

SOCIAL SERVICES LEGISLATION AMENDMENT

(NO JAB, NO PAY) BILL 2015

SUBMISSION TO THE SENATE COMMUNITY AFFAIRS

LEGISLATION COMMITTEE

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1. BACKGROUND

Stop the Australian (anti-) Vaccination Network, or SAVN, thanks the Committee for the invitation to make a submission on the proposed 'No Jab No Pay' legislation. SAVN welcomes the opportunity to have the serious harm caused by the spread of anti-vaccination lies, and the urgent need for a robust policy response, put before the Senate. The scandalously low vaccination rates in areas like the Northern Rivers are a direct result of anti-vaccination advocacy on the part of people who have no regard for the truth or the health of their communities.

SAVN, founded in 2009, is an unincorporated association comprising a management team of 46 doctors, scientists, nurses, allied health professionals, academics, experts in other fields, and laypersons. We have a Facebook following of over 16,000 people from a range of backgrounds and professions. SAVN is dedicated to countering misinformation spread by anti-vaccine activists, and reporting their malfeasance to legislators, regulators, and the media. We do not believe in bringing anti-vaxxers 'into the tent' by airing their views alongside those of genuine experts; rather we believe, with good grounds for believing so,¹ that it is counterproductive to do so.

We have good evidence that our more robust strategy has been successful, with legislation introduced in the last four years to discourage vaccination refusal, and much less sympathy shown to anti-vaxxers in the media and less misinformation published.² A more detailed description of SAVN, our activities and successes is published on our Facebook page.³

We understand that the proposed legislation would close off some exemptions from the immunisation requirements for eligibility for the Family Tax Benefit Part A end-of-year supplement (hereafter FTB-A Supplement), Child Care Benefit (CCB) and Child Care Rebate (CCR) payments, due to Government concerns about the risk that non-vaccinated children pose to public health.

¹ Dixon and Clarke (2013) concluded that "Results suggest that balancing conflicting views of the autism-vaccine controversy may lead readers to erroneously infer the state of expert knowledge regarding vaccine safety and negatively impact vaccine intentions." In other words, presenting the views of anti-vaccination proponents alongside those of legitimate experts creates an impression of genuine scientific uncertainty and controversy where in fact none exists – precisely the impression that anti-vaccination campaigners depend upon. Dixon, G., Clarke C. (2013) "[The effect of falsely balanced reporting of the autism-vaccine controversy on vaccine safety perceptions and behavioral intentions](#)" *Health Education Research* 28(2):352-9.

² McDermott T., Gaylard A, Hawkes D, Coady A, Ryan C and Dunlop RA "[Quantitative Analysis of the Impact of the Stop the Australian Vaccination Network Campaign on the Public Profile and Finances of the Australian \(anti\) Vaccination Network](#)" Poster presented at the 2014 Australian National Immunisation Conference.

³ <https://www.facebook.com/stopavn/info>

2. SAVN'S GROUNDS FOR SUPPORTING THE LEGISLATION

SAVN supports the legislation. With all three levels of Australian government making comprehensive efforts to improve vaccination coverage rates, and now with the Commonwealth introducing financial penalties for non-compliance with immunisation schedules, SAVN agrees with the Government that it is taking a balanced "carrot and stick" approach to encouraging vaccination. From all of these initiatives, the Australian community will see a reduction in suffering and death, and reduced stress on the Australian health budget.

2.1 Vulnerability of Children in Child Care

The time when children are most vulnerable to complications from pertussis is in the first 6-12 months of their lives.⁴ Unfortunately this can also correspond to the time they have not completed the full schedule for pertussis vaccination⁵ leaving them susceptible to infection from other children and adults.

The complications of pertussis involve extensive suffering and hospitalisation, and sometimes death.⁶ In Australia, the two most recent deaths from pertussis were of babies who fitted into this category, having been too young to be fully vaccinated. In order to protect these children, health authorities recommend that all other people who come into contact with incompletely vaccinated babies get a booster shot for pertussis (a strategy known as "cocooning") but this provides only moderate protection.⁷ Another strategy employed to offer protection is vaccination of pregnant mothers, which has been offered as a free service by several governments in recent years.⁸

With such care taken to ensure mothers and close contacts of vulnerable infants are up to date with their shots, it seems nonsensical that childcare workers or children whose parents identify as "conscientious objectors" (or more correctly "vaccine refusers") should be exempt from vaccination. SAVN fully supports the 'No Jab No Play' legislation being implemented or considered by State governments for this reason. Hence, we also support the proposed 'No Jab No Pay' legislation as this too should see an increase in vaccination rates and thus greater protection for children.

2.2 The importance of "community immunity"

'Community immunity' and 'herd immunity' are terms used to describe the level of vaccination in a population required to prevent the outbreak of disease.⁹ The percentage varies depending on the vaccine and the disease.¹⁰ For protection against measles outbreaks, the percent of the population

⁴ http://www.betterhealth.vic.gov.au/bhcv2/bhcarticles.nsf/pages/Whooping_cough

⁵ <http://www.immunise.health.gov.au/internet/immunise/publishing.nsf/Content/Handbook10-home-handbook10part4~handbook10-4-12>

⁶ <http://www.cdc.gov/pertussis/clinical/complications.html>

⁷ <http://www.immunise.health.gov.au/internet/immunise/publishing.nsf/Content/Handbook10-home-handbook10part4~handbook10-4-12>

⁸ <http://www.health.nsw.gov.au/immunisation/pages/wc-newborns.aspx>

⁹ <http://www.vaccines.gov/basics/protection/>

¹⁰ <http://www.immune.org.nz/duration-protection-efficacy-and-effectiveness>

required to have the trivalent MMR vaccine is approximately 95%.¹¹ (MMR is one of the more effective vaccines available, offering 93% protection after one shot and 97% protection after 2 shots assuming complete seroconversion).¹²

As a rule of thumb, governments use 95% coverage as the level required to obtain community immunity and so prevent disease outbreaks. Epidemiology shows us that where pockets of unvaccinated individuals cluster, outbreaks of disease are more likely to occur. One example of this is the Northern Rivers region of NSW where a four week old baby died from pertussis complications in 2009. She contracted the disease in an area where as few as 66.7% of 5 year olds have received their full complement of vaccines.¹³

‘No Jab No Pay’, by virtue of it being linked to financial reward, will assist in reminding parents to be up-to-date with their children's vaccines. This will contribute to the maintenance of community immunity, protecting the vulnerable in our community. It neatly complements measures being taken in the States and Territories, such as Queensland’s and New South Wales’ ‘No Jab No Play’ legislation.

We must not forget that community immunity helps protect not only the very young, but also the elderly and the immunocompromised, such as people undergoing cancer treatment, transplants, or those with allergies to vaccine components. All our citizens deserve protection from vaccine preventable disease.

2.2.1 Free-Riding

We note that vaccination refusal constitutes a paradigm example of what is known as *free riding*. Free riding occurs in contexts where the realization of a collective good depends upon a large number of people making an individually small contribution to that good. Because the individual contribution is small, one or a few individuals not contributing makes no appreciable difference. This creates an incentive for individuals to refuse to contribute to the good while enjoying the benefits – in the case of community immunity, to “hide in the herd” by relying on the protection afforded by a vaccinated community without being vaccinated themselves. But free riding generates at least two serious problems.

First, there is an issue of equity: free riders enjoy a good that has been provided by others, without making any contribution to that good themselves. Prima facie the situation here appears to be analogous to someone who benefits from public services while refusing to pay tax. It is of course the case that there are many people who benefit from goods they *cannot* themselves contribute to, but here it is precisely the capacity to contribute that is the morally relevant factor. Those who cannot be vaccinated for medical reasons are thus in a different category to those who can be safely vaccinated (or have their children vaccinated) but elect not to.

Secondly, if enough people free ride, the collective good will fail to be realized. In the case of vaccination, community immunity requires very high rates of vaccination to be effective, meaning that a relatively small proportion of free riders can bring the vaccinated population below the community

¹¹ <http://www.cbc.ca/news/health/measles-vaccinations-of-toddlers-at-89-below-herd-immunity-level-1.3161617>

¹² <http://www.cdc.gov/measles/vaccination.html>

¹³ <http://www.northernstar.com.au/news/byron-immunisation-rates-remain-australias-worst/2211791/>

immunity threshold. This creates a greater urgency to discourage free-riding using the available policy mechanisms, such as the proposed changes to the availability of the FTB A supplement, CCR and CCB.

2.3 The removal of the FBT-A Supplement for vaccine refusers

The introduction of a "conscientious objection" exemption as part of the maternity immunisation allowance followed lobbying from vaccine refusers in 1997. In essence, this group is currently entitled to payment for something they have not done: protecting their children from communicable disease and maintaining community immunity. We find it bizarre that this is the case - if you do not qualify for welfare payments, you should not receive them. We see no logical reason why parents who identify as vaccine refusers should be entitled to payments. Therefore, SAVN supports the removal of the "conscientious objection" clause.

3. ETHICAL ISSUES

Every piece of legislation presented so far to promote vaccination has at some time been accused of limiting freedom of speech and religion, of limiting personal choice, and of making vaccination compulsory, and we expect the same allegations to be made this time.

3.1 Compulsion

SAVN rejects characterisation of this legislation as making vaccination compulsory. Vaccination will still be optional, but there will be consequences for refusing to vaccinate. Legislation in the States and Territories provide consequences such as non-enrolment in child-care centres and it is only fitting that the Commonwealth introduce complementary and supportive legislation.

3.2 Coercion

While the proposed legislation cannot, in our view, be construed as 'mandatory' vaccination, the new provisions can reasonably be understood as coercive. However, it is generally accepted within the Australian polity that the State has a legitimate role in applying various forms of coercive pressure in order to discourage behaviours that threaten public health, from taxes on cigarettes and alcohol, to fines for not wearing seatbelts. There is, of course, scope for legitimate debate as to the proper forms, objects, and degree of such pressure. Coercive laws of this type need to take into account both the risks and costs to individuals associated with compliance and the risks and costs to individuals and the community of individual non-compliance. In the case of vaccination, the facts are clear: the costs and risks to individuals are massively outweighed by the costs and risks, both to individuals and the wider community, of non-compliance.

The Senate recently referred an inquiry into personal choice and community impacts (so-called "Nanny State" laws i.e. laws which penalise risky behaviour that only affects the risk-taker) to the Senate Economics References Committee. Vaccination refusal does not fall within the scope of these laws, as the decision not to vaccinate does not solely effect the person making the decision. Vaccine refusers typically do not make vaccination decisions solely for themselves, but on behalf of their

children; and the aggregate of such decisions also impacts upon those who depend upon community immunity, such as babies who are too young to be vaccinated, people who are immunocompromised, or receiving immunosuppressive treatment such as transplant and cancer patients, and the small subset of the population who do not acquire immunity in response to vaccination.

SAVN notes that when appropriately weighted forms of coercion are applied to targeted behaviours over time, such constraints themselves play a role in changing the culture in which that behaviour occurs. The change in attitudes towards driving under the influence of alcohol, for example, has occurred due to strengthened law enforcement over decades in conjunction with public awareness campaigns. This capacity to alter the culture is particularly important for communities that currently have a higher level of non-compliance with measures necessary for public health and safety.

3.3 Freedom of Choice

Another criticism that has been made of the legislation is that it violates the individual right to freedom of choice. As noted, the legislation does apply coercive pressure, though it nonetheless preserves a right to choose not to vaccinate, even if that right becomes considerably more costly to exercise.

In any event, freedom of choice is never absolute, and certainly not in the case of parenting decisions. There are of course many areas of decision-making within which parents have a right to raise their children as they wish – raising them within a particular religion, or with allegiance to a particular sporting team for instance. But there are also parenting choices that the community and the law rightly do not respect: for instance, a parent's choice not to educate their children, or to allow them to ride bicycles without helmets. These latter choices are not respected because they violate the duty of care that parents owe their children. The same is true in the case of the decision not to vaccinate children: this decision needlessly exposes children to avoidable and grave harm, *regardless of whether or not parents believe that to be the case*.

One might argue that with respect to medical decision-making on behalf of another person, freedom of choice is more significant when the associated risks are either greater or less clear. For instance, if a child requires a course of potentially life-saving treatment that is also high-risk or may involve unknown dangers, the decision is properly left to the parents or guardians. However, this is not the case with vaccination. Vaccination benefits and risks are well-studied and well-understood: the risks associated with vaccination are vanishingly small compared to the risks associated with vaccine-preventable diseases. We acknowledge that vaccine refusing parents do not accept this to be true, but we do not believe the state is under any obligation to respect unearned counter-scientific beliefs when the health and wellbeing of the community, and particularly of children, is at stake.

3.4 Freedom of Speech

The legislation poses no threat to freedom of speech in Australia. Everyone has the right to express a view, however misguided or ill-informed, and neither this legislation nor the legal recognition of the importance of vaccination more generally impedes that right. Anti-vaccination activists typically

confuse the right to free speech with a non-existent right to be taken seriously, and to be immune from criticism – in other words, they want a right to free speech that would somehow evade the responsibilities that free speech brings with it.

For a detailed examination of free speech as it relates to health information and advice, see Assistant Professor Bruce Arnold's submission to the NSW Parliamentary Committee inquiring into 'The Promotion Of False Or Misleading Health-Related Information Or Practices.'¹⁴

3.5 Freedom of Religion

SAVN supports the removal of 'religious belief' as a qualifying exemption. Globally, no significant religion forbids vaccination today, and no religions opposed to vaccination operate within Australia. Nor, as various jurisdictions in both Australia and in other liberal democracies have recognised, does holding a religious view allow for complete exemption from laws regarding public health and safety.

We also note that the existing religious exemption has been cynically exploited by vaccine refusers. Indeed, some of Australia's more prominent anti-vaccine activists formed a fake church, the "Church of Conscious Living,"¹⁵ simply to get around legislation regarding welfare payments and child care and school vaccination requirements.

4. OUR CONCERNS ABOUT MISINFORMATION

SAVN is aware and remains deeply concerned that anti-vaccination activists, some of whom sincerely believe what they say, continue to spread misinformation concerning vaccines, despite being informed many times over that their 'information' is wrong and endangers public health. The ongoing dissemination of this misinformation by irresponsible parties remains a standing challenge for public health authorities, and one which necessitates strong policy responses such as the proposed No Jab, No Pay legislation.

For an example of the ways in which such misinformation continues to be promulgated despite the best efforts of health authorities, we refer the Committee to the NSW Health Care Complaints Commission's Public Statement and warning about Australia's largest anti-vaccine lobby group, the so-called "Australian Vaccination-skeptics Network, Inc." ('AVN'), formerly known as Australian Vaccination Network Inc.'¹⁶

After a detailed description of the AVN's misinformation, the Commission goes on to say:

The Commission has established that AVN does not provide reliable information in relation to certain vaccines and vaccination more generally. The Commission considers that AVN's dissemination of misleading, misrepresented and incorrect information about vaccination

¹⁴ <http://tinyurl.com/o37whwm>

¹⁵ See an analysis at <http://www.dilutedthinking.com/churchcl.php>

¹⁶ <http://www.hccc.nsw.gov.au/Hearings---decisions/Public-statements-and-warnings/Public-statement---warning-about-the-Australian-Vaccination-skeptics-Network--Inc---AVN---formerly-known-as-Australian-Vaccination-Network-Inc->

engenders fear and alarm and is likely to detrimentally affect the clinical management or care of its readers.

Given the issues identified with the information disseminated by AVN, the Commission urges general caution is exercised when using AVN's website or Facebook page to research vaccination and to consult other reliable sources, including speaking to a medical practitioner, to make an informed decision.

The Commission has recommended that AVN amend its published information with regard to the above issues and the Commission will monitor the implementation of these recommendations.

Despite this, the AVN has not corrected its publications and continues to spread misinformation, such as this:



SAVN is concerned that the AVN recently provided misinformation to the 2015 Qld Parliamentary Committee which inquired into the "Public Health (Childcare Vaccination) and Other Legislation Amendment Bill." (The objective of the Bill is to amend the Public Health Act to "give the person in charge of an approved education and care service the option to refuse, cancel or place a condition on the enrolment or attendance of a child who is not vaccinated, or not up to date with their scheduled immunisations.")

In their Report, at Section 5, beginning at page 25, the Committee lists some of the misinformation provided to them in submissions and testimony, and provides detailed rebuttals.¹⁷ Anti-vaxxers made allegations that vaccines cause SIDS and autism,¹⁸ are unsafe and ineffective, breached The Nuremberg Code and the Universal Declaration of Bioethics and Human Rights and so on. SAVN would not be surprised to see the same discredited allegations surface in submissions to this Committee.

We are reminded that in 2013 the Senate passed a motion, unanimously, calling on the AVN to 'pack up and go home.'

The motion was:

¹⁷ <http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2015/5515T1294.pdf>

¹⁸ The 'vaccines cause autism' claim is the real unsinkable rubber duck. It has been debunked in over 100 studies involving millions of children. See the CDC's statement at <http://www.cdc.gov/vaccinesafety/concerns/autism.html>

That the Senate –

- (a) notes the low vaccination rates in certain parts of Australia, and the threat this poses to the health of Australian children;
- (b) notes the irresponsible campaign run by the Australian Vaccination Network, which is spreading misinformation about the risks of vaccination and discouraging parents from vaccinating their children;
- (c) calls on the AVN to immediately disband and cease their harmful and unscientific scare campaign against vaccines.¹⁹

The AVN has not ceased operating and continues to attempt to mislead the public and legislators. Nor are they the only source of continued irresponsible misinformation. While the AVN is much reduced in membership and in grave financial difficulty,²⁰ there remain other active anti-vaccination lobby groups and individuals.²¹

We regret that the legislation has been made necessary by the sheer persistence of those who knowingly and recklessly spread falsehoods about vaccination. They continue to do so despite knowing they have no reasonable entitlement to these beliefs and despite being aware that their claims have been refuted.

This deliberate and persistent poisoning of discussion around vaccination with blatant falsehoods means that, sadly, we cannot rely on providing correct information alone to maintain and increase vaccination rates. We, as a society, must fall back on legislation and financial incentives. Accordingly, we support the measures contained in the Bill.

We urge the Committee to accept facts only from qualified reputable scientists and registered medical practitioners, and base their recommendations on the science.

Dr Rachael Dunlop

Dr Patrick Stokes

¹⁹ <http://richard-di-natale.greensmps.org.au/content/media-releases/senate-anti-vax-group-pack-and-go-home>

²⁰ Latest Annual Financial Statement at <http://tinyurl.com/pfbw9uf>

²¹ http://www.dilutedthinking.com/cat_campaigners.php and http://www.dilutedthinking.com/cat_avaxg.php