

Section D

Compulsory School Attendance

21 Legal Action Guidelines

21.1 Context

All children from [six years of age and under the minimum school leaving age of 17](#) are legally required to attend school. [Parents of compulsory school aged children](#) have a duty to ensure that their child is enrolled at and attends a government school or registered non-government school, or is registered for home schooling. (*Education Act 1990*)

All New South Wales students must complete Year 10. After Year 10 and until they turn 17 years of age students must be in a school or registered for home schooling, or full-time in

- further education and training (e.g. TAFE, traineeship, apprenticeship);
- full-time, paid employment of an average 25 hours per week; or
- a combination of both of the above.

In 2010 there were changes to the *Children and Young Persons (Care and Protection) Act 1998* that identified children and young people who **habitually did not attend school** or who were **not enrolled** as reasons to make a report to Community Services (CS) under *Education Neglect (Section 23 (b) 1)*.

Habitual non attendance can be described notionally as 30 unjustified/unexplained days out of 100 days. Care must be taken with this description as other risk factors may impact on the requirement to report.

21.2 Keep Them Safe A shared approach to child wellbeing

Provides the framework for parents, communities, government and non-government agencies to work together to support children and families. See <http://www.keepthemsafe.nsw.gov.au/>

Anyone who has reasonable grounds to suspect a child or young person is at risk of significant harm and has current concerns about the safety, welfare or wellbeing of the child or young person should make a report to the Child Protection Helpline.

Where concerns of harm do not meet the significant harm threshold, the referring agency should offer and coordinate assistance or make a referral to other services, using normal referral networks.

To help reporters decide whether a case needs to be reported to the Child Protection Helpline, mandatory and non-mandatory reporters may access advice via the [NSW Mandatory Reporter Guide](#).

21.3 What are some of the provisions in the Education Act 1990 (“the Act”)?

- Section 22A Obtaining information about children of [compulsory school-age](#)
 - (1) Any [relevant institution](#) or other person may provide information to the Department of Education and Training solely for the purpose of assisting the [Director-General](#) to ascertain
 - (a) *the age, identity or whereabouts of a child who is not receiving [compulsory schooling](#)* or who is not participating in education, training or paid work as an alternative to receiving [compulsory schooling](#), and
 - (b) the reasons why the child is not receiving that [schooling](#) or not so participating.

21.4 Dealing with students for whom school based strategies have failed to restore regular school attendance

21.4.1 Principals help to ensure the safety, welfare and wellbeing of students. Where schools have tried a range of strategies to address a student’s habitual non attendance other options are available. Prior to 2010, the only legal option available to enforce school attendance was prosecution in the Local Court, resulting in the imposition of a fine and/or a community service order. Legislation that came into effect in early 2010 gives greater flexibility in proactively dealing with cases of habitual absence. It is hoped that the majority of non-attendance matters will be resolved through pre-court process such as those set out below. Please note, in reading the information below, one process does not necessarily follow another. Some actions may occur concurrently.

21.4.2 Compulsory schooling undertakings

The Principal may make schooling arrangements with one or more parents or carers of a child that includes a written 'undertaking' by the parent/s or carer/s with respect to compulsory schooling for the child (a "Compulsory Schooling Undertaking").

The arrangements may be made before, during or after a conference. A compulsory schooling undertaking is admissible in evidence.

Undertakings deal with specific issues contributing to the habitual absence. Examples may include that

- the parent will turn off the child's computer game at a certain time each night
- an alarm clock will be used and the child will be out of bed at a set time
- the parent will attend drug and alcohol counselling sessions.

Signed undertakings should be kept by the school and a copy provided to the parent or carer.

21.4.3 Compulsory School Attendance Conference

A principal component of the new attendance procedures has been a greater emphasis on conferences involving families and Departmental student welfare officers. These conferences aim to address the underlying causes of poor school attendance. Conferences can take place at both the pre-legal stage, when convened by the Director-General, and at the initial stages of the legal process when ordered by the Children's Court. Conferences are conducted by an authorised person appointed by the Director-General or the Children's Court.

Conferences are convened with the family and school. They seek to identify the cause of non-attendance and develop strategies to improve attendance. Representatives of other relevant agencies or relevant community groups who can assist in improving attendance can also be invited to attend and assist.

Note - It is anticipated that a significant number of matters will have been subject to a Director-General's conference prior to reaching the Court. However this will not always be the case.

- In cases where parents have refused to attend a conference, it is anticipated that the Application to the Children's Court will, in addition to seeking a Compulsory Schooling Order, also seek an order that the parent attend a conference.

Principals seeking to initiate a Compulsory School Attendance Conference should do so by contacting their Schools Consultant who will refer the matter to the appropriate authority.

21.4.4 Action in the Children's Court

If other options have not been successful or are not appropriate, it may prove necessary to seek intervention of the court. In cases involving older children, aged twelve and above, where it is clearly established that the poor school attendance is not the fault of the parent, an application involving the child alone may be commenced. The proceedings in the Children's Court are less formal than the prosecutions in the Local Court. This has allowed older children to attend the Court with their parents.

Applications to the Children's Court will be conducted by a member of the regional welfare team who, for the purposes of the applying to the Children's Court will be referred to as the "Attendance Officer". All court appearances will be undertaken by a Legal officer or a local solicitor who has been engaged by the relevant legal officer.

Where the Principal deems it appropriate to refer a case to the Children's Court for further action, they should first refer the matter to their Schools Consultant. If a decision is made to proceed with the referral, Form D1 in Appendix D should be used.

21.4.4 (cont'd)

*The court may order the parent to attend a conference and/or issue an interim **Compulsory Schooling Order**. An interim order requires the parent to ensure that the child is enrolled at and attending school.*

Compulsory Schooling Orders can either be quite general in nature, for example an order that a parent engage with relevant Departmental staff, or that they attend a conference. Alternately orders can also be reasonably involved and comprise numerous components, such as an order to attend drug and alcohol counselling, and/or have a child medically assessed by a particular medical practitioner.

21.4.5 Prosecution in the Local Court

Where parents continue to fail to see that their children are enrolled and attending school, the matter may be taken to a Local Court. Such measures are in place to ensure that all children of compulsory school age receive the education they deserve.

This action can only be taken by, or with the written consent of, the Director-General. The Department of Education and Communities Legal Services Directorate will act on behalf of both government and non-government schools.

An action for breach of a Compulsory Schooling Order issued in the Children's Court must be undertaken in the Local Court, with penalties for these offences attracting a possible fine of 100 penalty units.

Note In general, only matters which have either been the subject of an application to the Children's Court, or where a conviction has previously taken place will be considered for prosecution. In exceptional circumstances consideration will be given to proceeding to a prosecution without first applying to the Children's Court. Such matters should be discussed with the Senior Legal Officer managing the school attendance practice.

22 Appendices to Section D

- D1 Proposed School Action for the Management of Habitual Non-Attendance
- D2 Referral Form to Legal Services for Consideration of Further Action
- D3 Non-Government Schools Actions; Enrolment Status of Students un-known
- D4 Compulsory School Attendance Information for Government and Non-Government Agencies
- D5 Compulsory School Attendance Information for parents



Form D1

Proposed School Action for the Management of Habitual Non Attendance

Step 1 5-10 days unexplained/unjustified absence (not necessarily consecutive)

- (i) Phone call to parents and notify School Counsellor
- (ii) Follow-up with letter/email to parents requesting meeting with parents to discuss

Step 2 11-20 days unexplained /unjustified absence (not necessarily consecutive)

- (i) Phone call to parents on each subsequent day of unexplained/unjustified non attendance after 1st 10 days
- (ii) Registered letter to parents re attendance requesting meeting between school and parents to discuss

Note: Refer to 4.13 in *Guidelines for the Management of Student Attendance in the Armidale Diocesan Schools System*

Step 3 21-30 days unexplained / unjustified absence (not necessarily consecutive)

- (i) Daily phone call /sms text message to parents on each day of unexplained/unjustified non attendance
- (ii) Registered letter to parents re attendance
- (iii) Consult with School Counsellor
- (iv) Inform the Schools' Consultant

Step 4 Above 30 days unexplained / unjustified absence within last 100 days

- (i) Registered letter to parents
- (ii) Daily phone call / sms text message to parents on each day unexplained/unjustified non attendance
- (iii) Consult with CSO Child Protection Officer on whether it is appropriate to report to Community Services (C.S.) If so, Principal or Counsellor makes report to C.S. and informs Schools Consultant.
- (iv) Referral by Schools Consultant to Risk Manager for possible further action

Step 5 Above 30 days unexplained / unjustified absence and no improvement from Step 4

- (i) Risk Manager and Principal make schooling arrangements with parents/carers that include a written undertaking with respect to compulsory schooling (a Compulsory Schooling Undertaking).