

Submission to the Scrutiny of Acts and Regulations Committee (SARC).

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

I contend that the Public Health and Wellbeing Amendment (No Jab No Play) Bill 2015, as introduced to the Legislative Assembly, is **incompatible** with human rights set out in the charter (Charter of Human Rights and Responsibilities Act 2006). Furthermore, the bill is **incompatible** with The Australian Constitution.

My submission will be focused on the Bill's breach of Section 10 of the Charter.

***Violation of Section 10. Protection from torture and cruel, inhuman or degrading treatment***

***A person must not be—***

- (a) subjected to torture; or***
- (b) treated or punished in a cruel, inhuman or degrading way; or***
- (c) subjected to medical or scientific experimentation or treatment without his or her full, free and informed consent.***

The 'no jab no play' amendment introduces an effective vaccination mandate for families who are dependent on access to early learning and childcare services in order to undertake employment or study. The proposed Bill therefore imposes economic pressure to accept medical services. This constitutes coercion and practical compulsion that subverts legally valid consent.

The Australian Constitution s.51(xxiiiA) forbids Commonwealth provision of medical and dental services to require anybody to accept those services. Justice Aickin declared, in relation to the Constitution's proscription (at s.51[xxiiiA]) upon providing medical services in such a way as to authorise civil conscription, that imposing economic pressure through legislation is a form of practical compulsion [1]. Such economic pressure, in penalising the option of non-consent, renders legally valid consent impossible. Justice Kirby declared that the Constitution (s.51[xxiiiA]) forbids the Australian Government from providing medical and dental services in such a way as to oblige parents to accept those services — an obligation that the Constitution and Kirby classify as "civil conscription" [2].

The 10<sup>th</sup> Edition of the Australian Governments' Immunisation Handbook Section 2.1.3 states: legally valid consent can occur only "in the absence of undue pressure, coercion or manipulation". With the prospect of being unable to enroll their child in early learning some parents will not be able coerced, under pressure to vaccinate their children.

Compromising free informed consent by imposing any of the vaccines on Australia's childhood vaccination schedules, all experimental, contravenes the International Covenant on Civil and Political Rights and the Convention on the Rights of Persons With Disabilities.

Australian data on safety and effectiveness of vaccines are created primarily through postmarket surveillance (a primarily passive system relying upon physician reports and universally acknowledged to be broken). Postmarket surveillance is necessary because the vaccines remain experimental

unproven in protectiveness, unproven in safety, and almost uninvestigated in long-term health outcomes.

Imposition of these experiments without free informed consent contravenes Article 7 of the International Covenant on Civil and Political Rights [3] and Article 15(1) of the Convention on the Rights of Persons With Disabilities [4].

The proposed legislation would breach the provisions by various human-rights instruments in force in Australia, as well as the Constitution itself, of inalienable freedom of informed choice to refuse medical products and procedures.

The proposed legislation can meet its putative intent only by violating the most fundamental medical ethic, which forbids exploitation by imposition of the risk of a medical procedure on one person for the sake of another.

The committee should oppose the removal of conscientious objection to vaccination on philosophical or religious grounds for entry into childcare and early learning services and retain freedom of choice for this medical procedure.

Sincere regards,

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[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] "CONSTITUTIONAL LIMITS ON FEDERAL LEGISLATION PRACTICALLY COMPELLING MEDICAL EMPLOYMENT: WONG v COMMONWEALTH; SELIM v PROFESSIONAL SERVICES REVIEW COMMITTEE", <https://law.anu.edu.au/sites/all/files/users/u9705219/236-lawrep-017-jlm-jl-0196.pdf>, 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, .

[3] <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

[4] <http://www.un.org/disabilities/convention/conventionfull.shtml>.