

LEGAL ISSUES BULLETIN

NEW SOUTH WALES
DEPARTMENT
OF EDUCATION
AND TRAINING



No. 17

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UNAUTHORISED ENTRY ONTO DEPARTMENTAL PREMISES

Legal Issues Bulletin No. 1 provided principals and institute managers with advice on the use of the provisions of the *Inclosed Lands Protection Act 1901* (the Act). Since the issue of the bulletin it has become apparent that in a small number of instances, the provisions of the Act may have been used either inappropriately or prematurely.

The powers available under the Act are wide and can significantly impact on people who might ordinarily have regular contact with the school or institute locations. The powers must therefore be exercised only in appropriate circumstances and after full consideration of the seriousness of the matter.

This bulletin replaces *Legal Issues Bulletin No. 1*.

Legislative background

People entering onto departmental premises without permission can be dealt with under the provisions of the Act. The Act provides a basis for taking action in relation to what is commonly referred to as trespass.

While schools are specifically defined as "inclosed lands", institute premises will also be covered by the Act if surrounded wholly or in part, by any fence, wall, or other construction or some natural feature that will allow the boundaries of the premises to be known or recognised. Any buildings or other structures occupied or

used in connection with the land are provided similar protection by the Act.

The Act provides for the following relevant offences:

- (1) Entry without lawful excuse onto inclosed lands without the consent of the owner, occupier or person apparently in charge of the land. The maximum penalty in relation to school premises is \$1,100 and for other premises is \$550.
- (2) Remaining on inclosed lands after a request to leave is given by the owner, occupier or person apparently in charge of the land. The maximum penalty in relation to school premises is \$1,100 and for other premises is \$550.
- (3) Remaining on inclosed lands after a request to leave is given by the owner, occupier or person apparently in charge of the land and behaving in an offensive manner. The maximum penalty in relation to school premises is \$2,200 and for other premises is \$1,100.
- (4) Giving a false name and address after being requested to provide such details by the owner, occupier or person apparently in charge of the land. The maximum penalty is \$55.

In relation to (1), it is up to the defendant (the intruder) to prove they had a lawful excuse to be on the premises. In relation to (3), "offensive manner" is behaviour that a reasonable person would find offensive. It must be sufficient to wound the feelings, arouse anger, resentment, disgust or outrage in the mind of a reasonable person.

In relation to (1) - (3), people intruding onto child care centres established on institute premises are subject to the same penalties as those applying to schools.

If an intruder is found on departmental premises, the principal, institute manager or person then in charge of the premises should inquire about the person's right to be there. If a legitimate reason is not provided the person should be advised they are trespassing and be requested to leave. If the person refuses to leave, police should be called. This may result in the person being arrested and charged under the Act. Prior to the arrival of the police no action should be taken to restrain or otherwise apprehend the person. No member of staff should put themselves in danger.

Sometimes people who would usually have a legitimate reason for being on departmental premises may have their entry restricted by the principal, institute manager or person in charge. This is because the person has threatened or used violence towards staff or students or has acted offensively, dangerously or otherwise inappropriately on the premises. Action to restrict the access of such people to departmental premises should only occur where all other attempts to resolve any dispute have failed or the behaviour is so serious that it warrants that course of action being implemented.

Circumstances that justify the use of the powers available under the Act without prior warning:

actual physical assaults or threatened physical assaults on students, staff, parents or community members at the school or institute or during the course of school or institute activities

The department does not expect its staff, students or other visitors to departmental premises to accept such behaviour. Additionally the department has a legal obligation to ensure that its premises are safe for staff, students and other visitors and the use of the powers under the Act is seen as an important tool in assisting the department fulfil that obligation.

Circumstances that may justify the use of the powers available under the Act with or without a prior warning:

behaving in a manner in the presence of students, staff, parents or other visitors to the school or institute that could reasonably be expected to cause alarm or concern to the students, staff, parents or other visitors

Principals and institute managers should have particular regard to the age and maturity of any students involved prior to utilising the powers under the Act. Situations may arise where the major concern is not what is said by a person but rather the manner in which they act while engaging with staff, students or other persons. This could include persons who appear to act in a highly agitated or irrational fashion. In most instances, it is expected that a prior warning would be given to the person concerned prior to utilising the powers under the Act in these circumstances. Any warning given should preferably be in writing and a copy retained by the principal or institute manager with the relevant documentation.

Use of offensive language (ie swearing) in the presence of students

Principals and institute managers should have particular regard to the age and maturity of any students involved prior to utilising the powers under the Act. While there may be situations where attempts to resolve such issues by other means might be appropriate, the department does not condone the use of offensive language in the presence of students.

Circumstances in which the powers under the Act should only be used after previous attempts at resolving the issue have failed:

when people persistently interrupt the learning environment of the school or institute by entering classrooms without permission;

when people persistently enter onto the school or institute site without permission or legitimate reason.

Circumstances in which the powers under the Act should not be used:

when people merely complain about the actions of staff or decisions at the school or institute;

when people persistently write letters or ask for information from school and institute staff.

People affected by decisions made by schools and institutes have a right to discuss or complain about those decisions. Complaints can be in writing or oral and may be multiple in nature and repetitive. Similarly, people also have a right to seek clarification or confirmation of decisions made by schools or institutes, particularly in circumstances where the decisions impact on themselves or their children. While the receipt of such complaints or requests may sometimes cause concern to staff,

the use of the powers under the Act in these circumstances is inappropriate.

Suggested strategies to deal with people in these circumstances will be the subject of a future *Legal Issues Bulletin*.

Procedures to be followed when issuing a directive under the Act

The following steps should be taken by the principal or institute manager when a decision is made to restrict a person's right of entry to school or institute premises:

- (i) A letter should be prepared stating the person is not to enter the school or institute premises without permission. The letter should indicate the reasons for the action taken. If entry is to be allowed for certain purposes or under certain conditions, those details must be clearly spelt out. A sample letter is attached. Principals and institute managers should advise the person of the reasons why the limitations on his or her entry are to be continued or otherwise varied.
- (ii) The letter should be delivered to the person either personally or by certified mail.
- (iii) Contact should be made with local police to explain the action taken and the reasons for the action. Depending on the relationship with local police and the level of co-operation existing with them, a copy of the letter should also be provided.

If the person denied entry subsequently enters the school or institute premises contrary to the direction given, police can be called and the person can be arrested and charged under the Act.

Contrary to common belief, it is not necessary for the police to catch the offender actually on the premises. All that is required is that the person be seen on the site and one or more witnesses be prepared to give evidence of this if necessary.

If police refuse to take action in a serious matter because the offender has left the premises prior to their arrival or for other reasons, contact should be made with the officer in charge of the station in an attempt to resolve the issue. If no resolution can be reached, contact should be made with the district superintendent or institute director so that further action can be pursued with the police at a higher level.

Principals and institute managers should note that action available to them under the Act must not be used as a substitute for normal school or institute discipline policies.

Should staff be in any doubt as to what action can be taken, contact should be made with the Legal Services Unit on telephone number 9561 8538.

Reviews of decisions to limit a person's right to enter departmental premises

Any decision to restrict a person's right to enter onto departmental premises in situations where the person has a legitimate on-going relationship with the school or institute should be reviewed periodically to ensure circumstances continue to exist which warrant maintenance of the limitation. Principals should conduct the reviews towards the end of terms 2 and 4 and institute managers should review these matters at the end of each semester. Reviews can also be undertaken by principals and institute managers at other times if they

become aware of any changes in the circumstances that warrant a review being carried out.

In undertaking a review, principals and institute managers will need to satisfy themselves that the maintenance of the limitations are justified. Information should be sought from relevant persons indicating any reasons why the limitations on the person's entry to the site should or should not be maintained.

A sample letter for use by principals and institute managers following a review is attached to this bulletin.

Complaints against decisions to limit access to departmental sites

People whose access to departmental premises is restricted or denied by a principal or institute manager, including those situations where a review has confirmed the restriction or denial, should be advised they may lodge a complaint about the decision. Any letter issued by the principal or institute manager must have this information included.

A complaint can be made in respect of a decision by the principal or institute manager to:

- restrict or deny a person's access to departmental premises, or
- continue to restrict or deny a person's access to departmental premises subsequent to a review.

A complaint about a decision by a principal or institute manager should be directed to either the district superintendent or institute director. The complaint will then be dealt with in accordance with the Department's *Responding to Suggestions, Complaints and Allegations* policy.

Legal Issues Bulletins are available on the Intranet through the *Network for Education* site. They are listed under the *department information* heading on that site.

About Legal Services.....

Legal Services provides legal support and advice to schools, colleges, districts and institutes in addition to state office directorates and specialist boards and authorities, such as the Board of Vocational Education and Training (BVET), the Board of the TAFE NSW, the Vocational Education and Training Accreditation Board (VETAB), the Board of Adult and Community Education (BACE) and the NSW Commissioner for Vocational Training.

Legal Services also provides legal advice for the senior officers and arranges for the preparation of legal opinions. It arranges for the department to be represented before a range of courts and tribunals and assists with the preparation of legal documents.

**The Legal Services Unit is located on Level 5, 35 Bridge Street, Sydney.
The telephone number is 9561 8538 and the fax number is 9561 8543.**

NB The Department's Industrial Relations Advocacy Unit and the Legal Services Unit have been merged into one unit.

Chief Legal Officer:	John Murn
Manager, Industrial Relations Advocacy:	Adrian Murphy
Principal Legal Officers:	Wayne Freakley and Victoria Abigail
Senior Industrial Officers:	Patrick Quinn
Senior Legal Officers:	Peter Johnson, Peter Cribb and Margaret Baker
Legal Officers:	Bev Charlton, Christopher Miles, Lee Rayner, Sandra Butler and Danny McVey
Assistant Industrial Officer:	Anne Hall
Paralegal:	Fiona Lynch

Sample letter re direction to leave premises (on letterhead)

Dear

I refer to the incident on *(insert date)* when you entered onto the *(insert school/campus/college/institute as appropriate)* site and you *(outline behaviour which gives rise to the letter)*.

Your behaviour on this occasion was inappropriate and as a result I do not consider your current access to the *(insert school/campus/college/institute as appropriate)* to be in the best interests of either the students or the staff. You should note that entry on to the *(insert school/campus/college/institute as appropriate)* is a privilege not a right.

In accordance with my authority under the *Inclosed Lands Protection Act 1901*, you are directed not to come onto the *(insert school/campus/college/institute as appropriate)* site again *(insert relevant provisions – [eg (without my prior approval and then only for the purpose of seeing me) or (except under the following conditions -)]**

If you enter onto the *(insert school/campus/college/institute as appropriate)* site contrary to this direction, the matter will be immediately reported to the police who may then take further summary action.

**The restrictions imposed upon you in relation to your entry onto the *(insert school/campus/college institute as appropriate)* site will be reviewed periodically to determine whether they should continue to operate. Generally the reviews will be held in June/July and December each year.

If you feel my decision in this matter is unfair you can make a complaint to *(insert contact details of district superintendent for school matters or details of the institute director for TAFE NSW matters as appropriate)*.

Yours faithfully

*Principal/Institute Manager

*delete that which is not applicable

** include if appropriate. This provision only applies to people who have a legitimate on-going relationship with the school or institute

Sample letter notifying person of the result of a review

Dear

I refer to –

*My previous letter of *(insert date)* which imposed conditions on your entry onto the *(insert school/institute/campus/college site as applicable)*

*The decision of the *(insert district superintendent/institute director as applicable)* dated *(insert date)* which imposed conditions on your entry onto the *(insert school/institute/campus/college site as applicable)*

I have reviewed the circumstances of the decision made to *(insert limit or deny as applicable)* your entry onto the *(insert school/institute/campus/college site as applicable)* and determined that –

*The existing conditions in relation to your entry onto the site are to remain in force

*The conditions relating to your entry onto the site are to be varied as follows –

(insert relevant new conditions)

for the following reasons *(insert reasons for the decision)*

If you wish to complain about my decision in this matter, you should contact *(insert contact details of district superintendent for school matters or details of the institute director for TAFE NSW matters as appropriate)*.

Yours faithfully

*Principal/Institute Manager

*delete that which is not applicable