

LEGAL ISSUES BULLETIN

NEW SOUTH WALES
DEPARTMENT
OF EDUCATION
AND TRAINING



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PROTECTION OF STUDENTS AND STAFF IN SCHOOLS AND INSTITUTES FROM VIOLENT BEHAVIOUR

Legal Issues Bulletin No. 1 provided principals and institute managers with advice on how to use the provisions of the *Inclosed Lands Act 1901* to restrict the entry of unwelcome persons on to the school or institute site.

While action under that legislation is usually effective in such situations, there will still be occasions when other strategies may be needed to afford protection to staff, students and visitors.

APPREHENDED VIOLENCE ORDERS

What is an AVO?

Apprehended personal violence orders (AVOs) can be obtained in situations where a person fears for their safety and reasonable grounds exist to justify those fears. Applications for AVOs can be made where a person:

- has been subject to an act of violence
- has been subject to harassment or molestation that in the opinion of the court warrants the making of an order
- has been subject to intimidation or a person with whom they have a domestic relationship has been subject to intimidation and the court is of the opinion it is sufficient to warrant the making of an order
- has been stalked by another person.

The term "domestic relationship" includes a current or previous spouse or de-facto partner, any person who is living with or has lived with the person seeking the order (except merely as a tenant or boarder), any person who is or has been a relative of the person seeking the order and any person who has or has had an intimate personal relationship with the person seeking the order.

Applications for AVO's can be made on behalf of persons by the police but in most instances police will indicate that it is not their role to assist. AVO's must generally be applied for personally by the person seeking protection under the order.

The department is committed to ensure that staff are afforded protection from acts or threatened acts of violence which relate to their employment and will provide assistance to staff who seek an AVO in these circumstances.

How do I apply for an AVO?

An application for an AVO involves providing information to court registry staff outlining the facts of the case and the reasons why fears for safety are held.

Staff seeking an AVO which relates to their employment should contact the Legal Services Unit (LSU) and discuss the issue with a legal officer. If an application for an AVO is the appropriate course of action, LSU will arrange legal support and representation in court.

Arrangements will then be made for either a legal officer from LSU or a private solicitor to assist and represent the staff member. If necessary, the representation will include accompanying the staff member to the court registry to complete the necessary application form. The costs of any legal representation provided by private solicitors will be paid for by the Legal Services Unit.

Representation can also be arranged in those matters where staff members are subject to applications for AVO's by other persons and the circumstances arise directly from their employment with the department.

What are court orders and how do they work?

Following the completion of an application for an AVO the matter will be listed before the court at a future date and a copy of the application served on the other party (“the defendant”) by the police. On the date the application is listed before the court, one of the following things is likely to occur:

- 1 The allegations giving rise to the application will be denied by the defendant and he or she will seek to defend the matter. If this occurs, the matter will be adjourned to a later date for hearing.
- 2 The allegations will be denied by the defendant but he or she nevertheless consents to an order being made.
- 3 The allegations are not disputed and the defendant has no objection to the court making an order.
- 4 The defendant does not attend and the court makes an order in their absence.
- 5 The defendant has not been served with a copy of the application and does not attend. In this situation a new date is set and another attempt made to serve the defendant with a copy of the application.

In reaching a decision to grant an order in circumstances as outlined in 2 - 4 above, the court may require the applicant to give evidence to substantiate the basis upon which the order is sought.

The court is able to grant interim AVOs in circumstances where the defendant does not appear and the court is of the view the circumstances of the case warrant an interim order being made.

In urgent circumstances it may be possible to seek an interim order on the same day as the application is made even if the defendant has not been given notice of the application. If an interim order is made, the matter will be adjourned to a future date.

The defendant will be notified of the interim order and be summonsed to appear on the future date so the matter can be heard and determined by the court. The court can either confirm, amend or revoke the interim order previously made on that future date.

When a court grants an application for an AVO it will generally include terms that prohibit any further assault, harassment, molestation or intimidation of the applicant by the defendant. These orders can also extend to persons with whom the applicant has a domestic relationship.

The court can also restrict approaches by the defendant to the applicant’s place of work, residence or other locations they frequent. Orders can also include conditions that all firearms be surrendered and that property of the applicant is not to be damaged. The applicant can seek orders for any given period of time - if no time period is specified in the application, any orders made will automatically remain in force for six months.

The precise details of which orders are appropriate in any given situation should be discussed by staff with their legal representative prior to attending the court registry to make the relevant application.

Unless special circumstances exist, staff should not seek an order that restricts entry onto the school or institute site of any student who is or will remain enrolled at that school or institute. Other protective orders can be sought that do not necessarily impinge on the student’s ability to continue his or her education at the school or institute despite the presence of the staff member.

If a defendant breaches the conditions of an AVO, he or she can be arrested and charged by the police and be subject to a maximum penalty of \$5,500 or two years imprisonment or both.

What are stalking and intimidation?

The term “stalking” means following or watching a person. It also includes frequenting the vicinity of or approaching a person’s place of residence, business or work or any other place that the person frequents for any social or leisure activity.

The term “intimidation” means conduct amounting to harassment or molestation. It includes the making of repeated telephone calls or any other conduct that would cause a person to have reasonable apprehension of injury to, or damage to property of, the person or someone else with whom he or she has a domestic relationship.

Any person found guilty of stalking or intimidating another person with the intention of causing that person or any other person with whom they have a domestic relationship to fear personal injury is liable to imprisonment for five years or a fine of \$5,500, or both.

Any staff member who considers they are subject to behaviour that falls within the definitions of stalking or intimidation should contact the police regarding their concerns. If police action for such an offence occurs, the police are also obliged under the relevant legislation to make an application for an AVO on behalf of the person who has been stalked or intimidated.

It is important to note the following -

1. Legal assistance for AVO's will generally not be provided for staff who seek orders against other staff with whom they work
2. Other strategies should generally be explored before making an application for an AVO.
3. AVO's are not be used by staff to circumvent procedures relating to the discipline of students
4. AVO's cannot be taken out on behalf of a school or institute although an AVO taken out by an individual can include an order that a person not enter or approach a departmental site.

SEARCHING STUDENTS FOR ILLEGAL DRUGS, KNIVES, PROHIBITED OR OFFENSIVE WEAPONS

Legal Issues Bulletins 2 (*Possession of Knives and Offensive Behaviour on or near Departmental Premises*) and 2A (*Possession of Knives and Power of Search - Update*) provided advice to schools and institutes on the powers available to search the bags of students suspected of having knives or other offensive implements in their possession.

Searching a student's bag or other possessions without permission of the student should only occur as a last resort and in circumstances where the immediate safety of students is at risk. As far as possible, all searches should occur with the permission of the student concerned.

Principals and institute directors may contact parents if deemed appropriate. If it is suspected that a student is in possession of illegal drugs or prohibited weapons, wherever practical, police assistance should be sought to conduct the search.

Any search of a student's bag 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.

Searches of students' bags in those cases where the student is suspected of having stolen property should only be conducted by staff if the student agrees to the search. If consent is not given, any search should be undertaken by police.

While principals and institute managers can ask a student to empty his or her pockets, any physical search of a student suspected of possessing illegal drugs, prohibited weapons or stolen property should be carried out by police.

If police are requested to attend a school for the purpose of conducting a search of a student or a student's bag or locker, 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.

STOP PRESS!

This edition of the Legal Issues Bulletin series is soon to be available on the department's intranet site. Look for it, and other editions, at www.intranet.dse.nsw.edu.au.

FAMILY LAW AND THE SCHOOL

Following amendments to the *Family Law Act 1975 (Cth)* in 1995, schools were issued with a revised *Family Law and the School* booklet in July 1997 which provided guidance to principals in dealing with parents who are subject to family breakdown and Family Court orders. Those guidelines remain current and should be adhered to by principals when dealing with such matters.

Since the booklet was issued, it has become apparent that some staff remain unaware of the contents of the booklet and the procedures to be followed when dealing with families affected by breakdowns in relationships. Principals should ensure that all staff are made aware of the guidelines, and particularly the following matters.

Parents should be asked to provide copies of any court orders that may exist so that staff can be aware of the rights and responsibilities each parent may have. If a parent is unable to provide a copy of any order that is said to be in existence, the principal should advise the parent that until a copy can be produced the school will have no option but to regard each parent as having equal rights in respect of any children at the school. A copy of any order provided should be retained with the student record card.

Upon request, non-residential parents are to be provided with copies of significant documentation concerning students which are ordinarily provided to the residential parent by the school.

This includes school reports, school newsletters, notices regarding major excursions, school photographs or other information which is considered by the principal to be significant. Principals should ensure that documentation is provided to non-residential parents in sufficient time to allow them to attend school activities, order school photographs etc.

Documents of a minor administrative nature such as notices that the school canteen will be closed or that specific school activities are cancelled would not normally be sent to the non-residential parent. While principals would not ordinarily be expected to provide such documents to non-residential parents, any request to provide them should be acceded to.

The fact that a parent may be subject to apprehended violence orders or be in prison does not of itself deny that parent the right to obtain information about how his or her children may be progressing at school. In the absence of a specific family law order, both parents are still entitled to receive relevant school documentation upon request.

Unless a student is already known by a name other than that which appears on his or her birth certificate, an individual parent cannot elect to have his or her child known by a different name. In the absence of one of the criteria outlined at paragraph 8.3 of the guidelines, students must be enrolled in and be known by the name which appears on their birth certificate.

About Legal Services...

Legal Services provides legal support and advice to schools, colleges, districts and institutes in addition to state office directorates and specialist boards and authorities, such as the Board of Vocational Education and Training (BVET), the Board of the TAFE NSW, the Vocational Education and Training Accreditation Board (VETAB), the Board of Adult and Community Education (BACE) and the NSW Commissioner for Vocational Training.

Legal Services also provides legal advice for the senior officers and arranges for the preparation of legal opinions. It arranges for the Department to be represented before a range of courts and tribunals and assists with the preparation of legal documents.

**The Legal Services Unit is located on level 5, 35 Bridge Street, Sydney.
The telephone number is 9561 8538 and the fax number is 9561 8543.**

Chief legal officer	:	John Murn
Principal legal officers:		Wayne Freakley and Victoria Abigail
Senior legal officer	:	Peter Cribb
Legal officers	:	Peter Johnson, Lee Rayner, Danny McVey, Sandra Butler and Christine Komarynsky