



Legal issues bulletin

Number 8 reviewed May 2015

Claims for loss of or damage to personal property and use of private motor vehicles by staff, parents and students

[Legal issues bulletin 39 - Preparation and use of accident reports in schools](#) provides details of action to be taken by principals when claims for personal injury and property damage incurred by students and other visitors to school are received. Principals should note different procedures apply when claims are made for loss or damage to personal property owned by staff. The following guidelines apply to all departmental premises and staff, effective from the date of this bulletin.

If staff suffer loss or damage to personal property while at work, will they be covered by insurance?

Generally, liability will not be accepted for loss or damage to an employee's personal effects which are used or stored on premises owned or used by the department except in specific circumstances. Staff should consider insuring personal property against loss or damage, particularly if it is of significant value. Claims for loss of or damage to staff property at work may be met by the NSW Treasury Managed Fund only where the following conditions apply:

- The property was in the nature of "tools of trade". That means it was solely used in teaching or to perform a particular work-related task.
- The property was not a purely personal item. Examples of personal items include wallets, cash, handbags, sunglasses, shoes, reading glasses and mobile phones.
- The supervisor had properly authorised, in advance, the "tool of trade" being at work and being used for work. The supervisor is responsible, in providing this authority, for advising the staff member of the conditions applying to claims for loss or damage.
- The maximum amount payable per claim is \$1,000, irrespective of the items involved.
- The person owning or having control of the property did not contribute to the risk - eg leaving the property unattended or in an unsafe place.
- The loss or damage is not claimable under workers' compensation coverage.
- The loss or damage is not claimable through an insurance policy held by the member of staff.
- A receipt, invoice or other satisfactory evidence of the value of the loss or damage is provided.

Any claims made should be directed to the principal, school education director or state office supervisor in the first instance who should then arrange for all relevant evidence and receipts to be collated. [See appendix A](#). The documentation should then be forwarded to the Insurance, Risk & Claims Management unit – Miscellaneous Claims, NSW department of Education, Locked Bag 5068, Parramatta NSW 2124, where the claim will be assessed and, if approved, forwarded to the NSW Treasury Managed Fund for payment. The Insurance, Risk & Claims Management unit can also be contacted on 1300 338 772 or email at insuranceriskclaims@det.nsw.edu.au.

Claimants should not be told the claim will be met until formal advice is received from the Insurance, Risk & Claims Management unit that the claim has been approved.

To minimise the risk of loss and inconvenience to staff, principals should advise all staff of their obligations to ensure the security of private property brought to the workplace. Staff should avoid storing private property at the workplace for extended periods of time, especially over weekends and during vacation periods.

Enquiries from schools about claims for loss of or damage to staff property should be directed to the Insurance, Risk & Claims Management unit.

In addition to claims under the NSW Treasury Managed Fund, some categories of staff may be entitled to make a claim under workers compensation in relation to loss or damage of personal property at work. Staff should refer to the department's [Industrial Relations website](#) for further information about individual award conditions.

If my claim is declined, do I have any other recourse?

Individual industrial awards may allow some categories of staff to make a claim for reimbursement for lost or damaged property in some circumstances where claims under the NSW Treasury Managed Fund or Workers Compensation have been declined. Staff should refer to the department's [Industrial Relations website](#) for further information about individual award conditions.

Will students, parents or community members be covered for loss of personal property in schools?

Principals should ensure persons who have cause to bring property onto the school are advised they do so at their own risk. As a general rule no responsibility should be accepted for loss or damage to private property brought to the school.

In situations where the school has accepted responsibility for safekeeping of personal property, claims for any loss or damage that may arise must be met by the school provided the following conditions are met:

- The property must have been lent, hired or entrusted to the school. Examples include:
 - property confiscated from a student which is to be returned
 - property lent for a school activity.
- The person who owns the property did not contribute to the loss.
- A receipt, invoice or other satisfactory evidence of the value of the loss or damage is provided to the principal.

In relation to schools, a number of claims are made each year in respect of loss or damage to bicycles and musical instruments which are brought to school by students. In the absence of an appropriate security system for the safeguarding of bicycles, parents and students should be reminded on a regular basis students leaving bicycles at the school do so at their own risk.

Similarly, students and parents frequently ask permission to leave personal musical instruments at the school rather than transport them to and from home on a regular basis. Unless principals can ensure any musical instruments left at the school can be securely put away when not in use, permission to leave the instrument at school should be denied.

Alternatively, the student and parent should be advised no secure storage is available and if the instrument is left at the school no responsibility will be accepted for its safekeeping.

If principals receive a claim for compensation in respect of damage to personal property that arises from circumstances other than those described above, the claim should be forwarded to Legal Services in accordance with the procedures outlined in [legal issues bulletin 39](#).

If the personal property of a student, parent or community member is confiscated or otherwise lent to the school, what steps should be taken in relation to its security?

The department is obliged to taken reasonable steps to ensure the security of items entrusted to it by others. It is not a duty to ensure safety – merely one to ensure reasonable steps are taken. If the personal property of students or other people is retained by school staff, action must be taken to securely store the property until it is returned to the owner. Under no circumstances should personal property be left in unlocked desk drawers, teachers tables, cupboards, staffrooms and the like. The property must as a minimum be locked away. Failure to do so will render the school liable in the event of loss.

What is the position in relation to motor vehicles damaged while parked on school premises?

All persons who park their vehicles on school premises do so at their own risk. This applies to staff, students, parents and members of the public. Principals should ensure all persons who park their cars on site are advised accordingly.

Any claims made for damage to motor vehicles parked on sites will not be met by the NSW Treasury Managed Fund. Principals must meet the costs of repairs for damaged vehicles provided the following conditions are met:

- The damage was caused in circumstances over which the department had some control. Examples include:
 - staff mowing lawns in close proximity to cars
 - not attending to decaying tree branches located near or within car park areas.
- The person owning or having control of the vehicle did not contribute to the risk of damage. Examples include:
 - failing to move the vehicle after being asked to do so because of lawn mowing
 - failing to take heed of warnings about the propensity of trees to drop branches.
- At least two quotes are obtained and provided to the principal or where the damage has been rectified, a receipt for the repair bill is provided.

The maximum amount that may be reimbursed is the "normal excess" prescribed by the insurer at the time that the vehicle is damaged. "Punitive" excess charges imposed by an insurer because of poor driving record or the type of vehicle insured shall not be reimbursed. The additional excess imposed by some insurers on inexperienced drivers (or those under 25) is not considered to be "punitive" excess and will be reimbursed.

If a claim on the insurer is not made, eg to avoid loss of a no-claim bonus etc, the maximum reimbursement is the prescribed excess that would have been paid had a claim been made or the actual cost of repair, whichever is the lesser.

To minimise the risk of motor vehicles parked on departmental sites being damaged, principals should ensure all lawn mowing activities undertaken in or near parking areas occur at times when vehicles are not present. If this is not possible, persons using the area should be asked to move their vehicles until the area has been mowed.

Regular checks should be made of trees in and around car park areas to ensure that the trees are not in any state of decay which may lead to a greater risk of falling limbs. If trees have a propensity to drop limbs irrespective of their health, persons using the car park area should either be warned or prohibited from parking under the trees.

What else should be done if a tree limb drops from a tree on the school site?

Principals should refer to the department's [Tree Management Guidelines](#) and take any further action required consistent with those Guidelines.

What if the tree is not on the school site?

Any area of the playground overhung by the tree should be placed in an out of bounds area. Prompt contact should be made with the owner of the property in which the tree is planted.

Where can I get further advice about the action to take after a tree limb falls?

Schools should contact their local Asset Management unit for advice. If legal issues arise contact can also be made with Legal Services.

Can parents, students and other community members use their private motor vehicles for department activities?

If students are required to attend departmental activities away from the school site, parents, community members or other students may provide transport to and from the activity subject to the following conditions:

- Written permission from the parent(s) of the student being transported is obtained.
- If students are transporting other students, written permission from the parent(s) of the driver must also be obtained to not only use the vehicle but also to transport other students.
- The driver must be licensed.
- The motor vehicle must be registered.

- The number of passengers in the vehicle must not exceed the number of seat belts or in the case of larger vehicles, the number of passengers that the vehicle may be licensed to carry.

Current driver's license and car registration details must be sighted prior to giving permission for students to be transported in the vehicle. Comprehensive car insurance of any kind is not required.

Transporting students in parents' or other students' vehicles should only occur in those circumstances where there is no other feasible option available to provide the transportation.

Any financial assistance offered to parents for the use of their cars should be limited to reimbursement for actual costs incurred for items such as petrol and tolls. The payment of any flat fee or other sum other than for actual expenses should be avoided.

What is the position in relation to staff who use their private motor vehicles to transport students or undertake other official duties?

Staff using private motor vehicles for official business purposes need not have comprehensive third party insurance unless they want to claim mileage costs as a result of using the vehicle. If staff use their private motor vehicle on a regular basis for work related duties and the car is insured for private use only, it is suggested that confirmation be obtained from the insurance company that the vehicle will be covered in the event of an accident.

Staff may sometimes transport students in a private motor vehicle. This might arise, either in the event of an emergency, or because no other viable options are available to transport the student(s) to a particular department activity. In non-emergency situations, the same requirements as outlined in respect of parents and students transporting students must be complied with.

Staff transporting students by private motor vehicle should always adopt relevant common sense strategies to minimise the risk of child protection issues being raised. Examples of these strategies include another adult being present, other students being present, having students sit in the rear of the vehicle and advising senior officers of the travel arrangements.

Staff should also refer to [legal issues bulletin 24 – Use of cars at work](#) for further information

Motor vehicles damaged while being used on official business

Any claims of this nature will not be met by the NSW Treasury Managed Fund. They are the responsibility of the relevant school, directorate or office which approves the use of the vehicle for official business purposes. Principals and office managers may meet any claims made provided the following conditions are met:

- the vehicle was being used for departmental business and this use
- had been approved by the school, directorate or office
- the damage occurred while on departmental business
- the damage was not the fault of a third party
- at least two quotes are obtained and provided to the principal, district office or state office manager or in cases where the damage has been rectified, a receipt for the repairs is provided.

The conditions set out in this bulletin regarding the maximum reimbursement that apply to vehicles damaged while on departmental premises also apply to vehicles damaged while being used on official business.

In cases where staff use their vehicle to attend programs such as training courses or conferences organised by a state or district office, approval to use the vehicle for official business should be obtained from, and any claims directed to, the relevant state office directorate or district office which has responsibility for the program.

Procedures for making a claim for staff personal property

The following documentation is required:

- statement of claim from the staff member, supported by the principal
- receipts / invoices / quotes of items being claimed for
- a copy of the breach of security report
- any other supporting documentation.

In accordance with NSW Treasury Managed Fund requirements, principals are responsible for assessing and, where appropriate, paying claims which are less than \$300.

For claims greater than \$300, the completed documentation should be forwarded to the Insurance, Risk & Claims Management unit – Miscellaneous Claims, NSW department of Education, Locked Bag 5068, Parramatta NSW 2124.

The Insurance, Risk & Claims Management unit will review the claim and, if approved, refer the documentation to the NSW Treasury Managed Fund, for payment.

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.