

Queensland Human Rights Inquiry 2016

Submission to the Legal Affairs and Community Safety Committee – Parliament of
Queensland

Australian Vaccination-skeptics Network Incorporated

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Submission to Legal Affairs and Community Safety Committee Parliament of Queensland
Re: Human Rights Inquiry 2016



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On behalf of the committee and the members of
Australian Vaccination-skeptics Network Incorporated



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Australian Vaccination-skeptics Network Incorporated (AVN) welcomes this opportunity to make a submission in relation to the possible enactment of a Human Rights Act in Queensland. We are greatly concerned about the recent direction of public policy regarding vaccination, the disturbing trend to strip away the right to refuse vaccination, and the increasing tendency of public health officials to scapegoat non-vaccinators as being responsible for disease outbreaks when vaccine failure provides a more plausible explanation.

1.0 Scope and Interpretation

Our submission addresses the following sections of the Terms of Reference as it pertains to the issue of vaccination or non-vaccination.

1. That the Legal Affairs and Community Safety Committee inquire into whether it is appropriate and desirable to legislate for a Human Rights Act (HR Act) in Queensland, other than through a constitutionally entrenched model.
2. That, in undertaking the inquiry, the committee consider:
 - a. the effectiveness of current laws and mechanisms for protecting human rights in Queensland and possible improvements to these mechanisms; and
 - b. the operation and effectiveness of human rights legislation in Victoria, the Australian Capital Territory and by ordinary statute internationally.
3. That, if the committee decides it would be appropriate and desirable to legislate for a HR Act in Queensland, the committee consider:
 - a. the objectives of the legislation and rights to be protected; and
 - b. how the legislation would apply to: the making of laws, courts and tribunals, public authorities and other entities; and

Conventional acronyms have been adopted throughout the submission. For example, the acronym ICCPR is used to refer to the International Covenant on Civil and Political Rights, and CHRR is used to refer to the Charter of Human Rights and Responsibilities Act 2006 (Vic).

2.0 Position Statement

The AVN generally supports the enactment of a Human Rights Act in Queensland as a means of protecting minority groups, particularly unpopular ones such as non-vaccinators, but only if the legislature will be prohibited from enacting laws which violate protected human rights without adequate rationale or justification. Any Human Rights Act should therefore provide for a judicial power to invalidate laws found to be inconsistent with human rights protected under the Act. A Human Rights Act which doesn't provide for such a judicial power is mere 'window-dressing'.

The principle of parliamentary supremacy provides that members of parliament have the ultimate authority – duly vested in them by democratic processes - to enact laws as they see fit. Supporters of

this principle argue that because it is representative, that the parliament's decisions will reflect the collective wisdom of the community.

Therein resides the problem for unpopular minorities: majoritarian democracy does not serve or protect well the interests of unpopular minorities.

It is our view, that it is the legislature itself which poses the greatest threat to the rights and freedoms of minorities under authority of populist appeal or 'mob rule', and that there is usually zero political consequences arising from the enactment of laws which breach the human rights of minorities. For this reason, the principle of parliamentary supremacy should be suspended in relation to a Human Rights Act.

As it currently stands in all states in Australia, parliaments may tyrannise over unpopular minorities with impunity because there are virtually no enforceable constraints on the power of parliaments to enact laws that breach human rights. Queensland has the opportunity to change this state of affairs, by enacting a human rights act with which even the parliament must comply.

3.0 Recommendations

Recommendation 1

In the event the Queensland parliament elects to enact a Human Rights Act it should include the following provisions:

- (a) a provision requiring that all enactments of the parliament comply with the objectives of the Human Rights Act; and
- (b) a judicial power to invalidate an enactment (or section of an enactment) which is inconsistent with the protection of human rights protected under the Human Rights Act.

Recommendation 2

A Human Rights Act should protect the following human rights (in addition to other rights not specific to the vaccination issue) in accordance with suggested definitions. All wording has been adapted from existing human rights laws or instruments.

Definition	Derived from Instrument or Act	Recommended wording, additions (in red), or deletions (strikethrough)
discrimination	Anti-Discrimination Act 1991 (Qld), section 8	As per Act
direct discrimination	Anti-Discrimination Act 1991 (Qld), section 10	As per Act
Indirect discrimination	Anti-Discrimination Act 1991 (Qld), section 11	As per Act

attribute	<p>Anti-Discrimination Act 1991 (Qld), section 7</p> <p>The Disability Discrimination Act 1992 (Cth) indirectly protects the right to non-discrimination on the basis of vaccination status. See definition of disability - items (c), (d), (h), (i), (j), and (k).</p>	<p>The Act prohibits discrimination on the basis of the following attribute -</p> <p>(a) sex; (b) relationship status; (c) pregnancy; (d) parental status; (e) breastfeeding; (f) age; (g) race; (h) impairment; (i) religious belief or religious activity; (j) political belief or activity; (k) trade union activity; (l) lawful sexual activity; (m) gender identity; (n) sexuality; (o) family responsibilities; <p>(p) vaccination status</p> (p) (q) association with, or relation to, a person identified on the basis of any of the above attributes.</p>
Human Right to be Protected	Derived from Instrument or Act	Recommended wording, additions (in red), or deletions (strikethrough)
Protection from torture and cruel, inhuman or degrading treatment	<p>CHRR Act 2006 Section 10</p> <p>This addition is adapted from, and consistent with, article 4.2 of the ICCPR</p>	<p>A person must not be –</p> <p>(a) subjected to torture; or</p> <p>(b) treated or punished in a cruel, inhuman or degrading way; or</p> <p>(c) subjected to medical or scientific experimentation or treatment or vaccination without his or her full, free and informed consent, absent of any form of coercion, financial or other; and in the case of a child, not without the full, free and informed consent, absent of any form of coercion, financial or other, of the child's parents or legal guardians.</p> <p>No derogation of these rights may be made even in times of a public health emergency.</p>

Freedom of thought, conscience, religion and belief	CHRR Act 2006 Section 14	As per Act
Freedom of expression	CHRR Act 2006 Section 15	<p>(1) Every person has the right to hold an opinion without interference.</p> <p>(2) Every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds, whether within or outside Victoria and whether—</p> <p>(a) orally; or</p> <p>(b) in writing; or</p> <p>(c) in print; or</p> <p>(d) by way of art; or</p> <p>(e) in another medium chosen by him or her.</p> <p>(3) Special duties and responsibilities are attached to the right of freedom of expression and the right may be subject to lawful restrictions reasonably necessary—</p> <p>(a) to respect the rights and reputation of other persons; or</p> <p>(b) for the protection of national security, public order, or public health or public morality.</p>
Protection of families and children	<p>CHRR Act 2006 Section 17</p> <p>This addition is consistent with Article 17 of the ICCPR</p>	<p>(1) Families are the fundamental group unit of society and are entitled to be protected by society and the State, and from the State.</p> <p>(2) 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.</p> <p>(3) Except in the circumstances of neglect or abuse, the family, as the fundamental unit of society, is usually best placed to make decisions in the best interests of and regarding the care of children in accordance with their experiences, beliefs, culture and aspirations, without arbitrary interference from the State.</p>

Right to recognition, and equality, and freedom from discrimination before the law	CHRR Act 2006 Section 8, sub-sections 1-4	As per Act, but using definition of discrimination suggested above
Right to social security	This is consistent with Articles 2.1, 2.2 and 9 of the ICESCR	(1) Every person has the right to enjoy the benefit of social welfare programs, services and payments funded by taxation, and redistributed by the state, without discrimination. (2) Eligibility for social welfare programs, services and payments may be limited only by way of criteria reasonably appropriate and adapted to the purpose of the program, service or payment.

4.0 About the AVN

The AVN is a not-for-profit, incorporated association, founded in 1994 in New South Wales by a group of parents and health professionals who were concerned about the quality of scientific evidence purporting to support the effectiveness and safety of vaccination as a means to achieving good health and/or preventing disease.

We acknowledge and promote the existence of a scientific controversy surrounding the effectiveness and safety of vaccines, and to this end, support every individual's right to exercise choices about vaccination for themselves or their children, which have been informed by the highest standards of evidence and free from coercion, compulsion or sanctions by the state.

Although many members of the AVN are sceptical about the purported effectiveness of vaccines – with some even questioning the veracity of the germ theory of disease itself - other members were once wholesale supporters of vaccination, realising specific safety concerns only after witnessing serious adverse side-effects in their children or other loved ones, many of which side-effects are routinely denied by government and medical authorities as having arisen from vaccination despite there being no other trigger to which to plausibly ascribe them.

However, one belief all members share, is the belief that the right to decline medical interventions, including vaccination, is an inalienable one, and that there are absolutely no circumstances in which it would be acceptable for the medical profession or state to use coercion or compulsion to secure compliance.

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6.0 The human right to consent freely to vaccination is being violated in Australia without adequate rationale

Last year represented a watershed in vaccine policy and law in Australia. For the first time, the Commonwealth parliament, and two state parliaments, enacted vaccination laws which are inconsistent with the human right to consent to a medical procedure free from coercion and duress, the right to freedom of belief or religion, and the right of a child to access subsidised childcare services.

All three laws were justified on spurious public health grounds, including the claim that the rate of vaccine objection was increasing exponentially. A recently published study found that the overall rate of vaccine objection was stable between 2002 and 2013³.

Commonwealth

The federal parliament enacted a law abolishing the right to conscientiously object to vaccination on religious or secular belief grounds for the purpose of eligibility to means-tested welfare measures

³ 2016, Beard et al, Trends and patterns in vaccination objection, Australia, 2002–2013, Medical Journal of Australia
<https://www.mja.com.au/journal/2016/204/7/trends-and-patterns-vaccination-objection-australia-2002-2013>

including childcare subsidies and a component of family tax benefits.⁴

In the 17 years prior, a parent's right to conscientiously object to vaccination on behalf of their children had been explicitly protected; firstly, by provisions in the Child Care Payments Act 1997 (Cth)⁵; and subsequently by provisions in A New Tax System (Family Assistance) Act 1999 (Cth)⁶ which replaced the earlier Act.

The AVN made submissions opposing the bill to two parliamentary committees, namely, the Joint Parliamentary Committee on Human Rights and the Senate Community Affairs which also conducted a public inquiry and hearing into the bill⁷.

The Human Rights committee expressed the concerns that there was not a rational connection between the bill's limitation on human rights and its stated purpose; that the limitation on human rights is not reasonable or proportionate to achieve the bill's stated objective; and that there may be less restrictive means by which the government may achieve the bill's objective⁸. The committee requested that the Minister respond to these concerns but at the time of the bill's passing in the Senate, the Minister had not issued a response. The Senate Community Affairs committee recommended the Bill be passed which the Senate proceeded to do on 23 November.

The requirement, under section 7 of the Human Rights (Parliamentary Scrutiny) Act 2011⁹, of the Joint Parliamentary Committee on Human Rights to scrutinise Bills for their compatibility with human rights, is virtually worthless for protecting minorities, when the parliament may ignore any committee recommendations with impunity.

⁴ Social Services Legislation (No Jab, No Pay) Bill 2015

<https://avn.org.au/wp-content/uploads/2016/03/No-Jab-No-Pay-Bill-as-passed-by-both-houses.pdf>

⁵ Child Care Payments Act 1997(Cth)

<https://www.legislation.gov.au/Details/C2004A05289>

⁶ A New Tax System (Family Assistance) Act 1999 (Cth) (superseded) section 6

https://www.legislation.gov.au/Details/C2015C00360/Html/Text#_Toc425847720

⁷ Social Services Legislation (No Jab, No Pay) Bill 2015, Submission to Senate Community Affairs Committee, AVN Inc.

<https://avn.org.au/wp-content/uploads/2016/03/AVN-Submission-to-Senate-Community-Affairs-Committee-Inquiry.pdf>

⁸ 13 October 2015, Twenty-ninth Report of the 44th Parliament, 13 October 2015, page 31

<https://avn.org.au/wp-content/uploads/2016/03/Joint-Parliamentary-Committee-into-Human-Rights-Report-on-No-Jab-No-Pay-and-AIR-Bills-13-October-2015.pdf>

⁹ Human Rights (Parliamentary Scrutiny) Act 2011

http://www.austlii.edu.au/au/legis/cth/consol_act/hrsa2011409/s7.html

Victoria

The Victorian parliament enacted a law which prohibits the enrolment of unvaccinated in kindergarten childcare with significant exemptions for socially disadvantaged groups¹⁰. The AVN made a submission opposing the bill to the Scrutiny of Acts and Regulations committee¹¹ which expressed the concerns that the bill violates several human rights protected by the Charter of Human Rights and Responsibilities Act 2006 (Vic)¹². Notwithstanding the serious concerns of the committee, the Victorian parliament proceeded to pass the bill seemingly in direct contravention of its human rights legislation. The failure of the Victorian Human Rights charter to protect human rights is discussed in more detail below.

Queensland

The Queensland parliament enacted a law which provides a discretionary power to childcare operators to not enrol unvaccinated children, or cancel the enrolment of unvaccinated children¹³. The law also provides protection to childcare operators against actions taken against them in the exercise of their discretionary power or their enforcement of the vaccination requirement. The Health and Ambulance Services (HAS) committee of the Queensland parliament conducted a public inquiry into the bill to which the AVN made a submission opposing it¹⁴. Despite our compelling submission, the bill was passed into law in accordance with the recommendation of the Health and Ambulance Services committee.

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8.0 The failure of the Victorian Charter of Human Rights and Responsibilities Act 2006 (CHRR) to protect the human rights of an unpopular minority: An examination of Victoria's No Jab No Play law

The Victorian 'No Jab No Play' Bill amended the Public Health and Wellbeing Act 2008 (Vic) and received Royal Assent on 10 November 2015. Its operation commenced on 1 January 2016.

Background

The Andrews ALP government, was elected on a pro-choice platform in 2014, but as we have come to expect from politicians on both sides of the political fence, it didn't take long – once elected – before doing a complete back-flip.

Although the ALP did indicate during the 2014 election campaign its desire to increase vaccination rates, it did so on the clear basis that a right to conscientiously object to vaccination was included in the

¹⁸ *ibid.* page 45

https://avn.org.au/wp-content/uploads/2016/03/Community-Affairs-Legislation-Committee_2015_11_02_3961_Official-Hearing-Transcript.pdf

¹⁹ 2015, Children not immunised due to socioeconomic barriers, University of Adelaide
<https://www.adelaide.edu.au/news/news79888.html>

deal. Evidence of this can be seen on Page 41 of the Victorian ALP's 2014 policy platform²⁰ which states:

Labor believes that it is the responsibility of parents to ensure their children's immunisations are up to date so that their own children, and all children in the community, are protected from preventable infectious diseases. Labor will:

*Change the law to require children to be fully immunised before they can enrol in childcare or kindergarten, in an attempt to boost vaccination rates across the community. Children who are not fully immunised will not be able to enrol unless they have an approved exemption for a medical reason **or their parents have a conscientious objection**. To receive this exemption, parents must receive counselling from a medical practitioner and state they have been advised of the risks of not immunising their child.*

On 16 August 2015, Victorian Health Minister, Jill Hennessy announced the government's intention to break its election promise, by enacting legislation which would prohibit the enrolment of unvaccinated children in Victorian kindergartens and childcare services, with no exemptions for those with a conscientious objection to vaccination on secular or religious grounds.

Summary of amendment

- 1) Early childhood services are prohibited from confirming the enrolment of a child unless the child is:
(a) age appropriately immunised; or (b) there is a medical contraindication to the child being vaccinated.
- 2) In addition to the medical exemption, there are a significant number of exemption categories provided in section 143C (1) subsections (a) – (g).
- 3) Within 16 weeks after the date on which a child (one of the aforementioned exemption categories provided in section 143C) first attends the early childhood service, the person in charge of the early childhood service must take reasonable steps to ensure that an immunisation status certificate in relation to the child is provided by a parent of the child. It appears that if the parent fails to provide this, no further steps can lawfully be taken to exclude the child.

Scrutiny of Acts and Regulations Committee Inquiry

In accordance with section 30 of CHRR, the Scrutiny of Acts and Regulations Committee was required to evaluate the Bill's compatibility with human rights. The committee also invited the public to make submissions in relation to the bill.

²⁰ Victorian Labor Platform 2014

<https://avn.org.au/wp-content/uploads/2016/04/Victorian-Labor-Party-Policy-Platform-2014.pdf>

The committee received 163 submissions in total, the vast majority of which opposed the Bill²¹. The AVN submitted the following arguments against the Bill²².

(1) The Bill limits the following human rights protected by CHRR:

- (a) Right to Equality and non-discrimination - section 8, subsections 2 and 3
- (b) Protection from torture and cruel, inhuman or degrading treatment - section 10, subsection c
- (c) Freedom of thought, conscience, religion or belief - section 14
- (d) Protection of families and children - section 17

(2) The Bill's limitation of human rights are not justified in accordance with section 7, subsection 2, having regard to:

- (a) sub-section (b) the importance of the purpose of the limitation; and
- (b) sub-section (d) the relationship between the limitation and its purpose

(3) The Bill's purpose to increase immunisation rates can be achieved by less restrictive means:

- (a) section 7 (e) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve

Committee findings

On 06 October 2015, the committee reported that it had identified significant human rights incompatibilities in the 'No Jab No Play Bill', and was requesting a response from the Minister²³.

²¹ 2015, Submissions list, Scrutiny of Acts and Regulations, Public Health and Wellbeing Amendment (No Jab, No Play) Bill 2015
<http://www.parliament.vic.gov.au/sarc/article/916>

²² Public Health and Wellbeing Amendment (No Jab, No Play) Bill 2015, Submission to Scrutiny of Acts and Regulations Committee, Victorian Parliament, AVN Inc.
<https://avn.org.au/wp-content/uploads/2015/10/AVN-Submission-to-SAR-Committee-Victoria-September-2015-06-WEB.pdf>

²³ Alert Digest 12, Public Health and Wellbeing Amendment (No Jab, No Play) Bill 2015, page 7
<https://avn.org.au/wp-content/uploads/2016/04/Scrutiny-of-Acts-and-Regulations-Committee-Victoria-Alert-Digest-No-12-of-2015.pdf>

(1) The Bill's immunisation requirement may constitute direct or indirect discrimination on the basis of imputation of possible future disease in contravention of the charter.

The Committee will write to the Minister seeking further information as to whether or not new section 143B's ban on the enrolment of most unvaccinated children in early childhood services is compatible with the Charter's rights against direct or indirect discrimination on the basis of possible future disease. (page 9)

(2) The Bill's immunisation requirement without exemptions on grounds of conscientious objection constitutes an effective mandate for those Victorian parents reliant on child care services in contravention of the charter which protects the right to consent freely to medical treatment.

However, the Committee notes that a parent who is unable to care for a child themselves (for example due to employment or other commitments) and cannot afford or otherwise obtain private care for their child (for example from a family member or a nanny) may have no choice other than to have his or her child vaccinated in order to enrol that child in an early childhood service. (page 10)

(3) The Committee called on Parliament to consider whether there was a less restrictive alternative which is reasonably available to increase vaccination rates even though the AVN's submission provided evidence about how vaccination rates could be increased without infringing the rights of conscientious objectors.

The Committee refers to Parliament for its consideration the question of whether there is a less restrictive alternative reasonably available to achieve clause 5's purpose. (page 11)

Notwithstanding the committee's findings, and the Minister's feeble response to the committee²⁴, the parliament proceeded to pass the bill with tri-partisan support.

Conclusions

(1) The Scrutiny of Acts and Regulations committee competently discharged its obligations under section 30 of CHRR, to report to the parliament incompatibilities of the Bill with human rights protected under the charter. The committee achieved this within an acceptable timeframe.

(2) Despite this, the entire process is an abject farce when the parliament is able to totally ignore the findings of the committee to enact laws which flagrantly breach human rights protected by the charter.

²⁴ Alert Digest 13, Public Health and Wellbeing Amendment (No Jab, No Play) Bill 2015, page 21
<https://avn.org.au/wp-content/uploads/2016/04/Scrutiny-of-Acts-and-Regulations-Committee-Victoria-Alert-Digest-No-13-of-2015.pdf>

(3) To give effect to the protection of human rights, any Human Rights Act must therefore include a requirement that the parliament may not enact laws in breach of human rights, and a judicial power to invalidate an enactment, or part thereof, when it has been found to be incompatible with human rights.

9.0 Rights which should be protected under a Human Rights Act

This is not an exhaustive list of rights requiring protection, just those relevant to the issue of vaccination. Suggestions of specific wording and definitions are provided in a table in the recommendations section above, most of which have been adapted from the Victorian CHRR.

9.1 Right to equality and non-discrimination

The rights to equality and non-discrimination are conferred by articles 2, 3 and 26 of the ICCPR, articles 2.2 and 3 of the ICESCR, articles 2 and 3 of the CEDAW and CRPD, and article 2 of the CRC.

No person should be subject to arbitrary discrimination. In the context of vaccination arbitrary discrimination may take the form of a requirement to be vaccinated for entry to childcare on the unfounded basis that unvaccinated children pose a risk to the public health, even though other unprotected children are permitted entry.

For example:

- (a) those who can't be vaccinated for medical reasons; and
- (b) those who are too young to have been vaccinated; and
- (c) those who have been vaccinated, but who are not protected due to not producing the required biological response claimed to confer immunity; and
- (d) those who were not vaccinated in utero; and
- (e) child care centre employees.

In addition there is also a significant body of scientific evidence that children recently vaccinated with live, attenuated viruses pose a genuine risk to close contacts in the post-vaccine period. Live attenuated vaccine viruses, such as Measles, Mumps, Rubella, Chickenpox and Rotavirus have been regularly associated with disease in the recently vaccinated, and transmission of the vaccine-strain viruses to others resulting in disease has been documented as well. A list of references evidencing vaccine-associated disease in recipients of live attenuated virus vaccines and transmission of vaccine-strain viruses to close contacts is provided in Appendix D.1.3 of this submission.

If unvaccinated children are alleged to pose a risk to others then surely children receiving live virus vaccines would also pose a risk, possibly a greater one.

A particularly ironic effect of the Victorian No Jab No Play law is that the unvaccinated, Hepatitis B negative children of conscientious objectors are denied enrolment on the basis they allegedly pose a risk to other children, at the same time as vaccinated, but Hepatitis B positive children may be enrolled, and the child's parents are not even under a legal obligation to advise a child care centre of their child's

Hepatitis B positive status²⁵.

9.1.1 The Disability Discrimination Act 1992 (Cth) protects against discrimination on the basis of imputation of disease (DDA)

Sections 3 - 6 of the DDA indirectly protects the unvaccinated from discrimination by prohibiting discrimination against a person on the ground of disability. Disability is defined in section 4²⁶ to include:

- (c) the presence in the body of organisms causing disease or illness; or
- (d) the presence in the body of organisms capable of causing disease or illness;
- (h) presently exists; or
- (i) previously existed but no longer exists; and includes a disability that:
- (j) may exist in the future (including because of a genetic predisposition to that disability); and
- (k) is imputed to a person.

This definition was interpreted by Hon. William Carter QC to include children who are not vaccinated according to the recommended schedule²⁷:

Therefore, a "disability" as defined... above remains a "disability" by definition even though it does not presently exist. If it "may exist in the future" it is nonetheless a "disability" for the purposes of the Act. In the case of the Beattie children it is therefore the case that since they may in the future have in their bodies the organisms which cause or are capable of causing certain diseases or illnesses they suffer a "disability" as defined in the Act. The complaint on their behalf is that they have been discriminated against contrary to s.5 (1) of the Act because on account of that disability they have been treated less favourably by the Council in that they were refused admission to the Council's child care centre. Prima facie such discrimination is unlawful.

9.2 The right to freedom of religion, conscience or belief

Article 18 of the ICCPR protects this right. Consistent with the ICCPR, and as a secular state, Australia should not distinguish between deeply-held religious and secular beliefs, or attribute higher standing to one over the other.

²⁵ Hepatitis B, Do I have to tell the school/day care that my child has hepatitis B?, The Sydney Children's Hospital Network
<http://www.schn.health.nsw.gov.au/parents-and-carers/fact-sheets/hepatitis-b>

²⁶ Disability Discrimination Act 1992 (Cth), section 4
https://www.comlaw.gov.au/Details/C2013C00022/Html/Text#_Toc345412388

²⁷ Beattie (on behalf of Kiro and Lewis Beattie) v Maroochy Shire Council [1996] HREOCA 40 (20 December 1996)
<http://www.austlii.edu.au/au/cases/cth/HREOCA/1996/40.html>

9.2.1 Historical legislative precedent for secular and religious belief based exemptions in Australia in the context of low vaccination rates

Prior to 2015, there had been longstanding and bipartisan legislative support for exemptions based on religious or secular beliefs since late 1997, when a vaccination requirement was first enacted in Commonwealth legislation²⁸.

It's important to consider that in 1997, vaccination rates were significantly lower than today, with less than 75% of children aged 12 months fully vaccinated in accordance with the schedule²⁹, yet the Commonwealth parliament still elected to provide for exemptions in that context.

This compares with the approximately 91% of 12-15 month olds fully vaccinated at the end of 2014, an increase of more than 20% from baseline over that period³⁰.

9.2.2 Recent bipartisan policy support for religious exemptions specifically

It is also noteworthy that the ALP and LNP both expressed in-principle support for religious exemptions as recently as April of last year.

ALP Leader Bill Shorten stated his support for exempting the children of parents who have a deeply-held religious view against vaccination from such a requirement under Commonwealth legislation³¹.

Similarly, then Social Services Minister, Scott Morrison, in announcing the so-called No Jab No Pay Commonwealth law, expressed his in-principle support for religious exemptions, by stating that existing exemptions on religious grounds will continue³².

Despite this in-principle support for exempting a minority from vaccination on the basis of religious belief, both the ALP and LNP supported the enactment of a commonwealth law to abolish such an exemption. This is clear evidence that we can no longer rely on our elected representatives to protect unpopular minorities.

²⁸ Child Care Payments Act 1997 (Cth), section 8
<https://www.comlaw.gov.au/Details/C2004A05289/Html/Text#param10>

²⁹ Figure: Trends in vaccination coverage, Australia, 1997 to 30 September 2012, by age cohort
<http://www.health.gov.au/internet/main/publishing.nsf/Content/cdi3701m>

³⁰ 2015, ACIR – Annual Coverage Historical Data, Immunise Australia Program
<http://www.immunise.health.gov.au/internet/immunise/publishing.nsf/Content/acir-ann-cov-hist-data.htm>

³¹ Shorten, 2015, Labor will work with government to increase immunisation rates
<http://billshorten.com.au/labor-will-work-with-government-to-increase-immunisation-rates>

³² Morrison, 2015, No jab – no play and no pay for child care
<http://www.liberal.org.au/latest-news/2015/04/12/no-jab-no-play-and-no-pay-child-care>

9.2.3 Opposition to vaccination as a religious belief

The High Court of Australia has adopted a broader definition of religion than is popularly accepted³³.

In his judgement that Scientology was a religion, Justice Murphy stated:

The truth or falsity of religions is not the business of officials or the courts. If each purported religion had to show that its doctrines were true, then all might fail. Administrators and judges must resist the temptation to hold that groups or institutions are not religious because claimed religious beliefs or practices seem absurd, fraudulent, evil or novel; or because the group or institution is new, the number of adherents small, the leaders hypocrites, or because they seek to obtain the financial and other privileges which come with religious status. In the eyes of the law, religions are equal. There is no religious club with a monopoly of State privileges for its members.

He subsequently suggested conditions which may be sufficient, but not necessary, to show the existence of a religion:

On this approach, any body which claims to be religious, whose beliefs or practices are a revival of, or resemble earlier cults, is religious. Any body which claims to be religious and to believe in a supernatural Being or Beings, whether physical and visible, such as the sun or the stars, or a physical invisible God or spirit, or an abstract God or entity, is religious. For example, if a few followers of astrology were to found an institution based on the belief that their destinies were influenced or controlled by the stars, and that astrologers can, by reading the stars, divine these destinies, and if it claimed to be religious, it would be a religious institution. Any body which claims to be religious, and offers a way to find meaning and purpose in life, is religious. The Aboriginal religion of Australia and of other countries must be included. The list is not exhaustive; the categories of religion are not closed.

It is our view, that under such a definition, a deep and abiding belief against vaccination, (or even just against certain vaccines), in addition to a belief that pharmaceutical based medicine only be used as a last resort or in the case of an emergency or trauma, instead of being central to therapeutic and preventative health goals, satisfies such a definition of religion.

Certainly, some of our more dogmatic critics have described us as a tin-foil hat wearing, science-denying religious cult on more than one occasion, and opposition to vaccination as a belief, has been around since Jenner's Smallpox vaccine was first unleashed on an unwitting public.

³³ High Court of Australia, *Church of the New Faith v. Commissioner of Pay-Roll Tax (Vict.)* [1983] HCA 40; 1983 154 CLR 120

<http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/HCA/1983/40.html>

9.3 Right to consent freely to medical treatments or experimentation

Section 3.5 of the Medical Board of Australia Code of Conduct³⁴ defines informed consent as “a person’s voluntary decision about medical care that is made with knowledge and understanding of the benefits and risks involved.”

Subsection 2 requires a doctor to obtain informed consent prior to providing a treatment.

Australian law generally protects an individual’s right to refuse medical treatments for themselves or on behalf of their children, except in the limited circumstances of a medical emergency or parental neglect, and that includes a right to refuse vaccination. Consent to vaccination should be a matter between a medical professional and their patient without intrusion or coercion by the state.

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9.4 The right to privacy and the rights of the family and children to be protected from arbitrary interference

Articles 17 and 23 of the ICCPR protect these rights. The right to privacy includes a right not to have one's private life arbitrarily interfered with. This extends to families, as the fundamental unit of society.

Families should be free to choose to raise their children free of medical and pharmaceutical interventions to the greatest extent possible. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9.5 The right to social security

Articles 2.1, 2.2 and 9 of the ICESCR protect these rights

⁴¹ The Human Genetic Theory of Infectious Diseases: A Brief History
<http://www.nyam.org/events/2015/2015-09-09.html>

It is absolutely vital that the right to receive taxpayer funded benefits, services and programs – limited only by way of criteria reasonably appropriate and adapted to the purpose of the benefit, service, or program - be explicitly protected. The Commonwealth No Job No Pay regime is a retrogressive measure, resulting in a backward step in the realisation of the economic rights of conscientious objectors and their children, who are currently being denied access to social welfare payments by way of eligibility criteria not adapted to the purpose of the payments. They are also being denied access to paid work by being denied access to affordable child care due to the loss of subsidies. This will necessarily impact on their standard of living by denying them access to wages, and in some case will result in parents not being able to pay their mortgages due to the loss of one income for household expenses.

For a low-income family on maximum benefits, the loss of childcare subsidies amounts to \$30,000 per annum for two children. The AVN has received hundreds of letters from families who are suffering under the law. Some of these are available on the AVN website⁴².

That the government is attempting to leverage compliance with an invasive medical procedure using non-means-test based criteria is repugnant. Welfare or equity measures should never be subject to a requirement to submit to vaccination. The only test that should apply to means-tested welfare measures is a means test.

While this retrogressive measure is affecting both male and female conscientious objector parents, the impact on women is greater due to their over-representation in the care giving role⁴³. It is women mainly who have been forced out of the workforce by the effect of this law.

Australian women continue to be under-represented in the workforce, with 78% of Australian men aged 20-74 years participating in or looking for work in 2013-14, compared with 65% of women.[28] This gap widens with the arrival of children, with 57.5% of mothers whose youngest child is aged 0-5 years participating in the labour force, compared with 94% of fathers.[29] When employed, women are also more likely to work in part-time or casual roles than men, with women comprising 35.8% of fulltime employees in Australia, 75.3% of part-time employees and 57.2% of casual employees.[30]

The law then can be seen to be a direct attack on previous gains in equal opportunity in increasing the workplace participation of women and consequent accrual of retirement savings.

⁴² 2016, Families are suffering – share your story. AVN Inc.
<https://avn.org.au/no-jab-no-pay/families-suffering-share-story/>

⁴³ Broderick, 2015, Submission to the Senate Inquiry into the Fairer Paid Parental Leave Amendment Bill 2015, Australian Human Rights Commission, p 4
<https://hrawards.humanrights.gov.au/sites/default/files/15.07.27%20AHRC%20submission%20-%20Fairer%20Paid%20Parental%20Leave%20Amendment%20Bill%202015.pdf>