

LEGAL ADVICE ON THE USE OF MOBILE PHONES, PORTABLE COMPUTER GAMES, TAPE RECORDERS AND CAMERAS IN SCHOOL

DIOCESE OF WAGGA WAGGA

Policy Number	02/10
Policy Name	Legal advice on the use of Mobile Phones, Portable Computer Games, Tape Recorders and Cameras in Schools
Applicability	All Systemic School
Contact Person	Director of Schools
Policy Status	Accepted – Legal Advice
Date of Approval	November 2002
Date Last Amended	August 2007
Related Policies/Documents	<ul style="list-style-type: none"> • Education Act • Child Pornography Policy & Procedures • Enrolment Policy & Procedures
Review Period:	2008

LEGAL ADVICE ON THE USE OF MOBILE PHONES, PORTABLE COMPUTER GAMES, TAPE RECORDERS AND CAMERAS IN SCHOOLS FOR DIOCESAN SYSTEMIC SCHOOLS

Legal Issues – The Use of Mobile Phones, Portable Computer Games, Tape Recorders and Cameras in Schools

Mobile Phones

What approach is to be taken in relation to the use of mobile phones generally?

The use of mobile phones in schools should not automatically be of concern. It is only if a mobile phone is used inappropriately that action may be necessary.

Generally, a mobile phone will be used inappropriately if it –

- Disrupts or is likely to disrupt the learning environment or interfere with the operation of the school, or
- Threatens or is likely to threaten the safety or well being of any person, or
- Is in breach of any law.

Inappropriate use of mobile phones will include students using them to bully, intimidate or otherwise harass other people through any SMS or text message, photographic, video or other data transfer system available on the phone.

Should I be concerned if a student brings a mobile phone to the school or institute?

Mobile phones are sometimes viewed as enhancing security for students travelling to and from schools. For this reason, a student bringing a mobile phone into the school is usually not, of itself, enough to justify any action against the student. Blanket rules or policies that seek to ban students bringing mobile phones to the school or site must not be introduced.

What action can I take if students use mobile phones inappropriately?

If students use mobile phones inappropriately, principals have the right to undertake action.

Depending on the circumstances, action can include the following-

- banning the students from using mobile phones during the course of the school day;
- confiscating mobile phones from individual students;
- in the case of schools, requiring students to hand in their mobile phones to designated school staff at the beginning of the school day for collection when the students go home;
- applying student disciplinary provisions.

Principals should ensure that inappropriate use of mobile phones is clearly spelt out in any student welfare and policy documents.

How should student devices be confiscated from students?

Action must be taken to securely store any mobile phone confiscated from a student. Under no circumstances should phones be left in unlocked desk draws, on teachers' tables or in staff rooms unless the phone can be locked away. Arrangements must be made to return the phone to the student at the conclusion of the school day. If this is not possible, it should happen as soon as practicable.

What should be done if the school required the students to hand their phones in each day?

Principals must consult with parents before bringing in a policy requiring students to hand in mobile phones at the start of the school day. The circumstances of individual students also needs to be taken into account when implementing such a system. Students may sometimes need to make or receive phone calls of an urgent nature during the course of the day. Providing access to a designated phone in the school may be one way of addressing such issues.

If a student's mobile phone is damaged or lost, is the school liable to pay any compensation?

Students and parents should be reminded on a regular basis that the students bring the mobile phones to the school premises at their own risk – schools will not accept responsibility for any loss or damage to mobile phones.

Once confiscated however, responsibility for the security and safe keeping of the mobile phone *does* rest with the school.

If a confiscated mobile phone is lost or destroyed while not having been properly secured by staff, the school may be liable to compensate the student.

Portable computer games, Walkman, ipods and similar devices

The procedures applying to the inappropriate use of mobile phones apply equally to the inappropriate use of portable computer games, walkman, ipods and similar devices.

Tape Recorders and Other Listening Devices

What is the law in relation to the recording of private conversations?

Sometimes persons being interviewed on school or institute premises will seek to record the interview. Subject to certain exceptions, it is an offence for a person to use a listening device to record or listen to a private conversation to which the person is a party.

The *Listening Devices Act 1984* applies in this situation and defines a “private conversation” as anything said by one person to another or other in circumstances where it can be assumed that any of the persons involved desire the conversation to be heard only by those present or, with the consent of all present, some other person or persons.

It is not an offence to record a private conversation if –

- everyone in the conversation agrees
- any person involved in the conversation consents to the recording being made, provided the recording is reasonably necessary for the protection of the lawful interests of that person; or
- any person involved in the conversation consents to the recording and it is not made for the purpose of disclosing the conversation to others not involved.

Generally, if a person who has been involved in a private conversation records the conversation (with or without consent) he or she is prohibited from later communicating or publishing any record of the conversation to another person. The exceptions to this rule are –

- the communication or publication is made to another person who was involved in the conversation or it is made with the consent of all people involved in the conversation, or
- the communication or publication is reasonably necessary for the protection of the lawful interests of the person making the communication or publication, or
- the communication or publication is made to a person who has or can

reasonable be said to have such an interest in the private conversation as to reasonably justify the communication or publication being made.

Breaches of the Listening Devices Act attract penalties of up to \$11 000 or 5 years imprisonment or both.

Should I consent to an interview being recorded by tape or other means?

It is a matter of discretion in deciding whether to consent to an interview being recorded. On the one hand, there is no general requirement to consent to the request. On the other hand, refusing to consent may result in adverse perceptions as to why the consent is not being given.

Any consent given should be subject to the other person agreeing, preferably in writing, to provide a copy of the recording made at the conclusion, or as soon as practicable after the conclusion, of the interview.

Should I record any interviews I hold by tape or other means?

Generally, principals should not seek to record interviews held with parents, students or other persons. Such requests can appear heavy handed and may result in a reluctance to fully participate in the interview. If special circumstances exist which justify recording the interview, principals should ensure the other person is aware the interview will be recorded and that a copy of the recording can be provided.

Is it illegal to film or photograph a person without their consent?

Generally no, though recent changes to the law mean that it is now an offence to film for indecent purposes. Section 21G of the *Summary Offences Act* provides that a person will be guilty of an offence if he or she films or attempts to film, for the purposes of sexual gratification, another person who-

- Is in a state of undress, or is engaged in a private act, in circumstances in which a reasonable person would reasonably expect to be afforded privacy, and
- The person does not consent to being filmed.

It is also an offence to install a device to facilitate filming for indecent purposes. The indecent filming provisions of the *Summary Offences Act 1988* also apply to mobile phones with image capabilities.

Incidents of this nature that occur in schools should be reported to the police.

Can photographs or videos be taken in schools?

Generally, taking photographs or videos on school premises should not occur unless the principal is satisfied there is a good reason. Where applicable, staff and parental or student permission should be obtained.

What if the person is taking photographs or videos from outside the school?

Principals have no power to prevent people from taking photographs from outside the school.

If concerns are held, inquiries should be made with the person involved and, where appropriate, he or she should be asked to stop. If the person refuses the request and the principal has continuing concerns, the police should be contacted. While there is no general law against taking photographs, such behaviour may, depending on the circumstances, be considered harassment, intimidation or threatening. It may also be possible, again depending on the circumstances, to make a complaint to the federal privacy commissioner for a breach of Commonwealth privacy legislation.

What if students use cameras (including mobile phones with image capture capabilities) inappropriately in the school?

If a student brings cameras or video cameras into the school and uses them in any way that –

- Interferes with the learning environment or the efficient operation of the school, or
- Threatens or is likely to threaten the safety or wellbeing of any person, or
- Is a breach of any law,

the school student discipline and welfare policy should be invoked. If necessary, the camera or video camera can be confiscated.

Principals should ensure that inappropriate use of cameras is clearly spelt out in any student welfare and policy documents.

How should cameras be confiscated from students?

The same issues and procedures as outlined previously in relation to the confiscation of mobile phones apply.

If a student camera is damaged or lost, is the school liable to pay any compensation?

The same issues and procedures outlined previously in relation to mobile phones apply.