Parliamentary Committees

# Public Health (Exclusion of Unvaccinated Children from Child Care) Amendment Bill 2013

## Report No. 29

## Health and Community Services Committee

**September 2013**

## Health and Community Services Committee

| | |
|---|---|
| **Chair** | Mr Trevor Ruthenberg MP, Member for Kallangur |
| **Deputy Chair** | Mrs Jo-Ann Miller MP, Member for Bundamba |
| **Members** | Ms Ros Bates MP, Member for Mudgeeraba |
| | Dr Alex Douglas MP, Member for Gaven |
| | Mr John Hathaway MP, Member for Townsville |
| | Mr Jon Krause MP, Member for Beaudesert |
| | Mr Dale Shuttleworth MP, Member for Ferny Grove |
| **Staff** | Ms Sue Cawcutt, Research Director |
| | Ms Lee Archinal, Principal Research Officer (part-time) |
| | Ms Kathleen Dalladay, Principal Research Officer (part-time) |
| | Mr Karl Holden, Principal Research Officer (part-time) |
| | Ms Stephanie Cash, Executive Assistant |
| **Technical Scrutiny Secretariat** | Ms Renee Easten, Research Director |
| | Mr Karl Holden, Principal Research Officer (part-time) |
| | Ms Marisa Ker, Principal Research Officer (part-time) |
| | Ms Tamara Vitale, Executive Assistant |
| **Contact details** | Health and Community Services Committee<br>Parliament House<br>George Street<br>Brisbane Qld 4000 |
| **Telephone** | +61 7 3406 7688 |
| **Fax** | +61 7 3406 7070 |
| **Email** | hcsc@parliament.qld.gov.au |
| **Web** | www.parliament.qld.gov.au/hcsc |


### Acknowledgements

The committee thanks those who briefed the committee, made submissions, gave evidence and participated in its inquiry.

## Contents

## Abbreviations and Glossary

| | |
|---|---|
| ACCYPN | Australian College of Children & Young People's Nurses |
| AMA | Australian Medical Association |
| ATAGI | Australian Technical Advisory Group on Immunisation |
| AVN | Australian Vaccination Network, Inc. |
| the Bill | Public Health (Exclusion of Unvaccinated Children from Child Care) Amendment Bill 2013 |
| C&K | Creche and Kindergarten Association Limited |
| CCYPCG | Commission for Children and Young People and Child Guardian |
| child care service | A centre based service or a home based service licensed under the *Child Care Act 2002* |
| the committee | Health and Community Services Committee |
| due day | date (after at least four weeks' notice) given to a child's parents to provide a documents or other evidence of vaccination |
| education and care service | an approved education and care service under the *Education and Care Services National Law (Queensland)* |
| exclusion actions | see section 4.3 of this report, as set out in Clause 5 of the Bill |
| exemption certificate | a certificate given by a doctor stating that vaccination of a child for a stated *vaccine preventable condition*, or all vaccine preventable conditions, would not be medically advisable under the current edition of the Australian Immunisation Handbook published by the Commonwealth |
| HPV | human papillomavirus |
| the immunisation schedule | the National Immunisation Program Schedule |
| the LSA | the *Legislative Standards Act 1992* |
| MMR | measles, mumps and rubella |
| NHPA | National Health Performance Authority |
| NIC | National Immunisation Committee |
| NIP | National Immunisation Program |
| NSW | New South Wales |
| the Public Health Act | the *Public Health Act 2005* |
| QCEC | Queensland Catholic Education Commission |
| QNU | Queensland Nurses' Union |
| the Regulation | Public Health Regulation 2005 |
| SIDS | Sudden Infant Death Syndrome |
| UN | United Nations |
| unvaccinated child | a child who has not been vaccinated for every *vaccine preventable condition* and has not otherwise acquired immunity from contracting each vaccine preventable condition for which the child has not been vaccinated |
| vaccinated child | a child other than an *unvaccinated child* |
| vaccination certificate | a certificate given by a doctor stating that a child has been vaccinated for a stated *vaccine preventable condition* |
| vaccine preventable condition | a contagious condition that is prescribed under a regulation as a vaccine preventable condition |

## Chair's foreword

On behalf of the Health and Community Services Committee of the 54th Parliament of Queensland, I present this report on the Public Health (Exclusion of Unvaccinated Children from Child Care) Amendment Bill 2013 (the Bill).

The Bill was introduced into the Legislative Assembly by the Member for Bundamba on 23 May 2013. The committee was required to report to the Legislative Assembly by 27 September 2013.

The Bill amends the *Public Health Act 2005* to allow the person in charge of an education and care service or child care service to take what the Bill refers to as *exclusion actions* against an *unvaccinated child*. *Exclusion actions* include refusing to enrol an *unvaccinated child* at a service, imposing conditions on their enrolment and refusing to allow an *unvaccinated child* to attend a service.

In considering the Bill, the committee's task was to consider the policy to be given effect by the Bill, and whether the Bill has sufficient regard to the rights and liberties of individuals and to the institution of Parliament.

All members of the committee strongly support the policy objective of this Bill to improve childhood immunisation rates. The committee has carefully considered the Bill and the concerns raised in submissions and evidence.

There is potential for the Bill, if passed, to result in unintended consequences. The concerns considered by the committee include that: the Bill impacts on the common law right to consent to or decline medical treatment; there is no scope in the Bill for conscientious objection to vaccination; unvaccinated children's access to early childhood education could be impeded, particularly in rural and remote areas where early childhood facilities may be limited; and childhood vaccination is a widely accepted and effective public health measure. While vaccination is supported by committee members, there are concerns that this Bill does not sufficiently respond to the need to balance competing rights and obligations about public health, consent and access to early childhood education and child care.

On behalf of the committee, I thank those who made written submissions on this Bill and gave evidence at its public hearing. Thanks also to the committee's staff and the Technical Scrutiny secretariat.

I commend the report to the House.

**Trevor Ruthenberg MP**

**Chair**

## Recommendations and comments

**Committee comment** **23**

Given the lack of provision for conscientious objection to vaccination and consideration of the right to refuse medical treatment and the right of children to access early childhood education, the committee is not convinced that clause 5 of the Bill has sufficient regard to the rights and liberties of parents and children. The committee believes there are other ways to achieve the policy objective of improving childhood vaccination that have less impact on rights and liberties.

**Committee comment** **24**

The committee's view is that, on balance, clause 6 of the Bill confers sufficient immunity with adequate justification.

**Committee comment** **24**

The committee believes that consultation with key stakeholders during the development of legislation is an important aspect of the legislative process. The conduct of an appropriate consultation process will ensure that alternative approaches to meeting the objectives of a Bill are adequately canvassed and considered.

# 1 Introduction

## 1.1 Role of the committee

The Health and Community Services Committee (the committee) was established by resolution of the Legislative Assembly on 18 May 2012, and consists of government and non-government members.

Section 93 of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for considering:

- the policy to be given effect by the Bill, and
- the application of the fundamental legislative principles to the Bill.

## 1.2 Committee process

The Public Health (Exclusion of Unvaccinated Children from Child Care) Amendment Bill 2013 (the Bill) was referred to the committee on 23 May 2013, and the committee was required to report to the Legislative Assembly by 27 September 2013.

The committee called for submissions by notice on its website, and wrote to almost 70 stakeholder organisations to invite submissions. Sixty-four submissions were received (see list at Appendix A). The committee held a public hearing on 19 August 2013 at Parliament House, Brisbane and heard from ten witnesses (see list at Appendix B). The Member for Bundamba, Mrs Jo-Ann Miller MP, and Mr Greg Fowler, Health Policy Advisor, Office of the Leader of the Opposition, briefed the committee about the Bill on 21 August 2013.

Transcripts of the public hearing on 19 August 2013 and the public briefing on 21 August 2013 are published on the committee's webpage. Submissions received and accepted by the committee are also published on the webpage at www.parliament.qld.gov.au/hcsc.

# 2 Overview

## 2.1 Should the Bill be passed?

Standing Order 132(1)[1] requires the committee to recommend whether the Bill should be passed. The committee considered the policy changes which the Bill would implement, as well as the application of fundamental legislative principles. The evidence considered by the committee is summarised in this report. After considering the Bill, a briefing by the Member for Bundamba, submissions, evidence provided at a public hearing and other material, a majority of the committee determined to recommend that the Bill not be passed.

The committee strongly supports childhood immunisation and its benefits. It supports in principle appropriate measures to encourage the maintenance of, or increase in, immunisation rates for children in Queensland. The committee considers, however, that the Bill, in its current form, does not appropriately support those aims.

The approach adopted in the Bill is flawed and may have a number of unintended consequences. These are discussed in sections 5.1 to 5.5 of this report. The Bill does not provide for conscientious objection on religious, philosophical or medical grounds and, therefore, does not adequately recognise the right to refuse medical treatment and the right of children to have access to early education and child care. The committee considers that there are other approaches that can be taken to support high levels of immunisation in Queensland. These alternative approaches are canvassed in sections 6.1 to 6.3. For these reasons, the committee does not support passage of the Bill.

**Recommendation 1**

The committee recommends that the Public Health (Exclusion of Unvaccinated Children from Child Care) Amendment Bill 2013 should not be passed.

In reviewing information about immunisation and its benefits and considering the evidence provided in submissions and at the public hearing and briefing, the committee was persuaded that the maintenance of high levels of immunisation in Queensland, in particular for children, is very important. There are public education and legislative approaches that could be considered by government to encourage immunisation, assist people in becoming better informed about immunisation and ensure that high levels of immunisation are maintained in local areas as well as nationally or across the state.

**Recommendation 2**

In the light of concerns about the current Bill, the committee recommends that the Legislative Assembly consider supporting any future Bill that would encourage parents to ensure that children are appropriately vaccinated on entry to child care. Any such legislation should include provision for medical exemption and informed conscientious objection (philosophical, religious or medical), with an emphasis on ensuring that parents are provided with education and information on immunisation.

The later sections of this report describe the issues considered by the committee in more detail and outline alternative approaches to supporting high levels of immunisation in Queensland.

1 Legislative Assembly of Queensland, Standing Rules and Orders of the Legislative Assembly, as amended 4 June 2013, available at http://www.parliament.qld.gov.au/work-of-assembly/procedures

## 2.2 Policy objectives of the Bill

In her explanatory speech, the Member for Bundamba, Mrs Jo-Ann Miller MP, referred to the National Health Performance Authority's report, *Healthy Communities: Immunisation rates for children in 2011–12*, which found that 70,000 children in Australia are not fully immunised at ages one, two and five years. The Member for Bundamba stated that:

> *the rate of immunisation for children in the Noosa, Nambour, Surfers Paradise and Kuranda areas is comparable with that of developing countries such as Angola and Uganda. The report also shows that in Brisbane's inner city there are 3,371 unvaccinated children and fewer than 85 per cent of five-year-olds are fully vaccinated.*[2]

The Member for Bundamba noted that there had been a concerted community response about the risks of vaccination to healthy immunised children by people who grossly exaggerate the risks. The Member for Bundamba argued that ill-informed choices by some parents, advocated by anti-vaccination lobby groups and some irresponsible sections of the media, are contributing to the recent decline in immunisation rates.[3]

The object of the Bill is to give a person in charge of an education and care service or child care service the option to refuse to allow children who are not fully immunised to enrol in the child care facility or to participate in particular activities or services provided by the facility.[4]

The Member for Bundamba stated that the Bill will "encourage more parents to vaccinate their children and protect them from preventable diseases".[5]

## 2.3 Stakeholder views – a summary

A large majority of submissions (59 of 64) received by the committee did not support the Bill. These included 52 submissions from bodies, such as the Australian National Therapists Association and the Australian Vaccination Network, Inc. (AVN),[6] and from individuals and families, who questioned the need for, and safety of, vaccination. They raised strong concerns about the right of parents to make informed decisions for their children about immunisation.

Seven submissions did not support the Bill despite supporting immunisation and the need to maintain high levels of immunisation. Submissions from Professor Chris Del Mar of the Centre for Research in Evidence-Based Practice at Bond University, the Commissioner for Children and Young People and Child Guardian, the Australian College of Nurses, the Creche and Kindergarten Association Limited (C&K) and the Australian College of Midwives Queensland fell into this category.[7] A number of submissions in this category suggested that there were better approaches that could be taken to encourage immunisation in Queensland. Submissions also raised concerns about the proposed amendments and possible unintended consequences.

The Queensland Catholic Education Commission (QCEC), the Queensland Nurses' Union (QNU), The Benevolent Society, Centacare, and the Australian College of Children & Young People's Nurses (ACCYPN) supported the Bill and its objective of encouraging increased immunisation rates.[8] The Benevolent Society noted in its submission that it is important to be able to safeguard the wellbeing

---

2 Queensland, Legislative Assembly, *Hansard*, 23 May 2013, p.1797 (Mrs Jo-Ann Miller MP), available at http://www.parliament.qld.gov.au/documents/hansard/2013/2013_05_23_WEEKLY.pdf. The report is available at http://www.nhpa.gov.au/internet/nhpa/publishing.nsf/Content/Healthy-communities/$file/HC_ImmRates_2011-12_FINAL_130409.pdf

3 *Hansard*, 23 May 2013, p.1798 (Mrs Jo-Ann Miller MP)

4 Explanatory Notes to the Public Health (Exclusion of Unvaccinated Children from Child Care) Amendment Bill 2013, p.1, available at http://www.legislation.qld.gov.au/Bills/54PDF/2013/PublicHealthExUCCCAB13_PE.pdf

5 *Hansard*, ibid.

6 Submissions 43 and 61

7 Submissions 10, 15, 48, 56, 57, 58 and 60

8 Submissions 49, 50, 62, 63 and 64

of children in child care centres by having the option to refuse enrolment.[9] The QNU and the QCEC viewed the option to exclude unvaccinated children from child care as an important component of centres' occupational health and safety and other risk management.[10]

The issues raised in submissions and at the public hearing about the Bill are detailed more fully later in this report.

9 The Benevolent Society, Submission 62, p.2

10 Queensland Nurses' Union (QNU), Submission 50, p.4; and Queensland Catholic Education Commission, Submission 49, p.1

# 3 Immunisation – policy context

## 3.1 The National Immunisation Program

The National Immunisation Committee (NIC) is responsible for overseeing the development, implementation and delivery of the Immunise Australia Program. The NIC reports to the Australian Health Protection Committee through the Communicable Diseases Network Australia.[11]

The Immunise Australia Program implements the National Immunisation Program (NIP) Schedule (the immunisation schedule) which currently includes vaccines against a total of 16 diseases. The immunisation schedule lists the diseases for which immunisation is available and the ages at which doses should be given for vaccines currently funded under the NIP. The immunisation schedule is provided at Appendix C.

The Australian Government provides funding to the:

- state and territory governments to obtain vaccines listed on the NIP
- Medicare Australia for maintenance of the Australian Childhood Immunisation Register and subsidies for individual private consultations which involve immunisation through the Medicare Benefits Schedule, and
- the Victorian Cytology Service for the administration of the National Human Papillomavirus (HPV) Vaccination Program Register.[12]

The Australian Technical Advisory Group on Immunisation (ATAGI) provides advice to the Australian Government Minister for Health and Ageing on the Immunise Australia Program, the medical administration of vaccines available in Australia, including those on the NIP, and other related issues. The ATAGI's membership includes a consumer representative, a nurse and general practitioners as well as technical experts.[13]

## 3.2 Community views on immunisation

### *3.2.1 Parental concerns*

The QNU told the committee that parents who exempt children from vaccination often have concerns about vaccine safety and effectiveness. Parents may also be concerned about overloading a child's immune system.[14] The ACCYPN advised the committee that the reasons parents do not vaccinate their children varies. The College noted that some parents have particular concerns about links between early vaccination and Sudden Infant Death Syndrome (SIDS) but pointed to evidence that shows that immunisation may decrease the risk of SIDS.[15]

Ms Rebecca Hansensmith noted in her submission that, while the decision to vaccinate or not to vaccinate a child was often presented as a simple dichotomy, in reality attitudes range from accepting the full schedule of immunisation, through adopting a modified schedule for a particular child with regard to which vaccines and their timing, to complete rejection of the use of vaccines.[16]

The QNU advised the committee in its submission that immunisation is "one of the most important public health measures that primary care offers the population" but that it had been a "victim of its own success". As most people have not seen the diseases that children are vaccinated for, there has been "growing resistance to such interventions".[17] In her briefing for the committee, the Member for

11 Australian Government Department of Health and Ageing, *About the program,* accessed on 30 August 2013 from http://www.health.gov.au/internet/immunise/publishing.nsf/Content/about-the-program
12 ibid. Note that the General Practice Immunisation Incentive finished in May 2013.
13 ibid.
14 QNU, Submission 50, pp.3–4
15 Australian College of Children & Young People's Nurses (ACCYPN), Submission 64, p.1
16 Rebecca Hansensmith, Submission 52, p.1
17 QNU, Submission 50, p.2

Bundamba also said that because of the success of immunisation, "we tend to forget the thousands of Australian infants and children of our grandparents' generation whose deaths and disabilities were avoidable".[18]

### *3.2.2 Responses to concerns about immunisation*

In May 2013, the Australian Government Department of Health and Ageing released the fifth edition of a guide for providers of vaccinations, *Myths and Realities: Responding to arguments against vaccination*.[19] The guide outlines various beliefs and concerns parents and patients have about immunisation, and provides facts in response. The guide covers:

- vaccine manufacture and testing
- the immune system
- the need for vaccination
- safety concerns about vaccination in general, and
- safety concerns about specific vaccines.

The guide encourages providers to treat decision-making about vaccination as a partnership between the patient or parent and their health professional.

In November 2012, the Australian Academy of Science released a publication that provides an explanation of the current situation in immunisation science, covering areas of consensus and explaining where uncertainties in the science exist. It aims to address confusion created by contradictory information in the public domain and provide a firm basis for understanding the science of immunisation and its implications.

The paper addresses six questions:

- What is immunisation?
- What is in a vaccine?
- Who benefits from vaccines?
- Are vaccines safe?
- How are vaccines shown to be safe?, and
- What does the future hold for vaccination?

The paper was prepared by a working group of eight internationally recognised scientists who have contributed to the underlying science and was reviewed by an oversight committee chaired by Sir Gus Nossal. It is endorsed by the Royal Australasian College of Physicians and the Australian Medical Association.

In its summary, the paper notes that the "widespread use of vaccines globally has been highly effective in reducing the incidence of infectious diseases and their associated complications, including death".[20] The paper also says that vaccines are "the most successful form of disease prevention available".[21]

### *3.2.3 'Herd immunity' and reduced incidence of infectious diseases*

In his submission to the committee, Professor Chris Del Mar, Professor of Public Health at the Centre for Research in Evidence-Based Practice at Bond University, advised that incentives to increase immunisation are important in order to raise the 'herd immunity' of the population against vaccine-

18 Mrs Jo-Ann Miller MP, Member for Bundamba, *Public Briefing Transcript*, 21 August 2013, p.1

19 Australian Government Department of Health and Ageing, *Myths and Realities: Responding to arguments against vaccination*. The guide is available at http://www.health.gov.au/internet/immunise/publishing.nsf/content/1FC63A2886238E6CCA2575BD001C80DC/$File/full-publication-myths-and-realities-5th-ed-2013.pdf

20 Australian Academy of Science, *The Science of Immunisation: Questions and Answers*, p.2. The paper is available from http://science.org.au/policy/immunisation.html

21 ibid., p.3

preventable infections. He noted that the proportion of the population required to achieve herd immunity varies with each disease depending on its particular infectivity.[22] The QNU explained in its submission that high percentages of people being immunised means that there is less opportunity for diseases to spread as there are fewer people who can be infected. People who can be infected (babies too young to be immunised and people who cannot be immunised for medical reasons) may be indirectly protected as they are less likely to be exposed to the disease.[23]

At the public hearing Professor Del Mar advised the committee that, as with any health intervention, the pros and cons of whether or not to vaccinate need to be weighed up. In the case of child immunisation, he noted that "this particular area has had its clear waters muddied by a rogue doctor in Britain … who has now been disgraced and removed from the medical register in the UK for publishing misleading information about the harms related to this kind of vaccination". Professor Del Mar's view is that the benefits of child vaccination greatly outweigh the risks. He noted, however, that some vaccines, such as for influenza, are more controversial.[24]

Professor Del Mar went on to discuss the benefits of vaccination for the community as a whole through 'herd immunity' where "if you are vaccinated, your neighbour or your colleague at the next desk at school is also partly protected as well".[25] If herd immunity can be raised above a certain percentage (which varies for each disease) the whole population can be protected and, if high enough worldwide, diseases can be eradicated.[26]

### 3.3 Child immunisation rates

In her explanatory speech, the Member for Bundamba referred to "a recent decline in immunisation rates".[27] In their submission, Dr Hal Willaby and Associate Professor Julie Leask of the School of Public Health at the University of Sydney noted that immunisation rates are high and stable, contrary to the statement that there has been a recent decline in immunisation rates.[28]

The National Centre for Immunisation Research and Surveillance *School Entry Vaccination Requirements: Summary of the Evidence* report notes, however, that high national immunisation coverage rates "conceal substantial differences in coverage among smaller geographic areas", citing data that shows that some Medicare Local catchment areas contain more than 1,000 children aged 1 year, 2 years or 5 years who are not fully immunised. The report notes that lower immunisation coverage may be due to access issues (mainly in low socioeconomic areas) or vaccine refusal (which is higher in urban areas, primarily those that are higher socioeconomic status, and in some regional areas such as the Sunshine Coast). The report indicates concern about the possibility of disease outbreaks in these circumstances.[29]

The National Health Performance Authority (NHPA) released its report on immunisation rates in April 2013. The report found that there was considerable variation between Medicare Local catchments in terms of the children fully immunised across three age groups to age five. It also noted that immunisation rates among Aboriginal and Torres Strait Islander children were considerably lower than for all children in many Medicare Local catchments.

---

22 Professor Chris Del Mar, Submission 10, p.1
23 QNU, Submission 50, p.3
24 Professor Chris Del Mar, Centre for Research in Evidence-Based Practice, Bond University, *Public Hearing Transcript*, 19 August 2013, p.11
25 ibid., p.11
26 ibid., p.12
27 *Hansard*, 23 May 2013, p.1798 (Mrs Jo-Ann Miller MP)
28 Dr Hal Willaby & Associate Professor Julie Leask, Schools of Public Health, University of Sydney, Submission 57, p.2
29 National Centre for Immunisation Research and Surveillance, *School Entry Vaccination Requirements: Summary of the Evidence*, p.4. The report is available from http://www.immunise.health.gov.au/internet/immunise/publishing.nsf/Content/ncirs-sevr-se

The report published the percentages of fully immunised children by Medicare Local catchment area as well as by smaller local areas called Statistical Areas Level 3. The term 'fully immunised' means that a child has received a subset of vaccinations that are detailed in the immunisation schedule for their age.

The report noted a number of Medicare Local catchments where high numbers of children were not fully immunised. The data for Queensland indicates that, against a national rate of full immunisation for one year olds of 92 per cent, five areas (Sunshine Coast, Far North Queensland, Greater Metro South Brisbane, Central and North West Queensland, and Gold Coast) were below the average at 90-91 per cent. Two areas of Queensland (Sunshine Coast and Gold Coast) were below the average immunisation rate for two year olds and five year olds.

# 4 What the Bill does

## 4.1 *Public Health Act 2005* and Public Health Regulation 2005

The Bill amends the *Public Health Act 2005* (the Public Health Act) by inserting a new division 1AA (Exclusion of unvaccinated children from particular services) into Part 2 of Chapter 5. The amendments give the person in charge of an *education and care service* or *child care service* (the person in charge of the service) the discretion to take *exclusion actions* against an *unvaccinated child*.

The amendments apply to child care facilities (such as pre-schools and kindergartens), but do not apply to primary or secondary schools.

Chapter 5 of the Public Health Act makes provisions about child health, including managing outbreaks of contagious conditions in schools, education and care services or child care services. The Public Health Act provides, among other actions, that the person in charge of a school, education and care service or a child care service may, during an outbreak of a contagious condition, direct the parent of a child who has the contagious condition or a child who has not been vaccinated for the contagious condition, to remove the child from the school or service. The list of contagious conditions is set out in the Public Health Regulation 2005 (the Regulation) and includes diphtheria, hepatitis A, measles and pertussis (whooping cough).

## 4.2 Definition of unvaccinated child and vaccinated child

Clause 4 of the Bill defines an *unvaccinated child* as a child who has not been vaccinated for every *vaccine preventable condition* and has not otherwise acquired immunity from contracting each *vaccine preventable condition*. The term *vaccine preventable condition* is defined at section 158 of the Public Health Act as a contagious condition prescribed under regulation. The Regulation currently lists only measles as a *vaccine preventable condition*. A *vaccinated child* is defined as a child other than an *unvaccinated child*.

The Member for Bundamba wrote to the committee on 28 May 2013 to clarify that the intention of the Bill is to encompass a broader range of conditions for which vaccination is available, for example diphtheria, mumps, pertussis (whooping cough) and rubella. The Member for Bundamba informed the committee that amendments would be moved during consideration in detail to correct this error.[30]

The committee notes that the schedule in the Regulation referred to by the Bill is a schedule providing for the prescribed period for a vaccine preventable condition. The prescribed period relates to the time that a parent may currently be directed that their child may not attend a service.[31] The schedule in the Regulation does not set out the way of fully vaccinating a child for a vaccine preventable condition.

## 4.3 What are exclusion actions and when can they be taken?

Clause 5 would insert section 160A into the Public Health Act to provide that the person in charge of an *education and care service* or *child care service* may, after giving a child's parent notice and time to respond, take one of the following actions (*exclusion actions*) in relation to an *unvaccinated child*:

- refuse to enrol the child at the service
- impose relevant conditions on the child's enrolment
- refuse to allow the child to attend the service
- impose relevant conditions on the child's attendance, and
- deny the child access to, or place relevant limitations on the child's access to an activity, thing done or service provided at the service (clause 5, proposed section 160A of Public Health Act).

30 Mrs Jo-Ann Miller MP, Member for Bundamba, *Correspondence*, 28 May 2013, see Appendix D

31 See Public Health Regulation, Schedule 2A Part 2 and section 166, Public Health Act

Before taking an *exclusion action*, the person in charge of the service must give the child's parent written notice stating the proposed exclusion action. The notice must state that the parent may provide the person in charge of the service with a vaccine certificate (from a doctor) for the child, other evidence that the child has been vaccinated or an exemption certificate (see section 4.4 below). The child's parent must be given at least four weeks (the *due day*) to provide one of the above documents or other evidence (clause 5, proposed section 160B of Public Health Act).

After the due day, the person in charge of the service may take an exclusion action, if: they do not believe the child is a *vaccinated child;* the child's parent has not provided a *vaccination certificate* or exemption certificate; and the person considered any other evidence provided by the child's parent (clause 5, proposed section 160C of Public Health Act).

### 4.4 Exemptions

The Bill provides for an exemption on medical grounds. An unvaccinated child is exempt from exclusion action, if he or she has been given an exemption certificate from a doctor stating that it is not medically advisable for the child to be vaccinated for one, or all, *vaccine preventable conditions* (clause 4, definition of *exemption certificate*).

The Bill does not provide for exemption on religious grounds or for conscientious objection on philosophical, religious or medical grounds.

### 4.5 Confidentiality

The existing confidentiality provisions in Part 2 of the Public Health Act will apply to information obtained by a person in charge of the service when discharging functions relating to taking *exclusion action*. A person in charge of the service must not, whether directly or indirectly, disclose confidential information about the child in question, unless authorised to do so, or discharging a function under the Public Health Act or the person has received written consent (sections 175 to 177 of the Public Health Act).

### 4.6 Protection from liability

Clause 6 amends section 179(1) of the Public Health Act to extend the current protection provided to individuals discharging functions under Part 2 of the Public Health Act to a person in charge of charge of service who takes *exclusion action* against an unvaccinated child.

Clause 6 provides that a person in charge of a service who takes *exclusion action* is not liable civilly, criminally or under an administrative process, so long as they act honestly.

In her briefing for the committee, the Member for Bundamba noted that the Bill did not make child care centres responsible for child vaccination.[32]

32 Mrs Jo-Ann Miller MP, *Public Briefing Transcript*, p.1

# 5 Issues raised about the Bill

## 5.1 Age appropriate immunisation

The National Immunisation Program Schedule (the immunisation schedule) sets out the age by which it is recommended that children should have specific vaccinations. The immunisation schedule recommends, for example, that a child should have their first measles, mumps and rubella (MMR) vaccination at 12 months, followed by a second MMR vaccination at 18 months.

The Bill does not make any link to the immunisation schedule or the recommended age by which a child should be vaccinated. Under the Bill, it appears that a child under 12 months, who has not received the MMR vaccination, could be considered to be an *unvaccinated child* as defined, even though the MMR vaccination is not recommended until a child is 12 months. It is also unclear whether a child aged between 12 and 18 months would be considered an *unvaccinated child*, as full immunity from MMR is not acquired until till the second vaccination at 18 months.

In her submission, Ms Rebecca Hansensmith noted that parents "may choose the option of a more customised response to vaccination" after consideration of the vaccines on the immunisation schedule. She argued that there is potential for the Bill to impact on any parent who might choose not to follow the full immunisation schedule or the exact timing regarding the age specified in the schedule.[33]

At the public hearing, Karen Berry, Immunisation Program Nurse from the ACCYPN, noted that being fully vaccinated for young babies would depend on their age and that they could be on the immunisation schedule but not be fully immunised.[34]

In briefing the committee on the Bill, Mr Greg Fowler noted that there was no intention in introducing the Bill that a child be excluded from child care if too young to be vaccinated and that the immunisation schedule should be considered.[35]

**Committee comment**

The committee considers that any legislative mechanism to facilitate excluding an unvaccinated child from child care should be consistent with the range of age appropriate vaccination in the National Immunisation Program Schedule.

## 5.2 Complexity of the immunisation schedule

Although the ACCYPN supported the bill, it noted in its submission that vaccination schedules can be complex and may be misinterpreted by non-health professionals which might lead to the unnecessary exclusion of children. It also noted that the optional nature of exclusion may make it difficult for child care centre directors to exclude children where child care is limited or if childcare centre directors feel the process is too resource intensive or complex.[36]

At the public hearing, Karen Berry of the ACCYPN brought the complexity of the immunisation schedule to the committee's attention. She noted that checking is "not a one-off. Rather, it is an ongoing process and it requires at times interpretation by a qualified health professional".[37]

Parents also noted the complexity of the immunisation schedule as well as concerns about the combination of many vaccines in a short time frame.[38] The AVN argued that the Bill is arbitrarily

33 Rebecca Hansensmith, Submission 52, p.2
34 Karen Berry, Immunisation Program Nurse, ACCYPN, *Public Hearing Transcript*, p.19
35 Greg Fowler, Health Policy Advisor, Office of the Leader of the Opposition, *Public Briefing Transcript*, p.4
36 ACCYPN, Submission 64, pp.1–2
37 Karen Berry, ibid., p.17
38 Simone Eggers, Submission 16, p.1, Bev Pattenden, Submission 26, p.1, Jo Douglas, Submission 31, p.1

selective as it does not allow exclusion from child care of those unvaccinated for age or medical reasons, nor for the exclusion of those vaccinated but not 'protected'. The AVN's view was that the Bill "unnecessarily introduces coercion and confusion in an area which is the subject of ongoing debate".[39]

Professor Del Mar advised the committee that the schedule for giving childhood immunisations was "not based on very hard evidence", explaining that if vaccinations are received too early the immune system is not mature enough to make the antibodies against the virus to build the required immune response but that if immunisation is too late, the child may already have caught the virus. He told the committee that, therefore, the schedule is the "best guess when we think it will work".[40]

In his submission to the committee, Michael Broer advised that "leeway needs to be made for parents to be able to adopt their own approach to the schedule" and that parents should be allowed to "select from the best medical advice". He noted that there can be benefits in spacing out vaccines and that parents should be able to exercise these options.[41] He also drew attention to concerns on the part of the US advisory body on vaccine practices with regard to the combining of vaccines such as measles, mumps, rubella and varicella for children.[42]

The committee also noted differing approaches in other countries to what childhood immunisations are recommended, and at what age.

**Committee comment**

The committee notes the complexity of the National Immunisation Program Schedule for children and the information available about how it is established and reviewed. The committee believes there would be value in government reviewing the schedule and giving consideration to improving its accessibility.

### 5.3 Right of parents to make an informed decision

Many submissions maintained that parents have the right to make an informed decision about vaccination for their children.

The Commission for Children and Young People and Child Guardian (CCYPCG) noted its strong support for the objective of the Bill of increasing vaccination rates in its submission but argued that it is important to preserve the important parental right to make medical decisions for their child without sanction.[43]

In his submission Nicholas Robinson drew the committee's attention to Queensland Health's *Guide to Informed Decision-making in Healthcare* and specifically its emphasis on two-way communication between patient and health practitioner and the right of the patient to accept or decline certain healthcare.[44]

In her submission, Merilyn Haines advised the committee that she did not support the Bill on the basis that "vaccination, a medical treatment, should always be a matter of parental and personal choice". She noted that the Australian Medical Association (AMA)'s code of ethics recognises that doctors should respect their patient's right to choose or reject treatment.[45] In the Code of Ethics, the AMA states that the "doctor-patient relationship is itself a partnership based on mutual respect and

39 Australian Vaccination Network Inc. (AVN), Submission 61, pp.2&4
40 Professor Chris Del Mar, *Public Hearing Transcript*, pp.13–14
41 Michael Broer, Submission 48, p.2
42 ibid., pp.1–2
43 Commission for Children and Young People and Child Guardian (CCYPCG), Submission 15, p.1
44 Nicholas Robinson, Submission 18, p.1. The guide is available at http://www.health.qld.gov.au/consent/documents/ic-guide.pdf
45 Merilyn Haines, Submission 55, p.1

collaboration. Within the partnership, both the doctor and the patient have rights as well as responsibilities". The code requires doctors to respect the patient's right to accept or reject advice and to make their own decisions about treatment or procedures.[46]

The Australian College of Midwives submission did not support the Bill on the basis that it recognised every woman's "responsibility to make informed decisions for herself, her baby and her family with assistance, when requested, from health professionals". It stated that families should be able to choose full, partial or non-compliance with the vaccination schedule.[47]

In contrast, Beth Mohle of the QNU made the point at the public hearing that "although we accept that parents have the right to make personal choices about immunisation, in choosing not to vaccinate they may place others at risk".[48] She also noted that the question was about a balancing of "two very important and competing rights".[49]

James Gilbert of the QNU raised the issue of employers and workplaces being required to ensure the safety of workers and others affected by the workplace. In this context unvaccinated children in child care centres are a risk management issue for the child care centre operator.[50] Karen Berry of the ACCYPN told the committee that child care centres or their operators needed to have the right to assess the risk that an unimmunised child might have to children in a centre and to the unimmunised staff in the centre.[51]

In her briefing for the committee, the Member for Bundamba noted that the state has a duty of care to ensure that children are protected and have the best possible health outcome.[52]

The evidence presented to the committee indicated that the issue was a matter of balancing the individual right to make a decision about medical treatment against the protection of children and the community more broadly.

**Committee comment**

The committee strongly endorses the need for children to be immunised for the vaccine preventable diseases that are recommended by the National Immunisation Program. The committee acknowledges that some parents have deeply felt concerns about immunisation and notes that vaccination is not compulsory. The committee considers, however, that the right of parents to make a decision about immunisation must be balanced against the benefits of immunisation and the importance of protecting the community.

## 5.4 Grounds for exemption

A number of submissions suggested that the Bill should allow for exemption on the grounds of conscientious objection to vaccination.

Lica Bienholz explained her concern that, although she has decided not to vaccinate her child after consultation with a medical practitioner followed by independent research, the option of lodging a conscientious objection form would not be open to her under the proposed amendments and her

46 Principle 11 of 1.1 Patient Care of the Australian Medical Association's *Code of Ethics*. The code is available at https://ama.com.au/codeofethics

47 Australian College of Midwives, Submission 60, p.1

48 Beth Mohle, State Secretary, QNU, *Public Hearing Transcript*, p.16

49 ibid.

50 James Gilbert, Occupational Health and Safety Officer, QNU, *Public Hearing Transcript*, p.17

51 Karen Berry, *Public Hearing Transcript*, p.18

52 Mrs Jo-Ann Miller MP, *Public Briefing Transcript*, p.5

child could be denied child care or early childhood education.[53] Christine Taylor noted that it would be 'fairer' to provide information about the possibility of making a conscientious objection.[54]

In its submission the Australian Natural Therapists Association Ltd noted that the Australian Government's Immunise Australia Program recognises the right to refuse vaccination on medical grounds if a person has a personal, philosophical, religious or medical belief that a child should not be immunised. The program provides for a conscientious objection form to be completed with the assistance of the person's healthcare provider.[55]

Michael Broer noted in his submission that there is a "lack of consensus among medical providers as to what constitutes a medical exemption to vaccination". In his experience, some doctors "downplay" the risks of vaccinating children not in full health or those with a family history of auto immune disease or seizures while others require that a child be fully well before vaccinating.[56]

The Australian College of Nursing suggested that all immunisation-accredited health professionals, not only doctors, should be able to provide parents with vaccination exemption certificates.[57]

The CCYPCG suggested that exemption from exclusion on the basis of conscientious objection to vaccination should be included in the Bill. Such an exemption should require certification by an authorised practitioner that the benefits and risks of immunisation have been explained to the parent and the potential danger of not immunising advised.[58]

Matt Gardiner, the State Director Queensland of The Benevolent Society, noted that the Society supported the Bill given the importance of protecting children but also said that "there is room for conscientious objection and for it to act as a prompt for parents to talk to their health care provider about immunisation".[59] Karen Berry of the ACCYPN also made a similar point. She saw the ability to seek exemption as an "opportunity to provide parents with good, solid evidence based information on which they can make an informed consent about vaccination rather than looking at very controversial information that is provided in the various forms of media".[60]

Professor Del Mar noted that people "tend to overestimate the risks and underestimate the benefits" of vaccination. He suggested that this was probably because fewer people now have experience of the specific diseases being immunised against, and therefore are more concerned about the possible side effects of immunisation. Professor Del Mar stressed the importance of education about immunisation and improved health literacy in general.[61] This issue is discussed in more detail at sections 6.2 and 6.3 of this report.

In briefing the committee on the Bill, Greg Fowler noted that allowing for conscientious objection in a way that includes an opportunity for parents to discuss their concerns with a health practitioner could be a "useful way to contain some of the issues which are really behind the declining rates in some communities".[62]

---

53 Lica Bienholz, Submission 8, p.1

54 Christine Taylor, Submission 59.1, p.1

55 Australian Natural Therapists Association Ltd, Submission 43, p.3. Medical practitioners are automatically recognised as registered immunisation providers under the Immunise Australia Program. For registration, other immunisation providers – such as community health clinics – need to complete a registration form and send it to their State or Territory health department for authorisation. Information accessed from http://www.medicareaustralia.gov.au/provider/patients/acir/providers.jsp on 4 September 2013.

56 Michael Broer, Submission 48, p.1

57 Australian College of Nursing, Submission 56, p.4

58 CCYPCG, Submission 15, p.1

59 Matt Gardiner, State Director Queensland, The Benevolent Society, *Public Hearing Transcript*, p.23

60 Karen Berry, *Public Hearing Transcript*, p.17

61 Professor Chris Del Mar, *Public Hearing Transcript*, p.11

62 Greg Fowler, *Public Briefing Transcript*, p.4

**Committee comment**

The committee believes that any legislative mechanism to facilitate excluding an unvaccinated child from child care should allow for exemption on the grounds of informed conscientious objection (philosophical, religious or medical) to immunisation.

## 5.5 Potential unintended consequences

A number of possible unintended consequences of the Bill were raised in submissions and at the public hearing.

### *5.5.1 Concentration of unvaccinated children*

In its submission the Australian College of Nursing noted that a "significant limitation" of the Bill was that its impact could be extremely variable as it would allow, but not require, child care centres to exclude unvaccinated children. The College noted that one ramification of this was that there was a risk that this could lead to concentrations of unvaccinated children in child care centres which did not exercise the option to exclude unvaccinated children.[63] In its submission, C&K noted that the Bill could have a detrimental effect on the early childhood and care sector through inconsistency in enrolment policy that might confuse parents.[64]

Dr Hal Willaby and Associate Professor Julie Leask of the School of Public Health of the University of Sydney also stated that they did not support the Bill given the possible unintended consequences that are "counter to public health aims". The possible consequences include a concentration of unvaccinated children in particular child care centres. Dr Willaby and Professor Leask note that the "documented 1,502 local children on the Sunshine Coast are currently spread amongst fully immunised children" and that this provided a degree of 'herd immunity'.[65]

Michael Broer also argued in his submission that the Bill may lead to concentrations of unvaccinated children with those child care providers that accept unvaccinated children; increasing the risk to both vaccinated and unvaccinated children of a disease outbreak.[66]

### *5.5.2 Increased risk of vaccinating unwell children*

Submissions indicated concern that the Bill may also encourage the vaccination of children who are not in full health and therefore increase health risks.

Merilyn Haines drew the committee's attention to the issue of children getting "a succession of childhood illnesses", noting that vaccinating children who are not in full health is a particular concern given that multiple vaccinations are administered at one time. She was particularly concerned that parents may be pressured by a requirement to vaccinate to access child care into vaccinating children who are not fully well.[67]

Some submissions also questioned who would be liable if a child was injured by being vaccinated in order to access child care.[68] The AVN's submission argued that it is not clear where responsibility would fall, if a child who is vaccinated to access child care was harmed by the vaccination. Due to this uncertainty, child care operators might be placed in a difficult position.[69] Greg Beattie, President of

63 Australian College of Nursing, Submission 56, p.2
64 C&K, Submission 58, p.2
65 Dr Hal Willaby & Associate Professor Julie Leask, Submission 57, p.2-3
66 Michael Broer, Submission 48, p.2
67 Merilyn Haines, Submission 55, p.2
68 Submissions 1,20, 26, 46, 48, 52 and 61
69 AVN, Submission 61, pp.5&6

the AVN, made the point at the public hearing that in the case of an adverse reaction to vaccination, it is parents who "are the ones left holding the baby".[70]

Rebecca Hansensmith advised the committee that Australia, unlike other countries, does not have a vaccine compensation scheme.[71] Michael Broer noted that Australia does not have an adequate adverse event reporting scheme or vaccine injury compensation scheme. He advised that the World Health Organisation believes that, given the risks of vaccination, a compensation scheme is an "ethical necessity".[72]

### *5.5.3 Limitation of care and early childhood education opportunities for children*

Although Dr Willaby and Professor Leask support vaccination they noted that excluding children from society on the basis of decisions taken by others on their behalf had ethical and pragmatic considerations. They were concerned that the Bill might "potentially punish children for the decisions of their parents, decisions they have no part in".[73]

A number of submissions were concerned that the Bill is contrary to children's right to education and may reduce educational opportunities.[74] Sonja Hardy listed the benefits of early childhood education in her submission and argued that children should not be excluded from early childhood educational setting on the basis of their vaccination status.[75] Lica Bienholz noted that the "amendment is inconsistent with government initiatives of raising the kindergarten attendance rates".[76]

The Creche and Kindergarten Association Limited (C&K) is supportive of vaccination but did not support the Bill on the basis that children may be denied their right to education contrary to the United Nations' *Convention on the rights of the child*. C&K was also concerned that the Bill works in opposition to the National Partnership on Universal Access to Early Childhood Education.[77] At the public hearing, Michael Tizard, Chief Executive Officer of C&K, said that, in C&K's view, "… vaccination is not compulsory, we do not believe that legislation should be introduced via early education and child care programs to attempt to force vaccination".[78]

### *5.5.4 Need to access child care in order to be able to work*

In her submission, Elizabeth James noted that, as a conscientious objector to vaccination with a child in child care, she would be unfairly discriminated against and might not be able to access the child care she needs to run her own business and "contribute to the economy".[79] Simone Eggers advised the committee that, as a conscientious objector to vaccination after her son had a severe reaction, she would not be able to work if her child was to be excluded from child care.[80] In her submission to the committee, Shona Stromer raised concerns about the impact of the Bill on primary care givers and their ability to participate in the workforce and economically.[81] A number of other submissions maintained that the Bill is discriminatory.[82]

The Australian College of Midwives drew the committee's attention to the "detrimental consequences on working families or those that need daily respite care" that the Bill might have.[83]

---

70 Greg Beattie, President, Australian Vaccination Network, Inc., *Public Hearing Transcript*, p.1
71 Rebecca Hansensmith, *Public Hearing Transcript*, p.3
72 Michael Broer, *Public Hearing Transcript*, p.5
73 Dr Hal Willaby & Associate Professor Julie Leask, Submission 57, pp.2&3
74 Submissions 3, 8, 38, 53, 57, 58
75 Sonja Hardy, Submission 33, p.1
76 Lica Bienholz, Submission 8.3, p.1
77 C&K, Submission 58, p.2
78 Michael Tizard, Chief Executive Officer, C&K, *Public Hearing Transcript*, p.23
79 Elizabeth James, Submission 6, p.1
80 Simone Eggers, Submission 16, p.1
81 Shona Stromer, Submission 38, p.1
82 For example, submissions 3, 5, 8, 12, 18, 20 etc
83 Australian College of Midwives, Submission 60, p.1

Submissions noted that children in areas where there are few child care providers (for example, regional and remote areas) may be put at a specific disadvantage. The CCYPCG was concerned that children and families in remote communities may be particularly disadvantaged by the Bill as there may be "no other close and convenient option".[84] In its submission, C&K noted that there are areas where some providers are the only early childhood service and children should not be disadvantaged by the lack of health programs in those areas.[85]

Alternative approaches that could achieve the aims of the Bill without, or with less risk of, these unintended consequences are addressed in the following section of the report.

**Committee comment**

The committee believes that there are alternative approaches to increasing immunisation that could be taken which would have fewer unintended impacts on children and their rights to education and/or that would better mitigate the risk of unintended consequences.

84 CCYPCG, Submission 15, p.1
85 C&K, Submission 58, p.2

# 6 Other approaches to improving immunisation rates

A range of submissions suggested that there are alternative approaches that could be taken to achieving the objective of the bill that would be more effective than the proposed amendments.

## 6.1 The legislative approach taken in New South Wales

In May 2013, a private member's Bill in New South Wales (NSW) proposed amendments that would give child care centres the right to refuse to enrol children who had not been vaccinated unless: they have a medical certificate stating that vaccination is not medically advisable; or it could be shown that the child had otherwise developed immunity. On 29 May 2013, a NSW Government Amendment Bill was tabled and the private member's Bill was withdrawn.

The NSW Government's Public Health Amendment (Vaccination of Children Attending Child Care Facilities) Bill 2013 was passed and received assent in June 2013 and will come into effect from 1 January 2014.[86] The changes in NSW require that a child care centre must not enrol a child, or permit a child to enrol, unless it has documented evidence that the child is up to date with their vaccinations, or that the child is on a recognised catch-up schedule, or that the child has a medical contraindication to vaccination, or that the parents have a conscientious objection to vaccination.

A certificate stating that the parents have a conscientious belief that their child should not be vaccinated must be accompanied by a certificate from a medical practitioner stating that the medical practitioner has explained the benefits and risks to the parent and informed the parent of the potential dangers of not vaccinating their child.

The NSW child care centre must maintain an immunisation register showing that every child enrolled at the service has been vaccinated or is exempt. If the regulator requires proof of these documents and they are not available, a service could be fined up to $4,000.

A number of submissions to the committee noted that the approach taken in NSW was preferable to that proposed in the Bill currently under consideration.[87] The CCYPCG recommended that the approach taken in NSW should be followed in preference to that taken in the Bill in order to preserve the right of parents to make a decision about medical treatment for their children.[88] Michael Broer noted in his submission that the legislative approach adopted in NSW was preferred as it allows for conscientious objection in a way that encourages more informed decision making on the part of parents as well as better monitoring of the vaccination status of children in child care centres in the case of outbreaks of contagious conditions.[89]

In their submission to the committee, Dr Hal Willaby and Associate Professor Julie Leask of the School of Public Health at the University of Sydney also recommended the NSW approach as having several advantages over the approach of the Bill.[90]

## 6.2 Support informed decision making and eliminate barriers to immunisation

A number of submissions noted that there were actions and programs other than legislation that could be adopted and might better support high and increased rates of immunisation of children.

While the Australian College of Nursing supported efforts to increase the immunisation rate, it argued in its submission that there are more effective ways to achieve this goal.[91] In the College's view, the focus should be on expanding programs that have had a positive impact on the vaccination

86 Information on the NSW amendment Bill is at http://www.parliament.nsw.gov.au/prod/parlment/NSWBills.nsf/1d436d3c74a9e047ca256e690001d75b/c5d744535f879759ca257b79001e8059?OpenDocument
87 Submissions 15, 48, 57
88 CCYPCG, Submission 15, p.1
89 Michael Broer, Submission 48, p.2
90 Dr Hal Willaby & Associate Professor Julie Leask, Submission 57, p.4
91 Australian College of Nursing, Submission 56, p.2

rate or eliminating barriers to vaccination.[92] The College noted that only three to seven per cent of parents hold "intractable views" about the dangers of vaccination and that measures that target the group of "hesitant parents or poorly motivated parents" could be more effective. Improved access to information about vaccination for parents should be supported by improving the education that nurses and midwives receive on vaccination.[93]

The College noted that there are a number of barriers to immunisation for parents, in terms of both cost and accessibility. The provision of free immunisation and reminders has been shown to be effective in improving immunisation rates. The College also pointed out that Queensland's immunisation accreditation program requirements are relatively onerous in comparison with other jurisdictions and that there are waiting lists for approved immunisation courses for nurses. The College considers that steps should be taken to better assist nurses to gain immunisation qualifications so that access to immunisation is improved.[94]

Karen Berry of the ACCYPN advised the committee that the Brisbane City Council offered some evening vaccination clinics for parents and that "it would probably help if we had more access for parents, rather than less". She described the example of a successful meningococcal C campaign, where immunisation clinics were held on weekdays and public holidays across the state.[95]

In her submission to the committee, Petra Kralovic argued that the role of government should be to provide information and support to parents "so that they can make the best decisions based on fact not fear and threat".[96] A submission from Steve Gardner also noted that the role of government should not be to make decisions for parents but to provide them with "the freedom and support to make fully informed decisions".[97]

Merilyn Haines suggested in her submission that encouragement and reminders for parents to vaccinate their children would be a preferable approach to increasing the rate of immunisation.[98]

Dr Willaby and Professor Leask were concerned that the Bill might provoke a reactionary response and that the Bill "presents a form of compulsory vaccination which is counterproductive". Dr Willaby and Professor Leask noted that "alternative measures that respect the right of parents are considered by most researchers to be more effective". They drew the committee's attention to recommendations that measures to increase immunisation rates should focus on "delivering consistent, positive messages to parents through well-trained and well-informed practitioners" as well as addressing parents' concerns and questions effectively.[99]

The Creche and Kindergarten Association Limited (C&K), a large Queensland child care provider providing a range of child care service types, did not support the Bill and its approach. C&K noted that many of its policies, procedures and systems aimed to "support families to participate in the National Immunisation Program and to ensure children are protected and safe". These measures include the provision of information on immunisation to parents and infectious diseases and immunisation procedures.[100] C&K recommended that measures other than the current Bill be adopted to support high immunisation rates including:

- public health campaigns addressing concerns about vaccination
- free clinics in schools and other educational settings

92 Australian College of Nursing, Submission 56, pp.3&4
93 ibid., p.4
94 ibid.
95 Karen Berry, *Public Hearing Transcript*, pp.20–21
96 Petra Kralovic, Submission 12, p.1
97 Steve Gardner, Submission 32, p.1
98 Merilyn Haines, Submission 55, p.2
99 Dr Hal Willaby & Associate Professor Julie Leask, Submission 57, p.3
100 C&K, Submission 58, p.1

- more culturally appropriate health promotion materials relating to vaccination and children's health
- immunisation reminders for families, and
- support for early childhood services to provide comprehensive information to families and communities about vaccination and develop policies and procedures to protect children who are not immunised.

In her evidence to the committee at the public hearing, Merilyn Haines said "By all means encourage parents to vaccinate. Introduce or improve on any reminder systems, but use the carrot approach; do not use the big stick …".[101]

At the public hearing, Professor Del Mar explained to the committee the difficulties for parents in weighing the pros and cons of vaccination and the need to communicate the risks and benefits of vaccination to people in a way that helps in making an informed decision. Professor Del Mar told the committee that "the benefits greatly outweigh the risks by several orders of magnitude and that it is worthwhile vaccinating children". Professor Del Mar noted that this was not true of all vaccines, indicating that there are some doubts about the efficacy of the influenza vaccine (which is not on the immunisation schedule for children).[102]

Karen Berry of the ACCYPN told the committee that although all parents want to do the right thing by their children, "some parents … are uninformed".[103] She noted that it was difficult to make decisions based on reports in the media and parents needed to seek out evidence based information about immunisation but that if parents wanted to exempt their child "they need to understand the ramifications of that exemption …".[104]

### 6.3 Public education and improved health literacy

Professor Del Mar noted in his submission that, rather than adopt a measure to exclude unvaccinated children from child care with its attendant ethical issues, it might be more important to address issues that "induce parents to avoid vaccination of their children". He noted that this avoidance is often a result of inadequate health literacy and in particular a lack of understanding of "empirical pros and cons" on the part of members of the public. Therefore, measures to improve health literacy might be more effective than coercion in improving immunisation rates.[105]

Professor Del Mar also highlighted the role of the medical and health professions, noting that practitioners do not always "employ techniques such as shared decision-making effectively". This approach highlights communication of the evidence behind a health recommendation and an increased understanding of the pros and cons of medical procedures.[106]

At the public hearing, Professor Del Mar encouraged the committee to consider the benefits of "spending more funds on education instead of on coercion".[107] Karen Berry of the ACCYPN told the committee about the information parents receive about immunisation when a baby is born but commented that "… we are not seeing what we used to see on the TV. We used to see a lot of information about immunisation and that is not the case at the moment".[108]

In the public briefing, Greg Fowler advised that the intent of the Bill "is really to address some substantial misinformation that has been circulated in the community about the relative risk of

101 Merilyn Haines, *Public Hearing Transcript*, p.2
102 Professor Chris Del Mar, *Public Hearing Transcript*, p.11
103 Karen Berry, *Public Hearing Transcript*, p.18
104 Karen Berry, ibid., pp.18–19
105 Professor Chris Del Mar, Submission 10, p.1
106 ibid.
107 Professor Chris Del Mar, *Public Hearing Transcript*, p.12
108 Karen Berry, ibid., p.20

immunisation". He noted that public health initiatives were required to ensure that immunisation rates did not decrease.[109]

The committee noted that legislation is not the best mechanism to improve health education.

**Recommendation 3**

The committee recommends that the Minister for Health consider implementing a well-planned, multifaceted and ongoing public education campaign about the benefits of childhood immunisation, particularly in localities where immunisation rates are low.

109 Greg Fowler, *Public Briefing Transcript*, p.5

# 7 Fundamental legislative principles

## 7.1 Introduction

Section 4 of the *Legislative Standards Act 1992* states that fundamental legislative principles are the "principles relating to legislation that underlie a parliamentary democracy based on the rule of law". The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of parliament.

The committee considered the application of fundamental legislative principles to the Bill. It noted that the Explanatory Notes state that the Bill is consistent with fundamental legislative principles. The committee has identified the following potential fundamental legislative principles issues with the Bill and makes the following comments.

## 7.2 Rights and liberties of individuals

### *7.2.1 Impact on the rights and liberties of children and their parents*

A fundamental legislative principle is that legislation should be reasonable and fair in its treatment of individuals and should not be discriminatory.

Clause 5 of the Bill inserts new section 160A into the Public Health Act. New section 160A would provide that the person in charge of an education and care service or child care service may take one of the following actions (*exclusion actions*) on the ground that a child is an unvaccinated child:

- refuse to enrol the child at the service
- impose relevant conditions on the child's enrolment at the service
- refuse to allow the child to attend the service
- impose relevant conditions on the child's attendance at the service, or
- deny the child access to, or place relevant limitations on the child's access to, an activity or thing done or provided at the service.

Clause 4 defines an *unvaccinated child* as a child who has not been vaccinated for every vaccine preventable condition and has not otherwise acquired immunity from contracting each vaccine preventable condition for which the child has not been vaccinated.

The committee notes that, while the power to take exclusion actions is entirely at the discretion of the person in charge of the centre, clause 5 may potentially have a significant impact on the rights and liberties of children and their parents.

It may be the case that parents object to having their child vaccinated on religious grounds or may wish to not vaccinate their child after considering the risks and benefits of vaccination ('conscientious objectors'). The Bill (clauses 4 and 5) provides for an exemption on medical grounds, (i.e. if it is not medically advisable for a child to be vaccinated). However, the committee notes that the Bill does not provide for exemptions on grounds of religious belief or conscientious objection. By allowing persons in charge of services to effectively place a requirement on parents to have their children vaccinated to attend child care impacts on a parent's right to make an informed choice about vaccination.

The Bill has a number of potential impacts on the rights and liberties of parents and children. A decision by a centre to exclude an unvaccinated child may affect that child's socialisation, education and future development. Where parents rely on child care in order to work, they may be faced with withdrawing from work if they are unable to secure child care. These issues may be particularly acute in remote and regional areas, where child care places are already at a premium.

A number of submissions stated that the Bill is contrary to the United Nations (UN) Convention on the Rights of the Child. Article 28 of the UN Convention on the Rights of the Child provides that all

children have the right to a primary education. The committee notes that the Bill applies only to child care facilities, and not to compulsory education at primary or secondary schools.

Submissions also stated that the Bill is discriminatory. The *Anti-Discrimination Act 1991* prohibits discrimination on the basis of a number of attributes, including religious belief or activity. Section 107 of the *Anti-Discrimination Act 1991* provides a broad exemption for acts taken where it is reasonably necessary to protect public health. It is noted the principal objective of the Bill is to protect the health of children and the wider community. While the committee acknowledges that stakeholders consider the Bill would be discriminatory, it notes that it would not lead to unlawful discrimination.

Submissions also stated that clause 5 was contrary to the right to refuse medical treatment.

In considering these issues, the committee notes that the rights and liberties of individuals are not absolute. In these circumstances, the rights and liberties of the parents and children need to be balanced against the objective of the Bill to protect public health.

As indicated in submissions and hearing evidence, there is debate about the efficacy of vaccination and concerns about adverse outcomes from vaccination and, therefore, whether immunisation protects public health. The committee notes that current medical opinion, based on careful consideration of the evidence, is that the benefits of vaccination outweigh the risks.

The committee, therefore, strongly supports the policy objective of the Bill to improve immunisation rates of children in Queensland. At the same time, the committee notes that vaccination is not compulsory.

The current Bill does not allow for conscientious objection and does not have sufficient regard to the right to refuse medical treatment and the right of children to access educational opportunities, particularly in rural and remote areas where facilities may be limited.

**Committee comment**

Given the lack of provision for conscientious objection to vaccination and consideration of the right to refuse medical treatment and the right of children to access early childhood education, the committee is not convinced that clause 5 of the Bill has sufficient regard to the rights and liberties of parents and children. The committee believes there are other ways to achieve the policy objective of improving childhood vaccination that have less impact on rights and liberties.

### *7.2.2 Immunity from proceedings*

Section 4(3)(h) of the *Legislative Standards Act 1992* (the LSA) provides that legislation should not confer immunity without adequate justification. Generally, if protection is needed for persons administering Queensland legislation, the preferred legislative approach is to provide immunity for actions done honestly and without negligence.

Clause 6 amends section 179 of the Public Health Act to provide that a person, acting honestly, who gives information (obtained while discharging functions under the Act) or takes exclusion actions under new Part 1AA of the Act is not liable civilly, criminally or under an administrative process.

The committee notes that clause 6 only provides immunity for actions done honestly, there is no requirement of an absence of negligence (i.e. failure to take proper care), as is usually required in Queensland legislation.

Given that information would only be disclosed in response to a request and exclusion actions would only be taken after following the processes set out in the proposed amendments (i.e. after giving parents a chance to respond), it is difficult to envisage circumstances where information will be provided negligently. It therefore appears reasonable in such circumstances to provide immunity only for honestly made (but still erroneous) disclosures or exclusion actions.

**Committee comment**

The committee's view is that, on balance, clause 6 of the Bill confers sufficient immunity with adequate justification.

#### *7.2.3 Clear and precise drafting*

Clause 4 of the Bill inserts new definitions in section 158 of the Public Health Act, including a definition of *unvaccinated child*.

An *unvaccinated child* is defined as a child who has not been vaccinated for every vaccine preventable condition and had not otherwise acquired immunity from contracting each vaccine preventable condition for which the child has not been vaccinated.

Section 158 of the Public Health Act defines a vaccine preventable condition as a contagious condition that is prescribed under regulation as a vaccine preventable condition. The list of current vaccine preventable conditions is at part 2 of schedule 2A to the Regulation. Measles is currently the only condition listed in part 2 of schedule 2A to the Regulation.

This is inconsistent with the policy objective set out in the Explanatory Notes which state that the Bill will allow for "… education and care service or child care service the option to refuse to allow children who are not fully immunised to enrol in the child care facility".[110]

The Member for Bundamba wrote to the committee to advise that amendments will be moved during consideration in detail to correct this error.[111]

### 7.3 Explanatory notes

Part 4 of the LSA relates to Explanatory Notes. It requires that Explanatory Notes be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information Explanatory Notes should contain.

Explanatory Notes were tabled with the introduction of the Bill. The notes contain most of the information required by Part 4 of the LSA and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

The Explanatory Notes do not provide information about any of the potential fundamental legislative principles identified in this report.

Section 23 of the LSA provides that Explanatory Notes must include a brief statement of the extent which consultation was carried out in relation to the Bill. The 'consultation' section of the Explanatory Notes refers to consultation with the New South Wales Opposition Office and states that further consultation will be conducted on the Bill once it has been introduced.

The committee is not aware of any consultation that may have taken place since the Bill was introduced by the Member for Bundamba. The committee notes that the Bill impacts widely on parents, children, child care service providers and other community stakeholders with an interest in immunisation.

**Committee comment**

The committee believes that consultation with key stakeholders during the development of legislation is an important aspect of the legislative process. The conduct of an appropriate consultation process will ensure that alternative approaches to meeting the objectives of a Bill are adequately canvassed and considered.

110 Explanatory Notes, p.1

111 Mrs Jo-Ann Miller MP, *Correspondence*, Appendix D

# Appendices

### Appendix A – List of Submissions

| Sub # | Submitter |
|---|---|
| 001 | The Iwinski Family |
| 002 | Pamela Atkinson |
| 003 | Tasha David |
| 004 | Name supressed |
| 005 | Name supressed |
| 006 | Elizabeth James |
| 007 | Melissa Fitzsimon |
| 008 | Lica Bienholz |
| 009 | Name supressed |
| 010 | Professor Chris Del Mar |
| 011 | Susan Lindberg |
| 012 | Petra Kralovic |
| 013 | Kathleen Kaandorp |
| 014 | Gerald Kaandorp |
| 015 | Commission for Children and Young People and Child Guardian |
| 016 | Simone Eggers |
| 017 | Alex Hodges |
| 018 | Nicholas Robinson |
| 019 | Sally Rhyanen |
| 020 | Robert Berkeley |
| 021 | Robert and Bev Blanch |
| 022 | Terry and Margaret Dwyer |
| 023 | Wayne and Michelle Graf |
| 024 | Raymond Howe |
| 025 | Bob and Gail Osmak |
| 026 | Bev Pattenden |
| 027 | Amy Rayward |
| 028 | Robert Salthouse |
| 031 | Name supressed |
| 032 | Steve Gardner |
| 033 | Sonja Hardy |

| Sub # | Submitter |
|---|---|
| 034 | Angel Love |
| 035 | Clara McManus |
| 036 | Name supressed |
| 037 | Karissa Stallwood, Kathleen Borello and Melanie Cooper |
| 038 | Shona Stromer |
| 039 | Amanda Beattie |
| 040 | Ian Billman |
| 041 | Name supressed |
| 042 | Alain Romary |
| 043 | Australian Natural Therapists Association Ltd |
| 044 | Hildegard Bienholz |
| 045 | Debbie Goudy |
| 046 | Name supressed |
| 047 | Adriano Regano |
| 048 | Michael Broer |
| 049 | Queensland Catholic Education Commission |
| 050 | Queensland Nurses' Union |
| 051 | Aneeta Hafemeister |
| 052 | Rebecca Hansensmith |
| 053 | Glen Williams |
| 054 | Name supressed |
| 055 | Merilyn Haines |
| 056 | Australian College of Nursing |
| 057 | Dr. Hal Willaby & Associate Professor Julie Leask |
| 058 | Creche & Kindergarten Association Limited |
| 059 | Christine Taylor |
| 060 | Australian College of Midwives Queensland |
| 061 | Australian Vaccination Network, Inc. |
| 062 | The Benevolent Society |
| 063 | Centacare |
| 064 | Australian College of Children & Young People's Nurses |

## Appendix B – Witnesses at public briefings and hearings

| **Public hearing – 19 August 2013** |
|---|
| Mr Greg Beattie, President, Australian Vaccination Network, Inc. |
| Mrs Merilyn Haines, individual capacity |
| Ms Rebecca Hansensmith, individual capacity |
| Mr Michael Broer, individual capacity |
| Professor Chris Del Mar, Professor of Public Health, Centre for Research in Evidence-Based Practice, Faculty of Health Sciences and Medicine, Bond University |
| Ms Beth Mohle, State Secretary, Queensland Nurses' Union |
| Mr James Gilbert, Health and Safety Officer, Queensland Nurses' Union |
| Ms Karen Berry, Immunisation Program Nurse, Australian College of Children & Young People's Nurses |
| Mr Matt Gardiner, State Director Queensland, The Benevolent Society |
| Mr Michael Tizard, Chief Executive Officer, Creche & Kindergarten Association Limited |

| **Public briefing – 21 August 2013** |
|---|
| Mrs Jo-Ann Miller MP, Member for Bundamba |
| Mr Greg Fowler, Health Policy Advisor, Office of the Leader of the Opposition |

## Appendix C – National Immunisation Program Schedule

Australian Government
Department of Health and Ageing

# National Immunisation Program Schedule
**From 1 July 2013**

| Child programs | |
|---|---|
| **Age** | **Vaccine** |
| **Birth** | • Hepatitis B (hepB) [a] |
| **2 months** | • Hepatitis B, diphtheria, tetanus, acellular pertussis (whooping cough), *Haemophilus influenzae* type b, inactivated poliomyelitis (polio) (hepB-DTPa-Hib-IPV)<br>• Pneumococcal conjugate (13vPCV)<br>• Rotavirus |
| **4 months** | • Hepatitis B, diphtheria, tetanus, acellular pertussis (whooping cough), *Haemophilus influenzae* type b, inactivated poliomyelitis (polio) (hepB-DTPa-Hib-IPV)<br>• Pneumococcal conjugate (13vPCV)<br>• Rotavirus |
| **6 months** | • Hepatitis B, diphtheria, tetanus, acellular pertussis (whooping cough), *Haemophilus influenzae* type b, inactivated poliomyelitis (polio) (hepB-DTPa-Hib-IPV)<br>• Pneumococcal conjugate (13vPCV)<br>• Rotavirus [b] |
| **12 months** | • *Haemophilus influenzae* type b and Meningococcal C (Hib-MenC)<br>• Measles, mumps and rubella (MMR) |
| **18 months** | • Measles, mumps, rubella and varicella (chickenpox) (MMRV) |
| **4 years** | • Diphtheria, tetanus, acellular pertussis (whooping cough) and inactivated poliomyelitis (polio) (DTPa-IPV)<br>• Measles, mumps and rubella (MMR) (to be given only if MMRV vaccine was not given at 18 months) |
| **School programs** | |
| **10–15 years** (contact your State or Territory Health Department for details) | • Hepatitis B (hepB) [c]<br>• Varicella (chickenpox) [c]<br>• Human papillomavirus (HPV) [d]<br>• Diphtheria, tetanus and acellular pertussis (whooping cough) (dTpa) |
| **At-risk groups** | |
| **6 months and over** | • Influenza (flu) (people with medical conditions placing them at risk of serious complications of influenza) |
| **12 months** | • Pneumococcal conjugate (13vPCV) [e] (medically at risk) |
| **12–18 months** | • Pneumococcal conjugate (13vPCV) (Aboriginal and Torres Strait Islander children in high risk areas) [e] |
| **12–24 months** | • Hepatitis A (Aboriginal and Torres Strait Islander children in high risk areas) [f] |
| **4 years** | • Pneumococcal polysaccharide (23vPPV) [e] (medically at risk) |
| **15 years and over** | • Influenza (flu) (Aboriginal and Torres Strait Islander people)<br>• Pneumococcal polysaccharide (23vPPV) (Aboriginal and Torres Strait Islander people medically at risk) |
| **50 years and over** | • Pneumococcal polysaccharide (23vPPV) (Aboriginal and Torres Strait Islander people) |
| **Pregnant women** | • Influenza (flu) |
| **65 years and over** | • Influenza (flu)<br>• Pneumococcal polysaccharide (23vPPV) |

* Please refer to reverse for footnotes

IMMUNISATION

### Footnotes to the National Immunisation Program (NIP) Schedule

a. Hepatitis B vaccine: should be given to all infants as soon as practicable after birth. The greatest benefit is if given within 24 hours, and must be given within 7 days.

b. Rotavirus vaccine: third dose of vaccine is dependent on vaccine brand used. Contact your State or Territory Health Department for details.

c. Hepatitis B and Varicella vaccine: contact your State or Territory Health Department for details on the school grade eligible for vaccination.

d. HPV vaccine: is for all adolescents aged between 12 and 13 years. A catch-up program for males aged between 14 and 15 years is available until December 2014. Contact your State or Territory Health Department for details on the school grade eligible for vaccination.

e. Pneumococcal vaccine:
   i. Medically at risk children require: a fourth dose of 13vPCV at 12 months of age; and a booster dose of 23vPPV at 4 years of age (but less than 6 years of age).
   ii. Infants born at less than 28 weeks gestation require: a fourth dose of 13vPCV at 12 months of age.
   iii. Aboriginal and Torres Strait Islander children require: a fourth dose of pneumococcal vaccine (13vPCV) at 12 months of age (but not more than 18 months) for children living in high risk areas (Queensland, Northern Territory, Western Australia and South Australia). Contact your State or Territory Health Department for details.

f. Hepatitis A vaccine: two doses of Hepatitis A vaccine for Aboriginal and Torres Strait Islander children living in high risk areas (Queensland, Northern Territory, Western Australia and South Australia). Contact your State or Territory Health Department for details.

### Further information

Further information and immunisation resources are available from the Immunise Australia Program website at **www.immunise.health.gov.au** or by contacting the infoline on **1800 671 811**.

You should contact your State or Territory Health Department for further information on the program specific to your State or Territory:

| State/Territory | Contact Number |
|---|---|
| Australian Capital Territory | (02) 6205 2300 |
| New South Wales | 1300 066 055 |
| Northern Territory | (08) 8922 8044 |
| Queensland | 13 HEALTH (13 4325 84) |
| South Australia | 1300 232 272 |
| Tasmania | 1800 671 738 |
| Victoria | 1300 882 008 |
| Western Australia | (08) 9321 1312 |

IMMUNISE AUSTRALIA PROGRAM

**A joint Australian, State and Territory Government initiative**

**www.immunise.health.gov.au**

All information in this publication is correct as at May 2013

10231 May 2013

## Appendix D – Correspondence from Member for Bundamba re error in Clause 4 of the Bill

JO-ANN MILLER MP
SHADOW MINISTER FOR HEALTH, NATURAL RESOURCES AND MINES, AND HOUSING
MEMBER FOR BUNDAMBA

28 May 2013

Mr Trevor Rutherberg MP
Chairperson
Health and Community Services Committee
Parliament House
George Street
BRISBANE QLD 4300

By post and email to: hcsc@parliament.qld.gov.au

Dear Mr Rutherberg

**Public Health (Exclusion of Unvaccinated Children from Child Care) Amendment Bill 2013**

On 23 May 2013, I introduced a private members bill into the Legislative Assembly of the Queensland Parliament entitled *Public Health (Exclusion of Unvaccinated Children from Child Care) Amendment Bill 2013*. The bill was subsequently referred to the Health and Community Services Committee for appropriate review and scrutiny.

Since introducing the bill on 23 May 2013, it has come to my attention that there is an error in clause 4 of the bill. This clause specifically amends section 158 of the *Public Health Act 2005* to insert various definitions into the *Public Health Act 2005*. In particular, line 22 of the bill adds the definition of an unvaccinated child, as set out below:

> **unvaccinated child**, for division 1AA, means a child who-
>
> (a) has not been vaccinated for every vaccine preventable condition; and
> (b) has not otherwise acquired an immunity from contracting each vaccine preventable condition for which the child has not been vaccinated.

The definition of "vaccine preventable condition" can be found in section 158 of the *Public Health Act 2005*, which states:

> ***vaccine preventable condition*** *means a contagious condition that is prescribed under a regulation as a vaccine preventable condition.*

Part 2B, section 12D of the *Public Health Regulation 2005* outlines that the definition for "vaccine preventable condition" as stated in section 158 of the *Public Health Act 2005* is located in schedule 2A, part 2 of the *Public Health Regulation 2005*.

It has come to my attention that, schedule 2A, part 2 of the *Public Health Regulation 2005* only lists measles. As the committee would appreciate, the purpose and intent of the bill as detailed in the objectives section of the explanatory notes of the bill, is to allow for "… education and care service or child care service the option to refuse to allow children who are not **fully immunized** to enroll in the child care facility…" [emphasis added]

Clearly, the intention of the bill was to encompass a broader range of conditions that can be vaccinated, specifically:

- Diphtheria
- Haemophilus influenze type b
- Measles
- Meningoccocal type C
- Mumps
- Pertussis (whooping cough)
- Poliomyelitis
- Rubella
- Tetanus.

I will be moving amendments during consideration in detail to correct this error and will furnish the amendments to the committee at the earliest possible opportunity.

I therefore request that the committee undertake its deliberations with the knowledge of these amendments and the understanding that the bill was intended to cover a broader spectrum of possible immunizations.

Please do not hesitate to contact me if I can be of any further assistance.

Yours sincerely

Jo-Ann Miller MP
**Shadow Minister for Health**

## Appendix E – Publications referred to in this report

*Anti-Discrimination Act 1991*, available at https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/A/AntiDiscrimA91.pdf

Australian Academy of Science, *The Science of Immunisation: Questions and Answers*, available at http://science.org.au/policy/immunisation.html

Australian Government Department of Health and Ageing, *About the program*, available at http://www.health.gov.au/internet/immunise/publishing.nsf/Content/about-the-program

——*Myths and Realities: Responding to arguments against vaccination*, available at http://www.health.gov.au/internet/immunise/publishing.nsf/content/1FC63A2886238E6CCA2575BD001C80DC/$File/full-publication-myths-and-realities-5th-ed-2013.pdf

Australian Government Department of Human Services, *Information for Immunisation Providers*, available at http://www.medicareaustralia.gov.au/provider/patients/acir/providers.jsp

Australian Medical Association, *Code of Ethics*, available at https://ama.com.au/codeofethics

*Child Care Act 2002*, available at https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/C/ChildCareA02.pdf

Council of Australian Governments, *National Partnership Agreement on Universal Access to Early Childhood Education*, available at http://www.federalfinancialrelations.gov.au/content/npa/education/early_childhood_education/early_childhood_education.pdf

*Education and Care Services National Law (Queensland) Act 2011*, available at https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/E/EduCareServA11.pdf

Explanatory Notes to the Public Health (Exclusion of Unvaccinated Children from Child Care) Amendment Bill 2013, available at http://www.legislation.qld.gov.au/Bills/54PDF/2013/PublicHealthExUCCCAB13_PE.pdf

Health and Community Services Committee, *Public Briefing Transcript*, 21 August 2013, available at http://www.parliament.qld.gov.au/documents/committees/HCSC/2013/PHunvaccinatedchildren/trns-21Aug2013-PH.pdf

——*Public Hearing Transcript*, 19 August 2013, available at http://www.parliament.qld.gov.au/documents/committees/HCSC/2013/PHunvaccinatedchildren/trns-19Aug2013.pdf

——*Website*, available at www.parliament.qld.gov.au/hcsc

*Legislative Standards Act 1992*, available at https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/L/LegisStandA92.pdf

Miller MP, Mrs Jo-Ann, Member for Bundamba, *Correspondence from Member for Bundamba re error in Clause 4 of the Bill*, 28 May 2013 *(see Appendix D)*

National Centre for Immunisation Research and Surveillance, *School Entry Vaccination Requirements: Summary of the Evidence*, available at http://www.immunise.health.gov.au/internet/immunise/publishing.nsf/Content/ncirs-sevr-se

National Health Performance Authority, *Healthy Communities: Immunisation rates for children in 2011–12*, available at http://www.nhpa.gov.au/internet/nhpa/publishing.nsf/Content/Healthy-communities/$file/HC_ImmRates_2011-12_FINAL_130409.pdf

Parliament of New South Wales, Public Health Amendment (Vaccination of Children Attending Child Care Facilities) Bill 2013, available at http://www.parliament.nsw.gov.au/prod/parlment/NSWBills.nsf/1d436d3c74a9e047ca256e690001d75b/c5d744535f879759ca257b79001e8059?OpenDocument

*Parliament of Queensland Act 2001*, available at https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/P/ParliaQA01.pdf

*Public Health Act 2005*, available at http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/P/PubHealA05.pdf

Public Health Regulation 2005, available at http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/P/PubHealR05.pdf

Queensland, Legislative Assembly, *Hansard*, 23 May 2013, p.1798 (Mrs Jo-Ann Miller MP), available at http://www.parliament.qld.gov.au/documents/hansard/2013/2013_05_23_WEEKLY.pdf

——*Standing Rules and Orders of the Legislative Assembly*, as amended 4 June 2013, available at http://www.parliament.qld.gov.au/work-of-assembly/procedures

Queensland Health, *Guide to informed decision-making,* available at http://www.health.qld.gov.au/consent/documents/ic-guide.pdf

United Nations, 1989, *Convention on the Rights of the Child*, available at http://www.un.org/documents/ga/res/44/a44r025.htm

## Dissenting reports

### Mrs Jo-Ann Miller MP

JO-ANN MILLER MP
SHADOW MINISTER FOR HEALTH, NATURAL RESOURCES AND MINES, AND HOUSING
MEMBER FOR BUNDAMBA
PO Box 15057, City East QLD 4002
reception@opposition.qld.gov.au (07) 3838 6767

Mr Trevor Ruthenberg MP
Chairperson
Health and Community Services Committee
Parliament House
George Street
BRISBANE QLD 4000

## Dissenting Report

**Public Health (Exclusion of Unvaccinated Children from Child Care) Amendment Bill 2013**

I submit a Dissenting Report to Report 29 of the Health and Community Services Committee on the *Public Health (Exclusion of Unvaccinated Children from Child Care) Amendment Bill 2013*.

This Private Member's Bill was introduced in response to the research evidence presented by the National Health Performance Authority in its report released 11 April 2013 – *Healthy Communities: Immunisation rates for children 2011-12*.
http://www.nhpa.gov.au/internet/nhpa/publishing.nsf/Content/Report-Download-Healthy-Communities-Immunisation-rates-for-children-in-2011-12

This report identified immunization rates in some areas of Queensland well below acceptable levels for a developed country. This is of particular concern as child immunization is a cornerstone of public health efforts to protect the community from vaccine preventable infectious diseases. Child vaccination in Australia is free and easily accessible, yet in some metropolitan and regional areas scheduled vaccinations are not being taken up.

False, malicious and misleading information about the risks and effectiveness of child vaccination has been disseminated by some individuals and groups including the organisation known as the Australian Vaccination Network. Some of the individuals involved have provided submissions to this Committee.

There has been local support for anti-vaccination campaigners by LNP MPs, such as the Member for Nudgee. Members of this Committee under the guise of supporting "rights and liberties" are legitimizing the misinformation disseminated by the Australian Vaccination Network.

I am disappointed that the Committee has not taken the time to consider a bipartisan approach to this Bill. Dismissing the Bill without full consideration shows a level of arrogance and an ignorance of population health strategies that is very concerning. The committee processes in this Parliament offer an opportunity to rise above the partisan politics of daily political discourse.

JO-ANN MILLER MP
SHADOW MINISTER FOR HEALTH, NATURAL RESOURCES AND MINES, AND HOUSING
MEMBER FOR BUNDAMBA
P.O Box 15057, City East QLD 4002
reception@opposition.qld.gov.au (07) 3838 6767

Clearly the effort of carefully considering the intent of this Bill, the evidence and options for achieving the best outcome for the health of our communities and of our children, is beyond government members. The Committee has squandered the opportunity to enhance this Bill in response to public submissions, technical advice from the committee research staff and the deliberations of Committee Members.

In the spirit of collaboration, I am willing to amend the Bill with regard to:

- clarifying age-appropriate vaccination as specified by the National Immunisation Program Schedule
- allowing informed conscientious objection to vaccination using a formal process consistent with the *NSW Public Health Amendment (Vaccination of Children Attending Child Care Facilities) Act 2013*.

I, however, reject the assertion that the intent of the Bill could be achieved through a public education campaign without the regulatory requirements of the Bill.

Further I find it telling that the Committee has not taken this issue seriously enough to address the clear deficiency in Schedule 2A to the Public Health Regulations that only list measles as a vaccine preventable condition and does not list Diphtheria, Haemophilus influenza type B, Meningoccocal type C, Mumps, Pertussis (whooping cough), Poliomyelitis, Rubella, and Tetanus. The Committee's comments on "reviewing the schedule" demonstrate a lack of understanding of the Committee's responsibilities for Queensland public health legislation and the processes by which the National Immunisation Program Schedule is amended and disseminated.

The current outbreak of adolescent and adult measles highlights the importance of public health action to protect the community from infectious disease. This government has approached health policy as a cost-cutting exercise and failed in its duty of care.

The record of the Newman Government in enhancing population health is poor.

The foolish attempt, in August 2012, to close the Queensland Tuberculosis Control Centre at the Princess Alexandra Hospital engendered such ridicule that the Minister performed a backflip worthy of a circus performer.

The Minister has walked away from the Queensland Chronic Disease Strategy, sacking health promotion workers, public health nutritionists and prevention staff across the state. This is a government that has said primary health care is not its business.

Health professionals have advised me that the Minister's decision to progressively close public sexual health services across the state, including the state's largest clinic at Biala in Roma Street, is likely to lead to an epidemic of infectious diseases including Chlamydia, Gonorrhea, Syphilis and HIV.

JO-ANN MILLER MP
SHADOW MINISTER FOR HEALTH, NATURAL RESOURCES AND MINES, AND HOUSING
MEMBER FOR BUNDAMBA
PO Box 15057, City East QLD 4002
reception@opposition.qld.gov.au (07) 3838 6767

Earlier this year, the Minister sacked the Queensland Health Senior Director of Communicable Diseases, Dr Christine Selvey, after six years of dedicated service and without any public justification. Dr Selvey is an acknowledged leader in the field of child vaccination and immunization programs in Australia.

Again I would like to express my disappointment that government members of this Committee have not taken this opportunity to provide the leadership in public health policy that is clearly beyond the competence of the Minister for Health. I will watch very closely to see if the LNP Government which has dismissed this Bill miraculously introduces similar legislation at some future time.

Yours sincerely

Jo-Ann Miller MP
**Shadow Minister for Health**
**Member for Bundamba**

**Dr Alex Douglas MP**


# DR ALEX DOUGLAS MP
## STATE MEMBER FOR GAVEN


Mr Trevor Ruthenberg MP
Chair
Health and Community Services Committee
Parliament House
Brisbane 4000

Dear Mr Ruthenberg

**Statement of Dissent – Public Health (Exclusion of Unvaccinated children from Childcare) Amendment Bill 2013**

I oppose the committee's decision to oppose this legislation. I consider that the committee may have failed in its duty to parliament by opposing a critical piece of legislation purely for political purposes and by uncritically assessing the evidence supportive of the legislation and the submissions.

My specific medical reasons are:

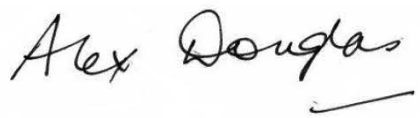
1. The legislation addresses in a practical manner what parents of children attending child care centres need to know about admission rules for all children attending those childcare centres and their vaccination status, in an era where privacy guidelines are so strict that it is impossible to ask information about other children and uniformly share that information in the modern era.
2. This legislation is similar to that legislated in other states.
3. Submissions from the anti- vaccination lobby , in particular are so extreme that they should be rejected purely on scientific grounds alone. Regarding the submission from Professor Chris Del Mar, despite his opposition to the bill, on detailed questioning, he appeared to suggest that there were no other practical steps that could be taken to achieve the proposed outcome as efficiently.
4. The current evidence is overwhelming regarding both eternal vigilance, completeness of vaccinating herd populations and dangers to those staff, families and children involved in child care. There can be no gaps otherwise we may see


gaven@parliament.qld.gov.au
4/12 Ferry Street Nerang 4211
PO Box 1140 Nerang 4211

www.alex4gaven.com.au
P: 07 5502 1411
F: 07 5502 1433

dreadful outcomes. The most recent outbreaks of Measles and Pertussis in Queensland must not go being ignored.

Yours sincerely



**DR ALEX DOUGLAS MP**
**State Member for Gaven**

September 24, 2013

gaven@parliament.qld.gov.au
4/12 Ferry Street Nerang 4211
PO Box 1140 Nerang 4211

www.alex4gaven.com.au
P: 07 5502 1411
F: 07 5502 1433