

Health Services Amendment (Mandatory Vaccination of Healthcare Workers) Bill 2020

Introduction Print

EXPLANATORY MEMORANDUM

General

The Health Services Amendment (Mandatory Vaccination of Healthcare Workers) Bill 2020 amends the **Health Services Act 1988** and the **Ambulance Services Act 1986** to provide the Secretary with powers to give directions to public hospitals (which includes public health services), denominational hospitals, health service establishments and ambulance services specifying requirements for persons employed or engaged by those entities to be vaccinated or prove immunity to specified diseases. The purpose of the new direction making powers is to ensure the health and safety of patients, employees and other persons working in or visiting health services, by limiting the risk of transmission of vaccine-preventable disease.

Clause Notes

Clause 1 sets out the main purposes of the Bill, which are to—

- amend the **Health Services Act 1988** to enable the Secretary to the Department of Health and Human Services (the Secretary) to direct public hospitals and denominational hospitals to require persons employed or engaged by them to be vaccinated or demonstrate immunity against specified diseases;
- amend the **Health Services Act 1988** to enable the Secretary to provide directions to specified health service establishments requiring them to ensure the vaccination of persons employed or engaged by those establishments against specified diseases;

- amend the **Ambulance Services Act 1986** to enable the Secretary to direct ambulance services to require persons employed or engaged by those services to be vaccinated against specified diseases;
- to enhance the protection of the health and safety of patients and employees of public hospitals, denominational hospitals, health service establishments and ambulance services.

Clause 2 is the commencement provision. It provides that the Act will come into operation on the day after the day that the Bill receives Royal Assent.

Clause 3 updates the definition of *Department* in section 3(1) of the **Health Services Act 1988** by substituting "Department of Health" with "Department of Health and Human Services".

(On 1 January 2015, the Department of Health was renamed the Department of Health and Human Services, by Order in Council under section 10 of the **Public Administration Act 2004**.)

Clause 4 amends section 42(1) of the **Health Services Act 1988** to include an additional matter in relation to which the Secretary may give directions to public hospitals and denominational hospitals (hospitals). The additional matter is the setting of requirements that specified persons employed or engaged by the hospital be vaccinated against or prove immunity to specified diseases, and the consequences of non-compliance with the requirements for those persons as employees or persons engaged by the hospital.

It is intended that each direction made by the Secretary pursuant to new section 42(1)(ca) will include the details of the vaccination requirements. A direction may—

- apply to all persons employed or engaged by a hospital or a specified class of such persons, such as persons who work or provide services in an acute healthcare setting;
- apply to all persons employed or engaged by a hospital or only those employed or engaged after the date specified in the direction;

- specify that different vaccination requirements apply to different parts of the hospital. For example, it may specify that all workers should be vaccinated against influenza but may provide that only workers that access particular areas require vaccination against hepatitis A and tuberculosis;
- specify that vaccination requirements may not apply where a person can demonstrate a contraindication to vaccination for the specified vaccine;
- specify the consequences that a hospital should impose on workers who fail to comply with the vaccination requirements. Such consequences may include that the worker is redeployed to a different area of the hospital, or even that the worker's employment or engagement is terminated.

Subclause (2) inserts a new section 42(2B) into the **Health Services Act 1988** to provide that any action taken by a hospital in compliance with a direction given by the Secretary pursuant to new section 42(1)(ca) of the **Health Services Act 1988** is not discrimination on the basis of the following attributes under the **Equal Opportunity Act 2010**—"political belief or activity" and "religious belief or activity". This reflects an intention of the scheme that healthcare workers should not be permitted to refuse to comply with vaccination requirements for non-medical reasons.

- Clause 5 amends section 100(1) of the **Health Services Act 1988**, which specifies the matters of which the Secretary must be satisfied before exercising the discretion to suspend the registration of a health service establishment in relation to the provision of a specified prescribed health service. This clause adds a new matter to section 100(1) being if the proprietor of the relevant health service establishment has failed to comply with a direction of the Secretary under new section 105A, which is inserted by clause 8.
- Clause 6 amends section 101(1) of the **Health Services Act 1988**, which specifies the matters of which the Secretary must be satisfied before exercising the discretion to suspend the registration of a health service establishment. This clause adds a new matter to section 101(1) being if the proprietor of the relevant health

service establishment has failed to comply with a direction of the Secretary under new section 105A, which is inserted by clause 8.

- Clause 7 amends section 102(1) of the **Health Services Act 1988** which sets out a number of matters in the alternative of which the Minister must be satisfied before giving notice in writing to the proprietor in accordance with section 102(1)(d) revoking the registration of the relevant health service establishment. Clause 7 adds a new matter to section 102(1) being that the proprietor of a health service establishment has failed to comply with a direction of the Secretary under new section 105A.
- Clause 8 inserts a new section 105A into the **Health Services Act 1988** which provides that the Secretary may, for the purpose of protecting the health and safety of patients, direct the proprietor of a health service establishment to require persons employed or engaged by the health service establishment to be vaccinated against, or demonstrate immunity to, specified diseases.
- New section 105A(2) states that a direction given pursuant to section 105A(1) may apply to all health service establishments, a particular specified health service establishment or a class of health service establishments (for example, all private hospitals).
- New section 105A(3) sets out the matters that must be included in a direction issued pursuant to section 105A(1), namely the persons employed or engaged by the health service establishment or class of such persons to whom the requirements apply and the disease in relation to which the specified persons must be vaccinated against or demonstrate immunity to.
- A failure by the proprietor of a health service establishment to comply with a direction given in accordance with new section 105A is not an offence. However, such a failure to comply may result in the registration of the health service establishment being suspended or revoked in accordance with sections 100, 101 or 102 of the **Health Services Act 1988** (see clauses 5, 6 and 7 above).
- Clause 9 updates the definition of *Secretary* in section 3(1) of the **Ambulance Services Act 1986** by substituting "Department of Health" with "Department of Health and Human Services".

(On 1 January 2015, the Department of Health was renamed the Department of Health and Human Services, by Order in Council under section 10 of the **Public Administration Act 2004**.)

Clause 10 amends section 10(4) of the **Ambulance Services Act 1986** to add a new matter in relation to which the Secretary may give directions in writing. The additional matter is the specification of requirements that specified persons employed or engaged by the ambulance service be vaccinated against or prove immunity to specified diseases, and the consequences of non-compliance for those persons as employees or persons engaged.

It is intended that each direction made by the Secretary pursuant to new section 10(4)(ca) will include the detail of the vaccination requirements. A direction may—

- apply to all persons employed or engaged by an ambulance service or to a specified class of such persons, such as registered paramedics;
- apply to all persons employed or engaged by an ambulance service or only those employed or engaged after the date specified in the direction;
- specify that different vaccination requirements apply for different classes of person. For example, it may specify that all registered paramedics should be vaccinated against influenza. It may not require such vaccination for workers who do not have patient contact;
- specify that vaccination requirements may not apply where a person can demonstrate a contraindication to vaccination for the specified vaccine;
- specify the consequences that an ambulance service should impose on workers who fail to comply with the vaccination requirements. Such consequences may include that the worker is redeployed to different work without patient contact, or even that the worker's employment or engagement is terminated.

Subclause (2) inserts a new section 10(4A) into the **Ambulance Services Act 1986** to provide that any action taken by an ambulance service in compliance with a direction given by the Secretary pursuant to new section 10(4)(ca) of the **Ambulance Services Act 1986** is not discrimination on the basis of the

following attributes under the **Equal Opportunity Act 2010**—
"political belief or activity" and "religious belief or activity".
This reflects an intention of the scheme that healthcare workers
should not be permitted to refuse to comply with vaccination
requirements for non-medical reasons.

Clause 11 provides for the automatic repeal of this amending Bill on the
anniversary of the day that the Bill receives Royal Assent. The
repeal of this Bill does not affect in any way the continuing
operation of the amendments made by this Bill (see section 15(1)
of the **Interpretation of Legislation Act 1984**).