

11 February 2019

The Hon Brad Hazzard MP  
NSW Minister for Health  
Parliament of New South Wales  
52 Martin Place  
SYDNEY NSW 2000

Dear Minister Hazzard,

**Re: Request urgent regulatory amendment to  
*Public Health Regulation 2012* addressing an existing permanent  
exemption for all Aboriginal and Torres Strait Islander children to  
not be immunised while attending any NSW early childhood education  
and care services**

I wish to bring to your attention what appears to be a regulatory irregularity that enables Aboriginal and Torres Strait Islander children to be exempt from being immunised while attending any NSW early childhood education and care approved services.

This regulatory irregularity puts NSW-based early childhood education and care services in a most conflicted position where all other children and their families may be exposed to an unimmunised child. Moreover, should any NSW-based early childhood education and care service refuse to enrol an unimmunised Aboriginal and Torres Strait Islander child, that service could be the subject of a racial discrimination complaint.

The *Public Health Regulation 2012*'s s44a(1)(e) suggests a permanent exemption for all Aboriginal or Torres Strait Islander children from immunisation. This is opposite to the NSW Health's Immunisation Enrolment Toolkit where on page 4's section 1.3, it states Aboriginal and Torres Strait Islander children are allowed temporary exemptions to the immunisation enrolments up to a 12 week period.

NSW Health formally has advised us that they are “... *aware of this inconsistency and will be reviewing it in 2019. In the interim, providers should continue to request approved forms for Aboriginal children in the 12 weeks after enrolment, noting that in practice there is no mechanism to de-enrol children in the event that approved documentation is not provided.*”

This presents early childhood education and care providers with a grave dilemma – to risk being publicly accused of racial discrimination, or to risk negative health impacts on other children emanating from an unimmunised child.

Would you please advise what the NSW Government will do to resolve this issue urgently?

Thanking you in anticipation.

Yours sincerely,



Chiang Lim  
CEO

encl 1. Legal advice from Belinda Kenneally dated 4 February 2019  
2. Advice from NSW Health dated 22 January 2019

cc The Hon Sarah Mitchell MLC, NSW Minister for Early Childhood Education, NSW Minister for Aboriginal Affairs

## Donna Wehbe

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**From:** Anne Allen (South Eastern Sydney LHD) <Anne.Allen@health.nsw.gov.au> on behalf of SESLHD-PublicHealthUnit-IMMTeam <SESLHD-PublicHealthUnit-IMMTeam@health.nsw.gov.au>  
**Sent:** Tuesday, 22 January 2019 9:38 AM  
**To:** Donna Wehbe; SESLHD-PublicHealthUnit-IMMTeam  
**Cc:** Sonya Ennis; Dennis Meijer; Mark Ferson (South Eastern Sydney LHD)  
**Subject:** RE: Immunisation Enquiry

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Donna,

The advice on your query from HPNSW is as follows:

“Please advise Donna at ACA that we’re aware of this inconsistency in the legislation and will be reviewing it during 2019. In the interim, providers should continue to request approved forms for Aboriginal children in the 12 weeks after enrolment, noting that in practice there is no mechanism to de-enrol children in the event that approved documentation is not provided. If ACA intends to communicate to members about this, please ask that they run any wording by us first please.”

Kind regards

*Anne Allen*

Immunisation Coordinator (CNC)  
([SESLHD-PublicHealthUnit-IMMTeam@health.nsw.gov.au](mailto:SESLHD-PublicHealthUnit-IMMTeam@health.nsw.gov.au))



Planning, Population Health and Equity,  
South Eastern Sydney Public Health Unit  
Locked Mail Bag 88  
Randwick NSW 2031  
Ph: 9382 8333 Fax: 9382 4309

SESLHD Public Health Unit Website: <https://www.seslhd.health.nsw.gov.au/public-health>

*The South Eastern Sydney Local Health District, Public Health Unit pays respect to the Aboriginal Elders past & present and would like to acknowledge the traditional owners of the land on which we work.*



South Eastern Sydney Public Health Unit is now on Twitter!  
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**From:** Donna Wehbe [mailto:Donna.Wehbe@childcarealliance.org.au]  
**Sent:** Friday, 18 January 2019 2:47 PM  
**To:** SESLHD-PublicHealthUnit-IMMTeam <SESLHD-PublicHealthUnit-IMMTeam@health.nsw.gov.au>  
**Subject:** RE: Immunisation Enquiry

Dear NSW Health,

The Childcare Alliance NSW is the peak body for 1,600 child care services across NSW.

One of our members has highlighted what appears to be conflicting regulatory information.

On Immunisation Enrolment Toolkit (see <https://www.health.nsw.gov.au/immunisation/Publications/immunisation-enrolment-toolkit.pdf> page 4 undersection 1.3), you will find that it states Aboriginal or Torres Strait Islander children are allowed temporary exemptions to the immunisation enrolment requirements up to a 12 week period.

However, under the Public Health Regulation 2012 s44a (1)(e), it suggests that it's a permanent exemption (not up to 12 weeks) for all Aboriginal or Torres Strait Islander children. (see [https://www.legislation.nsw.gov.au/#/view/regulation/2012/311/part7/div2/sec44a?autoquery=\(Content%3D\(\(%22public%20health%20regulation%22\)\)\)%20AND%20\(\(Type%3D%22act%22%20AND%20Repealed%3D%22N%22\)%20OR%20\(Type%3D%22subordleg%22%20AND%20Repealed%3D%22N%22\)\)%20AND%20\(%22Historical%20Document%22%3D%22%22\)&dq=Document%20Types%3D%22%3Cspan%20class%3D%22dq%22%3EActs%3C%2Fspan%3E,%20%3Cspan%20class%3D%22dq%22%3ERegs%3C%2Fspan%3E%22,%20Exact%20Phrase%3D%22%3Cspan%20class%3D%22dq%22%3Epublic%20health%20regulation%3C%2Fspan%3E%22,%20Search%20In%3D%22%3Cspan%20class%3D%22dq%22%3EText%3C%2Fspan%3E%22&fullquery=\(\(%22public%20health%20regulation%22\)\)\)](https://www.legislation.nsw.gov.au/#/view/regulation/2012/311/part7/div2/sec44a?autoquery=(Content%3D((%22public%20health%20regulation%22)))%20AND%20((Type%3D%22act%22%20AND%20Repealed%3D%22N%22)%20OR%20(Type%3D%22subordleg%22%20AND%20Repealed%3D%22N%22))%20AND%20(%22Historical%20Document%22%3D%22%22)&dq=Document%20Types%3D%22%3Cspan%20class%3D%22dq%22%3EActs%3C%2Fspan%3E,%20%3Cspan%20class%3D%22dq%22%3ERegs%3C%2Fspan%3E%22,%20Exact%20Phrase%3D%22%3Cspan%20class%3D%22dq%22%3Epublic%20health%20regulation%3C%2Fspan%3E%22,%20Search%20In%3D%22%3Cspan%20class%3D%22dq%22%3EText%3C%2Fspan%3E%22&fullquery=((%22public%20health%20regulation%22)))) )

Given that the public health regulation 2012 is a statutory instrument, does it not mean that the Immunisation Enrolment Toolkit is technically incorrect.

Would you kindly advise /clarify so that we can advise our member accordingly.

Thank you in anticipation.

Kind Regards



*(formerly Child Care New South Wales)*

**Donna Wehbe**  
Member Support Officer

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**From:** Meegan Treuberg (South Eastern Sydney LHD) [mailto:Meegan.Treuberg@health.nsw.gov.au] **On Behalf Of** SESLHD-PublicHealthUnit-IMMTeam

**Sent:** Friday, 18 January 2019 2:38 PM

**To:** NSW

**Subject:** Immunisation Enquiry

Good afternoon

Thank you for your immunisation enquiry.

In order to provide a full response please can you send an email to [SESLHD-PublicHealthUnit-ImmTeam@health.nsw.gov.au](mailto:SESLHD-PublicHealthUnit-ImmTeam@health.nsw.gov.au)

Please include:

**Name:**

**Phone number:**

**Email address:**

**Postcode:**

**Details of enquiry:**

Please **provide times** you are available if call-back from a nurse is required:

One of our nurses will provide a **response within 24-48hrs**. If your enquiry is urgent please outline the urgency in your email so that we can prioritise.

In the meantime you may wish to access immunisation resources at the following links:

Public Health Unit website Immunisation pages:

Information for the public

<https://www.seslhd.health.nsw.gov.au/services-clinics/directory/public-health/information-for-general-public/immunisation-information-for-public>

Information for health professionals

<https://www.seslhd.health.nsw.gov.au/services-clinics/directory/public-health/information-for-health-professionals/immunisation-information-for-health-professionals>

Other weblinks

The new NSW Immunisation Schedule

<http://www.health.nsw.gov.au/immunisation/Pages/schedule-changes.aspx>

Childcare vaccination requirements

[http://www.health.nsw.gov.au/immunisation/Pages/childcare\\_ga.aspx](http://www.health.nsw.gov.au/immunisation/Pages/childcare_ga.aspx)

Primary and secondary school vaccination requirements

<http://www.health.nsw.gov.au/immunisation/Pages/Immunisation-in-schools.aspx>

Influenza vaccination for children under 5 years

[http://www.health.nsw.gov.au/immunisation/Pages/seasonal\\_flu\\_vaccination.aspx](http://www.health.nsw.gov.au/immunisation/Pages/seasonal_flu_vaccination.aspx)

Information about different vaccines

<http://www.ncirs.edu.au/provider-resources/ncirs-fact-sheets/>

Catch-up tables (still to be updated for new schedule)

<http://ncirs.edu.au/provider-resources/immunisation-handbook-tables/>

***The digital Australian Immunisation Handbook is now available from***

<https://immunisationhandbook.health.gov.au/>

If you are a health professional you may find it helpful to consult the immunisation handbook - please note this was update in April 2018 and the online version is more up-to-date than the printed version. You can access the online version here: <http://www.immunise.health.gov.au/internet/immunise/publishing.nsf/Content/Handbook10-home>

Kind regards

**Immunisation Team | Public Health Unit**

Randwick Hospitals Campus, Hut 'U' Easy Street, Locked Bag 88, Randwick NSW 2031

Tel (02) 9382 8333 | Fax (02) 9382 8334 |

<https://www.seslhd.health.nsw.gov.au/public-health>

**E:** [SESLHD-PublicHealthUnit-IMMTeam@health.nsw.gov.au](mailto:SESLHD-PublicHealthUnit-IMMTeam@health.nsw.gov.au)

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