

Public Health Amendment (Immunisation Requirements for Enrolment) Bill 2019

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Western Australia

LEGISLATIVE COUNCIL

(As amended in Committee)

**Public Health Amendment (Immunisation
Requirements for Enrolment) Bill 2019**

A Bill for

***An Act to amend the *Public Health Act 2016* and the *School
Education Act 1999*.***

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Public Health Amendment (Immunisation Requirements for Enrolment) Act 2019*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1, Part 2 (other than sections 4 to 12) and Part 3 (other than sections 14 to 22) — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

Part 2 — Public Health Act 2016 amended

3. Act amended

This Part amends the *Public Health Act 2016*.

4. Section 4 amended

(1) In section 4(1) delete the definitions of:

child care service

school

(2) In section 4(1) insert in alphabetical order:

child care service —

(a) means —

(i) an education and care service as defined in the *Education and Care Services National Law (Western Australia)* section 5(1); or

(ii) a child care service as defined in the *Child Care Services Act 2007* section 4;

but

(b) does not include a child care service prescribed for the purposes of this definition;

community kindergarten means a kindergarten registered under the *School Education Act 1999* Part 5;

compulsory education period has the meaning given in the *School Education Act 1999* section 6;

school means a government school, or a non-government school, as defined in the *School Education Act 1999* section 4;

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1 ***urgently notifiable infectious disease-related***
2 ***condition*** means a notifiable infectious disease-related
3 condition declared under section 91 to be an urgently
4 notifiable infectious disease-related condition;
5

6 **5. Section 91 amended**

7 (1) Delete section 91(1) and insert:
8

9 (1) In this section —

10 ***acute rheumatic fever*** means an illness caused by an
11 autoimmune response to a bacterial infection with
12 group A streptococcus (GAS);

13 ***rheumatic heart disease*** means damage to the heart
14 resulting from an episode, or more than one episode, of
15 acute rheumatic fever.

16 (1A) The regulations may —

- 17 (a) declare a medical condition, other than a
18 notifiable infectious disease, to be a notifiable
19 infectious disease-related condition; or
20 (b) declare a notifiable infectious disease-related
21 condition to be an urgently notifiable infectious
22 disease-related condition.
23

24 (2) In section 91(2) after “disease-related condition” insert:
25

26 or an urgently notifiable infectious disease-related condition
27

1 (3) After section 91(2) insert:

2

3 (3) The following medical conditions cannot be declared to
4 be a notifiable infectious disease-related condition or
5 an urgently notifiable infectious disease-related
6 condition —

7 (a) acute rheumatic fever;

8 (b) rheumatic heart disease.

9

10 **6. Section 94 amended**

11 Delete section 94(4)(a) and insert:

12

13 (a) as soon as is practicable, and in any event —

14 (i) in the case of an urgently notifiable
15 infectious disease or an urgently
16 notifiable infectious disease-related
17 condition, within 24 hours; or

18 (ii) in the case of any other notifiable
19 infectious disease or notifiable
20 infectious disease-related condition,
21 within 72 hours;

22 and

23

24 **7. Section 135 amended**

25 Delete section 135(2)(b) and insert:

26

27 (b) if the affected person or exposed person is
28 believed to be attending, or to have attended, a
29 school, community kindergarten, child care
30 service, university or other educational
31 institution, a teacher, lecturer, or other member
32 of staff of the school, community kindergarten,

s. 8

1 child care service, university or educational
2 institution;
3

4 **8. Part 9 Division 8 replaced**

5 Delete Part 9 Division 8 and insert:
6

7 **Division 8 — Immunisation status of children**

8 **Subdivision 1 — Preliminary**

9 **141A. Terms used**

10 In this Division —

11 ***Australian Immunisation Register*** means the register
12 called the Australian Immunisation Register kept under
13 the *Australian Immunisation Register Act 2015*
14 (Commonwealth) section 8;

15 ***child*** means a person who is under 18 years of age;

16 ***current***, in relation to an immunisation certificate for a
17 child, means a certificate issued not more than the
18 prescribed period before —

19 (a) the most recent date of an application for
20 enrolment of the child in a school, community
21 kindergarten or child care service; or

22 (b) the day on which the certificate is otherwise
23 required to be provided under this Act;

24 ***exempt child*** means a child who is in a class of
25 children prescribed by the regulations for the purposes
26 of this definition;

27 ***immunisation certificate*** means —

28 (a) an extract of an entry in the Australian
29 Immunisation Register; or

(b) a certificate issued by the Chief Health Officer under section 141C(1); or

(c) a document declared to be an immunisation certificate under section 141C(4);

immunisation status means the status of —

(a) having been immunised against, or having acquired immunity by infection from, all or specified vaccine preventable notifiable infectious diseases; or

(b) not having been immunised against, and not having acquired immunity by infection from, all or specified vaccine preventable notifiable infectious diseases;

person in charge, of a school, community kindergarten or child care service, means the person who has responsibility for the day-to-day management and control of the school, community kindergarten or child care service;

responsible person, in relation to a child, means —

(a) a parent of the child; or

(b) a guardian of the child; or

(c) another person who has responsibility for the day-to-day care of the child.

Subdivision 2 — Immunisation requirements for enrolment

141B. Responsible person to give immunisation status to person in charge

(1) This section applies to a child enrolling in, or enrolled in, a school, community kindergarten or child care service.

(2) The responsible person for the child is required to give to the person in charge of the school, community kindergarten or child care service the immunisation

s. 8

- 1 status of the child as recorded on the current
2 immunisation certificate for the child —
- 3 (a) when the child is being enrolled in the school,
4 community kindergarten or child care service;
5 and
- 6 (b) at such other time or times as are prescribed by
7 the regulations.
- 8 (3) For the purposes of ensuring compliance with
9 subsection (2), the person in charge may require the
10 responsible person for the child to produce the current
11 immunisation certificate for the child.
- 12 (4) The person in charge must take all reasonable steps to
13 ensure that the responsible person for the child
14 complies with subsection (2).
- 15 Penalty for this subsection: a fine of \$1 000.
- 16 **141C. Immunisation certificates issued or declared by**
17 **Chief Health Officer**
- 18 (1) The Chief Health Officer may issue an immunisation
19 certificate for a child for the purposes of section 141B
20 if —
- 21 (a) the Chief Health Officer is —
- 22 (i) satisfied that a circumstance prescribed
23 by the regulations is applicable to the
24 child; or
- 25 (ii) otherwise satisfied that a special
26 circumstance is applicable to the child;
27 and
- 28 (b) the Chief Health Officer is satisfied that, but for
29 that circumstance, the child's immunisation
30 status would be up-to-date.
- 31 (2) An immunisation certificate issued under
32 subsection (1) remains in force for the period specified

in the certificate or, if no period is specified, for an indefinite period.

(3) The responsible person for a child may apply to the State Administrative Tribunal for a review of a decision by the Chief Health Officer to refuse to issue an immunisation certificate for the child under subsection (1).

(4) The Chief Health Officer may, by notice published in the *Gazette*, declare a document or a class of documents to be an immunisation certificate for the purposes of section 141B.

141D. Immunisation or exemption a condition of enrolment

(1) Unless a child meets a requirement of subsection (2), the person in charge of a school, community kindergarten or child care service must not permit the child to enrol in —

- (a) the school, before the child's compulsory education period; or
- (b) the community kindergarten; or
- (c) the child care service.

Penalty for this subsection: a fine of \$10 000.

(2) A child meets a requirement of this subsection if —

- (a) the immunisation certificate for the child states that the child's immunisation status is up-to-date; or
- (b) the immunisation certificate for the child states that the Chief Health Officer is satisfied that, but for a circumstance mentioned in section 141C(1)(a), the child's immunisation status would be up-to-date; or

s. 8

- 1 (c) the immunisation certificate for the child is a
2 document, or a document belonging to a class
3 of documents, declared to be an immunisation
4 certificate under section 141C(4); or
5 (d) the child is following a catch-up schedule
6 prescribed by the regulations; or
7 (e) the person in charge is satisfied that the child is
8 an exempt child.

9 **Subdivision 3 — Regulations relating to immunisation status**
10 **of children**

11 **142. Regulations relating to immunisation status of**
12 **children and control of disease**

- 13 (1) Without limiting section 304(1), regulations may —
14 (a) require the person in charge of a school,
15 community kindergarten or child care service,
16 when directed to do so by the Chief Health
17 Officer, to give a report to the Chief Health
18 Officer in respect of information given to the
19 person about the immunisation status of —
20 (i) a child enrolled at the school,
21 community kindergarten or child care
22 service; or
23 (ii) children enrolled at the school,
24 community kindergarten or child care
25 service;
26 and
27 (b) require the person in charge of a school,
28 community kindergarten or child care service,
29 when directed to do so by the Chief Health
30 Officer either when giving a direction under
31 regulations made under paragraph (a) or at a
32 later time, to give to the Chief Health Officer
33 further information necessary to assist in

1 preventing, controlling or abating a public
2 health risk that might foreseeably arise from a
3 child or children not being immunised against a
4 vaccine preventable notifiable infectious
5 disease, including —

6 (i) the names of, and other identifying
7 information in relation to, the child or
8 children; and

9 (ii) the names and contact details of the
10 responsible persons for the child or
11 children;

12 and

13 (c) in the case of a child at a school, community
14 kindergarten or child care service who has
15 contracted, or is reasonably believed to have
16 contracted, a vaccine preventable notifiable
17 infectious disease, require the person in charge
18 of the school, community kindergarten or child
19 care service to give to the Chief Health Officer
20 a report in respect of the child; and

21 (d) require the person in charge of a school,
22 community kindergarten or child care service,
23 when directed to do so by the Chief Health
24 Officer, to ensure that a child who has not been
25 immunised against a vaccine preventable
26 notifiable infectious disease specified by the
27 Chief Health Officer is not permitted to attend,
28 or participate in an educational programme of,
29 the school, community kindergarten or child
30 care service for the period specified by the
31 Chief Health Officer; and

32 (e) require the person in charge of a school,
33 community kindergarten or child care service,
34 when directed to do so by the Chief Health
35 Officer, to close the whole, or a part, of the

s. 8

1 school, community kindergarten or child care
2 service for the period specified by the Chief
3 Health Officer to limit or prevent the spread of
4 a vaccine preventable notifiable infectious
5 disease.

6 (2) Despite subsection (1)(a) and (b), the regulations may
7 provide that the person required to provide the relevant
8 report or information when directed to do so by the
9 Chief Health Officer is —

- 10 (a) the chief executive officer, as defined in the
11 *School Education Act 1999* section 229; or
12 (b) if the relevant information is held in an
13 information management system established
14 and maintained by another person or body, that
15 other person or body.

16 **Subdivision 4 — Reporting requirements**

17 **142A. Annual report to include information about**
18 **enrolments**

19 (1) In this section —

20 ***enrolment*** means an enrolment of a child in —

- 21 (a) a school, before the child's compulsory
22 education period; or
23 (b) a community kindergarten; or
24 (c) a child care service.

25 (2) The accountable authority of the Department must
26 include the following information in each annual report
27 submitted under the *Financial Management Act 2006*
28 Part 5 —

- 29 (a) the number of enrolments in the financial year
30 to which the annual report relates that were of a
31 child whose immunisation certificate did not

state that the child's immunisation status is up-to-date;

(b) in relation to the enrolments referred to in paragraph (a), the number that were of a child who, by the end of the financial year to which the annual report relates —

(i) has an immunisation certificate that states that the child's immunisation status is up-to-date; or

(ii) is following a catch-up schedule referred to in section 141D(2)(d).

(3) The information included in an annual report under subsection (2) must not include any information that identifies, or is likely to identify, any child to whom the information relates.

9. Section 240 amended

In section 240(1)(d) delete "public health risk" and insert:

public health risk, including a public health risk that might foreseeably arise from a child or children not having been immunised against a vaccine preventable notifiable infectious disease,

10. Section 254 replaced

Delete section 254 and insert:

254. False or misleading information

(1) A person must not give false or misleading information to —

(a) an authorised officer who is carrying out a function under this Act; or

s. 11

- 1 (b) any person pursuant to a requirement under this
2 Act to provide information or produce a record
3 or other document to that person.

4 Penalty for this subsection: a fine of \$10 000.

- 5 (2) For the purposes of subsection (1), a person gives false
6 or misleading information if the person does one or
7 more of the following —

8 (a) states anything that the person knows is false or
9 misleading in a material particular;

10 (b) omits from a statement anything without which
11 the statement is, to the person's knowledge,
12 misleading in a material particular;

13 (c) gives or produces any record or other document
14 that —

15 (i) the person knows is false or misleading
16 in a material particular; or

17 (ii) omits anything without which the record
18 or other document is, to the person's
19 knowledge, misleading in a material
20 particular.
21

22 **11. Section 280 amended**

23 Delete section 280(b) and insert:

24
25 (b) by a local government, by the chief executive
26 officer of a local government or by an
27 authorised officer authorised in writing by the
28 local government; or

29 (c) by an enforcement agency of a kind referred to
30 in paragraph (c) of the definition of
31 **enforcement agency** in section 4(1) or by an
32 authorised officer authorised in writing by an
33 enforcement agency of that kind.
34

12. Section 306A inserted

After section 306 insert:

306A. Review of amendments made by *Public Health Amendment (Immunisation Requirements for Enrolment) Act 2019*

(1) In this section —

relevant amendments means —

- (a) the amendments made to this Act by the *Public Health Amendment (Immunisation Requirements for Enrolment) Act 2019* section 8; and
- (b) the amendments made to the *School Education Act 1999* by the *Public Health Amendment (Immunisation Requirements for Enrolment) Act 2019*.

(2) The Minister must review the operation and effectiveness of the relevant amendments, and prepare a report based on the review, as soon as practicable after the 3rd anniversary of the day on which the *Public Health Amendment (Immunisation Requirements for Enrolment) Act 2019* section 1 comes into operation.

(3) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 3rd anniversary.

1 **Part 3 — *School Education Act 1999* amended**

2 **13. *School Education Act 1999* amended**

3 This Part amends the *School Education Act 1999*.

4 **14. Section 3 amended**

5 In section 3(1)(a) delete “education; and” and insert:

6

7 education during the child’s compulsory education period; and

8

9 **15. Section 16 amended**

10 (1) Before section 16(1) insert:

11

12 (1A) In this section —

13 *immunisation status* has the meaning given in the
14 *Public Health Act 2016* section 141A.

15

16 (2) Delete section 16(1)(f).

17 (3) In section 16(2) delete “applicant.” and insert:

18

19 applicant under subsection (1).

20

21 (4) After section 16(2) insert:

22

23 (3) A person who wishes to make an application for
24 enrolment of a child at a school is to provide the
25 immunisation status of the enrollee in accordance with
26 the *Public Health Act 2016* section 141B.

27

1 **16. Section 17 amended**

2 In section 17(1)(b) after “(c) or (g)” insert:

3

4 or section 16(3)

5

6 **17. Section 23 amended**

7 (1) In section 23(1):

8 (a) delete “must” and insert:

9

10 must, for every year of the student’s compulsory
11 education period,

12

13 (b) in paragraph (a)(i) delete “he or she” and insert:

14

15 the student

16

17 (2) Delete section 23(2)(b) and insert:

18

19 (b) section 27 (which relates to non-attendance for
20 public health reasons); and

21

22 **18. Section 27 amended**

23 (1) Before section 27(1) insert:

24

25 (1A) In this section —

26 **Chief Health Officer** has the meaning given in the
27 *Public Health Act 2016* section 4(1).

28 (1B) The principal of a school must comply with a direction
29 given by the Chief Health Officer under regulations
30 made for the purposes of the *Public Health Act 2016*

s. 19

1 section 142(1)(d) to not permit a child to attend the
2 school or participate in an educational programme of
3 the school.
4

5 (2) In section 27(2) delete “This section” and insert:
6

7 Subsection (1)
8

9 (3) Delete section 27(3A).

10 Note: The heading to amended section 27 is to read:

11 **Non-attendance of student may be required on public health**
12 **grounds**

13 **19. Section 77 amended**

14 After section 77(a) insert:
15

16 (aa) the enrolment would not contravene the *Public*
17 *Health Act 2016* section 141D; and
18

19 **20. Section 82 amended**

20 (1) After section 82(1) insert:
21

22 (1A) However, this section does not apply to a child in the
23 child’s pre-compulsory education period if the
24 enrolment of the child would contravene the *Public*
25 *Health Act 2016* section 141D.
26

27 (2) Delete section 82(2)(d) and insert:
28

29 (d) any other criteria prescribed for the purposes of
30 section 76(2), 77(b), 78(2)(b) or 79(1)(b), as the
31 case requires, are satisfied,
32

- 1 (3) In section 82(3):
- 2 (a) delete “decides that —” and insert:
- 3
- 4 decides under subsection (2) that —
- 5
- 6 (b) delete paragraph (d) and insert:
- 7
- 8 (d) any other criteria prescribed for the purposes of
- 9 section 77(b), 78(2)(b) or 79(1)(b), as the case
- 10 requires, are not satisfied in relation to the
- 11 child,
- 12

13 Note: The heading to amended section 82 is to read:

14 **Resolving question under s. 76, 77, 78 or 79**

15 **21. Section 159 amended**

16 After section 159(1)(h) insert:

17

- 18 (ha) the health and safety procedures at schools,
- 19 including immunisation requirements for
- 20 enrolment;
- 21

22 **22. Section 206 amended**

23 Delete section 206(2) and insert:

24

- 25 (2) The enrolment of a child at a community kindergarten
- 26 is to be in accordance with —
- 27 (a) the *Public Health Act 2016* section 141D; and
- 28 (b) the regulations.
- 29

30
