# POSSESSION OF KNIVES AND POWER TO SEARCH (LEGISLATIVE REQUIREMENTS)

## DIOCESE OF WAGGA WAGGA

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<td>Document Name</td>
<td>Possession of Knives and Power to Search</td>
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| Related Policies/Documents | - Education Act  
                          - Suspension, Exclusion and Expulsion Policy and Procedures |
| Review Period:  | 2018 |
LEGISLATIVE REQUIREMENTS ON POSSESSION OF KNIVES AND POWER TO SEARCH FOR DIOCESAN SYSTEMIC SCHOOLS

Legal Advice to Schools

Rationale

A number of amendments have been made to the Summary Offences Act by the Crime Legislation Amendment (Police and Public Safety) Act 1998 and the Summary Offences Amendment (Public Safety) Act 2002. The amendments create a variety of new powers of search to enable police to deal with persons who may be in possession of knives or other dangerous implements. Principals should be aware of the following provisions of the Act that have a direct impact on departmental premises.

Knives

The definition of a knife has been expanded to include a knife blade, razor blade or any other blade but not items that are specifically excluded by regulation. To date no regulations have been made.

A person must not without reasonable excuse have in his or her custody a knife in a public place or a school. For a first offence, the maximum penalty is $550. If previously dealt with by a court for a knife-related offence, the maximum penalty is $1,100 or 12 months imprisonment or both. In the case of a person who has been dealt with by the court for two or more previous knife related offences, the maximum penalty is $2,200 or 2 years imprisonment or both.

It is an offence for a parent to knowingly authorize or permit his or her child (ie under 18 years of age) to possess a knife in a public place or school without reasonable excuse. The maximum penalty is $550. For the purpose of the section, parent includes a person who has guardianship or custody of the child.

It is a defence if the person in possession of a knife has a reasonable excuse. The Act sets out some specific circumstances which constitute a reasonable excuse but does not limit the defence to those circumstances. It is up to the person in possession of the knife to establish that they have a reasonable excuse. Some of the specific circumstances detailed in the Act that have relevance to schools and institutes are:

- Lawful pursuit of the person’s occupation such as the preparation or consumption of food or drink.
- Participation in a lawful entertainment, recreation or sport
- Exhibition of knives for retail or other trade purposes
- Wearing of an official uniform.
It should be noted that possession of a knife for self defence is not regarded as a reasonable excuse.

While the legislation is yet to be interpreted by the courts, it would appear that possession of a knife for the purpose of undertaking a legitimate course of study in a school will be a reasonable excuse provided use of the knife is essential for the course. The New South Wales Police Commissioner has indicated that the question of reasonableness will be determined by police according to the circumstances of each particular case.

Given the community concern regarding knives as expressed in the Acts, any arrangement where the school provides a knife or knife blade to students should include provision for the knife or knife blade to be returned at the conclusion of the class in which its use is required. This will also minimize the risk of breaches of the new legislation by students. The use of knives in lessons conducted outside of school (eg excursions, field trips) should occur only in those circumstances where their use is considered essential for the purpose of the activity. Principals should ensure that appropriate strategies are developed to ensure knives are used only when absolutely necessary.

**Powers of Search**

Police are able to search a person if there are reasonable grounds to suspect that a person who is in a public place or school has in his or her possession a dangerous implement. For the purpose of the legislation, ‘dangerous implement’ includes 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.

The power to search includes any bag that the person has with him or her and is within view so long as it can be examined with reasonable convenience to the person.

In the case of school students, the power to search extends to the student’s locker at the school and any bag or other personal effect that is inside the locker.

If reasonably possible to do so, any examination of a bag should be carried out by having the person hold the bag open and move the contents so that they can be more easily viewed by the police officer.

In the case of a student at a school, police 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 submit to the search by a police officer or to produce anything detected by the police officer during the course of the search may lead to the person being charged with an offence.

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

In addition to the provisions outlined above, police have also been given additional powers to give directions to individuals or groups of people in public places if the police have reasonable grounds to believe the person’s or group’s behavior or presence:

- Is obstructing another person, persons or traffic, or
- Constitutes harassment or intimidation of another person or persons, or
- Is causing or likely to cause fear to another person or persons.

Any direction given by police must be reasonable in the circumstances and for the purpose of reducing or eliminating the obstruction, harassment, intimidation or fear.

It should be noted that the power to give such directions applies only where the person is in a public place although the person or persons subject to the behavior need not be in that public place so long as they are nearby when the behavior occurs. While schools are not public places for the purposes of the Act, the provisions still apply if the behavior occurs outside the school but is directed towards students or staff who are on the school site.