

Final Report to NLAF Education Act Prosecutions Working group March 2015 - May 2017

The Education Act (EA) Prosecutions working group met on 24 May 2017.

The Objectives of the working group were reviewed at this meeting. This review determined that the objectives set by the NLAF for this working group had been met and a final report should be prepared regarding its operations, activities and outcomes. Any outstanding actions (detailed below) are to be dealt with by the relevant agencies.

Meetings

The working group had its first meeting in March 2015 and continued meeting quarterly until its last meeting in May 2017. It was chaired by Annmarie Lumsden, then Legal Aid NSW Director of Strategic Policy and Planning and now Legal Aid NSW Director Crime.

The working group was regularly attended by representatives from:

- Legal Aid NSW – Crime, Care, Policy, Grants and CLSD
- Department of Justice – Policy
- Department of Education – Legal Team and Child Protection Services
- LawAccess NSW
- CLCNSW
- NLAF Program Manager

Other Attendees

- ALS NSW/ACT
- Executive Officer Children’s Court

External Contacts/Guest Speakers

The Working group also had meetings with:

- Executive Officers of the Children’s Court and Local Court
- NSW Ombudsmans Office
- Education Director, Judicial Commission of NSW
- Legal Aid NSW Children’s Civil Law Service

Activities/Outcomes

Aim

The Education Act Working group aims to improve access to legal services (in particular legal advice and representation) for parents and children involved in Compulsory School Order (CSO) proceedings in the Children’s Court and Education Act (EA) prosecutions in the Local Court. The Working group will note the particular issues arising out of EA litigation in disadvantaged communities in regional and remote NSW.

Objectives

1 *Map the programs and service providers (NSW and Commonwealth-funded) that are currently addressing truancy and school attendance in NSW.*

1.1 A report was prepared for the working group identifying programs funded/operated by Federal and State governments and the NSW Police Force that seek to address truancy and school attendance in NSW.

1.2 The Department of Justice provided statistics on the numbers of applications for CSOs, interim CSOs, and prosecutions under the EA for the years 2011-2014.

1.3 The Department of Education and Communities (Education) provided the location of Home School Liaison Officers (HSLOs) and Aboriginal School Liaison Officers (ASLOs) throughout NSW and a summary of the role they play in court proceedings.

1.4 The working group undertook an analysis of data comparing the location of HSLOs with the number of 2014 EA CSO matters listed in the Courts closest to their location. This highlighted the fact that where there is a specialist Children's Court in the area, matters are being listed there; otherwise they are listed in the closest Local Court.

1.5 In 2016 a new CSO list was created at Mt Druitt Local Court. This list was established to encourage greater attendance by families involved in EA matters. Updates were provided to the working group and at its last meeting Education advised that the list would continue into the foreseeable future due to its success.

1.6 New data obtained from Education showed that EA enforcement actions in the Children's Court and Local Court had declined significantly from 619 in 2013 to 255 in 2015. The Education legal team reported that this is in part due to current Education policy where matters involving young people aged 15 years and over are rarely taken to Court. Education prefers alternative processes to be used to reengage these young people into education options.

1.7 Following a presentation by the Legal Aid NSW Children's Civil Law Service the issue of young people in out of home care not attending education was discussed in some detail. The Education legal team noted they do not undertake enforcement actions in matters involving children/young people who are under the parental responsibility of the Minister.

1.8 As a follow up to discussions about young people in out of home care, the Education Director of Child Protection Services gave a presentation to the working group and spoke about changes that were occurring in line with recommendations of the recently released Independent Review of Out of Home Care in NSW (David Tune Review) – [Their Futures Matter: A new approach](#). Education is working closely with FaCS to ensure when decisions are made regarding placement of children in OOHHC/setting up of residential care facilities that enrolment and attendance at school is prioritised, streamlined and supported through education of carers/services and school infrastructure/services.

2 Collect and collate case studies illustrating the need for improved practices, processes and collaboration around CSO proceedings and EA prosecutions.

2.1 The working group noted that the *Education Act* requires Education to make inquiries with agencies and any relevant institutions before instigating legal proceedings. The working group had been informed of instances whereby Education was not making these inquiries, nor was there proper engagement with agencies when warrants were issued to bring parents to court. Without the proper inquiries Education and the courts were not taking into account individual circumstances that may affect a student or parent's ability to attend school or court.

2.2 The working group also noted the Children's Court Practice Note No. 7 (PN 7) requiring the appointment of a legal representative to act for a child in proceedings for CSOs before the first listing of the matter. It appeared that magistrates in the Local Court were not aware of the practice note. The working group made contact with the Chief Magistrates Office to request that PN 7 be drawn to the attention of Local Court magistrates.

2.3 The working group sought case studies from the NSW Law Society and members of the working group to demonstrate the issues identified in 2.1 and 2.2. These case studies were used in discussions with the Education legal team to demonstrate the working group's concerns. To assist in addressing the concerns raised, the Education legal team agreed to provide Legal Aid NSW with email notifications of EA CSO and prosecution matters when listed. These notifications go to a specific Legal Aid in-box. Legal Aid passes this information to the relevant Legal Aid office or Panel Lawyer to ensure they make contact with the parents/children before or at Court.

2.4 At its last meeting the working group was informed that this process continues to work well despite changes in staffing within the Education legal team. The Legal Aid NSW EA matters in-box is being monitored by the Solicitor in Charge, Care and Protection and Grants to ensure notifications are provided to relevant in-house or panel lawyers in a timely way.

3 Clarify and promote the availability of legal services in CSO proceedings and EA prosecutions – including raising awareness with the legal profession, Courts, schools, community workers and the Department of Education and Communities and Police Force of NSW.

3.1 The working group has promoted the availability of legal aid for EA matters in Legal Aid News, Cooperative Legal Services Delivery Program e-update, Lyris messages to panel lawyers and the NSW Law Society's 'Monday Brief'. These broadcasts will continue to occur.

3.2 The working group discussed communications being used by Education, Legal Aid NSW, LawAccess NSW and Community Legal Centres for parents and/or children when contacted regarding EA matters to ensure consistency.

3.3 The Education legal team reported to the working group an improvement in the availability of legal advice for parents and children at the Courts since the increase in communications to lawyers as well as an improvement in attendance at Court by parents and children.

3.4 Sub-Committee focusing on education and training of judicial officers and legal practitioners

3.4.1 A sub-committee was formed in 2016 to meet in between working group meetings. Its focus was on practical ways of working with Education, Courts and lawyers to ensure children and parents receive legal assistance in EA matters. The following initiatives were undertaken by this group:

- A letter was prepared for the Chief Magistrate and sent from the NLAF to remind Magistrates of the availability of Legal Aid in EA matters and to ask that they refer parents and children to the duty lawyer if they attend unrepresented.
- A plain English flyer and poster were produced by Legal Aid on EA matters to promote the availability of free legal advice at Court to parents and children attending for EA matters. These were distributed by Legal Aid NSW to Education Learning and Wellbeing staff, Children's and Local Court Registrars, Community Legal Centre Care Partners, Legal Aid offices Solicitors in Charge and all relevant panel Coordinators for private lawyers.
- A meeting was held with the Education legal team to discuss amending their Court Attendance Notices to include information about free legal assistance being available for EA matters plus including a copy of the EA flyer in letters sent to parents or children.
- Two Legal Aid webinars were produced for in house and panel lawyer training, focusing on running EA CSO and prosecution matters.
- Legal Aid NSW developed and delivered a lunch time training session on EA matters in December 2016 at the Broadmeadow Children's Court. This was on a list day and about 25 lawyers attended - both in house and panel. Based on the success of this session a series of sessions have been planned to be run during 2017 at all Children's Courts and local courts where a Specialist Magistrate sits on circuit. The Legal Aid Grants Division are also delivering a series of training sessions in regional areas with panel lawyers and will include information about EA matters.
- A meeting was held with the Judicial Commission of NSW Education Director to discuss ways that issues around EA matters could be promoted to judicial officers through their publications. The working group was invited to prepare an article for their monthly Judicial Officer Bulletin and contribute to an update to their Children's Court Handbook.

4 Engage with the Department of Education and Communities and the Courts to settle agreed procedures for conducting litigation in relation to CSO proceedings and EA prosecutions, including: exploring practical and workable procedures in relation to listing arrangements, clarifying practices and jurisdiction in relation to the issuing of bench warrants.

4a exploring practical and workable procedures in relation to listing arrangements

4a.1 Through discussions with the Education legal team, the working group made significant progress in seeking changes to listing arrangement in the Children’s Court.

4b clarifying practices and jurisdiction in relation to the issuing of bench warrants.

4b.1 It was agreed by the working group that the practice of issuing bench warrants to children and parents when they do not attend Court for EA matters required a policy and law reform response.

4b.2 In 2016 the working group was informed by the Education legal team that they had been invited to meet with the President of the Children’s Court to discuss bench warrants. An undertaking had been made in this meeting that Education would no longer seek these in EA matters.

4b.3 The working group agreed then that the issuing of bench warrants needed to be removed from the legislation to be consistent with current practice that had been negotiated as an undertaking by Education. Legal Aid NSW agreed to commence this process and at its last meeting the working group was consulted about a draft paper being prepared by the Legal Aid NSW policy unit on law reform options to remove this power.

Remaining issues identified by the Working group for ongoing action by Legal Aid NSW and the Department of Education.

Law Reform

The Legal Aid NSW Strategic Planning and Policy Division are currently researching the legislative amendment/s which would be required to remove provisions for issuing warrants to children and young people who do not attend court for EA matters. Once the research is complete, the next step will be to consult with the President of the Children’s Court to ascertain his support.

Lawyer attendance at EA Act s22C Conferences (Conference of relevant parties to deal with unsatisfactory school attendance)

This issue was raised at the end of 2016 and Legal Aid NSW is meeting with the Education legal team to discuss options regarding attendance by lawyers at these Conferences to support the student being heard in the proceedings.

Work with the NSW Ombudsmans office

The NSW Ombudsmans office was invited to the first meeting in 2016 to discuss issues identified. In particular the working group's concerns that EA CSOs and prosecutions were not effectively addressing the underlying issues impacting on school attendance by particular cohorts of children and young people; namely Aboriginal children/young people, young people in out of home/residential care and children/young people with a disability.

After this meeting the working group briefed the NLAF Plenary about writing to the NSW Ombudsman regarding the issues identified with suggestions regarding collaborative projects to address these. The subsequent letter requested assistance from the NSW Ombudsman to address concerns identified by the working group, namely:

- aiding the development of inter-agency principles or protocols to address truancy and school non-attendance across NSW;
- evaluating whether the current programs and procedures are effective in improving school attendance; and
- considering whether agencies might be able to more effectively work together to achieve better outcomes for children and young people with chronic truancy or low school attendance.

The working group was kept informed by the Ombudsman about their consultations with a range of stakeholders about the issues raised by NLAF and also the President of the Children's Court. A final meeting with the NSW Ombudsman was held on 1 June 2017 where the outcomes of their consultations were discussed in detail.

Copies of the quarterly reports prepared by the working group for the NLAF Plenary meetings can be found on the NLAF website www.nalf.org.au.

Annmarie Lumsden

Director Crime, Legal Aid NSW

Chair NLAF Educations Act Prosecutions Working group, June 2017