

Assessment of Criminal History Guideline

1. Purpose

This document seeks to guide the TRBWA secretariat in determining what circumstances of criminal offending would impinge the issue of fit and proper and require further assessment and referral to the Board for final decision.

2. Scope

This guideline applies to all applications for registration and renewal. To be eligible for registration a person must be a fit and proper person to be registered as a teacher. The TRBWA may not grant registration unless it is satisfied that this requirement is met.

This guideline applies to all TRBWA staff and Board members involved in the registration and regulation of teachers in Western Australia.

3. Background

In order for a person to be registered the Board must be satisfied that person is a fit and proper person.

Section 24 of the Act details what matters the Board is to have regard to in determining whether a person is fit and proper to be registered, including among other things, the criminal history of the person.

For a registered teacher, s45 details action to be taken by the Board on receiving a notification or criminal record check.

Section 5 of the Act states the paramount consideration when performing any function in relation to the Act as being the best interests of children. Section 5 states:

A person or body with functions under this Act must, in the performance of those functions, regard the best interests of children as the paramount consideration.

4. Guideline

4.1 Criminal record check

All applicants to the TRBWA are required to consent to a criminal record check. This is a requirement for the making of an application for registration.

The Board may at any time give written notice to a registered teacher requesting that the teacher provide written consent for the Board to obtain a criminal record check in respect of the teacher. Failure to provide consent may lead to cancellation of a teacher's registration.

A criminal record check through the CRIMTAC agency is undertaken in respect of all applicants for registration to the TRBWA. The information received is assessed by the TRBWA and taken into account in determining whether a person is a fit and proper person.

Where a person has been convicted of criminal offences, the issue of fitness and propriety will be considered by the TRBWA and a decision will be made based on the nature of the offending.

4.2 Assessment of Offence history

Where a criminal record check shows a criminal history an assessment of the individual cases is undertaken to determine whether further information and/or assessment is required based on the nature, seriousness and relevance of the offence(s) to the fitness and propriety of a teacher.

Not all offending renders a person unfit to be a teacher therefore when considering the registration of a teacher the TRBWA will focus on, in the Board's opinion, offences which suggest that:

- a person might pose a risk to the safety of children
- the person cannot be regarded as able to provide proper moral guidance to the children for whom they may be responsible
- an impairment may be present.

For some offences it will be possible to decide to grant registration or renewal by considering the nature of the offence and the penalty, without obtaining a statement of material facts or other information.

For other offences further assessment will be warranted. Some may require only the obtaining of a statement of material facts which may then demonstrate that the circumstances of the offence were such not to render a person unfit and improper to be registered as a teacher. Others, in terms of offence and penalty, are more serious and will require further assessment.

4.3 Categorising of offences

The TRBWA has determined a threshold to guide decisions on the issue of which offences require further assessment and which are likely to be relevant to fitness and propriety. The threshold is based on categorising offences by the type of offence and the penalty incurred.

The most common types of offences which may give rise to concern have been grouped into the following categories:

- disorderly
- dishonesty
- drugs
- driving
- dangerous.

Disorderly

These are in the main offences involving inappropriate or offensive behaviour such as disorderly conduct, swearing, street urination, obstructing police, graffiti, minor property damage, or public drinking. These offences generally require no further assessment.

An assessment should be made where an applicant/teacher has been convicted of such offences on three separate occasions in three consecutive years or fewer.

Dishonesty

Dishonesty offences include theft, fraud, forgery, perverting the course of justice (most usually by giving a false name if stopped while driving). These offences cover a range, from stealing sweets or failure to correct wrong information given to Centrelink through to defrauding people of their savings. At the high end, they may constitute unfitness and are likely to result in a sentence of imprisonment.

An assessment should be made into the circumstances of any dishonesty offence that results in a sentence of a Community Based Order or higher.

Drugs

- Possession

Drug possession may include drugs of addiction and others that can lead to dependence in these cases may indicate an impairment.

An assessment should be made into the circumstances where a teacher has:

- one or more convictions of possession of heroin or cocaine
- two or more convictions for possession of amphetamines
- three or more convictions for possession of any other drug.

- Selling/supplying

Selling and/or supplying drugs can be a serious offence and can constitute unfitness.

An assessment should be made into the circumstances of any sell/supply offence where the conviction is a fine greater than \$1000.

Driving

Most of these offences will not constitute unfitness, although some single offences or patterns of offending may show such a selfish disregard for the safety of others that they may do so. Some driving offences may also suggest impairment.

An assessment should be made:

- into the circumstances of all convictions for dangerous or reckless driving, and of failure to stop after an accident
- into the circumstances of all other driving convictions, other than speeding, on four or more separate occasions within the past four years
- where a teacher has two or more DUI convictions, or three or more of .08.

Dangerous

This category encompasses all the other offences such as assault, doing bodily harm, robbery, arson, stalking, threats, sexual assaults (on adults), up to murder. Some will indicate a person may be a danger to children, and others will be so morally reprehensible as to constitute unfitness.

An assessment should be made into the circumstances of most of these. However for assault no assessment need be made in relation to offences resulting in a fine of \$1000 or any lesser sentence.

Sexual offences against children have not been included in this category as s27 of the Act covers these offences.

Multi-offending

For complex cases where a person has a number of disparate offences and there is reason to be concerned about their character, these cases will need to be brought to the Board.

Spent Convictions

For spent conviction assessment needs only to be made into the circumstances of spent convictions where there is some later conviction that needs assessment and where the details of the spent conviction may provide context for the later one.

5. Supporting information

- *Fit and Proper Policy*

6. Change History

Approved	Version	Details	Approved By
16/5/2013	1	New Guideline Issued	TRBWA
Next Review Date		16/5/2015	