



Queensland

Public Health (Childcare Vaccination) and Other Legislation Amendment Bill 2015

Includes amendments agreed during Consideration



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2015

A Bill

for

An Act to amend the Health Ombudsman Act 2013 and Public Health Act 2005 for particular purposes

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Public Health (Childcare Vaccination) and Other Legislation Amendment Act 2015*.

2 Commencement

Part 2 commences on 1 January 2016.

Part 2 Amendment of the Public Health Act 2005

3 Act amended

This part amends the *Public Health Act 2005*.

4 Amendment of s 158 (Definitions for ch 5)

(1) Section 158—

insert—

Australian Immunisation Handbook, for part 2, division 1AA, see section 160A.

immunisation history statement, for part 2, division 1AA, see section 160A.

immunisation status “up to date”, for part 2, division 1AA, see section 160A.

recognised immunisation provider, for part 2, division 1AA, see section 160A.

- (2) Section 158, definition *vaccine preventable condition*, after ‘contagious condition’—

insert—

, or another medical condition,

5 Insertion of new ch 5, pt 2, div 1AA

Chapter 5, part 2, before division 1—

insert—

Division 1AA Exclusion of unvaccinated children from particular services

160A Definitions for div 1AA

In this division—

Australian Immunisation Handbook means the Australian Immunisation Handbook approved as guidelines under the *National Health and Medical Research Council Act 1992* (Cwlth), section 14A.

immunisation history statement means—

- (a) an immunisation history statement as recorded on the Australian Childhood Immunisation Register kept under the *Health Insurance Act 1973* (Cwlth), section 46B; or
- (b) a statement about a child’s immunisation history given by a recognised immunisation provider.

[s 5]

immunisation status “up to date”, for a child, means the child, for each vaccine preventable condition—

- (a) is age appropriately immunised for the condition in accordance with the recommendations stated in the Australian Immunisation Handbook; or
- (b) is following an approved immunisation catch-up schedule for the condition developed by a recognised immunisation provider in accordance with the Australian Immunisation Handbook; or
- (c) has an exemption for a vaccine for the condition given by a recognised immunisation provider because of a medical contraindication to vaccination.

recognised immunisation provider see the *Health Insurance Act 1973* (Cwlth), section 46A.

160B When person in charge may exclude child not yet enrolled

- (1) A person in charge of an education and care service or QEC approved service may in the circumstances mentioned in subsection (2) do any of the following—
 - (a) refuse to enrol a child at the service;
 - (b) refuse to allow a child to attend the service until an immunisation history statement stating that the child has the immunisation status “up to date” is given to a person in charge of the service;
 - (c) impose a condition on a child’s enrolment or attendance at the service until an immunisation history statement stating that the child has the immunisation status “up to

date” is given to a person in charge of the service.

- (2) The circumstances are—
- (a) a person in charge of the service requests a parent intending to enrol the child at the service to give to the person in charge, within a reasonable period after the request is made, an immunisation history statement stating that the child has the immunisation status “up to date”; and
 - (b) on making the request, the person in charge advises the parent that the person in charge may take any of the actions mentioned in subsection (1) if the parent does not comply with the request; and
 - (c) a parent of the child either—
 - (i) refuses to comply with the request; or
 - (ii) does not comply with the request within a reasonable period after the request is made.
- (3) A request under subsection (2)(a) may be made in a form given to the parent for the purpose of applying to enrol the child at the service.
- (4) A condition imposed under subsection (1)(c)—
- (a) must be relevant to the immunisation status of the child; and
 - (b) may be a condition that the child’s enrolment at the service will be cancelled if a parent of the child does not give a person in charge of the service an immunisation history statement stating that the child has the immunisation status “up to date”.

[s 5]

160C When person in charge may exclude enrolled child

- (1) A person in charge of an education and care service or QEC approved service may in the circumstances mentioned in subsection (2) do any of the following—
 - (a) cancel a child’s enrolment at the service;
 - (b) refuse to allow a child enrolled at the service to attend the service until an immunisation history statement stating that the child has the immunisation status “up to date” is given to a person in charge of the service;
 - (c) impose a condition on a child’s enrolment or attendance at the service until an immunisation history statement stating that the child has the immunisation status “up to date” is given to a person in charge of the service.
- (2) The circumstances are—
 - (a) a person in charge of the service requests a parent of the child to give to the person in charge, within a stated period of at least 4 weeks after the request is made, an immunisation history statement stating that the child has the immunisation status “up to date”; and
 - (b) the request is made after the child has reached the age stated in the National Immunisation Program Schedule Queensland, for a vaccine preventable condition, at which it is recommended the child be immunised or further immunised against the condition; and
 - (c) on making the request, the person in charge advises the parent that the person in charge may take any of the actions mentioned in

subsection (1) if the parent does not comply with the request; and

- (d) a parent of the child does not comply with the request within the stated period for the request.
- (3) A condition imposed under subsection (1)(c) must be relevant to the immunisation status of the child.
- (4) In this section—

National Immunisation Program Schedule Queensland means the schedule for age appropriate immunisation for vaccine preventable conditions recommended by the department and published on the department's website.

Editor's note—

The department's website is at <www.health.qld.gov.au>.

160D Immunisation status of children allowed to attend without statement

- (1) This section applies if a person in charge of an education and care service or QEC approved service decides—
 - (a) to enrol a child despite not being given, under section 160B, an immunisation history statement stating that the child has the immunisation status “up to date”; or
 - (b) to allow a child to attend the service despite not being given, under section 160B or 160C, an immunisation history statement stating that the child has the immunisation status “up to date”.
- (2) For each provision of this part, until the day on which an immunisation history statement stating

[s 6]

that the child has the immunisation status “up to date” is given to a person in charge of the service, the child is taken not to be vaccinated.

6 Amendment of s 179 (Protection for persons acting under pt 2)

Section 179—

insert—

- (1A) This section also applies if a person in charge of an education and care service or QEC approved service, acting honestly, does either of the following things—
- (a) exercises a power under section 160B or 160C;
 - (b) decides to enrol a child at, or allow a child to attend, the service in the circumstances mentioned in section 160D(1).

7 Amendment of sch 2 (Dictionary)

Schedule 2—

insert—

Australian Immunisation Handbook, for chapter 5, part 2, division 1AA, see section 160A.

immunisation history statement, for chapter 5, part 2, division 1AA, see section 160A.

immunisation status “up to date”, for chapter 5, part 2, division 1AA, see section 160A.

recognised immunisation provider, for chapter 5, part 2, division 1AA, see section 160A.

[s 10]

10 Amendment of s 229 (Offence to contravene information requirement)

Section 229(1), ‘an information requirement is made’—

omit, insert—

a requirement is made under section 228(3)(a)

11 Insertion of new s 229A

Part 15, division 5, after section 229—

insert—

229A Offence to contravene attendance requirement

- (1) A person of whom a requirement is made under section 228(3)(b) must not fail, without reasonable excuse, to—
- (a) attend as required by the notice; and
 - (b) continue to attend as required by the authorised person until excused from further attendance; and
 - (c) answer a question the person is required to answer by the authorised person; and
 - (d) produce a document the person is required to produce by the notice.

Maximum penalty—100 penalty units.

- (2) For subsection (1), it is a reasonable excuse for an individual to fail to answer a question or produce a document if answering the question or producing the document might tend to incriminate the individual or expose the individual to a penalty.

12 Renumbering of pt 21, divs 1 to 8

Part 21, divisions 1 to 8—

renumber as part 21, division 1, subdivisions 1 to 8.

13 Insertion of new pt 21, div 1 hdg

After part 21, heading—

insert—

**Division 1 Savings and transitional
provisions for Act No. 36 of
2013**

14 Amendment of s 293 (Definitions for pt 21)

(1) Section 293, heading, ‘pt 21’—

omit, insert—

div 1

(2) Section 293, ‘In this part’—

omit, insert—

In this division

15 Amendment of ss 294 and 298

Sections 294 and 298(2), ‘part’—

omit, insert—

division

16 Insertion of new pt 21, div 2

Part 21—

insert—

[s 16]

Division 2 **Transitional provisions for
Public Health (Childcare
Vaccination) and Other
Legislation Amendment
Act 2015**

**320A Power of authorised person to require
attendance under s 228**

- (1) Section 228, as amended by the amendment Act, applies in relation to an offence, or a matter being investigated by the health ombudsman, even if the offence was committed, or the matter happened or arose, before the commencement.
- (2) In this section—
amendment Act means the *Public Health (Childcare Vaccination) and Other Legislation Amendment Act 2015*.

**320B Effect of particular notices given before the
commencement**

- (1) This section applies if, before the commencement, an authorised person gave a notice to a person that purported to—
 - (a) be given under pre-amended section 228; and
 - (b) require the person to attend before the authorised person at a stated time and place to answer questions.
- (2) The notice has effect, and is taken to have had effect since it was given, to the same extent as it would have if—
 - (a) amended section 228 were in force when the notice was given; and

- (b) the notice were given under that section.
- (3) However, to remove any doubt, it is declared that the person is not taken to have committed an offence under section 229 or 229A by failing to do a thing mentioned in section 229A(1)(a) to (d) before the commencement.
- (4) Without limiting subsection (2)—
- (a) information obtained as a result of the giving of the notice is taken to have been as lawfully obtained by the authorised person under this Act as it would have been in the circumstances mentioned in subsection (2)(a) and (b); and
- (b) any decision made or other action taken by the health ombudsman in reliance on the information, before or after the commencement, is taken to be as lawful as it would be in the circumstances mentioned in subsection (2)(a) and (b).
- (5) In this section—
- amended section 228*** means section 228 as in force immediately after the commencement.
- information*** includes a document.
- pre-amended section 228*** means section 228 as in force from time to time before the commencement.