

EXPLANATORY MEMORANDUM

PUBLIC HEALTH AMENDMENT (IMMUNISATION REQUIREMENTS ON ENROLMENT) BILL 2019

Overview

The purpose of the Public Health Amendment (Immunisation Requirements for Enrolment) Bill 2019 ('the Bill') is to increase childhood immunisation rates in WA, through strengthening immunisation requirements for enrolment in early childhood education and care.

The Bill is broken up into three Parts:

- Part 1 provides for the short title and commencement provisions.
- Part 2 provides for amendments to the *Public Health Act 2016*. The amendments implement a framework for new immunisation requirements for enrolment in child care services and kindergarten programs and include miscellaneous amendments that are required prior to bringing the remaining provisions of the *Public Health Act 2016* into effect.
- Part 3 provides for amendments to the *School Education Act 1999*. The amendments achieve consistency with and complement the changes to the *Public Health Act 2016*.

The Bill amends the *Public Health Act 2016* to provide that a child care service, community kindergarten or school must not permit a child to enrol, before the child's compulsory education period, unless the child's immunisation certificate states that the child's immunisations are up-to-date.

An immunisation certificate is defined in the Bill to include an extract of a child's Australian Immunisation Register ('AIR') record – this is commonly known as the child's AIR Immunisation History Statement. This record shows that a child is 'up-to-date' if they are age appropriately immunised in accordance with the National Immunisation Program Schedule; have a registered medical contraindication to vaccination or have acquired natural immunity to a particular vaccination under section 9(c) of the *Australian Immunisation Register Act 2015* (Cth). The Bill provides children following a catch up schedule in accordance with the regulations are also permitted to enrol.

The Bill recognises that certain children experiencing vulnerability or disadvantage may be disproportionately negatively affected by the new immunisation enrolment requirements. The Bill provides for these children to be prescribed in the regulations as exempt from the immunisation requirements for enrolment.

The Bill provides a mechanism to address when a child's AIR Immunisation History Statement cannot be used as evidence of their immunisation status due to an atypical or unforeseen circumstance, but for which the child would otherwise be fully vaccinated for age. For example, where there is a temporary vaccine shortage. In these circumstances the Chief Health Officer can issue an alternative certificate for enrolment purposes.

To monitor the number of children enrolled each year on either a catch up schedule, Chief Health Officer immunisation certificate or as an 'exempt child', the Bill provides the accountable authority of the Department of Health must include in its annual report each year, the number of children enrolled for that financial year in a child care service or kindergarten program with an immunisation status of 'not up-to-date'. The report must also include the number of those children that by the end of that same financial year have had their immunisation status changed from 'not up-to-date' to 'up-to-date' or following a catch up schedule.

Other components of the Bill include:

- a requirement for a parent or guardian to provide updated information about their child's immunisation status to the person in charge of a child care service, community kindergarten or school, at such other times as prescribed in the regulations;
- amendments to section 240(1)(d) of the *Public Health Act 2016* to clarify powers of entry and inspection where it is suspected there are documents that relate to a public health risk. A public health risk has been clarified to include a risk that might foreseeably arise from a child not having been immunised against a vaccine preventable notifiable infectious disease;
- amendments to clarify that the offence under section 254 of the *Public Health Act 2016* of providing false information also applies where a person is required to provide information or produce a document regarding a child's immunisation status and eligibility for exemption;
- amendments to repeal obsolete provisions and clarify regulation making powers in section 142 of the *Public Health Act 2016*; and
- a requirement that after three years the Minister for Health review the operation and effectiveness of the new immunisation requirements on enrolment.

Part 1 – Preliminary

This Part provides for the short title and commencement provisions.

Clause 1: Short title

This clause provides the Act may be cited as the *Public Health Amendment (Immunisation Requirements for Enrolment) Act 2019*.

Clause 2: Commencement

This clause provides for the commencement of the Act.

Part 1, Part 2 (other than sections 4 - 12) and Part 3 (other than sections 14 - 22) of the Act will come into operation on the day the Act receives Royal Assent.

The remainder of the Act will come into operation on a day fixed by proclamation.

Part 2 – Public Health Act 2016 amended

This Part provides for amendments to the *Public Health Act 2016*.

Clause 3: Act amended

This clause provides for the *Public Health Act 2016* to be amended by this Part.

Clause 4: Section 4 amended

Section 4 defines the terms used in the *Public Health Act 2016*.

Clause 4(1) amends section 4 by deleting the definitions of ‘*child care service*’ and ‘*school*’.

Clause 4(2) inserts new definitions of ‘*child care service*’, ‘*community kindergarten*’, ‘*compulsory education period*’, ‘*school*’ and ‘*urgently notifiable infectious disease related condition*’ into section 4.

The definition of ‘*school*’ within the *Public Health Act 2016* extends to include a community kindergarten and a place where a child care service is provided. To provide clarity, the references to a community kindergarten and child care service have been removed from the definition of school and defined separately. The definition of ‘*school*’ and ‘*community kindergarten*’ in the Bill reflects the meaning, defined in the *School Education Act 1999*.

The definition of ‘*child care service*’ includes a power to prescribe child care services that do not fall within the definition of ‘*child care service*’ for the purposes of the *Public Health Act 2016*.

Variances in operating hours and regulatory requirements make it impracticable for all child care services captured under the *Education and Care Services National Law* (WA) and *Child Care Services Act 2007* to be subject to the new immunisation requirements for enrolment.

The definition of ‘*compulsory education period*’ is required for the purposes of new section 141D(1)(a) inserted by clause 8. ‘*Compulsory education period*’ has the meaning given in the *School Education Act 1999* section 6.

The definition of ‘*urgently notifiable infectious disease related condition*’ is required for purposes of clauses 5 and 6 of the Bill and means a notifiable infectious disease-related condition declared under section 91 to be an urgently notifiable infectious disease-related condition.

Clause 5: Section 91 amended

Section 91 authorises regulations to be made declaring a medical condition to be a notifiable infectious disease-related condition.

Clause 5(1) deletes section 91(1) and inserts a new section 91(1) which provides for the definition of '*acute rheumatic fever*' and '*rheumatic heart disease*'. These definitions are required for the purposes of new subsection (3) inserted by clause 5(3).

Subclause (1) also inserts a new subsection (1A) into section 91 which provides that regulations may declare a notifiable infectious disease-related condition to be an urgently notifiable infectious disease-related condition. The purpose of this amendment is to provide a subset of notifiable infectious disease-related conditions that are required to be urgently notifiable.

Clause 5(2) amends section 91(2) to provide that a medical condition cannot be declared to be an urgently notifiable infectious disease-related condition unless it meets the criteria in paragraphs (a) to (c).

Clause 5(3) inserts a new subsection (3) into section 91 which provides that acute rheumatic fever and rheumatic heart disease cannot be declared to be a notifiable infectious disease-related condition or urgently notifiable infectious disease-related condition.

Acute rheumatic fever and rheumatic heart disease are technically considered infectious disease-related conditions. However to address practicality issues in applying the notification requirements in Part 9 of the *Public Health Act 2016* to these two particular conditions, subsection (3) ensures that these conditions are not capable of being declared an infectious disease-related condition and captured under the notification requirements of Part 9 of the *Public Health Act 2016*.

Clause 6: Section 94 amended

Section 94 requires the notification of notifiable infectious diseases and disease-related conditions by medical practitioners, nurse practitioners and responsible pathologists to the Chief Health Officer in specified circumstances.

This clause deletes section 94(4)(a) and inserts a new section 94(4)(a) which provides for a urgently notifiable infectious disease-related condition to also be notifiable within 24 hours.

Clause 7: Section 135 amended

Section 135 authorises an authorised officer to obtain specified information in relation to an affected person or an exposed person from a person other than the affected person or the exposed person.

This clause deletes section 135(2)(b) and inserts a new section 135(2)(b) which provides an authorised officer may also require information in relation to an affected person or exposed person from a child care service or community kindergarten.

This amendment is required as a consequence of the new definition of '*school*' in clause 4.

Clause 8: Part 9 Division 8 replaced

Part 9 Division 8 authorises regulations to be made with respect to the immunisation status of children.

This clause deletes Part 9 Division 8 and inserts a new Part 9 Division 8 which includes new sections 141A to 141D and new sections 142 and 142A. This clause provides the framework for new immunisation requirements for enrolment in schools, child care services and community kindergartens.

Section 141A provides for the definitions of key terms used in new Part 9 Division 8.

The definitions of '*child*' and '*immunisation status*' have not changed from their original meaning in Part 9 Division 8.

A reference to a community kindergarten or child care service has been inserted into the definition of '*person in charge*' as a consequence of the new definition of *school* in clause 4.

The definitions of '*Australian Immunisation Register*', '*immunisation certificate*', '*responsible person*' and '*current*' have been moved from regulation 10A of the *Public Health Regulations 2017* into section 141A.

A reference to a community kindergarten or child care service has been inserted into the definition of '*current*' as a consequence of the new definition of *school* in clause 4. The new definition of '*current*' also provides for other times a certificate is required to be provided under the *Public Health Act 2016*, for example should other times be prescribed under new section 141B(2)(b).

The definition of '*immunisation certificate*' has been extended to include a certificate issued by the Chief Health Officer under section 141C(1) or a document declared to be an immunisation certificate under section 141C(3).

A definition of '*exempt child*' is required for the purposes of new section 141D(2). An '*exempt child*' means a child who is in a class of children prescribed by the regulations for the purposes of this definition.

The ability to prescribe a class of children as exempt is to recognise that certain children with a vulnerability or disadvantage may be disproportionately negatively affected by the new immunisation requirements for enrolment, should they be prevented from accessing early childhood education.

The responsible person may apply for an exemption when enrolling in a school, community kindergarten or child care service. The person in charge of the school, community kindergarten or child care service will be required to determine if the child qualifies for an exemption.

Section 141B provides for the collection of information about the immunisation status of a child at the time of enrolment in a school, community kindergarten or child care service and at such other time or times as are prescribed in the regulations.

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

Subsection (2) provides 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 status of the child as recorded on the child's current immunisation certificate when the child is being enrolled and at such other time or times as are prescribed by the regulations.

Subsection (3) provides the person in charge may require the responsible person for the child to produce the current immunisation certificate for the child. This is to enable a person in charge to verify the child's immunisation status.

Subsection (4) provides a fine of \$1,000 applies for failure of a person in charge of a school, community kindergarten or child care service to take reasonable steps to ensure that a responsible person for the child, complies with subsection (2).

Section 141C provides a mechanism to address when a child's AIR Immunisation History Statement cannot be used as evidence of their immunisation status due to an atypical or unforeseen circumstance, but for which the child would otherwise be fully vaccinated for age. For example, where there is temporary vaccine shortage or a child is awaiting overseas immunisation records to be recorded on the AIR. In these circumstances the Chief Health Officer can issue or declare documentation other than a child's AIR Immunisation History Statement to be an immunisation certificate for the purposes of new section 141B.

Subsection (1) provides the Chief Health Officer may:

- issue an immunisation certificate for a child for the purposes of section 141B if the Chief Health Officer is satisfied that a circumstance prescribed in the regulations applies to the child, and but for that circumstance the child's immunisation status would be up-to-date; or
- issue an immunisation certificate for a child for the purposes of section 141B if the Chief Health Officer is satisfied that there are special circumstances that apply to the child and but for that circumstance the child's immunisation status would be up-to-date.

The circumstances in which it is anticipated an immunisation certificate may be required to be issued by the Chief Health Officer are to be prescribed in the regulations, however, a general discretionary power has been included in section 141C(1)(a)(ii) to capture any as yet unforeseen circumstances. This discretionary power is expected to be used very rarely.

Subsection (2) provides an immunisation certificate issued by the Chief Health Officer under this section remains in force for the period specified in the certificate, or if no period is specified for an indefinite period.

Subsection (3) provides that a 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 under subsection (1).

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

Section 141D provides the immunisation conditions for enrolment in a school, community kindergarten or child care service before the child's compulsory education period.

Subsection (1) provides the person in charge of a school, community kindergarten or child care service must not permit a child to enrol in the school, community kindergarten or child care service, before the child's compulsory education period unless the child meets the requirements of subsection (2). A fine of \$10,000 applies for failure of a person in charge to comply with this requirement.

Subsection (2) provides a child is to have an immunisation certificate that states the child's immunisation status is up-to-date; or have an immunisation certificate that states that the Chief Health Officer is satisfied that, but for a circumstance set out in section 141C(1)(a), the child's immunisation status would be up-to-date; or have an immunisation certificate that is a document declared to be an immunisation certificate under section 141C(3); or be following a catch up schedule prescribed by the regulations, or have satisfied the person in charge they are an exempt child, to be permitted to enrol in a school, community kindergarten or child care service before the child's compulsory education period.

An '*immunisation certificate*' is defined in new section 141A as an extract of a child's AIR record – this is commonly known as the child's AIR Immunisation History Statement. It shows that a child is 'up-to-date' if they are age appropriately immunised in accordance with the National Immunisation Program Schedule; have a registered medical contraindication to vaccination or have acquired natural immunity to a particular vaccination under section 9(c) of the *Australian Immunisation Register Act 2015* (Cth).

Section 142 provides the power to make regulations relating to the immunisation status of children and the control of disease.

Subsection (1) provides authority for regulations to be made on various matters listed under paragraphs (a) to (e) relating to immunisation and control of disease.

This subsection replaces existing regulation powers under the *Public Health Act 2016* with similar regulation powers. The new powers are amended to clarify their original intent. New section 142(1) also does not include provisions that have since been identified as obsolete as those powers are addressed in other state legislation.

Subsection (2) provides regulations may provide that the person required to provide a report or information under regulations made under section 142(1)(b) and (c) is the chief executive officer, as defined in the *School Education Act 1999* section 229 or if

the relevant information is held in an information management system established and maintained by another person or body, that other person or body.

The purpose of subsection (2) is to enable regulations to prescribe a governing person or body to provide the report or information required under regulations made under section 142(1)(b) and (c) to the Chief Health Officer on behalf of a person in charge, where that information has been centralised with that person or body. This is to minimise the administrative burden on schools, community kindergartens and child care services from reporting this information individually to the Chief Health Officer. It will also create efficiencies for the Department of Health in collating and processing this data.

Section 142A provides for annual reporting requirements in respect to enrolments.

Subsection (1) provides for the definition of ‘*enrolment*’ for the purposes of this section.

Subsection (2) provides that the accountable authority for the Department of Health must include in its annual report each year, the number of children for that financial year, that were enrolled in a child care service or kindergarten program with an immunisation status that was ‘not up-to-date’

This subsection also provides that the annual report must include the number of children for that financial year, that had an immunisation status that was ‘not up-to-date’ at enrolment, but by the end of that same financial year have had their immunisation status changed to either ‘up-to-date’ or following a catch up schedule.

Subsection (3) provides the information to be included in the annual report will not include any information that is likely to identify any child to whom the information relates.

Clause 9: Section 240 amended

Section 240 empowers authorised officers to exercise various powers, including powers of entry, inspection, search and seizure.

This clause amends section 240(1)(d) to clarify an authorised officer’s power to enter and inspect premises where it is reasonably suspected there are documents that relate to a public health risk. A public health risk in this context has been clarified to include a public health risk posed by a child not having been immunised against a vaccine preventable disease.

Clause 10: Section 254 amended

Section 254 provides an offence in respect to the provision of false or misleading information.

This clause deletes section 254 and replaces it with a new section 254 which clarifies the offence of providing false or misleading information and also applies it to where a person is required to provide information or produce a document under the *Public Health Act 2016* regarding a child’s immunisation status and eligibility for exemption.

Clause 11: Section 280 amended

Section 280 provides for the commencing of proceedings under the *Public Health Act 2016*.

This clause deletes section 280(b) and inserts new section 280(b) and (c) to extend who may commence proceedings for an offence under the *Public Health Act 2016*.

Clause 12: Section 306A inserted

This clause inserts a new section 306A into the *Public Health Act 2016* to provide for the review of the amendments made by clause 8 and Part 3 of the Bill.

Subsection (1) provides for the definition of ‘*relevant amendments*’ for the purposes of this section.

Subsection (2) requires the Minister to review the operation and effectiveness of the relevant amendments after three years and prepare a report based on that review.

Subsection (3) requires the Minister to table that report before each House of Parliament.

Part 3 – School Education Act 1999 amended

This Part provides for amendments to the *School Education Act 1999*. The amendments are required to achieve consistency with and complement the changes to the *Public Health Act 2016*.

Clause 13: School Education Act amended

This clause provides for the *School Education Act 1999* to be amended by this Part.

Clause 14: Section 3 amended

Section 3 provides for the objects of the *School Education Act 1999*.

This clause amends section 3(1)(a) to recognise the limitation from the immunisation requirements before the compulsory education period and the different position for the compulsory education period.

Clause 15: Section 16 amended

Section 16 provides for the information that is to be provided when a person makes an application for enrolment at a school. This section also applies to applications for enrolment at a community kindergarten (see regulation 136, *School Education Regulations 2000*).

Clause 15(1) inserts a new subsection (1A) into section 16 to provide a definition of ‘*immunisation status*’. ‘*Immunisation status*’ has the meaning given in the *Public*

Health Act 2016 section 141A. This definition is required for the purposes of new subsection (3) inserted by clause 15(4).

Clause 15(2) deletes section 16(1)(f) as this requirement is now captured by new subsection (3) inserted by clause 15(4).

Clause 15(3) amends section 16(2) to provide that subsection (2) applies to information referred to under subsection (1).

Clause 15(4) inserts a new subsection (3) into section 16 to provide that a person who wishes to make an application for enrolment is to provide the immunisation status of the enrollee in accordance with the *Public Health Act 2016* section 141B(2).

Clause 16: Section 17 amended

Section 17 provides for changes to certain particulars required under section 16 to be notified to the principal of a school. This section also applies to community kindergartens (see regulation 136, *School Education Regulations 2000*).

This clause amends section 17(1)(b) to include a reference to section 16(3).

This amendment will provide that where there is a change in the immunisation status of a child as provided under section 16(3) this is to be notified to the principal of the school at which the child is enrolled.

Clause 17: Section 23 amended

Section 23 relates to attendance requirements for the compulsory education period and the offence of failure to comply in section 38.

Clause 17(1) amends section 23(1) to clarify that the attendance requirements apply for every year of the student's compulsory education period. A minor technical amendment to provide gender neutral language is also included.

Clause 17(2) amends section 23(2)(b) to provide consistency with the amendments made to section 27 by clause 18.

Clause 18: Section 27 amended

Section 27 provides a principal may require the non-attendance of a student suffering from a medical condition to which the section applies.

Clause 18(1) inserts a definition of 'Chief Health Officer' into section 27. It also inserts a new subsection (1B) into section 27 which provides that the principal of a school must comply with a direction given by the Chief Health Officer under regulations made for the purposes of section 142(1)(d) of the *Public Health Act 2016* to not permit a child to attend the school or participate in an educational programme of the school.

This amendment is required to ensure a principal can require an unimmunised student not to attend school in the specified circumstances, to clarify that a student's immunisation status is a 'medical condition' for the purposes of section 27(2).

Clause 18(3) clarifies that section 27(2) applies to subsection (1).

The heading of section 27 has also been updated to reflect these changes.

Clause 19: Section 77 amended

Section 77 provides when a child below compulsory school age is entitled to be enrolled in a government school.

This clause amends section 77 to include a new paragraph (aa) that provides a child is entitled to be enrolled if the enrolment would not contravene the *Public Health Act 2016* section 141D.

Clause 20: Section 82 amended

Section 82 provides for what occurs when a question arises in respect to a child's entitlement to enrol under sections 76, 77, 78 or 79.

Clause 20(1) amends section 82(2) to clarify that section 82 does not apply where a question arises in respect to whether a child's enrolment would not contravene the *Public Health Act 2016* section 141D.

Clause 20(2) amends section 82(3) to clarify that subsection (3) applies to an issue in dispute under subsection (2), not whether a child's enrolment would contravene the *Public Health Act 2016* section 141D.

Clause 21: Section 159 amended

Section 159 provides for the matters that the Minister may determine standards for non-government schools.

This clause inserts a new paragraph (ha) into section 159(1) for the Minister to determine health and safety procedures at non-government schools, including immunisation requirements for enrolment.

The purpose of this amendment is to enable the Minister to require the enrolment of a child in a non-government school is to be in accordance with the *Public Health Act 2016* section 141D.

Clause 22: Section 206 amended

Section 206 provides for the curriculum and enrolment at community kindergartens.

This clause deletes section 206(2) and inserts a new section 206(2) which requires the enrolment of a child at a community kindergarten to be in accordance with the *Public Health Act 2016* section 141D.