

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

Explanatory Notes

Short title

The short title of the Bill is the Public Health (Childcare Vaccination) and Other Legislation Amendment Bill 2015 (the Bill).

Policy objectives and the reasons for them

The primary purpose of the Bill is to amend the *Public Health Act 2005* (the Public Health Act) to give the person in charge of an approved education and care service the option to refuse, cancel or place a condition on the enrolment or attendance of a child who is not vaccinated, or not up to date with their scheduled immunisations.

The Bill will also amend the *Health Ombudsman Act 2013* (the Health Ombudsman Act) to expressly empower an authorised person to require a person to attend and answer questions and produce documents in relation to investigations into serious healthcare complaints and offences under the Act.

Public Health Act 2005

The object of the Public Health Act is to protect and promote the health of the Queensland public, and one way in which this object will be achieved is by preventing, controlling and reducing risks to public health.

The terms ‘immunisation’ and ‘vaccination’ are used interchangeably, but their meanings are not exactly the same. ‘Immunisation’ means both being administered a vaccine, and becoming immune to a disease as a result of being vaccinated. ‘Vaccination’ simply means being administered a vaccine.

Vaccination is a critically important public health strategy and is a key health priority of the Government. Immunisation has long been recognised as one of the most successful public health interventions introduced in Australia, enabling community health to be maintained and protected by the reduction and eradication of vaccine-preventable conditions.

The majority of people support immunisation and have their children vaccinated. This is validated by high childhood immunisation rates in Queensland of approximately 92%. In 2014, 91.5% of one-year old, 92.4% of two-year old and 92.4% of five-year old Queensland children were up to date with their scheduled vaccinations.

While these annualised rates are high and comparable to other Australian jurisdictions, they indicate that over 15,000 one-, two- and five-year old children were not fully immunised. These children remain at risk of contracting and transmitting serious and potentially life-threatening diseases within the community, particularly within a childcare setting.

These rates also fall short of the 95% required to achieve 'herd immunity'. When 95% of the population is immunised, herd immunity prevents the transmission of highly contagious conditions, such as measles. Herd immunity, while protecting those who are already immunised, also protects those who are not, including the most vulnerable and at-risk groups, including:

- babies and children who are too young to be immunised
- children who cannot be immunised due to a medical contraindication, as the vaccine may be harmful to them
- people who are immunosuppressed
- people with an immune system that does not adequately respond to immunisation.

While some parents may intend to have their children fully-immunised, there may be circumstances where a child is not administered their vaccinations at the recommended milestone. For example, a child might be unwell when they are due to be vaccinated, and the vaccination has to be delayed. In these instances, children may be on a 'catch up' schedule for their vaccinations.

Of particular concern is immunisation coverage for Queensland Aboriginal and Torres Strait Islander children at one year of age. The rate is considerably lower than for non-indigenous children at the same age, with present data showing a 4.6 percentage gap in the immunisation rates of Aboriginal and Torres Strait Islander children compared to non-indigenous children (87.5% compared to 92.1%). The continuing challenge in closing this gap is communicating to Aboriginal and Torres Strait Islander parents the importance of having children vaccinated on time, as data shows this does not occur in many instances, thereby putting the children at risk of contracting and transmitting serious vaccine-preventable conditions.

When immunisation rates are not maintained, vaccine-preventable conditions such as measles or rotavirus can spread rapidly, with potentially devastating consequences. It is therefore imperative that high immunisation coverage rates are achieved and maintained.

Between 2010 and 2014, Queensland Health received over 6,500 notifications of vaccine-preventable conditions in childcare-aged children (0-4 years). The notification data for this period showed incidences of pertussis (whooping cough) (2,866), rotavirus (2,802), and chicken pox (726) are particularly high. These viruses are serious and potentially life-threatening. For example:

- Pertussis (whooping cough) is a highly contagious respiratory infection caused by the bacterium *Bordetella pertussis*. It can be life threatening for babies and children, while adolescents and adults may only get a persistent cough. Complications in babies may include pneumonia, fits and brain damage from prolonged lack of oxygen. Most hospitalisations and deaths resulting from whooping cough occur in babies less than six-months of age.

- Rotavirus is a group of viruses that can cause severe gastroenteritis in infants and children. It is spread by the faecal-oral route and can cause mild-to-severe dehydrating diarrhoea, fever and potentially death.
- Chicken pox (also known as varicella) is highly contagious. It is caused by the varicella-zoster virus and causes low-grade fever and fluid filled spots. Reactivation of the virus later in life causes shingles. One in 100,000 patients develop encephalitis (brain inflammation). It can result in congenital malformations in newborns. Infection in the mother around birth can result in severe infections in the baby in up to one third of cases.
- Measles is an acute, highly infectious illness caused by the measles virus. Serious complications include pneumonia and encephalitis. It may also cause middle-ear infection. Most deaths occur in children under five. People with a chronic illness are also considered high risk.

Presently, the Public Health Act enables a person in charge of a school or an education and care service, approved under the Education and Care Services National Law (Queensland) or *Education and Care Services Act 2013*, to advise a child's parent if they reasonably suspect a child attending the school or approved service may have a contagious condition, and other children attending the school or approved service may be at risk of contracting the condition.

The Public Health Act authorises a person in charge of a school or approved education and care service to direct the parent of a child (who has not been vaccinated for a vaccine-preventable condition) to remove and not send the child to the school or approved service for a prescribed period of time. The direction can only be made if the person in charge has done all of the following:

- advised at least one of the child's parents about their suspicion that the child is at risk of contracting a contagious condition
- reasonably suspected the child will be at risk of contracting the contagious condition because of the child's continued attendance at the school or approved service
- has consulted a doctor or another person authorised by the chief executive of the Department of Health.

However, the only vaccine-preventable condition specified in the *Public Health Regulation 2005* is measles. It is proposed to amend the *Public Health Regulation 2005* to list all necessary vaccine-preventable conditions relevant to the Bill.

In addition, approved education and care services require a child's immunisation status to be kept in a child's enrolment record. However, the legislation neither specifically provides for the type of vaccination record to be kept to prove immunisation status, nor does it provide for the exclusion of children from enrolment in a service if they are not immunised.

The objective of the Bill is to promote immunisation and empower approved education and care services to refuse, cancel or place a condition on the enrolment or attendance of a child who is not vaccinated, or not up to date with their scheduled immunisations. Empowering approved services in this way will protect children, as well as those who work with children, from vaccine-preventable conditions.

Health Ombudsman Act 2013

The Bill also contains an unrelated health legislation amendment. The amendment to the Health Ombudsman Act is urgently required to ensure the Health Ombudsman has sufficient information-gathering powers to undertake investigations into healthcare complaints and possible offences under the Act. The amendment effectively clarifies an existing power to require a person to provide information in the course of an investigation, by specifically providing that a person may be compelled to attend and answer questions.

Under the Health Ombudsman Act, an authorised person is responsible for carrying out activities for the purpose of an investigation by the Health Ombudsman and investigating, monitoring and enforcing compliance with the Act. Presently, the Act empowers an authorised person to require a person to give information in the course of an investigation at a stated reasonable time and place. However, the Supreme Court ruled in *Moosawi v Massey* [2015] QSC 169 that this power did not extend to compelling a person to attend in person and answer questions. Without such full powers, the Health Ombudsman will be unable to effectively undertake investigations into serious healthcare complaints.

The relevant Supreme Court decision concerned a challenge to a notice issued by an authorised person under section 228 of the Health Ombudsman Act. The notice required a person to appear and answer questions as part of an investigation. The Supreme Court ruled that the existing power in the Act, to require a person to give information, was insufficient to support such a notice.

Achievement of policy objectives

Public Health Act 2005

The Bill amends the Public Health Act to support the policy initiatives of the Government to promote immunisation and protect children, their families and those who work with children against vaccine-preventable conditions.

Amendments to the Public Health Act will mean that if, on request, a parent does not provide an immunisation history statement showing their child's immunisation status is up to date, the person in charge of an approved education and care service will be empowered to make any of the following decisions:

- refuse to enrol the child at their service
- conditionally accept enrolment and/or attendance of the child at their service
- cancel the enrolment or refuse attendance of the child at their service.

As these amendments offer discretionary power to approved education and care services, it does not prevent a service from allowing unvaccinated children to enrol or attend their service. Also, if a parent refuses to comply with the request to provide an immunisation history statement, the person in charge can refuse to enrol the child.

The person in charge may make their request for an immunisation history statement in an enrolment form, or any similar documentation used for enrolling a new child.

Importantly, the amendments also provide a person in charge with flexibility to accept a child's enrolment, but make that enrolment and/or the child's attendance subject to conditions. Such a condition may be that if the requested immunisation history statement is not provided, enrolment will be cancelled.

Approved education and care services are encouraged to take into consideration a child's circumstances when utilising their discretionary power under the Public Health Act. If the person in charge of an approved service reasonably believes the child is a vulnerable child, and refusing enrolment or attendance would not be in the best interests of the child, they may choose to enrol or accept attendance if their immunisation status is not up to date, or waive the requirement to provide an immunisation history statement.

A vulnerable child may be one whose parents have limited literacy, numeracy, communication or English-language skills (possibly because they are newly arrived in Australia), and therefore have difficulty in completing forms or seeking access to government services in relation to their child. Another example may be children whose parents are Aboriginal and Torres Strait Islander, and they live in a remote community.

The Bill provides that a child's immunisation status is 'up to date' in any of the following circumstances:

- the child is age-appropriately immunised
- the child is following an approved immunisation catch-up schedule
- the child has not been vaccinated due to a medical contraindication.

The person in charge of an approved education and care service is also empowered to request the parent of a child enrolled at the service to provide updated proof of the child's immunisation status at key immunisation age milestones. Where the parent does not provide this within a period of at least four weeks of the request, the person in charge of the service may refuse to enrol or may refuse to allow the child to attend the service, or impose conditions on the child's attendance at the service. These conditions may include an agreement between the service provider and the parent on a reasonable timeframe to obtain an immunisation history statement or provide a catch-up schedule approved by a recognised immunisation provider.

The amendments will only apply to education and care services approved under the Education and Care Services National Law (Queensland) and the *Education and Care Services Act 2013*. The most common service types approved under this legislation include the following:

- family day care services – services which organise, coordinate, and monitor the provision of family day care, provided by educators, usually in their homes
- standalone kindergarten services – centre-based services primarily for children in the year prior to Prep, generally operating during school terms and school hours
- long day care services – centre-based services that primarily cater for children aged from birth to the year prior to Prep, and operate for at least 10 hours a day from Monday-to-Friday for a minimum of 48 weeks each year

- limited hours services – centre-based services for up to 30 children at any one time, operating for not more than 20 hours in one week
- outside school hours care services – centre-based services which mainly cater for school aged children outside school hours (i.e. before and after school, and during school holidays).

The proposed legislation will not apply to the providers of unregulated or unapproved education and care services, which are often short-term, ad hoc arrangements (e.g. nannies, babysitters, playgroups).

A judicial review clause has not been included in the Public Health Act as the legislation is drafted to eliminate any ambiguity to whether the child is up to date with their scheduled vaccinations.

The amendments will promote immunisation and protect children and those people working at approved education and care services from vaccine-preventable conditions.

Health Ombudsman Act 2013

The Bill will amend the Health Ombudsman Act to specify the power for an authorised person to compel a person to attend, at a stated reasonable time and place, and answer questions or produce documents related to an offence, or matter being investigated by the Health Ombudsman. However, the existing right of a person to refuse to answer a question or produce a document on the ground of self-incrimination will not change.

The amendments will apply retrospectively to achieve the following:

- validate notices given prior to commencement, where the notice purported to require a person to attend and answer questions
- provide that information obtained in response to these notices, and any decisions made and actions taken in reliance on such information, are taken to be as lawful as they would have otherwise been had the relevant notice been issued under section 228 as amended.

Alternative ways of achieving policy objectives

There are no other viable alternatives that would achieve the policy objectives of the Bill.

Estimated cost for government implementation

The costs to government associated with implementation of the Bill will be met from within existing budget allocations.

Consistency with fundamental legislative principles

Rights and liberties of individuals (*Public Health Act 2005*)

Clause 5 provides that a person in charge of an approved education and care service can refuse enrolment to a child whose immunisation status is not up to date, or can refuse to allow

the child to attend the service. This power may be considered to impact on the rights and liberties of children and their parents, and particularly may be considered discriminatory in nature.

However, refusing to allow the enrolment or attendance of a child at an approved education and care service based solely on the child's immunisation status could not be considered discriminatory. The *Anti-Discrimination Act 1991* prohibits discrimination on the basis of a number of attributes, including disability or religious belief, however immunisation status is not a recognised attribute. The *Anti-Discrimination Act 1991* also provides a broad exemption for actions which are reasonably necessary to protect public health, and the aim of the Bill is to protect children and people who work at approved education and care services from vaccine-preventable conditions. Accordingly, the Bill will not lead to unlawful discrimination.

Rights and liberties of individuals are not absolute, and the rights and liberties of parents and children need to be balanced against the objective of the Bill in order to protect public health. Immunisation is a key public health strategy in protecting people from the risks associated with vaccine-preventable conditions. It is therefore considered the possible infringement on individual's rights and liberties presented by the Bill are outweighed by the public health benefits it will achieve.

Immunity from proceedings (*Public Health Act 2005*)

Clause 6 provides that a person in charge of an approved education and care service is not liable civilly, criminally, or under an administrative process, where they followed the prescribed process and acted honestly. This means that the Bill includes a protection from liability for a person in charge of a service for making the decision to refuse enrolment or attendance. Similarly, protection is also offered where the person decides to accept enrolment or attendance regardless of immunisation status.

Rights and liberties of individuals (*Health Ombudsman Act 2013*)

Clause 9 will empower an authorised person to require a person to attend and answer questions and produce documents, rather than merely give information at a stated reasonable time and place, as the Health Ombudsman Act is presently drafted. This power will affect the rights and liberties of individuals. However, the existing complementary right of a person to refuse to answer a question or produce a document on the ground of self-incrimination will not change.

The new provisions are consistent with the *Health Quality and Complaints Commission Act 2006*, repealed by the Health Ombudsman Act, which provided a power to require a person to attend before an authorised person to answer questions or produce documents. The new provisions are also consistent with the information-gathering provisions in the Health Practitioner Regulation National Law 2009 (Queensland) that apply to disciplinary proceedings for registered health practitioners. The new power goes no further than is reasonably necessary to enable the Health Ombudsman to conduct investigations and inquiries into the provision of healthcare services.

Clause 16 will amend the Health Ombudsman Act to provide the following:

- a notice given prior to commencement that purported to require a person to attend and answer questions is taken to have effect, and is taken to have had effect since it was given, as if the notice was given under section 228 as amended
- information obtained in response to a notice requiring a person to attend and answer questions, issued before commencement, is taken to be as lawful as it would have been had the relevant notice been issued under section 228 as amended
- any decision made or other action taken by the Health Ombudsman in reliance on such information, either before or after commencement, is taken to be as lawful as it would have been had the relevant notice been issued under section 228 as amended.

These provisions will affect the rights and liberties of individuals retrospectively. In issuing notices under section 228, the Health Ombudsman has acted on the belief the existing provisions in the Health Ombudsman Act provide sufficient powers to require a person to provide information by attending at a place and answering questions. However, the recent Supreme Court decision creates uncertainty as to, firstly, the validity of notices issued by authorised officers that required a person to attend at a place and answer questions and, secondly, reliance on information obtained pursuant to these notices.

The Health Ombudsman is responsible for investigating complaints about health services and health service providers, which may include, for example, allegations of inappropriate behaviour by a provider or concerns about the quality of treatment or care provided. Applying the amendments retrospectively will provide certainty for all parties, by validating notices issued under the current provisions. It will also provide clarity that decisions made and actions already taken by the Health Ombudsman are not invalidated because of defects relating to the issuing of notices under section 228. Accordingly, the retrospective application of the amendments is justified in the circumstances.

Clause 16 provides that a notice requiring a person to attend and answer questions can be issued in relation to an offence or matter being investigated, even if the offence was committed, or the matter happened or arose, before the amendments commence. This provision does not retrospectively affect the rights or liberties of individuals. Rather it is included for the avoidance of doubt to ensure that the Health Ombudsman is able to use the full range of information-gathering powers in matters that may have commenced prior to the amendments.

Introduction of new offences (*Health Ombudsman Act 2013*)

Clause 11 will amend the Health Ombudsman Act to include a new offence for contravening a requirement to attend before an authorised person and answer questions and produce documents. This offence carries a maximum penalty of 100 penalty units. This new offence may infringe on the principle that an Act has sufficient regard to the rights and liberties of individuals by introducing a new offence.

The Health Ombudsman Act presently provides that it is an offence to fail to comply with a requirement to give information to an authorised person. The new offence provision is consistent with the existing penalty provision and carries the same penalty for failing to

comply. The provision contains appropriate safeguards, because failing to comply will not be an offence if the person has a reasonable excuse. The Bill expressly provides that it is a reasonable excuse if answering the question or producing the document might incriminate the person.

Authorised persons are responsible for investigating serious healthcare complaints and offences against the Health Ombudsman Act. Gathering information is crucial to the effective performance of these functions. The offence provision is necessary to ensure compliance with attendance requirements and ensure investigations can be conducted effectively and in a timely manner.

Consultation

Public Health Act 2005

Targeted consultation on the proposed amendments was undertaken with the following external industry stakeholders:

- Queensland Children's Activity Network (QCAN)
- Early Childhood Australia (ECA)
- Queensland Lutheran Early Childhood Services
- The Creche and Kindergarten Association Limited (C&K)
- Independent Schools Queensland (ISQ)
- Queensland Catholic Education Commission (QCEC)
- Playgroup Queensland
- Early Childhood Teachers' Association
- Family Day Care Association of Queensland (FDCAQ)
- The Parenthood
- Isolated Children's Parents' Association
- The Gowrie (QLD).

These stakeholders, which included representatives from lead approved education and care services, generally supported the amendments.

Health Ombudsman Act 2013

The Health Ombudsman was consulted on, and supports, the proposed amendments to the Health Ombudsman Act.

Consistency with legislation of other jurisdictions

Public Health Act 2005

In New South Wales, the *Public Health Act 2010* (NSW) provides that the principal of a childcare facility must not enrol a child, or permit a child to enrol at the facility, unless the child's parent has provided the principal with a vaccination certificate for the child. The vaccination certificate is an immunisation certificate indicating that the child is age appropriately immunised. Alternatively, the vaccination certificate may be a certified in an

approved form by an authorised provider certifying that the child is following an approved vaccination catch-up schedule. Alternatively, the parent of a child may provide a certificate (in the approved form) showing the child should be exempt from one or more of the specified vaccines because the child has a medical contraindication.

The New South Wales legislation also provides that a parent may provide a certificate which specifies that the parent has a conscientious objection to immunisation. The New South Wales legislation was passed prior to an announcement made by the Prime Minister of Australia in April 2015 that parents who fail to immunise their children will no longer be paid the Family Tax Benefit, the Childcare Benefit, or the Childcare Rebates.

The New South Wales legislation differs from the Queensland model in that, in New South Wales, childcare centres must not enrol a child where proof of immunisation has not been provided by the parent. By contrast, the Bill gives persons in charge of approved education and care services in Queensland the discretion to refuse enrolment to a child whose immunisation status is not up to date.

In Tasmania, the *Public Health Act 1997* (Tas) requires a person in charge of a school or childcare facility to require a parent or guardian of a child about to attend the school or facility to produce any of the following:

- an immunisation certificate for the child, stating the child's immunisation status
- a statutory declaration, stating the parent or guardian has a conscientious objection to immunisation
- a statutory declaration, stating the parent or guardian believes the child has been immunised against a notifiable disease but cannot produce proof of immunisation.

The person in charge of the school or childcare facility must keep a record of all information relating to the immunisation of each child at the school or facility.

In the Australian Capital Territory, the *Public Health Regulation 2000* (ACT) provides that, when a child is enrolled at kindergarten or primary school for the first time, the person in charge of the kindergarten or school must require a parent or guardian of the child to provide an immunisation record, or a statutory declaration stating that the child has been immunised. If the child has not been immunised, or the parent or guardian does not know whether the child has been immunised, a declaration must be provided to that effect. The legislation also provides that when a child is enrolled at a preschool or childcare centre for the first time, the person in charge of the preschool or centre must require a parent or guardian of the child to provide an immunisation record setting out the immunisation status of the child, and give the person in charge a copy of that record.

It is understood that Victorian state health and education departments have commenced drafting laws to enforce a 'no jab, no play policy'.

Health Ombudsman Act 2013

In all Australian jurisdictions, other than Western Australia and Queensland, serious healthcare complaints such as those dealt with by the Health Ombudsman are dealt with under the Health Practitioner Regulation National Law as implemented in each jurisdiction.

The Health Practitioner Regulation National Law contains express powers to compel a person to attend and answer questions. Accordingly, the amendments will ensure the Health Ombudsman's powers are consistent with those used in other Australian jurisdictions.

Notes on provisions

Part 1 Preliminary

Short title

Clause 1 provides that, when enacted, the short title of the Act will be the *Public Health (Childcare Vaccination) and Other Legislation Amendment Act 2015*.

Commencement

Clause 2 provides for the commencement of the Act.

The amendments to the *Public Health Act 2005* (the Public Health Act) will commence on 1 January 2016. The amendments to the *Health Ombudsman Act 2013* (the Health Ombudsman Act) will commence on Assent.

Part 2 Amendment of the *Public Health Act 2005*

Act amended

Clause 3 specifies that this part amends the Public Health Act.

Amendment of s 158 (Definitions for ch 5)

Clause 4 amends section 158 to insert a range of new definitions for chapter 5, part 2, division 1AA. Each of the definitions is defined by reference to new section 160A.

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

Clause 5 inserts new division 1AA into chapter 5, part 2. This division inserts new sections 160A to 160D into the Public Health Act.

Section 160A sets out the following definitions for new division 1AA:

- ‘Australian Immunisation Handbook’ means The Australian Immunisation Handbook, approved as guidelines under section 14A of the *National Health and Medical Research Council Act 1992* (Cwlth)
- ‘immunisation history statement’ means an immunisation history statement as recorded on the Australian Childhood Immunisation Register kept under the *Health Insurance Act 1973* (Cwlth), section 46B, or a statement about a child’s immunisation history given by a recognised immunisation provider
- ‘immunisation status ‘up to date’’ means, for each vaccine-preventable condition, a child is age-appropriately immunised for the condition in accordance with the recommendations stated in the Australian Immunisation Handbook; or 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 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’ is defined by reference to section 46A of the *Health Insurance Act 1973* (Cwlth) - under section 46A of the *Health Insurance Act 1973*

(Cwlth), a recognised immunisation provider is a person who is recognised by the Chief Executive Medicare as a provider of immunisation to children.

Section 160B sets out the circumstances in which a person in charge of an approved education and care service may exclude a child not yet enrolled. When a parent applies to enrol a child at a service, the person in charge of the service is protected from liability if they make any of the following decisions, and that decision is made in particular circumstances.

The person in charge of a service may make any of the following decisions:

1. refuse to enrol the child
2. enrol the child, but not allow the child to attend until the parent provides an immunisation history statement
3. enrol the child subject to a condition, and/or enrol the child and impose a condition on the child's attendance, with either condition remaining in place until the parent provides an immunisation history statement.

The particular circumstances, all of which must apply, are as follows:

- the person in charge must request the parent provide an immunisation history statement, showing the child's immunisation status is up to date - the person in charge must decide on a reasonable period within which the statement is to be provided, and advise the parent of that period
- the person in charge must also advise the parent that any of the decisions may be made if the statement is not provided within the given period
- the parent refuses to comply with the request, or does not provide the statement within the given period.

The request may be made in an enrolment form provided to the parent by the person in charge. If a condition is imposed, it must be relevant to the immunisation status of the child, and may also state that the child's enrolment is cancelled if the parent does not provide an immunisation history statement noting the child's immunisation status as 'up to date'.

The decisions are explained in more detail below:

1. The person in charge may decide to refuse to enrol the child if a parent fails to provide an immunisation history statement within the given period or if the parent refuses to comply with the request to provide the statement. In this situation, if the parent still wants to enrol the child at the service, the parent must commence the enrolment process again. This decision does not address the child's attendance at the service, as it is presumed the child could not attend if they have not first been enrolled.
2. The person in charge may decide to enrol the child, but not allow the child to attend until the parent provides an immunisation history statement. This will allow a person in charge to provide certainty to parents on a place for the child in a service until they can provide proof of 'up to date' immunisation status for their child. Although enrolment is not specifically mentioned, it is presumed the child could only attend if they have first been enrolled.
3. The person in charge may decide to enrol the child (with the child not attending), but make that enrolment subject to a stated condition, with that condition remaining in place

until the parent provides an immunisation history statement. A stated condition must be relevant to the immunisation status of the child, and may be a condition that the child's enrolment will be cancelled if the immunisation history statement is not provided. If the statement is provided, the enrolment is confirmed and the child may attend the service.

Alternatively, the person in charge may decide to enrol the child, and allow the child to attend the service, but make that attendance subject to a condition, with that condition remaining in place until the parent provides an immunisation history statement. Again, the stated condition must be relevant to the immunisation status of the child, and may be a condition that the child's enrolment will be cancelled if the immunisation history statement is not provided (although it remains an option for a condition on attendance to not impact on enrolment). If the statement is provided, the condition will no longer apply to the child's attendance.

The person in charge may make any one of these decisions. In addition, the person in charge may make a combination of these decisions (e.g. enrol the child conditionally and also allow the child to attend conditionally, so that if the immunisation history statement is not provided within the stated period, both the enrolment is cancelled and the attendance refused). The request does not need to nominate which of the prescribed decisions may be taken if the statement is not provided, rather it must note that any of those decisions may be taken.

An approved education and care service includes an education and care service and a QEC approved service. 'Education and care service' is defined in section 158 of the Public Health Act as an approved education and care service under the Education and Care Services National Law (Queensland). A 'QEC approved service' is defined by reference to schedule 1 of the *Education and Care Services Act 2013*. Under this Act, a 'QEC approved service' means a Queensland-approved education and care service.

'Parent' is defined in section 159 of the Public Health Act to mean a child's mother, father or someone else having or exercising parental responsibility for the child. Where a child is in the custody or guardianship of the chief executive (child safety) under the *Child Protection Act 1999*, the chief executive is considered to be the child's parent for the purposes of these provisions. A 'parent' also includes a person who under Aboriginal tradition or Torres Strait Island custom is regarded as a parent.

Section 160C sets out the circumstances in which a person in charge of an education and care service or QEC approved service may exclude an enrolled child.

The person in charge is protected from liability if they make any of the following decisions, and that decision is made in particular circumstances.

The person in charge of a service may make any of the following decisions:

1. cancel the child's enrolment
2. refuse to allow the enrolled child to attend the service until the parent provides an immunisation history statement stating that the child immunisation status is 'up to date'
3. allow the child to attend the service, but impose a condition on their enrolment or attendance, with either condition remaining in place until the parent provides an immunisation history statement stating that the child's immunisation status is 'up to date'.

The particular circumstances, all of which must apply, are as follows:

- the person in charge must request the parent provide an immunisation history statement, showing the child's immunisation status is up to date. The person in charge must allow at least four weeks within which the statement is to be provided, and advise the parent of that period
- the request is made after the child has reached the age (as stated in the National Immunisation Program Schedule Queensland) at which the child should be immunised (or further immunised) against a vaccine-preventable condition
- the person in charge must also advise the parent that any of the three decisions may be made if the statement is not provided within the given period
- the parent does not provide the statement within the given period.

Again, if a condition is imposed, it must be relevant to the immunisation status of the child.

The decisions are explained in more detail below:

1. The person in charge may decide to cancel the child's enrolment. In this situation, as it is presumed the child could only attend if they continue to be enrolled, the child will no longer be allowed to attend the service.
2. The person in charge may decide to continue the child's enrolment, but refuse to allow the child to continue attending the service until the parent provides an immunisation history statement. If the statement is provided, the child may resume attending the service, however if the statement is not provided, the child will continue to not be allowed to attend the service.
3. The person in charge may decide to continue the child's enrolment and allow the child to continue attending the service, but make that enrolment subject to stated conditions, with that condition remaining in place until the parent provides an immunisation history statement. If the stated condition is satisfied, the enrolment continues, and the child may also continue attending the service. However, if the stated condition is not satisfied, the enrolment can be cancelled, and the child will no longer be allowed to attend the service.

Alternately, the person in charge may decide to continue the child's enrolment, and also allow the child to continue attending the service, but make that attendance subject to stated conditions, with that condition remaining in place until the parent provides an immunisation history statement. If the statement is provided, the child may continue attending the service. However, if the statement is not provided, the child will continue to not be allowed to attend the service.

The person in charge may make any one of these decisions. In addition, the person in charge may make a combination of these decisions (e.g. impose a condition on the child's enrolment and make the child's attendance conditional, so that if the immunisation history statement is not provided within the stated period, both the enrolment is cancelled and the attendance refused). The request does not need to nominate which of the prescribed decisions may be taken if the statement is not provided, rather it must note that any of those decisions may be taken.

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

‘Vaccine-preventable condition’ is defined in section 158 of the Public Health Act to mean a contagious condition that is prescribed under a regulation as a vaccine-preventable condition.

Section 160D provides that if a parent does not provide an immunisation history statement for their child stating that the child’s immunisation status is ‘up to date’, and the person in charge of an approved education and care service decides to enrol a child, or allow a child to attend the service, the child is taken to not be vaccinated. The effect of this is that if there is an outbreak of a vaccine-preventable condition at an approved service, the person in charge of the service can direct the parent of an unvaccinated child not to send their child to the service because they may be at risk of contracting the condition.

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

Clause 6 inserts new subsection (1A) into section 179. Presently, section 179 provides that, where a person in charge of a school or an approved education and care service takes action to temporarily exclude a child, or instruct a parent not to send a child to the service because the child is unvaccinated or at risk of contracting a contagious condition or vaccine-preventable condition, the person is not liable civilly, criminally, or under an administrative process for doing the thing, where the person acted honestly.

New subsection (1A) provides that, where a person in charge of an approved education and care service, acting honestly, refuses to enrol a child, refuses to allow the child to attend the service, or imposes conditions on the child’s enrolment or attendance at the service, the person is not liable civilly, criminally, or under an administrative process.

New subsection (1A) also extends the protection from liability afforded by section 179 to apply where the person in charge of an approved education and care service decides to enrol a child who is not fully immunised, or allow that child to attend the service.

New subsection (1A) does not apply to schools.

Amendment of sch 2 (Dictionary)

Clause 7 amends schedule 2 to insert a range of new definitions for chapter 5, part 2, division 1AA. Each of the definitions is defined by reference to new section 160A.

Part 3 Amendment of *Health Ombudsman Act 2013*

Act amended

Clause 8 specifies that this part amends the Health Ombudsman Act.

Amendment of s 228 (Power to require information)

Clause 9 amends section 228, to expressly provide that an authorised person may require a person to attend before the authorised person and answer questions or produce documents.

The existing power for the authorised person to require a person to give information related to an offence or matter being investigated, at a stated reasonable time and place, is retained, with an amendment to provide that the authorised person may require the person to give

stated information. This makes clear that new section 228(3)(a) is for use in circumstances where the authorised person seeks specific information from the person.

New section 228(3)(b) provides that an authorised person may require a person to attend before the authorised person at a stated reasonable time and place to answer questions or produce documents.

The power to require a person to give stated information under paragraph (a) and the power to require a person to answer questions and produce documents under paragraph (b) are alternative powers for the authorised person. That is, an authorised person may exercise the power to issue a notice under section 228(3)(b), even if the authorised person has issued a notice under section 228(3)(a).

Clause 9 also makes amendments to simplify the drafting of section 228 by removing the defined term ‘information requirement’, and instead referring to the ‘requirement’.

Amendment of s 229 (Offence to contravene information requirement)

Clause 10 amends section 229, which provides that it is an offence to fail to comply with a requirement to give information. The amendments remove the term ‘information requirement’ and replace it with a reference to a requirement made under section 228(3)(a), that is, the requirement to give stated information.

Insertion of new s 229A

Clause 11 inserts new section 229A, which provides that it is an offence for a person who has been given a notice under new section 228(3)(b) to fail to do any of the following:

- attend as required by the notice
- continue to attend as required by the authorised person until excused from further attendance
- answer a question the person is required to answer by the authorised person
- produce a document the person is required to produce by the notice.

However, it will not be an offence if the person has a reasonable excuse. New subsection (2) provides that it is a reasonable excuse if answering the question or producing the document might tend to incriminate the individual or expose the individual to a penalty. This reflects the existing protections that apply where a person is required to give information under current section 228.

This offence carries a maximum penalty of 100 penalty units.

Renumbering of pt 21, divs 1 to 8

Clause 12 renumbers part 21 as a result of clause 16, which inserts new division 2 into part 21.

Insertion of new pt 21, div 1 hdg

Clause 13 amends the heading of division 1 of part 21, as a result of the renumbering of part 21.

Amendment of s 293 (Definitions for pt 21)

Clause 14 makes a consequential amendment to section 293, as a result of the renumbering of part 21.

Amendment of ss 294 and 298

Clause 15 makes consequential amendments to sections 294 and 298(2), as a result of the renumbering of part 21.

Insertion of new pt 21, div 2

Clause 16 inserts new division 2 into part 21. New division 2 contains the transitional provisions for the amendments made by part 3 of the Act.

New section 320A provides that section 228, as amended, applies in relation to an offence or a matter being investigated by the Health Ombudsman, even if the offence was committed or the matter being investigated happened or arose before commencement of section 320A. This provision will ensure that an authorised person may issue a notice under section 228, as amended, in relation to matters already on foot at the time the amendments commence.

New section 320B applies if an authorised person has given a notice to a person under section 228, as in force before this Act commences, requiring the person to attend before the authorised person to answer questions at a stated time and place ('a pre-commencement notice'). New section 320B(2) operates retrospectively to provide that a pre-commencement notice has effect, and is taken to have had effect since it was given, to the same extent it would have if the notice was given under section 228 as amended.

New subsection (3) declares that, notwithstanding the retrospective application of this provision, a person is not taken to have committed an offence under section 229 or 229A if, before commencement, the person fails to attend or answer a question or produce a document as required by new section 229A(1)(a) to (d).

New subsection (4) provides that:

- information obtained as a result of the giving of a pre-commencement notice is taken to have been as lawfully obtained by the authorised person as it would have been if it were obtained pursuant to a notice given under the amended provisions; and
- any decision made or action taken by the Health Ombudsman in reliance on information obtained pursuant to a pre-commencement notice is taken to be as lawful as it would have been had it been issued under section 228 as amended.

New subsection (5) contains definitions for new section 320B.

To avoid any doubt, new section 320B is intended to operate retrospectively, by validating the lawfulness of pre-commencement notices. This section is intended to not only validate the use of information obtained pursuant to pre-commencement notices following commencement of these amendments, but to also provide that pre-commencement notices are taken to have been valid since the time they were given.

The provision will make clear that information obtained in response to a pre-commencement notice, and decisions made and actions taken in reliance on such information, are now and are taken to have been, at all relevant times since the information was obtained, as lawful as they would have been had the pre-commencement notice been issued under the amended provisions. The amendments will provide that decisions made and actions already taken by the Health Ombudsman are not invalidated simply because of defects relating to the issuing of notices under section 228.

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