

Enforcement of compulsory school attendance 2020

The law in NSW places the responsibility on parents to ensure their child is enrolled at a government or non-government school and attends the school whenever teaching is provided (or is registered for home schooling).

Under Section 22 of the Education Act 1990 parents have a legal duty to ensure their school-aged children attend school. The NSW Department of Education has developed strategies to support all students' regular attendance at school. Where absenteeism is persistent and an attendance improvement plan has been unsuccessful, and the parents have not meaningfully engaged with the plan, the matter is referred for consideration of legal action.

School support

Each school has a discipline policy which sets out clear expectations for regular student attendance and consequences of truancy.

A key responsibility of the school is identifying students who are at risk of developing poor school attendance patterns. Once attendance issues are identified a range of strategies are used at school including:

- prompt follow up of any absences
- implementing programs and practices to address attendance issues, including:
- the phone intervention program where phone contact is made on a particular day with parents of all students who are absent
- communicating with parents and seeking an explanation for any unexplained absences
- putting in place student welfare support within the school, including referral to the school counsellor if appropriate
- liaising with other government and non-government agencies.

Home School Liaison Program

Where schools have used a range of strategies to resolve a non-attendance issue without success, a referral may be made to the regional Home School Liaison Program for support.

The Home School Liaison Program provides a supportive service to students, parents and schools to encourage the attendance of students at school.

The home school liaison officer develops an attendance improvement plan with the school, student and parents, which identifies strategies and responsibilities to improve the student's attendance.

Legal measures

Where an attendance improvement plan has been unsuccessful in resolving the matter, and the parents have not meaningfully engaged with the plan, the matter is referred for consideration of legal action.

Enforcing compulsory attendance

Legal action to enforce school attendance can take place in either the Local Court or the Children’s Court. Legal action in the Children’s Court is non-punitive and is intended to assist families address the issues that are preventing satisfactory school attendance.

Legal action in the Local Court is conducted as a criminal prosecution with a possible fine being imposed by the Court when a parent fails to ensure a child attends school satisfactorily. The department prosecutes parents in the Local Court as a last resort when all reasonable attempts have been made to restore satisfactory school attendance by other means.

Children’s Court Matters

Outcome	Matters
Final Compulsory Schooling Order	61
Withdrawn or dismissed	170
Ongoing	176
Total	407

Local Court Matters

Outcome	Matters
Fined	20
S9(1)(a) Conditional release order with conviction	1
S9(1)(b) Conditional release order no conviction	2
S10A Conviction with no penalty	6
S10(1)(a) No conviction no penalty	1
S8 Community correction order	1
Withdrawn or dismissed	14
Ongoing	66
Total	111

All Court Matters

Outcome	Matters
Final Compulsory Schooling Order	61
Fined	20
S9(1)(a) Conditional release order with conviction	1
S9(1)(b) Conditional release order no conviction	2
S10A Conviction with no penalty	6
S10(1)(a) No conviction no penalty	1
S8 Community correction order	1
Withdrawn or dismissed	184
Ongoing	242
Total	518

Explanatory notes

Proceedings were typically withdrawn when attendance had improved sufficiently to justify withdrawal, or because it appeared likely that a defence could be established (for example illness or disobedience).

Matters not commenced occurred for a range of reasons including not being able to serve court papers, living arrangements for child changing, improvement in attendance, and the student moving out of the jurisdiction.

The Local Court introduced a range of alternative sentencing options in the Crimes (Sentencing Procedure) Act in the latter half of 2018. The new measures include conditional release orders both with and without conviction. It is anticipated in school enforcement prosecutions that the Court will make use of the capacity to apply the new Section 11 whereby a conviction is recorded but a matter is adjourned for a lengthy period before sentencing to allow a parent to address the poor school attendance prior to being sentenced.

Quality of information

Data figures were prepared from administrative systems that were developed to internally track the progress of cases rather than to report externally.

There are no statistical quality assurance measures applied to these figures, and there may be anomalies or errors due to the significant number of users who access the system.

The data is correct to the best of the department's knowledge and understanding.

Impact of Covid-19

Covid-19 impacted on Data figures for legal proceedings across NSW. There was a significant reduction in the number of matters being listed throughout March-July 2020, at the request of both the Children's Court and Local Court. There was also a rise in administrative adjournments due to the pandemic, resulting in longer running proceedings overall.