

Social Services Legislation Amendment (No Jab, No Pay) Act 2015

Portfolio: Social Services

Introduced: House of Representatives, 16 September 2015

Purpose

2.246 The Social Services Legislation Amendment (No Jab, No Pay) Bill 2015 (the bill) sought to amend the *A New Tax System (Family Assistance) Act 1999* to provide that child care benefit, child care rebate and the Family Tax Benefit Part A supplement will only be payable where a child fully meets the immunisation requirements.

Background

2.247 The committee previously considered the bill in its *Twenty-ninth Report of the 44th Parliament* (previous report) and requested further information from the Minister for Social Services as to the compatibility of the bill with the right to freedom of thought, conscience and religion.¹

2.248 The bill was referred to the Senate Community Affairs Legislation Committee on 17 September 2015, which tabled its report on 11 November 2015.

2.249 The bill passed both Houses of Parliament on 23 November 2015 and received Royal Assent on 26 November 2015, becoming the *Social Services Legislation Amendment (No Jab, No Pay) Act 2015* (the Act).

2.250 Measures raising human rights concerns or issues are set out below.

No exception for religious or conscientious objections

2.251 Prior to enactment, the *A New Tax System (Family Assistance) Act 1999* provided that certain family assistance payments were conditional on meeting the childhood immunisation requirements for children at all ages. However, an exception existed where the child's parent had declared in writing that he or she has a conscientious objection to the child being immunised. A conscientious objection was defined as follows:

An individual has a conscientious objection to a child being immunised if the individual's objection is based on a personal, philosophical, religious or medical belief involving a conviction that vaccination under the latest edition of the standard vaccination schedule should not take place.²

1 Parliamentary Joint Committee on Human Rights, *Twenty-ninth Report of the 44th Parliament* (13 October 2015) 31-33.

2 See section 5 of the *A New Tax System (Family Assistance) Act 1999* (Compilation No. 77).

2.252 The Act repealed this exception meaning that certain family assistance payments are only payable in relation to a child that has been immunised (unless there is a medical contradiction to immunisation or immunisation is unnecessary as the child has developed a natural immunity). There is no longer an exception where the parent objected to immunisation based on their religious or personal beliefs.

2.253 The committee considered in its previous analysis that the removal of the exemption for conscientious objectors engaged and may limit the right to freedom of thought, conscience and religion.

Right to freedom of thought, conscience and religion

2.254 Article 18 of the International Covenant on Civil and Political Rights (ICCPR) protects the rights of all persons to think freely, and to entertain ideas and hold positions based on conscientious or religious or other beliefs. Subject to certain limitations, persons also have the right to demonstrate or manifest religious or other beliefs, by way of worship, observance, practice and teaching. The right includes the right to have no religion or to have non-religious beliefs protected.

2.255 The right to hold a religious or other belief or opinion is an absolute right. However, the right to exercise one's belief can be limited given its potential impact on others. The right can be limited as long as it can be demonstrated that the limitation is reasonable and proportionate and is necessary to protect public safety, order, health or morals or the rights of others.

Compatibility of the measure with the right to freedom of thought, conscience and religion

2.256 The statement of compatibility acknowledged that the right to freedom of thought, conscience and religion is engaged by this measure as families will no longer be eligible to receive certain levels of family assistance where they have a conscientious or religious belief that prevents them from immunising their children. However, it noted that article 18 of the ICCPR permits limitations on the right if necessary to protect public health or the fundamental rights and freedoms of others.

2.257 The statement of compatibility also stated that the purpose of the bill was to 'encourage parents to immunise their children' and noted that in so doing the bill promoted the right to health as vaccination is recognised to be the most effective method of preventing infectious diseases and providing protection to both the vaccinated individuals and the wider community.³

2.258 The committee agreed that the objective of the bill, in encouraging parents to immunise their children and thereby prevent the spread of infectious diseases is a legitimate objective for the purposes of international human rights law.

3 Explanatory memorandum (EM), statement of compatibility (SOC) 1-2.

2.259 However, no information was provided to explain whether the measures would be likely to be effective in achieving the objective of encouraging vaccination. It was not clear to the committee whether these particular measures which result in certain family assistance payments being withheld would be likely to encourage persons with strongly held objections to vaccinate their child.

2.260 In addition, little information was provided in the statement of compatibility as to whether there were any less rights restrictive options available to achieve the bill's objective. No information was given as to whether other less restrictive options had been explored.

2.261 The committee therefore sought the advice of the Minister for Social Services as to how the measures in the bill were rationally connected with the stated objective, and why the limitation was a reasonable and proportionate measure for the achievement of that objective.

Minister's response

Thank you for your letter of 13 October 2015 on behalf of the Parliamentary Joint Committee on Human Rights regarding the human rights compatibility of the Social Services Legislation Amendment (No Jab, No Pay) Bill 2015. I appreciate the time you have taken to bring this matter to my attention.

In your letter you raise an assertion that the removal of the 'conscientious objector' exemption to the immunisation requirements may engage and limit the human right to freedom of thought, conscience and religion. You note that the statement of compatibility which accompanies the Social Services Legislation Amendment (No Jab, No Pay) Bill 2015 does not provide information on whether there is a rational connection between this possible limitation and the objective of encouraging immunisation and thereby preventing the spread of infectious diseases.

The rationale of the changes made by the Social Services Legislation Amendment (No Jab, No Pay) Bill 2015 is to effect practical changes that reflect the Australian Government's policy position that immunisation is an important public health measure for children, their families and the community. The aim of this policy is to further increase immunisation rates in the Australian community and therefore increase the right to health of the overwhelming majority of individual Australians by providing high community rates of immunisation against infectious diseases. This new policy will strengthen the definition relating to conscientious objection and introduce a link between vaccination and some welfare benefits, as a mechanism designed to reinforce the importance of immunisation as a matter of public education and increase rates of vaccination to enhance the protection of public health. These outcomes are sought to be achieved by providing a level of encouragement and incentive for families to more

thoroughly inform themselves about the importance of immunising their children and then pursue the course of action to immunise their children.

The Government recognises that parents have the right to decide not to vaccinate their children. Nothing in the present policy approach prevents such a decision being made, however, if they make such a decision as an objector to vaccinations, their decision will mean they are no longer eligible for some government financial assistance. Importantly, an individual is not prohibited from maintaining their vaccination objection; although they will not receive some family assistance they may otherwise receive. For example, the Family Tax Benefit Part A supplement is currently \$726 per year. This is a relatively small financial cost to the vaccination objectors family, particularly when compared to the cost that the spread of crippling, debilitating and deadly diseases has on our health system and community and particularly when it is noted this is public tax-payer funded welfare money.

The financial consequences of losing access to Child Care Benefit and Child Care Rebate are not insubstantial, however, this is a proportionate policy reasonably matched to the purpose of ensuring the highest possible immunisation rates at the country's child care and early learning centres.

Additionally, you have asked that I advise whether this possible limitation to the human right to freedom of thought, conscience and religion is reasonable and proportionate for the achievement of the objective of encouraging vaccination, in particular that it is the least right restrictive approach to achieving the aim of this new policy. As noted above, there is no limitation whatsoever on freedom of thought or conscience, rather the Government has determined to no longer allocate taxpayer funded welfare payments to reward freely made decisions that diminish public health outcomes.

Further, it should be noted that article 18(3) of the International Covenant on Civil and Political Rights states that a freedom to manifest religion or beliefs may be limited by law when it is necessary to protect public safety and the health of others. It is the Government's view that when an individual decides not to vaccinate their child they are putting their child and the community at risk of infectious diseases. Following these changes, the only exemptions will be those on medical grounds i.e. where the child is unable to be vaccinated or unable to benefit from vaccination.

The Government has previously introduced policy which has improved immunisation coverage in Australia, for example through the initial linkages between immunisation and family assistance payments. However, allowing vaccination objectors to be exempt from these requirements has allowed an increase in vaccination objectors from 0.23 per cent of the population in 1999, to 1.77 per cent in 2014. This suggests that this exemption is encouraging a section of the population to avoid the vaccine requirement.

Additionally, successive governments have placed mutual obligations on recipients of social security payments. The rationale for this is that mutual obligation encourages behaviours beneficial to individuals and the broader community. For example, in order to receive Family Tax Benefit for teenagers aged between 16 and 19 years, they must be enrolled in full-time secondary study. This is to encourage teenagers to stay in school and obtain their Year 12 Certificate, as evidence shows that those teenagers who finish their education or get a trade are better off in the long term.

The overwhelming body of medical and scientific evidence supports the promotion of vaccination for the prevention of potentially crippling, debilitating and deadly diseases. By allowing the continuation of an exemption from immunisation as a vaccination objector, the Government would contradict its position that immunisation is an important public health policy. The choice not to vaccinate on the grounds of vaccination objection is neither supported by public health policy nor medical research. It is therefore important that these views, which put others' right to health at risk, should not be encouraged or accepted by Government.

It is my view that the Social Services Legislation Amendment (No Jab, No Pay) Bill 2015 is compatible with human rights because it advances the protection of the right to physical health, and to the extent that it may also limit human rights, those limitations are reasonable, necessary and proportionate.⁴

Committee response

2.262 The committee thanks the Minister for Social Services for his response.

2.263 As the minister notes, article 18(3) of the ICCPR provides that a freedom to manifest religion or beliefs may be limited by law when it is necessary to protect public safety and the health of others. The committee agrees that medical research makes it clear that immunisation has important public health and safety benefits for all individuals in a community. The committee reiterates its view that the objective of the Act, in encouraging parents to immunise their children and thereby prevent the spread of infectious diseases is a legitimate objective for the purposes of international human rights law.

2.264 The minister has provided evidence indicating that allowing vaccination objectors to be exempt from immunisation requirements has led to an increase in vaccination objectors from 0.23 per cent of the population in 1999 to 1.77 per cent in 2014. While direct causality is difficult to determine, the committee agrees that it is likely that the exemption encourages a section of the population to avoid the vaccine requirement. If this is true, then repealing the conscientious objectors exemption will likely improve vaccination rates.

4 See Appendix 1, Letter from the Hon Christian Porter, Minister for Social Services, to the Hon Philip Ruddock MP (received 9 March 2016) 1-2.

2.265 While the evidence is not completely clear, the committee considers that withholding family assistance payments is likely to assist in increasing the vaccination rate. As such, the measures in the Act are rationally connected to the objective of the Act.

2.266 In terms of proportionality, the minister did not indicate whether less rights restrictive options, such as education or awareness campaigns informing Australians of the importance of immunisation, had been considered. However, the committee appreciates the minister's advice that retaining the conscientious objector exemption weakens the government's position, supported by the weight of public health policy and medical research, that immunisation is vitally important for public health. For this reason, an education campaign, while potentially valuable, may not lead to the same level of reduction in vaccination objectors.

2.267 The committee's assessment of the removal of the exemption for conscientious objectors against article 18 of the International Covenant on Civil and Political Rights (right to freedom of thought, conscience and religion) is that the measures are compatible with international human rights law.