

Health, Safety and Civil Liability (Children in Schools and Child Care Services) Bill 2010

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Western Australia

LEGISLATIVE ASSEMBLY

**Health, Safety and Civil Liability (Children in
Schools and Child Care Services) Bill 2010**

A Bill for

***An Act to amend the *Civil Liability Act 2002* 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 *Health, Safety and Civil Liability (Children in Schools and Child Care Services) Act 2010*.

2. Commencement

This Act comes into operation as follows :

- (a) sections 1 and 2 — 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.

1 **Part 2 — Civil Liability Act 2002 amended**

2 **3. Act amended**

3 This Part amends the *Civil Liability Act 2002*.

4 **4. Section 3A amended**

5 In section 3A(1) in the Table item 1 column 3 after “1C,” insert:

6

7 1CA,

8

9 **5. Section 4A amended**

10 In section 4A(1) after “1C,” insert:

11

12 1CA,

13

14 **6. Part 1CA inserted**

15 After section 5AA insert:

16

17 **Part 1CA — Liability relating to emergency**
18 **medical assistance given to enrolled children**

19 **5AAA. Terms used**

20 In this Part —

21 *child care service* has the meaning given in the *Child*
22 *Care Services Act 2007* section 4;

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

25 *emergency medical assistance* means medical
26 assistance of a type prescribed by the regulations as
27 assistance to which this Part applies;

s. 6

- 1 **enrolled child** means —
- 2 (a) a child enrolled at community kindergarten; or
- 3 (b) a child for whom a child care service is
- 4 provided; or
- 5 (c) a student within the meaning given in the
- 6 *School Education Act 1999* section 4;
- 7 **staff member** means a natural person who is —
- 8 (a) employed in the department of the Public
- 9 Service referred to in the *School Education*
- 10 *Act 1999* section 228; or
- 11 (b) employed in a school registered under the
- 12 *School Education Act 1999* section 160; or
- 13 (c) a supervising officer as defined in the *Child*
- 14 *Care Services Act 2007* section 3; or
- 15 (d) a member of the staff of a child care service; or
- 16 (e) prescribed (or of a class prescribed) by the
- 17 regulations as a person to whom this Part
- 18 applies.

19 **5AAB. Application of this Part**

- 20 (1) In this section —
- 21 **commencement day** means the day on which the
- 22 *Health, Safety and Civil Liability (Children in Schools*
- 23 *and Child Care Services) Act 2010* section 6 comes
- 24 into operation.
- 25 (2) Subject to sections 3A and 4A, this Part applies to civil
- 26 liability of any kind unless this section states otherwise.
- 27 (3) This Part extends to a claim even if the damages are
- 28 sought to be recovered in an action for breach of
- 29 contract or any other action.

- 1 (4) This Part does not apply unless the civil liability giving
2 rise to the claim arises out of an incident happening on
3 or after the commencement day.
- 4 (5) If in a claim for damages —
5 (a) it cannot be ascertained whether or not the
6 incident out of which the personal injury arises
7 happened on or after the commencement day;
8 and
9 (b) the symptoms of the injury first appeared on or
10 after the commencement day,
- 11 the incident is to be taken, for the purpose of
12 subsection (4), to have happened on or after the
13 commencement day.
- 14 (6) This Part does not limit the protection from liability
15 given by another written law.

16 **5AAC. Protection of staff members**

- 17 (1) A staff member does not incur any personal civil
18 liability in respect of —
19 (a) an act or omission done or made by the staff
20 member at the scene of an emergency in
21 assisting an enrolled child in apparent need of
22 emergency medical assistance; or
23 (b) advice given by the staff member about
24 assistance to be given to an enrolled child in
25 apparent need of emergency medical assistance,
- 26 if the act or omission is done or made, or the advice
27 given, in good faith and without recklessness in the
28 course of the staff member's employment as a staff
29 member.
- 30 (2) This section does not affect the vicarious liability of
31 any person for the acts or omissions of a staff member.

s. 6

1 **5AAD. Exclusion from protection**

2 The protection from personal civil liability conferred
3 by this Part does not apply if the ability of the staff
4 member to exercise reasonable care and skill, at the
5 relevant time, was significantly impaired by reason of
6 the staff member being intoxicated by alcohol or a drug
7 or other substance capable of intoxicating a person and
8 the intoxication was self-induced.

9

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

2 **7. Act amended**

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

4 **8. Section 17 amended**

5 In section 17(1)(b) delete “16(1)(b) or (c)” and insert:

6

7 16(1)(b), (c) or (g)

8

9 **9. Section 244 amended**

10 In section 244(2):

11 (a) after paragraph (a) insert:

12

13 (ba) make provision for requirements as to the
14 health and safety of children enrolled at a
15 school or a community kindergarten registered
16 under Part 5; and

17

18 (b) after paragraph (a) insert:

19

20 and

21

22

