



Queensland

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



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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— 1

Part 1 Preliminary 2

Clause 1 Short title 3

This Act may be cited as the *Public Health (Childcare Vaccination) and Other Legislation Amendment Act 2015*. 4
5

Clause 2 Commencement 6

Part 2 commences on 1 January 2016. 7

Part 2 Amendment of the Public Health Act 2005 8
9

Clause 3 Act amended 10

This part amends the *Public Health Act 2005*. 11

Clause 4 Amendment of s 158 (Definitions for ch 5) 12

Section 158— 13

insert— 14

Australian Immunisation Handbook, for part 2, 15
division 1AA, see section 160A. 16

immunisation history statement, for part 2, 17
division 1AA, see section 160A. 18

immunisation status “up to date”, for part 2, 19
division 1AA, see section 160A. 20

	<i>recognised immunisation provider</i> , for part 2, division 1AA, see section 160A.	1 2
Clause 5	Insertion of new ch 5, pt 2, div 1AA	3
	Chapter 5, part 2, before division 1—	4
	<i>insert—</i>	5
	Division 1AA Exclusion of unvaccinated children from particular services	6 7 8
	160A Definitions for div 1AA	9
	In this division—	10
	<i>Australian Immunisation Handbook</i> means the Australian Immunisation Handbook approved as guidelines under the <i>National Health and Medical Research Council Act 1992</i> (Cwlth), section 14A.	11 12 13 14 15
	<i>immunisation history statement</i> means—	16
	(a) an immunisation history statement as recorded on the Australian Childhood Immunisation Register kept under the <i>Health Insurance Act 1973</i> (Cwlth), section 46B; or	17 18 19 20 21
	(b) a statement about a child’s immunisation history given by a recognised immunisation provider.	22 23 24
	<i>immunisation status “up to date”</i> , for a child, means the child, for each vaccine preventable condition—	25 26 27
	(a) is age appropriately immunised for the condition in accordance with the recommendations stated in the Australian Immunisation Handbook; or	28 29 30 31

[s 5]

- (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 1
stating that the child has the immunisation 2
status “up to date”; and 3
- (b) on making the request, the person in charge 4
advises the parent that the person in charge 5
may take any of the actions mentioned in 6
subsection (1) if the parent does not comply 7
with the request; and 8
- (c) a parent of the child either— 9
- (i) refuses to comply with the request; or 10
- (ii) does not comply with the request 11
within a reasonable period after the 12
request is made. 13
- (3) A request under subsection (2)(a) may be made 14
in a form given to the parent for the purpose of 15
applying to enrol the child at the service. 16
- (4) A condition imposed under subsection (1)(c)— 17
- (a) must be relevant to the immunisation status 18
of the child; and 19
- (b) may be a condition that the child’s 20
enrolment at the service will be cancelled if 21
a parent of the child does not give a person 22
in charge of the service an immunisation 23
history statement stating that the child has 24
the immunisation status “up to date”. 25

**160C When person in charge may exclude enrolled 26
child 27**

- (1) A person in charge of an education and care 28
service or QEC approved service may in the 29
circumstances mentioned in subsection (2) do 30
any of the following— 31
- (a) cancel a child’s enrolment at the service; 32

[s 5]

- (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; 1
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 - (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. 6
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- (2) The circumstances are— 12
 - (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 13
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 - (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 20
21
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 - (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 27
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 - (d) a parent of the child does not comply with the request within the stated period for the request. 32
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- (3) A condition imposed under subsection (1)(c) must be relevant to the immunisation status of the child. 35
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-
- (4) In this section— 1
- 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. 2
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5
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- Editor’s note—* 8
- The department’s website is at 9
<www.health.qld.gov.au>. 10

160D Immunisation status of children allowed to attend without statement 11
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- (1) This section applies if a person in charge of an education and care service or QEC approved service decides— 13
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15
- (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 16
17
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19
- (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”. 20
21
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- (2) For each provision of this part, until the day on which 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, the child is taken not to be vaccinated. 25
26
27
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29

- Clause 6 Amendment of s 179 (Protection for persons acting under pt 2)** 30
31
- Section 179— 32
- insert—* 33

[s 7]

- (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).

Clause 7	Amendment of sch 2 (Dictionary)	10
	Schedule 2—	11
	<i>insert—</i>	12
	<i>Australian Immunisation Handbook</i> , for chapter 5, part 2, division 1AA, see section 160A.	13 14 15
	<i>immunisation history statement</i> , for chapter 5, part 2, division 1AA, see section 160A.	16 17
	<i>immunisation status “up to date”</i> , for chapter 5, part 2, division 1AA, see section 160A.	18 19
	<i>recognised immunisation provider</i> , for chapter 5, part 2, division 1AA, see section 160A.	20 21

Part 3 **Amendment of the Health Ombudsman Act 2013**

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Clause 8	Act amended	24
	This part amends the <i>Health Ombudsman Act 2013</i> .	25

Clause 9	Amendment of s 228 (Power to require information)	1
(1)	Section 228, heading, after ‘information’—	2
	<i>insert</i> —	3
	or attendance	4
(2)	Section 228(3) and (4)—	5
	<i>omit, insert</i> —	6
(3)	The authorised person may, by notice given to the person, require the person to—	7
	(a) give the authorised person stated information related to the offence, or matter being investigated, at a stated reasonable time and place; or	8
	(b) attend before the authorised person at a stated reasonable time and place to answer questions, or produce documents, related to the offence or matter being investigated.	9
(3)	Section 228(5), ‘information requirement’—	10
	<i>omit, insert</i> —	11
	requirement	12
(4)	Section 228(5) and (6)—	13
	<i>renumber</i> as section 228(4) and (5).	14
Clause 10	Amendment of s 229 (Offence to contravene information requirement)	15
	Section 229(1), ‘an information requirement is made’—	16
	<i>omit, insert</i> —	17
	a requirement is made under section 228(3)(a)	18
Clause 11	Insertion of new s 229A	19
	Part 15, division 5, after section 229—	20

[s 12]

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.

Clause 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.

Clause 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	1 2 3
Clause 14	Amendment of s 293 (Definitions for pt 21)		4
	(1) Section 293, heading, ‘pt 21’—		5
	<i>omit, insert—</i>		6
	div 1		7
	(2) Section 293, ‘In this part’—		8
	<i>omit, insert—</i>		9
	In this division		10
Clause 15	Amendment of ss 294 and 298		11
	Sections 294 and 298(2), ‘part’—		12
	<i>omit, insert—</i>		13
	division		14
Clause 16	Insertion of new pt 21, div 2		15
	Part 21—		16
	<i>insert—</i>		17
	Division 2	Transitional provisions for Public Health (Childcare Vaccination) and Other Legislation Amendment Act 2015	18 19 20 21 22
	320A Power of authorised person to require attendance under s 228		23 24
	(1) Section 228, as amended by the amendment Act, applies in relation to an offence, or a matter being		25 26

[s 16]

investigated by the health ombudsman, even if 1
the offence was committed, or the matter 2
happened or arose, before the commencement. 3

(2) In this section— 4

amendment Act means the *Public Health 5*
(Childcare Vaccination) and Other Legislation 6
Amendment Act 2015. 7

320B Effect of particular notices given before the 8
commencement 9

(1) This section applies if, before the 10
commencement, an authorised person gave a 11
notice to a person that purported to— 12

(a) be given under pre-amended section 228; 13
and 14

(b) require the person to attend before the 15
authorised person at a stated time and place 16
to answer questions. 17

(2) The notice has effect, and is taken to have had 18
effect since it was given, to the same extent as it 19
would have if— 20

(a) amended section 228 were in force when the 21
notice was given; and 22

(b) the notice were given under that section. 23

(3) However, to remove any doubt, it is declared that 24
the person is not taken to have committed an 25
offence under section 229 or 229A by failing to 26
do a thing mentioned in section 229A(1)(a) to (d) 27
before the commencement. 28

(4) Without limiting subsection (2)— 29

(a) information obtained as a result of the 30
giving of the notice is taken to have been as 31
lawfully obtained by the authorised person 32
under this Act as it would have been in the 33

circumstances mentioned in subsection (2)(a) and (b); and	1 2
(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).	3 4 5 6 7 8
(5) In this section—	9
<i>amended section 228</i> means section 228 as in force immediately after the commencement.	10 11
<i>information</i> includes a document.	12
<i>pre-amended section 228</i> means section 228 as in force from time to time before the commencement.	13 14 15