



Western Australia

Public Health Amendment (Immunisation Requirements for Enrolment) Act 2019

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Public Health Amendment (Immunisation Requirements for Enrolment) Act 2019

Contents

Part 1 — Preliminary		
1.	Short title	2
2.	Commencement	2
Part 2 — <i>Public Health Act 2016</i> amended		
3.	Act amended	3
4.	Section 4 amended	3
5.	Section 91 amended	4
6.	Section 94 amended	5
7.	Section 135 amended	5
8.	Part 9 Division 8 replaced	6
Division 8 — Immunisation status of children		
Subdivision 1 — Preliminary		
141A.	Terms used	6
Subdivision 2 — Immunisation requirements for enrolment		
141B.	Responsible person to give immunisation status to person in charge	7
141C.	Immunisation certificates issued or declared by Chief Health Officer	8
141D.	Immunisation or exemption a condition of enrolment	9
Subdivision 3 — Regulations relating to immunisation status of children		
142.	Regulations relating to immunisation status of children and control of disease	10

Contents

	Subdivision 4 — Reporting requirements	
	142A. Annual report to include information about enrolments	12
9.	Section 240 amended	13
10.	Section 254 replaced	13
	254. False or misleading information	14
11.	Section 280 amended	14
12.	Section 306A inserted	15
	306A. Review of amendments made by <i>Public Health Amendment (Immunisation Requirements for Enrolment) Act 2019</i>	15
	Part 3 — <i>School Education Act 1999</i> amended	
13.	<i>School Education Act 1999</i> amended	17
14.	Section 3 amended	17
15.	Section 16 amended	17
16.	Section 17 amended	18
17.	Section 23 amended	18
18.	Section 27 amended	18
19.	Section 77 amended	19
20.	Section 82 amended	19
21.	Section 159 amended	20
22.	Section 206 amended	20



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Public Health Amendment (Immunisation Requirements for Enrolment) Act 2019

No. 14 of 2019

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

[Assented to 5 July 2019]

The Parliament of Western Australia enacts as follows:

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;

urgently notifiable infectious disease-related condition means a notifiable infectious disease-related condition declared under section 91 to be an urgently notifiable infectious disease-related condition;

5. Section 91 amended

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

(1) In this section —

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

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

(1A) The regulations may —

- (a) declare a medical condition, other than a notifiable infectious disease, to be a notifiable infectious disease-related condition; or
- (b) declare a notifiable infectious disease-related condition to be an urgently notifiable infectious disease-related condition.

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

or an urgently notifiable infectious disease-related condition

(3) After section 91(2) insert:

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

- (a) acute rheumatic fever;
- (b) rheumatic heart disease.

6. Section 94 amended

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

- (a) as soon as is practicable, and in any event —
 - (i) in the case of an urgently notifiable infectious disease or an urgently notifiable infectious disease-related condition, within 24 hours; or
 - (ii) in the case of any other notifiable infectious disease or notifiable infectious disease-related condition, within 72 hours;

and

7. Section 135 amended

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

- (b) if the affected person or exposed person is believed to be attending, or to have attended, a school, community kindergarten, child care service, university or other educational institution, a teacher, lecturer, or other member

of staff of the school, community kindergarten,
child care service, university or educational
institution;

8. Part 9 Division 8 replaced

Delete Part 9 Division 8 and insert:

Division 8 — Immunisation status of children

Subdivision 1 — Preliminary

141A. Terms used

In this Division —

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

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

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

- (a) the most recent date of an application for enrolment of the child in a school, community kindergarten or child care service; or
- (b) the day on which the certificate is otherwise required to be provided under this Act;

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

immunisation certificate means —

- (a) an extract of an entry in the Australian 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 status of the child as recorded on the current immunisation certificate for the child —

- (a) when the child is being enrolled in the school, community kindergarten or child care service; and
 - (b) at such other time or times as are prescribed by the regulations.
- (3) For the purposes of ensuring compliance with subsection (2), the person in charge may require the responsible person for the child to produce the current immunisation certificate for the child.
- (4) The person in charge must take all reasonable steps to ensure that the responsible person for the child complies with subsection (2).

Penalty for this subsection: a fine of \$1 000.

141C. Immunisation certificates issued or declared by Chief Health Officer

- (1) The Chief Health Officer may issue an immunisation certificate for a child for the purposes of section 141B if —
- (a) the Chief Health Officer is —
 - (i) satisfied that a circumstance prescribed by the regulations is applicable to the child; or
 - (ii) otherwise satisfied that a special circumstance is applicable to the child;
 - and
 - (b) the Chief Health Officer is satisfied that, but for that circumstance, the child's immunisation status would be up-to-date.

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

Subdivision 3 — Regulations relating to immunisation status of children

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

- (1) Without limiting section 304(1), regulations may —
 - (a) require the person in charge of a school, community kindergarten or child care service, when directed to do so by the Chief Health Officer, to give a report to the Chief Health Officer in respect of information given to the person about the immunisation status of —
 - (i) a child enrolled at the school, community kindergarten or child care service; or
 - (ii) children enrolled at the school, community kindergarten or child care service;
- and
- (b) require the person in charge of a school, community kindergarten or child care service, when directed to do so by the Chief Health Officer either when giving a direction under

regulations made under paragraph (a) or at a later time, to give to the Chief Health Officer further information necessary to assist in preventing, controlling or abating a public health risk that might foreseeably arise from a child or children not being immunised against a vaccine preventable notifiable infectious disease, including —

- (i) the names of, and other identifying information in relation to, the child or children; and
- (ii) the names and contact details of the responsible persons for the child or children;

and

- (c) in the case of a child at a school, community kindergarten or child care service who has contracted, or is reasonably believed to have contracted, a vaccine preventable notifiable infectious disease, require the person in charge of the school, community kindergarten or child care service to give to the Chief Health Officer a report in respect of the child; and
- (d) require the person in charge of a school, community kindergarten or child care service, when directed to do so by the Chief Health Officer, to ensure that a child who has not been immunised against a vaccine preventable notifiable infectious disease specified by the Chief Health Officer is not permitted to attend, or participate in an educational programme of, the school, community kindergarten or child care service for the period specified by the Chief Health Officer; and

- (e) require the person in charge of a school, community kindergarten or child care service, when directed to do so by the Chief Health Officer, to close the whole, or a part, of the school, community kindergarten or child care service for the period specified by the Chief Health Officer to limit or prevent the spread of a vaccine preventable notifiable infectious disease.
- (2) Despite subsection (1)(a) and (b), the regulations may provide that the person required to provide the relevant report or information when directed to do so by the Chief Health Officer is —
 - (a) the chief executive officer, as defined in the *School Education Act 1999* section 229; or
 - (b) if the relevant information is held in an information management system established and maintained by another person or body, that other person or body.

Subdivision 4 — Reporting requirements

142A. Annual report to include information about enrolments

- (1) In this section —
enrolment means an enrolment of a child in —
 - (a) a school, before the child’s compulsory education period; or
 - (b) a community kindergarten; or
 - (c) a child care service.
- (2) The accountable authority of the Department must include the following information in each annual report

submitted under the *Financial Management Act 2006*
Part 5 —

- (a) the number of enrolments in the financial year to which the annual report relates that were of a 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
 - (b) any person pursuant to a requirement under this Act to provide information or produce a record or other document to that person.

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

- (2) For the purposes of subsection (1), a person gives false or misleading information if the person does one or more of the following —
- (a) states anything that the person knows is false or misleading in a material particular;
 - (b) omits from a statement anything without which the statement is, to the person's knowledge, misleading in a material particular;
 - (c) gives or produces any record or other document that —
 - (i) the person knows is false or misleading in a material particular; or
 - (ii) omits anything without which the record or other document is, to the person's knowledge, misleading in a material particular.

11. Section 280 amended

Delete section 280(b) and insert:

- (b) by a local government, by the chief executive officer of a local government or by an

- authorised officer authorised in writing by the local government; or
- (c) by an enforcement agency of a kind referred to in paragraph (c) of the definition of ***enforcement agency*** in section 4(1) or by an authorised officer authorised in writing by an enforcement agency of that kind.

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

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

Part 2 Public Health Act 2016 amended

s. 12

is prepared, but not later than 12 months after the
3rd anniversary.

Part 3 — *School Education Act 1999* amended

13. *School Education Act 1999* amended

This Part amends the *School Education Act 1999*.

14. Section 3 amended

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

education during the child’s compulsory education period; and

15. Section 16 amended

(1) Before section 16(1) insert:

(1A) In this section —

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

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

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

applicant under subsection (1).

(4) After section 16(2) insert:

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

16. Section 17 amended

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

or section 16(3)

17. Section 23 amended

(1) In section 23(1):

(a) delete “must” and insert:

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

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

the student

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

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

18. Section 27 amended

(1) Before section 27(1) insert:

(1A) In this section —

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

(1B) The principal of a school must comply with a direction
given by the Chief Health Officer under regulations

made for the purposes of the *Public Health Act 2016* section 142(1)(d) to not permit a child to attend the school or participate in an educational programme of the school.

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

Subsection (1)

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

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

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

19. Section 77 amended

After section 77(a) insert:

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

20. Section 82 amended

- (1) After section 82(1) insert:

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

s. 21

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

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

(3) In section 82(3):

(a) delete “decides that —” and insert:

decides under subsection (2) that —

(b) delete paragraph (d) and insert:

(d) any other criteria prescribed for the purposes of section 77(b), 78(2)(b) or 79(1)(b), as the case requires, are not satisfied in relation to the child,

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

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

21. Section 159 amended

After section 159(1)(h) insert:

(ha) the health and safety procedures at schools, including immunisation requirements for enrolment;

22. Section 206 amended

Delete section 206(2) and insert:

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

