



# Legal Issues Bulletin

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## Power to Search Students

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

Principals and institutes managers have a legal obligation to ensure school and institute 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 or offensive 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.

Searches should only occur with the student's permission unless the immediate safety or wellbeing of students or other persons is at risk.

### 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 and institute directors 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. Where practicable, an independent observer such as a 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.

While principals and institute managers 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 police attend an institute for similar purposes, the requirement to contact parents or any other appropriate person will need to be determined by the institute manager based on the particular circumstances of the student.

### 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 No. 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 No. 2](#) for the definition of 'offensive implement').

## About Legal Services

Legal Services provides legal support and advice to staff in schools, colleges, regions, state office directorates and specialist boards and authorities. It arranges for the Department to be represented before a range of courts and tribunals and assists with the preparation of legal documents. It is also available to provide legal advice in respect of any departmental policies or procedures that may have a legal complexion.

The Legal Services Directorate can provide legal advice to departmental staff only. It is not able to provide legal advice or assistance to parents, students or members of the public.

The Legal Services Directorate posts a large amount of information on the Department's intranet. This includes:

- all current Legal Issues Bulletins
- questions the Legal Services Directorate most frequently encounters
- information about the Government Information (Public Access) Act
- links to other related legal web-sites
- other information for the use of schools and TAFE

The Legal Services Directorate continues to offer its telephone advice service to DEC personnel.

The service is available between **9.00am to 5.00pm** weekdays.