

## Fit and Proper Policy – Criminal History

### 1. Purpose

This policy outlines the Fit and Proper requirements for applications for registration and renewal of registration with the Teacher Registration Board (TRBWA).

### 2. Scope

This policy applies to applications for registration and renewal of registration. 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 or renewal of registration unless it is satisfied that this requirement is met. The policy does not, however, apply to applications made by currently registered teachers holding either Full or Provisional Registration applying for Non-Practising Registration (not intending to teach) pursuant to section 18(a) of the *Teacher Registration Act 2012* (Act).

The policy also applies to those applicants for registration who have resided overseas for 12 months or more within the last ten years and to those applicants for renewal of registration or who are currently registered applying for another category of registration who have resided overseas for 12 months or more within the current period of registration.

The policy does not apply to disciplinary or impairment matters or to the TRBWA's power to cancel registration under section 27 of the Act. These matters are addressed in separate TRBWA policies.

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

### 3. Background

The TRBWA operates within a national context. Each State and Territory has established an authority or agency similar to the TRBWA for the registration of teachers. The TRBWA along with its State and Territory counterparts operates within a consistent framework for registration of teachers which was endorsed by the Education Ministers of all jurisdictions in October 2011.

Section 24 of the Act states:

*In determining whether a person is a fit and proper person to be registered, the Board is to have regard to the following —*

*(a) the person's history of compliance with —*

*(i) this Act; or*

*(ii) a law of another State or a Territory or New Zealand that deals with the registration of teachers (however described);*

*(b) any decision under this Act or a law referred to in paragraph (a)(ii) to refuse, refuse to renew, suspend or cancel a licence, approval, registration, certification or other authorisation (however described) granted to the person under such an Act or law;*

*(c) the criminal history of the person;*

*(d) any behaviour of the person that —*

*(i) does not satisfy a standard of behaviour generally expected of a teacher; or*

*(ii) shows that the person is not of good character;*

*(e) whether the person has contravened —*

- (i) *an order of the Board, a disciplinary committee or the State Administrative Tribunal under Part 5; or*
- (ii) *an order of a disciplinary body or of a court or tribunal of another jurisdiction exercising jurisdiction or powers by way of appeal or review of an order of a disciplinary body that deals with the registration of teachers (however described);*
- (f) *(without limiting any other paragraph, whether the person has failed to pay any costs, expenses or fines for which the person is liable under this Act;*
- (g) *any other matters relating to the person that the Board considers are appropriate.*

With respect to the requirement for an applicant who has resided overseas to provide the Board with an overseas criminal record check at the time of making an application, the Board, under the authority of section 13 of the Act, may make a request of the applicant to provide to it further information which is relevant to that application.

Section 13(1) states:

*The Board may, in writing, request –*

- (a) *the applicant; or*
- (b) *if the application is for the grant or renewal of limited registration, the nominee,*

*to do any or all of the following –*

- (c) *provide the Board with such further information relevant to the application as the Board requires;*
- (d) *verify any further information by statutory declaration;*
- (e) *provide the Board with the applicant's or nominee's written consent to seek, from another person or body specified by the Board, information about the applicant or nominee relevant to the application.*

Section 13(3) provides the Board with the authority to refuse an application if the applicant or nominee does not comply with a request made under this section.

Section 5 of the Act provides that 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.

This requirements is relevant when the Board is making an assessment as to whether a person is a fit and proper person to be registered.

## **4. Policy**

### **4.1 Consent for a criminal record check**

Applicants to the TRBWA are required to consent to a national criminal record check. This requirement applies to those persons who are applying for registration as a teacher for the first time, those who are seeking to apply for another category of registration, and those who are seeking to renew registration in a particular category.

The requirement to provide consent applies to the abovementioned applications, regardless of whether the TRBWA has recently undertaken a criminal record check in relation to the applicant. An application without written consent for the TRBWA to undertake a criminal record check will be deemed not to be an application and will not be processed.

The submission of a notice of Intention to Apply for Limited Registration (Form 1) is not an 'application' to the TRBWA, and in this case consent is not required to be given. However any subsequent application for Limited Registration is required to be accompanied by consent for a criminal record check.

Under section 18(a) of the Act, a registered teacher holding Full or Provisional Registration is eligible to apply for Non-Practising Registration if they do not intend to teach in an educational venue for a period of time. This allows a teacher to retain their registration whilst not actively teaching. There is no requirement for a consideration of fit and proper in these circumstances. Holders of Non-Practising Registration who have commenced teaching are required to give written notice of that fact to the TRBWA. In this situation the TRBWA will generally request a person to provide written consent for a criminal record check under section 43 of the Act, particularly where a significant period of time has elapsed since the person last underwent a criminal record check.

#### **4.2 Notice from the Board**

Under section 43 of the Act, 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 unless the Board is satisfied that there are extenuating circumstances.

#### **4.3 Fit and Proper considerations: Criminal offending**

A national criminal record check is undertaken in respect of 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 to be registered.

The Act also provides for notice to be given by registered teachers, employers and other agencies to the TRBWA on a number of matters which may have a bearing on fit and proper considerations.

A person who has been convicted or found guilty of a sexual offence involving a child (as defined in section 46 of the Act) or has been issued with a negative notice or an interim negative notice under the *Working with Children (Criminal Record Checking) Act 2004*, is not entitled to be registered as a teacher, under section 27 of the Act, and will therefore not meet the fit and proper requirements.

Where a person has been convicted of other criminal offences, the individual circumstances will be considered by the Board and a decision will be made based on many factors, including the seriousness of the offence(s) and the time since the last offence. The Board will also have regard to the Board's *Assessment of Criminal History Guideline*.

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

- the 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
- the person shows a selfish disregard for the safety of others.

When considering criminal offences, factors the Board will also consider include:

- the seriousness and/or frequency of any offending
- the nature of any sentence/s imposed
- the age of the offence/s.

When assessing whether a person is a fit and proper person to be registered, the best interests of children will always be paramount.

#### **4.4 Requirement for an overseas criminal record check**

An overseas criminal record check is required from each country, other than Australia, in which the applicant has resided for a cumulative period of 12 months or more and must cover the entire time in each country after the age of 18 during the last 10 years. The check must include all names by which the individual has been known in that country.

The Board also requires those teachers applying to renew their registration or for another category of registration, who have resided in any country other than Australia for a cumulative period of 12 months or more within their current period of registration, to provide an overseas criminal record check as part of the application.

For those applicants, it is a requirement to provide an overseas criminal record check issued in the last 12 months from each country in which the teacher has resided. The check must be undertaken on all names by which the individual has been known in that country.

Should the result of the check be in a language other than English, it must be accompanied by a certified English translation.

There may be circumstances where it is not possible to obtain an overseas criminal record check due to matters or requirements specific to a particular country. In such circumstances, the TRBWA may accept a statutory declaration by the applicant that attests that the applicant has no criminal history in that country, details the reasons for not being able to obtain the overseas criminal record check and outlines what steps were taken to obtain the check.

#### **4.5 Fit and Proper considerations: Other matters**

Although criminal history constitutes an important part of fit and proper assessments, consideration will also be given to misconduct and behaviour which is inappropriate, unprofessional, which tends to indicate incompetence or is otherwise behaviour not generally expected of a teacher.

### **5. Supporting information**

- *Teacher Registration Act 2012*
- *Teacher Registration (General) Regulations 2012*
- *Assessment of Criminal History Guidelines*

## 6. Change History

Approved	Version	Details	Approved By
19/6/2013	1	New Policy Issued	Board
11/12/2014	2	Amended to include requirement for overseas criminal record check	Board
27/01/2015	2.1	Amendments to 4.4 overseas criminal record check to remove reference to translators outside Australia	Director
13/04/2016	2.2	Amendment to 4.3 fit and proper considerations to include that the TRBWA may take into account a criminal record check that is less than 12 months old	Board
06/09/2016	2.3	Amendment to 4.3 fit and proper considerations to remove references to the CRIMTRAC agency	Director
07/09/2017	2.4	Amendment to 4.4 with respect to clarifying requirements with respect to overseas criminal record checks, amendment to the scope to exclude applications made pursuant to s.18(a) of the Act and general policy review.	Director
Next Review Date		30/06/2019	