

Scrutiny of Acts and Regulations Committee
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A submission to SARC regarding the Public Health and Wellbeing Amendment (No Jab, No Play) Bill 2015.

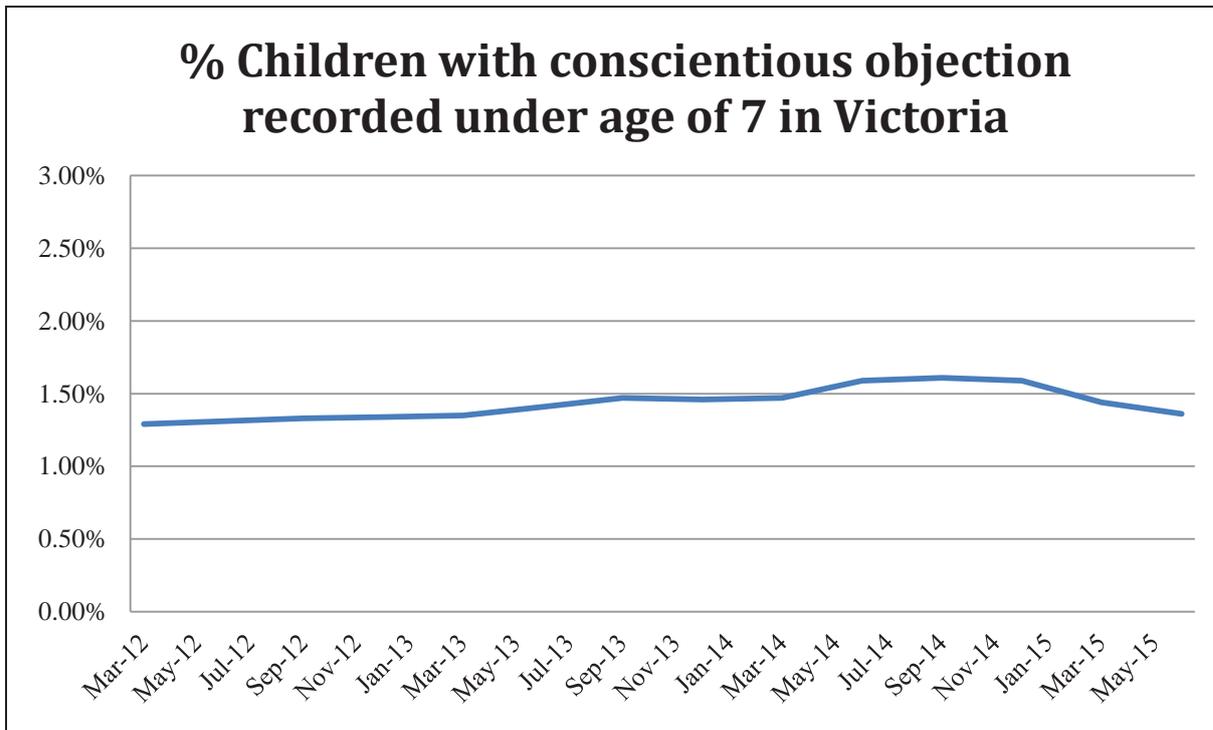
Dear SARC Committee members,

The proposed amendment will require fully up to date vaccination according to the vaccine schedule in order to attend childcare or early learning centers.

In her statement of compatibility with the Charter of Human Rights and Responsibilities Act 2006, Hon Jill Hennessy (Minister for Health) rightly acknowledges that the No Jab, No Play Bill contravenes a number of human rights outlined in the Charter. Freedom of thought, conscience, religion and belief (section 14) freedom of expression (section 15) and rights of children to public services (section 17). I argue that section 10 (Medical treatment without full, free and informed consent) is also contravened because a working parent would be ultimately forced to choose between giving up their livelihood or giving into vaccination, thus imposing pressure to accept medical services through legislation which is a form of practical compulsion that subverts legally valid consent [1] [2].

The Minister for Health attempts to justify subversion these human rights by suggesting it is outweighed by the benefit it will provide public health. However no evidence is presented to make such an assertion. Instead an unsubstantiated claim is made that a vaccination rate of 95% is required for 'herd immunity' to take effect to protect those who cannot be vaccinated from Measles for example. 'Herd immunity' is a theory. It was coined by Hedrich in 1933, who observed that if at least 68% of a population acquired natural lifelong immunity (not the transient immunity afforded by vaccination) the population would be protected against epidemics (measles). It is important to note that there have been numerous documented measles outbreaks in populations with vaccination compliance at 95% and up to 99% [3] [4]. Additionally a documented outbreak in Australia occurred in a population demonstrated to be 95% vaccinated [5]. There is no evidence provided by the Minister to suggest that achieving the desired target 95% compliance will protect any more than the current 92.61%.

The No Jab No Play Bill specifically targets conscientious objectors. The available data shows that the number of conscientious objectors has remained stable since 2012 and currently constitutes 1.36% of the child population under 7 years of age.



ACIR - State and Territory Vaccine Objection (Conscientious Objection) Data [6].

The current percentage of children fully vaccinated according to the schedule at 63 months of age is 92.61% [7]. Therefore the vast majority of the childhood population that are classified as unvaccinated are not conscientious objectors (6.03%). Indeed it can be estimated that a large proportion of this 6.03% classified as unvaccinated will be children partially vaccinated. At any rate these children are extremely unlikely to be attending child care anyway, because if they were, they would already be registered as conscientious objectors which is currently required to access Commonwealth Child Care Rebates.

A/Professor Leask estimated that the impact of the Commonwealth No Jab No *Pay* laws on immunisation rates may be as little as 0.3% [8]. Professor Raina Macintyre argues there has been a lot of research into the beliefs of conscientious objectors, which has found it is extremely hard to change their views [9]. Consequently, even if an entire half of conscientious objectors capitulate – and the empirical research suggests this is overly optimistic – then the immunisation rate would only be increased by only 0.68% at best.

Instead of targeting the conscious objectors, the Government should consider targeting the group represented by the 6.03% as it is suggestive that a large proportion of this population is amenable to the idea of vaccination.

In conclusion I contend that the proposed Bill is discriminatory and contravenes section 10, 14, 15 and 17 of the Charter. The Minister has not adequately demonstrated just cause to specifically target and discriminate against conscious objectors of vaccination.

Furthermore there is a glaring lack of specific evidence to justify that the proposed amendments are necessary and the subversion of human rights is acceptable. As such, the Bill should not be passed in its current form.

Kind regards,

Mark Konkel

References

- [1] *Aickin J in General Practitioners Society v Commonwealth (1980) 145 CLR 532 at 565–566, as quoted in Thomas Faunce, “COMMISSIONS OF AUDIT IN AUSTRALIA: HEALTH SYSTEM PRIVATISATION DIRECTIVES AND CIVIL CONSCRIPTION PROTECTIONS”, (2014) 21 JLM 561 at 569.*
- [2] *Kirby J in Grain Pool (WA) v Commonwealth(2000) 202 CLR 479 at 523 and again in Wong v Commonwealth; Selim v Professional Services Review Committee (2009) 236 CLR 573 (the PSR case), as quoted on page 199 of Thomas Faunce, “CONSTITUTIONAL LIMITS ON FEDERA.*
- [3] *De Serres et al. (2013) Largest measles epidemic in North America in a decade–Quebec, Canada, 2011: contribution of susceptibility, serendipity, and superspreading events. J Infect Dis 207:990-98.*
- [4] *Wang et al. (2014) Difficulties in eliminating measles and controlling rubella and mumps: a cross-sectional study of a first measles and rubella vaccination and a second measles, mumps, and rubella vaccination. PLoS One 9:e89361, “The reported coverage of the measles-mumps-rubella (MMR) vaccine is greater than 99.0% in Zhejiang province. However, the incidence of measles, mumps, and rubella remains high.”.*
- [5] *Herceg A, Passaris I, Mead C., An outbreak of measles in a highly immunised population: immunisation status and vaccine efficacy. Aust J Public Health. 1994 Sep;18(3):249-52..*
- [6] <http://www.immunise.health.gov.au/internet/immunise/publishing.nsf/Content/acir-st-cons-objection-data.htm>.
- [7] <http://www.immunise.health.gov.au/internet/immunise/publishing.nsf/Content/acir-curr-data.htm>.
- [8] <https://julieleask.wordpress.com/2015/04/11/will-stopping-vaccine-objectors-from-accessing-payments-have-its-desired-impact/>.
- [9] <http://www.abc.net.au/news/2015-04-13/no-benefits-for-anti-vaccination-parents/6387914>.