Vaccine Mandates: an unjustified assault on our human rights and freedoms

Submission to the Australian Human Rights Commission conversation on human rights

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Foreword

A growing number of Australians are becoming acutely aware that vaccination policy will eventually intrude into every aspect of their personal, family, social and economic lives, unless the sweeping powers available to the parliament under the Australian Constitution are duly limited.

It is not a case of if, but when vaccination policy will touch an individual, family or occupational class. It would seem that no citizen will be immune from the authoritarian creep towards coercive, cradle-to-grave, or more correctly, womb-to-tomb vaccination laws, as vaccine promoters find more and more indications for vaccination. The old, the young, the yet-to-be-born; no citizen will be able to escape multiple rounds of vaccination and boosters. Existing mandates for health care workers will be extended to other occupations, and as vaccination failure becomes more difficult to conceal by health officials, adults, including pregnant women, will be increasingly targeted for vaccination, and their freedom of movement restricted. This is the dystopian future planned for us.

Since 2015, Australian citizens have lost important social, economic and medical rights, under the 'No Jab, No Pay' and 'No Jab, No Play' mandatory vaccination laws, which were not justified on either individual health or public health grounds. Despite Australia having historically high vaccination rates, these laws were framed as being necessary to further increase vaccination rates, without any evidence that such an increase would lead to healthier children or a reduction in disease outbreaks. In other words, vaccination became an end in itself under these laws.

These laws provide alarming examples of how our system of representative democracy is not capable of protecting minorities with dissenting positions, and how easily it can be hijacked by extremist lobby groups which 'have the ear' of members of parliament.

As Australia is the only liberal democracy without a constitutional bill of rights, or comprehensive federal human rights legislation, most rights which Australians take for granted are not adequately protected against legislative excess. Under our system of government, citizens rely, almost exclusively, on the goodwill and diligence of their elected representatives to enact proportionate and least-rights-restrictive laws, characteristics which were rarely observed during the enactment of the No Jab, No Pay/Play laws. Consequently, there is a strong case, and growing support for law reform in this area.

The legislative models adopted in Victoria, A.C.T., and recently Queensland – whilst ensuring that ministerial and other administrative decisions are consistent with the protection of human rights – are not binding on the parliament itself. As a result, under these models, the parliament is still permitted to enact laws which violate human rights, which we witnessed first-hand with the enactment of the Victorian 'No Jab, No Play' law in 2015. For this reason, a silmilar model should not be supported at the federal level.

I encourage all Australian citizens to support either a constitutional bill of rights, or, a federal human rights Act which is binding on both the parliamentary and executive arms of government.

It is time. Our human rights and freedoms must be protected before it is too late.

Aneeta Hafemeister

President

Australian Vaccination-risks Network Inc.

Advocates for vaccine safety and informed choice since 1994

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Overview

Australian Vaccination-risks Network Incorporated (AVN) welcomes this opportunity to inform the Australian Human Rights Commission (AHRC) on the status of human rights protections with respect to the issue of vaccination, and vaccination mandates.

We condemn the recent direction of public policy regarding vaccination, the disturbing trend to remove the right to opt-out of one or more vaccinations, and the increasing tendency of public health officials to scapegoat the unvaccinated as being responsible for disease outbreaks when vaccine failure provides a more plausible explanation.

We are opposed to the human rights 'dialogue' model being promoted by the AHRC, which will have no effect on the powers of the parliament, and which we consider amounts to window-dressing.

We support a constitutional bill of rights, as representing the strongest form of protection against legislative overreach, by affording citizens the opportunity to have laws which breach human rights invalidated by the court; and a constitutional charter of medical ethics as representing the strongest form of protection against medical or scientific overreach.

Scope

Our submission addresses the AHRC's terms of reference to the extent these apply to the issue of vaccination and vaccination mandates, having regard to two AHRC publications: 'Issues paper: An Australian conversation on Human Rights dated April 2019; and, 'Discussion paper: A model for positive human rights reform in Australia' dated August 2019.

About the AVN

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

As an inclusive organisation, the AVN welcomes members with diverse backgrounds, religions and beliefs, and for this reason considers that religious based beliefs should not be elevated above beliefs not derived from conventional religious doctrine, or matters of conscience.

We advocate for vaccine safety, consistent with community expectations of product safety as contemplated by the Australian Consumer Law[1], as well as the common law principle of informed consent to vaccination, absent of coercion or duress.

We acknowledge and promote the existence of a scientific controversy pertaining to the safety, effectiveness and necessity of vaccines, and to this end, support a wide-ranging inquiry into the evidence and theories purporting to support vaccination, and vaccination mandates.[2] Although many of our members are sceptical about the purported effectiveness of vaccines, with some even

questioning the veracity of the germ theory of disease, other members were once wholesale supporters of vaccination, realising specific safety concerns, only after witnessing serious adverse side-effects in their children or other loved ones, many of which side-effects are not capable of being detected by the adverse events surveillance systems currently used in Australia.

We share with our members and supporters, an aspiration of optimal health outcomes for all Australian citizens, especially children.

We believe that the promotion and management of children's health is, first and foremost, the responsibility of parents, and not the government or medical profession. Parents are best-placed to make decisions about vaccination in the best interests of their children, having regard to their family's genetic and cultural history and traditions, and beliefs. In our view, it is only on occasions when parents genuinely neglect their responsibilities to promote and protect their children's health should the state be authorised to enter the private sphere of child-rearing. Non-vaccination of perfectly healthy and well-cared for children is not one of those occasions.

Although we believe broadly in the concept of a social contract inherent in some public health measures, we consider that no such contract arises in the case of mass vaccination programs and the alleged need to achieve threshold vaccination rates under herd immunity theory, which we assert is not scientifically sound.

The AVN is also part of an informal coalition of organisations and parent groups based in all states and territories of Australia, which support similar goals to our organisation.

Although not affiliated with the AVN, we generally support the vaccination policies of the emerging political parties, Health Australia Party[3], and the Involuntary Medication Objector's Party[4].

Attacks on the AVN and our affiliates

Since 2009, the AVN has been under sustained attack by extremist mandatory vaccination lobby groups operating in Australia. These groups include, Stop the Australian Vaccination Network (SAVN)[5], and its splinter groups, Northern Rivers Vaccination Supporters (NRVS)[6], Light for Riley (LFR)[7], Immunisation Foundation of Australia (IFA)[8] and Friends of Science in Medicine[9] (FOSIM). Whilst purporting to represent a grass-roots social movement, many of the leaders and members of these groups are vaccination program insiders, or have established links with vaccine manufacturers[10].

Emeritus Professor Brian Martin, a world-renowned expert on whistle-blowing, scientific controversies, and suppression of dissent, has written extensively about the dehumanising strategies employed by these groups[11] [12], which includes the incitement of hatred against parents who do not vaccinate their children, cyberbullying and harassment, and astroturfing and media manipulation[13].

Past President, and founder of the AVN, Meryl Dorey, in particular, was singled out for particularly vicious treatment by these groups, including but not limited to: abuse, harassment, trolling, death threats, the sending of violent pornographic images to both her home and online accounts, and threatening phone calls to her home. During 2012, two of the phone calls were traced to the

home of SAVN founder, Daniel Raffaele, for which she successfully obtained an Apprehended Personal Violence Order.[14] Dr. John Cunningham, a member of SAVN's management team, has also admitted to resorting to bribery in order to secure the cancellation of contracts between the AVN and venues hosting our events.[15]

The AVN continues to be the subject of frivolous and vexatious complaints to the New South Wales Health Care Complaints Commission (HCCC) (and other government bodies) by members of these groups, despite our successful appeal against the HCCC to the NSW Supreme Court in 2012.[16] It is unclear how many complaints in total have been lodged with the HCCC since 2009, but is likely to run to the hundreds or more. One thing is certain though: the HCCC has, over many years, allocated a huge percentage of its taxpayer-funded resources in pursuit of our unfunded, citizen-run, not-for-profit organisation. At the same time, it is well-known that the HCCC has failed to protect the general public from the real risks of dangerous medical practitioners.[17] In this context, it is impossible to view the HCCC's pursuit of the AVN, as anything other than a politically motivated abuse of power against a critic of the government's vaccination program.

Pro-vaccination zealotry escalated into physical violence in Western Australia in 2014. One of our members – the wife of a man who suffered a permanent disability from a whooping cough vaccine[18] – was dragged from her car and assaulted without provocation. The previous day, the Kalgoorlie Miner newspaper had published an article about the family's plight following the vaccine injury. The perpetrator, who was convicted of assault in the Perth Magistrates Court in 2015, told the court that the victim was putting the public at risk by speaking out about vaccine injury. This assault would be better characterised as a type of hate crime, and an inevitable consequence of the hateful discourse being promoted by the mandatory vaccination groups.

Polly Tommey, co-producer of the documentary film 'Vaxxed', which exposed scientific fraud within the U.S. Centers for Disease Control[19], was subjected to an unlawful search by immigration officials, and her visa unlawfully cancelled, when she was leaving Australia in 2017. This followed our Vaxxed tour, at which she was a keynote speaker. The cancellation of Ms Tommey's visa meant that she was banned from entering any Commonwealth country for three years, leaving her with no choice but to appeal to the court. The Federal Circuit Court, which upheld her appeal, found that the decision to cancel her visa was affected by jurisdictional error, being the misapplication of s 116 (1)(e)(i) of the Migration Act, 1958 (Cth), as there was no evidence available to satisfy the delegate in finding that Ms Tommey would be a risk to the health, safety or good order of the Australian community.[20]

In a similar misuse of executive power, Joan Shenton, investigative journalist and producer of the award-winning documentary film 'Sacrificial Virgins'[21], which exposed the dangers of HPV vaccination, was prevented from appearing at our 2018 'Sacrificial Virgins' tour, due to an excessive delay in the processing and issue of her entry visa by immigration department officials[22]. Ms Shenton was finally issued with an entry visa in September 2018[23], a month after our tour was over. It is impossible to believe that the delay was anything other than deliberate.

Understanding the vaccination controversy

Senator Bob Brown (former Australian Greens leader and pro-vaccination GP) stated in the Senate in 1997 *"there is very much contradictory evidence and debate, even in scientific and medical*

circles, about vaccination".[24] In less than a generation, this truism was replaced in the official narrative by the well-rehearsed slogans of, 'the science is settled', 'vaccines are safe and effective', and 'vaccines save lives', absent of any caveats.

The following sections provide an overview of some of the reasons informing vaccine scepticism and arguments against the necessity of vaccine mandates.

Mortality from infectious diseases

Most citizens would be surprised to learn that the popular claim of vaccines having saved millions of lives is not supported by an evaluation of the evidence.

> *Vaccines are popularly thought to have saved more lives than any other intervention in human history, other than clean water. They are frequently credited with conveying us from the days when children died in large numbers from infectious disease to the present day where such deaths are rare. Indeed, it is this image that forms the fundamental marketing slogan for vaccination.*
>
> *An examination of the publicly available data, however, suggests these claims are lacking in evidence. The attached graphs (Appendices 1-4) provide pictorial representations of the limited role vaccines played in the reduction of deaths from infectious disease in Australia. Readers will immediately see that if a role was played in the transition it was small in comparison to other factors.*
>
> *The vast majority of the declines for which vaccination is typically given credit by its promoters occurred before the vaccines were even available. The real heroes of our past were those who brought about improvements in nutrition, sanitation, housing, education and the many other areas which have long been considered the primary determinants of health. It was through these efforts that our communities were forged into the robust and safe living environments they are today.*
>
> *The scenario represented in the graphs was identical to that found throughout the developed countries of the world.*[25]

Morbidity from infectious diseases

Similar questions arise as to whether mass vaccination, which commenced in Australia in the 1950s, has resulted in an overall decline in the incidence of all-cause infectious diseases. Although official sources purport to show a reduction in certain vaccine-targeted infectious diseases over time, the overall hospitalisation rate of children due to all-cause infectious diseases remains high to this day[26]. This ongoing high hospitalisation rate may suggest that diagnostic substitution is occurring, rather than vaccines materially reducing disease rates. Diagnostic substitution is a phenomenon in which one label for a condition becomes replaced with another, causing an apparent decrease in the rate of the first condition and increase in the rate of the second.[27]

Alternatively, infectious diseases may be subject to replacement under vacated ecological niche theory[28], making vaccination a zero-sum game.

Burden of disability and chronic disease remains high

Contrary to claims by proponents of vaccines – claims which have been ingrained in the public psyche over many decades – vaccination has not led to a decreased burden of disability and chronic disease in Australia. High rates of chronic disease and disability in the population represents a public health emergency, yet is being largely ignored in favour of a peculiar focus on the prevention of infectious diseases.

According to the Australian Bureau of Statistics, as at 2012, approx 2.2 million people between the ages 15-64 have a disability with approx 25% of those having profound disability and 47% a moderate to mild disability; and these figures do not include the significant percentage of the population suffering from a chronic disease.[29] These statistics are alarming and cannot be explained by reference to the ageing population or an increase in the rate of Type 2 Diabetes, both of which are popular excuses to dismiss our high rates of disability and chronic disease.

The National Commission of Audit (NCA), reported in 2014, that the National Disability Insurance Scheme (NDIS) will cost in excess of $22 billion per annum when fully rolled out in 2019/20[30], and that $22 billion does not even include income support payments such as the Disability Support Pension. Eligibility for the NDIS is restricted to the young (15-64) so the disability burden is not a function of an ageing population.

Key health indicators suggest that Australia's high vaccination rate is not resulting in positive health outcomes for children. The Australian Research Alliance for Children and Youth reported that Australia was ranked only 15 out of 30 OECD nations for infant mortality (2018 Wellbeing Report Card), and alarmingly, in the bottom quartile (14 out of 16 OECD nations) for incidence of diabetes and asthma (2013 Wellbeing Report Card).[31]

The following conditions have also been reported to be increasing in children:

- allergy requiring hospitalisation[32]
- eczema requiring hospitalisation[33]
- Multiple Sclerosis[34]
- Type 1 Diabetes[35]
- juvenile arthritis[36]
- childhood cancer[37]

Further, a 2013 report by the Australasian Society of Clinical Immunology and Allergy highlighted some damning truths about the high level of immune system dysfunction in the Australian population.[38]

- Allergy and immune diseases (immunodeficiency and autoimmune diseases) are among the fastest growing chronic conditions in Australia.
- Almost 20% of the Australian population has an allergic disease and this prevalence is increasing. Hospital admissions for anaphylaxis (severe life threatening allergic reaction) have increased fourfold in the last 20 years.
- Food-induced anaphylaxis has doubled in the last 10 years and 10% of infants now have an

immediate food allergy.
- Immunodeficiency diseases are serious, potentially life threatening conditions that are increasing in number and complexity.
- Autoimmune diseases affect 5% of Australians and are more common than cancer or heart disease.

The rapidly expanding vaccination schedule provides a scientifically plausible explanation for the widespread, and increasing incidence of immune system dysfunction in the population. Increases of this magnitude cannot be explained by genetics alone, and immunisation stimulates the immune system in an abnormal way. A recently published review echoes our concerns in relation to autoimmune conditions, stating *"vaccines are able to elicit the immune system towards an autoimmune reaction"*, and *"there is evidence of vaccine-induced autoimmunity and adjuvant-induced autoimmunity in both experimental models as well as human patients"*.[39]

Despite these concerns being expressed in the scientific literature, the vaccination schedule continues to be expanded, with seeming disregard for such red flags.

Herd immunity theory

The theory of herd immunity evolved from observations of naturally occurring disease patterns in animals, and later humans[40]; diseases which were believed to confer lifelong immunity. Vaccines, whilst once believed to confer lifelong immunity, are now accepted as being capable of conferring only short-term protection, if at all.

We reject the view that unvaccinated children pose a risk to the public due to a breakdown in herd immunity. The current herd immunity threshold of 95% vaccination coverage is based on spurious mathematics models, and has been the subject of frequent upward revisions over the years, every time a vaccine failure has been identified. In any case, Australia has never had vaccination rates over 95%, because adults have not received most of the vaccines recommended today. A child born today will receive 49 vaccine doses for 14 diseases by the time they reach adulthood, when the standard schedule has been followed to the letter. This rises to to 67 when the recommended (but unfunded nationally) annual Influenza for children aged 6 months to 18 years is included. This can be compared with the 1960 vaccination schedule, which included only 13 doses of vaccine for five diseases.[41]

Even if we were to accept that there is a herd immunity effect arising from vaccination, it would be impossible to quantify in such discrete numerical terms, and would obviously vary by disease. A valid herd immunity model would also need to consider natural immunity, as well as vaccination coverage rates in adults, not just children under seven years of age. Reported vaccination coverage rates pertain to children under the age of seven years only.

Many of the vaccines on the current vaccination schedule are not theoretically or practically capable of producing a herd immunity effect anyway because they do not provide sterilising immunity; this much at least, is uncontroversial.

A US-based immunologist recently published an open letter to legislators, wherein she identifies vaccines that are not capable of producing a herd immunity effect and which are only capable of

offering protection to individual vaccine recipients.[42] These include inactivated polio vaccine (IPV), tetanus, diphtheria, whooping cough, HIB (via a shift in strain dominance under pressure from the vaccine), and hepatitis B.

Vaccination as a pseudoscience

There are legitimate concerns about the quality of evidence purporting to support vaccination, and in particular, vaccination mandates.

Professor Kevin Dew argues that individuals who actively refuse to take part in vaccination programs, ought not to be simply dismissed as being irrational, and conversely, that public health is not simply a rational, scientific endeavour, evidenced by the fact that vaccination campaigns – and by corollary, herd immunity theory – are not falsifiable, if we follow Karl Popper's prescription for science.

> *[…] whatever happens as the result of a campaign can be explained away without having to modify the beliefs that justify immunization. In other words, there is no outcome that would prove the theories underlying immunization as false, and so there are no grounds for contesting immunization campaigns.*
> *[...]*
> *In some respects, immunisation campaigns have exhibited more of the characteristics of astrology than of Popper's ideal of science.*
> *[…]*
> *Many of the decisions being made in such campaigns are extra-scientific; yet, they are being presented to the public as being purely objective.*[43]

That vaccination campaigns are not falsifiable, and therefore not strictly scientific, is significantly at odds with the official narrative 'the science is settled'.

Vaccines are licensed merely on the basis of evidence of immunogenicity (antibody production), a surrogate marker of immunity, rather than evidence of effectiveness against the target disease. Immunogenicity and effectiveness may or may not be the same thing, a good example being the pertussis (whooping cough) vaccine. Pertussis antibodies have never been accepted as evidence of immunity for the purpose of health care worker vaccine mandates[44], yet were assumed to be a surrogate of immunity for the purpose of pre-licensure clinical trials. There is now clear evidence that pertussis antibodies are not an indicator of immunity to the disease, with large outbreaks occurring in heavily vaccinated populations[45].

Post-licensure field efficacy studies (observational studies) which purport to show a vaccine is effective in preventing the targeted disease, and creating herd immunity, are all subject to systemic error or bias[46], which is probably why the Australian Immunisation Handbook, a clinical guideline, does not rely on the evidence grading system used for many other approved National Health and Medical Research Council clinical guidelines[47].

Similar limitations are found in vaccine science purporting to show that vaccines are safe. Pre-licensure clinical trials of vaccines lack the sensitivity to detect the less common adverse events, or those with a delayed onset.[48] Acute Disseminated Encephalomyelitis, an autoimmune disease, is

an example of a life-threatening disease which has been associated with vaccination[49], but which usually has a delayed onset, and as such, is not capable of being detected in pre-licensure clinical trials.

Passive post-marketing surveillance of adverse events, as used in Australia, results in significant under-reporting.[50] The Therapeutic Goods Administration (TGA) acknowledges significant under-reporting of adverse events, reporting that, worldwide, 90-95% of adverse events are not reported to regulators.[51]

Vaccine safety controversies

It is widely accepted that vaccines can and do cause injury and death – history is littered with such examples. See for example, the Bundaberg Tragedy[52] [53] and Fluvax Scandal[54] [55] [56], both of which resulted in the death or disablement of many children.

The most famous vaccine safety controversy is the observed link between vaccination and Autism. Whilst some published epidemiological studies have purported to show that vaccines are not a cause of autism, all of them have employed critically flawed statistical methods, and most have compared a population of children who have received *x* vaccines with children who have received y vaccines. In studies of this type, the group that received just one fewer vaccine than the other is deceptively described as the "unvaccinated" control. No studies conducted to date have compared rates of autism (or other disabilities or chronic diseases) in the completely unvaccinated with rates in the fully vaccinated.[57]

As early as 1948, doctors observed that developmental arrest as a result of encephalopathy was related to pertussis vaccination, and that the risk of encephalopathy following vaccination may be higher in boys.[58] This is interesting in the context of boys being over-represented in rates of developmental disorders, including autism.

The US Vaccine Injury Compensation Program (VICP) has been quietly compensating cases of autism since its inception in 1986. A preliminary study published in 2011 found 83 compensated cases of autism under the alternative diagnostic labels of encephalopathy or residual seizure disorder. In other words, compensation was awarded for a vaccine-related brain injury that led to autism.[59] This study only represents the tip of the iceberg.

There have also been other reports of compensated autism cases.[60] [61] The question of whether vaccination is one of the causes of autism no longer arises; that question has been answered in the affirmative. Rather, it is a question of how many cases of autism have been caused by vaccination.

Corruption and conflicts of interest are ubiquitous in medicine

Conflicts of interest are common in medicine, however they don't always involve money. It has been suggested that intellectual conflicts of interest are almost ubiquitous and often overlooked as a source of bias.

> *According to Gordon Guyana, a Professor in the Faculty of Medicine at Masters University, "intellectual conflicts of interest are completely ubiquitous" and have generally been*

ignored.

Intellectual conflicts occur when clinicians or researchers may be too deeply embedded in their own area of expertise to objectively look at a research question "with an open mind". Guyana argues that "even when money is not involved … we [scientists] get very attached to our ideas." This is compounded by university culture, which rewards researchers if their work is highly referenced by others and is perceived to be influential. This environment creates an incentive for those participating in guideline development to highlight their own research in clinical practice guidelines.[62]

Former editor-in-chief of the prestigious New England Journal of Medicine, Marcia Angeles, wrote in 2009:

It is simply no longer possible to believe much of the clinical research that is published, or to rely on the judgement of trusted physicians or authoritative medical guidelines. I take no pleasure in this conclusion, which I reached slowly and reluctantly over my two decades as an editor of The New England Journal of Medicine.[63]

British medical doctor and scientist, Dr. Ben Goldacre, and author of various books including Bad Science and Bad Pharma, has also made damning criticisms of medical science. In the foreword to his 2012 book Bad Science he famously stated:

We're going to see that the whole edifice of medicine is broken, because the evidence we use to make decisions is hopelessly and systematically distorted; and this is no small thing. Because in medicine, we doctors and patients use abstract data to make decisions in the very real world of flesh and blood. If those decisions are misguided, they can result in death, and suffering, and pain.[64]

More recently, Dr. Peter Gotzsche, from the Danish section of the prestigious Cochrane Collaboration, has described the corruption of medicine by the pharmaceutical industry as a form of organised crime.[65]

Similarly, current editor of Lancet, Dr. Richard Horton stated in 2015:

The case against science is straightforward: much of the scientific literature, perhaps half, may simply be untrue. Afflicted by studies with small sample sizes, tiny effects, invalid exploratory analyses, and conflicts of interest, together with an obsession for pursuing fashionable trends of dubious importance, science has taken a turn towards darkness.[66]

Independent researcher, Elizabeth Hart, has conducted an extensive investigation into the conflicts of interest within Australia's Vaccination Program, and presented her alarming findings to the Sydney Vaccination Conference in 2018.[67]

Loss of social, economic, and medical rights since 2015

The mandatory vaccination groups operating in Australia (discussed above) successfully, but dishonestly, ushered in vaccine mandates across Australia, by promoting a false imperative using

fear-based tactics[68], even though there is no evidence that parental acceptance of vaccination is declining, a view supported by Associate Professor Julie Leask and colleagues.

> *Reading the headlines, it would be easy to believe childhood vaccination rates are declining in Australia, due to an increasing trend towards distrust of vaccines among parents. In fact, vaccination rates in Australia have been high and stable, hovering between 91% and 93% since 2003.*[69]

Australian citizens lost important social, economic and medical rights, due to the enactment of the 'No Jab, No Pay' and 'No Jab, No Play' mandatory vaccination laws, which were not justified on either individual health or public health grounds. In other words, vaccination became an end in itself under these laws.

No Jab No Pay

A vaccination requirement for the purpose of eligibility to federal childcare subsidies and certain family payments was in force between 1998 and 2015 inclusive, but during that time, included a provision for conscientious objection exemptions.

The federal ‘No Jab No Pay’ law, effective from 01 January 2016, ceased to include a provision for conscientious objection exemptions, and the vaccination requirement was also extended to children up to the age of 20 years.[70]

When No Jab No Pay first took effect, parents of unvaccinated children lost up to $15,000 per child per year, which comprised $7,500 Childcare Benefit and $7,500 Childcare Rebate. If that wasn’t bad enough, following changes to the legislation in 2018, parents who live in the five states and territories which still permit unvaccinated children to be enrolled in childcare and kindergarten, are now losing up to $26,000 per child per year in Childcare Subsidy.[71]

No Jab No Play

‘No Jab No Play’ laws currently operate in four states, New South Wales (since 2018), Victoria (since 2016), Western Australia (since 2019), and Queensland (since 2015).

In general, these laws require children to be completely vaccinated according to the mandated schedule for the purpose of enrolment in childcare services and kindergarten, but not the compulsory phase of schooling. phase. In Queensland, services were given the discretion to opt-out of the vaccination requirement.

Historical context & scope of conscientious objection

The term ‘conscientious objection’, as it applies to vaccine exemptions, has been criticised by some Australian politicians in recent years.[72]

However, concerns about vaccination are as old as the practice itself, and when compulsory vaccination legislation was employed in some states during early, post-federation Australia,

provisions for exemptions based on conscience were permitted in all states by 1920. As an example, the Western Australian Health Act which came into force in 1911 provided that a parent could make a statutory declaration to the effect they conscientiously believe that vaccination would be prejudicial to the health of their child.[73]

A provision for conscientious objection exemptions was later adopted by the federal parliament when it enacted the Child Care Payments Act in 1997.[74] Notably, the definition included medical beliefs, in addition to religious and philosophical beliefs, even though a separate provision for exemption on the grounds of medical contraindication (as assessed by an immunisation provider), was also included in the law.

> *A person has a conscientious objection to a child being immunised if the person'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.*[75]

This definition was retained in federal family assistance legislation which superseded this law, until conscientious objection exemptions were abolished by the 'No Jab No Pay' amendment in 2015.[76]

Conscientious objection exemptions are sometimes described as personal belief exemptions or non-medical exemptions in other developed countries.

The provision of conscientious objection exemptions in vaccination laws represents best practice, and a necessary safety mechanism to mitigate the multiple uncertainties inherent in vaccination science, some of which were outlined above.

The inconvenience model

Navin and Largent evaluated three regulatory approaches to non-medical exemptions, as conscientious objection exemptions are sometimes called in other developed countries: (1) elimination, (2) prioritising religion, and (3) inconvenience.[77] The federal 'No Jab No Pay' law, and the Victorian, New South Wales and Western Australian 'No Jab No Play' laws, fall within the elimination model.

These experts recommended that non-medical exemptions should be available to parents who object to vaccination for both religious and secular reasons, and that the best way to decrease exemption rates – if there is a concern that parents are objecting to vaccination for frivolous reasons – is to make the exemption application process more burdensome for parents (inconvenience).

The inconvenience model is also favoured by Australian experts, Leask and Danchin, who argue that regulatory approaches to vaccine rejection should be firm but fair, enabling hard-to-obtain exemptions that promote engagement, not alienation from the health system.[78] To this end, they support yearly registration of conscientious objection exemptions[79], instead of once only, as was operating between 1998 and 2015 inclusive with respect to federal family assistance legislation[80] and between 2014 and 2017 inclusive with respect to the New South Wales No Jab No Play law[81].

The inconvenience model achieves a balance between the interests of governments wishing to increase vaccination rates on the one hand, and the rights of parents who have concerns with vaccination, on the other. Mandatory vaccination laws which include hard-to-obtain exemptions, serve as a reminder to those parents who are not opposed to vaccination to get their children up-to-date, while preserving the medical autonomy of those parents who have strong objections against vaccination, or who vaccinate their children selectively.

No Jab No Pay/Play laws have been widely criticised

Peak doctors and welfare groups, prominent health officials, legal scholars and associations, and other respected Australians have expressed various concerns over Australia's No Jab No Pay/Play laws.

Their main concerns and arguments are that:

- denying welfare payments to parents will disadvantage children
- denying children access to childcare and kindergarten will disadvantage children
- the laws will not reduce the community's risks from vaccine-preventable diseases
- the drive for the laws came from the tabloid [Murdoch] press
- there are better ways than coercion to increase vaccination uptake

These are outlined in further detail on our website.[82]

The case for human rights law reform

As Australia is the only liberal democracy without a constitutional bill of rights, or a federal human rights Act, citizens remain highly susceptible to human rights violations by the state, due to the sweeping powers available to the legislative arm of government under the Australian Constitution.

Many Australians would be surprised to know that most human rights and freedoms we take for granted are not protected under the Australian Constitution. It is correct to say that most rights we currently enjoy in Australia can be removed at will by the parliament, with no legal recourse for those adversely affected.

The No Jab No Pay/Play laws, which abolished the right to conscientiously object to vaccination on religious or secular grounds, for the purpose of eligibility to family assistance payments and enrolment in childcare and kindergarten, provide the perfect example of how these sweeping powers can be used against a minority, without adequate rationale or justification.

Perils of parliamentary supremacy

The doctrine of parliamentary supremacy provides that under our system of government members of parliament have the ultimate authority – duly vested in them by democratic processes - to enact laws as they see fit, subject only to the constitution. Supporters of the doctrine argue that because it is representative, the parliament's decisions will reflect the collective wisdom of the community. Therein resides the problem for unpopular minorities such as vaccine sceptics: majoritarian democracy does not serve or protect well the interests of unpopular minorities.

We believe that it is the legislature itself which poses the greatest threat to the rights and freedoms of minorities under the authority of perceived, populist appeal, and recognise that there is usually zero political consequences arising from the enactment of laws which breach the human rights of minorities. As it currently stands in Australia, the parliament can tyrannise over minorities with impunity because there are virtually no enforceable constraints on the parliament's powers to enact laws that breach human rights.

The intent of the 1946 social services referendum has been subverted by the parliament

When citizens went to vote on the 1946 referendum, they were provided with educational materials espousing the arguments for and against inserting new social services powers into the Australian Constitution (s51xxiiiA). Page 7 of the 'Argument FOR the proposed law' states:

> *The whole purpose of social services is to ensure that people may live out their lives in freedom from fear and from want.*[83]

This aspirational statement is a far cry from how these social services powers are being exploited by the parliament today, for social engineering purposes, and medical tyranny.

Existing human rights legislation is inadequate

We generally support the intent of the Human Rights (Parliamentary Scrutiny) Act 2011 (HRPS Act) as a means of directing the minds of members of parliament to at least consider the human rights implications of proposed laws. However, in practical terms, the requirement, under section 7 of the HRPS Act, for the Joint Parliamentary Committee on Human Rights to scrutinise Bills for their compatibility with human rights, is demonstrably worthless for protecting minorities, when the parliament may ignore any committee recommendations with impunity.

During 2015, this committee considered the abolition of the right to conscientiously object to vaccination on religion and conscience grounds and concluded that this intrusion was not justified.

> *The committee's assessment of the removal of the conscientious objector exemption against article 18 of the International Covenant on Civil and Political Rights (right to freedom of thought, conscience and religion) raises questions as to whether the limitation is justifiable.*
>
> *As set out above, the removal of the conscientious objector exemption engages and limits the right to freedom of thought, conscience and religion. The statement of compatibility does not sufficiently justify that limitation for the purposes of international human rights law. The committee therefore seeks the advice of the Minister for Social Services as to:*
>
> - *whether there is a rational connection between the limitation and the stated objective; and*
> - *whether the limitation is a reasonable and proportionate measure for the achievement of that objective, in particular that it is the least rights restrictive approach to achieving that objective.*[84]

The committee requested that the Minister respond to these concerns but was silent about the other human rights engaged by the Bill. For example, the right to social security under the International Covenant of Economic, Social and Cultural Rights.

At the time of the bill's passing in the Senate in November 2015, the Minister had not issued a response. The Minister finally responded, but six months too late[85], which demonstrates a high level of arrogance and contempt for the citizens he has been elected to represent.

Similarly, the Victorian parliament ignored incompatibilities with the Charter of Human Rights and Responsibilities Act 2006, when enacting the No Jab No Play law in 2015.[86]

We are left to wonder why the charade of scrutinising bills for compatibility with human rights is permitted to continue.

Recommendation 1: constitutional bill of rights

For the reasons outlined above, we support a constitutional bill of rights, as representing the strongest form of protection against legislative overreach, by affording citizens the opportunity to have laws which breach human rights invalidated by the court.

The bill of rights should include the following as a minimum.

Human Rights Instrument	Number
Universal Declaration on Bioethics and Human Rights[87]	Article 6 Informed medical consent
International Covenant on Civil and Political Rights[88]	Article 7 Freedom from experimentation
	Article 17 Right to privacy
	Article 18 Freedom of thought, conscience and religion.
	Article 19 Freedom of expression
	Article 21 Right of peaceful assembly
	Article 22 Freedom of association

Human Rights Instrument	Number
International Covenant on Economic, Social and Cultural Rights[89]	Article 6 Right to work
	Article 9 Right to social security
	Article 13 Right to education

In the event a constitutional bill of rights is not possible, we would support a federal human rights Act, but not the dialogue model favoured by the AHRC. A human rights Act of substance, must include a judicial power to invalidate an enactment (or section of an enactment) which is incompatible with the human rights protected by the Act.

Recommendation 2: constitutional charter of medical ethics

Doctors and scientists hold positions of great trust and power in society, and historically have been responsible for heinous acts amounting to crimes against humanity. As such, citizens need to be protected from being subjected to any unethical and/or dangerous clinical practice or research. We support a constitutional charter of medical ethics as representing the strongest form of protection against medical or scientific overreach.

We are aware that many of these ethical principles have been adopted in professional codes of conduct and human research ethics guidelines. However, we are of the view that these principles are so important that they should be enshrined in the constitution.

The charter should include the following principles as a minimum.

Ethics Instrument	Principle
Declaration of Helsinki – ethical principles for medical research involving human subjects[90]	All
Declaration of Geneva[91]	The Physician's Pledge

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