

Managing a Safe School Environment – Legislative Changes

Industrial/legal guidelines



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Related Documents:	<ul style="list-style-type: none">• <i>Protective School Environments (2001)</i>• <i>Occupational Health & Safety Policy (2003)</i>• <i>Child Protection Kit (2002)</i>• <i>Principal's Handbook (2002)</i>• <i>Maintaining Right Relations (2003)</i>• Policy on student bullying (<i>pending</i>)• <i>Procedures to be followed in the suspension and expulsion of students from Catholic schools (1996)</i>
Distribution:	Systemic Catholic schools, Diocese of Parramatta

Amendments governing the provision of a safe school environment for schools, staff and students

A number of amendments have been introduced within NSW laws and regulations which relate to the promotion of safety for staff and students within the school environment. These amendments are :-

1. *Crimes Amendment (School Protection) Act 2002, & Crimes (General) Amendment (School Protection) Regulation 2003* (both effective 10/02/03)
2. *Crimes Amendment (Child Protection – Physical Mistreatment) Act 2001* (effective 10/02/03)
3. *Inclosed Lands Protection Regulation 2002* (effective 6/12/02)

These changes require that those responsible for managing the school environment for staff and students must take action where incidents occur, including the notification of incidents involving criminal conduct to an external authority. New offences have been created and penalties increased relating to criminal conduct on school property, which attract harsher penalties than similar offences committed outside school grounds.

How do these acts and regulations define non-safe behaviour within schools?

This legislation has created new offences for the *assault, harassment, stalking and intimidation* of students and staff who are on school premises for the purpose of work or study, whilst entering or leaving school premises, or whilst using out-of-hours school services.

The legislation includes the following definitions:

“School premises” include students/staff disembarking and boarding of buses immediately outside the school, and the drop off and pick up of students by parents when in the immediate vicinity of the school. “School premises” also includes parks and other community premises that are being used by a school but only while they are being used for the purposes of the school.

“Member of staff” may include persons performing voluntary work for the school.

“School student” includes a child attending a child-care facility.

“Attending school” includes:

- the student or member of staff being on school premises for the purposes of school work or duty, even if not engaged in such work or duty at the time, or

- the student or member of staff being on school premises for the purposes of before school or after school child care, or
- entering or leaving school premises in connection with school work or duty, or
- entering or leaving school premises in connection with before school or after school child care

In most cases, an assault or related incident will involve actual physical contact, however such contact is not necessary to establish that an assault has occurred. “Intimidation” means behaviour which affects the conduct of the person subject to the behaviour.

The new offences are “serious indictable offences” for the purposes of the Crimes Act. That Act imposes an obligation to report such offences to the police or other appropriate authority, with the exceptions of incidents involving minor physical altercations, harassment or intimidation between students, which should be dealt with in accordance with school and system policies.

The Crimes (General) Amendment (School Protection) Regulation 2003 prescribes teachers (including principals) as a category of persons who carry an obligation to report.

Where a school teacher, or a principal, knows or believes a serious indictable offence has been committed on school premises, and fails to advise the police or appropriate authority, penalties of up to two (2) years imprisonment can be applied. However, any prosecution against a member of the teaching service for failing to report a serious indictable offence cannot occur without the prior approval of the Attorney-General.

The new legislation also provides that any reasonable disciplinary action taken by a member of staff of a school against a school student will not amount to an assault, harassment, stalking or intimidation of the student.

LEGISLATION / REGULATIONS

1. **a) The Crimes (General) Amendment (School Protection) Act 2002, & Crimes (General) Amendment (School Protection) Regulation 2003**, amends the Crimes Act and allows for the criminal prosecution of persons for the offences of:-

- Assaulting, stalking, harassing or intimidating any school student or member of staff while the student or member of staff is attending school – maximum penalty is 5 years imprisonment;
- Assaulting a school student or member of staff while the student or member of staff is attending school in circumstances where the assault causes actual bodily harm. “Actual bodily harm” is an injury that is more than merely transient and trifling, including a psychiatric injury but not mere fear or panic – maximum penalty is 7 years imprisonment;
- Maliciously wounding of a school student or member of staff while the student or member of staff is attending school. “Malicious wounding”

means: breaking or cutting the skin of a person with malice; indifference to the outcome; recklessly, wantonly or with intent to injure the person – maximum penalty is 12 years imprisonment;

- Maliciously inflicting grievous bodily harm to a school student or member of staff while the student or member of staff is attending school. “Maliciously inflict grievous bodily harm” means an injury of a serious kind but not necessarily permanent which is also done maliciously – maximum penalty is 12 years imprisonment;
- Entering school premises with the intention to commit one of the above offences – maximum penalty is 5 years imprisonment.

b) How do schools implement the requirements of the Crimes Amendment Act 2002 & Regulation 2003?

Principals should note that Crimes Act provisions complement, but do not negate, either a school’s discipline policy or *Procedures for Suspension and Expulsion*.

In the majority of cases, notification to the police of incidents involving minor physical altercations, harassment or intimidation between students will be unnecessary, and should be dealt with in accordance with school and system policies relating to student welfare, suspension and expulsion policies.

c) When should the principal report an incident to the police?

In determining whether an incident involving students should be reported to the police, particularly where it involves harassment or intimidation, principals should examine the facts relevant to each individual case. Factors to be taken into account will include, but are not limited to:-

- the effect of the incident on victim
- the extent of any physical injuries sustained
- the nature of any threats that may have been made
- whether any weapons or other implements have been used
- whether the incident involved an individual or group of students
- the age of the students involved, and any age differential between alleged perpetrator and victim
- whether the incident was isolated or part of an ongoing dispute between the students involved

- the likelihood of the dispute being resolved internally
- whether school welfare and discipline procedures have been used in the past to resolve the same issue
- whether the events involve children under the age of 10 as alleged offenders.

Children under 10 are not considered by the law to be capable of committing a criminal offence. (Principals will, however, need to consider whether action in accordance with child protection legislation is required e.g. is the child, a child at risk of harm and/or in need of care).

Matters involving students under the age of 10 as perpetrators should be dealt with as an internal matter, although some matters may need to be reported to DOCS as required by child protection legislation.

- whether the provisions of the Child Protection – Physical Mistreatment Act 2001 may apply
- the views of the parents or care-givers of the victim, parents and students at all times have the right to report a matter directly to the police

If principals are in any doubt about whether to report the incident they are advised to consult their area administrator and/or their local police. The area administrator must be advised of any matter reported to the police.

A memorandum of understanding for the exchange of information between police local area commanders and school principals is currently being finalised.

Where notification is provided to the police, the principal must also deal with the issues as an internal discipline matter. Any matters reported to the police should also be documented in a critical incident report.

Staff members may report matters to the police in the areas noted, as well as to the principal.

Staff members who are assaulted or believe they are being harassed, assaulted or intimidated may choose to report the matter to the police. The system policy, *Maintaining Right Relations*, will be applied if the matter is managed as an internal matter.

2. a) The Crimes Amendment (Child Protection – Physical Mistreatment) Act 2001 requires that in any criminal proceedings against a person for using force against a child, a defence of lawful correction can only apply if correction of the child was :-

- applied by a parent of the child or by a person acting for a parent of the child

- reasonable, having regard to the age, health, maturity or other characteristics of the child and the nature of the alleged circumstances

Unless it could reasonably be considered trivial or negligible, reasonable force will not include any force applied to the head or neck of a child, or to any other part of the body as to cause harm that lasts more than a short period.

b) How do schools comply with the requirements of the Crimes Amendment (Child Protection – Physical Mistreatment) Act 2001?

- Appropriate physical force can still be used by staff to ensure that the employer’s duty of care to protect students from foreseeable risks of injury is met. This will not be seen as assault, harassment or intimidation of the student.
- Staff subject to criminal proceedings for assault involving students can continue to rely on common law defences such as self defence, defence of others and defence of property.
- Class management techniques - or other action which aim to maintain a safe, secure and effective learning environment and which observe relevant school and system policies and procedures in dealing with students - will be considered reasonable disciplinary action.

c) When should the principal report an incident to the police?

An incident reported to the police should also be reported to the Department of Community Services under the requirements of the Children and Young Persons (Care & Protection) Act 1998.

An incident should be reported to the police when the following has occurred:-

- physical discipline has been applied to a student where the person applying the force was not the parent of the child or acting for the parent of the child (includes step-parent, de-facto spouse of a parent of the child, or a person authorised by the parent of the child to care and manage the child)
- the physical force was unreasonable - having regard to the age, health, maturity, or other characteristics of the child, and the nature of the alleged misbehaviour or other circumstances

If principals are in any doubt about whether to report the incident they are advised to consult their area administrator and/or their local police.

3. a) The Inclosed Lands Protection Act and Regulations 2002 creates the offence of Criminal Trespass. Police can enforce this Act.

Set out below is a summary of the offence.

Criminal Trespass

It is an offence, without lawful excuse, to:

- enter enclosed lands without the consent of the owner, occupier or person apparently in charge, or
- remain on inclosed lands after being requested to leave by the owner, occupier, or person apparently in charge (Inclosed Lands Protection Act 1901 - maximum 5 penalty units)
- “Inclosed lands” means any lands, either public or private, enclosed or surrounded by a fence or wall, or jointly enclosed or surrounded by a fence or wall and a canal or some natural feature such as a river or cliff which provides recognisable boundaries. It includes any part of a building or structure and any land occupied or used in connection with a building or structure. **Some premises such as schools, child-care centres, hospitals and nursing homes are specially prescribed and any entry to them carries a double penalty of 10 points**

Many schools may already have existing signs. It is suggested that each school ensure that a clearly visible sign is placed at the entry and exit points of each school, with appropriate wording. The following wording for signage has been suggested by the Catholic Education Commission:

ATTENTION

This property is protected by the *Inclosed Lands Protection Act*. Entry without permission is not permitted. You are asked to seek permission before entry - failure to do so may result in removal and prosecution.

If the school is part of parish property, principals would need to discuss the issue of signage with their parish priest before proceeding. It would also be important to ensure that the reasons for this new or updated signage are explained clearly to the school community, prior to the erection of the sign.

The Inclosed Lands Protection Regulation 2002 prescribes the following penalties if offences under the Act are dealt with by issuing an ‘on-the-spot’ fine by police officers:-

- persons entering school premises without lawful excuse or remaining on school premises after being asked to leave (penalty of \$550)
- persons acting in an offensive manner on school premises whilst remaining on those premises after being asked to leave (penalty of \$250)

The recent amendment to this Act in the form of the regulation strengthens the powers of the Act, and allows police the option of issuing an ‘on-the-spot’ fine to any person who

enters onto school premises without lawful excuse or who remains on school premises after being asked to leave. The penalty notice provisions also apply to persons who act in an offensive manner on school premises after being asked to leave.

b) How does the Inclosed Lands Protection Regulation 2002 assist schools?

Principals may advise persons breaching the above requirements that notification to the police will involve the above penalties, and may result in an ‘on the spot’ fine.

c) When should schools report an incident to the police?

Incidents in the above categories may be notified to the police.

Dr Anne Benjamin, Executive Director of Schools,
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