



NATIONAL
WELFARE RIGHTS
NETWORK

Submission to Senate Community Affairs
Legislation Committee

Social Services Legislation Amendment
(No Job, No Pay) Bill 2015

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About the National Welfare Rights Network

The National Welfare Rights Network (NWRN) is the peak community organisation in the area of social security law, policy and administration. We represent community legal centres and organisations whose role is to provide people with information, advice and representation about Australia's social security system.

NWRN member organisations operate in all states and territories of Australia. They are organisations which have community legal services and workers dedicated to social security issues. Their services are free and they are independent of Centrelink and government departments.

The NWRN also has as Associate Members the Central Australian Aboriginal Legal Aid Service (CAALAS) and the North Australian Aboriginal Justice Agency (NAAJA).

The NWRN develops policy about social security, family assistance and employment assistance based on the casework experience of its members. The Network provides submissions to government, advocates in the media and lobbies for improvements to Australia's social security system and for the rights of people who use the system.

Introduction

NWRN believes in universal vaccination as a public health policy objective. We support effective measures to increase rates of vaccination to a level where the community, especially children and other vulnerable populations, are adequately protected from the risks of infectious disease.

This measure represents a tightening of existing measures tying family assistance payments to child immunisation and may have a small impact on rates of vaccination. However, it is important that the measure be drafted carefully so that income support is not unfairly reduced to some families and their children, for example families who are behind on their immunisation schedule and willing to catch up and families in regional or rural areas who are willing to vaccinate but face other obstacles to doing so in a timely fashion.

The NWRN, whose members have expertise in social security and family assistance law and work, is well placed to analyse likely consequences, both intended and unintended, for vulnerable welfare recipients.

Consultation with DSS

NWRN met with DSS to discuss this measure after it was announced in May 2015. NWRN indicated our general support for measures which increase rates in vaccination, but observed that provisions relating to continuing entitlements during the 63 day grace periods and during catch-up-schedule periods should remain.

We were assured that they would be retained but are concerned that this does not appear to be the case for the 63 day grace period for CCB. However, a discretion has been included in the bill which, if flexibly applied, may reduce the impact of removing the 63 day grace period.

We received a further, very helpful, briefing from DSS on 13 October 2015.

Abolition of 63 day grace periods and the freestanding discretion.

As the explanatory memorandum explains at p 6, “Item 7 inserts a new subsection 42(1AA), which has the effect of removing the 63 day grace period...”

We are not aware of any evidence that suggests that cutting off payment pending vaccination will be more effective than providing a 63 day grace period. We are concerned about the potential for unfair repercussions: eg for grandparents and other people who take unimmunised children into their care or people who live in regional or remote areas who may not be able to access a doctor quickly.

Case Study

Jane had a serious drug addiction and frequently left her children with various family members and friends. At different times her family tax benefit payments were cut off because she did not have children in her care. She went into detox and then had counselling and got her addiction under control. She decided that she needed to turn her life around and decided to study. When the children returned to her care, she went to Centrelink and discovered that she could not receive the FTB Supplement or CCB because her children were not vaccinated. She lives in a regional area where a doctor visits irregularly and has to wait for 6 weeks for a doctors appointment.

What occurred under current rules

DHS issued her with a 63 day notice to immunise her child for the purposes of receiving child care payments. She was able to immunise her child 6 weeks into that period. CCB payments were granted as soon as the children entered daycare and she commenced her studies.

Possible scenario under proposed rules

There is no 63 day notice in respect of child care benefit. Despite her intention to vaccinate her child at the soonest opportunity during that period she can't be paid child care benefit.

Her course commences, but she cant afford to start the child in day care until CCB is granted. Once she attends the doctor's appointment her child is placed on a catch up schedule, her CCB can be granted but the delay has meant she has lost the daycare place for her child. She misses half the lessons during the first term of her course as she could not always find friends and family members to care for the kids.

Currently s42(1)(iii) operates so that a person is able to be paid arrears CCB and CCR if the child is immunised during a 63 day notice period . However, the bill proposes to remove s42(1)(iii) which would mean that arrears cannot be paid. This means that families who experience delay in immunisation may suffer a large financial penalty, unless the Secretary exercised a discretion to determine that they nevertheless meet the immunisation requirements for the period.

We acknowledge that, in practice, many child care centres would not admit a child until vaccination is complete anyway. But in a case like the example above, where a parent has an urgent need for daycare, and the child care centre agrees to let the child to start daycare on the basis that the child will be vaccinated at the next available doctors appointment) CCB and CCR should be payable, as many low income parents cannot afford the full cost of the child care (neither instalments nor arrears can be paid).

We have been assured by the Department of Social Services (re family assistance payments) and the Department of Employment (re child care payments) that the discretion in proposed subsection 6(6) would be applied a range of situations where unfairness would otherwise result (but not, for example, for conscientious objectors).

We are very pleased that this discretion has been included in the bill. A discretion is particularly important given the proposed removal of both the conscientious objection rules and the 63 day grace period.

Decision makers will be required to follow proposed decision making principles when exercising the discretion. It is critical that these principles are flexible and adequately safeguard against possible unfairness. Including foreseeable exemptions in the text of the bill, as well as the proposed discretion in 6(6) and principles for its exercise in 6(7), would give members of parliament voting on the bill certainty

Some foreseeable examples of people who rely on family assistance payments and may need immediate access to payments, under a grace period or a temporary exemption, until they can get their child onto a catchup schedule would include:

- grandparents who receive care of unimmunised children;
- people exiting prison or psychiatric confinement who discover their children were not vaccinated during their confinement;
- people whose children are temporarily unable to be vaccinated due to temporary illness;
- foster parents who receive care of unimmunised children;
- people experiencing family violence;
- people whose study, work or job search prospects may be harmed by any subsequent delay in accessing childcare; and
- other situations where the secretary considers it appropriate having regard to the person's circumstances (but not conscientious objectors).

Community health nurses that visit remote communities are not always able to give vaccinations to children with medical conditions. Sometimes they are only adminsterable by a doctor or specialist. This can lead to significant delays in meeting vaccination requirenents.

We anticipate that the discretion, however worded, would not be applied often, and would usually only be temporary (eg to enable a grandparent who has taken children into their care to obtain the consent of the parent where appropriate, or for people in remote areas or without immediate access to health services to have additional time to meet immunisation requirements). There should be no temporal limit on the discretion.

Possible case scenario¹

Mary's daughter suffers from a severe mental illness. Mary's grandson was diagnosed with severe asthma just prior to him turning 18 months. Mary's daughter was not coping and Mary assumed care of her grandson after her daughter was hospitalised. Mary claimed FTB and discovered that her grandson was overdue for his vaccinations. She took her grandson to the Child Health Centre as soon as she could, they were only open on certain days during the week and Mary was still trying to work part-time.

The Nurse at the Child Health Centre advised her that because her grandson had severe asthma the vaccinations had to be done by either the GP or the specialist who had diagnosed the asthma. Mary's GP was away and she had to wait a two weeks to get an appointment. She tried to make an appointment with the specialist but there was a four week wait. By the time she saw her GP, her grandson had caught a cold and was running a temperature and the GP prescribed a two week course of antibiotics and refused to do the vaccinations until her grandson was well. The cold triggered a severe asthma attack and her grandson was hospitalised for a couple of weeks and eventually released with a course of steroids. The hospital advised that no vaccinations could be done until her grandson was off the steroids and completely well. It was another 6 weeks before her grandson was well enough to have the vaccinations.

Catch up schedule for unimmunised children

It is critical that the existing rules which permit suspended payments to be restored as soon as a person begins an approved catch-up schedule are retained. We have been assured that they will be.

Although not a major issue, we note that current section 6 does not specifically refer to catch-up schedules and the bill refers only to catch up schedules in the context of children who have returned from overseas.

To give certainty, we suggest that section 6 (2), which currently states "the child meets the immunisation requirenments if the child has been immunised", should be amended to read

¹ This is a scenario based on the real experiences of our caseworkers, but is not a case study.

that “the child meets the immunisation requirements if the child has been vaccinated under a standard vaccination schedule, or a catch up vaccination schedule” which would also be more consistent with the wording of the bill in item 4.

“At risk” children

NWRN is unsure about the measure which moves access to CCB for services caring for “at risk” children. It is impossible for us to assess the breadth of impact of this measure and we acknowledge that its impact will be limited by the fact that vaccination is a pre-condition of many Approved Care Organisations anyway. As noted below, we do not oppose this measure. However, we think it is worth raising some concerns.

What needs to be weighed is the possible exposure risk to other children against the wellbeing risks to disadvantaged children assessed by an approved child care provider as being “at risk”. We don’t see many of these cases. However when we do see these cases we observe that these children are generally from violent and dysfunctional family environments. In our experience, the benefits of access to day care services cannot be understated (both for the children, and their families, who would otherwise not utilise child care services).

Care must be taken to ensure this measure does not create a disincentive for a child care organisation to provide a service to a child who is “at risk”. We note there is already an incentive for the parent/care giver to vaccinate due to the FTB penalty that applies and the ACO will also be putting pressure on the parent to vaccinate in the interests of its other children and its own service requirements.

However, as noted in the discussion about departmental discretion above, we have been assured by the Department of Education that the discretion in 6(6) will be exercised to safeguard situations such as these. We understand from the Department of Education that where it is the Approved Care Organisation who has identified that a child is at risk and is seeking Special Child Care Benefit an exemption will automatically be applied. We understand that where it is the parent/carer who seeks the exemption it will be assessed on a case by case basis. We understand that it is intended that the kinds of groups we have listed at page 5 above would be excluded. On this basis, we do not oppose this measure.

However, as noted above, including a list of foreseeable exemptions in the text of the bill, in addition to the proposed discretion in 6(6) and principles for its exercise in 6(7), would give members of parliament voting on the bill certainty that those vulnerable parents would not be unfairly impacted by this bill.

Universal problem requires a universal solution

NWRN is concerned that this Government measure may fuel misunderstanding among the public about immunisation practices of welfare recipients and further stigmatise welfare

recipients as wrong doers. In fact, 97% of people receiving FTB are meeting immunisation requirements².

NWRN considers that the response to the issue of vaccination rates needs to be a universal one. One problem with focussing on welfare receipts is that not all families receive welfare and while part of the proposed measures will extend the current welfare stick to higher income families, this reach may only be short term, for reasons we explain below.

The Government should be consulting epidemiologists and medical experts about what alternative universal tools there may be to increase vaccination rates. These may include improvements to education and referral processes as suggested by the Australian Medical Association.³, or possibly a measure in the broader tax system. NWRN believes that, if there must be a penalty for failure to immunise children, it should not apply only to lower income families.

Summary

NWRN supports this bill, however, we recommend that 63 day grace periods be retained.

We also recommend that the Departments provide detailed information to parliament about the proposed guidelines for exemptions and note that, if foreseeable exemptions were included in the bill this would provide additional certainty to the community, and the Members of Parliament voting on the bill, that those vulnerable groups would not be unfairly impacted by this bill.

² <http://www.abc.net.au/news/2015-04-14/jha-anti-vaxxer-crackdown/6390494>

³ https://ama.com.au/ausmed/punishing-families-not-way-boost-vaccination-rates?hc_location=ufi