

# Public Health and Wellbeing Amendment (No Jab, No Play) Bill 2015

## Introduction Print

### EXPLANATORY MEMORANDUM

#### Clause Notes

- Clause 1 sets out the purpose of the Bill.
- Clause 2 is the commencement provision, which provides for the Bill to come into operation on a day to be proclaimed, or on 1 January 2017 if not proclaimed before that date. It is intended that the Bill will be proclaimed to commence on 1 January 2016.
- Clause 3 identifies the **Public Health and Wellbeing Act 2008** as the Principal Act.
- Clause 4 inserts new definitions into section 3(1) of the Principal Act.

The term *age appropriately immunised* is defined for the purposes of Division 7 of Part 8 of the Principal Act. A child is age appropriately immunised if the child is immunised in accordance with the relevant standard vaccination schedule or the relevant catch up vaccination schedule determined under the A New Tax (Family Assistance) Act 1999 (Cth). A child will be regarded as having been immunised in accordance with the relevant standard vaccination schedule if he or she has received all the vaccinations specified in that schedule for the child's age. A child will be regarded as having been immunised in accordance with the relevant catch up vaccination schedule if the child has received the vaccinations in the catch up vaccination schedule by the dates specified by a recognised immunisation provider in the relevant immunisation status certificate.

A new definition of *early childhood service* is also inserted into section 3(1) of the Principal Act for the purposes of Division 7 of Part 8 of the Principal Act. There are two parts to this definition. Paragraph (a) includes as an *early childhood service* any service that comes within the meaning of education and care service in section 5(1) of the Education and Care Services National Law (Victoria) other than an education and care service that is an outside school hours care service or a school holiday care service, or any part of an education and care service that is an outside school hours care service or a school holiday care service.

An education and care service that has been granted a service approval for the purposes of section 48 of the Education and Care Services National Law (Victoria) may provide various types of education and care in either a centre or family day care setting to children up to 13 years of age. Types of education and care provided include long day care, kindergarten for children up to and including 5 years of age and outside school hours care and school holiday care to school aged children. Outside school hours care can include care provided to children before and after school and care provided on pupil-free days.

The definition of *early childhood service* only includes those parts of any service that are not providing care to school aged children. For example, if a centre provides long day care to younger children and also provides before and after school care to primary school aged children, the centre must comply with new sections 143B, 143C and 143D only in relation to the children attending the centre for the purposes of long day care. The centre does not have to comply with new sections 143B, 143C and 143D in relation to the children of primary school age attending the out of school hours care part of the service, even if the children attending the outside school hours care part of the service share a room or play area with the children attending the long day care part of the service.

Paragraph (b) of the definition of *early childhood service* includes a service that is licensed under Part 3 of the **Children's Services Act 1996**, and is prescribed by regulations to be an early childhood service. A variety of services are licensed under Part 3 of the **Children's Services Act 1996**. Only the prescribed services will be required to comply with new sections 143A to 143D before confirming enrolment of a child.

It is intended that the regulations made for the purposes of paragraph (b) will promote consistency with paragraph (a) of the definition of *early childhood service*. It is proposed that the services prescribed for the purposes of paragraph (b) will not include services licensed under the **Children's Services Act 1996** to provide school holiday care or care for brief periods under a limited Type 1 licence (such as crèches in gyms or shopping centres).

Clause 4 also inserts a new definition of *person in charge* in relation to an *early childhood service*. This term means the approved provider of an education and care service within the meaning of section 5 of the Education and Care Services National Law (Victoria) or the proprietor of a service licensed under Part 3 of the **Children's Services Act 1996**, depending on the type of *early childhood service*.

Clause 5 inserts new sections 143A, 143B, 143C and 143D into the Principal Act.

Section 143A sets out when the new sections 143B, 143C and 143D will apply. Section 143A provides that the new sections apply in relation to any child that is to attend an early childhood service.

Section 143B(1) provides that a person in charge of an early childhood service must ensure that the enrolment of a child at the early childhood service is not confirmed unless a parent of the child has provided to the early childhood service a relevant immunisation status certificate. To satisfy this section, the document or documents constituting the immunisation status certificate must show that, as at a date not more than 2 months immediately before the date that the child first attends the early childhood service, the child is age appropriately immunised or, in relation to any vaccinations on the standard vaccination schedule that the child has not received, that immunisation of the child would be medically contraindicated under the specifications set out in the Australian Immunisation Handbook.

Section 143C provides an exemption from the requirements in section 143B for certain disadvantaged and vulnerable children. The categories of disadvantaged and vulnerable children to whom the exemption applies are listed in paragraphs (a) to (g) of section 143C(1). The nature of the exemption is that the person in charge of the early childhood service is not required to comply

with section 143B in relation to a child if the child falls within one or more of the specified categories of disadvantaged and vulnerable children.

Section 143C(2) provides that, despite the exemption in section 143C(1), if a child comes within one or more of the categories of disadvantaged and vulnerable children specified in section 143C(1), the person in charge of the early childhood service attended by the child must take reasonable steps within 16 weeks after the date on which the child first attends the early childhood service to ensure that an immunisation status certificate for the child is provided by the parent of the child. Reasonable steps may include providing the parent of the child with information about immunisation and referring the parent of the child to a recognised immunisation provider who can provide information concerning vaccination schedules and administer any necessary vaccines.

Section 143D(1) provides that for the purposes of section 143C(1)(g), the Secretary may make guidelines specifying circumstances that may apply in relation to a child. These guidelines will apply to determine when a child will be exempted from the requirements in section 143B in accordance with section 143C(1)(g). The guidelines will be used to ensure that any categories of children identified as being disadvantaged or vulnerable which are not listed in paragraphs 143C(1)(a) to (f) are able to access the exemption in section 143C(1). Initially, it is proposed that the guidelines will specify refugee and asylum seeker children and children known to Child Protection.

Section 143D(2) provides that any guidelines made by the Secretary pursuant to section 143D(1) must be published in the Government Gazette and come into operation on the day that the guidelines are published. The guidelines may also be revoked by the Secretary.

Clause 6 amends section 147 of the Principal Act.

Clause 6(1) amends section 147(1) to clarify that an immunisation status certificate may consist of one document or a combination of documents. For example, an immunisation status certificate may consist of the combination of an extract from the Australian Childhood Immunisation Register and a certificate from a recognised immunisation provider, which together show

that the child has been immunised in accordance with the relevant vaccination schedule.

Clause 6(2) substitutes a new paragraph (a) into section 147(1). Section 147(1)(a) currently refers to section 46E(1)(c) of the Health Insurance Act 1973 (Cth), which refers to documents posted to parents containing information about the immunisation of a child. This is replaced by a reference to any extract of an entry in the Australian Childhood Immunisation Register kept under section 46B of the Health Insurance Act 1973 (Cth). This amendment means that an extract from the Register printed using online access to the Register, or a print-out obtained at a Medicare office, will also be regarded as being all or part of an immunisation status certificate for the purposes of section 147.

Clause 6(3) substitutes new sections 147(2)(c) and (d) into the Principal Act. This clarifies the legislative requirements for evidence of vaccination for the purposes of section 147(1)(b). The amendment means that a statutory declaration made by a parent declaring that the parent believes that the child has been immunised against the vaccine-preventable disease will no longer be accepted as evidence of immunisation for the purposes of section 147(1)(b). The new paragraph (c) means that evidence for the purposes of section 147(1)(b) will include evidence that the immunisation of the child is medically contraindicated under the specifications set out in the Australian Immunisation Handbook.

New section 147(2)(d) provides that the Secretary may, by means of a notice published in the Government Gazette, specify documents that set out the immunisation history of a child to be evidence for the purposes of section 147(1)(b). This new power to specify the documents in a notice rather than prescribe such documents means that the Secretary has the ability to specify particular documents to be evidence of immunisation, in circumstances where there would be insufficient time to make regulations.

Clause 7 amends section 148 to clarify that section 148 (which authorises persons authorised by a Council to issue immunisation status certificates) applies to children who attend or propose to attend an early childhood service in the municipal district of the relevant Council as well as children who attend or propose to attend a primary school in that area.

Clause 8 inserts a new section 149(2) into the Principal Act which provides that a person in charge of an early childhood service may rely on statements in an immunisation status certificate.

Clause 9 provides for the automatic repeal of this amending Act on 1 January 2018, one year after the default commencement day.

The repeal does not affect in any way the continuing operation of the amendments made by the amending Act (see section 15(1) of the **Interpretation of Legislation Act 1984**).