

South African Council for Social Service Professions

**POLICY ON THE
FIT AND PROPER PERSON REQUIREMENT
2017**

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South African Council for Social Service Professions Policy on the Fit and Proper Person Requirement

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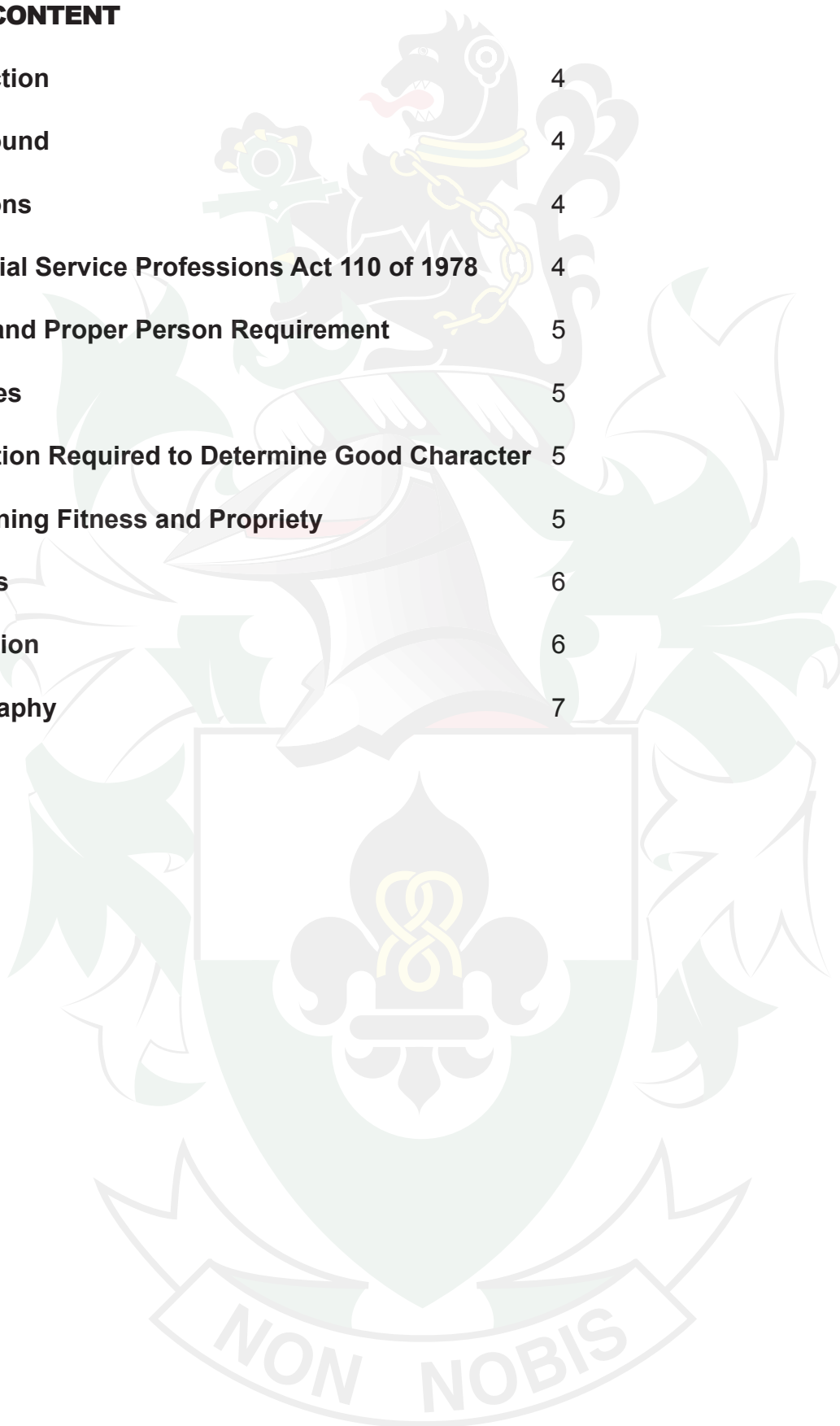
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ABOUT THE SOUTH AFRICAN COUNCIL FOR SERVICE PROFESSIONS

The South African Council for Social Service Professions (SACSSP/ Council) is a statutory body established in terms of section 2 of the Social Service Professions Act 110 of 1978 (the Act). Council has two Professional boards under its auspices: the Professional Board for Social Work and the Professional Board for Child and Youth Care Work. Council, in conjunction with its Professional Boards, guides and regulates the professions of social work and child youth care work in aspects pertaining to registration; education and training; professional conduct and ethical behaviour; ensuring continuing professional development; and fostering compliance with professional standards. It protects the integrity of the social service professions as well as the interest of the public at large. In order to safeguard the public and indirectly the professions, registration with Council in terms of the Act is a prerequisite before practicing social work and child and youth care work. Registration is mandatory for social workers, social auxiliary workers, student social workers, learner social auxiliary workers, child and youth care workers, auxiliary child and youth care workers and student child and youth care workers.

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1. INTRODUCTION

- 1.1 According to section 7(1) of the Constitution of the Republic of South Africa, 1996 (“the Constitution”), the Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.
- 1.2 Section 22 of the Constitution determines that every citizen has the right to choose their trade, occupation or profession freely, but the practice of a trade, occupation or profession may be regulated by law.
- 1.3 Section 36 of the Constitution determines that the rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.

2. BACKGROUND

- 2.1 A very important requirement for registration or re-registration as a social worker, social auxiliary worker or person who wishes to practise a profession in respect of which a professional board has been established, is to be a fit and proper person. Despite the fact that this is a stringent requirement, it is not defined in the Social Service Professions Act 110 of 1978 (“the Act”). Therefore it has to be interpreted in a subjective manner and applied by seniors in the relevant social service professions.
- 2.2 It is therefore clear that it is not sufficient to hold the prescribed qualifications and to satisfy and comply with the prescribed conditions in order to be registered as a social worker, a social auxiliary worker or a person who practises a profession in respect of which a professional board has been established. Applicants will only be registered once they have proven that they are indeed fit and proper persons to be registered. The burden of proof is on the applicant and registration or re-registration is thus subjected to character screening.
- 2.3 Although the burden of proof is on the applicant, the decision remains essentially a discretionary value-judgment on the part of seniors in the relevant social service professions. In order to assist these seniors to make an informed decision on the fit and proper person requirement, the South African Council for Social Service Professions decided to establish its own policy on the fit and proper person requirement.
- 2.4 The Policy envisages to adequately reflect the reasonable expectations and views of those in the social service professions sector.
- 2.5 The purpose of the Policy is therefore to outline

the principles, responsibilities and processes associated with the fit and proper person requirement and provide some guidance towards considerations on what characteristics could determine whether an applicant can be regarded as being a fit and proper person or not.

3. DEFINITIONS

In this policy, unless the context indicates otherwise:

Applicant means the person who applies for registration as a social worker, social auxiliary worker or to practise a profession in respect of which a Professional Board has been established;

Dignity means conduct worthy of honour or respect;

Honesty means the quality of being truthful;

Integrity means impeccable honesty and having strong moral principles and an antipathy to doing anything dishonest or irregular for the sake of personal gain;

Objectivity means the state of not being influenced by personal feelings or opinions;

Reliability means the quality of being consistently good in performance and able to be trusted; and

Seniors means social workers, social auxiliary workers and persons practising a profession in respect of which a professional board has been established who are members of Council or of the relevant Professional Board.

4. THE SOCIAL SERVICE PROFESSIONS ACT 110 OF 1978

- 4.1 Section 17(1) of the Act provides that Council may, on application made in the prescribed manner, register as a social worker any person who holds the prescribed qualifications and satisfies the prescribed conditions and satisfies Council that he or she is a fit and proper person to be allowed to practise the profession of social work.
- 4.2 Section 18(1) of the Act provides that Council may on application made in the prescribed manner, register any person as a social auxiliary who holds the prescribed qualifications, complies with the prescribed conditions and satisfies Council that he or she is a fit and proper person to be registered as a social auxiliary worker.
- 4.3 Section 18A(1) of the Act provides that Council may on application made in the prescribed manner, register any person who wishes to practise a profession in respect of which a professional board has been established, other than social work, and who holds the prescribed

qualifications, complies with the prescribed conditions person to be registered as such.

- 4.4 Section 22(4) of the Act also makes it clear that re-registration is subject to the provisions of sections 17(1), 18(1) and 18A(1).
- 4.5 Therefore, if any social worker, social auxiliary worker or person practising a profession in respect of which a Professional Board has been established, whose registration has been cancelled wants to apply for re-registration, that social worker, social auxiliary worker or person will once again have to prove to the Council or relevant Professional Board that he or she is a fit and proper person.

5. THE FIT AND PROPER PERSON REQUIREMENT

- 5.1 The fit and proper person requirement is designed to ensure that a person who wants to qualify and practise as a social worker, social auxiliary worker or in a profession in respect of which a Professional Board has been established, has the characteristics and principles necessary to ensure the delivery of high-quality services and outcomes for the profession.
- 5.2 However, the mere labelling of a person as being a fit and proper person might create a “false warranty” given to the public that such person will actually act ethically. It is also true that certain professionals who have been described as fit and proper persons do not always act in such manner. Unfortunately the assessment for being a fit and proper person takes place before the applicant is registered and one just cannot predict how a person will act in future.
- 5.3 Council is of the view that the applicants must be persons who possess the attributes of honesty, objectivity, reliability and integrity appropriate to the professional position they hold. These are the characteristics which could affect the relationship between a social worker, a social auxiliary worker or a person practising a profession in respect of which a Professional Board has been established on the one hand and a client on the other hand.

6. PRINCIPLES

The requirements for registration, together with the accepted ethics and rules of the professions and the *Code of Ethics* issued by Council, are regulatory tools whereby Council controls the suitability of persons for registration and their subsequent professional behaviour.

7. INFORMATION REQUIRED TO DETERMINE GOOD CHARACTER

- 7.1 In determining whether an applicant is of good character, is an honest person, has integrity and has the skills and experience necessary to be registered, Council or relevant Professional Board may refer to any information in its possession or brought to its attention.
- 7.2 An applicant must, in the application to Council or relevant professional board, be candid and accurate and must of own accord disclose all facts or information at his or her disposal and which may be relevant for purposes of a decision by Council or relevant Professional Board that the applicant complies or does not comply with the fit and proper person requirement.
- 7.3 Council or relevant Professional Board may request that the applicant provide a character reference from a person not related to the applicant. The person supplying the reference could be a current employer or a person who knows the applicant well.

8. DETERMINING FITNESS AND PROPRIETY

- 8.1 There is no general, universal applicable formula for determining whether a person is a fit and proper person for the purpose of registration in a particular profession or sector.
- 8.2 A determination on whether a person is a fit and proper person requires Council or relevant Professional Board to make a value judgment in the context of the activities in which the applicant is or will be engaged.
- 8.3 Therefore a determination on whether a person is fit and proper is not made by applying a single standard test, assessment or rule, but rather by balancing a range of considerations that may be seen to be relevant to fitness and propriety generally.
- 8.4 Whether or not the considerations present in a given case result in a finding that a person is not fit and proper for registration will depend on a range of factors, including the nature and degree of any improper conduct, any prior conduct or experience of the applicant and any relevant surrounding circumstances.
- 8.5 Maintaining the public interest and trust is integral to the functioning of the social service professions. This is achieved through ensuring that only those applicants that possess and display certain qualities which cannot be acquired through learning are registered. Possessing the following qualities could indicate that a person is indeed a fit and proper person for the profession, namely honesty, integrity,

objectivity, reliability, dignity, the possession of knowledge and technical skills, a capacity for hard work and a sense of equity or fairness. Consequently, applicants presenting an unacceptable risk to the public should not be registered.

- 8.6 The fit and proper person requirement applies to all applicants and it is the responsibility of Council or relevant Professional Board to apply the said requirement. When assessing an applicant, Council or relevant Professional Board may take into account considerations or factors for assessing fitness and propriety as well as conditions which will enable them to determine an ethical malpractice may be taken into account as well as the satisfactory completion of training courses.
- 8.7 When deciding whether an applicant is a fit and proper person, other considerations or factors that Council may consider include whether the applicant –
- has been convicted of any offence listed in Clause 9.1 committed after the Constitution took effect, and sentenced to imprisonment without the option of a fine;
 - as been included in any register preventing him or her from working with children or vulnerable adults.
- If any one of the above applies, the applicant is an unfit person.
- 8.8 Consistent with the public protection rationale, an applicant who has committed criminal offences or previous improper or unprofessional conduct must satisfy the Council or the relevant Professional Board as part of its determination on fitness and propriety that the conduct was merely temporary or isolated and unlikely to recur in the future. It will be more difficult for an applicant to satisfy the requirements underlying fitness and propriety where he or she has committed criminal offences or improper or unprofessional conduct extending over several years.

9. OFFENCES

- 9.1 Council concluded that conviction on any of the following offences would lead to a reasonable person concluding that an applicant is not a fit and proper person to be registered:
- 9.2 Where an applicant has been convicted of a criminal offence including but not limited to arson, assault, corruption, culpable homicide, child stealing.
- 9.3 Where an applicant has been convicted of a criminal offence including, but not limited to:
- Arson
 - Assault
 - Breaking or entering any premises with the

- intent to commit an offence
- Bribery
 - Child stealing
 - Corruption
 - Culpable homicide
 - Forgery or uttering a forged document fraud
 - Fraud
 - Incest
 - Kidnapping
 - Malicious injury to property
 - Murder
 - Offence relating to the illicit possession, conveyance, or supply of dependence producing drugs or child pornography
 - Public indecency
 - Public violence
 - Rape or compelled rape as contemplated in section 3 or 4 of the Criminal Law (The Sexual Offences and Related Matters) Amendment Act 32 of 2007, respectively.
 - Receiving stolen property.
 - Robbery
 - Any sexual offence against a child of a person who is mentally disabled.
 - Theft, trafficking in person for sexual purposes.
 - Treason
 - Any conspiracy, incitement of attempt to commit any offence reformed to above

- 9.4 Council or the relevant Professional Board, as the case may be, has to consider such fact as a factor in determining whether such applicant is a fit and proper person for registration or re-registration in a particular profession or sector.
- 9.5 However, when assessing the matter of convictions, Council or relevant Professional Board may take the following factors into account:
- The nature of the crime or offence;
 - The penalty imposed by the court;
 - The age of the applicant at the time of the offence;
 - The time that has elapsed since the offence took place;
 - The likelihood of the applicant re-offending; and
 - Rehabilitation since committing the offence.

10. CONCLUSION

- 10.1 The fit and proper person requirement does not succeed in keeping unwanted elements out of the social service professions and is also no guarantee of moral goodness. An applicant should do more than just occupy a profession – he or she should serve the public and to do so effectively they need to be trustworthy men and women of untarnished reputation, therefore fit and proper persons.
- 10.2 No means to determine whether or not an

applicant is indeed a fit and proper person are perfect, nor can it guarantee that an applicant will act morally and ethically in future, yet some means of screening prospective applicants are necessary and must be enhanced by further training through seminars and workshops on ethical behaviour or morality within the social service professions.

- 10.3 If the fit and proper person requirement is to remain the moral scrutiny of prospective applicants, its consequences and meaning should be communicated to each and every applicant so that all of them know exactly what moral conduct is expected of them, not only shortly after registration, but also well into the future. This knowledge should be followed up by extra training in ethics. To remind them of their respective Codes of Conduct or Ethical Rules is not enough to guarantee acceptable behaviour. To allow only real fit and proper persons into the professions remains aspirational.
- 10.4 Within the legal profession, the constitutionality of the power of the Court to strike an attorney off the roll of attorneys was challenged when in the matter of *Law Society of Transvaal v Machaka 1998(4) SA 413(T)* it was argued that the fit and proper standard violated the constitutional right to dignity, equality and the right to choose one's trade, occupation or profession freely.
- 10.5 The Court rejected the arguments as well as the idea that membership of the legal profession should not be subjected to the character screening of the person involved. The Court held that the character screening prevented the right to freely choose one's profession from being abused by criminally minded attorneys.
- 10.6 The judgment in the above matter should equally apply to the social service professions sector and it can safely be assumed that it is constitutionally acceptable to use the fit and proper person requirement in the social service professions sector.

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