



LEGAL BRIEF: THE SOCIAL SERVICE PROFESSIONS AND OCCUPATIONS BILL, 2008

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By Khululwa Seyisi and Lucy Jamieson

For more information please contact:

Khululwa Seyisi
Advocacy Network Coordinator
Tel : 021 689 5404 (ext 108)
Khululwa.Seyisi@uct.ac.za

Lucy Jamieson
Senior Advocacy Coordinator
Tel: 083 458 9075
Lucy.Jamieson@uct.ac.za

1. Introduction

The social service professions are currently regulated by the Social Service Professions Act (110 of 1978). The Act establishes the South African Council for Social Service Professions and allows for the establishment of Professional Boards, and the registration of professionals. The Council is responsible for writing codes of conduct and ensuring discipline within the professions. Additionally, the Council has a mandate to 'protect and promote' the interests of the social service professions.

The Council is in the process of drafting new legislation which will replace the Social Service Professions Act. The first draft, the Social Service Professions Bill 2008 was published for comment in the Government Gazette in January 2008. The primary objective of the first draft was to "advance social justice by promoting developmental social services". Several redrafts were released in 2008, and the draft introduced in this paper dates from November 2008, and is called the Social Service Professions and Occupations Bill, 2008. It was released on the Council website in June 2009, and the site says that they are receiving comments. For more information visit <http://www.sacssp.co.za/>

This paper will introduce and give an overview of the Social Service Professions and Occupations Bill, 2008, compare it with the Social Service Professions Act 110 of 1978; and will also provide a comparison of the Social Service Professions and Occupations Bill with the Built Environment Professions Bill and Health Professions Act as they establish statutory bodies with similar powers and functions.

2. Title and definitions

The title of the Bill has changed with each draft. The original draft published in the Government Gazette had the title 'Social Service Professions Bill' mirroring the title of the current Act. The second draft was called the 'Social Service Practitioner Bill' and the latest draft is called the 'Social Service Professions and Occupations Bill'.

Section 1 of the Social Service Professions and Occupations (SSPO) Bill contains a number of new definitions that are not in the original Act. They introduce the distinctions between practice, occupation and profession:

“practise” means to render any service within the scope of a social service profession or a social service occupation as defined by the Minister in terms of section 22(1)(b) or section 27(1)(b) or to perform any type of work identified by the Minister in terms of section 33;prescribed qualification.”

“social service occupation” means the child and youth care work occupation and any other social service occupation designated by the Minister as a social service occupation; Including child and youth care work; under this definition may mean that the law would have to be amended before it could be recognised as a profession.

“social service profession” means the social work profession, and any other social service profession designated by the Minister as a social service profession. Including social work under this category gives them additional protection, meaning that the Minister does not have the power to withdraw their recognition as a profession.

“social service practitioner” means any person registered to practice a social service profession or a social service occupation in terms of this Act. The generic term covering both professionals and people practicing an occupation.

“social service professional” means a person registered to practise a profession designated by the Minister as a social service profession in terms of this Act;

New categories of practitioner defined in the Bill:

“child and youth care worker”,

“student social auxiliary worker”,

“student child and youth care worker,”

Other new definitions include:

“board” means a social service professional board or a social service occupational board;

“education and training institution” means a university, a college or other education and training institution that offers an education and training programme or programmes leading to a prescribed qualification; (Education has been added to this definition. Training teaches a process whereas education includes critical thinking and analytical skills).

“prescribed qualification” means a minimum qualification prescribed by the Minister in terms of section 60(1)(a);

The changes in the title reflect ongoing debates about how to ensure the regulation of occupations that have not developed their education and training to what is considered to be a professional standard. No definitions of either 'profession' or 'occupation' are given in the SSPO Bill. However, the authors assume that it will be in line with the NQFA. According to the National Qualifications Framework Act (67 of 2008) "**professional body**" means any body of expert practitioners in an occupational field and includes an occupational body; and "**professional designation**" means a title or status conferred by a professional body in recognition of a person's expertise and right to practice in an occupational field. Occupation therefore appears to be a broad term applying to all practitioners, whereas, the profession is restricted to those recognised as experts.

KEY QUESTIONS:

1. What do you think of the proposal to distinguish between occupations and professions?

Comment on the title and the definitions in your response.

2. Which practitioner groups should be defined in the Bill?

3. Do you have any comments on the other definitions?

4. Are there any other terms which need to be defined?

3. Objects of the Act

The objects of the Act are:

- (a) to establish the South African Council for Social Service Professions and Occupations;
- (b) to provide for the establishment of social service professional boards in respect of social service professions;
- (c) to provide for the establishment of social service occupational boards in respect of social service occupations;
- (d) to advance social justice by promoting developmental social services;
- (e) to promote and protect the interests of the public in matters involving social service practitioners;
- (f) to advance the interests of social service practitioners;
- (g) to promote the professional and ethical standards of social service practitioners;
- (h) to promote the standard and quality of education, training and development of social service practitioners;
- (i) to provide for the registration of social service practitioners; and

- (j) to provide for disciplinary action in respect of unprofessional conduct by social service practitioners

Objects (d) to (h) relate to the general societal aims, whilst the others are functions of the Act and Council i.e. how the general aims will be achieved. To a certain extent the order determines the primacy of the objectives.

KEY QUESTIONS:

1. Are there any other objectives that should be included? For example members of the Working Group wanted to add an objective that puts a duty on Council to promote multi-disciplinary team work.
2. What order should the objectives be in?
3. Should the objectives be grouped or regrouped?

4. General powers of the Council

General powers of the Council are dealt with under section 4. The Council acts as an advisory to the Minister on matters affecting social service professions and occupations and on matters related to the Act.

Council plays an advisory, consultative and liaison role with public authorities in matters affecting social service professions and occupations. It must also promote the interests of the professions, and work to enhance the integrity and prestige of the sector.

Council must develop policy on financial matters; education and training; the registration of social service practitioners; and professional conduct. It must also develop and issue guidelines on any matter affecting social service professions and ensure uniform application of such policies and guidelines by the boards.

Council has a responsibility to provide the necessary financial, administrative and other assistance to enable the boards to perform their functions, and must coordinate the activities of the boards.

Determine the standard of professional conduct and enforce those standards.

KEY QUESTIONS:

1. What should be the role and function of the South African Council for Social Service Professions?
2. What specific powers and functions should it have?
3. Should there be an obligation to consult with the boards before making recommendations to the Minister?
4. Should there be obligations to consult with the sector before determining policy?

5. Powers of Council regarding registration

Section 5 deals with registration powers of the Council. The Council must recommend to the Minister the minimum qualifications, practical training, competency standards, conditions and requirements of registration in respect of social service practitioners.

Section 3 (f) of the current Act requires the Council “to determine, *on the recommendation of the professional boards*, the qualifications for registration of social workers, social auxiliary workers and persons practising other professions in respect of which professional boards have been established (emphasis added).” Thus putting an obligation on Council to consult the boards on the minimum qualifications and competency standards.

Council considers and decides on application for registration and renewal of registration; and prescribes on the type of registers to be kept and how the registers should be kept.

KEY QUESTIONS:

1. What powers should Council have regarding registration?
2. Should there be an obligation to consult with the boards before making recommendations to the Minister?
3. What powers should boards have in relation to registration?

6. Powers and functions of the Council regarding education, training and development

Section 6 states that the Council must recommend the minimum standards and exercise control over quality assurance of education, training and development of social service practitioners. The Council must consult with relevant authorities in education like South African Qualifications Authority; and ensure liaison in the field of education, training and development of social service practitioners in the Republic and internationally.

Council may recognise education and training programmes by education and training institutions and may withdraw such recognition. Qualifications and assessment of prior, experiential learning may be recognised by council or council may withdraw such recognition. The Council can recognise foreign qualifications.

KEY QUESTIONS:

1. What powers should Council have regarding education, training and development?
2. Should there be an obligation to consult with the boards before making recommendations to the Minister?

7. Composition of Council

Section 9 deals with the composition of the Council. The following table illustrates how Council is constituted.

Each Prof. board	Each Occ board	NGO forums	DSD	Dept of Educ.	Trade Unions	Community Reps.
3	2	1	1	1	1	2

The representatives from the boards must be registered as practitioner or professional of one of the social services falling under that board.

In terms of section 9(3) the council may co-opt two additional members to supplement its expertise or to accommodate additional constituencies – for example the early childhood development practitioners do not have an occupational board at present, this clause would enable Council to ensure that there is representation from the early childhood development sector if they were to consider establishing a board and registering early childhood development practitioners.

The president and vice-president of Council

Under the Act Council members elect their own president and vice-president. In the draft legislation section 13 gives the Minister the power to appoint the president of Council from a list of three nominees put forward by the Council. The nominees must be registered practitioners. The Minister also has the power to remove the president or the vice-president. They remain in office until the end of their terms of office as members of the Council.

All members are elected/ appointed for a term of five years. Where a vacancy occurs the Minister must appoint a suitable person to sit on Council for the remainder the term of office.

KEY QUESTIONS:

1. Are there any other people or organisations that should be represented on the Council?
2. Should professional boards have more representatives than occupational boards?
3. How should the Executive of Council be selected?
4. Should the Minister have the power to appoint the president? Is this not an interference in professional autonomy?

8. Social Services Professional and Occupation boards

The boards are established and dissolved by the Minister at the recommendation by the Council. The role of the professional and occupational boards is to advise the Council on matters affecting social service practitioners, liaise with other boards, and exercise effective control over professional conduct. The Minister may, on recommendation of the Council, make regulations specifying composition, procedures in relation to nomination and appointment and term of office for the members. The new draft of the legislation allows more than one occupation or profession to be overseen by one board. The Minister has the power to determine the duration of the term of office of the boards.

Professionals (elected by registered practitioners/ professionals)	Departments employing practitioners	Education and training	Community representatives
Minimum 50%	prescribed by regulation	prescribed by regulation	2

KEY QUESTIONS:

1. What should be the role of the boards?
2. How should they be constituted? Comment on composition and selection procedures.
3. Should there be a distinction between professional and occupational boards?
4. What powers should the boards have?

9. Registration categories

Categories of registration appear in section 32. The categories in which a person may register in a social service profession are:

- (a) social worker;
- (b) social auxiliary worker;
- (c) student social worker;
- (d) student auxiliary worker.

The categories in which a person may register in a social service occupation are:

- (a) child and youth care worker;
- (b) student child and youth care worker.

A person may practise in the above categories only if he/she is registered in that category. Section 33 states that the Minister may, on recommendation of the Council, identify the type of work which may only be performed by persons registered in a category. The Minister may, on recommendation of the Council order that persons registering for the first must perform remunerated community service for a period not exceeding two years.

KEY QUESTIONS:

1. What categories should be listed in the Bill?
2. Should they be listed under professions or under occupations? Why?

10. Community service

Section 55 give the Minister the power to “declare that persons registering for the first time in a category of social service practitioner contemplated must perform remunerated community service for a period, not exceeding two years, and on conditions determined in that notice.” Civil society organisations have expressed a concern that the imposition of community service could lead to practitioners being forced to work for government, and hence civil society would lose out on potential recruits. The conditions can be different for each category of social service practitioner; concerns have also been raised that this might make one occupation more attractive than another.

KEY QUESTIONS:

1. Should the Minister have the power to make practitioners do community service?
2. Should the conditions be uniform for each occupation, or should the Minister have the power to vary the conditions?
3. Should there be a guarantee that the places at which community service is to be performed includes civil society?
4. Is the period of two years reasonable?

11. Comparison with the Social Service Profession Act 110 of 1978

11.1 Powers of the Council

The current Act confers general powers to the Council like the power to sue and be sued, or power to acquire and dispose of property.

The powers conferred to the Council are clearly tabulated in the Social Service Professions and Occupations Bill, like the power over registration, powers regarding education, training and development and the general powers.

11.2 Composition of the Council

The Act

Social workers	Each prof board	DSD	Dept of Educ	NGO forums	Comm-unity	Instit-utions	Busi-ness	Unions	Provin. heads
6	3	1	1	2	4	2	1	1	1

The Bill

Each Prof Board	Each Occ Board	DSD	Dept of Educ	NGO forums	Community	Trade Unions
3	2	1	1	1	2	1

11.3 Training and qualification

Under the Social Service Professions Act the Council determines qualifications for registration on the recommendation of the professional boards. Professional boards exercise control over training and the power to recognise qualifications is vested with them.

To the contrary, the Bill grants the powers over registration, training standards, recognition of qualifications to the Council.

11.4 Registration categories

The current Act makes provision for registration of social workers and auxiliary workers only. A professional board for the child and youth care work exists but the regulations have not been passed and therefore cannot register under the Act.

The Bill makes provision for professional and occupational registration. Social work remains the only category that can register as a profession and the child and youth care work is categorised as an occupation.

The current Act makes no provision on community service and the Bill states that the Minister may order that persons registering for the first time must perform remunerated community service.

12. Comparison of the Council's structure with Built Environment Professions Bill and Health Occupations Act

12.1 The Social Service Professions and Occupations Bill lists the categories of professions or occupations that can register under the Act.

The Built Environment Professions Bill and Health Professions Act avoid specifying registration categories in the main legislation, the categories are listed in the regulations.

12.2 All three councils are established as juristic entities, general powers are the same. The South African Council for Social Service Professions and Occupations (SACSSPO) has far more powers than the other two council structures. Almost on all aspects that the Minister is required to act, it is always upon the recommendation of the SACSSPO;

12.3 SACSSPO has powers over registration which includes the recommending minimum qualifications, practical training, competency standards, and, council considers and determines applications for registration and renewal of registration.

12.4 With the SSPO Bill, on education and training, professional boards only promote liaison and promote the standard of education and training

12.5 South African Council for the Built Environment (SACBE) must determine policy in accordance with national public works policy determined by the public works Minister. This is a function that the Health Professions Council of South Africa (HPCSA) also has.

12.6 The relationship between SACBE and the Minister is structured differently than the SACSSP's. SACBE must:

- (a) *communicate* to the Minister information on public interest matters; *advise* the Minister with regard to the amendment of the Act;
- (b) provide advice, *if requested* by the Minister in respect of national policy;
- (c) *submit to the Minister a strategic plan, six monthly report and annual report.*

This kind of relationship is also similar between HPCSA and the Minister of Health.

12.7 SACBE must obtain recognition for professional boards as bodies responsible for the establishment of education and training standards;

12.8 SACBE must promote coordination between the Council on Higher Education and the professional boards in relation to the accreditation of education institutions.