



Legal issues bulletin

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Power to Search Students

In what circumstances can students' bags or possessions be searched by staff?

Principals have a legal obligation to ensure school premises remain safe and secure for students, staff and other visitors. This duty arises from both the common law duty of care and from the Work Health and Safety Act 2011.

To give effect to this obligation, students' bags and possessions (which includes student lockers) can be searched if staff have reasonable grounds to believe the student is in possession of:

- illegal drugs
- knives, prohibited, offensive weapons or dangerous weapons
- stolen property
- illegal material such as pornographic magazines or other publications
- mobile phones, Ipads, laptop computers or other technological devices which may contain material or images which are illegal, offensive or otherwise inappropriate or which evidence illegal, offensive or otherwise inappropriate conduct – e.g. a film of students fighting.

Unless impractical or because the immediate safety or wellbeing of students or other persons is at risk, searches for knives, prohibited, offensive or dangerous weapons should be conducted by the police.

What if the student does not give permission to be searched?

If consent is not given police should be contacted and asked to conduct the search.

What steps should be followed if a student's bag or possessions are to be searched?

Principals may contact parents if deemed appropriate. Any search of a student's bag or possessions should be undertaken in a private setting away from other students and be dealt with in a sensitive manner. The student must be present. Where practicable, an independent observer such as another member of staff should be present. When searching a student's bag, the student should be asked to hold the bag open and move the contents around so they can be more easily viewed by the staff member conducting the search. Students may also be asked to empty their pockets.

At all times staff need to be mindful of any items that may be in a bag or locker on the student that may be of a personal or sensitive nature.

If any dangerous or otherwise prohibited weapon is found by staff during a search, it should be confiscated and police contacted to attend the school to take custody of the article.

While principals can ask a student to empty his or her pockets any physical search of a student suspected of possessing material or items giving rise for the need to search should be carried out by police.

If police are requested to attend a school to conduct a search of a student or a student's bag or possessions an attempt should be made to contact the student's parents prior to any search being conducted. If parents cannot be contacted prior to the search being undertaken, principals should contact them after the search has been completed to inform them of the search and any subsequent action taken.

What action should be taken if a student refuses to allow staff to search his or her possessions?

If staff have reasonable grounds to suspect the student possesses items or material referred to previously, police should be called, particularly if it is believed the safety of students and staff at the school will be at risk if they challenge the student. Risk minimisation procedures should be implemented until police arrive.

What powers do police have to conduct searches of students?

Generally, police have the power to stop and search anyone in a public place who they suspect on reasonable grounds to possess on their person illegal drugs or any dangerous implement or other item that has been used or intended to be used in the commission of a serious offence, including offences under the Weapons Prohibition Act 1998 or the Firearms Act 1996.

Police also have the power to conduct a frisk search of anyone in a public place or a school if they suspect on reasonable grounds that the person has a dangerous implement in his or her custody. If the person is at school, police may also request the person to:

- submit to a search of any bag or other personal effect that is on or with the person, and or
- submit to a search of the person's locker and any bag or other personal effect that is inside the locker.

If police conduct a search of a student at school they must, if reasonably possible to do so, allow the student to nominate an adult who is on the school premises to be present during the search. Failure to comply with a request to be searched is an offence which carries a maximum penalty of \$5,500.

Police have the power to confiscate any dangerous implement, stolen property or illegal drug found in the possession of a person in a public place or school.

What is a dangerous implement?

"Dangerous implement" includes a knife (refer to [legal issues bulletin 22](#) for the definition of a "knife"), a firearm within the meaning of the Firearms Act 1996, a prohibited weapon or article within the meaning of the Prohibited Weapons Act 1989 or an offensive implement as defined by the Summary Offences Act 1988 (refer to [legal issues bulletin 2](#) for the definition of 'offensive implement').

It should be noted that the power of principals to confiscate from students any items they believe pose an immediate threat to the safety of other people is not affected even though the item may not be a dangerous implement within the meaning of the law.

About Legal Services

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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.