2026. However, the Applicant declined to withdraw his claims against the Board, and said he required the disputed jurisdiction issues to be determined by the Authority.

[82] The Applicant rebuffed the Authority's attempts to save the parties' time and legal costs by encouraging them to resolve the disputed jurisdiction issues by agreement. The Applicant refused to allow the matter to be dealt with other than by the issuing of a written determination.

[83] During the CMC, the Authority asked Mr Halse to specifically raise the potential adverse costs consequences the Applicant would face if he failed to establish jurisdiction. Mr Halse said that he had already done that, so the Applicant therefore proceeded knowing that adverse costs' consequences was a likely outcome of his decision to continue pursuing the Board as a respondent in these proceedings.

[84] The Applicant's submissions, lodged before the Board had asked for a costs uplift, said costs should be awarded in accordance with the notional daily tariff. The Applicant was subsequently given an opportunity to reply to the Board's submissions, which included its

request for an award of \$4,500.00 costs, based on a doubling of the notional starting tariff. However, the Applicant did not respond to the Board's submissions.

[85] The Authority noted in its DoA dated 11 February 2026, that the Board's strike out application looked strong, and it urged the Applicant to consider this prior to lodging his evidence and submissions on the disputed jurisdiction issues.

[86] It should have been clear from the outset to the Applicant, who was represented, that his claims against the Board lacked any legal merit. Even if he had not been aware of that (as he should have been because he was represented) from the outset, then that must have been obvious when he lodged his submissions, given the concessions he made in them.

[87] At that point the Applicant should have realised his claims against the Board had no prospect of success, but instead of withdrawing them he put the Board to the unnecessary additional expense of lodging affidavit evidence and submissions.

[88] The Applicant should not have made claims in the Authority against the Board. Mr Halse appeared to have already known that the Applicant could pursue his concerns about the Board's decisions regarding his registration in the District Court because, when the Authority asked during the CMC why he had not done that, Mr Halse complained that "the District Court process took too long." That criticism was also reflected in his submissions.

[89] However, such complaints about the District Court was not a legitimate reason for the Applicant to have unreasonably caused the Board to have to incur \$7000.00 legal costs in connection with these proceedings.

[90] The Applicant is ordered to contribute \$4,500.00 towards the Board's actual legal costs to reflect that the manner in which he elected to conduct this matter unreasonably caused the Board to incur legal costs of \$7,000.00.

Outcome

[91] The Authority does not have jurisdiction over any of the claims the Applicant has made in the SoP against the Social Workers Registration Board.

[92] Within 28 days of the date of this determination, the Applicant is ordered to pay \$4,500.00 to the Social Workers Registration Board as a contribution towards its actual legal costs.

Rachel Larmer
Member of the Employment Relations Authority