



INTRODUCTORY STATEMENT

MODEL PROVISIONS FOR CERTIFICATION OF IMMUNISATION STATUS ON SCHOOL AND CHILDCARE ENTRY

Background

On 30 July 1998 the Australian Health Minister's Conference (AHMC) endorsed the Legislation Reform Working Group's workplan, which identified a uniform national approach for immunisation certification and best practice model provisions for inclusion in the Legislator's Toolkit. Ten key elements were developed by LRWG, in close consultation with immunisation policy representatives of all jurisdictions, to inform the drafting of these best practice model provisions. These were endorsed as 'Key Principles' by the National Public Health Partnership Group, in the context of the proposed adoption of the model provisions as a 'policy blueprint' to aid in the development of future legislation. The Partnership Group specifically noted that 'in principle' adoption of the provisions would not commit individual jurisdictions to immediate legislative action.

Purpose of Model Provisions

The Model Provisions for Certification of Immunisation Status on School and Child Care Entry ('model provisions') are intended to provide a policy blueprint to aid the development of new legislation and reviews of existing legislation. They also represent the views of LRWG members as to what constitutes 'best practice' in the context of national harmonisation of immunisation certification provisions. However, LRWG recognises both the paramountcy of parliamentary sovereignty of each State and Territory jurisdiction enacting its own laws in this field, and the desirability of retaining flexibility for individual jurisdictions to adapt the model provisions to local circumstances and systems as they see fit.

It is not intended that the model provisions prescribe the method or content of individual States and Territories' certification of immunisation status legislation. Nor is it intended that the model provisions be adopted pursuant to a specific national legislative scheme. Of all the implementation options for national legislative schemes (for example: adoption by reference, mirror legislation, template legislation or complementary adoptive legislation) the model provisions are intended to most closely resemble the 'alternative consistent' legislative scheme. This scheme enables individual jurisdictions to pass their own legislation, which can either be identical to, less extensive than, or go further than, the model legislation which informs it. However, as noted, the endorsement of the model provisions for inclusion in the Legislators' Toolkit does not represent endorsement of a 'national legislative scheme' in a formal sense.

The model provisions, through the use of flexible definitions and extensive referencing, clearly indicate the specific areas that may give rise to jurisdictional difference, to reflect local circumstances identified through relevant policy and legislative development processes.

It is intended that, in implementing or reviewing legislation for the certification of immunisation status on school or child care entry, individual States and Territories will remain responsible for determining the form and content of the provisions to be enacted in their own jurisdictions. It is acknowledged that the model provisions represent a harmonised approach across jurisdictions, reflecting the desirability of a uniform commitment to the need for certification legislation and its key principles, whilst recognising the desirability of diversity in terms of the method of enactment, legislative placement and extent of the model provisions in each jurisdiction.

MODEL PROVISIONS

Notification of Immunisation Status Act 1999

An Act to provide for the collection and recording of the immunisation status of children attending school and for related purposes

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Notification of Immunisation Status Act 1999*.

2. Commencement

This Act commences on the day after the day on which it receives Royal Assent.

3. Interpretation

In this Act unless the contrary intention appears:

Australian Childhood Immunisation Register means the Register kept under section 46B of the *Health Insurance Act 1973* (Cth);

Australian Immunisation Procedures Handbook means the latest edition of the Australian Immunisation Procedures Handbook published by the Australian Government Publishing Service;

Australian Standard Vaccination Schedule means the Schedule to the Australian Immunisation Procedures Handbook;

child means a person under the age of 18 years;

child-care facility means any facility used for the care of children¹;

¹ It is intended that these provisions will apply to family day care services, after-school care services and other services providing care or supervision to children. The specific terms of the definition (and the definition of 'school') will depend on individual State or Territory regulatory and policy frameworks.

immunisation means the process of administering to a person a vaccine registered under the *Therapeutic Goods Act 1989* (Cth) for the purpose of immunising that person;

immunisation record means a record of the immunisation status of a child required to be kept under subsection 5(1);

Principal Statutory Officer means the public officer with day to day responsibility for administering the laws of the {State or Territory} relating to immunisation;²

recognised immunisation provider³ means a person who is recognised by the {appropriate State or Territory Authority} as a provider of immunisation to children;

school⁴ includes -

- (a) a government school established under {the relevant State or Territory Act}; and
 - (b) a non-government school registered under {the relevant State or Territory Act}; and
 - (c) a preschool; and
 - (d) a primary, secondary, technical or private school;
- but does not include a tertiary institution;

² It is intended that individual jurisdictions substitute the local title of the office-holder responsible for performing these functions, eg. Chief Health Officer, Chief Medical Officer etc.

³ This definition comes from Part IVA of the Cth *Health Insurance Act 1973* where it refers to a person recognised by the (Cth) Health Insurance Commission. However, the concept used in that provision is not appropriate to State or Territory jurisdictions and, consequently, the draft refers to the appropriate State or Territory Authority in a generic sense. Individual jurisdictions will need to consider local circumstances in relation to which persons or classes of persons will be recognised, and should also consider the accessibility of this information to the public.

⁴ This is generally based on the definition of school in the ACT *Public Health (Infectious and Notifiable Diseases) Regulations*. The definition maintains the distinction in the NSW *Public Health Act 1991* between government and non-government schools although the method of referring to them will be different in each jurisdiction and may not be necessary eg. the ACT definition will pick up non-government schools without specific reference being made. Also refer to footnote 1 in relation to the scope of the provisions.

vaccine preventable disease⁵ means

- (a) any disease that is specified in the current Australian Standard Vaccination Schedule; and
- (b) in relation to a child for whom the Australian Immunisation Procedures Handbook recommends vaccination against hepatitis B and tuberculosis--hepatitis B and tuberculosis.

⁵ This definition allows maximum flexibility and currency of the provisions by reflecting the current national standard, assessed by the NHMRC as an independent, expert advisory body.

PART 2 – IMMUNISATION RECORDS

4. Immunisation history to be produced before enrolment at school or child-care facility⁶

- (1) Where a child is being enrolled at a school or a child-care facility for the first time, the principal teacher or person in charge of the school or facility⁷ shall request the parent or guardian of the child⁸ to lodge with him or her-
 - (a) a certificate stating the immunisation status⁹ of the child in respect of each vaccine preventable disease; or
 - (b) a statutory declaration¹⁰ stating-
 - (i) that the parent or guardian believes the child has been immunised against a specified vaccine preventable disease, but is unable to produce a certificate; and
 - (ii) the immunisations against a specified vaccine preventable disease that the parent or guardian believes the child has received; or

⁶ This is based on subregulation 14A(1) of the ACT *Public Health (Infectious and Notifiable Diseases) Regulations*. However, the draft does not maintain the ACT distinction between enrolling at a primary school and enrolling at a preschool or child-care centre and defines school as including both preschool and child-care centre.

⁷ The reference to ‘principal teacher or person in charge of the school or facility’ is intended to refer to the person responsible for the day-to-day administration of the particular school or facility at which the relevant child is enrolled. Individual jurisdictions may need to amend the definition to exclude interpretation of this term to mean officers responsible for schools or facilities generally, e.g. Director-General of Education.

⁸ Note that it is the responsibility of the parents of children who are the subject of Residential Care Orders or other Family Court orders to comply with the terms of such orders.

⁹ The form of certification to be used is an administrative matter for each jurisdiction to determine. ‘Immunisation Status’ refers to vaccinations received by the child in accordance with the provisions of the Australian Standard Vaccination Schedule.

¹⁰ Note that statutory declarations may provide a lesser standard of evidence of immunisation status than certificates under paragraphs (a) or (c). The forms of evidence of immunisation status and the relative weight to be accorded to them in the event of an outbreak of vaccine-preventable disease, will be a matter for each jurisdiction to determine in accordance with local requirements.

- (c) a medical certificate from a registered medical practitioner that the child has recovered from a specified vaccine preventable disease, has developed a natural immunity and does not require immunisation;¹¹ or
 - (d) a statutory declaration that the parent or guardian has a conscientious objection to immunisation in respect of a specified vaccine preventable disease¹².
- (2) Where a child is being re-enrolled¹³ at a school or child-care facility, the principal teacher or person in charge of the school or facility shall request the parent or guardian of the child to lodge with him or her a statement as to any change in the immunisation status of the child.
- (3) Where the principal teacher or person in charge of the school or child-care facility is made aware of a change in the immunisation status of a child, the principal teacher or person in charge of the school or facility shall request the parent or guardian of the child to lodge with him or her a certificate under paragraph (1)(a), a statutory declaration under paragraph(1)(b) or a medical certificate under paragraph (1)(c) in respect of that change in immunisation status.
- (4) A certificate under paragraph (1)(a)–
- (a) must be issued by–
 - (i) a recognised immunisation provider; or
 - (ii) a person or body approved by the Minister¹⁴; or

¹¹ Based on paragraph 39A(3)(f) of the *Childcare Rebate Act 1993* (Cth). The medical certificate should include some form of laboratory confirmation – the specific requirements are a matter for each jurisdiction to determine in accordance with local requirements. The forms of evidence which may be required to prevent exclusion of children in the event of an outbreak may be addressed in guidelines (refer to section 9 of the model provisions, and to footnote 10 above).

¹² This is similar to the subparagraph 144(4)(c)(ii) of the Victorian *Health Act 1958*. Refer also to comments at footnote 10.

¹³ Updated information is only required in relation to re-enrolment where the child’s immunisation status has changed since the last enrolment or since the information was last provided. Where a child is being enrolled at a school for the first time, the provisions of subsection 4(1) will apply. Where a child moves to a new school or facility, the forwarding of information by the principal teacher or person in charge of a the previous school or child care to the principal teacher or person in charge of the new school or child care facility will be addressed in the “Principles relating to personal information” (refer to section 6).

¹⁴ The draft attempts to introduce some flexibility by allowing the Minister to authorise another person or

(iii) where the certificate contains information from the Australian Childhood Immunisation Register—the Managing Director of the Health Insurance Commission established under the *Health Insurance Commission Act 1973* (Cth); and

(b) is conclusive proof of the facts stated in it.

(5) Penalty provision¹⁵.

5. Record of Immunisation Status¹⁶

(1) The principal teacher or person in charge of a school or child-care facility shall maintain a record of the immunisation status of each child enrolled at the school or facility in accordance with the relevant guidelines¹⁷ and in a form that is readily accessible to the principal teacher, the person in charge and the Principal Statutory Officer.

(2) The principal teacher or person in charge of a school or child-care facility shall retain a copy of an immunisation record lodged with him or her in safe custody for the period of time during which the child is enrolled at the school or facility.

(3) Penalty provision.¹⁸

body to give an immunisation certificate eg to allow for VIVAS in Qld. It may be desirable for the guidelines made under section 10 to specify the types of bodies that can be approved.

¹⁵ In respect of key element 10 relating to the inclusion of penalty provisions “commensurate with the degree of public health risk”, the appropriate level of penalty is essentially a matter to be determined by each jurisdiction. Individual jurisdictions will need to consider the appropriate level of penalty (if any), and the person or persons to whom the penalty provisions should apply, in accordance with local policies and practices. For example, individual jurisdictions may wish to consider placing obligations on parents/guardians to provide this information, and the possible application of penalty provisions to parents/guardians in the event of non-compliance with those obligations.

¹⁶ Based on subregulations 14A(4) & (5) of the ACT *Public Health (Infectious and Notifiable Diseases) Regulations*.

¹⁷ The concept of guidelines to be followed in respect of the maintenance of records of the immunisation status is used in subsection 58(2) of the Tas *Public Health Act 1997*. It is a useful flexible device for control over the form of records and the manner in which they are kept. If this device is to be used a further provision saying who makes the guidelines will be required.

¹⁸ See footnote 15.

6. Principles relating to personal information¹⁹

- (1) The Minister may, in writing, make principles relating to:
 - (a) the acquiring of personal information under or for the purposes of this Act; and
 - (b) the storage of, security of, access to, correction of, use of and disclosure of such personal information.
- (2) A principal teacher or person in charge of the school or child-care facility who maintains immunisation records must comply with the principles made under subsection (1).
- (3) Penalty provision.²⁰
- {(4) The principles are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901* (Cth).}²¹
- (5) In this section:

personal information has the same meaning as in the *Privacy Act 1988* (Cth).

7. Use etc. of information relating to another person²²

- (1) A person who, without reasonable excuse, uses, makes a record of, or discloses or communicates to any person, body or agency any information that relates to the affairs of another person and that was acquired under or for the purposes of this Act is guilty of an offence.

Penalty provision²³.

¹⁹ Based on section 12-1 of the Cth *Private Health Insurance Incentives Act 1997*. The form and location of the Principles to govern the use of personal information relating to these model provisions will be a matter for each jurisdiction to determine in accordance with local requirements. For example, the Principles may be made pursuant to these provisions (whether enacted as ‘stand alone’ legislation or as part of existing State/territory legislation), or pursuant to existing Privacy laws.

²⁰ See footnote 15.

²¹ This provision is only relevant for jurisdictions which use a concept similar to the Commonwealth idea of a disallowable instrument. The reference to the Commonwealth Acts Interpretation Act is only illustrative.

²² Based on section 12-2 of the Cth *Private Health Insurance Incentives Act 1997*. Note the intention that the provision of information from a child’s previous school or child care facility to his or her new school or child care facility would be dealt with under these Principles (refer also to footnote 13).

- (2) This section does not apply to conduct carried out in the performance of a function or obligation under this Act or the exercise of a power under this Act.
- (3) This section does not apply to disclosure or communication of information by a person where the person believes on reasonable grounds that the use of the information is necessary to prevent or lessen a serious and imminent threat to the life or health of another person.

8. Information to Principal Statutory Officer²⁴

- (1) If the principal teacher or person in charge of a school or child-care facility believes, on reasonable grounds, that a child enrolled at the school-

- (a) is suffering from a vaccine preventable disease; or
- (b) has not been immunised against a vaccine preventable disease and has been in contact with a person at the school who is infected with such a disease;

he or she shall, as soon as practicable, inform-

- (c) a parent or guardian of the child; and
- (d) the Principal Statutory Officer;

of that fact.

9. Exclusion from school or child-care facility²⁵

- (1) The principal teacher or person in charge of a school or child-care facility when directed to do so by the Principal Statutory Officer must ensure, in accordance with the relevant guidelines,²⁶ that a child

²³ See footnote 15.

²⁴ Based on regulation 14A of the ACT *Public Health (Infectious and Notifiable Diseases) Regulations*. The information should be provided in accordance with the relevant guidelines, for example in relation to the order and means of notification.

²⁵ Based on section 60 of the Tasmanian *Public Health Act 1997*. The specific terms of this provision will be a matter for each jurisdiction to determine in accordance with local requirements, having regard to the relationship between the powers and functions of the relevant Principal Statutory Officer and those of the relevant Principal teacher or person in charge. For example, some jurisdictions may prefer to specify that action is to be taken ‘on the advice of’ the PSO, rather than ‘as directed’.

²⁶ ‘Relevant guidelines’ means the guidelines referred to in section 10 of the model provisions, if any such guidelines are in force in the relevant jurisdiction (whether issued pursuant to these or other legislative provisions). It is a matter for individual jurisdictions to determine whether any such guidelines should be

enrolled at that school or facility who is not immunised against a vaccine preventable disease specified by the Principal Statutory Officer in that direction, does not attend the school or facility until the Principal Statutory Officer directs that such attendance can be resumed.

- (2) Penalty provision.²⁷
- (3) The Principal Statutory Officer may order the closure of a school or child-care facility if satisfied that it is necessary to do so to limit or prevent the spread of a vaccine preventable disease.

PART 3 – MISCELLANEOUS²⁸

10. Guidelines²⁹

- (1) The Minister may issue guidelines relating to any matter under this Act.
- (2) The guidelines may adopt or incorporate the whole or part of any standard, rule, code, specification or guidelines, with or without modification, issued, prescribed, made or published by any person or body before or after the guidelines take effect.
- (3) The Minister may amend or revoke any guidelines.
- (4) The Minister, by public notice, must notify -
 - (a) the issue, amendment or revocation of any guidelines; and
 - (b) the subject matter of the guidelines; and
 - (c) the place at which a copy of the guidelines may be obtained; and

included in the model provisions themselves, rather than in subordinate legislation, in accordance with local policy and practice (and refer to footnotes 28 and 29). Note also that guidelines in this instance apply to the action to be taken by the principal teacher or person in charge of a school or child care facility, and do not refer to the powers of the PSO or the grounds upon which a PSO may issue advice or directions. However, they may indicate the forms of evidence which will be acceptable in the relevant jurisdiction to indicate whether or not a child will be regarded as being immunised against a vaccine preventable disease (see footnotes 10 and 11).

²⁷ See footnote 15.

²⁸ These are general provisions that may or may not be relevant depending on the particular jurisdiction. If guidelines are to be made some mechanism to promulgate or control the guidelines may be necessary. The type of guidelines and manner of promulgation of the guidelines is a matter for each particular jurisdiction.

²⁹ Based on section 184 of the Tasmanian *Public Health Act 1997*. It is in the draft purely to illustrate a form of provision controlling the formalised use of guidelines. In respect of the person who can make guidelines, the provision could refer to the Principal Statutory Officer rather than the Minister.

(d) the cost, if any, of obtaining the guidelines.

11. Delegation³⁰

- (1) The Minister may, by instrument, delegate any of the powers of the Minister under this Act other than this power of delegation.
- (2) A delegation under subsection (1) may be made–
 - (a) to a specified person; or
 - (b) to the holder for the time being of a specified office or position.
- (3) Where a delegated power under subsection (1) is exercised by the delegate, the power is taken to have been exercised by the Minister.
- (4) The delegation of powers under subsection (1) does not prevent its exercise by the Minister.

12. Regulations

- (1) The Governor may make regulations not inconsistent with this Act prescribing matters–
 - (a) required or permitted by this Act to be prescribed;
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may prescribe a penalty for contravention of the regulations.³¹

³⁰ In most jurisdictions, the relevant Acts Interpretation Act provisions would mean that only subsection (1) was necessary. ‘Minister’ refers to the Minister administering the laws of the relevant State or Territory relating to immunisation – most jurisdictions will have a provision such as 19A of the *Acts Interpretation Act 1901* (Cth) with the effect that ‘Minister’ need not be separately defined.

³¹ See footnote 15.

KEY PRINCIPLES FOR CERTIFICATION OF IMMUNISATION STATUS ON SCHOOL AND CHILD CARE ENTRY

KEY PRINCIPLES

1. Certification of immunisation status on entry to both government and private schools

Immunisation certification information is to be collected upon enrolment in both government and private schools, and updated at regular intervals.

2. Certification of immunisation status on entry to child care facilities

Immunisation certification information is to be collected upon enrolment in child care facilities, and updated at regular intervals.

3. Acceptable forms / evidence of certification

Recognised Immunisation Providers and the Australian Childhood Immunisation Register are to be recognised as two appropriate forms of certification of immunisation status. Some flexibility is necessary in recognising additional forms of certification, which may be developed in response to particular needs, for example VIVAS in Queensland, or those, which may occur in rural or remote areas.

4. Conscientious objection

Conscientious objection is to be recognised as a valid reason for refusal to have a child immunised. The reason for non-immunisation is irrelevant to whether a child will be excluded in the event of an outbreak. Information indicating the child's immunisation status should still be requested to ensure that records are available for each child.

5. Responsibility for requesting / providing information on immunisation status

Schools principals and directors of child care are to be responsible for requesting the provision of immunisation status information from parents or other legal representative of a child.

6. Confidentiality and privacy

Confidentiality and privacy provisions are to be included, although care is to be taken to ensure the provisions do not compromise the proper use of immunisation records by people who need access to that information in order to protect the

health of individual children and the population in general. In principle, these confidentiality and privacy provisions are to reflect Information Privacy Principles contained in the Commonwealth Privacy Act 1908, although this is a matter for further consideration as part of the development of model provisions.

7. Responsibility for exclusion of at-risk children from schools and child care facilities in the event of an outbreak of a vaccine-preventable disease

Both school principals/ child care centre operators and Chief Medical Officers or their delegates are to have a role in the exclusions of at-risk children from schools and child care facilities, in the event of an outbreak of a vaccine-preventable disease.

8. Determination of appropriate exclusion periods

Chief Medical Officers or their delegates are to determine appropriate exclusion periods.

9. Updating certification status of a disease

Certification status of a disease is to be updated by means of a schedule promulgated from time to time by a nationally recognised body (for example the NHMRC's Standard Vaccination Schedule).

10. Penalties for non-compliance

The model legislation is to contain penalty provisions commensurate with the degree of public health risk.

Endorsed by National Public Health Partnership Group, 28 May 1998