

EXECUTIVE MEMORANDUM NO: 97/041

TO: Principals and Head Teachers

FROM: Peter Allen, Director of Schools

SUBJECT: Trespassers in Schools

DATE: 29 August 1997

On 19 June 1997, Part 10 of the Law and Justice Legislation Amendment Act 1997 came into operation. It amended the *Summary Offences Act 1966* to give owners and occupiers of State schools (and other specified premises) wider and more effective powers to deal with trespassers.

The main change in the law is that a person who enters the school premises after being previously warned by the principal/head teacher not to enter, or in breach of a prominently displayed sign, will be guilty of trespassing (unless they had some other legitimate purpose for entering).

The attached guidelines have been prepared to assist principals and head teachers implement the new amendments, and cover the following matters -

- The principal's/ head teacher's powers to -
 - * issue formal warnings to persons not to enter the school premises,
 - * erect signs prohibiting trespassers,
 - * order persons and trespassers off school property,
 - * authorise others to exercise the new powers on behalf of the principal/head teacher.
- Procedures which should be undertaken in schools; and
- the form to be used by principals and head teachers if they wish to authorise other people to exercise the new powers on their behalf.

Principals and head teachers should ensure that staff members, school council members, and other members of the school community are informed of the new provisions. It is important that they have an adequate knowledge and understanding of the implications of the new provisions, and that written procedures for their use by the school are developed.

I stress it is important that these new and significant powers should be implemented with prudence.

Peter Allan
Director of Schools

1. BACKGROUND

On 19 June 1997, amendments to section 9 of the *Summary Offences Act 1966* came into operation. The amendments were made by Part 10 of the Law and Justice Legislation Amendment Act 1997, and they give principals and head teachers of State schools wider powers to deal with trespassers in schools.

The amendments apply the new laws to all *scheduled public places*. All *State schools* are listed in schedule 1 of the Summary Offences Act 1966 as scheduled public places. Attachment 1 to these guidelines contains a consolidated version of section 9 of the Summary Offences Act 1966 with the amendments made by Part 10 of the Law and Justice Legislation Amendment Act 1997, except that "*State school*" is used instead of "*scheduled public place*".

2. POWERS OF THE PRINCIPAL OR HEAD TEACHER

Under the above changes, the principal/head teacher (or a person authorised by the principal/head teacher to act on their behalf) can -

- (a) warn a person or trespasser (**refer 3.0**) to **leave the** school premises,
- (b) warn a person not to **enter** the school premises, (**refer 4.0**)
- (c) erect **signs** warning persons not to enter the school premises (**refer 6**),
- (d) request the police to lay a charge under section 9 of the Summary Offences Act 1966, when a person fails to comply with an above warning (**refer 5.2**)

The position of principal/head teacher as occupier of school premises, and their power to authorise others to exercise the powers as an occupier, have been further enhanced by the delegation from the Minister for Education in attachment 2, and by an amendment to clause 3.15 of Teaching Service Order 140 in attachment 3.

Principals/head teachers may choose to authorise other school staff or members of the school council (except student members) to exercise, on their behalf, their powers with regard to trespassers. In such circumstances, the principal/head teacher should make the authority formal by using the form in attachment 4.

3. MEANING OF TRESPASSER

A trespasser includes any person who enters onto school grounds (including into any buildings)

- (a) without authority (unless for a legitimate purpose), or
- (b) without a lawful excuse (unless for a legitimate purpose) or,
- (c) in a manner likely to cause a breach of the peace.

- 3.1 A person enters onto school grounds "without authority" if:
- a) they enter after having been *previously* warned not to enter by the principal/head teacher (or a person authorised by the principal/head teacher to give such a warning on their behalf); or
 - b) they remain after being warned by the principal/head teacher (or a person authorised by the principal/head teacher to give such a warning on their behalf); or
 - c) they enter in breach of a prominently displayed sign in the school premises stating that entry by particular persons (as named on the sign), or persons engaging in certain activities, is prohibited.
- 3.2 The *Summary Offences Act* 1966 does not define what constitutes a "lawful excuse" for entering school grounds but does state that a person who enters for a legitimate purpose is not guilty of trespass. The clearest example of persons who have a legitimate purpose are officers of emergency services such as ambulances, the fire brigade and the police. Other persons who have a right to enter are gas and electricity meter readers, and their rights arise either under contract or by statute. Students, parents, siblings and other people, such as delivery people, as well as persons invited to the school by someone with the authority to invite persons, usually have a legitimate purpose or lawful excuse for being on the premises.

A person who ordinarily has a legitimate purpose to enter school premises may cease to have a legitimate purpose under certain circumstances. This may include students who are on suspension (unless they return to collect some of their books or have some other legitimate reason for returning), or a parent who has engaged in threatening behaviour and has been warned by the principal/head teacher not to enter the school. Refer also to 5.5.

- 3.3 A person enters onto school grounds "in a manner likely to cause a breach of the peace" if they enter, for example, carrying a weapon or displaying disruptive or aggressive behaviour. Such a person may include a parent or other person who enters the school and threatens to damage school property or to cause harm to students, teachers or other persons at the school, or who uses abusive or offensive language.

4. WARNINGS

A warning can be given to a person not to enter the school -

- a) orally; or
- b) by handing to the person a written notice setting out the warning; or
- c) by sending a written notice setting out the warning by certified mail addressed to the person at their usual or last known home address.

4.1 **Written warnings**

Whenever possible, the warning should be given **by** written notice, because it is the best type of evidence for police to use later if they charge the person who has received the warning. Attachment 5 is an example of a written warning not to enter the school premises.

The legislation does not limit warnings to a particular time period, however the relevant time period should be inserted in the warning. Given that circumstances may change over time, it is recommended that the period ordinarily be one year, unless the person giving the warning considers a shorter or longer period is appropriate.

4.2 **Oral warnings**

In general, oral warnings should be avoided for the reasons stated in 4.1, however they may need to be given in urgent situations. If an oral warning is to be given, the following words (or similar) should be used:

Oral warning to person to leave the premises and not to return

"I am authorised to exercise the powers of an occupier and to require persons to leave these premises.

What is your reason for being on these premises ? (Do not ask this question if the person obviously has no legitimate reason for being on the school premises The following warning may still be issued where the question is asked and the principal/head teacher is not satisfied of the legitimacy of the reason given.)

You have no legitimate reason for being on these premises and I give you notice that you have no right to remain on the school premises. I require that you leave the school premises immediately. If you do not do so, you will be trespassing. The police will be called and you will be arrested and charged with trespass.

(If you consider the person should not return to the school for any purpose add) - You are warned not to enter the school premises for a period of 1 year." (A shorter or longer time period may be given - refer 4. 1)

(If you consider the person may need to enter the school for limited purposes in the future add You are warned not to enter the school premises for a period of 1 year except for the purpose of attending any school function to which the general public is invited.

Where an oral warning is given, it is desirable that -

- (a) there be at least one witness present,
- (b) the oral warning be confirmed with a written warning, and
- (c) a diary or other note of the warning be made as soon as possible (with a subsequent record kept as in 4.3).

4.3 Record of warning

Whether an oral or written warning is given, a record of the warning should be kept on file and include -

- (a) the type of warning (oral or written),
- (b) the time and date on which the warning was delivered, and the name of any witness,
- (c) a copy of any written warning notice.

Attachment 6 is an example of a form which may be used for this purpose.

4.4 Notification of warnings

The names of persons who have been given warnings should be made known to staff, school council members and, if considered appropriate, the local police to ensure that appropriate action can be taken against those who return to school premises contrary to a warning.

5. IMPLEMENTING THE NEW LEGISLATION

5.1 No right of the public to be on school premises

There is no general right of the public at large to be at a school, either within or outside school hours.

However, many schools have encouraged community use of school facilities, and have created an environment whereby members of the local community access the school grounds outside school hours. In these circumstances, it is likely that the community provides an excellent safeguard against undesirable intruders, vandals etc.

There are also situations where a school may find it quite acceptable to allow access by members of the local community to the school during school hours.

Schools should therefore differentiate between those who use school grounds harmlessly (for example, kicking a football on or jogging around an oval) and those who may be a threat to students or staff, who may cause damage to property or who may generally be disruptive.

5.2 Reserve trespass laws for serious matters

The use of the trespass legislation should be reserved for the more serious or persistent instances of trespass. If the police do charge a person with trespass, the case will be heard in a Magistrate's Court. Where the principal/head teacher (or a person authorised by them to act on their behalf) has given the warning or requested that the police charge the person with trespass, the evidence on which the charge was made will need to be substantiated.

5.3 School policies and guidelines

Principals/head teachers and school councils need to develop written policies and guidelines to ensure that correct processes are followed and that a consistent approach is applied to trespassers. It is essential that those staff and members of school council who have been authorised by the principal/head teacher to exercise on their behalf, their powers with regard to trespassers, have a clear understanding of the school's policy and guidelines and know when and how to exercise these powers.

It is also important that members of the school community, including parents, are made aware of the implications that the changes to the legislation may have for the school. In particular, all staff need to know and understand the procedures to be undertaken when a person trespasses or a warned trespasser returns to the school premises contrary to a warning.

5.4 Authorisations

The principal/head teacher may authorise selected staff or a school council member to exercise the principal powers as occupier. The authority can be ongoing or specific to particular duties or activities. For example in a school where trespassers are known to be a problem or are considered likely to be a problem, the principal/head teacher may wish to authorise on a continuous basis, an assistant principal, senior staff and specified teachers on yard duty. In other circumstances, the principal/head teacher may choose to authorise a member of school council (but not a student) during a school council activity when the principal/head teacher will not be in attendance.

Whilst the authority can be given verbally, it is recommended that it be in writing and that attachment 4 be used. A copy of the written authority should be given to each delegate, and the original kept on file. Where a number of authorisations are issued, it would also be appropriate to maintain a register.

A principal/head teacher may revoke an authority in attachment 4 by -

- (a) signing a notice stating that the authority in attachment 4 (or the relevant part of it) is revoked as from a particular date. (The date cannot be retrospective and should not be earlier than the date on which the notice of revocation is delivered to the authorised person), and
- (b) handing a copy of the notice of revocation to the authorised person.

Note: Whilst the principal/head teacher can revoke an authority at any time by verbally communicating to the authorised person that their authority is revoked, it is recommended that the revocation be in writing as above.

As the responsibility for issuing warnings to trespassers is a serious matter, it is essential that principals and head teachers only delegate their powers to those people who have the knowledge, understanding and capacity to use the powers consistently and appropriately.

5.5 **Visitors with legitimate purposes**

Care should be taken in exercising the new powers particularly in relation to students, parents, siblings and other people who ordinarily have a legitimate purpose or lawful excuse to be on school premises. Questions should be asked of the person to ascertain their reason for being on school premises and, where any doubt exists, advice should be sought from the Regional Office or the police before any warnings are given or any other action is taken.

It should be noted that persons who have been given a warning are able to enter the school premises when they have a legitimate purpose or a lawful excuse. For example, a parent who has been warned could nevertheless attend a parent - teacher meeting to which all parents have been invited, or attend a school concert, unless the parent was specifically warned by the principal/head teacher not to attend the meeting or concert.

Where trespassers are a problem or are likely to be problem to schools, it is recommended that principals/head teachers make early contact with the local police or if necessary the local divisional commander of police, to ensure that there is a common understanding and approach to dealing with trespassers.

5.6 **Reasonable force**

At common law, an owner or occupier of a property may use reasonable force to prevent a person from committing a trespass or to remove a trespasser who refuses to leave a property after being warned to do so. However, use of unreasonable or excessive force may result in civil action being taken against the owner or occupier.

It is therefore recommended that the principal/head teacher, staff and school councillors do not remove or use force against a trespasser unless the circumstances are extreme. In general, where it is considered that trespassers need to be removed from the school, the police should be called.

6. **WARNING SIGNS**

Where appropriate, signs may be displayed prominently at each entry to the school premises and in and around the school buildings. These signs serve as a warning to potential trespassers that they do not have authority to enter the school premises, and that, if they do so, they will be trespassing. The signs could prohibit:-

- (a) unauthorised persons who do not have a legitimate purpose or a lawful excuse from entering school premises, or
- (b) those persons who engage in particular named activities, for example skateboarding, horse riding or drinking alcohol.

The following are some options for wording for signs

• ***"Warning - Trespassers Prosecuted"***

(a) ***General sign -(option 1)***

Only persons who are authorised or who have a legitimate purpose or a lawful excuse may enter these school premises. All other persons are prohibited from entering the school premises. If they do so, they may be charged with trespass under the Summary Offences Act 1966.

BY authority:

Principal Date

(b) ***(Option 2) - this may displayed separately or added to option 1.***

Persons are prohibited from entering these premises for the purpose of skateboarding, horse riding or consuming alcohol. Persons who engage in any of these activities on these premises may be charged with trespass under the Summary Offences Act 1966.

By authority:

Principal Date

- (c) **(Option 3)** Note:- Section 9(1C)(c)(i) of the Summary Offences Act 1966 states that a person does not have authority to enter a place if the person enters the place in breach of a prominently displayed sign stating that "the person concerned..... is prohibited from entering that place". This option would ordinarily require that the name of the relevant person concerned be displayed on the sign. This option should only be used in exceptional circumstances.

ATTACHMENT 1

The left hand column is a consolidated version of section 9 of the Summary Offences Act 1966 with the amendments made by Part 10 of the Law and Justice Legislation Amendment Act 1997, except that "*State school*" is used instead of "*scheduled public place*". The amending law is in italics.

THE SUMMARY OFFENCES ACT 1966

Section 9. Any person who-

- (d) wilfully trespasses in any (*State school*) and neglects or refuses to leave that place after being warned to **do so** by the owner occupier or a person authorized by or on behalf of the owner or occupier, or
- (e) *without express or implied authority given by the owner or occupier or given on behalf of the owner or occupier by a person authorised to give it or without any other lawful excuse, wilfully enters any (State school) unless for a legitimate purpose; or*
- (f) *neglects or refuses to leave a (State school) after being warned to do so by the owner or occupier or a person authorised to give that warning on behalf of the owner or occupier, unless the person has a lawful excuse; or*
- (g) *without lawful excuse, enters any (State school) in a manner likely to cause a breach of the peace or reasonable apprehension of a breach of the peace.*

← Paragraph (d) is the law that existed prior to 19 June 1997. This law remains as a separate aspect of trespass law.

← For the purpose of (e) opposite, a new section 9(1)(C) states-

IC Without limiting paragraph (e) of sub-section (1), examples of circumstances in which a person does not have express or implied

(a) the person enters that place after having been previously warned not to enter by the owner or occupier or a person authorised to give such a warning on behalf of the owner or occupier; or

(b) the person enters that place despite being then warned not to enter by the owner or occupier or a person authorised to give such a warning on behalf of the owner or occupier; or

(c) the person enters that place in breach of a prominently displayed sign erected at that place by the owner or occupier or a person authorised to erect such a sign on behalf of the owner or occupier stating that-

(i) the person concerned, or a class of persons of which the person concerned is a member, is prohibited from entering that place; or

(ii) persons engaging in that place in the type of activity in which the person concerned is proposing to engage in that place are prohibited from entering that place

and the person has no other lawful excuse for entering that place authority to enter a place.

A new section 9(1)(D) states

A warning may be given to a person under sub-section (1)(f) or sub-section (IC)(a) or (b)-

- (a) orally; or
 (b) by delivering written notice of it personally to the person; or

- (c) *except in the case of a warning under sub-section (1)(f), by sending written notice of it by certified mail addressed to the person at his or her usual or last known place of residence.*

ATTACHMENT 2

Education Act 1958

**INSTRUMENT OF AUTHORITY AND DELEGATION OF CERTAIN POWERS
OF THE MINISTER FOR EDUCATION AS OWNER OF STATE SCHOOL
PROPERTY**

1. I hereby **authorise**, and pursuant to section 8 of the Education Act 1958 I hereby **delegate** to, each Principal and Head Teacher of a State school, to exercise in relation to the State school of which the Principal or Head Teacher is the Principal or Head Teacher, all my powers as Minister for Education as the owner and occupier of State school property, to determine who may enter, or remain upon the school property, and -
 - (a) **the** power to authorise a person to enter or remain upon the school property;
 - (b) the power to warn, demand or require a person to leave the school property;
 - (c) the power to warn a person not to enter the school property, in accordance with section 9 of the *Summary Offences Act 1966*;
 - (d) the power to erect on the school property a sign or signs in accordance with section 9 of the *Summary Offences Act 1966*; and
 - (e) the power to lawfully remove a trespasser on school property.
2. This Instrument is in addition to, and does not limit, any other powers of Principals and Head Teachers as occupiers of a school or otherwise.
3. This Instrument takes effect on the day it is signed.

Dated the 28th day of August 1997.

.....
HON. PHILLIP GUDE MP
Minister for Education

ATTACHMENT 3

Teaching Service Act 1981

Teaching Service Order No. 163

The Minister for Education, under the powers contained in section 11 of the *Teaching Service Act* 1981, makes the following order.

Citation

1. This Order may be cited as the Teaching. Service (Duties of Members and Complaints Process) (Amendment) Order 1997.

Definitions

2. In this Order, **Principal Order** means the Teaching. Service (Duties of Members and Complaints Process) **Order 140** of 1993.
3. Any word or expression used in this Order which is defined in the Principal Order shall have the same meaning as in the Principal Order.

Amendment

4. Clause 3.15 of the Principal Order is amended by deleting the word "and" where it appears at the end of sub-clause (7), by adding. the expression "; and" at the end of sub-clause(8),and by adding- the following after sub-clause(8):

- "(9) as occupier of the school ensuring(, that trespassers do not enter or remain upon school premises and for that purpose (and for the purposes of the *Summary Offences Act* 1966), may:
- (a) authorise a person to enter or remain upon school premises;
 - (b) warn, demand or require a person to leave the school property;
 - (c) warn a person not to enter the school premises, in accordance with section 9 of the *Summary Offences Act* 1966;
 - (d) lawfully remove a trespasser from school premises;
 - (e) request assistance from a member employed at the school in relation to any matter referred to in sub-clause (9); and
 - (f) authorise a member employed at the school or any other person to exercise, on behalf of the principal, any power of the principal for the purposes of sub-clause (9)."

Dated the 28th day of August 1997.

.....
HON. PHILLIP GUDE MP
Minister for Education

ATTACHMENT 4

**AUTHORITY TO EXERCISE POWERS OF OCCUPIER FOR THE PURPOSES OF
THE SUMMARY OFFENCES ACT 1966**

..... [insert name of school]

AUTHORITY

1. As principal/head teacher of the above school, I hereby authorise each of the persons named in paragraph 4 below or for the time being occupying the position set out in paragraph 4, all of the principal's/head teacher's powers as occupier of the school, for the purposes of section 9 of the *Summary Offences Act 1966*. Those powers are to be exercised on behalf of the principal/head teacher.

REVOCAATION

2. The principal/head teacher may revoke all or any part of this Authority at any time.

DATE OF EFFECT

3. This Authority takes effect on..... (insert date).

PERSONS POSITIONS AUTHORISED

4. (The following are examples of the type of wording which could be used here) -
- a) The person for the time being holding or acting in the position of an assistant principal of the above school.
 - b) The president of the school council of the above school during school council activities or outside of the normal operational hours for the school.
 - c) A teacher of the above school during recesses, lunch time or while on yard duty.
 - d)(*insert name of person*) a parent member of the school council *of the school during the school fete on 12 September 1997.*
 - e) (*insert name of person*),.....(*insert name of person*) and.....(*insert name of person*) being teachers at the above school
 - f)(*insert name of person*) Business Manager at the above school

Dated the day of 199

.....
Principal's/head teacher's name

..... Signature



ATTACHMENT 5

(To be used on the school's letterhead)

**WARNING UNDER SECTION 9 OF THE
SUMMARY OFFENCES ACT 1966**

TO:[insert name (and if known the address) of person to whom warning is being given]

I am authorised to exercise the powers of the occupier of the..... (insert name of school) and I am authorised to permit and deny entry to the above premises.

You are hereby warned not to enter onto the premises of..... (insert name and address of school) for a period of one year from the date of this notice, unless you have a legitimate purpose or lawful excuse.

If you breach this notice, you may be charged with the offence of trespass under section 9 of the *Summary* Offences Act 1966.

Signed: Position:.....

Print name:..... Date.....

[Notes: 1 Where the principal head teacher has authorised another person (such as a teacher) to give a warning and the warning is given by that person, the following should be added: This warning is given on behalf of and with the authority of the principal (or, where appropriate, head teacher)

- 2. It is optional to give any reason why the notice is being issued. Reasons can be given if they are available, however it is important not to make the notice depend on the validity of the reasons. An example of reasons is as follows -

Without affecting the validity of the warning in this notice, on..... [insert date/s of alleged trespassing you were seen on the premises of this school without authority, legitimate purpose or lawful excuse, and causing a disruption .

ATTACHMENT 6

FORM RECORDING THE GIVING OF A WARNING UNDER SECTION 9 OF THE SUMMARY OFFENCES ACT 1966

Name of person to whom warning given.....

Address of person to whom warning given.....

Date warning given:.....

Manner of giving warning (tick one or more):	<input type="checkbox"/> Orally (date of any follow up written notice.....) <input type="checkbox"/> hand delivered written notice <input type="checkbox"/> written notice sent by certified mail to usual or last known home address [number or receipt attached]
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If the warning was given by way of written notice, a copy should be attached. If the warning was given orally, set out the words used.

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.....

Witnesses to the giving of warning.....(for oral or personal delivery)

General description of incident(s) which lead to the issuing of the warning including names of any witnesses.

.....
.....
.....

Name of person giving warning.....

Signature of person giving the warning.....

Position:.....Date:

Police have/have not been advised (If yes, insert date.....)

