

Immunisation and Family Law

Some Australian parents have recently begun to question whether to immunise their children, expressing concerns about possible side-effects risks associated with childhood vaccinations. But what happens if parents are separated and can't agree?

Background

Childhood vaccines, introduced in 1932, are said to have greatly reduced illness and deaths from diseases such as whooping cough, polio, measles and mumps. However, in recent years immunisation rates have fallen amid some parents' fears about the safety of vaccines, whether vaccines have been adequately tested and concerns about vaccines' links to conditions such as autism, sudden infant death syndrome and multiple sclerosis.

Approximately 92% of Australian 5 year olds are fully immunised; however, in some areas the figure is lower than that. Some diseases, whooping cough for example, previously thought to be "extinct", seem to again be on the rise.

The Australian government maintains a register of the vaccinations received by children under 7 years of age. Parental eligibility for some family payments is now linked to children's immunisation status, and in some circumstances unimmunised children may not remain at school or daycare if there is an outbreak of a particular disease. Exemptions can be obtained if there are approved medical reasons why the child is not immunised.

Who gets to decide?

It is hoped that parents would agree on whether or not to vaccinate their children, perhaps after discussing any concerns with their family doctor. But what if they can't agree? Who gets to decide?

Equal parental responsibility

In the absence of a Court order, both parents, whether separated or not, have equal parental responsibility for their children. In addition, except in unusual situations, the Court normally orders that both separated parents have equal shared parental responsibility.

What is equal shared parental responsibility?

Equal shared parental responsibility means that the parents both have the right to consult with each other, hopefully agree on and then implement decisions about their

children's long-term care, welfare and development. Those long-term issues include decisions such as a child's name and religion, schooling and major health decisions. Major health decisions are things like an operation, treating a broken bone, commencing certain medication such as Ritalin, or arranging for a child to see a psychologist. Whether or not to vaccinate a child probably also constitutes a major health decision.

In other words, where parents have equal shared parental responsibility, they share the right to be consulted about and hopefully agree on whether or not to vaccinate their children. Neither parent has the right to make that decision without consulting with and obtaining the other parent's consent.

What if we can't agree?

For some parents, the immunisation debate can become emotionally charged, as they may approach the decision from different lifestyle, wellness and health care philosophies. One parent may also be concerned not to lose government benefits if the children are not fully vaccinated.

In such circumstances, no matter how much the parents consult with one another, they may never be able to reach agreement. In addition, the immunisation debate is quite "black and white" - it would not be easy to reach a compromise or middle ground. The parent who opposes vaccination is not likely to agree for the children to receive half their vaccinations, for example; just as the other parent would probably equally strongly believe that the children should get all, not half, their necessary jabs.

Can we go to Court?

If parents cannot agree about how to exercise their equal shared parental responsibility, they may have to ask the Court to decide for them. Before going to Court, they must first try to resolve their issue through mediation with a family dispute resolution practitioner.

If the parents still can't agree, going to Court and asking a Judge to decide may be the only option. The Court generally prefers not to make these sorts of decisions for parents, but if the parents really cannot reach an agreement, then a Judge would ultimately impose his or her decision about whether or not the children should be vaccinated.

Summary

Although childhood vaccines against a range of diseases have been in use for many decades, in some parts of Australia today there is strenuous debate about the need for and safety of immunisation programs. This debate could be a source of conflict for separated parents.

In most situations, parents have equal shared parental responsibility, meaning that parents share the right to consult with one another and hopefully agree on issues relating to their children's long-term welfare, which would include decisions about vaccinating their children. However, if they cannot agree, the Court can be asked to decide for them.

To find out more about your rights regarding the immunisation of your children, call us on (03) 9459 5764 or email admin@rtlegal.com.au.