



INDEPENDENT EDUCATION UNION OF AUSTRALIA

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12 November 2004

Ms Lynne McDonald
DEST

By Email: Lynne.mcdonald@dest.gov.au

Dear Ms McDonald,

Please find attached the Independent Education Union's submission to the
Conduct of Criminal Record Checks on Persons Seeking to work with
Children In Educational Settings.

Many thanks for your assistance.

Yours sincerely,

Lynne Rolley
Federal Secretary



**Independent Education Union of
Australia**

Submission

**Conduct of Criminal Record Checks
On Persons
Seeking to Work
With Children
In Educational Settings**

12 November, 2004

*Authorised by Lynne Rolley
Federal Secretary
Independent Education Union of Australia*

1. The Independent Education Union of Australia (IEUA) is the federally registered union for staff in Australia's non-government schools and other private educational institutions. Its constituent State and Territory organisations/branches represent teachers on the various Registration Boards and Institutes in each State and Territory and represent teachers and other staff in relation to formal employment screening processes, inquiries, disputes and appeals.
2. There has been rapid development in the various States and Territories in recent times of provisions relating to employment screening. There are some commonalities but also divergences in approach. In broad terms, the IEUA supports the general notion of nationally consistent provisions implemented by way of adjustment to existing State and Territory laws, after appropriate local consultation. This broad support is contingent on the nationally consistent provisions being fair and embodying a range of protections and standards currently to be found in some places but not all, as is discussed below. The IEUA does not support the use of nationally consistent provisions to effect major structural changes in any jurisdiction unless there is extensive further consultation and agreement reached by the relevant organisations – including the IEUA locally.
3. The constituent IEUA State and Territory bodies which deal actively with employment screening and teacher registration matters in non-government schools are:

Queensland Independent Education Union

P O Box 418
Fortitude Valley
QUEENSLAND 4006

NSW/ACT Independent Education Union, (for both NSW and ACT jurisdictions)

GPO Box 116
SYDNEY 2001

Victorian Independent Education Union

P O Box 1320
SOUTH MELBOURNE
VIC 3205

Independent Education Union (SA)

213-215 Currie Street
ADELAIDE SA 5000

Independent Schools Salaried Officers' Association

P O Box 8444
PERTH BUSINESS CENTRE 6849

Tasmanian Independent Schools Teachers' Association

P O Box 235
Sandy Bay
TASMANIA 7006

Tasmanian Catholic Education Employees' Association

GPO Box 572
North Hobart
TASMANIA 7002

Independent Education Union (NT Branch)

38 Woods Street
DARWIN 0800

4. **Initial Remarks**

(i) Objectives

The stated objectives of model legislation (authority for consistent and controlled release of information, limitations on use, and requirements for natural justice) are supported. The proposal to avoid substantial structural or procedural changes within jurisdictions is also broadly supported, unless a case can be made that important protections absent in a jurisdiction need to be addressed. This would be subject to agreement in that jurisdiction.

(ii) Principles

The fundamental principles adopted by the Australian Education System Officials Committee for the preparation of model legislation include acceptable and important principles but obviously are open to considerable interpretation and debate.

For instance, the principle that mandatorily acquired personal and sensitive information about a person's history must not be misused is supported but should lead to strong conclusions about the restricted use of and access to such information. Arguments by some employers that their interest in suitability for employment on religious, ethos, life-style or other grounds, not related to suitability for working with children, should allow access to such information for these other purposes, must be rejected.

The IEUA considers that the principle of relevance is of great importance and must control assessments (see 6(ii) below).

(iii) Teachers/Other Staff

Existing arrangements in the States and Territories reveal a patchwork quilt in regard to teachers and other staff. For instance, the release of criminal record information in Queensland and NSW to approved screening agencies applies to all employees, whereas in other places, the use of Teacher Registration Boards/Institutes for criminal checks for teachers does not cover others. (We note discussions in South Australia exploring the possibility of the Teachers Registration Board undertaking this function for schools for support/ancillary staff.). Protections in relation to access to and use of information that derive from the fact that Boards/Institutes undertake the checks independently of local employers should, in principle, also be afforded to other employees. This could be adopted as an operating principle for nationally consistent model legislation, with the actual mechanism in jurisdictions to be sorted out locally. It should be noted that it is the view of the IEUA that small, individual employers (pre schools, individual schools) are not necessarily

the best placed to observe the limitations of use of information, with due regard to privacy and fairness that more centralised agencies with specially trained staff are.

(iv) Different Tests

Laws establishing Registration Boards/Institutes for teachers typically require a 'good character' or 'fit and proper person' test. While there may be a formal distinction between these (eg, 'good character' is a somewhat global assessment and 'fit and proper person' may be more functionally directed at teaching) in practice, these are probably similar enough. The issue is really the kind of weight to be put on convictions of various kinds, and charges of various kinds. Some jurisdictions automatically exclude a person from teaching upon conviction of certain offences (eg Victoria with its proscribed sexual offences, and the requirements of the NSW Prohibited Employment Act 1998, and its required declarations). Broadly, other jurisdictions operating through Teachers Boards would probably be similarly guided by such offences, although a judgment is to be made. Note, the NSW legislation allows the Administrative Decisions Tribunal, or Industrial Relations Commission to allow a prohibited person to teach, and some such applications have been successful. The Queensland list of 'serious crimes' is much wider than the NSW/Victorian prohibited crimes but also allows the possibility of employment in exceptional circumstances.

On the other hand, NSW screening procedures result in advice to employers that a person is a high/medium/low risk or 'risk no greater than average'. The best one can achieve! This is quite different from receiving a concluded judgment from the agency about fitness to teach.

Further, in places where there is no general screening agency, and where teachers are dealt with under Registration Boards, it seems that police checks are undertaken by employers for non-teaching staff. There does not seem to be a code or set of mandatory procedures or protections in such cases. With the multiplicity of small employers, and stand alone schools in the non-government sector, this is unsatisfactory.

However, it is instructive that in Queensland, the BTR handles teachers and the Children's Commission handles all other staff in schools, coaching colleges, as well as a range of other institutions. The Commission undertakes the criminal checks and assesses suitability.

It is worth noting that in early childhood education, which is substantially community based or privately run, screening is undertaken in a number of jurisdictions by the relevant Department of Community/Family Services, and is separate from the local employing authority, is mandatory and is carried out by specialist staff. This model and the Queensland approach, should be considered for non-teaching staff in states and territories where Teachers Boards deal with teachers exclusively.

(v) Included information dependent on protections.

The particular information to be included (spent convictions, unrecorded convictions, dropped charges etc) should be considered in relation to the strength of the privacy provisions, training of staff, criteria for assessment, security of information etc which apply. Use of dropped charges and spent

convictions constitute an overriding of a person's rights and if they are to be countenanced because of child protection risk assessment principles, the procedural and structural protections must be much stronger. This is not currently the case in a number of places.

5. **Mutual Recognition Acts**

With the implementation of registration bodies for teachers in all jurisdictions (other than ACT, so far) registration in one jurisdiction will provide right of registration elsewhere. It follows that a greater measure of consistency regarding serious relevant criminal matters is desirable.

6. **Information to be Released** (Consultative Questions 1-6)

- (i) It is a defensible position to argue that only recorded convictions of offences relevant to working with children, and perhaps pending charges similarly relevant, should be assessed. Findings of 'not guilty', dropped charges, and spent convictions all have characteristics which suggest the person involved should have the benefit of the outcome. There is a form of double jeopardy involved in the effect of spent conviction laws, which are granted only under specified circumstances where Parliament considers such a benefit is appropriate, being extinguished in particular cases. Where spent convictions are accessed they should be of strictly relevant offences and subject to rigorous assessment in terms of evidence of patterns of unacceptable behavior.

Similarly, charges may be dropped for a variety of reasons, and in any case, being dropped, the presumption of innocence remains and the drawing of adverse inferences from untested material, where the individual has been denied a right to formally engage with the material and accusation, and may be unaware of much of the material, is at best precarious and at worst, objectionable.

Nonetheless, the current legislative arrangements and policy in most places provides for the full criminal history record to be made available. The IEUA is of the view that if this is to remain, further requirements are needed to afford proper protections, and indeed proper rigor in decision-making. It is essential that where full criminal histories are accessed there especially be the most rigorous implementation of protections for individuals in the area of not guilty verdicts. These outcomes must not be abrogated by risk assessment modules which effectively reverse these coveted outcomes.

For instance, the NSW CCYP screening system does provide access to the full record, including reasons for charges being dropped where these exist; however there are a number of steps taken to sift the material for relevance for child protection purposes (as noted in the annexure to this submission dealing with NSW). The jurisdiction of record, CrimTrac, and the CCYP all check for relevance, and in any case, the employer is not given the information.

In other places, the purpose of the criminal record check is clearly related to either child protection, or fitness/character tests, and – at least for teachers – assessed at arms length from the employer under processes subject to appeal.

The IEUA opposes model legislation which provides access to full records to employers, especially individual schools, and supports such material only being accessed by authorized screening agencies operating under explicit and enforceable rules of natural justice, including assessments being governed by specific purposes. Hence, the IEUA believes the issue of 'what records' depends on the processes and structures which are in place.

- (ii) The IEUA notes that the inherent requirements of a job are the usual determinants at law of the relevance of employment information or criminal history. It is accepted that some States and Territories have decided that, in respect of working with children for instance, certain offences/criminal records will generally disqualify a person from teaching/working with children. However, NSW and Queensland do allow a process of exemption from this absolute exclusion, while in Victoria the exclusions are absolute but apply only to teachers. The inherent requirements of the job test, and related notions of the special characteristics of a field of employment, obviously go more broadly than child protection considerations with teachers, e.g. accountancy fraud convictions in relation to a bursar's job, a history of dangerous driving convictions in relation to bus driving.

Some principles identified in draft work of the Human Rights and Equal Employment Commission should be noted:

- inherent requirement of a job means 'essential' not incidental
- burden on employer to identify such requirements
- determination in reference to actual job, actual employee and actual context.
- tight correlation between inherent requirements and criminal history.
- strict interpretation of inherent requirements.

Further, the decision of the High Court of Australia in "A Solicitor v The Council of the Law Society of NSW (2004) HCA 1 (4 Feb 2004)" established clearly the distinction between personal misconduct (in this case, aggravated indecent assault of two step daughters) and professional misconduct (relevant to being a fit and proper person to be a solicitor). This case underlines the importance of establishing the relationship between criminal record and fitness for the job (clearly the record in this case would relate directly to fitness to teach) and support the proposition that formal agencies need to be in place to receive and assess such information, under protocols of clear purpose, criteria, right to comment, appeals etc.

- (iii) Accordingly, in regards to questions 1-6, the IEUA considers that:
- a) where the model legislation relates to child protection issues, criminal records of convictions relevant to such matters only should be released; while great care must be taken about pending charges as they are untested, given their currency, it is probable that they should also be advised to the screening agency.

- b) where all relevant charges, or spent convictions are to be released for child protection purposes, there needs to be strict controls on the assessment of such information; there should be a strong test based on pattern or multiple occurrences in drawing adverse implications from dropped charges where the reasons are unknown/unrecorded or where there is no other record of convictions, further charges, or relevant disciplinary matters of a serious and related kind.
- c) where model legislation is intended to embrace the more global good character/fitness to teach tests, there should either be a removal of criminal record information that does not relate to the profession of teaching (inherent requirements) or an equivalent strict interpretative protocol or set of criteria that ensures that only relevant material for defined purposes is considered.
- d) where full records are made available in relation to all staff in schools (not just teachers) and the model legislation goes beyond child protection and embraces fitness for the position, then strict application of the inherent requirements test should be established.
- e) broadly the IEUA believes spent convictions should remain spent; if this is not accepted then strict limitations on implications to be drawn, in the absence of other information that is adverse, should apply.
- f) in all cases above, the material should be processed by approved central agencies which meet the standards required.
- g) in regard to release of investigative information, the IEUA believes only the fact of a pending charge should be available; the strict limitations set out on p14 must apply. If this is not accepted, then the practice of untested prejudicial material being made available is to be resisted.

7. **Who Should Criminal History Information be Released to?** (Q7-9)

The previous parts of this submission make it clear that approved expert public agencies should alone handle such information. Large public service departments, with specialist units, would be included in this of course, as per current practice. For non-government schools/ECS centers, teacher registration boards, children's commissions or related screening agencies are the appropriate vehicles. This means that consideration has to be given to the appropriate agency for non-teachers in WA, NT, SA, Vic and Tas, and for all staff in the ACT. In relation to the ACT, the practice of using the NSW CCYP should be clarified.

8. **Control on Release, use, Retention and Storage** (Q10-16)

- (i) The foregoing discussion has clarified the IEUA's views in relation to these issues. We have drawn attention to the need to clarify the test and the purpose of the record check.

The information must be relevant to the purpose and the requirements of the position. General character/fitness assessments need to be

underpinned by rigorous assessment of information and relevance strictly determined. Individual school employers should not be enabled to access such mandatory information for other purposes (e.g. religious/political/life-style suitability or compatibility with school ethos).

- (ii) Information should be destroyed after use. Some agencies require this now. No doubt there will be a file record of relevant matters considered in an inquiry or investigation or assessment of an individual case, and the basis for the decision recorded. This should be secure. Material excluded as irrelevant should be expunged. Material would be held until the completion of all relevant processes, and where information was relevant to a decision (including fitness to teach being agreed in the face of prima facie adverse information) the details of the relevant information would be recorded in the file as part of the record of decision-making. The file would be subject to strict privacy laws and other statutory restrictions.
- (iii) This submission has discussed the principles governing use and assessment.
- (iv) Offences for unauthorized requests for criminal records, unauthorized use and release of information, and improper disclosure should be created. Indemnity for honest and non-negligent actions could be considered for those required to be involved in the administration of the system.

9. **Ensuring Natural Justice**

The proposals listed under Right of Reply and Right of Appeal are supported.

Such rights must not only require the provision of the criminal/history information to the person concerned, right to comment and provide further information, necessity to consider all information relevant, but also include transparency of decision-making; in particular, an affected person must be able to see the tests and criteria applied, judgments made about relevance of information and grounds for decision.

Appeals should be available after reviews have occurred.

10. **Review**

The period of review of model legislation would depend somewhat on the form of local legislative enactments undertaken to achieve the common outcome. The IEUA considers that legislative arrangements need to be settled, but the proposal to examine the nationwide outcome after 3 years seems reasonable.

Criminal Record Checks – NSW/ACT

NSW

Employment screening of preferred applicant – “relevant national criminal record check” and “check of relevant Apprehended Violence Orders”

Definition:

A criminal record of a person with respect to an offence involving sexual activity, acts of indecency, child abuse or child pornography that was: ‘committed in NSW and was punishable by penal servitude or imprisonment for 12 months or more, or committed elsewhere and would have been an offence punishable by penal servitude or imprisonment for 12 months or more if it had been committed in NSW’

An apprehended violence order (other than an interim order) made by a court under Part 15A of the Crimes Act 1900, or an interstate restraint order (within the meaning of Part 15A of the Crimes Act 1900) , and made on the application of a police officer or other public official for the protection of a child (or a child and others)

Conversation with CCYP (Wed 28 October):

In accessing convictions from other jurisdictions NSW has sent a list of ‘relevant offences’ [relevant Crimes Act sections] to other States/Territories. 3 layers of ‘filtering’ occur. First the jurisdiction in which the conviction was recorded is asked to check against relevancy, second CrimTrac checks against relevancy and thirdly CCYP checks relevancy. Often court papers are used to establish detail (e.g. age of victim) for purposes of relevancy. AVOs from interstate are not accessed. Sect 38 (3) (b) provides access to ‘any relevant charges’ (same test for relevancy as in convictions). Risk assessment based on patterns of charges and reason for withdrawal (again court papers are accessed and person sometimes asked to make stat dec where detail is sparse especially in cases from some time ago)

ACT

Catholic Systemic

Use NSW employment screening protocols (via CCER)

Catholic Congregational

Use NSW employment screening protocols (via CCER)

Independent Schools

Anglican independent and Christian schools are using NSW CCYP screening]

ACT Government Schools

Criminal record check – all criminal convictions are checked via CrimTrac
No agreed protocols on ‘filtering’ of types of offences, penalty on conviction or time since conviction recorded. Historically teachers (including

Archdiocesan teachers until advent of NSW legislation and adoption of same) had to pay for their own police check. ACT Government picked up the tab for this a couple of years ago. Department of Education as recently as last Friday 22 October was arguing for checking of "all Charges" as well as convictions! ACT Department not happy with 'lesser' test currently applied by Archdiocese. Also, proposal by Department to check existing teachers. AEU does not necessarily oppose the latter.

The following provides general background of the NSW arrangements as discussed above.

1. The Wood Royal Commission into the NSW Police received a pedophilia reference, and investigated schools. In response to a request for input, both teaching unions supported the establishment of a registration board (then being mooted) that could undertake screening among other functions. The Royal Commission accepted this advice and recommended this in its final report. The government rejected this recommendation, and implemented an alternative scheme which involved:
 - (i) The Commission for Children and Young People (CCYP) being established, empowered to undertake pre-employment screening (criminal records, AVO's and notified disciplinary matters on its own database – items put there by employers after investigations of complaints and findings made).
 - (ii) All complaints of abuse (since redesignated as 'reportable matters') to be notified firstly to the Ombudsman, which oversees investigations.
2. Prior to the late 1998 legislation setting all this up, criminal record checks were undertaken in the Department of Education and Training pursuant to public service legislation. No checks were undertaken in non-government schools: there was no central authority to do so, no law requiring it, and in fact the police were not authorised to give the information to the schools.

This latter was quoted, correctly, by schools in our sector when criticized for not doing this.

3. Since 2000, compulsory pre-employment screening is undertaken by authorised screening agents as follows:
 - (i) public schools – Department of Education Screening Agency
 - (ii) Catholic schools – Catholic Commission for Employment Relations Screening Agency
 - (iii) Independent Schools – CCYP itself
 - (iv) ECS – Department of Community Services Screening Agency

The agencies contact crimtrac under CCYP established protocols.

4. Screening involves 3 sets of modules which assign points which when totaled produce a risk assessment (high, medium, low, no greater than average, this last being the best one can get!). Employers are told the risk outcome, not the information. Employees are given opportunity to discuss the police information, the AVO information and the disciplinary information.

AVO's only used if taken out in a court, by the police only, and only if to protect a child.

5. All convictions and charges are accessed. Convictions rated (by points) for age differentials, time since occurrence, number of times etc. Charges, where dropped, are considered in relation to relevance and reasons for charges being dropped. The latter are not always available, or clear, and in any case are still problematic.
6. The benefits of the NSW system include being undertaken by an authorised agency and assessment of relevance. However, issuing in a risk assessment is different from a suitable/not suitable outcome, and there is no appeal against the assessment (this could be tested in the ADT perhaps, but would effectively have to be an appeal against the points module itself, and there is no Bill of Rights to appeal to, or other benchmark of right.

The transfer, over time, of the screening function to the new Institute of Teachers would have obvious benefits if associated with a 'fitness to teach' criteria, and appeals, but would not necessarily add to the Institute's popularity at the moment.

7. Regarding model legislation, the issue of what kind of judgment/what criteria for judgment seems an important point, and relates to benchmarks re crimes, relevance etc.

Criminal Record Checks – Northern Territory

1. Amendments to Education Act in 1997 required police checks on all employees with children; reference to Child Welfare Act for the kinds of material that is relevant, including all charges and convictions but requiring assessment for relevance re child employment. So, all newly employed post 1997 have been screened.
2. Teacher signed authorization at point of employment; employer requested and received the police data, and assessed it. No real scrutiny or redress unless offending an antidiscrimination principle.
3. In 2004, the Teachers Registration Act implemented progressively:
 - (i) all existing teachers granted registration

- (ii) all new teachers have police checks BUT data given to Registration Board, not employer
 - (iii) assessed in terms of Child Welfare Act to determine whether 'fit and proper person'
 - (iv) all pre 1997 teachers being checked this year
 - (v) after that, all post 1997 teachers whose police check is more than 2 years old, will be rechecked
 - (vi) thereafter, no re registration/rechecking
 - (vii) there is a public service requirement (as elsewhere) for officers to notify state of offences; no equivalent non-government requirement, through sex changes would be unlikely to escape notice of employer.
4. TRE Director accesses 'fit and proper' and refers to Board for decision. Appeal against Board to the Board in first instance (right to be heard/legal representation); thereafter appeal to Magistrates Court.
 5. The Registration Board has adopted the principles and limitations/definitions of the Anti-Discrimination Act in certain regards (need to clarify detail of this) which affects scope.
 6. All operates in NT context of relatively small communities with fairly immediate/effective circulation of information informally (block lists!) and the Board process provides some objectivity.
 7. Employers don't get access to information – one is either fit/proper, or not.
 8. It would follow perhaps that some data may be kept by the Board, although given there is no re registration process, the point of this is not clear.

Criminal Record Checks – SA

1. SA Teachers Registration Board is well established, like Queensland's; since 1997, it has conducted criminal record checks on all new applicants for teacher registration (pre-condition for teaching). The information on criminal record was provided previously under a memorandum of agreement between the Board and the SA Police Service (SAPOL), governing protocols for use and specifying content. Now, the Board accesses Crimtrac. The information contributes to a 'fit and proper' person test. Negative outcomes are appealable to the District Court, and are rare.
2. Alongside this process, private school employers (Catholic and Independent) have required a separate criminal record check; this has required a signed personal authorisation by the teacher and has occurred under separate employer – SAPOL memorandum. This process and its outcome is not subject to review in any effective way (in

Catholic schools the appeal is to the Director, and there have not yet been any in the Lutheran schools).

3. Extensive revision of the Teachers Registration Board is currently before the SA Parliament, and child protection screening is a significant element of the revision. Key features include:
 - (i) strengthening the 'fit and proper' test, in line with 'nationally agreed measures'
 - (ii) Board to 'screen, monitor and make decisions' on teachers' suitability to work with children
 - (iii) power to require criminal record checks on registration and reregistration, impose conditions, and require training on mandatory reporting prior to registration/renewal
 - (iv) Board to undertake investigations and impose disciplinary action (fines, conditions, suspend, deregister)
 - (v) stronger national sharing of information
 - (vi) transitional criminal checking of all teachers not previously checked
 - (vii) strong emphasis on participating in nationally consistent standards and processes
 - (viii) it is a condition of registration (and an offence to not comply) that a teacher must notify the Board within 14 days of any specified offence (charge and conviction) or dismissal (or resignation following allegations) relating to unprofessional conduct or improper conduct. It is also an obligation on employers to do the same.
 - (ix) various provisions regarding inquiries, right to be heard, relevant evidence, natural justice, outcomes of inquiries
 - (x) registrar to advise employer if relevant offences (charge/conviction) occur; also notify of acquittal, charge withdrawal
4. Catholics indicate they may drop separate requirement for criminal checks if Board process satisfactory. Larger Independent schools likewise, but Christian schools grouping demanding full separate access, to ascertain ethos/lifestyle suitability.
5. Non-teaching staff currently subject to employer-based process. There is a possibility the Board may also handle this, perhaps through an associated 'business agency' mechanism that may give police information and advise schools of outcome if child-protection relevant. Still being negotiated, and subject to final powers/functions of Board.

WESTERN AUSTRALIA – CRIMINAL RECORDS/REGISTRATION

1. College of Teaching commenced 15 September 2004. All existing teachers will be registered, but on application within 18 months. The application must specify that a criminal record check has been done – i.e. this is the 'retrospective' mechanism. The Catholic Education Office is negotiating with

the Department of Education and Training (WA) for it to undertake this backlog task on its behalf. The issues have included privacy concerns about employment details being given to the Department, use of this and police records by the Department and possible retention of them, assessment of past matters by the CEO.

2. Previous arrangements included:
 - Department teachers always had police checks
 - No law regarding non-government teachers requiring such checks
 - Practice over last 5 years has been for Catholics to require record check for new teachers and university practicum students; the individual applied and handed it over; not clear who assessed the practicum student (university or school employer).
 - A number of independent schools did the same, but a bit ad hoc.
3. The Police Clearance Consent Form used by the Education Department shows:
 - The Catholics and AIS have an agency arrangement with the DET for accessing CrimTrac, that the Departmental Screening Committee makes decisions, subject to appeal, on state teachers, and gives the same assessments on non-government teachers to their employers but as advice only; employers then make decisions.
 - Crimes included (whether 'spent' or not) are child stealing, desertion of child, assaults, sexual assaults, offences against morality, homicide suicide(?) concealment of birth, offences endangering life or health, offences against liberty.
 - Criminal records will be held by the Department's Central office only and will be destroyed once an employment or placement determination is made. Clarification is needed as to whether specific information on criminal record, or documents, are relayed from the DET to non-government schools, and what is the fate of such material.
 - Teachers have to sign that they will notify their employer of any offences for which charged or convicted during the course of employment, and any investigations or disciplinary action by any other agency.
4. The DPP is required to notify the College of Teaching of any charges/convictions in the specified offences, and notify the employer.
5. The College of Teaching decides 'fit and proper'/good character. The application form and notes on the College website indicate that the applicant "must sign an authorisation for the College to conduct a police criminal record check", or provide a current record.
6. There is a right of review of an adverse decision, and appeal to the courts.

CRIMINAL RECORDS – TASMANIA

1. The Teachers Registration Act was passed in December 2000, with the Board established in March 2001, with teacher registration a requirement from 1 January 2002. Current or previous registration with the Qld, SA, NZ, or Victorian Registered Schools Board is relevant, and one must attend to any de-

registrations, refusals to register, charges/convictions of indictable offences and disclose details.

2. The Board undertakes criminal record checks, initially through the Tasmania Police, now presumably through CrimTrac. Information received is not destroyed but stored in "secure personal files" at the Board and may be used at later times.
3. Re-registration periodically, 3 years usually, and can be on the 'ground' of professional development evidence or ongoing competence. One must attest to dismissals, resignations, disciplinary action etc and the employer is also asked, with a new attestation regarding charges or convictions.

QUEENSLAND – CRIMINAL RECORDS/REGISTRATION

1. Compulsory registration with good character requirements, have been law for decades. The Act was revised in 1988, and again new provisions have been implemented over the last 2 years.
2. From Term 1, 2004, the Board must decide if a teacher is suitable to work with children, must obtain a criminal history report from the Qld Police Service (information about every conviction, recorded or not, and charges) and may ask the police for investigatory information into allegations of committing an offence, provided the 'investigation has led, or is likely to lead, to a reasonable suspicion you committed the offence'. (BTR website). The list of serious offences is extensive and includes unlawful assembly, burglary, contamination of goods, sending dangerous goods in a vehicle etc as well as the more obvious ones. Information is only to be used to determine good character; a prima facie unsuitability with a conviction can be overcome by arguing special circumstances that would lead to a decision that one was not a risk to children.
3. There are rights of review and appeal to the District Court.
4. All existing teachers were subject to criminal record checks in 2003-2004.
5. The Commission for Children and Young People and Child Guardian undertakes screening (including criminal history checks) for employees in schools (other than teachers), boarding houses, childcare, private teaching, coaching or tutoring, and other educational programs outside of schools. Resultant 'blue cards' have a two year currency.

CRIMINAL RECORDS/REGISTRATION – VICTORIA

1. The new Victorian Institute of Teachers required the registration of new teachers from 2003. Deemed registration was granted to those registered under the Registered Schools Board, and the Mutual Recognition Act covers those registered in a number of other states.
2. The institute undertakes a criminal record check, including spent convictions. The Act prevents persons convicted of listed child sex offences from teaching at all. Convictions of indictable offences, other than the excluded ones, require at least an initial inquiry/consideration by the Institute, and a formal investigation if warranted. The school is notified if a formal inquiry is undertaken.

3. The Act required all existing teachers to have new criminal record checks by end 2007, but now legislation is proposed to empower the Secretary of the Education Department and CEO of the Institute to undertake checks compulsorily on any teacher not consenting to this to be done in 2005. The union and Catholic authorities are in agreement that the institute should undertake all checks, by end 2005, in Catholic schools, and that individual schools should not undertake this. Interstate legal requirements for consent may well defeat the Victorian legislation for checks without consent.
4. In Victoria, individual requests issue only in convictions over the last 10 years, but VIT or employer requests provide all information (changes/convictions).