

Hon Nick Goiran; Hon Sue Ellery; Hon Rick Mazza; Hon Dr Steve Thomas; Hon Michael Mischin; Hon Martin Aldridge; Hon Aaron Stonehouse; Hon Alison Xamon; Hon Donna Faragher

**PUBLIC HEALTH AMENDMENT
(IMMUNISATION REQUIREMENTS FOR ENROLMENT) BILL 2019**

Committee

Resumed from 25 June. The Deputy Chair of Committees (Hon Adele Farina) in the chair; Hon Sue Ellery (Minister for Education and Training) in charge of the bill.

Clause 8: Part 9 Division 8 replaced —

Progress was reported on the following amendment moved by Hon Rick Mazza —

Page 6, lines 24 to 26 — To delete the lines.

The DEPUTY CHAIR: I draw members' attention to issue 5 of supplementary notice paper 127. The question is that clause 8 stand as printed.

Hon NICK GOIRAN: I think the question before the Chair at the moment is whether the words to be deleted be deleted.

The DEPUTY CHAIR: Thank you for your guidance. The question is that the words to be deleted be deleted.

Hon NICK GOIRAN: When we were considering Hon Rick Mazza's proposed amendment yesterday, I asked the minister for an explanation about the eight categories of exemptions. Members may recall that this bill has a very unusual clause in it in the sense that it would allow —

The DEPUTY CHAIR: Order, members! There is way too much noise in the chamber. It makes it very difficult for me to follow the debate and for Hansard to record it. If you are having private conversations, please leave the chamber.

Hon NICK GOIRAN: Clause 8 includes a very unusual provision in that it would allow the government to exempt a class of children prescribed by the regulations. It is important for us to remember that the very constituency for this bill is in fact children; children whom the opposition says ought to be vaccinated, yet the government is seeking to provide a massive power to potentially carve out all Western Australian children from the very scheme that the chamber wishes to put forward. I asked the minister to explain the eight categories of exemptions. Where we left it yesterday was that the minister indicated why the government says each of those eight categories are required. I wanted to know the estimated number of children in each of those eight categories, but the minister indicated that that information was not available. I then asked about the number of Aboriginal children in Western Australia and the minister took that on notice. I simply ask whether that information is now available.

Hon SUE ELLERY: In Western Australia in 2019—this is at the semester 1 census, which is done in the first term of school in February—there were 34 296 kindy students in WA; 2 078 were Aboriginal students.

Hon RICK MAZZA: Last night, the minister explained the intended scope of exempt children. I must admit that it worries me further that we now have a very wide scope including children whose parents receive benefits from Centrelink, among other categories. If the intention of this bill is the public health of children, but some of those children are unable to be vaccinated for medical reasons, I think the ability for unvaccinated children to attend, but who can be vaccinated, puts those children at risk. Notwithstanding the importance of education, I think that the overall health of a child is more important. We are talking here about the possibility of a child contracting a disease and dying. That is how grave this is, and why I have such worry about it, particularly if parents whose child is unable to be vaccinated are not notified, or have no idea that their children are being exposed to a child with one of these diseases. I know that last night the minister said that they are in the general community anyway, and the possibility is that they could pick up one of these diseases in their daily life. However, a kindergarten or day care centre concentrates a group of kids together, so the possibility of a child who is unable to be vaccinated contracting a disease from somebody who is not vaccinated but can be is too great a risk. We could have an exemption under which an application for enrolment can be made by an exempt child who is yet to be vaccinated, but I think before commencement—we are talking about applications being rolled out later this year for next year—they should be vaccinated. I did hear that a follow-up process would be undertaken by the department to try to get unvaccinated children vaccinated, but that could take weeks or months, if it happens at all. There is no reasonable possibility of that child not attending a kindergarten or day care centre. I wanted to express those concerns. I think this is a very grave issue. The scope of exempt children is very wide, and I think it defeats the purpose of the bill.

Hon NICK GOIRAN: The information that the minister provided today is quite helpful—34 296 children are in kindergarten as at the date the minister mentioned, and 2 078 of them are Aboriginal. By my calculations, 6.06 per cent of kindergarten students are Aboriginal. Already six per cent, with regard to class or category exemption 1, are exempt, by the government's count. Can the minister tell us how many of those kindergarten students are Torres Strait Islander children, as defined by section 3 of the Children and Community Services Act?

Hon SUE ELLERY: No, I cannot. I want to remind people what we are doing here. We are debating a proposed series of exemptions that might best be described as non-medical exemptions. I want to use the opportunity to

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respond to Hon Nick Goiran to also canvass the issues raised by Hon Rick Mazza. He is right when he says that there is a risk, but the policy intent of this bill is not to remove all risk. It is not to suggest that one measure will achieve by itself the level of herd immunity that we are seeking. It also fails to recognise what this bill is trying to do, which is to balance the health and education policy areas. It is recognising, and erring on the side of recognising, that the best way to assist those children who there is no disagreement are disadvantaged already, is to get them enrolled in education, so that that is the point at which further interventions can be taken. If the policy intent of the bill before us was solely to meet a health objective, then the line of argument being pursued by Hon Rick Mazza would be quite correct, but it is not. It is about balancing the health and education prospects for those children, and understanding that the way to lift the rate of immunisation is to make sure that children are enrolled, so that attendance at the school, the kindergarten or the childcare centre is the point at which an intervention can be managed, because they are in the one spot. I think the honourable member recognises that we are not going to be able to reach agreement on whether we have non-medical exemptions. The best advice available to the government is that we do need to have those.

Hon Nick Goiran may proceed to ask a series of questions about the details of each of the proposed exemptions, and when I am able to, I will give him that information. The government reserves its right to say that the best place, for a range of reasons, to have those exemptions, and to ensure those exemptions are kept as up-to-date as possible—bearing in mind that we also have to interact with commonwealth legislation—is in the regulations. I do not mind answering questions about details, when I have them, of each of the specific exemptions, but the government’s position remains that the best place for those exemptions is in the regulations.

Hon NICK GOIRAN: I have no doubt that the government would prefer the exemptions to be in the regulations. We already know, as a result of this debate, that the government has changed its mind on one of the exemptions. The government said one thing in the second reading speech, and now tells us something quite different. If the house tells the government to go ahead and do it by way of regulation, the government can do whatever it likes. In fact, it could go ahead and exempt every child in Western Australia if it wanted to. It could exempt all children of financial Labor Party members in Western Australia. We could do the same thing with regard to the Nationals WA, the Liberal Party or any other party. It could come up with any type of exemption it wanted, because the house would be giving it that power. I am simply saying that if the government thinks these exemptions are justified, it should make a case for each and every one of them. The minister did that, in part, last night, but now I am simply asking how many people will be caught by these exemptions. I can determine from what the minister has told me that approximately six per cent of all children in Western Australia will be captured by the first exemption, which is whether they are an Aboriginal child. The minister tells me that, despite the fact that she is the Minister for Education, she does not know how many Torres Strait Islander children are in kindergarten. She does not know that. She does know that there are 34 296 children in kindergarten, and that 2 078 are Aboriginal, but she does not know how many are Torres Strait Islanders, and yet she asks us to give her the authority to exempt those children, despite not wanting to tell us how many there are. I assume the number would be less than 2 078, that fewer Torres Strait Islander children than Aboriginal children would be enrolled in kindergarten in Western Australia. That is my best guess. It is really for the government to tell us that, but it cannot tell us that.

The minister’s third round of exemption is for a child who is in need of protection, as defined in section 28(2) of the Children and Community Services Act. How many children in kindergarten are in need of such protection?

Hon SUE ELLERY: I do not have those figures available to me at the table. If the honourable member had known that he was going to ask for specific numbers, I could have tried to get the member a list before the debate started today, but I am at the table and therefore unable to get them. I do not have it at the table, but I do not mind providing the member with projections about that category or any other category. However, I do not have that information at the table.

Hon NICK GOIRAN: This is unbelievable from this minister. Last night, I asked the minister the estimated number of children in each of the eight exempt categories, and now, today, at 3.00 pm, she says, “If only the member had told me he was going to ask these questions.” What was I doing last night? If you like, I gave notice last night that this would be the line of questioning. The fact is that no-one has done any work since last night. Everyone had a nice good long sleep last night, and who knows what has been happening today? I asked about it last night and the only piece of information the minister can give me now is that 2 078 Aboriginal students are enrolled in kindergarten. Of course I was going to ask these questions today. I am particularly frustrated that she and her government have done nothing overnight about this because her government has decided to ram this Public Health Amendment (Immunisation Requirements for Enrolment) Bill through this chamber this week. I previously suggested to the government that the bill would be better dealt with by going to a committee. The government said, “No, we can’t possibly have this matter examined by a committee because it is an urgent bill”, notwithstanding that, last night the government had to correct its own bill because everything was to be sent off for proclamation and even though the regulations are not ready. The regulations are at draft number three. The government has not prepared the exemption form. Despite all those things, the government wants to ram this bill through today so that

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it can get to the other place and ram it through that place tomorrow. In all those circumstances, the minister comes here utterly unprepared to answer simple questions such as: how many children will be captured by these exemptions that the minister says are so important?

I can see that it will be pointless asking this minister how many children will be captured by the other exemptions when she does not know even the more simple ones. I indicate that the opposition will support the motion moved by Hon Rick Mazza because he is the only person who has put together a cogent explanation on this matter. It is a government that says to the chamber, “Just give us carte blanche to exempt whomever we want, and, by the way, here are eight categories but we can’t even tell you how many children will be captured by that.” That is totally inadequate. I previously referred to this as a junior Henry VIII clause, and I think that as each moment passes in this debate, junior Henry VIII gets larger and larger all because of the government’s inability to provide us with information.

The opposition is sick and tired of this government not providing information to Parliament when we are asking basic questions. I certainly will not tolerate from this minister any suggestion that I could have given her a bit more notice about the line of questioning. That was precisely what I was doing last night. On behalf of the opposition, I indicate our support for the amendment moved by Hon Rick Mazza.

Hon Dr STEVE THOMAS: I want to make a few comments and not take too much of the time of the chamber. It was mentioned previously in debate that nobody in the chamber is trained in epidemiology or immunology. I thought I would start by correcting that and advise that there is one representative who is trained in both. Because of that I have a couple of key questions I would like to put forward about the amendment proposed by Hon Rick Mazza. The first is that, obviously, all members will agree—I hope the minister will agree—when we talk about immunology, any exemption on any terms, apart from what will cause damage to the recipient, weakens the capacity for herd immunity. Surely, we can accept the basic premise that the more people we exempt from the process, the weaker we make the overall immune reaction. If we take that fairly sensible scientific approach, we need to accept that all the exemptions come with some inherent risk and they all ultimately weaken the full immune reactivity of the population. I am interested to see whether the government will accept that. The government may well say that it accepts that overall immunity will be slightly reduced, and we can debate the numbers if we like. The reality is that any exemption will have a reduction in the overall immunity of the population. I would have thought that that was to be avoided. The major problem I have relates to, as intimated by the minister in her response to the second reading debate, when she said that the advice she was receiving was from, I think, educationalists primarily rather than medical advice.

Hon Sue Ellery: I was specifically referring to the non-medical exemptions.

Hon Dr STEVE THOMAS: Yes. I would say that the discussion before the chamber from the government has been led that way. The problem the government has with this proposal is that in some circumstances in which education has primacy over immunity or education has primacy over health, and, in other circumstances, health has primacy over education, it gives an extremely mixed message. The government will have to go forward and say, “We think in this set of circumstances that education is more important than the immunity of the population, but that in other circumstances it has taken the reverse position.” That is the government’s position. I think Hon Rick Mazza’s amendment before the chamber will effectively remove the government’s discretion to do exactly that. For that reason, it deserves serious consideration because I think it is very hard for the government to say to one group of people, “Education is prime and, therefore, it is more important for your children to be in kindergarten than it is for them to be vaccinated”, and for another group of people to say, “Well, actually, we don’t accept your reason; immunisation is prime and you don’t have the right to put any other part of the community at risk.”

I would have thought that was a fairly difficult position to take and to justify universally, so I would have thought that would have made that double standard very hard to sell. That is a position the government is probably stuck with and it will take that, but I think that double standard has immense problems.

Hon SUE ELLERY: The member is quite right to raise it as a really interesting point of the debate. However, it is not the first time that, if you like, a middle course or a balancing between social objectives and clinical health objectives has been reached. In fact, if we look at the commonwealth decision to limit childcare subsidy payments and link those to vaccination, we can see that it is exactly the same decision. Exactly the same things were balanced. This is not the first time a government has effectively tried to marry two policy objectives—recognising that early intervention and connection with school and an educational setting is the best way to achieve a range of social objectives, including a health or a medical objective—and it probably will not be the last time it is done. Hon Dr Steve Thomas made the point that it is a conflicting message. He is quite right, but it is a conflicting message that national and state governments have made from time to time, and, I suspect, will have to make again.

Hon Dr STEVE THOMAS: Thank you for that, minister. It is absolutely the case that governments pick and choose a bit. I wanted to highlight to the chamber that this is one of those cases of picking and choosing. There is a forward

step from that that I think is important. It has been suggested that primacy in education in some areas and primacy in health and vaccination in other areas are the only alternatives. I think the chamber needs to consider that there might be a third alternative; that is, rather than saying the only way we can improve vaccination rates without impacting on education for those at-risk communities is to exempt them from the vaccination program, maybe the alternative is just to make sure that government puts programs in place to ensure the vaccination levels are up to date. That is not the easiest thing in the world to do. Maybe this is the alternative the chamber needs to consider rather than granting exemptions because it is too hard. That is the easy path to take. The minister is absolutely right. Federal and state governments take that path all the time. The perhaps tougher and a bit more expensive alternative would be to get people in the communities of those at-risk young people and get the job done. There is an alternative that is a third path that is just to do the job that needs to be done—that is, get into those communities. I have heard the argument from around the chamber—I think the figures back this up—that a lot of those at-risk children are unvaccinated not because of a lack of intent, but perhaps because of a lack of opportunity or a lack of understanding. We have seen figures, certainly at the briefings provided by the minister, that show that a lot of those communities have higher vaccination rates than do a lot of very well-off communities, where it is, I think, a quite misguided choice and certainly a choice that I think puts at risk the rest of the children's community. But there is an alternative to exempting those people, and that is engaging with them and making sure that vaccination is available and that the information is given. The government has presented a binary choice, but I do not think it is a binary choice at all. It is open to the chamber to demand that the government step up and fulfil that duty to get those kids vaccinated in another way.

Hon SUE ELLERY: The honourable member has characterised this as a binary choice; in fact, that is not what has been put before the chamber. On at least four occasions, but perhaps more, I have indicated to the chamber that it is not just about exempting the child from the program; it is also about the follow-up that the Department of Health will provide. If all we were doing was exempting a child from that educational setting, the member would have a sound argument, but that is not all we are doing. I have already outlined to the chamber the follow-up that will occur and the additional money that has been provided to the WA Country Health Service to ensure that in regional areas that follow-up will not be too much of a financial burden on the health resources. It is not that the government's intervention ends with the exemption. That is actually the beginning of the follow-up to try to maximise the level of vaccination.

Hon Dr Steve Thomas: In my view, the follow-up is coming too late. If it is starting at the exemption, it is too late. If you were starting your follow-up before you got to the exemption point, you might actually avoid the need for the exemption.

Hon SUE ELLERY: I understand the point the member is making; it is well made. But it assumes that the Department of Health does nothing to lift vaccination rates before a child turns up to enrol at kindy or a childcare centre, and that is not the case either.

Hon MICHAEL MISCHIN: I want to indicate my reasons for supporting Hon Rick Mazza's amendment. Everything that has been said by the minister has confirmed my view that another approach is necessary in this case rather than the one that has been adopted by the government. We were told in the second reading speech at the start of this debate that the objective of the bill was to increase immunisation rates to 95 per cent. With respect, that is a nonsense objective on its own. Picking an arbitrary figure simply to achieve it is worthless without it being underpinned by a genuine health objective. I am persuaded from all the evidence that I have seen that that is a worthwhile objective to try to achieve through the methods that have been adopted if it means that there will be an increase in immunisation rates by some means of prodding or compulsion—some carrot and stick approach—to improve the health of the community and this particular demographic in the long term. But it astonishes me to then be told that this is not really a health objective alone and that, in fact, right from the beginning it was a balancing exercise between health and education. Right from the beginning, the second reading speech was framed in terms of the importance of government responsibility to compel people to achieve vaccination for their children, not to give them a choice —

The government has a responsibility to take measures beyond standard initiatives to protect individuals and the community from serious infectious disease.

It was a health objective, and the bill reinforces the message about the need for it.

Hon Alison Xamon mentioned the balance between the right to early education and the right to health. I think that is misconceived. Those are made-up rights. Rights can be framed around anything. We are trying to encourage these children to get into education as long as they do not fall within the exempt categories, in which case we do not care. If they do not fall within the exempt categories, we do not care whether they have early education; we will force the parents to vaccinate their kids as a precondition! So much for the right to early education. It appears that they do have a right to it, and they ought to be encouraged to do it, as long as they fall within all the various

exempt categories. We have an exemption for a class of children prescribed by the regulations for the purposes of this definition, which could be anything. I asked during questioning yesterday what an educationalist was so that I could understand the qualifications of those who were involved in setting this balance, but the minister could not tell me. There was a look of scorn and she said, “You’re really asking me that?” Yes, I was, and I still do not know what an educationalist’s qualifications are to be able to set this balance. I know that the minister rolled her eyes. It was good to see that at least the intellect was engaged, as well as the emotions, but I still did not get an answer about what that was. We are told that an educationalist will govern this alleged health policy. This has all the makings of the sorts of problems that are dealt with in the Family Court when parents separate. The father of this bill allegedly is Hon Roger Cook, the Minister for Health. There is a joint parent, and that is the Minister for Education and Training. They put up a joint submission, but somewhere along the line, they got divorced and now instead of being a health initiative, it is an education initiative. The child of this marriage is being garbed in the clothing of education and trying to get education as the priority for at least one group of, as we are told, disadvantaged and vulnerable children. That is the criteria. Disadvantaged? I can understand that, but that is relative. Those who will be disadvantaged in this will be those whose parents will choose that the risk, rightly or wrongly, of vaccinating their children is too high a price to pay, and their children will not get the education that apparently is so important to everyone else. Vulnerability is a nice catchphrase, just like educationalist. Vulnerable to what? We have not been told, yet those are the criteria that will govern the regulation-making power into the future.

There has been no clarity about the number of children who will be involved in this exercise and be exempted. I would have thought it would be self-evident that the government, if it was going to put forward in this place these propositions as a basis for widespread exemptions from a blanket rule with no qualifications, should come prepared. They are the obvious questions that members would ask. Hon Nick Goiran foreshadowed it last night. We were told once again by this government that it cannot make up its mind whether this is an education bill or a health bill, how those two sometimes conflicting initiatives react and interact, or how a balance is to be struck sensibly between those competing imperatives. It cannot tell us anything about how that is to be struck in a sensible way. It is either a health initiative, which justifies, in the right circumstances, compelling citizens to do something for the greater good, or an education initiative, whereby we ought to try to encourage people, or not discourage them, from entering their children in the education system at an early stage, but the government cannot have it both ways.

There are other ways of going about this exercise, and the minister has recognised that herself. She mentioned the legislation in Victoria and New South Wales. She mentioned that there were provisional enrolments. I would have thought that that would be a sensible way of getting every child into early education and then using all the resources of government to try to encourage them to a particular end, which is immunisation, but for some reason that has been rejected and we have not heard any explanation about why, so provisional enrolment is out. Apparently, all these exempt children who are disadvantaged and vulnerable can be encouraged to look after their health, or their parents can, or they can otherwise be directed by the department to look after their health and the health of their peers in pre-education centres, but the children who are being compelled cannot be encouraged. Why is one demographic being compelled and another encouraged? If the objective is to achieve these ends for these exempt children by getting them into the system and persuading them, their parents and guardians of their interests, why would that not apply to everyone? I have had no explanation for that. There has not even been an attempt to approach the problem from the avenue of encouragement or of trying to get all children into the education system. Some can apparently be sacrificed and some cannot.

I find that amazing. It appears that we are not talking about a health measure; we are talking about an educational measure with a health initiative grafted onto it under which the government is prepared to sacrifice the interests of some children to the interests of others. I find that an astonishing approach by a government. To say that a balance needs to be struck is all very well, but we have had no clarity as to how that balance is to be struck or what objective standards we can in due course apply to any regulations that are brought before this place for disallowance. There has been no clarity other than “vulnerability”, in the vaguest sense, and “disadvantage”, also in the vaguest sense. Otherwise, as Hon Nick Goiran has pointed out, the government will have carte blanche to do whatever it likes and to react to any particular pressure group it chooses to favour.

The only justification for this legislation is a health one. That being the case, I am inclined to support Hon Rick Mazza. There are other options the government could avail itself of that have been done in other states, but we have not heard any reasons for why that cannot or ought not be done in this state, so I support Hon Rick Mazza’s amendment; it at least gives some consistency and some principle to this confused mess of policy.

Hon MARTIN ALDRIDGE: I rise to make a contribution on behalf of the Leader of the Nationals WA in this place to the amendment that has been moved by Hon Rick Mazza, and indicate that the National Party will not be supporting it. I want to take a moment to outline the reasons why we will not support it.

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Clause 8 is probably the clause that has created the greatest need for us to focus on aspects of this bill. When I read the minister's second reading speech and saw the list of exemptions, I thought to myself, "Who's going to be left once these exemptions are applied?" As I learnt in the briefing—this was confirmed in the minister's reply to the second reading debate—the exemption categories proposed by the government to be contained in regulations are based on the Victorian model. The Victorian experience suggests that 1.1 per cent of kindergarten children are exempt, of which one-third are exempt on medical grounds. Those figures are consistent with what I heard in the briefing, noting also that there was other data that the state of Victoria was unwilling to share. That would put total exemptions at somewhere less than one per cent.

In my contribution to the second reading debate, I said that when considering the effectiveness of government strategies in such circumstances, a carrot rather than a stick approach is more likely to succeed. I recognise that we are getting towards the pointy end of scrapping for small percentages in an attempt to lift the immunisation rate to 95 per cent. I also made reference to budget paper No 2, page 274. There is no better example of kindergarten students interacting with the education system than what is outlined under "Outcomes and Key Effectiveness Indicators" on that page. In 2018–19, two-year-old Aboriginal children had a vaccination rate of 81.8 per cent, which is a woeful figure. We then see that the vaccination rate for five-year-old Aboriginal students was 95.9 per cent, which is actually a higher rate than that for non-Aboriginal students in the same year. The only explanation for the difference can be the interaction of the older children with the education system.

I know that the Leader of the National Party in this place has exchanged letters with the Minister for Health, and the Minister for Health has given assurances of extra health resourcing in the community as well as in schools, including for follow-up vaccinations and targeted vaccination programs in some of our communities, particularly regional communities. After weighing up all those things, I think the best approach is to have flexibility for the government to determine the exempt classes. The focus of the conversation has been very much about which initial classes of children are to be exempt. My concern is about the future. The exemption category may grow, but it may also contract. I hope there will be a time when some of the children listed as "vulnerable" are no longer vulnerable, so that exemptions may be withdrawn. That may not happen in the near future, but bringing legislation back to Parliament simply to effect such a change would be unlikely. The more likely outcome would be to wait for a bill that addresses other things, and this may be one of the consequential amendments that is tacked on. This amendment will take away the government's flexibility to respond to those changes.

Given that Victoria was unwilling to share more data than it had already shared, we sought an amendment from the government that is now on the supplementary notice paper and will be considered later today, relating to the reporting of exemptions. I said in my contribution to the second reading debate that members will still have the opportunity to scrutinise and disallow regulations made by the government. If that amendment is supported by the chamber, we will also see some annual reporting of those exemptions, so we can track, on an annual basis, their effect on the classes of children whose exemptions are issued by regulation, should this amendment moved by Hon Rick Mazza fail.

With those few words, it is our view that the best path forward is one in which the government is able to issue regulations and also respond in time to those classes of children either contracting or expanding. Ultimately, only time will tell whether this bill will be effective in driving small increases in the vaccination rate, but it is clear that the interaction as early as possible of vulnerable students, particularly vulnerable Aboriginal students, with the education system is a clear driver of increasing vaccination rates. The National Party will not be supporting this amendment.

Hon AARON STONEHOUSE: I would like to comment on the amendment we are considering. I actually quite liked Hon Michael Mischin's categorisation of the Public Health Amendment (Immunisation Requirements for Enrolment) Bill 2019. If I might expand upon that a little, this is the misshapen love child of the marriage between the health portfolio and the education portfolio. I am certainly not a fan of many of the components of this bill. It raises some serious issues about how we balance different policy objectives between clinical health outcomes and education outcomes. We need to keep in mind that the public health outcome is not necessarily a zero-sum game. There are competing objectives and social outcomes that we must consider. If the objective is to reach 95 per cent immunisation at any cost, we might as well put on jackboots, kick down people's doors, take their children off them and force immunisation. If the policy objective is a 95 per cent immunisation rate no matter what, that would be the route we would go down. That is clearly not the case. I do not think anyone wants to go down the route of coercive medicine or coercive treatment.

Hon Martin Aldridge interjected.

Hon AARON STONEHOUSE: Maybe some people would. It seems to me that we have to balance these things. In some cases, early childhood education may be just as important, or in some cases more important, to children of certain cohorts and demographics than immunisation may be at that time. From the explanation given by the

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Minister for Education and Training, it seems that excluding certain children from enrolment may be counterproductive in health outcomes anyway, because if they are not enrolled, we are not able to track those children and know who is not immunised, and we cannot follow up those children. As a previous member said, we are at the thin edge of the wedge here. We are chasing that last percentage by going after certain groups and making sure that they cannot be excluded. There are some other problems with the way the government is going about these exclusions, as were raised by Hon Nick Goiran. That is leaving it up to subsidiary legislation.

Just last night, I gave an example of why I think few things should be left to subsidiary legislation. The Tobacco Products Control Regulations disallowance motion last night is a classic example. Regulations were gazetted, and they were tabled several days later. No-one knows that they were tabled. No-one knows what they do. Industry is not consulted. If we are lucky and we happen to be paying attention when the papers are tabled in the morning, we may notice it and move a disallowance motion; otherwise, subsidiary legislation does not get the same level of scrutiny that primary legislation gets here. This is a classic example. We are dealing with primary legislation and going through it clause by clause, in excruciating detail, I am sure, for the minister. We are making sure that no stone is left unturned. Subsidiary legislation does not get that scrutiny. Three months after a notice of disallowance motion is given, we are given 20 minutes to debate the matter and the question is merely whether to allow or disallow. I am sceptical of leaving things up to subsidiary legislation.

I like the approach that the government seemed to be taking not too long ago. On supplementary notice paper 127, issue 5, we can see an amendment in the minister's name to include the classes of exempted children in the primary legislation, which I think is perhaps preferable. It is maybe not quite as flexible, but it at least lays out for us now those different classes of children, and we can then give it the level of scrutiny that it deserves. The proposed amendment by the minister includes paragraph (i) —

a child who is in a class of children prescribed by the regulations for the purposes of this paragraph.

It also leaves in that junior Henry VIII clause, to borrow a term coined by Hon Nick Goiran, allowing the government to add to that list of exempted children. Would that be needed if we were laying them all out in the primary legislation? I wonder whether the government has in mind other classes of children or whether that is merely because we do not know what other circumstances may arise in the future. Maybe if there is some change in the way welfare is issued by the commonwealth and we want to insert a new class of child whose parent is a recipient of a new type of welfare from the commonwealth, having the regulation to do that would be ideal. If there is a concern about leaving this up to regulation, I would much rather have removed the clause to allow prescribed classes of children to be exempted and included the classes of children to be exempted in the primary legislation. I think that would be a much safer way to go about it, rather than removing the option to exempt children entirely from either primary or subsidiary legislation.

Looking at the merits of this amendment on its own, simply to delete lines 24 to 26 and remove the ability to prescribe an exempt child, it seems to me that this might be counter to health outcomes in the end anyway.

Hon Sue Ellery: That is not what we are dealing with.

Hon AARON STONEHOUSE: Are we not? We are dealing with Hon Rick Mazza's amendment on page 6, lines 24 to 26, to delete the lines and delete the ability to prescribe exempt children.

I have some issues with the ethics around this bill and that it skirts a little too closely to coercive health for my liking. I also have an issue with such broad exemptions being applied. It seems unnecessary that we would exempt Aboriginal and Torres Strait Islander children when as five-year-olds they have the highest rate of immunisation, but not at younger ages. Some of these exempt classes perhaps need to be teased out a bit more and there might be more questions about them. This measure, which is denying access to childcare services on the basis of someone's immunisation status, sits uncomfortably with me. I am not comfortable with that measure, although I am certainly pro-vaccination. Do I want to have carved out certain exemptions for that measure considering I am uncomfortable with the measure to begin with? I prefer consistency and for the law to be easy to understand; having a long list of exemptions certainly complicates the matter. Again, if we look at this with a public health outcome in mind, we can see that having the ability to enrol these children and then follow them up is a less coercive way to ensure that those children get vaccinated and immunised, as opposed to the alternative, which is to say, "No child care for you unless you are immunised", which, in my view, puts more compulsion on parents. I certainly prefer the softer, more of a nudge, approach to the heavy-stick approach. On that basis, I would like to leave lines 24 to 26 as they are for now and then perhaps when we discuss the minister's amendment, we can discuss —

Hon Sue Ellery: To help the member —

Hon AARON STONEHOUSE: Once we have resolved the debate on this amendment, we can get back to discussing the clause proper and whether certain categories of children should be exempt. For now, I will not be supporting the amendment.

Hon Nick Goiran; Hon Sue Ellery; Hon Rick Mazza; Hon Dr Steve Thomas; Hon Michael Mischin; Hon Martin Aldridge; Hon Aaron Stonehouse; Hon Alison Xamon; Hon Donna Faragher

Hon RICK MAZZA: I want to make a couple of comments before we put this amendment to the vote. I have heard from contributors—I thank them for the contributions that they have made—that, firstly, we are saying to one part of the community, “You have to be vaccinated”, and to another part of the community, “You don’t have to. We’ll catch up with you a bit later.” Catching up with someone later does not resolve the issue of them exposing to disease children who are medically unable to be vaccinated. If the purpose of the bill is to increase the vaccination rate, surely it being a prerequisite to their application or to their commencement at kindergarten would increase those rates anyway. Many in the vulnerable child category would be vaccinated in any case, so that is fine, or those who want to attend kindergarten or day care would go ahead and get vaccinated. Increasing the vaccination rate could be achieved by requiring it up-front, rather than after the fact; that is the point I am trying to make. I know that we have been talking about balance, but, at the end of the day, health trumps education.

Hon NICK GOIRAN: I will follow up on a comment made by my good friend Hon Martin Aldridge and I respect the position that has been taken by the National Party, which I understand will not be supporting Hon Rick Mazza’s motion. I want to point out one thing, and I say so knowing that there is more than one reason that we might not want to support the amendment moved by Hon Rick Mazza. Reference was made to information that was provided to the National Party that was also provided to me in briefings prior to this bill being brought before the chamber. That information that the government provided to us was about the percentage of Victorian children subject to the exemption. The government told the National Party, as it told the opposition, that in Victoria, in which similar legislation has been implemented, approximately 1.1 per cent of children enrolled in kindergarten are eligible for an exemption, and one-third of those are exempt for medical reasons. I point out to members that today we have been provided with fresh information from the government that six per cent of kindergarten enrolments are Aboriginal students. Therefore, whatever information the government has about Victoria is utterly unhelpful to us in this debate. We can only assume that there are many more Aboriginal children in Western Australia than there are in Victoria. I do not think that would be stark news to anybody. The point is that if one per cent of kindergarten children in Victoria are eligible for an exemption, the figure in Western Australia must be much higher—it must be at least six per cent. I have asked the minister to provide me with information about the percentage, and that has not been provided. I fear that the percentage of children enrolled for kindergarten who will be eligible for an exemption will be quite large. I do not know what the percentage is. The government does not know and has not been able to tell us. However, we know that the figure must be higher than six per cent.

Division

Amendment put and a division taken, the Chair casting his vote with the ayes, with the following result —

Ayes (11)

Hon Jim Chown	Hon Nick Goiran	Hon Simon O’Brien	Hon Dr Steve Thomas
Hon Peter Collier	Hon Rick Mazza	Hon Robin Scott	Hon Ken Baston (<i>Teller</i>)
Hon Donna Faragher	Hon Michael Mischin	Hon Charles Smith	

Noes (20)

Hon Martin Aldridge	Hon Stephen Dawson	Hon Laurie Graham	Hon Aaron Stonehouse
Hon Jacqui Boydell	Hon Colin de Grussa	Hon Colin Holt	Hon Matthew Swinbourn
Hon Robin Chapple	Hon Sue Ellery	Hon Alannah MacTiernan	Hon Darren West
Hon Tim Clifford	Hon Diane Evers	Hon Kyle McGinn	Hon Alison Xamon
Hon Alanna Clohesy	Hon Adele Farina	Hon Samantha Rowe	Hon Pierre Yang (<i>Teller</i>)

Pairs

Hon Colin Tincknell	Hon Martin Pritchard
Hon Tjorn Sibma	Hon Dr Sally Talbot

Amendment thus negatived.

The CHAIR: We now return to the substantive question, that clause 8 do stand as printed.

Hon NICK GOIRAN: Clause 8 seeks, among other things, to insert into the act section 141A, “Terms used”. Why is it necessary to provide a definition of “child”?

Hon SUE ELLERY: The definition of “child” is “means a person who is under 18 years of age”. I am advised that is the same as the definition that appears elsewhere in the Public Health Act 2016. We want to be consistent with the language and the definitions in that act.

Hon NICK GOIRAN: If that definition is provided elsewhere in the Public Health Act, why are we seeking to insert it now?

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Hon SUE ELLERY: This clause seeks to delete division 8, which currently covers only section 142 of the Public Health Act, and substitute a new division 8. This has effectively been reformatted to take account of what is in section 142. We need to use the same definition and reformat the arrangements to take account of those structural changes in the Public Health Act.

Hon NICK GOIRAN: If line 15 was deleted and we did not have the benefit of this definition, how would “child” be interpreted?

Hon SUE ELLERY: I am not sure that I understand the point the honourable member is trying to make. In division 8, “Regulations relating to immunisation status of children”, in the existing Public Health Act, the definition under section 142(1) states —

child means a person who is under 18 years of age;

In the clause before us now, Parliamentary Counsel has taken those elements that need to stay as part of the existing section 142 and transposed them into what will be the new section 141A.

Hon NICK GOIRAN: Yes, the minister said that earlier. If this line were deleted, where it says “child means a person who is under 18 years of age”, how would “child” be interpreted without the benefit of this statutory definition?

Hon SUE ELLERY: We might need to look at the provisions of the Interpretation Act, but we would have to rely on the ordinary person’s understanding of the word “child”. I am advised that elsewhere in the Public Health Act there are definitions of “child” in the same terms but they apply to different provisions in the Public Health Act. It is not clear to me, but if there is some issue that the honourable member is concerned about, I can try to get some more precise advice. It is not clear to me what the actual issue is.

Hon NICK GOIRAN: It seems to me the definitions are necessary, but if the government says it is absolutely crucial that this definition is here, but has no capacity to articulate why, let us move on. What period is intended to be prescribed to determine whether an immunisation certificate is current?

Hon SUE ELLERY: It is two months. That is the existing period that appears in the regulations.

Hon ALISON XAMON: I want to ask some questions about the definition of “current”. I understand that the minister said it is within two months. What will happen when someone presents to enrol a four-year-old child but the vaccination regime has changed as to what is required as compulsory vaccination, so they may not be up to date? At the age of four years, they may have complied with the vaccinations according to the schedule that had been laid out in the previous four years. What happens if they present and it turns out that the vaccination schedule has changed and they have not had the full quota of vaccinations? Does the minister understand what I am asking?

Hon SUE ELLERY: They are not up to date so they will not be enrolled.

Hon ALISON XAMON: I am concerned about that. That would not have happened because of any deliberate decision by the parent or any wrongdoing or anything like that. What sort of grace period will at least be made available to the parent and those children so they can enrol? They do not fall under any of the identified exemption categories of vulnerable children—who do exist—as per the regulations, but say it is me, a regular parent, who has complied with four years’ worth of vaccinations but in the meantime the schedule has changed and my child is not up to date. I may not even realise that until I present to enrol my child. Will I simply be denied the opportunity to enrol my child?

Hon SUE ELLERY: The provisions of the bill before us are quite clear. The child needs to be up to date with whatever current regime of vaccinations is required. I suspect that parents, like the member, would actually seek to enrol their child early and would get that information early and would be able to take steps to ensure that they could proceed with enrolment. Let us say a parent took their child to enrol the day before. They would be asked to provide the required vaccination information. If they were not able to demonstrate that, they would be provided with an enrolment information kit about what was required. They would also be provided with information about where to get further assistance, if required, as I have already outlined a couple of times in the course of debate.

Hon ALISON XAMON: I can see how that would roll out. A parent would potentially have a bit of time to organise that; for example, if a child were starting kindy. I am less persuaded that that would be helpful if someone suddenly gets a job and needs to be able to put their child into child care. They could suddenly find themselves, without any ill intent on their part—even if they have committed to ensure that their child is going to receive those catch-up vaccinations—unable to enrol their child at all in child care. I want to confirm that that is the intent of the legislation. These children are not subject to any of the vulnerable children exemptions; these are parents who, up until that date, have attempted to keep up to date with the known vaccination regime but will be simply denied the opportunity to use those childcare arrangements.

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Hon SUE ELLERY: I would not use the words “simply denied”. They will actually be provided with assistance and information on how to ensure that their child is appropriately vaccinated.

Hon ALISON XAMON: I hear that, but can the minister confirm that they will not be able to enrol their child at that time?

Hon SUE ELLERY: As I have already said, that is correct.

Hon ALISON XAMON: I want to ask some questions about the definition of “immunisation status”. The bill refers to “the status of having been immunised against”, which is fairly straightforward: a child has either been immunised or not. The definition also says —

... or having acquired immunity by infection from, all or specified vaccine preventable notifiable infectious diseases; ...

How will that be recorded and how will that be presented to any institution to which someone presents for enrolment; for example, a child who has had all the vaccinations but potentially had measles or rubella before the age of 12 months and hence may not need to have that vaccination? That will not appear on the Australian Immunisation Register. What mechanism is used to demonstrate that that child has acquired immunity? I am talking about a child who, by virtue of having contracted the disease at some point, has acquired immunity. Presumably that could be demonstrated because the child had gone to the doctor or the hospital at some point and been diagnosed. That means they may not need that vaccination. How do parents go about demonstrating, for the purpose of the immunisation record, that the child has acquired immunity?

Hon SUE ELLERY: It is actually recorded on the Australian Immunisation Register’s “Immunisation History Statement”. That will show that a child is up to date if the child has either a registered medical contraindication or natural immunity to a particular vaccination under section 9(c) of the commonwealth act. That would have been recorded on their AIR by a medical practitioner.

Hon NICK GOIRAN: The minister mentioned earlier that in the definition of “current”, the prescribed period is intended to be two months, which is the same at the moment. Why do we not simply put “two months” in the bill?

Hon SUE ELLERY: For some reason, there might be some emerging public health advice that says it is necessary to change that. Rather than putting it in the act and having to have a piece of legislation come before the Parliament to change that, it is far more flexible to have two months as a prescribed number in the regulations.

Hon NICK GOIRAN: But this is simply the time in which a certificate will be deemed to be current. If it has been issued in the last two months, under Western Australian law, for the purposes of enrolments, that immunisation certificate will be deemed to be current. It does not seem to me that it has anything to do with emerging public health advice, because time is needed to determine whether they needed to have had their certificate in the last 24 hours, week, month, two months or six months. This government has decided to maintain the status quo, which is two months. If that has worked well, I cannot see why we would not put that in the bill now.

Hon SUE ELLERY: It is currently in regulations. It has always been in regulations. The government wants to retain that flexibility. If there is some reason for that to change—I do not have an example to give the member—we want the capacity to do that without having to bring a piece of legislation before the Parliament.

Hon NICK GOIRAN: Courtesy of the chamber’s decision to defeat the amendment moved by Hon Rick Mazza, the government will now have a massive capacity to exempt children in Western Australia. I understand that it is the government’s intention to prescribe eight classes of children to be exempt. Would the government consider these classes of children to be educationally vulnerable?

Hon SUE ELLERY: In the debate last night, the honourable member will recall that—because the honourable member requested it—I explained each of the proposed exemptions.

As the member will recall, one of the expressions that I used in my descriptions of those—homelessness, for example, or being a holder of a particular visa—is that it may sometimes be an indicator of a particular disadvantage, meaning that it may be less likely that either the family can demonstrate vaccination or can actually get the vaccinations done. I set out for the chamber the specific reasons why they may be captured under the category of educationally disadvantaged as well, because some of those things, like homelessness et cetera, can be an indicator of other disadvantage.

Hon NICK GOIRAN: Thank you, minister. I think that is a helpful explanation. Effectively, what the minister is saying is that the eight classes of children can be categorised as not only educationally vulnerable, but also educationally disadvantaged —

Hon Sue Ellery: Honourable member, will you just take it by interjection?

Hon NICK GOIRAN: Yes.

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Hon Sue Ellery: I specifically use the word “may” because it’s not always the case, but that may be an indicator.

Hon NICK GOIRAN: Are there any other indicators of educational vulnerability or disadvantage that are not captured by the proposed eight classes of exemptions?

Hon SUE ELLERY: There may well be. No proposal is being currently considered to add any additional classes, but there may well be a view taken at some time in the future that there is.

Hon DONNA FARAGHER: My question is on clause 8. I think this is probably the best time for me to raise it. It is in relation to some matters that I indicated when we were dealing with clause 1. This is on the issue of having the ability to identify those students whose families are seeking to enrol them and who do not fall within an exempt category and are therefore denied enrolment until such time as their vaccinations are up to date. I specifically refer to kindergarten children, not day care and others. Those children whose families are seeking to enrol them today will not start school until February next year. There is ample opportunity within that time, one might say, for the children to have their immunisation status brought up to date. One of the concerns that I have, and it has been expressed by others in this place, is that there appears to be quite a significant focus on follow-up for those students who would be able to enrol but who would be deemed exempt. I just want some clarity. My first question to the minister is: in terms of the follow-up that the minister is referring to, whereby the Department of Health will undertake all the necessary follow-ups and checks once the children have enrolled, will that be prescribed in the regulations or will that be through guidelines?

Hon SUE ELLERY: It is through the Department of Education guidelines.

Hon DONNA FARAGHER: If family X comes to a school and we find that they do not fall within any of the exempt categories, they will not be allowed to enrol, but they will have provided all the other relevant information that is required of them to enrol the child at the school. I appreciate that as they are not enrolled, they do not necessarily need to have child’s name and their family name recorded, but if they chose to do so, would there be a mechanism that could be applied to allow those children to be followed up by the Department of Health long before the new year commences? I am sorry that I am going a little bit all over the place, because it is a bit of a tricky way to go, but I feel that we have a cohort of children who do not fulfil the exempt category who will turn up, the family will seek to enrol them, and they will be told no. What is the follow-up with them?

Hon SUE ELLERY: I thank the honourable member for raising this issue. I undertook to see what we could do to accommodate that, and whether it was possible to do it in the act or to do it in any other way, so I am happy to advise the following and to give the member an undertaking that we will include a proposal that captures what the member just described in the guidelines. It is not possible under the act for the department to be compelled to collect, hold and manage information for students who are not enrolled. Under the act, the information that the department controls is information about enrolled students. However, it is possible to put something in the guidelines that if the parent consents, the schools can offer to the parent to provide the child’s name, date of birth and the parent’s name and contact details to the Department of Health. This could be one of the supports that is offered to those parents at the time they are told that their child cannot be enrolled because their child’s immunisation is not up to date. Parents will be directed to the Health website for assistance and provided with information on how to contact the Department of Health. We will amend the guidelines to ask parents to complete a form with the child’s name, date of birth and the parent’s name and contact details, and sign it, which would provide consent for the school to contact the Department of Health with these details for the purposes of it directly following up with that family. I am happy to give the member my commitment that, on passage of the bill, our enrolment policy and procedures will be amended accordingly.

Hon DONNA FARAGHER: I appreciate the response from the minister. I am not sure how many families will take up the offer, and I accept that, but I think it at least provides a further opportunity for the Department of Health, when those families are willing, to follow them up. Given that there is such a strong focus on exempt children, it is as important, from an early childhood and early education perspective, to focus also on those children who would otherwise not be deemed exempt. I thank the minister for her undertaking, and I appreciate that once those guidelines have been updated, I will receive a copy in due course.

Hon NICK GOIRAN: Moving to proposed new section 141B, I note that the bill will create obligations upon a responsible person. How will a non-parent or non-guardian know whether they are deemed to be a responsible person?

Hon SUE ELLERY: The text in the bill immediately above proposed section 141B defines a responsible person as —

- (a) a parent of the child; or
- (b) a guardian of the child; or
- (c) another person who has responsibility for the day-to-day care of the child.

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I am advised that schools deal with this regularly, and it could be in a variety of ways. It might be a letter from the child protection division of the Department of Communities. It might be a Medicare card with the name of the person and the name of the child on it. Schools use a variety of mechanisms to verify the responsible person, because this is not an unusual event.

Hon NICK GOIRAN: What are the times that are intended to be prescribed in proposed section 141B(2)(b) and why can these times not be set out in the bill?

Hon SUE ELLERY: None are proposed at the moment, but further consultation is happening, particularly with schools about what, administratively, might be an appropriate period.

Hon NICK GOIRAN: It is a little odd, because the minister mentioned the massive consultation process that she and the government have embarked on. I think she referred to the consultation regulatory impact statement, and then boasted about how the government had provided to the opposition the decision regulatory impact statement.

Hon Sue Ellery: I did not boast. I only said that we had done that.

Hon NICK GOIRAN: Yes, the government did all that—a massive consultation—and then despite the fact that that massive consultation has taken place, no-one at this stage is able to identify any other time, and now there will be some further consultation. It just seems a little odd that after all that consultation, we still need to do further consultation, because we cannot determine what the period is and why it would need to be otherwise set out in the bill. Nevertheless, let us press on.

Why does proposed section 141B(3) leave the production of the current immunisation certificate as discretionary? Should the section read “must” rather than “may”?

Hon SUE ELLERY: It was to provide certainty and clarity, so that the word “give”, which appears in proposed subsection (2), can be appropriately enforced, so that the person in charge may require the responsible person to actually produce the current immunisation certificate. They might not need to.

Committee interrupted, pursuant to standing orders.

[Continued on page 4650.]

Sitting suspended from 4.15 to 4.30 pm