



# Legal issues bulletin

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## Offences and other related changes relevant to the safety and security of schools, staff and students

Staff should be aware the Crimes Act 1900 (the Act) has specific offences with significant penalties for the assault, harassment, stalking and intimidation of students and staff on school premises or while entering or leaving school premises.

### What are the details of the offences?

The following offences relate specifically to schools:

- 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.
- Wounding a school student or member of staff while the student or member of staff is attending school. "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.
- Inflicting grievous bodily harm to a school student or member of staff while the student or member of staff is attending school. "Inflict grievous bodily harm" means cause an injury of a serious kind but not necessarily permanent which is also done maliciously - maximum penalty is 12 years imprisonment.
- Entering onto school premises with the intention to commit one of the above offences - maximum penalty is 5 years imprisonment.

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.

### If I believe one of these offences has been committed should I report it to the police?

Yes. The new offences are "serious indictable offences" for the purposes of the Act. Section 316 of the Act imposes an obligation to report such offences to the police or other appropriate authority. It is a defence to a prosecution for not reporting if there is a reasonable excuse for not doing so.

Additionally, if the knowledge or belief that a serious indictable offence has been committed has arisen during the course of certain prescribed vocations, any prosecution for failing to report the information to the police or other appropriate authority cannot be commenced without the prior approval of the Attorney-General. The Crimes Regulation 2010 prescribes teachers (including principals) as a relevant vocation.

## What is the practical effect of the legislation?

The practical effect of the new legislation is summarised below.

### Use of physical force by staff

**Physical force** can (and, where appropriate, should) still be used by staff to ensure that the department's duty of care to protect students from foreseeable risks of injury is met.

Any **reasonable physical contact or force** used by a member of staff to protect students from foreseeable risks of injury will not be considered an assault, harassment or intimidation of the student.

Any **class management techniques**, physical restraint of students or other action that is directed to maintaining a safe, secure and effective learning environment and which is in accordance with relevant departmental policies or procedures dealing with student management and/or obligations of staff are likely to be considered reasonable disciplinary action for the purposes of the new provisions.

### Incidents between students

Any incidents involving physical altercations, harassment or intimidation between students during school activities should continue to be dealt with in accordance with the department's Procedures for the Suspension and Expulsion of School Students policy and individual school student welfare procedures. Principals should also refer to Memorandum DN10/00225 - Reporting Incidents Involving Assaults, Threats, Intimidation or Harassment for further information on when such matters need to be reported to the police. The fact that a matter is reported to the police does not negate the principal's obligations under the department's suspension and expulsion guidelines to deal with the matter as an internal discipline matter.

### Reporting minor incidents between students

In most cases, there will be no need to report to the police any incidents involving minor physical altercations, harassment or intimidation between students. Legal Services considers that dealing with such minor incidents in accordance with the department's Good Discipline and Effective Learning policy is a reasonable excuse not to report to police what is technically an indictable offence. It is also considered that staff reporting such incidents to the principal or other relevant senior officer for the purpose of instigating possible school discipline procedures would amount to reporting the matter to an "appropriate authority" under the Act. Solicitors acting for the NSW Police Service have supported this interpretation of legislation.

Matters involving students under the age of 10 as perpetrators should not generally be reported to the police as children below this age are not considered by the law to be capable of committing criminal offences. Principals should nevertheless still consider whether action in accordance with departmental child protection policies and/or child protection legislation is appropriate.

### Reporting matters to the police

If members of staff are assaulted or believe they are being harassed, intimidated or stalked they may report the matter to the police. They must also report the matter to the principal. If a student is injured in the course of an assault at school or while travelling to or from school and the incident is connected to the school, it is responsibility of the principal to notify police. A report should be made irrespective of whether parents or students indicate they do not want police involved.

While it is not the responsibility of parents and students to report such matters to the police, at all times have the right to do so.

Any incident involving an assault or threat of an assault at school or during school activities must also be reported to the School Safety and Response Hotline on 1300 363 778.

## What factors should I take into account when determining whether a matter involving students should be reported to the police?

departmental staff should refer to DN10/00225 - Reporting Incidents Involving Assaults, Threats, Intimidation or Harassment for advice on what factors need to be taken into account when determining whether or not to report any

incident involving an assault at school or during school activities. Principals should direct any inquiries regarding the implementation of the procedures under the memorandum to the department's Safety and Security directorate.

Principals should also note that incidents covered by the legislation may, depending on the circumstances, also require a report to be made to the Workcover Authority.

## Frequently asked questions about the legislation

### **Q. What is meant by the term "member of staff"?**

A. "Member of staff" includes any person who does voluntary work for the school. P&C working bees and other similar activities fall within the meaning of "work for the school" and are thus covered by the new offence provisions. Fetes and other similar fund raising activities are not likely to be captured by the new provisions.

### **Q. What is meant by the term "attending school"?**

A. This term applies to the normal daily attendance of staff and students at school. It also applies to students and members of staff being on school premises for the purposes of school work or duty even if they are not engaged in such work or duty at the time. It also includes a student or member of staff being on school premises for the purpose of before school or after school child care.

### **Q. Do the new provisions apply to students and staff travelling to and from school?**

A. The provisions apply to situations where students and staff are entering and leaving school premises for the purpose of work or study or for before/after school care. In relation to before and after school, the provisions will apply to those situations where students disembark and board buses outside the school, get dropped off and picked up by parents in private motor vehicles and when they are generally in the immediate vicinity of the school. The provisions of the legislation do not provide any clarity in relation to students and staff who are on their way to or from the school site. Each case would need to be looked at on its own merits and would ultimately be an issue for the police to determine.

### **Q. What is meant by the term "school premises"? Will the new provisions apply to sporting venues such as council swimming pools and ovals, ice-skating rinks, tennis courts etc which are used by schools for regular sporting activities?**

A. Parks and other community premises are considered school premises while being used for the purposes of the school. Other community facilities such as council swimming pools are also likely to fall within the definition of school premises while being used for school related activities. Commercial centres such as tennis courts, bowling alleys and ice skating rinks may also fall within the provisions of the legislation if being used by the school.

### **Q. What is meant by the term "assault"?**

A. Courts have defined assault to mean any act which intentionally or recklessly causes another person to perceive immediate and unlawful violence. While in most cases an assault will involve actual physical contact, such contact is not necessary to establish that an assault has occurred.

### **Q. What is meant by the terms "stalking, harassing and intimidating"?**

A. The terms "harassment" and "stalking" are not defined in the legislation and so the ordinary dictionary meaning will apply. While "intimidation" is also not defined in the legislation, courts have previously determined it means behaviour that actually induces fear or affects the conduct of the person subject to the behaviour. There can be no intimidation until the person is affected in some way.

### **Q. Does the fact that an incident involving students has been reported to the police as a possible breach of the provisions prevent the incident being dealt with in accordance with the school's student discipline procedures?**

A. No. The matter can still be dealt with as a school discipline issue irrespective of any action the police may or may not take. If principals believe further investigation by the school may adversely impact on a police investigation, they should speak to their local police to clarify the situation.

**Q. If an incident occurs at school which the principal determines is minor and can be appropriately dealt with as a school discipline issue, without the need to report the matter to the police, can a parent insist that the principal report the matter?**

A. If a principal believes that a matter does not need to be reported to the police owing to its relatively minor nature and the fact the issue can be appropriately dealt with at the school level, the fact a parent does not agree with that decision is not of itself justification for reporting it to the police. The parent and student retain the right to report the matter to the police if they consider it necessary.

**Q. If a student alleges he or she is subject to harassment, intimidation or stalking by a member of staff at school, how should such allegations be dealt with?**

A. Any allegation that a member of staff is intimidating, harassing or stalking a student at school should be dealt with in accordance with the department's complaint resolution and or child protection procedures. The parent and student retain the right to report the matter to the police if they consider it necessary.

**Q. Can a person who continually complains about matters occurring at a school be dealt with under the new provisions for harassment or intimidation?**

A. At times people will wish to make complaints about decisions made by schools and institutes. These complaints can sometimes be persistent and repetitive and occasionally cause distress to staff. Such conduct will not amount to harassment or intimidation under the provisions of the relevant legislation.

## About Legal Services

Legal Services is here to support our government schools. [Staff can contact Legal Services by email or phone.](#)

Legal Services can only provide legal advice to departmental staff. It is not able to provide legal advice or assistance to parents, students or members of the public due to the potential for a conflict of interest.