



Legal issues bulletin

Number 58 reviewed March 2018

Unauthorised entry onto departmental premises - update

Principals can use the Inclosed Lands Protection Act 1901 (the Act) to deal with people who enter onto or remain on departmental sites without authority. The powers available under the Act are wide and can significantly impact on people who ordinarily have regular contact with the school or other sections of the Department of Education. The powers must therefore be exercised only in appropriate circumstances and after full consideration of the seriousness of the matter.

A list of issues that must be considered before action is taken under the Act has been developed to assist principals and other persons in charge of a work site to determine whether or not action should be taken under the Act. Template letters are also available to use when warning someone about their behaviour and when restricting a person's access to the school.

Schools are covered by the Act: are other departmental worksites?

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

Any buildings or other structures occupied or used in connection with the land are provided the same protection by the Act. This includes sites that may be controlled by the school for a school event such as a local hall hired for a speech night.

What is the relevant law?

The Act provides a basis for taking action in relation to what is commonly referred to as "trespass". 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. If dealt with by way of an "on-the-spot" fine, the penalty 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 and behaving in an offensive manner 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 \$2,200 and for other premises is \$1,100. If dealt with by way of an "on-the-spot" fine, the penalty is \$250.
- (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.

Commission of these offences may result in a person being arrested or issued with an "on-the-spot" fine by police.

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.

Do the provisions also cover child care centres on school sites?

In relation to the offences referred to in (1) - (3) above, people intruding onto child care centres established on school sites are subject to the same penalties as those applying to schools.

What if unauthorised entry onto school premises occurs?

If an intruder is found on departmental premises, the principal or person otherwise in charge of the premises should, if safe to do so, inquire about the person's reason or purpose for being there and determine whether or not the person should be allowed to remain on the premises. 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 on 000 (triple zero).

Should I take any action before police arrive?

Prior to the arrival of the police no action should be taken to restrain or otherwise apprehend the person although it may be necessary to take other action to discharge the duty of care and other legal obligations (for example keeping the person under observation and/or placing the school in "lock down"). If the circumstances allow, further directions to cease the behaviour and or leave the premises can be given. However, no member of staff should put themselves in danger.

Can I take action against regular visitors like parents?

People who would usually have a legitimate reason for being on departmental premises may have their entry restricted by the principal or other person in charge of those premises. Depending on the circumstances this could include banning the person entering the school site or placing conditions on their entry onto the site (for example he or she can only enter the site to attend a pre-arranged meeting with the principal).

Action to restrict the access of such people should only occur where other reasonable attempts to resolve the problem have failed and a warning has been given unless the behaviour is so serious it warrants that course of action being implemented immediately.

It is important to remind members of the school community of the standard of behaviour expected of them while they are at school. These expectations should be expressed positively and regularly reinforced.

Depending on the circumstances it may also be appropriate to implement other strategies before preventing someone from coming onto the school site such as limiting the staff that person has contact with or implementing protocols for how a parent contacts the school (for example they can only contact school staff by email rather than by telephone). Paramount consideration must be given to the safety and wellbeing of students and staff if such strategies are contemplated.

Where practicable, principals should consult with their Director Educational Leadership prior to banning/placing conditions on the entry onto the school site of someone who ordinarily has a legitimate reason for being on departmental premises. If the Director Educational Leadership is unavailable urgent advice should be sought from the Legal Services directorate. Any subsequent decision to ban/place conditions on someone's entry onto the school site must be confirmed in writing.

Can the powers be used where a warning has previously been given?

Such circumstances include but are not restricted to:

- actual physical assaults or threatened physical assaults on students, staff, parents or community members at school or during the course of school activities
- inappropriate behaviour in the presence of students, staff, parents or other visitors that is so serious that it warrants action being taken immediately (for example a community member brings illegal drug paraphernalia to school or takes a dangerous dog within the meaning of the Companion Animals Act 1998 onto the school site, a parent attempts to remove a student from a classroom in breach of a court order restricting their contact with the student or a parent or other person engages in "road rage" when dropping children off or picking them up from school);

- expressing anti-social and extremist views or engaging in anti-social and extremist behaviour irrespective of whether this behaviour occurs at school or during a school related activity and
- threats of serious physical violence made to staff or students using the telephone, text messages, websites or other social media, emails or other electronic means. (Note that the powers under the Act are to prevent a person entering the land. This is appropriate after a threat has been made off-site. However, it may not, of itself, prevent future threatening electronic communications).

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 do what is reasonably practicable to ensure its premises are safe for staff, students and other visitors and the use of the powers under the Act is an important tool in fulfilling that obligation.

Can an Apprehended Personal Violence Order be used instead?

The types of behaviours that warrant using powers under the *Inclosed Lands Protection Act 1901* may also justify a staff member seeking an Apprehended Personal Violence Order (APVO). Information about APVOs is found in [legal issues bulletin 44](#). Advice about whether to use powers under the *Inclosed Lands Protection Act 1901* or seek an APVO is available from the Legal Services directorate on 9561 8538.

What about anti-social or extremist views or actions?

School staff must promptly advise the principal (or if the principal is absent the person in charge of the school) if they become aware a parent, volunteer or other person who regularly enters the school site has expressed anti-social and extremist views or engaged in anti-social and extremist behaviour.

In situations of imminent risk the police should be called on Triple Zero (000). In all other circumstances prompt contact must be made with the School Safety & Response unit.

Further information about anti-social and extremist views and behaviour, including a definition of those terms, can be found on the Health and Safety directorate webpage.

In what other circumstances can I use the powers under the Act?

Such circumstances include but are not restricted to:

- behaving in a manner in the presence of students, staff, parents or other visitors to the school that could reasonably be expected to cause alarm or concern (for example continuing to disrupt the learning or working environment of the school after being asked to desist, disrupting school assemblies, P&C meetings or social events hosted by the school or being belligerent and refusing to leave the school site despite having been previously warned about his or her behaviour)
- continuing to use offensive language (i.e. swearing) in the presence of students or staff and
- as a result of abusive or offensive telephone calls, text messages, websites or emails made to or about staff, or directed towards staff or the school.

Principals should have particular regard to the age and maturity of any students who may be affected by witnessing the behaviour prior to using the powers under the Act. In relation to behaviour, 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 people. This could include people who appear to act in a highly agitated or irrational fashion.

While attempts to resolve such issues by other reasonable means might be appropriate, the department does not condone the use of offensive language in the presence of students.

In most instances, it is expected that a prior warning would be given to the person concerned prior to using the powers under the Act. Any warning given should preferably be in writing and a copy retained by the principal or workplace manager with the relevant documentation. [A sample letter can be found here](#).

When should powers under the Act not ordinarily be used?

- When people merely complain about the actions of staff or decisions at the school.
- When people write letters or ask for information from school staff.
- When the people in question are students of the school, in which case disciplinary action is more appropriate

People have a right to seek clarification or confirmation of decisions made by schools and other parts of the department, particularly in circumstances where the decisions impact on themselves or their children. People affected by decisions made by schools also have a right to discuss or complain about those decisions.

It is, however, acknowledged that some complainants' behaviour is unreasonable.

What resources are there to manage unreasonable behaviour?

Assistance in managing complaints, including managing unreasonable complainant conduct, is found on the Employee Performance and Conduct (EPAC) directorate's [Complaints Handling Website](#). Advice and support is also available from EPAC, local educational services teams and Director Educational Leadership. Legal advice is available from the Legal Services directorate.

Suggested strategies to deal with people in these circumstances are also discussed in [legal issues bulletin 33 - Good practice when conducting difficult interviews and related issues](#).

What about when the health and safety of staff is affected?

Principals should note that action available to them under the Act must not be used as a substitute for complaint handling procedures or school discipline policies.

On rare occasions the nature and/or persistence of the contact a person has with the school may pose a health and safety risk to students and/or staff. In such circumstances it may become necessary to exclude a person who is behaving this way from access to the school site by use of the Act. It is also critically important the impact of this person's behaviour on staff is reported as an incident or injury to the Health and Safety directorate.

Should principals be in any doubt as to what action can be taken, they should contact their director educational leadership, the [School Safety and Response unit](#) or [Legal Services](#).

What should I do before issuing a directive?

The following steps should be taken:

1. If the incident involves violence or threatened violence, it should be reported to the police. A report must also be made to the Health and Safety.
2. Where practicable, consult with the Director Educational Leadership prior to banning a person who ordinarily has a legitimate reason to be on the school site from entering the site or placing conditions on their entry. This consultation should include a discussion of any prior steps that have been taken to manage the person's behaviour. If it is not practicable to consult the director educational leadership, advice should be sought from Legal Services.
3. Consult with any staff member whose safety may be at risk from the person's behaviour and consider legal obligations under the duty of care and other laws.
4. Use the template letters to issue the [warning letter](#) or [banning or conditions letter](#).
5. If a letter is issued and there are genuine safety concerns if a member of staff is required to deliver the letter to that person, contact the police and ask them to deliver the directive.
6. Standard operating procedures exist for police to serve a letter banning the person from the site on behalf of the school at the request of the principal.
7. If the letter banning the person from the site or placing conditions on their entry onto the site is issued for non-violence related issues – for example someone being disruptive rather than a threat – the letter should ordinarily be served by a member(s) of staff unless there are genuine safety concerns for the person delivering the letter. If these concerns do arise, you should contact the police as above. **A record of the delivery of any letter by a staff member should be created and retained.** This is important because it may be necessary to prove that the person has received the letter as part of a subsequent prosecution for a breach of the Inclosed Lands Protection Act 1901.
8. Once a letter banning a person from entering the site for non-violence related issues/placing conditions on their entry onto the site is issued, you should send a copy of the letter to the police. Police have standard operating procedures to appropriately record the service of these letters.
9. Inform staff, including casual staff, the letter has been issued. Instruct them to notify the principal (or person in charge of the site in the principal's absence) if a person enters the site (if banned) or contrary to any conditions that have been imposed on their entry.
10. Principals remain responsible for the service of any warning letters issued. A record of the delivery of any warning letters should be created and retained. This will be important in the event further action is required (including banning the person from entering the site for continuing their conduct despite being warned to desist).

What legal issues could arise under child protection legislation?

On rare occasions a parent's behaviour on the school site could give rise to a reasonable suspicion that their child is at risk of harm. This may relate to an actual incident, but other risk factors may also be present. School staff should inform their principal of any concerns that a student may be at risk of harm.

Principals need to consider whether to report to Family and Community Services, contact with the [Child Wellbeing unit](#) or some other action is required. The [Mandatory Reporter Guide](#) can help with this decision. If in doubt or assistance is required contact the [Child Wellbeing unit](#).

The department's [Protecting and Supporting Children and Young People policy and procedures](#) also provide guidance about responding to child protection issues.

When should an incident be reported to Health and Safety?

Consideration should be given to reporting an incident which give rise to a warning or exclusion letter being sent to the [Health and Safety directorate](#). This step should be taken irrespective of whether an injury has occurred. For further information about reporting to Health and Safety see the [Incident Reporting Policy](#) and [Incident Procedures](#).

What if there are concerns about a risk of domestic violence?

If a principal has reasonable grounds to believe a parent or other community member may be at risk of domestic violence, the matter can be raised sensitively and he or she can be provided with contact details of sources of potential support.

Where children or young people have been exposed to domestic violence, principals need to consider whether to report to Family and Community Services, contact with the [Child Wellbeing unit](#) or some other action is required by staff. The [Mandatory Reporter Guide](#) psychological harm decision tree can help with this decision. If in doubt or assistance is required contact the Child Wellbeing unit.

The department's [Protecting and Supporting Children and Young People policy and procedures](#) also provides guidance about responding to child protection issues.

Given the potential impact of exposure to domestic violence on students, the school counsellor/school psychologist should be notified if a principal becomes aware a student has been exposed to domestic violence.

What happens if a person breaches a direction?

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

Do police need to actually see the person on site before acting??

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 is seen on the site and one or more witnesses is prepared to give evidence of this if necessary. Police will require that this evidence is given in the form of a written statement. There is also a possibility the person making the statement may be required to give evidence if the defendant pleads not guilty to the offence.

Can only the principal take action under the Act?

In most cases the principal will be the person to issue a warning or banning letter or impose any conditions on someone's entry onto the school site.

Action can however be taken under the Act by any person who is apparently in charge of the premises. If therefore a staff member is working back late or on the weekend and a person enters the site without permission, that staff member can, if considered necessary, direct the person to leave the premises. If they do not leave, the police should be notified. On rare occasions the directive can be issued by the Director Educational Leadership who is responsible for the particular school.

Any action taken by staff should be documented and reported to the principal or manager as soon as it is practicable to do so. Staff members who work alone at their workplace, and their supervisors, are reminded of the [resources developed by the Health and Safety directorate for staff working alone](#).

Can action be taken for school activities conducted off site?

The capacity to take action under the Act in respect of activities away from departmental premises depends largely on the specific circumstances.

If the activities are being conducted in another facility (for example a local hall) and the school is the sole user of the facility at the time, then action can be taken on the basis the principal or other person in charge of the activity is the person apparently in charge of the premises.

The situation is not so clear when the activity is being held in an open place such as the local council oval or sporting facility. Much depends on whether the premises are “inclosed”. If however the place being used is inclosed and the school is the sole occupier of the site at the time, then there is nothing to prevent the principal or other person in charge of the activity from exercising powers under the Act.

If a warning or other action under the Act is being considered in respect of premises away from the school or the staff member is unsure whether premises are “inclosed”, advice from the Legal Services directorate should be sought where practicable prior to taking any action.

What if police do not take action regarding a reported breach?

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 local police and the shift supervisor spoken to in an attempt to resolve the issue. If no resolution can be reached, contact should be made with the Director Educational Leadership so that further action can be pursued with the police at a higher level.

If I issue a direction under the Act how long is it valid for?

If people ordinarily have a reasonable excuse to enter onto departmental sites, principals should avoid automatically applying restrictions which are open-ended in duration. Depending on the circumstances, consideration should be given to specifying a period of time during which the person’s right to enter onto the premises is restricted – for example two or three months. The imposition of restrictions that are of a relatively short duration can be successful in resolving these types of disputes.

Should I periodically review any directions made?

Yes. 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 should be reviewed periodically to ensure maintenance of the limitation is warranted.

Principals should ordinarily conduct the reviews towards the end of terms 2 and 4.

Reviews can also be undertaken by principals at other times if they become aware of any changes in the circumstances justifying a review.

In undertaking a review, principals need to satisfy themselves the maintenance of the limitations are justified. Information should be sought from relevant people, including the person who has been banned indicating any reasons why the limitations on entry to the site should or should not be maintained.

Where appropriate the person undertaking the review may require the person whose entry onto departmental premises has been restricted to:

- acknowledge that his or her previous behaviour was inconsistent with the standard of behaviour that is expected of a person entering departmental premises; and/or
- give an undertaking that he or she will not engage in similar behaviour or otherwise act inappropriately on departmental premises if the limitations on his or her entry onto departmental premises are removed.

Both a person's willingness to give this undertaking or their refusal to do so may be considered when determining whether or not the limitations placed on the person's access to departmental premises should be removed. [A sample letter](#) for use by principals following a review is available.

Can a person seek a review of a decision to limit access?

Yes. People whose access to departmental premises is restricted or extinguished by a principal, including those situations where a review has confirmed the decision made, should be advised they may lodge a complaint about the decision. Any letter issued by the principal must include information about the person's right of review.

A complaint about a decision by a principal or other departmental manager should be directed to the Director Educational Leadership respectively. The complaint will then be dealt with in accordance with the department's [School Community and Consumer Complaint Procedure](#). If a Director Educational Leadership advised the principal to limit a person's access to the school site he or she should arrange for a different Director to undertake the review in consultation with their Executive Director.

What record keeping requirements apply to this situation?

It is important to maintain appropriate official records when issuing a warning or excluding persons from right of entry onto departmental premises. These include records of:

- the incident which has given rise to action being taken under the Act
- any verbal warnings given (including the reason the warning was verbal rather than being in writing)
- correspondence sent to the person who has received a warning or been excluded from departmental premises
- service of any correspondence excluding persons from entry onto the school site
- contact with the NSW Police Force in relation to the incident
- compliance with any reporting requirements under the department's Incident Reporting Procedures or for child protection purposes.

Schools must observe any requirements imposed by privacy legislation with records being kept secure and accessible only to those staff that need to see them.

Staff should contact the [Records Management Centre of Expertise](#) if they have specific records-related inquiries.

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.