

TRUANCY AND THE LAW IN AUSTRALIA: THE QUEENSLAND EXAMPLE

ELIZABETH DICKSON[†] & TERRY HUTCHINSON

QUEENSLAND UNIVERSITY OF TECHNOLOGY, BRISBANE, AUSTRALIA

Truancy is a serious problem in Australian schools. This article examines how the law has been utilised as a strategy to control truancy in one of the Australian states, Queensland. The truancy problem in Queensland has recently attracted national attention in that a controversial federal intervention designed to reduce truancy is presently under trial in that state: the Improving School Enrolment and Attendance through Welfare Reform Measure (SEAM). SEAM authorises the quarantining of welfare payments to parents who fail to send their children to school. Queensland state laws allow for the prosecution of parents who fail to ensure that their children attend school. These state laws are, however, rarely implemented. The article speculates as to why this is the case and asks whether the law – federal or state – has a legitimate role to play in improving school attendance. While the main focus of the article is Queensland, truancy laws in other Australian states and territories are examined in order to explain the extent to which they correlate with or depart from the Queensland approach.

I INTRODUCTION

The purpose of this article is to explain legal initiatives to control truancy in Queensland, Australia, and to examine their utility in terms both of reducing truancy and of potential, unintended, educational and social problems that they raise. The article looks, particularly, at the Queensland legislation which compels school attendance and holds parents accountable for their children's failure to attend. It looks too at a recent Federal Government welfare quarantining initiative to reduce truancy, the Improving School Enrolment and Attendance through Welfare Reform Measure (SEAM). Queensland has agreed to trial SEAM in three communities. Laws from the other Australian states and territories will be considered where they contrast with or confirm the Queensland approach, and as such, potentially illuminate deficiencies or strengths in the Queensland approach. The article does not, unfortunately, consider the causes of truancy except to make a general survey of what experts have suggested they may be. Nor does the article consider solutions, other than legislative solutions, to truancy except to suggest that they are multifaceted and derive from social and educational strategies in conjunction with the legislative strategies.

The article concentrates on government responses to truancy rather than the responses of the independent education sector. The Queensland Government is responsible for driving the legislative agenda, has taken 'ownership' of the problem, and is held accountable for its management by the Queensland parliament. Any evidence that is available of the extent of the problem is from the state sector. It is likely, moreover, that persistent truancy is a more acute problem in the state sector as students at independent schools disengaged from the education

[†]*Address for correspondence:* Dr Elizabeth Dickson, School of Law, Queensland University of Technology, Gardens Point Campus, GPO Box 2434, Brisbane, Queensland 4001, Australia. Email: e.dickson@qut.edu.au

system find themselves back within the state sector. The state has a watching brief, however, on what happens in the independent sector as principals of independent schools may be obliged to provide access to school attendance data so as to ‘help ... an authorised person to decide whether or not a parent is contravening [the legislation]’.¹

While there is anecdotal evidence that truancy is a significant problem for Queensland schools it has, until recently, been difficult for members of the Australian public to access data capable of confirming that position. In May 2010, however, the Queensland Government released comprehensive student attendance statistics for its state schools if not for the first time, then for the first time in a very long time. These statistics do reveal that Queenslanders are right to be concerned that too many children and young people are disengaged from the education system. It must be conceded at the outset that, at least in recent times, truancy has come to be seen as an educational and social issue as much as, and perhaps more than, a legal one. As such, legislative measures to control it are merely part of a suite of measures. They are a part, however, which has come to be so rarely called upon to address the Queensland truancy problem, that it is fair to examine what role they actually play and whether, even, they are necessary at all.

II THE QUEENSLAND TRUANCY PROBLEM

Truancy in Queensland schools receives continual media attention as the Queensland Government struggles to contain what appears to be a continuous decline in school attendance.² We cannot be sure, however, of exact numbers of ‘unexplained absences’ because the Government has steadfastly maintained a line of talking in terms of ‘attendance rates’ rather than ‘truancy rates’. Any figures it reveals have not distinguished between students absent from school for genuine reasons and those truanting. The most recent figures from the Queensland Department of Education and Training (DET) show that state wide attendance rates are steadily declining: 91.8 per cent in 2007, 91.1 per cent in 2008 and 90.7 per cent in 2009.³ The more comprehensive school by school attendance figures released in May 2010 relate to Semester 1, 2009 and allow us, for the first time, to identify particular schools and localities where the attendance rate is so low that the only reasonable assumption is that truancy is a particular challenge. More than 25 percent of state schools had attendance rates of less than 90 percent, twenty schools had rates of less than 80 percent and the lowest rate was 56.2 percent at Urandangi State School.⁴ The worst performing schools were all located in indigenous communities or in disadvantaged communities on Brisbane’s southern and western outskirts.⁵ These figures are consistent with more informal reports from 2009 of a ‘growing problem’ of truancy in these areas.⁶

Launching a new truancy policy approach in October 2008, then Education Minister, Rod Welford, gave some insight into the extent of the problem by explaining that an attendance rate of 92 percent equated to each Queensland student missing 18 days of school each year.⁷ Mr Welford accepted, however, that, ‘[m]ost students only take a few days off each year due to illness or family reasons. So obviously there are some students who are absent a lot more days than the average’.⁸

A *Queensland Truancy Law Reform*

Queensland truancy laws were updated in 2006 as part of a new *Education (General Provisions) Act 2006* (Qld) (*Education Act*).⁹ The laws will be explained in detail, below. It is worth noting at the outset, however, that two particularly significant changes were introduced under the new *Education Act*. First, ‘cracking down on parents out of touch with their child’s schooling

attendance',¹⁰ penalties were doubled for parents who did not meet their obligations to see that their children attended school.¹¹ The maximum penalty available for a truancy offence is now 12 penalty units, \$1200. Secondly, the new Act changed the period of compulsory involvement in education. Before the changes, a Queensland child could leave school upon turning 15. The current position is that a child must be 'earning or learning' until the age of 17. This change was to address concerns that under the old regime, 'at least' 10 000 young Queenslanders aged between 15 and 17 were languishing in unemployment queues having left school without completing Year 12.¹² Department of Education and Training statistics were that while 34 per cent of 15-17 year olds were in full time employment in 1981-1982, only 8.4 percent were in full time employment in 2001-2002. Across the same period, part time employment increased from 15 percent to 36.2 percent,¹³ but this number, of course, included students attending school. The inference drawn from the statistics was that too many young people were:

not in school, not in training and not in any kind of substantial work [and]... [t]he future is bleak for most of these people unless better ways are found to help them re-engage in learning to gain the skills and qualifications needed to survive and prosper in today's society.¹⁴

B Queensland Truancy Laws in Detail

In Queensland a child is of 'compulsory school age' from the age of 6 years and 6 months until he or she turns 16,¹⁵ or completes Year 10.¹⁶ The *Education Act* obliges parents¹⁷ to ensure that their children attend school during the compulsory phase of education. Parents must ensure their children are enrolled,¹⁸ and attend,¹⁹ or face prosecution. The maximum penalty is, for a first offence, 6 penalty units (\$600) and for a subsequent offence, whether or not it relates to the same child, 12 penalty units (\$1 200).²⁰ Parents are excused compliance with the legislation, if they have a 'reasonable excuse'.²¹ The Act indicates that a reasonable excuse will encompass the situation where the parent does not have day to day responsibility for the child, and believes, on 'reasonable grounds', that the other parent is seeing that the child attends school.²² Significantly, it also indicates that a reasonable excuse will encompass the situation where the parent is 'not reasonably able to control the child's behaviour to the extent necessary to comply' with the Act.²³

Parents may seek an exemption for a 'stated' or 'indefinite' period.²⁴ The laws do not apply when a child is registered for home schooling²⁵ or suspended or excluded.²⁶ The laws do not apply when a child has a contagious disease²⁷ or is otherwise ill, unless the period of absence associated with the illness exceeds 10 days, in which case a parent must apply for an exemption.²⁸ Exemptions, generally, may be granted if a child 'cannot attend' school or 'it would be unreasonable in all the circumstances to require the child to attend'.²⁹

As noted, above, a very important change introduced by the *Education Act* is the extension of the period of compulsory education. A 'compulsory participation in education or training'³⁰ stage commences after the 'compulsory schooling'³¹ phase. During this phase, a 'young person', to adopt the terminology of the Act,³² must complete up to a further two years of education, training or work.³³ This phase ends when the young person turns 17 or gains a Senior Certificate or a Certificate III vocational qualification.³⁴ As with the compulsory schooling phase, parents must, unless they have a reasonable excuse,³⁵ meet their obligation under the act to ensure the attendance of their child or face prosecution.³⁶ A similar penalty regime also applies: 6 penalty units for a first offence and 12 penalty units for subsequent offences.³⁷ Similar exemptions for illness,³⁸ for suspension or exclusion³⁹ and for home schooling are available.⁴⁰ The laws also

do not apply, however, if a young person is in paid employment (25 hours or more a week)⁴¹ or participating in an employment skills development program.⁴² It is also important to note that during the compulsory participation phase of education, a young person him or herself, as well as a parent, may seek an exemption from the attendance requirements under the Act.⁴³

Before the parent of a truant may be prosecuted for an offence under the Act, various notice and meeting provisions are prescribed by the Act. The steps towards prosecution are essentially the same for both the compulsory schooling and compulsory participation phases of education:

- A notice to the parent is issued outlining the obligation under the Act to ensure attendance of their child;⁴⁴
- The parent may be required to attend a meeting to discuss the truancy;⁴⁵
- If a meeting is scheduled, ‘reasonable steps’ must be taken to ensure the parent attends;⁴⁶
- If the parent does not attend a meeting as required, a further notice, a ‘warning’ notice may be given;⁴⁷ and
- If the parent has failed to attend a required meeting, and has been warned, a prosecution may be commenced with the consent of the ‘chief executive’.⁴⁸

It should be noted that the truancy notice provisions in the *Education Act* are a series of ‘may’ provisions. The effect of this is that if, at any stage in the process, the child’s attendance is restored, the progression towards prosecution is short-circuited.

C Implementation of the Education Act by the Queensland Department of Education and Training

DET policies informed by the Act actually allow even more opportunities for a parent to comply with the legislation, than the legislation itself, before referring the matter for prosecution. Under the policy,⁴⁹ the laws are only engaged in respect of ‘regular or persistent unexplained absences or absences where reason given is considered unsatisfactory’ and ‘after the failure of ‘informal and personal approaches with student and parent’.⁵⁰ If the truancy persists, more formal steps will be taken, but still outside the legislative framework. Legislative provisions are engaged only after the failure of significant informal and formal attempts to ensure compliance. In summary, the departmental approach is as follows:⁵¹

- Informal attempts to resolve absenteeism;
- Written letter containing an invitation to discuss the absenteeism;
- If attendance still unsatisfactory one week later, written letter containing an invitation to attend a meeting;
- If attendance still unsatisfactory one week later, notice issued under the Act and ‘reasonable steps’ taken to meet parent;
- If no meeting held and attendance still unsatisfactory one week later or if meeting held and attendance still unsatisfactory one week later, warning notice issued under the Act of intention to refer the matter for prosecution; and
- If attendance still unsatisfactory one week later, matter referred for prosecution.

Note that throughout the process, a school should be ‘regularly attempting to contact parents and offering other avenues of support’.⁵² Note, too, that the timelines specified are a ‘general guide’.⁵³ The timelines anticipate, however, a minimum of 5 weeks of failed negotiations between school and parent before a matter is referred for prosecution.

It must be acknowledged, then, that DET legislative measures to combat truancy are part of a wider suite of measures. The department's current approach to managing truancy in its schools is the 'Every Day Counts' initiative which was launched in October 2008:⁵⁴

Every Day Counts is a state-wide initiative addressing the issue of student attendance at school. The initiative is designed to change parent, community and student attitudes to school attendance. It requires the support of both parents and the community if student attendance is to be successfully addressed.⁵⁵

The policy acknowledges that '[t]here is no quick and simple solution, nor a "one-size-fits-all" approach to improving school attendance'.⁵⁶ It is interesting that the policy positions truancy as a community problem — 'attendance at school is the responsibility of everyone in the community'⁵⁷ — while the laws position it as a parental problem. Strategies implemented are certainly directed at improving parent attitudes, but also at student and community attitudes. In recent times schools in the state system have experimented with a variety of programs to reduce truancy from appointing 'truancy officers' to track down missing children,⁵⁸ to breakfast clubs⁵⁹ and even reward vouchers.⁶⁰

D *Improving School Enrolment and Attendance through Welfare Reform Measure (SEAM)*

The Queensland Government agreed in late 2009 to be part of the Commonwealth Improving School Enrolment and Attendance through Welfare Reform Measure (SEAM) pilot program. SEAM does not reduce or replace 'the primary responsibility of state and territory education authorities to respond to truancy issues'.⁶¹ It is intended as 'an additional tool to help resolve intractable cases of no enrolment or poor attendance'.⁶² At time of writing, it is not clear from the legislation, and the pilot has not been in operation for sufficient time to determine from the evidence of the scheme's implementation, whether the SEAM penalty regime is an alternative to or additional to the penalty regime in a state act, such as the *Education (General Provisions Act) 2006* (Qld). There has been some criticism, however, that the program inappropriately relieves the pressure on state governments to take action to solve the truancy problem.⁶³

The SEAM program, which affects around 2000 families, commenced in Queensland in first term 2010 in thirty schools located across the Logan area on Brisbane's south eastern outskirts, and the indigenous communities of Doomadgee and Mornington Island.⁶⁴ It is fair to say that these are areas of community disadvantage, but this is, arguably, necessary to the scheme as the signal feature of SEAM is that it allows for the quarantining of welfare payments to parents of persistent truants. Therefore, the trial locations need to be communities with a high incidence of welfare dependency. SEAM is part of a tranche of 'welfare conditionality'⁶⁵ reforms authorising not only welfare quarantining but also income management and designed 'to foster responsibility and to provide a platform for people to move up and out of welfare dependence'.⁶⁶ It is related to, for example, and has perhaps been inspired by, a similar joint venture between the Queensland Government and the Federal Government and the Cape York Institute for Policy and Leadership, the Cape York Welfare Reform Trial (CYWRT) which has been running in 4 indigenous Cape York communities⁶⁷ since 2008. The CYWRT is due to finish in 2012. That trial provides for welfare management orders to be issued where individuals 'breach their welfare responsibilities'.⁶⁸ Truancy is just one of a series of triggers⁶⁹ which may give rise to an intervention. Impact on truancy has been mixed with most recent reports indicating that attendance has increased since 2007 in two communities and decreased since 2007 in two communities.⁷⁰ It is interesting that

the Queensland SEAM trial, for the first time, expands a welfare management approach beyond indigenous communities and into Queensland's urban heartland.

The Commonwealth Government has sought to justify its intrusion into truancy law, which has traditionally, and perhaps, constitutionally,⁷¹ been regarded as a state responsibility, by claiming that truancy undermines the potential for success of its core education policy, the 'Education Revolution'. The Government's focus on education is interrelated with its focus on welfare reform in that education is regarded as the pathway away from unemployment, welfare dependency and criminality:

We cannot have an Education Revolution and give every Australian child a world class education if they are not going to school.

We will not be able to improve literacy and numeracy, increase the Year 12 retention rate or close the unacceptable gap between Indigenous and non-Indigenous education outcomes if kids are not turning up to class.

We know that students who are regularly absent from school are those at greatest risk of dropping out of school early, becoming long-term unemployed, dependent on welfare and interacting with the criminal justice system.

We know that the majority of parents do the right thing by making sure their children go to school everyday, but for those who don't, their kids are missing out and this is not acceptable.⁷²

Like the Queensland legislation, under SEAM parents are responsible for ensuring the attendance at school of their children and parents are penalised if they fail to do so. Whereas under the Queensland legislation, the penalty for non-compliant parents is a fine, under SEAM the penalty is suspension of social security payments. Like the Queensland legislation, the policy behind SEAM is to modify parental behavior in order to benefit children. The implication is, of course, that attendance at school improves educational outcomes and life prospects. The clear ambition of the Commonwealth is to sever what it claims to be 'the established link between low educational outcomes and a number of undesirable outcomes such as increased likelihood of welfare dependency, unemployment and in some cases involvement in the criminal justice system'.⁷³

SEAM does not explicitly impose a regime of compulsory attendance; instead it relies on individual schools reporting that students,⁷⁴ and their parents,⁷⁵ are not compliant with the state attendance laws. Once a school has so reported, a series of ramifications unfolds. First, an 'attendance notice' may be issued to the parent 'requiring the [parent] to take reasonable steps ... to ensure that the child attends school as required by the law of that State or Territory'.⁷⁶ The notice must allow a period for the parent to comply of 'at least 28 days after the notice is given'.⁷⁷ There is a discretion to extend the initial compliance period allowed.⁷⁸ If the compliance period expires without compliance being demonstrated, a social security payment ('schooling requirement payment'), which would otherwise be payable to the parent, will not be payable.⁷⁹ Payments may be suspended more than once.⁸⁰ Payments withheld may be returned, if a parent complies with the attendance requirements within a 13 week period.⁸¹ There is the facility, however, for a noncompliant parent's withheld payments to be cancelled altogether.⁸² Explanatory material⁸³ accompanying the introduction of the trial suggests that cancellation would be an 'extreme measure'⁸⁴ and would be considered only when other interventions, such as restoring withheld payments and suspending payments for a further period and referring the affected family to Commonwealth or State support service.⁸⁵ The government department responsible

for administering the scheme, the Department of Families, Housing, Community Services and Indigenous Affairs, has also sought to reassure the public that ‘where a child has unsatisfactory school attendance despite the best efforts of their parents to work with the school to resolve this, no suspension of payments will occur’.⁸⁶

III THE UTILITY OF LEGISLATIVE SOLUTIONS TO TRUANCY

It is clear that truancy is a persistent problem despite the existence of legislation authorising the imposition of penalties on parents who do not ensure that their children attend school. Indeed, truancy seems to have increased in Queensland since the penalties under the *Education Act* were doubled in 2006. One reason for this disconnect must be that the laws allowing prosecutions are only rarely implemented. This suggests that they create a regime designed to deter as much as to punish. This suggests, also, that there is a residual reluctance to prosecute parents, which in turn suggests some underlying concern that to prosecute parents may not be an apt solution to the problem. It is appropriate, at this point, to examine these issues relevant to the utility of legislative solutions to truancy in a little more detail.

A Prosecutions under the Education Act 2006 (Qld)

Just as the Queensland Government has been hesitant to release comprehensive truancy data, it has also been hesitant to release data relating to the prosecution of parents for failing to discharge their obligations under the *Education Act*. While it may be true that in Queensland, ‘[i]n the old days information simply went from the school to the truancy inspectors and the inspector brought prosecutions’,⁸⁷ the anecdotal evidence is that prosecutions are now extremely rare. One parent was prosecuted in 2006. He or she pleaded guilty and was placed on a good behavior bond. No conviction was recorded.⁸⁸ In July 2009, media attention was focused on the fact that police had commenced proceedings against the parents of a boy from Tully, in far North Queensland, who was absent from school without excuse on over 300 occasions over a two year period.⁸⁹ The outcome of that prosecution has not been publicised but its novelty was evident in that it was described as a ‘landmark case under the state’s new truancy laws’.⁹⁰

B Welfare Quarantining under SEAM

Unlike the Queensland Government, the Federal Government has shown some willingness to follow through on threats of penalties. In April 2010 it was reported that 121 Queensland parents had been contacted under the scheme and compliance notices were issued to 27 but no suspensions had occurred.⁹¹ Jenny Macklin, Federal Minister responsible for the implementation of the pilot, told the *Courier Mail* newspaper that:

[the] objective is to get the kids to school ... That’s what we’re on about. So if we can get them to school without suspending their parents’ payments, obviously we prefer to do that. But in the end, if parents don’t get the message, then obviously that (suspending payments) is what will happen.⁹²

The first instances of welfare suspensions under the Queensland SEAM trial have now occurred. As at 10 September, 2010, 45 parents in Queensland had had their income support suspended for failing to ensure the regular school attendance of their children. There is no detail available as yet as to whether the suspensions occurred in the urban or remote indigenous

communities involved in the trial or as to whether the interventions have improved school attendance generally in the trial areas.

C The Approach in Other Australian Jurisdictions

Queensland is not the only Australian state to avoid prosecuting parents. While pressure is mounting for governmental action on truancy in Victoria, for example, there is anecdotal evidence that truancy fines available under current education legislation in that state have never been enforced.⁹³ The maximum fine in Victoria is linked to the duration of the absence: 1 penalty unit (currently \$119.45)⁹⁴ per day.⁹⁵ There are similar calls for truancy law reform and a campaign of prosecutions in South Australia. The South Australian education minister revealed in 2009 that only six parents had been prosecuted in the preceding 25 years.⁹⁶ In South Australia the maximum penalty is \$500.⁹⁷ In Western Australia, a truancy prosecution was brought for the first time in February 2010. A man whose two daughters were absent from school for more than nine months was prosecuted under the *School Education Act 1999* s 38 which provides for a maximum penalty of \$1000. He was not fined but was ordered to pay more than \$2 000 in costs and placed under a conditional release order.⁹⁸ In Tasmania, prosecutions are a ‘last resort’ and only six parents were prosecuted for truancy offences between 2005 and June 2009.⁹⁹ In Tasmania the maximum penalty is 10 penalty units¹⁰⁰ (currently \$130)¹⁰¹. The Northern Territory government has admitted that it does not enforce truancy laws.¹⁰² In the Northern Territory the current maximum penalty is \$266 (2 penalty units).¹⁰³ In the ACT, where the maximum penalty of 10 penalty units (\$1 100)¹⁰⁴ is the same as Queensland, the first, and, it appears, only prosecution under the current Act took place in 2009.¹⁰⁵ The ACT Minister for Education has claimed, however, that compared with the rest of Australia, ‘overall there are not any particularly alarming, high levels of truancy in the ACT’.¹⁰⁶

It is interesting to note, in contrast, that truancy prosecutions are not uncommon in New South Wales. Indeed, in 2009, 658 matters were referred for legal action resulting in 108 fines.¹⁰⁷ Not only is the threat to prosecute acted upon, the maximum penalty which may be imposed was increased in 2009, in dollar terms, from \$1 100 to \$11 000 (100 penalty units¹⁰⁸), an amount nearly 10 times higher than that available in Queensland. Moreover the NSW laws now allow for the imposition of a community service order instead of a fine.¹⁰⁹ When the truancy reform laws¹¹⁰ were introduced into New South Wales Parliament in April 2008, the then Premier, Morris Iemma, said, ‘We want to give our children every opportunity in life and the twin building blocks are good parenting and a good education ... This is about parental responsibility’.¹¹¹

D Prosecutions as a Deterrent

Prosecutions, and the imposition of penalties, are seen as a ‘last resort’ in Queensland. This ‘last resort’ rhetoric has been repeated by Queensland education department officials,¹¹² school principals¹¹³ and police prosecutors.¹¹⁴ Despite the recent spate of welfare interventions under SEAM, the Commonwealth Government too is committed to penalising only as a last resort:

Temporarily withholding a parent’s income support will be a last resort. This will only occur when the parent has failed, despite help from the school and Centrelink, to exercise parental responsibility.¹¹⁵

It is self evident, perhaps, that laws which impose penalties for non-compliance are intended to deter as well as, or even rather than, to punish.¹¹⁶ The threat of punishment is intended to encourage compliance so as to avoid the penalty. This is clearly the policy behind truancy laws

which impose a penalty only after various other means of encouragement towards stimulating ‘parental responsibility’¹¹⁷ have been exhausted. The evidence of the entrenched truancy problem in Queensland, however, suggests that in order to maintain the poignancy of the threat, the effectiveness of the deterrent, it may be necessary that some parents *are* prosecuted so that all parents are made aware that there are real consequences which flow from a failure to obey the law. Parents who ‘flout’ the law are held to account and, moreover, a warning message reverberates through the community.

There is some evidence from NSW that prosecutions may improve attendance. A New South Wales Department of Education and Training report indicates that school attendance rates in New South Wales were stable from 2004–2009 with approximately 92 per cent of government school students at school each school day.¹¹⁸ Other Government figures suggest that, under the old regime of lower fines, ‘in around 50 per cent of cases, attendance improves in the three months following a conviction’.¹¹⁹ This is some evidence that prosecutions work to improve the attendance of the children of those prosecuted, but not necessarily that they work to improve attendance figures generally. The increased penalties introduced in 2009 are aimed at improving the ‘50 percent’ result for the children of parents prosecuted and school attendance generally.¹²⁰ They are intended, therefore, as a harsher penalty and as a bigger threat and as a more effective means of changing parental behaviour. If the figures do improve in New South Wales after 2009, there will be some evidence to suggest that higher penalties are a more effective means of reducing truancy.

There has been some demand in Queensland for it to adopt a tough approach in line with that adopted in NSW. Whilst not clearly articulated, the rationale seems to be that parents must ‘get the message’ about or be held ‘accountable’ for their children’s antisocial behaviour. Eminent Australian indigenous educator, Chris Sarra,¹²¹ while reiterating the ‘last resort’ message, is of the view that ‘prosecuting parents ... will help’;¹²² ‘[u]ltimately there are some parents who actively disengage from schools and they’ve got to be held to account in a way that any other Australian parent is’.¹²³ The Queensland Association of State School Principals also regards prosecutions as necessary to the effectiveness of truancy laws: ‘We believe prosecutions should happen. We don’t want to make the kid the victim in all of this’.¹²⁴ Then federal Opposition families spokesman and now Opposition leader, Tony Abbott has argued that ‘[t]he simple and straightforward way to get the message out that parents have a responsibility to send their kids to school is to renew the long-standing Australian practice of truancy prosecutions’.¹²⁵ DET Queensland has reportedly suggested increasing fines again and the implementation of a streamlined approach to prosecutions implying a renewed interest, perhaps, in prosecuting parents.¹²⁶

E The Reluctance to Prosecute

Underpinning the reluctance to prosecute, perhaps, is an intuition that do so is a flawed solution to truancy. Stepping up penalties on paper without actually enforcing them may be nothing more than rhetoric designed to respond to the popular perception that governments need to ‘get tough on truancy’. Government is, or should be, aware, however, that there are potential problems with punishing parents in order to benefit children. First, in that truancy laws penalise parents, they are built on an assumption that parental failure is the cause of truancy. Secondly, punishing parents may entrench the disadvantage and dysfunction that research has demonstrated is associated with truancy.

In a revealing and personal recent interview, a Minister in the Victorian Government touched on these problems as informing his reticence to support an Opposition push to strengthen truancy laws in that state:

Gavin Jennings, Minister for the Environment, Climate Change and Innovation, says the power to punish parents already exists, but he believes its use would be damaging to low-income families in the long run.

He said he was forced to stay home once when he was a child because there wasn't enough food in the house.

Mr Jennings said his parents were too embarrassed to send their children to school without lunch.

'Fining my family \$116, which is the current penalty that's available, would in fact have only made our problems worse,' he said.

Mr Jennings said there was power under the Education Act [Victoria] to slap parents with fines but he wondered whether that law should be used.

'From time to time you think up powers and ways in which you can enforce that,' he said. 'The power does exist. Is it a wise power?'¹²⁷

The assumptions underpinning truancy penalties like those in the Queensland *Education Act* and SEAM may be baldly stated as follows: bad parenting causes truancy and punishing bad parenting will produce good parenting and prevent truancy. While bad parenting may be a cause of truancy, it is naïve at best, and dangerous at worst, to attribute anti-social behavior to any one cause. As stated at the outset, a comprehensive survey of the causes of truancy is beyond the scope of this paper. Suffice it to say, that it is well established that anti social behavior in the young may result from poverty, drug abuse, educational failure, mental illness, bullying, boredom, conflict, fear as well as 'bad parenting'.¹²⁸ The trouble with punishing 'bad parenting', however, is that it may exacerbate or entrench other causes of truancy. SEAM, particularly, in that it explicitly targets families which are clearly already disadvantaged, has attracted strong criticism on this basis:

The rhetoric of blaming the parents is evident in public discourse, such as the proposed new truancy laws which may prevent families from receiving social welfare if their children are not attending school. Further support should be made available to these families, which does not involve punitive measures such as restricting payments or creating further division for families. Punishing parents for the inimical behaviour of their children, which may be the result of a fatality in the family, or being a victim of family violence, is counter productive.¹²⁹

Legislators need to be concerned about the impact of the suspension or cancellation of income support payments on families who are more likely to live in circumstances of relative, if not acute, disadvantage. In the absence of sound evidence about the effectiveness of payment suspension in inducing behavioural change what will be the impact on parents and children when income support is withdrawn? How do these unintended impacts improve the likelihood of improved school attendance or do they amplify risks?¹³⁰

Government support for a multifaceted approach to solving truancy may amount to implicit acknowledgment that the causes of truancy are more complex than bad parenting. Moreover, government reluctance to prosecute parents may amount to implicit acknowledgment that penalising parents may ultimately penalise their children. As Gavin Jennings, Victorian Minister for the Environment explained, '[f]ining my family \$116, which is the current penalty that's available, would in fact have only made our problems worse'.¹³¹

IV CONCLUSION

While an intuition that penalising parents may cause more harm than good is likely to be a factor behind the reluctance to prosecute parents for the truancy of their children it may also be the case that policy makers suspect that penalising parents does not work. Former Queensland Education Minister, Rod Welford, has been blunt in expressing the reasoning behind his reluctance to invest in prosecution as a solution to truancy:

My interest is in doing what is effective to get students to attend and not expending resources on expensive prosecution if that's not in fact going to result in high levels of student attendance.¹³²

Can it be established that prosecutions and penalties work to reduce truancy? Despite the NSW evidence canvassed above, it could be argued that any evidence that fines, low or high, are effective strategies to change parental behaviour will inevitably be muddied by the fact that legislative remedies co-exist with other strategies designed to reduce truancy. This is a problem with assessing the value of legislative remedies in any jurisdiction. In NSW, of the 658 matters referred for legal action in 2009, 205 were withdrawn. DET (NSW) acknowledges that a reason for withdrawal of charges is that 'attendance improves'.¹³³ Did attendance improve because of the legal action or because of other support mechanisms in place? NSW employs 110 Home Attendance officers, for example, to assist parents to develop strategies to comply with their obligations.¹³⁴ Similarly, DET Queensland policy is that '[t]he process of engagement with parents continues even after a recommendation to prosecute is made'.¹³⁵ In the SEAM pilot the emphasis is on utilising other interventions to support parents and children contemporaneously with the mandated steps towards welfare quarantining.¹³⁶ Communities involved in the CYWRT which have demonstrated good attendance figures since the implementation of the welfare reform trial, have been praised also for their creative experiments in improving student engagement — experiments which involve the giving rather than the removing of support and welfare.¹³⁷ How does one separate out those parents who get their children to school as a result of the threat of prosecution and penalty, or of lost income, from those who do so as a result of counselling and support, or innovative engagement strategies, or incentives? Queensland schools have proved innovators in developing programs to increase engagement and reduce truancy, and to improve the educational outcomes of their students without further compromising fragile family dynamics.¹³⁸ If the law is to continue to play a role in the management of truancy, there is a need for Australian primary research, exploring not just Australian contexts but international research evidence on how law can intersect with other strategies to provide effective intervention for student truancy.

Keywords: Queensland; truancy; education law; welfare conditionality.

ENDNOTES

- 1 *Education (General Provisions) Act 2006* (Qld) ('*Education Act*') ss 180(1),(2)(c).
- 2 See, eg, the following examples from 2009: Rosemary Odgers, 'School Wagging on the Rise', *The Courier Mail* (Brisbane) 19 January 2009, 5; Tanya Chilcott, 'Parents Face Truancy Action', *The Courier Mail* (Brisbane), 11 April 2009, 7; Tanya Chilcott, 'No Skipping School Days — Campaign Lowering Absenteeism', *The Courier Mail* (Brisbane), 16 July 2009, 25; Leanne Edmestone and Melanie Christiansen, 'Truancy Overkill Warning — "Don't Punish Parents"', *The Courier Mail* (Brisbane), 19 September 2009, 11; Sophie Elsworth, 'Police Crackdown Highlights Scale of Truancy Problem', *The Courier Mail* (Brisbane), 28 October 2009, 5.

3 Education Queensland, *Student Attendance Rates by Department of Education and Training Region, 2007-2009* <<http://education.qld.gov.au/schools/statistics/#1>> at 30 October 2010

4 The Education Department document containing the full list of schools is available through the website of *The Courier Mail* newspaper but, interestingly, not through its own website: <http://media01.couriermail.com.au/multimedia/2010/05/170510_truancy/truancy.pdf> at 10 June 2010. Attendance figures for individual Queensland schools and, indeed, for Australian schools in general, are now also available at the controversial 'My School' website: <http://www.myschool.edu.au/>

5 Brisbane is the capital city of Queensland.

6 Elsworth, above n 2; See also, for example, Edmiston and Christiansen, above n 2; Chilcott (July 2009), above n 2; Chilcott (April 2009), above n 2.

7 Rosemary Odgers, 'School Absentee Levels Targeted', *The Courier Mail* (Brisbane), 8 October 2008, 15.

8 Ibid.

9 Replacing *the Education (General Provisions) Act 1989* (Qld).

10 Queensland, *Parliamentary Debates*, Legislative Assembly, 7 June 2008, 2259 (Kerry Shine, Attorney General).

11 They increased again in dollar terms in 2008 when the dollar amount of penalty unit was increased from \$75 to \$100. See *Penalties and Sentences Act 1992* (Qld) s 5 (amd 2008 No. 66 s 3(2)).

12 Education Queensland, *Queensland the Smart State: Education and Training Reforms for the Future* (2002), 12.

13 Ibid.

14 Ibid 6.

15 *Education Act* s 9(1).

16 *Education Act* s 9(2).

17 The term 'parent' is defined in *Education Act* s 10(1) as mother, father or person 'who exercises parental responsibility for the child'. It does not cover a person who has only temporary responsibility for a child: s 10(2). A parent of an Aboriginal or Torres Strait Islander child includes a person who, under Aboriginal or Torres Strait Islander tradition, is regarded as a parent of the child: s 10 (3) and (4).

18 *Education Act* s 176(1)(a).

19 *Education Act* s 176(1)(b).

20 *Education Act* s 176.

21 *Education Act* s 176(1).

22 *Education Act* s 176(2)(a).

23 This point is addressed further, below.

24 *Education Act* s 186(1).

25 *Education Act* s 199.

26 *Education Act* s 200.

27 *Education Act* s 202.

28 *Education Act* s 201.

29 *Education Act* s 185.

30 See *Education Act* Chapter 10, heading.

31 See *Education Act* Chapter 9, heading.

32 See, eg, *Education Act* ss 231, 234, 236-9.

33 See *Education Act* s 232 for eligible options and providers for the purposes of the Act.

34 *Education Act* s 231(b).

35 *Education Act* s 239(1).

36 *Education Act* s 239(1).

37 *Education Act* s 239.

38 *Education Act* s 236.

39 *Education Act* s 239(2).

40 *Education Act* s 240(5).

41 *Education Act* s 240(2)(a).

42 *Education Act* s 240(3).

- 43 *Education Act* s 244.
- 44 *Education Act* ss 178(2), 241(2).
- 45 *Education Act* ss 178(3), 241(3).
- 46 *Education Act* ss 178(4), 242(4).
- 47 *Education Act* ss 178(4), 242(4).
- 48 *Education Act* ss 179, 242.
- 49 Department of Education and Training (Queensland), *SMS-PR-017: Enforcement of Compulsory Schooling and Compulsory Participation Phase* <<http://education.qld.gov.au/strategic/eppr/students/smspr017/>> at 10 June 2010.
- 50 See Education Queensland, *Flowchart B: Process for Persistent Truancy and Absenteeism — Compulsory Schooling* <<http://education.qld.gov.au/strategic/eppr/students/smspr017/flowchartb.doc>> at 10 June 2010; Education Queensland, *Flowchart C: Process for Persistent Truancy and Absenteeism — Compulsory Participation* <<http://education.qld.gov.au/strategic/eppr/students/smspr017/flowchartc.doc>> at 10 June 2010.
- 51 Ibid.
- 52 Ibid.
- 53 Ibid.
- 54 The Honourable Rod Welford, Minister for Education (Queensland), ‘“Every Day Counts” Campaign to Help Reduce Absenteeism’ (Press Release, 7 October 2008).
- 55 Education Queensland, *Every Day Counts* <<http://education.qld.gov.au/everydaycounts/>> at 10 June 2010.
- 56 Ibid.
- 57 Ibid.
- 58 Tanya Chilcott, ‘Worst Attended Schools Revealed in Queensland’, *The Courier Mail* (Brisbane), 17 May 2010.
- 59 Tanya Chilcott, ‘Radical Program is Changing Kids’ Lives’, *The Courier Mail* (Brisbane), 28 May 2010, 3.
- 60 Tanya Chilcott, ‘Incentives Give Truants an Option to Cash in’, *The Courier Mail* (Brisbane), 19 May 2010, 10.
- 61 Australian Government Department of Families, Housing, Community Services and Indigenous Affairs, *Improving School Enrolment and Attendance through Welfare Reform Measure (SEAM)* <<http://www.facs.gov.au/sa/families/progserv/welfarereform/Pages/ImprovingSchoolEnrolmentAttendance.aspx>> at 10 June 2010.
- 62 Ibid.
- 63 Emma Rodgers, ‘Prosecute Parents to Stop Truancy: Abbott’ *ABC News*, 29 September 2009 <<http://www.abc.net.au/news/stories/2009/09/22/2693255.htm>> at 10 June 2010.
- 64 The Hon Jenny Macklin MP, Minister for Families; Housing; Community Services and Indigenous Affairs, and Anna Bligh MP, Queensland Premier, ‘Increasing School Attendance and Enrolment in Queensland’ (Press Release, 18 September 2009). SEAM trials had already commenced at the beginning of 2009 in six locations in the Northern Territory: Hermannsburg, Katherine, Katherine Town Camps, Tiwi Islands, Wadeye and Wallace Rockhole.
- 65 The Hon Jenny Macklin MP and Warren Snowdon MP, ‘Major Welfare Reforms to Protect Children and Strengthen Families’ (Press Release, 25/11/2009).
- 66 Ibid. Other programs maintained as part of the reform agenda include the Northern territory Emergency Response (NTER) and the Cape York Welfare Reform Trial (CYWRT).
- 67 Aurukun, Coen, Hope Vale and Mossman Gorge.
- 68 Queensland Government, Department of Child Safety, *Cape York welfare reform and child protection: Information for parents and carers*.
- 69 Welfare responsibilities relate to a parent or carers failure to ensure a child’s safety and wellbeing; engaging in criminal conduct and domestic violence; failing to send a child to school; and breaching housing tenancy agreements. See Queensland Government, Department of Child Safety, *Cape York welfare reform and child protection: Information for parents and carers*.

- 70 See Family Responsibilities Commission (Qld), *Annual Report 2009-2010* <<http://www.atsip.qld.gov.au/government/families-responsibilities-commission/>> at 5 November 2010, 3.
- 71 The *Commonwealth of Australia Constitution Act 1901* (Cth) s 51 does not allocate power to make laws in respect of education to the Commonwealth. SEAM draws its constitutional validity from the social securities powers contained in s 51(xxiii), (xxiiiA).
- 72 The Hon Julia Gillard MP, Minister for Education, and The Hon Jenny Macklin MP, Minister for Families; Housing; Community Services and Indigenous Affairs, ‘School Enrolment and Attendance Legislation to be Introduced’ (Press Release, 25 August 2008).
- 73 Australian Government Department of Families, Housing, Community Services and Indigenous Affairs, *Improving School Enrolment and Attendance through Welfare Reform Measure (SEAM)* <<http://www.facs.gov.au/sa/families/progserv/welfarereform/Pages/ImprovingSchoolEnrolmentAttendance.aspx>> at 10 June 2010.
- 74 *Social Security (Administration) Act 1999* (Cth) s 124K(1)(b)(i).
- 75 *Social Security (Administration) Act 1999* (Cth) s 124K(1)(b)(ii). The Act uses the terminology ‘schooling requirement person’ to cover those persons, including parents, who may be responsible for a child’s attendance at school.
- 76 *Social Security (Administration) Act 1999* s 124K(2).
- 77 *Social Security (Administration) Act 1999* s 124K(4).
- 78 *Social Security (Administration) Act 1999* s 124K(5).
- 79 *Social Security (Administration) Act 1999* s 124L.
- 80 *Social Security (Administration) Act 1999* s 124M(3).
- 81 *Social Security (Administration) Act 1999* ss 124M, 124N.
- 82 *Social Security (Administration) Act 1999* s 124M(2).
- 83 Australian Government Department of Families, Housing, Community Services and Indigenous Affairs, *Improving School Enrolment and Attendance through Welfare Reform Measure (SEAM)* <<http://www.facs.gov.au/sa/families/progserv/welfarereform/Pages/ImprovingSchoolEnrolmentAttendance.aspx>> at 10 June 2010.
- 84 Ibid.
- 85 Ibid.
- 86 Ibid.
- 87 Tony Abbott, quoted in *ibid.*
- 88 Quoted in Rosemary Odgers and Emma Chalmers, ‘Truancy Buoyed by Failure to Enrol Children in School’ *The Courier Mail* (Brisbane), 6 April 2008.
- 89 Peter Michael, ‘Parents of Truant Teen Charged’, *The Courier Mail* (Brisbane), 15 July 2009, 4.
- 90 Ibid.
- 91 Melanie Christiansen, ‘Parents of Truants Put on Notice over Centrelink Payments’, *The Courier Mail* (Brisbane), 5 April 2010.
- 92 Ibid.
- 93 Matt Johnston, and John Masanauskas, ‘Minister Gavin Jennings Says Liberals’ Plan to Fine Parents if Children Cut Class Will Make Matters Worse for Low-Income Families’ *The Herald Sun* (Melbourne), 14 June 2010.
- 94 See *Monetary Units Act 2004* (Vic) s 6; Victoria, *Government Gazette*, No G 10, 11 March 2010, 449.
- 95 Education and Training Reform Act 2006 (Vic) s 2.1.2.
- 96 ‘Tougher Truancy Laws Planned in SA’ *ABC News*, 17 November 2009 <<http://www.abc.net.au/news/stories/2009/11/17/2744613.htm>> at 10 June 2009.
- 97 *Education Act 1972* (SA) s 76(3).
- 98 Joe Stolley and Bethany Hiatt, ‘Man Guilty of Not Schooling Daughters’, *The West Australian* (Perth), 4 February 2010.
- 99 Tasmania, *Question on Notice*, Legislative Council, 17 June 2009 (Doug Parkinson, Leader of Government Business in the Legislative Council) <<http://www.parliament.tas.gov.au/lc/dean/truancy-q.htm>> at 30 October 2010.
- 100 *Education Act 1994* (Tas) s 6(1).

- 101 Penalty Units and Other Penalties Act 1987 (Tas) ss 4, 4A; Department of Justice (Tasmania), Legislation Development and Review: Value of Indexed Amounts in Legislation <http://www.justice.tas.gov.au/legislation_review/value_of_indexed_units_in_legislation> at 30 October 2010.
- 102 Katrina Bolton, 'Truancy-Linked Welfare Trial "Ineffective"', ABC News, 18 September 2009 <<http://www.abc.net.au/news/stories/2009/09/18/2689913.htm>> at 10 June 2010.
- 103 *Education Act 2004* (ACT) s 17A(2); *Legislation Act 2001* (ACT) s 133(2)(a).
- 104 *Education Act* (NT) s 22A; *Penalty Units Regulations* (NT) s 3. The value of a penalty unit is indexed to the CPI for Darwin: *Penalty Units Act* (NT) s 5.
- 105 Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 22 September 2010, 4268, (Steve Dozspot).
- 106 Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 21 September 2010, 9 (Andrew Barr, Minister for Education and Training).
- 107 Department of Education and Training (NSW), *Enforcement of Compulsory School Attendance* <https://www.det.nsw.edu.au/detresources/Compulsory_school_attendance_LEAhSEOIAW.pdf> at 30 October 2010.
- 108 *Education Act 1990* (NSW) s 23(1)(c); *Crimes (Sentencing Procedure) Act 1999* (NSW) s 17.
- 109 *Education Act 1990* (NSW) s 23(5).
- 110 Education Act Amendment (School Attendance) Bill 2008 (NSW).
- 111 Quoted in Simon Benson, 'Parents Face Jail for Truant Kids under New Laws', *The Daily Telegraph* (Sydney), 1 April 2008.
- 112 Chilcott (April 2009), above n 2: 'An Education Queensland spokesman said that recommending a parent for prosecution over truancy was a "last resort".'
- 113 Julie Lightfoot, 'Bullying, DVDs Drive Boy to Wag 156 Times', *The Cairns Post*, (Cairns), 12 March 2010: 'Ms Sprott [Robin Sprott, Principal of Tully State High School] said prosecution was a "last resort".'
- 114 Peter Michael, above n 89, 4: 'Police yesterday described the charges as a "last resort" after the school allegedly made numerous attempts to reach out to the parents'.
- 115 Macklin and Bligh, above n 64.
- 116 See *Penalties and Sentences Act 1992 (Qld)* s 9(1)(a),(c).
- 117 Macklin and Bligh, above n 64.
- 118 New South Wales Department of Education and Training, *School attendance rates* (June 2010) <https://www.det.nsw.edu.au/media/downloads/reports_stats/attendance.pdf> at 19 June 2010.
- 119 New South Wales, *Parliamentary Debates*, Legislative Assembly, 23 September 2009, 18057 (Verity Frith, Minister for Education and Training).
- 120 Ibid.
- 121 Chris Sarra is currently Executive Director of the Stronger Smarter Leadership Program at Queensland University of Technology. The program is designed to support improvement in education outcomes for Indigenous students. See <<http://www.strongersmarter.qut.edu.au/leadership/program.jsp>> at 10 June 2010.
- 122 Quoted in Jess Brown, 'Will Tracking Truants Up Attendance', *ABC News* (Western Australia), 2 June 2010 <<http://www.abc.net.au/news/stories/2010/06/02/2916300.htm>> at 10 June 2010.
- 123 Ibid.
- 124 Paul Weston, 'Principals Call for Law to Address Truancy', *The Sunday Mail* (Brisbane), 10 August 2008.
- 125 Emma Rodgers, above n 63.
- 126 Tanya Chilcott, 'Parents Penalised by Centrelink to Stop Kids Skipping School', *The Courier Mail* (Brisbane), 7 October 2010.
- 127 Johnston and Masanauskas, above n 93.
- 128 For a comprehensive recent Australian review of the literature on youth offending generally see Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into Strategies to Prevent High Volume Offending and Recidivism by Young People: Final Report* (2009).

- 129 Submission to Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into Strategies to Prevent High Volume Offending and Recidivism by Young People*, September 2008 (Springvale Monash Legal Service).
- 130 Sally Cowling, 'Suspending Welfare Payments to Promote School Attendance: Strange Logic, Unlikely Outcomes and a Better Way' (Paper presented to the ACOSS National Conference, Sydney, 2-3 April 2009).
- 131 Johnston and Masanauskas, above n 93.
- 132 Quoted in Odgers and Chalmers, above n 88.
- 133 Department of Education and Training (NSW), *Enforcement of Compulsory School Attendance* <https://www.det.nsw.edu.au/detresources/Compulsory_school_attendance_LEAhSEOIAW.pdf> at 30 October 2010.
- 134 Ibid.
- 135 An 'Education Queensland spokesman' quoted Chilcott (April 2009), above n 2.
- 136 Australian Government Department of Families, Housing, Community Services and Indigenous Affairs, *Improving School Enrolment and Attendance through Welfare Reform Measure (SEAM)* <<http://www.facs.gov.au/sa/families/progserv/welfarereform/Pages/ImprovingSchoolEnrolmentAttendance.aspx>> at 10 June 2010.
- 137 Chilcott, above n 59.
- 138 See, eg, the initiatives referenced in above nn 58, 59, 60.