

Western Australia

**Health, Safety and Civil Liability (Children in
Schools and Child Care Services) Act 2011**

As at 01 Mar 2011

No. 1 of 2011

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Health, Safety and Civil Liability (Children in Schools and Child Care Services) Act 2011

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No. 1 of 2011

**An Act to amend the *Civil Liability Act 2002* and the *School
Education Act 1999*.**

[Assented to 1 March 2011]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Health, Safety and Civil Liability (Children in Schools and Child Care Services) Act 2011*.

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.

Part 2 — *Civil Liability Act 2002* amended

3. Act amended

This Part amends the *Civil Liability Act 2002*.

4. Section 3A amended

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

1CA,

5. Section 4A amended

In section 4A(1) after “1C,” insert:

1CA,

6. Part 1CA inserted

After section 5AA insert:

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

5AAA. Terms used

In this Part —

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

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

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

enrolled child means —

- (a) a child enrolled at community kindergarten; or
- (b) a child for whom a child care service is provided; or
- (c) a student within the meaning given in the *School Education Act 1999* section 4;

staff member means a natural person who is —

- (a) employed in the department of the Public Service referred to in the *School Education Act 1999* section 228; or
- (b) employed in a school registered under the *School Education Act 1999* section 160; or
- (c) a supervising officer as defined in the *Child Care Services Act 2007* section 3; or
- (d) a member of the staff of a child care service; or
- (e) prescribed (or of a class prescribed) by the regulations as a person to whom this Part applies.

5AAB. Application of this Part

- (1) In this section —

commencement day means the day on which the *Health, Safety and Civil Liability (Children in Schools and Child Care Services) Act 2011* section 6 comes into operation.

- (2) Subject to sections 3A and 4A, this Part applies to civil liability of any kind unless this section states otherwise.
- (3) This Part extends to a claim even if the damages are sought to be recovered in an action for breach of contract or any other action.

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

5AAC. Protection of staff members

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

5AAD. Exclusion from protection

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

Part 3 — *School Education Act 1999* amended

7. Act amended

This Part amends the *School Education Act 1999*.

8. Section 17 amended

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

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

9. Section 244 amended

In section 244(2):

(a) after paragraph (a) insert:

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

(b) after paragraph (a) insert:

and

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