

**Australian Vaccination-skeptics Network Inc.**

**Statement of Compatibility - Public Health and Wellbeing Amendment (No Jab, No Play) Bill 2015**

**(as tabled in the Victorian Legislative Assembly on 16 September 2015)**

(as downloaded from <http://hansard.parliament.vic.gov.au/> on 23 March 2016)

**Ms HENNESSY** (Minister for Health) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (the charter), I make this statement of compatibility with respect to the Public Health and Wellbeing Amendment (No Jab, No Play) Bill 2015.

In my opinion, the Public Health and Wellbeing Amendment (No Jab, No Play) Bill 2015, as introduced to the Legislative Assembly, is compatible with human rights as set out in the charter. I base my opinion on the reasons outlined in this statement.

## **Overview**

The purpose of the bill is to increase immunisation rates for young children in the community. Vaccine preventable diseases such as whooping cough, measles, polio and diphtheria, can cause serious illness, disability and death. Childhood immunisation has been proven to significantly decrease the risk of infection and spread of vaccine preventable diseases.

The bill amends the Public Health and Wellbeing Act 2008, so that the person in charge of an early childhood service may not confirm the enrolment of a child at the service unless the parent or guardian of the child has provided an immunisation status certificate that demonstrates the child: is immunised according to the appropriate standard vaccination schedule, or a vaccination catch-up schedule, or has a medical contraindication for one or more vaccines.

The bill allows for certain categories of disadvantaged and vulnerable children to be enrolled without providing the immunisation status certificate, and requires the person in charge to take reasonable steps to obtain the certificate within 16 weeks of the child first attending the service. This will prompt the parents and carers of vulnerable and disadvantaged children to undertake vaccination and provide them with an additional opportunity to obtain information about how they can access immunisation services.

## **Human rights issues**

### **Protection of families and children (section 17)**

The bill engages section 17 of the charter, which provides that families are entitled to be protected by society and the state and that every child has the right, without discrimination, to such protection as is in his or her best interests and is needed by him or her by reason of being a child.

Vaccines protect vaccinated individuals by immunising them from the relevant disease. They also protect the community as a whole, by increasing the overall immunity in the community to reduce the spread of vaccine preventable diseases. The rate of immunisation that effectively prevents the spread of a disease is known as 'herd immunity'. For example, the overall rate of immunisation required to achieve herd immunity for measles is 95 per cent. High rates of immunisation also provide important

protection for those who cannot receive vaccines. This includes babies who are too young to receive vaccines or people who cannot receive vaccines for medical reasons (for example, due to an allergy to a component of a vaccine, or suppressed immunity).

The overall immunisation rate in Victoria for pre-school-aged children has remained stable for the past five years, between 91 per cent and 92 per cent. However, some areas have rates closer to 85 per cent. Existing initiatives that promote immunisation and facilitate access to immunisation services have maintained the overall level, but have not achieved a significant increase in the overall rate. In my view, the bill promotes this right due to the health benefits of immunisation described above.

The bill may also engage section 17(2) of the charter, in that children who are not fully vaccinated may be prevented from enrolling in early childhood services. The competing rights of children under section 17 must be balanced against the benefits of an increase in immunisation rates, both for vaccinated individuals and the community as a whole. The serious impact of vaccine preventable disease must be weighed against the relatively small number of children whose participation in early childhood services may be limited. The bill is designed to minimise the possible limitation on children's participation in these services by: allowing an exemption for children with a medical contraindication for vaccines; and allowing enrolment of disadvantaged and vulnerable children.

For these reasons I consider the bill does not unjustifiably limit the rights under section 17(2) of the charter.

### **Freedom of thought, conscience, religion and belief (section 14) and freedom of expression (section 15)**

The effect of the bill is that children who are not vaccinated because their parents or carers have a 'conscientious objection' to vaccination may be unable to enrol in early childhood services. This engages the rights in sections 14 and 15 of the charter. Section 14 provides that a person has the right to freedom of thought, conscience, religion and belief. This includes the freedom to have or adopt a belief of his or her choice, and the freedom to demonstrate the belief. A person must not be restrained or coerced in a way that limits their freedom to have a belief. Section 15 provides that every person has the right to hold an opinion without interference.

The bill may be seen to limit the rights of the parents to freedom of conscience, religion or belief or to hold an opinion without interference, in that their child is not able to enrol in early childhood services because of the parent holding a belief (objection to vaccines) and demonstrating it (acting on the belief by choosing not to have their child vaccinated). It may be argued that the bill therefore restrains or coerces parents in a way that limits their freedom to hold a conscientious objection against vaccination, in that they will be faced with a choice between vaccinating their child, against their belief, or not being able to enrol their child in early childhood services.

I consider that any limitations imposed on sections 14 and 15 by the bill are justifiable having regard to the factors set out in section 7(2) of the charter, for the following reasons. Firstly, the bill does not purport to prevent a parent from holding or observing a belief that their child should not be vaccinated.

Secondly, children and families have an interest in being protected from vaccine preventable diseases, which can have serious, even fatal, consequences. The weight of scientific evidence demonstrates that vaccines are safe and effective, with the benefits greatly outweighing the risks. As outlined above, high rates of immunisation in the community, particularly amongst children, are fundamental to maximising the benefits of immunisation in preventing the spread of vaccine preventable diseases. It is expected that the number of children whose participation in early childhood education and care is impacted will be smaller than the number of people who benefit from an increase in immunisation rates. Existing, less restrictive means available to increase immunisation rates — measures focused on promoting immunisation and facilitating access to immunisation services — have not achieved a significant increase in the overall immunisation rate.

The right to freedom of thought, conscience, religion and belief and the right to freedom of expression must be balanced against the significant public health benefits to the community as a whole from having high rates of immunisation across the community. Those rights must also be balanced against the rights in section 17 of the charter, for children and families. Measures that increase the numbers of vaccinated children attending early childhood services protect the interests of the children and families who access those services. This protection is particularly important for those who cannot receive vaccines, due to age or a medical contraindication.

### **Medical treatment without full, free and informed consent (section 10(c))**

It is noted that the bill will not mandate vaccinations, nor will it provide for the administration of vaccinations without consent. The right in section 10(c) of the charter that provides a person must not be subjected to medical or scientific treatment without his or her full, free and informed consent is therefore not engaged.

### **Privacy (section 13)**

The bill engages but does not limit the right in section 13(a), which provides that a person has the right not to have his or her family, home or correspondence unlawfully or arbitrarily interfered with. The bill will require that early childhood services collect information relating to a child. This will include information about the child's immunisation status, and information about whether the child is a disadvantaged or vulnerable child.

This information will be collected during the enrolment process, or during follow-up processes after enrolment as required under the bill. The provision of the information will be a condition of the enrolment process. In light of the enrolment requirements imposed under the bill on the person in charge of an early childhood service, the collection of the information would be consistent with the health privacy principles in the Health Records Act 2001, in that it would be authorised or required by law.

The collection of this information is fundamental to the purpose of the bill, since it is designed to:

prompt and motivate parents and carers to arrange for their children to be up to date with their vaccinations allow disadvantaged and vulnerable children to be enrolled, and their parents and carers to be provided with information about how to access immunisation services.

For these reasons, any interference with the privacy of children or their families is not considered to be arbitrary or unlawful.

Hon. Jill Hennessy, MP  
Minister for Health