



UNIVERSAL ACCESS
TO KINDY SA

NO JAB NO PLAY IMPLEMENTATION REVIEW

2021

A summary of the public's concerns, suggestions and recommendations following implementation of the No Jab No Play policy in South Australia.

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Who is Universal Access to Kindy SA

WHO WE ARE

Universal Access to Kindy South Australia (UAKSA) are a passionate community group concerned with the impact of 'No Jab No Play' legislation on children through conditional access to early childhood care and education in South Australia. Our volunteer contributors have a wide range of skills, experience and tertiary qualifications in children and families, education, health, science, and law.

IMMUNISATION STANCE

UAKSA understand that immunisation is one of the most effective and cost-effective health interventions to protect children and adults against serious disease. UAKSA fully support the Government in striving to achieve the highest levels of immunisation coverage in our state. We disagree, however, with policy measures that negatively impact on children and make access to education conditional.

ADVOCACY

Our ongoing advocacy is for all children to regain access to 600 hours of kindergarten in the year before school whilst supporting the Government to address other significant concerns and implement effective measures that improve and maintain immunisation coverage in our state.

COLLABORATIVE MISSION

We aim to collaborate with Government as a key stakeholder, representing the community, to achieve the best outcomes in early childhood education and immunisation coverage for SA.

Louise Nicholson
Principal Campaigner
April 20, 2021

Introduction and Context

From 2017 the 'No Jab No Play' policy has been an item for South Australian Parliament consideration. The policy followed on from the federal 'No Jab No Pay' law, which was introduced Australia-wide in 2016. Prior to South Australia (SA), four other states had implemented varying versions of 'No Jab No Play' legislation. These were Victoria (VIC), New South Wales (NSW), Queensland (QLD) and Western Australia (WA).

The 'No Jab No Play' policies use access to early childhood education as an incentive for parents/guardians to ensure children are up to date with their immunisations. The goal of the policy is to increase childhood immunisation rates. Some areas and age groups in SA do not currently meet the 95% coverage target set by the Australian Government as recommended by the World Health Organisation.

'No Jab No Play' was introduced in two phases in SA. The Phase 1 policy passed in early 2019 and requires parents or guardians to provide immunisation records to their child's early childhood service. It gives the Chief Public Health Officer (CPHO) the power to request those records if there is an outbreak, or risk of an outbreak of a vaccine preventable disease (VPD) at an early childhood service. The Phase 1 policy gives the CPHO the power to exclude children who do not meet full immunisation requirements from the service in the event of a VPD outbreak.

The Phase 1 policy has the dual benefit of acting to keep children who are not fully immunised protected from an outbreak of disease, whilst also removing the pool of children through whom the disease could spread quickly during an outbreak within an early childhood service.

Immediately following the Phase 1 policy the SA Government prepared a Discussion Paper for a Phase 2 Bill. The 'Early Childhood Services and Immunisation Discussion Paper' was released for public consultation in June 2019. It outlined several options for the public to consider:

- Option 1 – Pause: Proposes to fully implement the Phase 1 Bill (passed) before considering the need for further change.
- Option 2 – At Enrolment: Develop a second Bill (the Phase 2 Bill) to amend the South Australian Public Health Act 2011 to require children to be up-to-date with immunisation (or on a recognised immunisation catch-up program) to be able to enrol in early childhood services (unless medically exempt or meeting other prescribed exclusion criteria).
 - Option 2a – All children under 3 years.
 - Option 2b – All children under 6 years.

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- Option 3 – At enrolment and ongoing: Develop a second Bill (the Phase 2 Bill) to amend the South Australian Public Health Act 2011 to require children to be up-to-date with immunisation (or on a recognised immunisation catch-up program) to be able to enrol and maintain their enrolment ongoing in early childhood services (unless medically exempt or meeting other prescribed exclusion criteria).
 - Option 3a – All children under 3 years.
 - Option 3b – All children under 6 years.

‘Early childhood services’ is defined as: non-compulsory services such as childcare, kindergarten and early learning. For ‘No Jab No Play’ it also includes family day care and occasional care.

In February 2020, the Department for Health and Wellbeing went on to introduce the Phase 2 Amendment Bill in line with Option 3b, the most severe of the options presented. The Minister for Health and Wellbeing, Hon Stephen Wade stated there had been “overwhelming support” for the policy. The policy was passed and implemented in SA on Friday August 7th, 2020.

UAKSA, on behalf of the South Australian public, opposed aspects of the ‘No Jab No Play’ policy. Specifically, UAKSA opposed the use of punitive measures that would apply to children. UAKSA were alongside other professional bodies and organisations who raised serious concerns with the Government, including:

- Royal Australasian College of Physicians (RACP) (in collaboration with members of their Paediatrics Policy Advisory Committee, Australasian Faculty for Public Health Medicine (AFPHM), and RACP (South Australian Regional Committee),
- Public Health Association of Australia (PHAA),
- Child Development Council,
- South Australian Department for Education.

In addition, there has been immense opposition to ‘No Jab No Play’ (and ‘No Jab No Pay’) policies from leading medical and law professionals and organisations on a national scale. Some of these include:

- Professor Julie Leask
- Dr. Jenny Royle
- Professor Peter McIntyre
- Professor Robert Booy
- Dr Frank Beard
- Law Institute of Victoria (LIV)
- Australian Council of Social Service (ACOSS)

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- Australian medical ethics academics
- Liberty Victoria
- Professor Paula Gerber
- Jennifer Rivarovski (Education Consultant)

UAKSA participated in the 2019 public consultation, lobbied the Government with correspondence and submitted a petition to amend the Phase 2 Bill. UAKSA urged Parliament to allow all children unconditional access to the vital kindergarten year, 600 hours of early childhood education in the year before school. We urged Parliament to consider this to achieve both increased vaccination rates and quality early childhood education for all SA children. No such amendments were made.

Following implementation of the legislation in August 2020 UAKSA have been inundated with stories from the community of impact on families and children. We have also heard from medical and education professionals who are alarmed and concerned about the negative impact it is having on children. Victoria released the 5-year statutory review of their own 'No Jab No Play' policy which raises concerns around the effectiveness of the policy, in line with research findings that 'No Jab No' Play does not influence the behaviour of parents.

This review outlines our concerns following implementation of the 'No Jab No Play' policy in South Australia in detail. We discuss the importance of early childhood education, our concerns for children, the lack of support for the second phase of 'No Jab No Play' and the lack of evidence for the second phase of 'No Jab No Play'. We offer a number of suggestions and recommendations for the South Australian Government to address these issues and continue to advocate for children.

As a volunteer community group, we have worked hard to present this review and it is our wish that collaboratively with Government, related agencies and stakeholders, changes can be made to achieve strong health and education outcomes for South Australian children. We also hope that it might offer more understanding of the legislation from the view of the public and prompt increased participation in this matter by relevant professionals and stakeholders.

Early Childhood Education

THE IMPORTANCE OF EARLY CHILDHOOD EDUCATION

The current body of research into early childhood education is unequivocal in stating how essential it is for children's learning, development, and later life outcomes. With this evidence base, for the past 11 years each state in Australia has agreed to the National Partnership on Universal Access to Early Childhood Education, the most current of which is 2018-2021.

“This Agreement supports universal access to, and improved participation by children in, quality early childhood education in the year before full-time school, with a focus on Indigenous children vulnerable children and children experiencing disadvantage.”

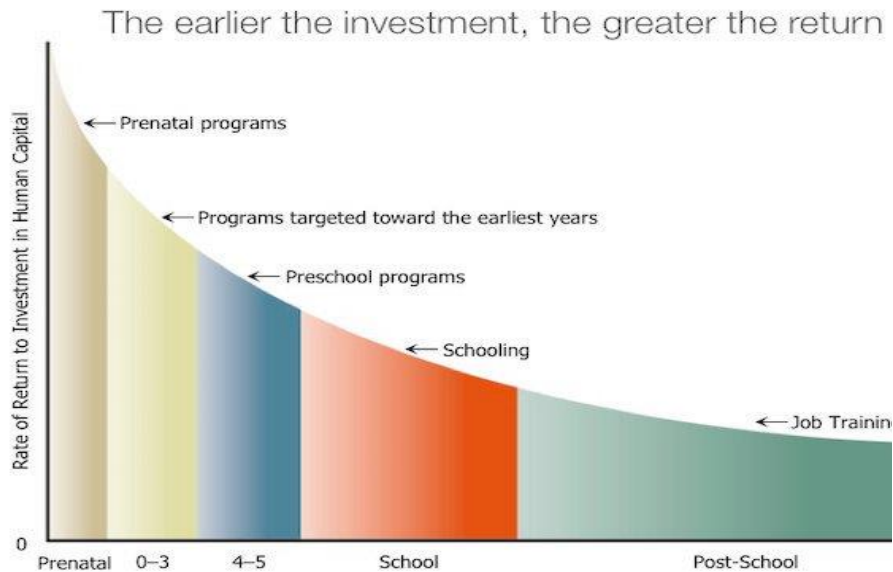
The objective of the National Partnership on Universal Access to Early Childhood Education is to facilitate children's early learning and development and transition to school, by maintaining universal access to, and improving participation in, affordable, quality early childhood education programs for all children. The objective is to be achieved through quality early childhood education programs for all children enrolled in the year before full-time school for 600 hours per year, delivered by a qualified early childhood teacher who meets National Quality Framework (NQF) requirements, and with a focus on participation by Indigenous children, vulnerable children and children experiencing disadvantage, regardless of the setting in which programs are delivered.

For over a decade, Governments and organisations have created policies and recommendations for early childhood education based on the findings of the Heckman equation, created by James Joseph Heckman, Nobel Prize winner for Economics in 2000.

Heckman's longitudinal studies found that Government investment in early childhood care and education can create returns of up to 7-10% (and as much as 13% for vulnerable children) per annum with a cost/benefit higher than most other Government investments, without fade-out.

His economic model illuminates the importance of quality early childhood care and education.

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Source: James Heckman, Nobel Laureate in Economics

Drawing from over 30 years of observations and study, Heckman developed a significant list of positive effects associated with access to quality early childhood care and education, a handful of which include:

- Improved health outcomes
- Longer life expectancy
- Better physical health
- Lower levels of obesity
- Better educational attainment
- Decrease risk of cardio-vascular disease
- Lower levels unemployment
- Decrease in risky behaviours and alcohol consumption
- Economic advantage
- Socio-emotional development
- Better self-regulation

SOUTH AUSTRALIAN EARLY CHILDHOOD EDUCATION

The South Australian Government demonstrates a great appreciation for early childhood education in documents such as *'Belonging, Being and Becoming – The Early Years Learning Framework'*, *'Aboriginal*

ATTENDANCE STRATEGY FOR GOVERNMENT PRESCHOOLS AND SCHOOLS 2017-2020

"International research demonstrates a high correlation between attendance at preschool and school and successful literacy and numeracy outcomes.

It is not acceptable for any of our children and young people to miss out on the opportunity of education; the cost is simply too high.

Under this state government, a quality education for every child in South Australia is considered a right, not an aspiration."

SUSAN CLOSE
(Former) Minister for Education and Child Development

*"I encourage you all to engage with everyone in your school community about this initiative and demonstrate that **attendance matters** in South Australian preschools and schools."*

RICK PERSSE
Chief Executive, Department for Education and Child Development

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Education Strategy 2019 to 2029 and *Attendance Matters in South Australian preschools and schools – Attendance for learning success and wellbeing 2018-2021*. Each of these along with countless other South Australian Government reports explicitly state the importance of access and attendance for **all** children to early childhood education.

Australia's Outcomes Framework for Children and Young People *'How are they faring? South Australia's 2020 Report Card for children and young people'* points out several areas of current concern where the importance of early childhood education and a strong foundation for education is clear:

- “South Australia continues to have lower rates in all reading, writing and numeracy when compared nationally. Since 2018 there has been a noticeable unfavourable change for Year 7 students, who are performing below the national rates in both literacy and numeracy”.
- “Two areas of significant concern are the increasing number of developmentally vulnerable children starting school and school attendance rates”.
- “To safeguard the trajectories of all children and young people, priorities for collective action in 2020-21 are: 1. the number of children entering the education system with unidentified disabilities and developmental delays...”.

The ‘No Jab No Play’ policy directly contradicts concurrent Government strategies and initiatives to ensure all children in South Australia have access to quality early childhood education. On one hand the Government is acknowledging the significant body of research indicating all children must have access to quality early childhood education, and on the other hand they are using access to early childhood education as mechanism to achieve public health targets, denying approximately 5% (one in twenty children) access to early childhood education, including kindergarten.

Concerns for Children

PENALISING THE CHILD

Children are being penalised for the action/inaction of their parents. The 'No Jab No Play' legislation impacts the individual child, more than the parents/guardians responsible for their immunisations. If a child is not recorded as completely up to date with their immunisations, they are the ones denied access to all early childhood services. Children are the ones to bear the penalty, through no fault of their own.

These concerns are shared by the Department for Child Protection, Public Health Association of Australia and the Royal Australasian College of Physicians as outlined in their respective South Australian Public Consultation submissions in 2019.

CHILDREN ARE NOT
RESPONSIBLE FOR THEIR
IMMUNISATION STATUS.

*"The growth and development of children in early childhood must remain the priority of all governments. This includes a specific focus on access to (and affordability of) early childhood education, which itself confers long-term health benefits. **Lack of access to early childhood education is highly detrimental**, especially from 3 to 4 years of age, and for children from already disadvantaged families. Early childhood education's importance in maximizing health and development outcomes for children during their school years is supported by strong evidence."*

"In short, early childhood education should not be seen as a policy lever by which to improve immunisation, but as an outcome that is at least equally as important as immunisation."

ROYAL AUSTRALASIAN COLLEGE OF PHYSICIANS, 2019

Children impacted from high socio-economic families will have better access to resources and alternative arrangements through their early childhood education years. Not all parents are able to deliver quality programs like those delivered in a formal setting, however. Children from low socio-economic families will have fewer means to access alternative early childhood education. In addition, the policy creates another barrier to household income. With no access to formal care, parents' ability to gain paid work outside the home is inhibited, perpetuating disadvantage.

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EARLY YEARS INTERVENTION, NDIS FUNDING & PREPAREDNESS FOR SCHOOL

Early childhood educators are trained to identify concerns for early childhood development. They understand that early intervention is crucial in supporting children with difficulties and delays in development.

Children under 6 years of age with a developmental delay can access National Disability Insurance Scheme (NDIS) funding for early years intervention. This funding is different from other NDIS funding in that the child does not require diagnosis with a permanent disability. Most children who meet the developmental delay access criteria will receive early intervention supports and then exit the NDIS. This is only available for children under 6 years of age.

With approximately 95% of children fully immunised, 'No Jab No Play' now denies approximately 5% access to early childhood services where any needs for early intervention supports are often identified. Children from within this 5% will miss out on assessments and this special arm of NDIS funding. These children will not be seen by qualified educators until they start primary school and there is no formal framework in place to recognise these children and ensure alternative means for identification and assistance are provided.

On top of the challenge of starting school 5 days per week with no formal preparation, some children will present with developmental difficulties and delays that, with no early intervention, will impact significantly on their experience of education, their confidence, wellbeing, long-term outcomes and also the workload of primary school staff to support these children and families.

SA Child CASE STUDY (1): Unvaccinated Child

This child attended kindy regularly in 2020 but was excluded when the No Jab No Play legislation was implemented. The child was excluded from most of Term 3 and Term 4 which would have included 'transition' days at school. In 2021 the child commenced Reception however in the first 5 weeks had only attended 5 days. The child has high anxiety and has received interventions from Teacher, Student Services Officers and Wellbeing Leader to assist with anxiety. Additional issues with toileting have required interventions.

UAKSA were informed by parents that they believe their child would have benefitted significantly from transition to school opportunities.

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SA Child CASE STUDY (2): Did Not Attend Kindy

This Aboriginal child did not attend kindy for a range of reasons (vaccination status unknown). By the end of Reception he was five reading levels below his peers and had only just been able to recognise his name. Poor routine led to 76 days absent from school in his first year. Had he attended kindy his educators would have had a one year head-start on supporting the child and family with routine and foundations for learning.

Child known to UAKSA Collaborator through professional context.

NO ACCESS TO A MANDATED NOTIFIER OR DEPARTMENT OF CHILD PROTECTION

Early childhood educators are Mandated Notifiers. This means they are required by law to notify the Department for Child Protection if they suspect on reasonable grounds that a child or young person is, or may be, at risk of harm. Early childhood educators are responsible for significant notifications of harm, or risk of harm to children every year.

There is concern that vulnerable children who are not being properly cared for by parents may also miss, or be late for, scheduled immunisations.

'No Jab No Play' will now deny these unidentified children access to early childhood education. Some may not meet a Mandated Notifier until the statutory time at which they are required to be enrolled in Primary School. They may have been subject to 6 years of unreported abuse and neglect.

SA Child CASE STUDY (3): Vulnerable Children

Twins who attended kindy were highlighted and Mandatory Notifications were made. Service provision began. For the next four years a network of support was provided to the family. At age 7 the children were removed from the parents' care. Without kindy making early notifications, interventions would not have been made and the time taken to have the children removed would have increased.

Child known to UAKSA Collaborator through professional context.

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“PHAA is a strong advocate for a well-immunised community, but does not support efforts that will disadvantage individual children socially or financially or impede access to health or education. PHAA does not support the intended Phase 2 Bill which will potentially provide for exclusion of unvaccinated children from enrolment in and potentially attendance at early childhood care and services and calls upon governments to reconsider strategies that inevitably harm children.”

PUBLIC HEALTH
ASSOCIATION
AUSTRALIA, 2019

NO ACCESS TO THE MANDATED CHILD PROTECTION CURRICULUM

The Mandated Child Protection Curriculum provides children aged 3-5 with strategies that focus on their right to be safe, respectful relationships, recognising and reporting abuse, and ways to protect themselves. Children who are not aware of components within this curriculum may be at increased risk of abuse or place others at risk.

THE RIGHTS OF THE CHILD

Although in Australia we do not have an explicit set of protected rights, we are signatory to several human rights conventions. The ‘No Jab No Play’ policy arguably conflicts with a number of these, including:

➤ The **International Covenant on Economic, Social and Cultural Rights** which states in Article 13, we “*recognise the right of everyone to education.*”

➤ The **United Nations Convention on the Rights of the Child** which states in Article 3, “*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*”

The Law Institute of Victoria (LIV) is Victoria’s peak body for lawyers. They raised concerns regarding ‘No Jab No Play’ policy and discussed the United Nations Convention on the Rights of the Child (article 3 as outlined above). The LIV wrote:

“The fact that the Bill takes a punitive approach to encouraging vaccinations and contains penalties for children and their families who may have a range of reasons for not being vaccinated strongly suggests that the legislation has not been designed with the best interests of the child in mind.”

Professor Paula Gerber from Monash University Law Faculty and Castan Centre for Human Rights commented further that:

“It is not in the best interests of children to try to increase one right (health) by denying access to another right (education).”

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SA Child CASE STUDY (4): Child Penalised

*In 1982, an Uncle of this child died due to a vaccine reaction. The Mother has a crippling fear of vaccination for her child and will not vaccinate her child. Due to 'No Jab No Play', now the **child** will miss out on all early childhood care and education as this family does not qualify for an exemption.*

Mother reached out to UAKSA for support, 2020.

DISCRIMINATION

Australia has strong anti-discrimination laws reflecting the importance of ensuring equal and fair access to all services and opportunities for all people in our country.

At a state level, South Australia has the Equal Opportunity Act 1984 and the following laws operate at a federal level:

- Age Discrimination Act 2004
- Australian Human Rights Commission Act 1986
- Disability Discrimination Act 1992
- Racial Discrimination Act 1975
- Sex Discrimination Act 1984

Following the introduction of 'No Jab No Play' in South Australia UAKSA was made aware of a legal challenge claiming legislation conflicted with the Commonwealth Disability Discrimination Act 1992. In this Act the interpretation of "disability, in relation to a person" gives 11 definitions including; "(c) the presence in the body of organisms causing disease or illness"; or "(d) the presence in the body of organisms capable of causing disease or illness".

The legal challenge claimed it would be unacceptable for children to be discriminated against based on the assumption that they may or may not be carrying an infectious disease at some point in the future.

The application of these interpretations, or any of the anti-discrimination laws to a child who does not meet immunisation requirements is so far yet to be determined by an Australian court as far as UAKSA is aware.

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ETHICS

Immunisation is a medical intervention and as such informed consent is a legal, ethical and professional requirement.

The Australian Commission on Safety and Quality in Health Care states:

“Informed consent is a person’s decision, given voluntarily, to agree to a healthcare treatment, procedure or other intervention that is made:

- *Following the provision of accurate and relevant information about the healthcare intervention and alternative options available; and*
- *With adequate knowledge and understanding of the benefits and material risks of the proposed intervention relevant to the person who would be having the treatment, procedure or other intervention.”*

‘No Jab No Play’ make access to early childhood education dependent on consent to childhood immunisations. The policy applies pressure to ensure immunisations are completed which has been argued to ethically undermine the voluntary nature of the consent.

RISKS OF ALTERNATIVE ARRANGEMENTS

Research shows that ‘No Jab No Play’ legislation has little to no impact on strongly vaccine hesitant or vaccine refusing families. Unable to access childcare or kindergarten, collectives of parents and guardians with unvaccinated children are combining their skills and resources to deliver collaborative, alternative education arrangements within the rules of the legislation.

It is pertinent to consider that, under pressure, some arrangements may be operating outside the rules of the legislation, particularly for care of children.

In Australia there are stringent rules on setting up a formal family day care from home. Currently the requirements include that a person must:

- Hold or be actively working towards at least Certificate III level education and care qualification.
- Hold current first aid and CPR certificates and training in the emergency management of asthma and anaphylaxis.
- Have appropriate clearances for working with children.

“One of the central tenets of ethical medical practice, including procedures like immunisation, is informed consent to proceed. Ethically, true informed consent cannot involve any real or perceived coercion.”

- Dr Julie Leask, Associate Professor: School of Public Health, University of Sydney, Senior Research Fellow: National Centre for Immunisation Research & Surveillance

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- Provide a national police check.
- Maintain public liability insurance.
- Have strict numbers allowed to care for at one time.
- Have an assessment of the residence to ensure it is a safe, stimulating and educational learning environment.

'No Jab No Play' has the potential to jeopardise the financial security of a family. Many families require access to childcare to allow parents time for employment. Many families rely on income from both parents. It is not difficult to see how some families would be pushed to consider informal childcare arrangements, even if it comes with risk.

If family day care were removed from the scope of the 'No Jab No Play' legislation this risk for children would be eliminated. With far smaller numbers the risk of transmission is also reduced in family day care settings in the event of a VPD outbreak.

A second risk to consider, is that No Jab No play legislation results in unvaccinated children who would normally make up approximately 5% of the greater population now being forced to cluster in 100% unvaccinated groups through which VPD outbreaks can spread very quickly, putting those children and the greater community at risk.

This is antithesis to public health efforts.

In early 2020 when the Phase 1 'No Jab No Play' policy was implemented, all children were able to attend early childhood services however would be excluded in the event of a VPD outbreak. **This practical and effective public health measure did not have a detrimental impact on children and did not inadvertently create increased risk of VPD.**

DR JULIE LEASK WROTE THAT NO JAB NO PLAY:

"Will not convince the highly entrenched who, unable to access childcare, may seek unregulated care arrangements as has been observed recently. Such centres would then corral the unvaccinated, causing a critical mass of non-immune to more readily seed an outbreak."

"The unvaccinated child would be at higher risk of VPD if they were excluded from mainstream early childhood services and corralled into totally unvaccinated groups."

Lack of Public Support for No Jab No Play Legislation

PUBLIC CONSULTATION

The South Australian Department for Health and Wellbeing released the 'Early Childhood Services and Immunisation Discussion Paper' for public consultation on Friday May 31, 2019 (hereafter referred to as the Discussion Paper). The Discussion Paper presented options for the second phase South Australian Public Health (Early Childhood Services and Immunisation) Amendment Bill. The public consultation was open for 28 days with submissions accepted until Friday 28 June 2019.

RESULTS

In October 2019, the Department for Health and Wellbeing South Australia released the follow up 'Early Childhood Services and Immunisation Discussion Paper, **Public consultation summary and analysis of responses**' (hereafter referred to as the Summary).

- There were 680 total responses to the public consultation.
- **An overwhelming 72.5% of respondents to the Public Consultation did not support children being denied access to Kindergarten.**

Question 4 of the Discussion Paper related to the basic concept of 'No Jab No Play', asking *"do you agree that, with rare exception, children in SA should be fully vaccinated for age as a condition of enrolment into early childhood services?"*

- 663 out of the total 680 submissions gave a definitive answer to Question 4.
- 52.2% of those definitive answers supported the statement (346 responses), 47.8% of the definitive answers did not support the statement (317 responses).

Question 5 of the Discussion Paper then asked the public *"If you said yes (at Question 4), which of the options in the Discussion Paper do you consider to be the best (i.e., option 1, 2a, 2b, 3a or 3b)?"*

- **21 respondents selected Option 1: Pause** as the option they considered to be the best. This Option proposed no further legislation.

OVERALL, 51% OF RESPONDENTS DID NOT SUPPORT FURTHER NO JAB NO PLAY LEGISLATION AND A STAGGERING 72.5% DID NOT SUPPORT CHILDREN BEING DENIED ACCESS TO KINDERGARTEN.

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- Adding these 21 respondents who voted for no further legislation to the 317 respondents who did not support the basic concept at all results in 338 total submissions, **51% of the total definitive responses, who did not want further legislation.**
- Only 155 respondents, 23%, considered the best option to be Option 3b: the most severe and ultimate version of legislation that was introduced and passed.

Further simple analysis of The Summary reveal that only 187 respondents out of the total 680 voted for Options 2b and 3b, where further legislation would be implemented and apply to children up to 6 years of age (as opposed to 3 years of age). These Options mean the legislation would apply to kindergarten aged children, the alternatives would not. **This reveals that only 27.5% of the total respondents supported legislation that would deny access to kindy, and 72.5% did not.**

The Department for Health and Wellbeing were misleading in stating there had been strong public support for 'No Jab No Play' when discussing the 2nd phase legislation. Just over half of respondents to the public consultation supported the basic concept of 'No Jab No Play' but more specifically and importantly, just over half of respondents disagreed with further legislation. Furthermore, a staggering 72.5% of respondents did not agree with legislation that would deny SA children access to kindergarten.

UAKSA can anecdotally add that a high number of medical and education professionals that we have spoken to, qualified and recognised figures, verbally state that they personally do not support this policy.

**ONLY 23% OF RESPONDENTS TO THE
PUBLIC CONSULTATION CONSIDERED
THE MOST SEVERE AND EVENTUAL
FORM OF THE LEGISLATION TO BE
THE BEST OPTION.**

Lack of Evidence to Support No Jab No Play Legislation

VICTORIAN NO JAB NO PLAY 5 YEAR STATUATORY REVIEW

In October 2020 Victoria released its statutory 5-year review of their own 'No Jab No Play' legislation. This 95-page document, titled 'No Jab No Play 2020 Review' was delivered by the Centre for Evaluation and Research Evidence, Department of Health and Human Services. The Review offers considerable information, however direct attribution of the policy as a mechanism for achieving its stated goals is absent.

In Victoria, childhood immunisation rates continued to increase after implementation of the 'No Jab No Play' legislation, as they had prior to implementation. The review states ***"...it is not possible to determine causal attribution of Victoria's legislation"***.

The Review goes on to state *"the review confirmed similar findings to those in national and international studies that: **No Jab No Play legislation does not influence the behaviour of parents/carers, including pro-vaccine, strongly vaccine hesitant and vaccine refusers"***.

"Without evaluation and strong evidence of success, the PHAA cannot support ongoing policies that have a potential to cause community division and disadvantage to children."

PUBLIC HEALTH ASSOCIATION OF AUSTRALIA

Despite the legislation, Victoria also reports ongoing geographic locations with lower immunisation rates, and admits further measures are still required to increase and maintain immunisation rates in the state.

Although the Victorian review provides recommendations for the ongoing implementation of their 'No Jab No Play' policy, the review:

- is not able to demonstrate that the 'No Jab No Play' legislation has directly contributed to already increasing immunisation rates,
- is not able to demonstrate a causal effect on immunisation rates in any way,
- confirms the legislation does not influence parents/carers immunisation behaviours,
- admits the legislation has not resulted in targets being met following 5 years of implementation, other measures are still required.

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In Victoria, following 5 years of implementation, No Jab No Play legislation has not achieved the desired outcomes.

It has not been an effective policy and research shows it is not an effective policy, as it does not influence the immunisation behaviours of parents/carers.

Victorian immunisation rates have continued to increase as they were already doing prior to implementation of 'No Jab No Play'. The only real, known impact of the policy has been on the children penalised. Research is unequivocal in stating the benefits of early childhood education, and so the only sure outcome of 'No Jab No Play' is that it denies every child who does not meet immunisation requirements the foundations for development, education and support in their most crucial years.

SCIENTIFIC LITERATURE REGARDING NO JAB NO PLAY LEGISLATION

The literature does not present a strong, consistent case for support of 'No Jab No Play'.

Consistent conclusions seen within the literature include:

- Reporting weak connections or no conclusive evidence that 'No Jab No Play' laws directly contribute to increased vaccination rates.
- Overall vaccine coverage rates were rising before vaccine mandates.
- Cautions regarding the delicate balance of benefit/cost of 'No Jab No Play' and impact on children.
- Ethical concerns.
- Recommendations to strengthen pre-existing and non-mandatory interventions instead of punitive measures.

ABILITY TO REDUCE VACCINE PREVENTABLE DISEASE

An important concept in the complex South Australian 'No Jab No Play' legislation is that it does not have the intention (or design) to reduce the incidence of vaccine preventable disease within early childhood education settings (i.e., to make these settings "safer").

Un/under-vaccinated children pose no threat to fully vaccinated children at these services and the purpose of banning their access is to increase total immunisation coverage across the state and meet 95% targets, not to increase safety at individual sites. This is a common misconception.

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Removing an unvaccinated child from childcare does not make childcare safer.

The mechanism of No Jab No Play is complex. Excluding children from early childhood services:

- applies pressure to parents which,
- is intended to illicit increased rates of immunisation which,
- increases the number of individuals protected against VPD which,
- reduces the pool through which VPD can spread which,
- has the peripheral effect of making it less likely that someone (who is immune compromised or not able to be vaccinated) will come in to contact with a person infected with a VPD, and,
- is therefore less likely to contract a VPD, which
- theoretically will reduce the number of notifications of VPD reported in South Australia.

VACCINATED CHILDREN IN EARLY CHILDHOOD SETTINGS ARE NOT AT GREAT RISK OF CONTRACTING A VACCINE PREVENTABLE DISEASE AND BECOMING UNWELL, BECAUSE THEY ARE VACCINATED.

An unintended consequence requires significant consideration as it has potential to undermine the aims of the policy. Parents of unvaccinated children who are excluded from mainstream early childhood services are now collaborating to create alternative arrangements, creating totally unvaccinated groups of children. Within unvaccinated groups, an outbreak can spread quickly. These children are put at higher risk of VPD by being excluded from the general population for early childhood services.

Dr Julie Leask wrote regarding 'No Jab No Play', that it "*is not a panacea for disease control because others too spread disease and need boosters – parents, childcare workers, travelers and health care workers. One review found that up to 50% of infants hospitalised with pertussis contracted it from a parent or sibling. Staff in childcare centres also spread disease and a NSW study of 319 childcare centers containing 3574 workers found that only 29.4% were fully vaccinated.*"

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The Royal Australasian College of Physicians also wrote:

“Measures to maximise protection against vaccine preventable diseases work best when coordinated with measures to maximise access to early childhood education. Excluding children who are not fully immunised and their families from parts of their normal lived environments (which includes early childhood education) is unlikely to be effective. Those children will still live in their communities and most will interact with fully vaccinated children, while their development is impeded by lack of access to early childhood education.”

“The unvaccinated child would be at higher risk of VPD if they were excluded from mainstream early childhood services and corralled into totally unvaccinated groups.”

*PUBLIC HEALTH
ASSOCIATION OF AUSTRALIA*

Concerns Regarding Current Application of ‘No Jab No Play’

MEDICAL EXEMPTION PATHWAY

South Australia’s ‘No Jab No Play’ legislation includes provisions for exemptions through the Chief Public Health Officer (CPHO). Following implementation of the legislation on August 7th, UAKSA have received numerous emails from members of the public saying the process of applying for an exemption is extremely difficult (to the point of being directly and indirectly put off the process all together, resulting in nil access to an exemption).

UAKSA are concerned that:

- There is no clear framework for members of the public to understand the process of applying for an exemption.
- Members of the public, medical professionals, educators, Department of Education, Department for Health and Wellbeing, SA Health and Communicable Diseases Control Branch SA require uniform and clear instructions on the process of seeking an exemption.
- Members of the public require consistent information and support through the process of seeking an exemption (particularly difficult for families experiencing disadvantage and lower socio-economic circumstances).
- Educators and medical professionals need explicit training on the process of applying for an exemption and how to support families through the exemption process.

*Public Health Association of Australia predicted difficulty for parent’s accessing appropriate medical exemptions. One of their concerns regarding SA’s No Jab No Play policy was “**inadequate provisions for medically complex cases within existing medical exemption arrangements**”.*

ENROLMENT, ONGOING AND UP-TO-DATE WINDOWS

The application of ‘No Jab No Play’ is complex. Children must be recorded as “up to date” on the Australian Immunisation Register (AIR) in order to enrol in a service. Once they are enrolled, they must provide updated records at the scheduled childhood immunisation points to maintain their enrolment. There are set timeframes for the presentation of the updated records however. UAKSA have been informed by members of the public that early childhood staff are not able to accurately support parents with this information.

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ACKNOWLEDGEMENT OF ONGOING CLASS EXEMPTIONS

Outside of the general application of 'No Jab No Play', Chief Public Health Officer, Professor Nicola Spurrier has issued six Class Exemption notices (current at publishing of review, 20 April 2021):

- **6 August 2020:** Children aged less than 7 months of age are exempt from legislation.
- **6 August 2020:** As children come under the custody or guardianship of the Chief Executive of the Department for Child Protection as per the *Children and Young People (Safety) Act 2017* a temporary exemption of six weeks will apply.
- **14 August 2020:** As children transfer from the custody or guardianship of the Chief Executive of the Department for Child Protection pursuant to the Children and Young People (Safety) Act 2017 to another guardian or to their parent a temporary exemption of 6 weeks will apply.
- **17 December 2020:** Children that attend an individual or approved provider who is eligible for the additional childcare subsidy ACCS (wellbeing) with respect to that child are exempt from the legislation.
- **2 March 2021:** Children who live or reside in the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands; or within the Oak Valley community; or within the Yalata community are exempt from the legislation.
- **2 March 2021:** Children of Aboriginal or Torres Strait Islander descent a temporary exemption of six weeks will apply.

'NO JAB NO PLAY' APPLICATION CASE STUDIES

Case Study 1:

Mother of five children from Northern suburbs was not aware of the 'No Jab No Play' legislation. All children are immunised however she developed concerns for one son last year (2020) and decided to delay his 4-year-old immunisations until she could seek medical advice. The child was enrolled for kindy 2021, attended the 'come and try' days, bought the uniform and shared in the excitement of starting kindy.

The child presented at his first day of kindy. The Kindergarten Director informed the Mother and son on that day that the child could not stay as his immunisation record was 'not up to date'. The family had to leave. They were "devastated". They had not been informed of the consequences of not providing his immunisation record, offered support with how to do this, or advised of the time frames for his eligibility to enrol/continue.

The Mother went to her GP who advised they were not able to help. She was told to go to

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her Paediatrician, who informed her that the wait time for an appointment with the Special Immunisation Service is 8 months by which time the child will be ready for school. The Mother was not able to access the exemption pathway and her son is not attending kindergarten this year (2021).

Case Study 2:

Child was fully vaccinated at 18months. This child was excluded from kindy after 7 August 2020 implementation of the legislation. Because she was already enrolled, this child had until the age of 4 years and 8 months to provide the approved immunisation record for her 4-year immunisations. Had the SA Health timeframe been honoured, this child would have had until December 2020 to complete the schedule and should have been able to complete her kindy year.

Case Study 3:

Child was fully vaccinated at 18months. This child is currently not allowed to enrol in Occasional Care nor Kindy as Immunisation Record shows 'not up to date'. The child would have been allowed to enrol prior to 4 years and 2 months (November 12, 2020) as Immunisation Record would have stated 'up to date'. The child would have then had 6 months until 4 years and 8 months to complete immunisation and provide approved record. Had the parents been informed of the complex time frames their child could have been enrolled prior to November 12, 2020 and entitled to attend Occasional Care or Kindy until May 12, 2021 whilst immunisation was addressed.

Suggestions and Recommendations

Following our review of the implementation of 'No Jab No Play' in South Australia, UAKSA recommend that the Department for Health and Wellbeing South Australia action the following:

1. Remove conditions on access to kindergarten for children in South Australia.

- To return the opportunity to attend kindergarten to all children, regardless of vaccination status, so that every child may prepare for school.
- To provide better long-term benefits and outcomes for the individuals and for society.
- To prevent the increased risk for the individual and community of disease spread following an outbreak, when unvaccinated children gather in 100% unvaccinated groups for shared learning and activities as an alternative to kindergarten.

- Amend the definition of *early childhood service* within the South Australian Public Health Act 2011

I.e. Amendment of section 96A – Interpretation

(1) Section 96A – after “does not include the following”, insert:

(l) provision of 600 hours of formal kindergarten/preschool in the year before school;

OR

Amendment of section 96A – Interpretation

(1) Section 96A – remove “under the age of 6 years” and replace with “under the age of 3 years”

OR

- South Australian Chief Public Health Officer to grant a Class Exemption to all children eligible for kindergarten in the year before school. (Phase 1 of the 'No Jab No Play' legislation to remain in place whereby unvaccinated children would be excluded in the event of a vaccine preventable disease outbreak, in order to protect those children and reduce the spread of the disease).

2. Create a class exemption from whole legislation for children of families who hold a low-income/health care card.

- To ensure those children who are at the highest risk of requiring additional services such as Families SA and NDIS are identified and supported with early intervention.

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- In line with the Victorian 'No Jab No Play' legislation.

Additionally, we suggest a formal framework to support children who do not meet immunisation requirements and who are not allowed to attend early childhood services. A way to ensure these children have an opportunity to be seen by Mandated Notifiers and assessed for any learning difficulties, developmental delays or disability. To provide early interventions and access to 'under 6' NDIS funding.

3. Remove Family Day Care from the scope of 'No Jab No Play' legislation

- To prevent any parent needing to, under pressure, consider high-risk informal care arrangements.
- To prevent the increased risk for the individual and community of disease spread following an outbreak when unvaccinated children gather in 100% unvaccinated groups for care.
- Amend the definition of *early childhood service* within the South Australian Public Health Act 2011
 - I.e. Amendment of section 96A – Interpretation
 - (1) Section 96A – after “does not include the following”, insert:
 - (1) family day care.

4. Review/improve the exemption pathway and professional understanding and implementation of 'No Jab No Play'.

- To support families who wish to apply for an exemption.
- To ensure children have access to specialist assessment and are not disadvantaged by wait times.
- Reinforcement of a consistent framework from SA Health regarding the exemption pathway for 'No Jab No Play'.
- Formal training or resources supplied to all medical professionals regarding the 'No Jab No Play' exemption pathway to ensure all GP's and Paediatricians are able to give clear, consistent information to patients.
- Easily accessible information and support for parents/carers (suggest: on the SA Health website and access through phone lines) regarding the steps of seeking an exemption for 'No Jab No Play'.
- Availability of appointments with the Specialist Immunisation Service to avoid long wait-times for assessment.
- Consistent and transparent information on provision of 'temporary exemptions' once a referral for Specialist assessment has been made.
- Exemption Criteria widened to include reasonable evaluation of parent's rationale for child not meeting full vaccination requirements, such as family history and access to education whereby there is increased risk to the child having not accessed early years

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- care and education.
- Formal training or resources supplied to all Early Childhood Service (front line) Educators regarding the 'No Jab No Play' exemption pathway including:
 - How to begin process of seeking an exemption,
 - Who is eligible to access early childhood services, i.e. a child can be enrolled at 4 years and 1 month when Immunisation Register record shows 'up to date' but not at 4 years and 2 months when Immunisation Register record shows 'not up to date' should there be any delay in receiving immunisations on time.
 - How to inform and support parents/carers of consequences of immunisations not being up to date.

Additionally, we suggest it could be pertinent to remind ECS staff that the personal immunisation information for children is highly confidential and is not to be shared directly or indirectly with any other parents/carers or members of the public.

I.e. "Jane Smith does not come to child care anymore because of 'No Jab No Play'".

CONCLUSION

Consideration of the issues outlined in this review along with collaboration between Government and relevant stakeholders is urgently required to ameliorate the negative impact of 'No Jab No Play' on South Australian children. Children are being denied access to crucial early childhood education whilst there is little evidence to suggest the policy will influence already increasing immunisation rates.

Further advocacy is required to produce evidence-based policy with real mechanisms to advance immunisation rates in our state. Strong, ongoing advocacy is also required for children's access to education. Children are the individuals subjected to the 'No Jab No Play' penalties, which stand to have a life-long impact on them.

UAKSA urge all professionals and stakeholders to actively advocate for innovative, evidence-based immunisation legislation for SA, and for a return of access to early childhood education for all of the children in our state.

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