Te Tāhuhu o te Mātauranga
Ministry of Education

Education Report: Strengthening expectations for school attendance

To:	Hon David Seymour, Associate Minister of Education		
Cc:	Hon Erica Stanford, Minister of Education		
Date:	15 March 2024	**Priority:**	Medium
Security Level:	In-Confidence	**METIS No:**	1323266
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Seen by the Communications Team:	No	**Round Robin:**	No

Purpose of Report

This report seeks your agreement to recommendations that progress long-term actions in the attendance action plan including:

- a new primary objective on attendance for boards in governing schools
- an Attendance Traffic Light System to guide responses to unjustified absence
- a possible new infringement scheme to enforce attendance and enrolment
- a changed operational process for attendance prosecutions.

It follows earlier reports (see METIS 1322328, 1322678 and 1323265) about steps government can take under the attendance action plan.

Summary

1. Regular attendance rates have declined in New Zealand over the last decade, and less than half of students attended school regularly (i.e., at least 90% of the time) in Term 3 of 2023. Attending school matters because it is strongly associated with attaining

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educational qualifications. We also know that attending and being positively engaged in school is a significant protective factor against involvement in youth crime.

2. This paper seeks direction from you in relation to:

   - how strongly you want to mandate attendance objectives,
   - the level of transparency and certainty about the way boards work towards attendance objectives, and
   - the ways you want to hold schools and parents accountable for meeting their responsibilities, while also balancing the various needs of the students and their families.

We recommend you mandate attendance objectives strongly, through section 127 of the Act

3. School boards have a wide range of duties and responsibilities placed on them by the Education and Training Act 2020 (the Act). In general, boards are free to balance and prioritise these obligations as they see fit. However, lifting regular attendance is a top priority for this Government.

4. We recommend that you seek to amend section 127 of the Act to introduce a new primary objective for boards in governing schools. The new objective would be to ensure that schools take all reasonable steps to make sure that the school's students attend the school when it is open. This change would signal the high priority of attendance to boards and mean that boards would have to incorporate attendance into their strategic planning.,

An Attendance Traffic Light System and Operational guidance would provide clear and transparent expectations for boards

5. We recommend the Ministry establish an Attendance Traffic Light System (TLS) to guide and coordinate support and enforcement responses to unjustified absence that are aimed at returning students to regular attendance (see Annex 2 for an indicative diagram).

An Attendance Traffic Light System and operational guidance would provide clear and transparent expectations for boards

6. The TLS would provide clarity for boards about the minimum steps needed to meet their attendance obligations to support students (and their families) to return to regular attendance. It would also set a clear expectation that students and their families must have been provided or offered the appropriate supports by schools or other relevant agencies, before regulatory penalties are considered.

7. We recommend the Ministry develop and disseminate operational guidance for schools to implement the Attendance TLS. The guidance would specify triggers, steps, and strategies for schools to take or consider when responding to repeated unjustified absence at different levels of severity.

You have choices about the level of certainty you want about the way boards work towards attendance objectives

8. **Option one:** Direct officials to develop operational guidance to support implementation of the TLS. We expect that the TLS and operational guidance, combined with the changes to section 127 of the Act will have an impact on the way boards respond to irregular

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attendance and truancy. However, there will not be certainty about how the TLS is being implemented by schools without any specific regulatory support to implement them.

9. **Option two:** Develop a regulatory duty on boards to develop an Attendance Management Plan that details how the TLS will be implemented in their school community. This approach means that schools will be required to use the TLS when they respond to unjustified absence but will still have some discretion to adapt the framework to local needs and conditions.

10. **Option three:** Develop regulations to impose a specific process for boards to follow when managing attendance, at a later date, once the TLS has been operational for a period of time and the Government has confidence it is fit for purpose.

11. Officials do not recommend you regulate to require a specific process for boards to follow when managing attendance until it has been operational for some time. This is because we want to ensure it works as intended and is fit for purpose. If it is not fit for purpose, there a risk that students and families with complex needs will not be provided with the support they need and may become further isolated from the education system.

Stronger accountability for parents

12. The policy goal of prosecution is to incentivise parents to ensure their child is enrolled and attends school regularly. However, prosecution is rarely used as a tool to enforce parents' obligations for enrolment and attendance because cases seldom reach the level of seriousness needed for prosecution to be in the public interest.

13. Schools have identified that it can be counter-productive for them to prosecute parents who they are trying to build relationships with. We consider that prosecution is an important enforcement tool, particularly in cases where the public interest threshold his met.

14. We recommend that the Ministry change operational process so that the Ministry leads prosecutions for non-attendance instead of schools. This will leave schools free to focus on their role of supporting students back to regular attendance.

15. Infringement penalty schemes provide an enforcement tool more suited to offences with a relatively low level of seriousness. New infringement schemes must be designed to comply with the Summary Proceedings Act 1957 and Cabinet-endorsed guidelines released by the Ministry of Justice and the Legislation Design Advisory Committee. There are some issues to work through, including whether we can design an infringement scheme that is likely to change behaviour and that will not penalise parents who are facing complex barriers to their child's attendance. We will provide you with initial high-level advice and recommendations to progress this work in late March.

Recommended Actions

The Ministry of Education recommends you:

a. **note** that you agreed to progress work on an Attendance Action Plan and have asked for advice on several long-term actions that will form part of that plan.

Noted

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Mandating attendance objectives for school boards'

b. **note** that section 127 of the Education and Training Act 2020 sets out primary objectives for boards when governing schools.

Noted

c. **agree** to seek amendment to section 127 of the Education and Training Act 2020 to introduce a new primary objective for boards so they will make sure the school takes all reasonable steps to ensure that the school's students attend the school when it is open.

Agree / Disagree

d. **note** that the Government priorities for Education include amending the Education and Training Amendment Act 2020 "to enshrine educational attainment as the paramount objective for state schools".

Noted

e. **note** that we consider that the two proposals for amending section 127 of the Education and Training Act 2020 should be progressed together for efficient use of policy and parliamentary resources.

Noted

f. **agree** to work with Minister Stanford to agree the scope and timeframe of amendments to section 127 of the Education and Training Act 2020.

Agree / Disagree

g. **note** that we recommend the proposed amendments to section 127 of the Education and Training Act 2020 be included in the proposed Education and Training Amendment Bill (No. 2), which would require final policy decisions to be made by Cabinet in September 2024.

Noted

An Attendance Traffic Light System can provide transparent expectations

h. **note** many individuals and organisations have responsibilities for school attendance including school boards, parents, the Ministry, Attendance Services, community service providers and government agencies outside of education.

Noted

i. **agree** that the Ministry establish an Attendance Traffic Light System that can be used to guide and coordinate support and enforcement interventions aimed at returning students to regular attendance.

Agree / Disagree

j. **agree** that the Attendance Traffic Light System framework would contain a continuum of traffic light zones mapped to existing data categories for attendance, for example, the 'green traffic light zone' would map onto the 'regular attendance' measure (see Annex 2 for illustrative purposes only).

Agree / Disagree

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Certainty about how boards work towards attendance objectives

k. **agree** that as part of the Attendance Traffic Light System, the Ministry develop operational guidance identifying triggers, process steps and interventions schools should take or consider for students in the yellow, amber and red traffic light zones.

Agree / Disagree

l. **agree** that the expectations for schools contained in the Attendance Traffic Light System would be implemented through EITHER:

i. **Option One:** operational guidance issued by the Ministry (see recommendation k) **only** with schools being encouraged to follow it when carrying out attendance management activities (i.e., it will not be supported by a regulatory requirement on school boards).

Agree / Disagree

OR

ii. **Option Two:** operational guidance issued by the Ministry (see recommendation k) **and** making regulations to impose a duty on boards to develop an Attendance Management Plan to implement operational guidance issued by the Ministry.

Important not to overload BOTs
Need to give a template inspired by best practice schools e.g.

Agree / Disagree

OR

9(2)(g)(i)

iii. **Option Three:** operational guidance issued by the Ministry (see recommendation k) **and** once the Traffic Light System has been operational for a period of time, develop regulations to impose a specific process for boards responding to unjustified absence that reflect core components of the Traffic Light System.

Agree / Disagree

m. **note** we do not recommend you create a regulatory requirement for boards to implement the TLS until it has been operational for some time. This is because we want to ensure it works as intended and is fit for purpose.

Noted

Strengthening accountability for parents through a traffic light system

n. **note** that prosecution is rarely used to enforce parents' enrolment and attendance obligations under sections 243 and 244 of the Education and Training Act 2024, as very few cases are sufficiently serious to pass the public interest test for prosecution.

Noted

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o. **note** schools have identified that it can be counter-productive for them to prosecute parents who they are trying to build relationships with.

Noted

p. **note** that we will change the operational process for irregular attendance prosecutions so that the Ministry takes the lead role, leaving schools free to focus on supporting students to return to regular attendance.

Agree / Disagree

q. **note** that as infringement penalty schemes are designed to deter conduct that is of relatively low seriousness, an infringement scheme may be a better tool than prosecution for enforcing parents' attendance and enrolment obligations.

Noted

r. **note** that an initial scan on establishing and administering an infringement scheme revealed some complex policy, legislative and operational design considerations that will need to be worked through before making any final decisions.

Noted

s. **note** that we will provide you with further advice and a first tranche of high-level policy recommendations in respect to possible establishment of an infringement scheme for attendance and enrolment in late March 2024.

Noted

t. **note** our advice on the possible establishment of an infringement scheme will be informed by the Summary Proceedings Act 1957, the Ministry of Justice Policy Framework for New Infringement Scheme, and the Legislative Design Advisory Committee (LDAC) Legislation Guidelines.

Noted

Proactive Release:

u. **agree** that the Ministry of Education release this paper **in full** once recommendations from this paper have been considered by Cabinet.

Agree / Disagree

Jennifer Fraser
General Manager, Schools Policy
Te Pou Kaupapahere | Policy

15/03/2024

Hon David Seymour
Associate Minister of Education

19/3/24

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Purpose

1. The purpose of this paper is to seek your agreement to:

   a. seek to introduce a new primary objective on attendance for boards into section 127 of the Education and Training Act 2020 (the Act);

   b. establish an attendance traffic light system (TLS) that can be used by those with attendance responsibilities to guide and coordinate support and enforcement interventions for unjustified absences;

   c. the Ministry developing operational guidance for expectations for school boards under an attendance TLS, and to seek direction about how strongly you want to regulate expectations;

   d. the Ministry changing the operational process for irregular attendance prosecutions so that the Ministry takes the lead role instead of school boards; and

   e. receive further advice on the policy, legislative and operational aspects of establishing and administering an infringement scheme for attendance.

Background

Regular attendance decreased over the last decade, accelerating during COVID 19

2. The Ministry's aim is to support students and their families to fulfil their aspirations for education by reducing barriers for all and placing the needs of students and their families in the centre of the schooling system.

3. Despite our efforts, regular attendance rates in New Zealand have declined since 2015 from 69.5% in Term 2 2015 to 57.7% in Term 2 2019.[1] This decline has accelerated since the COVID-19 pandemic to 47% in Term 2 2023, and 45.9% in Term 3 2023.

4. In New Zealand, some student groups have been more impacted than others. Declines in attendance since 2015 have been more pronounced among students who are in schools with more socioeconomic barriers to achievement, who are Māori, or Pacific, for different year levels and in different regions. These inequities appear to have been perpetuated further by the COVID-19 pandemic.

5. Attending school matters because it is strongly associated with attaining educational qualifications. Higher levels of educational attainment have been shown to be associated with better health and mortality outcomes, higher lifetime income and job stability, lower criminality, and increased civic engagement and social cohesion. We also know that attending and being positively engaged in school is a significant protective factor against involvement in youth crime.[2]

[1] Percentage of students attending school more than 90% of the time each term.
[2] Social Wellbeing Agency. *Bolstering support for children and youth to reduce offending*. 2022.

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You have asked for a multi-faceted Attendance Action Plan to lift attendance

6. We know there are many reasons for the attendance decline. To tackle this situation head on, you have requested that we progress work to form the basis of a multi-faceted Attendance Action Plan.

7. We have recently advised you (see METIS 1322328) on immediate actions to lift regular attendance rates, including:

   a. Shifting public attitudes and behaviours towards school attendance through public messaging;

   b. Publishing more frequent attendance data; and

   c. Ensuring local supports for schools in supporting attendance are effective and efficient.

8. We have also provided a paper for you to take to the Cabinet Social Outcomes Committee (SOU) on 20 March to socialise and where necessary, seek agreement to components of the attendance action plan (see METIS 1323265).

9. This report provides advice and recommendations on legislative and regulatory options to effect change. If you agree, we will provide you with advice on an infringement scheme in the coming weeks.

10. We will provide a second paper for you to take to Cabinet Business Committee on 15 April[3] that will seek agreement for legislative and regulatory changes needed to implement our previous advice on mandating daily reporting of attendance data (see METIS 1322678). Please note that Cabinet consideration of the decisions you make on this briefing, and future advice on an infringement framework, will be taken sequentially over the coming months.

Increasing schools' focus on attendance through primary legislation

Attendance is a top priority for Government, but one duty among many for boards

11. School boards have a wide range of duties and responsibilities they are required to undertake, as part of their governance role. These include offering an engaging curriculum and operating in a way that values the strengths of all students to provide a positive learning environment. In relation to attendance, schools are required to take all reasonable steps to ensure that their students attend when the school is open (section 36 of the Act) and may appoint attendance officers for this purpose (section 48). Boards also have complete discretion to perform their functions as they think fit, subject to any relevant legal requirements (section 131).

12. This means, as a rule, boards are free to balance and prioritise their various obligations and objectives as they perform day-to-day governance of a school. This flexibility allows boards to be responsive to the specific needs of their school community.

13. Lifting regular attendance is a top priority for this Government, as reflected in the coalition agreements. You have characterised the situation as a crisis that requires an urgent and

[3] Due the high number of recess weeks in April, we recommend you take your next paper to Cabinet Business Committee.

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strong response. There are legislative and regulatory mechanisms the Government could use to increase accountability and focus on attendance for schools and parents.

Options for legislative change to increase accountability and focus for boards

14. There are two mechanisms in the Act that can be used to increase the focus of boards on their attendance responsibilities when making strategic, financial, and operational decisions. The two mechanisms are:

    a. Objectives for boards in governing schools - amending section 127 of the Act to create a new primary objective for boards around attendance; and

    b. The NELP - issuing a new Statement of National Education and Learning Priorities (NELP) under section 5 of the Act with an attendance priority.

15. Section 127 contains four primary objectives for boards in governing schools (see Annex 1). Under the planning and reporting framework[4] boards are required to incorporate primary objectives into their strategic planning and reporting process. This means that, if an attendance objective were introduced, boards would need to develop at least one strategic goal to meet its attendance target in their three-year strategic plans; identify the actions for each year to contribute to its three-year goal, and report on whether they under- or over-performed in meeting their annual targets and explain why. Both the Ministry and ERO have a role in monitoring progress.

16. The Minister of Education can issue a NELP to set priorities for early childhood, primary and secondary education under section 5 of the Act. Schools are not required to give effect to the NELP but State schools must have *particular regard* to the NELP when meeting their primary objectives. The extent to which schools' strategic goals reflect the NELP depends on schools' assessment of what they need to focus on to improve student outcomes. This means the NELP is a weaker mechanism for influencing school boards than the section 127 objectives.

17. While issuing a NELP does not require legislative amendment, it does require consultation with the early childhood, primary and secondary education sectors, and a wide range of people and organisations listed in the Act.[5] This would likely be a time-consuming exercise for schools and the wider sector. We are developing advice to Hon Erica Stanford (see METIS 1323260) about the future of the NELP. One of the options we may present to Minister Stanford is that the NELP be withdrawn and not replaced.

We recommend you mandate attendance objectives through section 127 of the Act

18. For reasons outlined above, we recommend you seek to have a new objective for boards around attendance introduced into section 127 of the Act. Specifically, we recommend that the wording from section 36 of the Act, be incorporated into section 127. This would mean boards would have a primary objective in governing schools to ensure that the school "takes all reasonable steps to ensure that the school's students attend the school when it is open."

[4] See the Education (School Planning and Reporting) Regulations 2023.

[5] Consultation on a new NELP should take place with children and young people; national bodies representing the interests of—teachers, principals, governing bodies of schools, early childhood services, parents, the disability community, support staff in schools and early childhood services, Māori education organisations: proprietors of State integrated schools; and national bodies that have a particular role in respect of the character of designated character schools and Kura Kaupapa Māori.

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19. Section 127 is a foundational section in the Act and comes within the responsibilities of Minister of Education. We also note that the coalition agreement between the National Party and the ACT Party includes a priority to amend the Act "to enshrine educational attainment as the paramount objective for state schools". As the most efficient use of policy, and parliamentary resources, we recommend that the two proposed changes to section 127 be progressed together. We also recommend you work with Minister Stanford to agree the potential scope and timing of work to review section 127 of the Act.

20. If possible, we would recommend that the proposals be included in the planned Education and Training Amendment Bill (No. 2). Policy decisions are planned to be sought from the SOU by 18 September 2024, with a Bill is planned to be introduced in early 2025 and passed by the end of 2025. This would mean the new attendance objective would be in place in time for the beginning of the 2026 strategic planning cycle.

21. Alternatively, the proposals could be included in the proposed Education and Training Amendment Bill (No. 3). For that Bill, policy decisions are planned to be sought in mid-2025, a Bill introduced in late 2025 and passed in mid-2026.

22. Boards have recently completed and published their first strategic plans effective from 1 January 2024 and their next strategic plan is due to be made by 1 January 2026. It takes at least six-months for boards to prepare, consult on and finalise their plan. Boards would have an obligation to implement a new primary objective as soon as it came into force, We recommend that boards not be required to revise their current plans outside of the current planning cycle to avoid unnecessary compliance costs. In this case, there would be limited impact on boards' strategic planning until 2026, regardless of which of the two options were progressed.

A Traffic Light System for school attendance would improve transparency

23. The system for managing school attendance involves several individuals and organisations with responsibilities for attendance. These include school boards, parents, students themselves, the Ministry Attendance Services, other community service providers and government agencies outside of education. The regulatory system is designed for two types of interventions to be made when a student has repeated unjustified absences:

    a. ***Support interventions*** - identifying and providing appropriate supports and accommodations to remove barriers from students and their families that may prevent regular attendance; and

    b. ***Enforcement interventions*** - if the support interventions are unsuccessful then regulatory penalties may be considered to hold parents to account for their failure to ensure their child attends school.

24. We recommend the Ministry establish a 'traffic light system' (TLS) that can be used by those with attendance responsibilities to guide and coordinate responses to unjustified absences and which is differentiated according to the frequency of absences.

25. The Ministry measures school attendance by categorising student attendance by the proportion of each term that students have attended[6]. Because unjustified absence often

[6] These data categories do not distinguish between justified and unjustified absence. As an indication of the split between justified and unjustified absences, in Term 3 of 2023 8.3 percent of class time was made up of justified

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escalates over time, together these categories are sometimes referred to as 'the continuum of absence'.

Table 1: Current data categories for student attendance mapped to Traffic Light zones

Attendance data categories	Regular Attendance	Irregular Attendance	Moderate Absence	Chronic Absence
Description	91%-100%	81%-90%	71% - 80%	70% and under
Attendance Traffic Light zones	**GREEN**	**YELLOW**	**AMBER**	**RED**

26. We recommend that the specific objectives for attendance traffic light system (TLS) would be to:

Supports for students and families

a. Strengthening expectations for boards by providing more clarity about the minimum steps required for them to meet their attendance obligations by supporting students and their families to achieve regular attendance;

b. Set clear expectations that students and their families must have been provided or offered appropriate supports by schools or other relevant agencies, before regulatory penalties for parents are considered;

Accountability for parents

c. Strengthen accountability for parents' attendance responsibilities by investigating an infringement penalty scheme to be included in the accountability component of the attendance TLS.

d. Reduce boards' roles in enforcing parents' legal responsibilities, so boards are free to focus on their supportive role.

27. Annex 2 provides a conceptual diagram showing what an attendance traffic light system (TLS) with support and enforcement components might look like in our schooling system.

Clearer expectations for boards through a Traffic Light System

There are no clear minimum standards for schools in managing attendance

28. Schools are best placed to identify problematic absence and to undertake the first interventions to return a student to regular attendance. The legal obligation placed on boards to "take all reasonable steps to ensure that the school's students attend the school when it is open"[7], gives them a high level of autonomy and flexibility in carrying out their

absences and 6.3 percent was made up of unjustified absences. Both types of absence have increased since the COVID 19 pandemic.

[7] See sections 36 and 48 of the Education and Training Act 2020.

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responsibilities. The Ministry has published two sets of operational guidelines for schools setting out best practice approaches for managing attendance issues.[8]

29. The guidelines urge schools to act when unjustified absences are identified and give examples of useful interventions designed to support students back into regular attendance. They also emphasise that poor attendance patterns are best addressed as soon as they begin to emerge rather than being left until they become entrenched and are more difficult to turn around.

30. However, the existing guidelines lack the specificity about what actions would be appropriate for schools to use or consider according to where the student lies on the continuum of absence. Boards may genuinely be unclear about what and how much they need to do to meet their responsibilities. Further, schools ultimately have discretion about the extent to which they implement the Ministry's best practice guidance.

We have limited information on what schools are doing to meet their attendance responsibilities

31. Ministry front-line staff are involved in a broad range of activities that support schools in their attendance responsibilities. Frontline staff in regions regularly identify and track schools where data and feedback identify them as requiring coordinated support. These attendance activities include:

    a. Providing supporting deep dives into school attendance data including EveryDayMatters Reports, with school senior leaders, other staff, and Boards of Trustees, collaboratively identifying barriers and prioritising next steps.

    b. Supporting schools with their Attendance policies and best practice.

    c. Identifying and engaging with schools for specific initiatives or services including the Regional Response Fund and other Ministry funded programmes that support attendance such as loss of learning and counselling in schools.

32. However, the Ministry has limited oversight about how schools are managing attendance across the country. Schools have recently been asked to start reporting on whether they take action within five days, after a student has had five days of unjustified absence in a term. No data is yet available for this indicator.[9] This lack of information also contributes to the difficulty in assessing what works best to lift attendance.

33. As a consequence of the broad duty for boards to take 'all reasonable steps' and the high level of discretion that boards have to perform this duty, there is inconsistency in the steps individual schools take to perform their duties. There may be unjustifiable inconsistencies with how schools deal with particular cases in their schools. Education Review Office (ERO) investigations frequently find significant variation in the quality and extent of schools' implementation of best practice guidance issued by the Ministry. The discretionary element also means that, when schools are not doing what the Government considers is 'reasonable', the Ministry is unable to enforce their non-compliance.

We need the system for managing attendance to be more effective

[8] *Improving Attendance: Case management of truancy and the prosecution process*. Ministry of Education. 2010; *Attendance Matters: Guidelines for implementing an effective attendance management plan*. Ministry of Education. 2011,

[9] One of the long-term goals of the Attendance Data project is to increase detail of schools' reporting on actions taken to respond to unjustified attendance in order to develop an evidence base on what kind of interventions are most effective, at what point in the continuum of absence and for who.

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34. We need our attendance system to function better to be able to meet the challenges posed by historically low attendance levels and one of the first places to start is in schools. We need schools to respond to problematic attendance in a way that is more standardised and systematic while still allowing some flexibility to take into account the situation and needs of the school community.

35. We acknowledge that school boards do not have the sole responsibility for student attendance. Clarifying expectations for boards is just one of a range of actions needed to lift regular attendance, including those actions outside of the education sector. In addition, we have more to learn about the specific factors behind recent declines in regular attendance and about what interventions are most effective and for whom.

Options for implementing a TLS with clearer expectations for boards

36. There are several options for how a traffic light system could be implemented so that boards use it as their framework for monitoring and responding to student absence.

37. The analysis of options has been informed by the New Zealand Treasury's principles for best practice regulation[10]. Good regulation is proportional, that is, the burden of rules and their enforcement should be proportionate to the benefits that are expected to result; it is certain, meaning that regulated entities have certainty about their legal obligations; it is also flexible, in that regulated entities should have scope to adopt least cost and innovative approaches to meeting their legal obligations.

38. These options differ in:

    a. the level of transparency and certainty about the way boards work towards attendance objectives, and

    b. the ways schools would be held accountable for meeting their responsibilities, while also balancing the various needs of the students and their families.

- Option one*: Operational guidance only.*
- Option two: *Operational guidance and mandatory planning for boards.*
- Option Three: *Operational guidance and mandatory processes for boards, introduced once we know the TLS is fit for purpose.*

Option One: Operational guidance only

39. We consider that an essential component of implementing an attendance TLS for boards would be the Ministry developing and disseminating updated operational guidance. The guidance would specify triggers for action, the steps schools should take, and the strategies schools should consider for students whose attendance patterns place them in the yellow, amber and red zones of the TLS. This guidance would assist schools to designing attendance management processes and for monitoring and responding to absences of individual students.

40. The operational guidance would also specify the roles and responsibilities of all those involved in attendance alongside schools. It would help parents, the Ministry, community service providers and other government agencies to be on the same page about minimum steps to respond to absence across the traffic light zones.

[10] New Zealand Treasury. *The Best Practice Regulation Model: Principles and Assessments* – July 2012.

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41. Schools have a key role in helping to ensure that parents and students know about their own responsibilities for attendance. The operational guidance would also indicate the content and form of communications schools might use with parents when making contact about unjustified absences across the traffic light zones.

42. The goal of these communications would be to clearly describe circumstances in which absences are justified and unjustified; and to reinforce expectations that parents should communicate the reason for an absence to the school. They would also aim to make sure parents know they have a legal responsibility to ensure their child attends school and that there is a possibility of regulatory sanction if they fail to do so.

43. The operational guidance would provide clarity for schools about how to operationalise best practice for responding to attendance issues at different points along the continuum of absence. The Ministry would encourage boards to base their attendance management activities on TLS.

We expect that the TLS and operational guidance, combined with the changes to section 127 of the Act, will have an impact on the way boards respond to irregular attendance and truancy. However, boards would be free to disregard the attendance TLS if they believed that it was not an appropriate approach for their school community or was not appropriate in a particular circumstance It is likely that the public nature of the TLS and operational guidance would have an impact on parents' behaviour, and would contribute to your goal of shifting public attitudes to the importance of regular school attendance.

Option Two: Operational guidance and mandatory planning for boards

44. In addition to operational guidance, regulations could made to impose a duty on boards to develop an attendance management plan. The purpose of the plan would be for boards to outline how they will implement the TLS, as outlined in operational guidance, in their school community. Boards would be required to organise their attendance management activities based on the TLS and would not be able to disregard it. However, boards would still have the flexibility to adapt the framework to ensure it is appropriate and workable in their school community.

45. ERO and/or the Ministry could monitor whether schools had an attendance management plan in place. We note the Ministry's current practice for monitoring plans that schools are required to develop (e.g., three-year strategic plans) does not include assessing the quality of a plan or monitoring how schools implement it. If a school was found to not to have a plan in place, or not be implementing the plan, then statutory interventions under section 171 of the Act may be available.

46. The advantages of requiring an attendance management plan is that boards would be required to engage with the TLS and incorporate it into their processes and approaches to attendance management. There would be greater consistency between board responses to attendance issues, and greater consistency in how boards planned to react to individual cases at their school. A plan would also provide transparency to parents of the implication of their children not attending regularly. Importantly, should a school refuse to have a plan or to not to action its plan, the Ministry would have stronger legal grounds for using the intervention framework set out in section 171 of the Act.

47. The requirement for boards to develop a plan to implement a TLS would impose a compliance burden on school boards with no guarantee that the plan would translate to action. However, any such costs could be mitigated by enabling the plan to continue in perpetuity, or until the board or community wanted a change. This would mean that a board could do the plan once with regard to the TLS with no requirement for regular updates.

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Option Three: Operational guidance and mandatory processes for boards at a later date

48. Once the TLS has been operational for a period of time, you could develop regulations to impose a specific process for schools to follow when managing attendance. This option would require boards to take a few baseline actions to intervene when students' absence patterns place them in yellow, amber or red traffic light zones. For example, if a student in the amber zone hit a specified number of unjustified absence days in a term, the principal could be required to take reasonable steps to develop a plan with the student's parents to help them to return to regular attendance.

49. Option Three represents the most prescriptive approach to implementing the Attendance TLS in schools with the highest compliance burden and lowest flexibility in implementation. Under Options One and Two, schools, would have some discretion as to whether they would choose these specific processes or interventions. In contrast, this option would create a standardised process for boards and would encourage consistent and systematic practices in responding to unjustified absence.

50. Having specific mandatory steps that schools must follow would make it easier for the Secretary for Education to identify when a duty had been breached and to intervene under section 171 to hold the board to account. However, highly prescriptive approaches to regulate school boards are unusual in the system.

51. The schooling system has been designed so that boards largely have the ability to run their schools as they see fit. This is to allow boards the flexibility to meet the needs of their local community. Option three may result in families who face complex barriers to regular school attendance being treated in a way that exacerbates their challenges. Furthermore, for families in these complex situations it may be difficult for them to fully participate in the interventions so a more bespoke approach may be needed. This option relies on the TLS being operational for some time before developing the regulations to manage the risks associated with a prescriptive approach.

52. The Ministry does not systematically monitor actions that schools take to support individual students back into regular attendance due to limited capacity. This means in practice boards may not be held to account more often under this option unless the Ministry and/or ERO were to intensify their approach to monitoring schools' attendance activities.

53. In order to progress this option, we recommend operationalising the TLS for a period of time to test whether it is fit-for-purpose before establishing mandatory processes. This would then be supported by the Ministry undertaking a consultation process with the sector. This is the most complex option to establish and will take longer to implement than the other two. Mandating a one-size-fits all process for boards would also risk imposing requirements that some boards would find unworkable or inappropriate. Further policy work would be needed to develop proposals of what the specific triggers and required actions would be in each of the traffic light zones.

54. We do not recommend you that you develop regulations to impose a specific process for schools to follow when managing attendance until the TLS has been operational for some time. This is because we want to ensure it works as intended, is fit for purpose and we minimise the risk of any unintended consequences.

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Stronger accountability for parents through a TLS

If a supportive approach to unjustified absence is not effective, schools may move to prosecute

55. The Act places legal requirements on parents to enrol their children and ensure those children attend school. The Act also provides that parents have committed an offence where they have either failed or refused to ensure their child is enrolled or if their child does not attend as required and may be subject to a fine of up to $3,000.[11]
56. Schools will usually lead a prosecution for irregular attendance and have their costs reimbursed by the Ministry. The Ministry will not reimburse the school's legal costs unless the student has significant unjustified absence, the school has taken actions to support and assist the student back to regular attendance and the parents have made little or no effort to do anything about ensuring their child's attendance.

57. From the Ministry's perspective, the goal of prosecution is to provide an incentive for parents to take action to return their child to regular attendance. Ministry guidelines for schools[12] discourage the initiation of prosecutions where when there are broader social or environmental problems that mean prosecution is unlikely to result in a student returning to regular attendance.

However, the offences in the Act can only be used in rare cases

58. Prosecutions are currently the only regulatory tools available to hold a parent to account when they have not fulfilled their legal obligations for enrolment and attendance. However, prosecution as a tool is not well matched to the nature of offending that occurs in the case of non-enrolment and non-attendance.

59. Before laying a charge in the District Court, the prosecutor must assess both evidential sufficiency and whether a potential prosecution would meet the public interest test.[13] Prosecution resources are not limitless and the public interest test helps ensure appropriate use of Court time and resource. It does this by weeding out the large number of cases of non-serious offending that can be effectively addressed through other means.

60. Factors that the prosecutor should consider as part of the public interest test include: the use of serious or significant violence; the offence taking place in a group or as part of organised crime, the offence involving corruption; or the offence causing serious financial loss. Factors that count against prosecution include: the likelihood that the Court will impose a small or nominal penalty, that the defendant has no previous criminal convictions and that all available alternatives to prosecution have been exhausted. (see Annex 2 for further details).

61. Very few cases of non-enrolment or non-attendance meet the public interest test. Consequently, very few cases are brought to court and fewer result in convictions or fines.

[11] The non enrolment offence carries a maximum fine of $3,000 while irregular attendance has a maximum fine of $300 for a first offence and $3,000 for second and subsequent offences
[12] See above, 10.
[13] *Solicitor-General's Prosecution Guidelines*. 2013. Crown Law

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62. Between 2016 and 2020 there were eight prosecutions (five for persistent absences and three for not enrolling a child). Of the three prosecutions for not enrolling a child, two were withdrawn after the child was enrolled in education and the parents in the other case were convicted and fined $50 each plus court costs. The Ministry does not systematically collect information on prosecution outcomes where schools lead the prosecution. However, we know of at least once instance over this period where conviction resulted in no further penalty being imposed[14].

We recommend operational changes for prosecutions to put schools at arm's length

63. The Act enables an attendance officer, a principal, the Secretary, or any person appointed by a board or the Secretary to file charging documents, conduct prosecutions, and take any other proceedings.

64. During sector engagement last year, schools told us that their regulatory enforcement role can undermine their work to build positive relationships with students and their families to support students to return to regular attendance.

65. While attendance prosecutions are relatively infrequent, we think there is a benefit in clearly splitting responsibilities for delivering support to students and conducting enforcement interventions. We recommend changing our operational process so that the Ministry leads prosecutions instead of schools.

    Schools would still contribute to the decision to initiate prosecution and would provide the evidence needed to prosecute the offence. The Ministry would initiate a prosecution including communicating directly with the defendant parents about the prosecution process, leaving schools free to focus on a supportive and learning-focused relationship with students and parents. We would also manage dealings with the Crown prosecutor and pay legal costs directly instead of reimbursing schools.

Infringement schemes are designed to deter conduct of relatively low seriousness

66. You have requested advice on establishing an infringement scheme for irregular attendance. The Education and Training Act currently does not provide for infringement offences or the issue of infringement notices. The Act would need to be amended to specify the offence and to provide for such for the issue of infringement notices.

67. Infringement offences are a subset of criminal offences that usually involve low-level infringement fees (less than $1,000) imposed by issuing an infringement notice. Infringement offences are designed to deter conduct of relatively low seriousness that is unlikely to meet the public interest test for prosecution. The criminal courts generally become involved only if the infringement fee is not paid or if the recipient of the infringement notice challenges it.

Infringement Schemes from other jurisdictions

68. In our initial scan we considered attendance infringement schemes in the United Kingdom and Victoria, Australia (see Annex 2), which can serve as examples of what an infringement scheme could look like in New Zealand.

[14] In his 2017 judgement convicting a mother of two children for the persistent absences of her two children, Judge Rea convicted and discharge the mother without penalty.

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69. Both the United Kingdom and Victoria have statutory officers based outside of schools with discretionary power to issue fines. In the United Kingdom, the Local Authority is the empowered governing body that works closely with schools to identify and progress attendance infringement offences. Similarly, in Australia (Victoria state), School Attendance Officers operate as the empowered infringement authority. Their powers include the discretion to issue enrolment, attendance, and infringement notices, as well as initiating court proceedings.

We provide you with further, detailed advice on an infringement scheme

70. In order to establish and administer an infringement penalty scheme for attendance a range of complex and detailed decisions on the policy design, legislative implementation and operational design will need to be worked through. We recommend that you do not decide whether to progress an infringement scheme until you have considered this further advice. We will you provide the first tranche of high-level policy recommendations in an Education Report in the coming weeks.

Policy and legislative issues in developing an infringement scheme

71. There is a well-established legislative and policy framework that shapes the development of new infringement schemes. Key components of the framework are:

    a. The Summary Proceedings Act 1957 sets out a common framework for when the recipient of an infringement notice requests a hearing in the District Court or the prosecuting agency enforces the notice in the Court;

    b. The Ministry of Justice Policy Framework for New Infringement Schemes, set outs Cabinet's expectations for the design and operation of new infringement schemes;

    c. The Legislative Design Advisory Committee (LDAC) Legislation Guidelines, endorsed by Cabinet, are intended to guide thinking by those involved in making legislation.

72. LDAC and Ministry of Justice guidelines on infringement schemes set rules on appropriate use of infringement schemes. These indicate that infringement schemes should only be used for strict liability offences[15] that involve actions or omissions that are straight forward issues of fact. There may be challenges in designing an infringement scheme that avoids parents who are facing complex barriers to their child's attendance from being penalised. As for prosecutions, we consider it would only be desirable to sanction parents in circumstances where it would be likely to lead to behaviour change.

Operational issues in developing an infringement scheme

73. We anticipate that the operational aspects of establishing and administering an infringement scheme would involve considerable complexity and require cross-agency engagement.

74. Some key operational issues to consider include:

    a. authority to issue – statutory enforcement officers empowered to issue infringement notices;

    b. processes for managing disputed infringement notices before and after going to Court;

[15] Offences where it is only necessary to show that an action occurred and not that the defendant had any particular mental state. Total absence of fault is the only defence to a strict liability offence.

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c. IT systems for collecting payments and interfacing with Courts for unpaid fines;[16]

d. volume of notices likely to be issued, the proportion likely to go to Court and the resulting impacts on the Courts system;

e. the cost of administering the scheme compared to the amount of revenue to be collected and avenues for funding any shortfall.

75. After the bulk of operational decisions are made, amendments would be required to primary and secondary legislation to establish the scheme and its key features in law. The Act would need to specify maximum penalties, the authority empowered to issue infringement notices and the Crown body entitled to fines collected. Regulations would be made to establish the details of the scheme such as the actions or omissions that would constitute an offence.

Relative costs and benefits of establishing an infringement scheme

76. The international evidence is mixed as to whether fining parents results in improved attendance of their children (see IU 1320294). The variation could be due to could be differing implementation of penalties or differing cultural or contextual factors. A key factor to consider when deciding whether to progress an infringement scheme is whether the estimated degree of impact on regular attendance rates would justify the investment needed.

Next Steps

77. We will you provide the first tranche of high-level policy recommendations on an infringement scheme for attendance in an Education Report in the coming weeks.

78. We will provide a second Cabinet paper for you to take to Cabinet Business Committee on 15 April[17] that will seek agreement to the regulatory changes needed to implement our previous advice on mandating daily reporting of attendance data (see METIS 1322678).

79. Cabinet consideration of the decisions you make on this briefing, and future advice on an infringement scheme, will be taken sequentially over the coming months.

Annexes

The following are annexed to this paper:

Annex 1: Section 127 of the Education and Training Act 2020

Annex 2: Indicative diagram of an Attendance Traffic Light System

Annex 3: Solicitor-General's Prosecution Guidelines: the Public Interest Test

Annex 3: International infringement schemes for attendance

[16] ICT systems must have functionality to comply with requirements in section 21 of the Summary Proceedings Act 1957

[17] Due the high number of recess weeks in April, we recommend you take your next paper to Cabinet Business Committee.

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Annex 1: Section 127 of the Education and Training Act 2020

127 Objectives of boards in governing schools

(1) A board's primary objectives in governing a school are to ensure that—

(a) every student at the school is able to attain their highest possible standard in educational achievement; and

(b) the school—

(i) is a physically and emotionally safe place for all students and staff; and

(ii) gives effect to relevant student rights set out in this Act, the New Zealand Bill of Rights Act 1990, and the Human Rights Act 1993; and

(iii) takes all reasonable steps to eliminate racism, stigma, bullying, and any other forms of discrimination within the school; and

(c) the school is inclusive of, and caters for, students with differing needs; and

(d) the school gives effect to Te Tiriti o Waitangi, including by—

(i) working to ensure that its plans, policies, and local curriculum reflect local tikanga Māori, mātauranga Māori, and te ao Māori; and

(ii) taking all reasonable steps to make instruction available in tikanga Māori and te reo Māori; and

(iii) achieving equitable outcomes for Māori students.

(2) To meet the primary objectives, the board must—

(a) have particular regard to the statement of national education and learning priorities issued under section 5; and

(b) give effect to its obligations in relation to—

(i) any foundation curriculum statements, national curriculum statements, and national performance measures; and

(ii) teaching and learning programmes; and

(iii) monitoring and reporting students' progress; and

(c) perform its functions and exercise its powers in a way that is financially responsible; and

(d) if the school is a member of a community of learning that has a community of learning agreement under clause 2 of Schedule 5, comply with its obligations under the agreement; and

(e) comply with all of its other obligations under this or any other Act.

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Annex 2 Indicative diagram of an Attendance Traffic Light System

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DRAFT. NOT GOVT POLICY.
15/3/2024

INDICATIVE DIAGRAM OF AN ATTENDENCE TRAFFIC LIGHT SYSTEM

This A3 is a mock-up of what the Attendance Traffic Light System could look like, including suggested components, examples of actions to be taken by key players and of triggers for those actions.

TRAFFIC LIGHT SYSTEM COMPONENTS	GREEN	YELLOW	AMBER	RED	NOT ENROLLED
	Regular Attendance 91% - 100%	**Irregular Attendance** 81% - 90%	**Moderate Absence** 71% - 80%	**Chronic Absence** 70% and under	**Taken off roll/ Never enrolled**
School Culture *(Universal and preventative interventions)*	A welcoming and inclusive environment where students feel safe. An engaging and culturally responsive local curriculum. Positive relationships and powerful learning connections between teachers and students and teachers and families				
Triggers for targeted action		Student has **5** days of unjustified absence in a school term	Student has **10** days of unjustified absence in a school term	Student has **15** days of unjustified absence in a school term	Student taken off school roll due to prolonged absence
Expectations for Schools *(Systemic monitoring and response to absence)*		Contact parents to offer supports and early intervention options	School develops re-engagement plan with parents and student and monitors regularly	**STEP 1:** Review re-engagement plan **STEP 2:** School refers student and family to the Attendance Service **STEP 3:** School/Ministry brings in other social sector agencies (e.g. Oranga Tamariki) to address barriers **STEP 3:** If no family engagement, school refers to Ministry to consider sanctions	**STEP 1:** School refers student and family to the Attendance Service **STEP 2:** If no family engagement, Attendance Service refers to Ministry to consider sanctions
		Attendance Officers support schools to intervene early for students at risk of chronic absence		Attendance Service supports individual students and families	
		REGIONAL RESPONSE FUND INITIATIVES support schools, students and families			
Setting Expectations for Parents	School reminds parents of their responsibilities and communicates the extent of student absence and potential impact on learning.				
	School has policy setting out circumstances where absence is justified and unjustified				
Graduated Enforcement Framework for Ministry			**STEP 1:** Upon referral by school, Ministry sends letter(s) to parents warning of possible sanctions		
			STEP 2: After 3 warning letters, Ministry considers taking **prosecution** against parents due to poor attendance/ lack of enrolment		
			INVESTIGATE – establishing an **infringement** notice scheme to fine parents without prosecuting		

TRAFFIC LIGHT SYSTEM SUPPORTS / ENABLERS

Attendance data project

New regulatory duties on school boards and/or updated operational guidance

Monitoring of school attendance actions by Takiwā

Ministry-contracted attendance supports for schools and families

ALREADY IN PLACE

Attendance Public Information Campaign

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Annex 3: Solicitor-General's Prosecution Guidelines: the Public Interest Test

The following is an excerpt from the Solicitor-General's Prosecution Guidelines on the Public Interest Test. Published in 2013 by Crown Law.

The following section lists some public interest considerations for prosecution which may be relevant and require consideration by a prosecutor when determining where the public interest lies in any particular case. The following list is illustrative only.

Public interest considerations for prosecution

5.8.1 The predominant consideration is the seriousness of the offence. The gravity of the maximum sentence and the anticipated penalty is likely to be a strong factor in determining the seriousness of the offence;

5.8.2 Where the offence involved serious or significant violence;

5.8.3 Where there are grounds for believing that the offence is likely to be continued or repeated, for example, where there is a history of recurring conduct;

5.8.4 Where the defendant has relevant previous convictions, diversions or cautions;

5.8.5 Where the defendant is alleged to have committed an offence whilst on bail or subject to a sentence, or otherwise subject to a Court order;

5.8.6. Where the offence is prevalent;

5.8.7 Where the defendant was a ringleader or an organiser of the offence;

5.8.8 Where the offence was premeditated;

5.8.9 Where the offence was carried out by a group;

5.8.10 Where the offence was an incident of organised crime;

5.8.11 Where the victim of the offence, or their family, has been put in fear, or suffered personal attack, damage or disturbance. The more vulnerable the victim, the greater the aggravation;

5.8.12 Where the offender has created a serious risk of harm;

5.8.13 Where the offence has resulted in serious financial loss to an individual, corporation, trust person or society;

5.8.14 Where the defendant was in a position of authority or trust and the offence is an abuse of that position;

5.8.15 Where the offence was committed against a person serving the public, for example a doctor, nurse, member of the ambulance service, member of the fire service or a member of the police;

5.8.16 Where the defendant took advantage of a marked difference between the actual or developmental ages of the defendant and the victim;

5.8.17 Where the offence was motivated by hostility against a person because of their race, ethnicity, gender, sexual orientation, disability, religion, political beliefs, age, the office they hold, or similar factors;

5.8.18 Where there is any element of corruption.

5.9 The following section lists some public interest considerations against prosecution which may be relevant and require consideration by a prosecutor when determining where the public interest lies in any particular case. The following list is illustrative only.

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Public interest considerations against prosecution

5.9.1 Where the Court is likely to impose a very small or nominal penalty;

5.9.2 Where the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by an error of judgement or a genuine mistake;

5.9.3 Where the offence is not on any test of a serious nature, and is unlikely to be repeated;
5.9.4 Where there has been a long passage of time between an offence taking place and the likely date of trial such as to give rise to undue delay or an abuse of process unless:

- the offence is serious; or
- delay has been caused in part by the defendant; or
- the offence has only recently come to light; or
- the complexity of the offence has resulted in a lengthy investigation.

5.9.5 Where a prosecution is likely to have a detrimental effect on the physical or mental health of a victim or witness;

5.9.6 Where the defendant is elderly;

5.9.7 Where the defendant is a youth;

5.9.8 Where the defendant has no previous convictions;

5.9.9 Where the defendant was at the time of the offence or trial suffering from significant mental or physical ill-health;

5.9.10 Where the victim accepts that the defendant has rectified the loss or harm that was caused (although defendants should not be able to avoid prosecution simply because they pay compensation);

5.9.11 Where the recovery of the proceeds of crime can more effectively be pursued by civil action;

5.9.12 Where information may be made public that could disproportionately harm sources of information, international relations or national security;

5.9.13 Where any proper alternatives to prosecution are available (including disciplinary or other proceedings).

5.10 These considerations are not comprehensive or exhaustive. The public interest considerations which may properly be taken into account when deciding whether the public interest requires prosecution will vary from case to case. In regulatory prosecutions, for instance, relevant considerations will include an agency's statutory objectives and enforcement priorities.

5.11 Cost is also a relevant factor when making an overall assessment of the public interest. In each case where the evidential test has been met, the prosecutor will weigh the relevant public interest factors that are applicable. The prosecutor will then determine whether or not the public interest requires prosecution.

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Country	Compulsory Education	Culpability	Infringement scheme
Australia (Victoria State)	All children aged 6 – 17 are required to be enrolled at a registered school or registered for home-schooling.	Parents are legally required to ensure their child attends school every day and to provide an explanation for their child's absence from school unless an exemption from attendance has been granted or an exception to their attendance applies.	Australia's Constitution does not give the federal level of government the responsibility for education. It is the responsibility of Australia's states and territories to create any laws relating to the education of their residents. The below provides a description of the infringement scheme for the state of Victoria, Australia: 1. **Identification of absence** - A pattern of absence (or risk of becoming absent) is identified by the school through regular monitoring devices. In the state of Victoria, schools must record student attendance twice per day in primary schools and in every class in secondary schools. 2. **Early intervention support** – Where a student has been identified as at risk of poor attendance or becoming disengaged (absent for more than 5 days in a term and/or attendance falls below 90%), schools are advised to implement improvement and intervention strategies. There are several strategies that schools can employ including: a. *Attendance student support groups* – a support group convened by the principal attended by the parent, teacher, principal, student, and other welfare staff to help support the parent and student identify and work collaboratively to develop a student attendance improvement plan or individual education plan (both of which assist with the re-engagement of students with attendance issues). b. *Student Absence Learning Plan* – implemented to support the education of students who are absent from school for an extended period. Developed collaboratively with teachers, students, and parents. c. *Referral to school or community wellbeing professional* - providing schools access to specialist support including Student Support Services, Koorie Engagement Support Officers, and Primary Welfare Officers. d. *Referral to child first/child protection* – schools may also need to consider whether they should report a concern to Child Protection or make a referral to the Child FIRST intake service for referral to family services. 3. **School Attendance Officer** – Where a school has exhausted its strategies for addressing a student's unsatisfactory attendance, the principal may make a referral to a School Attendance Officer. To make a referral to a School Attendance Officer, the principal needs to establish that the student has been absent from school on at least 5 full days (in 12 months) and that the parent has not provided a reasonable excuse, measures to improve attendance have been undertaken and unsuccessful, and a parent responsible for absences can be identified. 4. **Issuing a School Attendance Notice** - School Attendance Officers have discretion about which action to take including send an official warning, issuing an Infringement Notice (except for the offence of providing false information), or to commence proceedings in the Magistrates' Court. These are set out as follows: a. *The School Attendance Notice* is not a fine, but an opportunity for the child's family to explain the absences and work with the child's school to improve attendance in the future. The School Attendance Office will assess the family's response to a School Attendance Notice. b. *An Official Warning* – a School Attendance Officer may issue an official warning prior to, or instead of, issuing an infringement notice.

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			c. *Infringement notice* – if all other strategies to improve attendance have been implemented and failed, the school have the right to issue an Infringement Notice, which is used as a last resort. The infringement notice is currently $78 however the amount changes each financial year. 5. **Prosecution** - Should a School Attendance Officer form the view that court proceedings are the most appropriate course of action, they should refer the matter to the Wellbeing, Health and Engagement Division of the Department for a final decision. Before contacting the Wellbeing, Health and Engagement Division, the School Attendance Officer should ensure they have evidence or reliable records of decisions that involved the exercise of some discretion or the consideration of information or excuses provided by the parent, including decisions made by a school principal before referring the matter to the School Attendance Officer.
United Kingdom	The Education Act 1996 provides for children of compulsory school age to be educated at home or a formal place of education. This includes those children between the ages of 5 (or 4 in Northern Ireland) and 16 (or 18 in England).[18]	Section 7 of the Act requires sets out a parental[19] duty to secure the efficient, full-time education suitable to the child's age, ability, aptitude, and to any special educational needs they may have.[20] It is the parents' responsibility to ensure that their children of compulsory school age receive suitable full-time education.	The United Kingdom infringement scheme is set out as follows: 1. **Identification of absence** - A pattern of absence (or risk of becoming absent) is identified by the school through regular monitoring devices including an admissions and attendance register which are required by law. Schools must take the attendance register at the start of each morning and once during the afternoon. 2. **Voluntary support** - Where a student has been identified as being absent (or at risk of becoming absent), the school is expected to support students and parents by working together to address any in-school barriers to attendance. Where barriers are outside of the school's control, all partners should work together to support pupils and parents to access any support they may need voluntary. As a minimum, this should include meeting with parents at risk of persistent or severe absence to understand barriers to being in school and agreeing actions or inventions to address them. 3. **Parenting contract -** Where voluntary support has not been effective and/or has not been engaged a Parenting Contract is employed. A parenting contract is a formal written agreement between parents and the school or local authority. A parenting contract is not legally binding; however, it allows for a more formal route to secure engagement with support where a voluntary early help plan has not worked. The parenting contract details the requirements that parents are expected to comply with, the timeframe of the contract, and a statement from school/local authority agreeing to provide support to parents. (Note: a parenting contract cannot lead to action for breach of contract or civil damages. There is no criminal sanction for parent's failure to comply with or refusal to sign a parenting contract). 4. **Student Attendance Order** (SAO) - if the local authority is not satisfied that parents are providing a suitable education to a child and it is appropriate for the child to attend school, they can apply for a School Attendance order. This order requires that the parent provide evidence that they have registered their child with the school listed (or that they are providing home education) within 15 days. Failure to comply with the order can result in prosecution or fine.[21] 5. **Education Supervision Orders** (ESO)– in cases where a voluntary support plan and parenting contract has not worked, an ESO can be used to provide formal legal intervention without criminal prosecution. ESOs are made through the Family or High Court, rather than Magistrates Court. They give the local authority a formal role in advising, helping and directing the pupil and parent(s) to ensure the pupil receives an efficient, full-time, suitable education. For the duration of the ESO, the parent's duties to secure the child's education and regular attendance are superseded by a duty to comply with any directions given by the local authority under the ESO. Once an ESO is secured, an officer of the local authority is chosen to act as the supervisor of the order. The supervisor determines any directions to give while the order is in force that parents must comply with. These may include requiring that the parent(s): attend support meeting, parenting programmes or counselling, access support services, undergo assessment by an educational psychologist.

[18] Department for Education - GOV.UK (www.gov.uk)
[19] Parents are defined as all natural parents, whether they are married or not, any person who has parental responsibility for a child or young person; any person who has care of a child or young person i.e., lives with and looks after the child. (School attendance parental responsibility measures – Statutory guidance for local authorities, school leaders, school staff, governing bodies and the polices. Department for Education., pg. 5.)
[20] Education Act 1996 (legislation.gov.uk)
[21] School attendance parental responsibility measures – Statutory guidance for local authorities, school leaders, school staff, governing bodies and the polices. Department for Education., pg.7.

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			6. **Fixed penalty notices** - are served on parents as an alternative to prosecution where they have failed to ensure that their child of compulsory school age regularly attends the school where they are registered or at a place where alternative provision is provided. They can be issued to each parent liable for the attendance offence or offences, which should usually be the parent or parents with day-to-day responsibility for the pupil's attendance. The penalty is £60 if paid within 21 days of receipt, rising to £120 if paid after 21 days but within 28 days. The payment must be paid direct to the local authority regardless of who issued the penalty notice. If the penalty is not paid by the end of the 28-day period, the local authority must decide either to prosecute for the original offence to which the notice applies, or withdraw the notice. There is no right of appeal by parents against a fixed penalty notice. 7. **Prosecution** – prosecting in the Magistrates Curt is the last resort where all other voluntary and formal support or legal intervention has failed. Only local authorities can prosecute parents and they must fund all associated costs. Following successful prosecution, the courts can also impose additional orders including *Parental orders* requiring parents to attending counselling or guidance sessions where they will receive help and support to enable them to improve their child's behaviour for up to 3 months. Parents are also subject to any other requirements as specified in the order lasting up to 12 months. Breaches of parental orders could lead to additional fines.

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