



Health

INQ13/36

Mr Jason Arditi  
Inquiry Manager  
Committee on the Health Care Complaints Commission  
Parliament of New South Wales  
Macquarie Street  
SYDNEY NSW 2000

Dear Mr Arditi

Please see enclosed the response from NSW Health to the questions taken on notice during Dr Jeremy McAnulty's appearance on Tuesday 2 September 2014 before the Committee on the Health Care Complaints Commission hearing on the inquiry into the promotion of false and misleading health-related information or practices.

Should you have any queries in relation to this matter please do not hesitate to contact [REDACTED], Director, Strategic Relations and Communications in the NSW Ministry of Health on [REDACTED].

Yours sincerely

Karen Crawshaw  
**Deputy Secretary**  
**Governance, Corporate and Workforce**

8.10.14

**PARLIAMENT OF NEW SOUTH WALES**  
**Committee on the Health Care Complaints Commission**  
**Inquiry into the Promotion of False or Misleading Health-related**  
**Information or Practices**  
**Tuesday, 2 September 2014 Hearing**  
**NSW Health response to questions taken on notice**

**Questions taken on notice – Page 11**

**CHAIR:** I ask a question in relation to the definition of "health service". In its submission, the HCCC stated the definition of a "health service" under its enabling Act is an exhaustive list of specific health services that may not cover some of the health-related information and services canvassed by this inquiry. By way of comparison, the Queensland Health Ombudsman Act is significantly broader in scope in its shift away from specifying occupational-based health services to more generic descriptions of what a health service may entail. Is a similar change to the definition of "health service" by a specific list of health-based services to a generic catch-all something NSW Health would consider?

**Dr McANULTY:** My understanding is that our definition gives examples as included and then lists them. But I can take that on notice. I am not a legal expert.

**Answer:**

The term "health service" is defined in section 4 of the Health Care Complaints Act 1993 as follows:

*"health service includes the following services, whether provided as public or private services:*

- (a) medical, hospital, nursing and midwifery services,*
- (b) dental services,*
- (c) mental health services,*
- (d) pharmaceutical services,*
- (e) ambulance services,*
- (f) community health services,*
- (g) health education services,*
- (h) welfare services necessary to implement any services referred to in paragraphs (a)–(g),*
- (i) services provided in connection with Aboriginal and Torres Strait Islander health practices and medical radiation practices,*
- (j) Chinese medicine, chiropractic, occupational therapy, optometry, osteopathy, physiotherapy, podiatry and psychology services,*
- (j1) optical dispensing, dietitian, massage therapy, naturopathy, acupuncture, speech therapy, audiology and audiometry services,*
- (k) services provided in other alternative health care fields,*
- (k1) forensic pathology services,*
- (l) a service prescribed by the regulations as a health service for the purposes of this Act."*

NSW Health notes that the examples of health services set out in paragraphs (a)-(l) are inclusive, and is *not* an exhaustive list of the categories of health services in respect of which complaints may be made under the Act.

It is also noted that paragraph (l) of the definition allows additional classes of “health service” to be prescribed by regulation in the event there is any doubt about whether any particular class of health service falls within the definition. At the present time no such additional class of “health service” has been prescribed.

Further, NSW Health notes that in the Supreme Court of NSW decision, *Australian Vaccination Network v Health Care Complaints Commission* [2012] NSWSC 110, it was accepted by both parties, and the Court found, that the Australian Vaccination Network provides a “health service” since it provides “*health education services*”.

The reason the Court found the HCCC did not have jurisdiction in relation to a complaint against AVN was because AVN did not provide a health service which “*affects the clinical management or care of an individual client*”. In accordance with comments of the judge in that case the Act has now been amended to provide the HCCC with jurisdiction in relation to any complaint which “*health services which “affects, or is likely to affect, the clinical management or care of an individual client”* (underlining added).

In light of the above, NSW Health does not consider there is any immediate need to amend the definition of “health service” in s4 of the Act. The Ministry of Health will, of course, continue to closely monitor the amendment to ensure it achieves its intended objective of ensuring the HCCC has adequate powers in relation to complaints about organisations such as AVN.

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**Dr ANDREW McDONALD:** Moving on from Mr Chair's question. One of the things that people advertise is cancer treatments. Has NSW Health found people advertising cures for cancer to be an issue?

**Dr McANULTY:** I am not aware that we have been engaged in that, but I can take that on notice and get back to you about the issue. It is outside my particular domain of health protection.

**Answer:**

Any complaint would be referred to the Health Care Complaints Commission which has the power to deal with and take action against registered and unregistered health practitioners. The Cancer Institute refers queries about treatments that are not based on scientific evidence to the website [www.iheard.com.au](http://www.iheard.com.au), established by the Cancer Council Australia to address popular beliefs about the causes of and treatments for cancer.

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**Dr ANDREW McDONALD:** The same thing applies to stem cells, which is also being advertised. Has that come under NSW Health's—

**Dr McANULTY:** Not in my experience, but I can get back to the Committee with an answer to that.

**Answer:**

The only stem cell therapies for which there is evidence of a benefit are bone marrow and cord blood transplants – for treatment of leukaemia and other blood disorders. Claims about benefits from untested stem cell therapies are mostly anecdotal, with some recipients benefitting and others not. Importantly, as yet no significant health and safety issues associated with untested stem cell therapies have occurred in Australia, and unsubstantiated claims associated with these treatments appear to be minimal. Progress towards implementation of Good Clinical Practice guidelines is occurring with some companies such as Mesoblast, Cell Therapies, and Cell & Tissue Therapies leading the way. The entities monitoring this area include the NSW Stem Cell Network, Stem Cells Australia, National Stem Cell Foundation of Australia, the National Health & Medical Research Council of Australia and the Therapeutic Goods Administration.

Any complaint would be referred to the Health Care Complaints Commission which has the power to deal with and take action against registered and unregistered health practitioners.

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**The Hon. HELEN WESTWOOD:** The HCCC suggested that consideration could also be given to broaden the current power to have public warnings include warnings about particular individuals who are not themselves health providers, as well as unethical services. What is NSW Health's view of that proposal?

**Dr McANULTY:** I guess it comes back to the definition of what "a health service" is. As I understand it, groups like the AVN are captured under the definition of "a health service". Further detail I would have to take on notice to get back to you.

**Answer:**

It is understood this question refers to a statement made by the HCCC in its submission, where the HCCC stated:

*"Consideration could also be given to broaden the current power to make public warnings under s94A of the Act to include warnings about particular individuals, not themselves health service providers, as well as unethical services"*

The NSW Ministry of Health understands this suggestion by the HCCC flows from the HCCC's concern referred to above that the definition of "health service" under the Health Care Complaints Act may be too narrow. As explained earlier, the Ministry considers there is no evidence the definition is too narrow, and that this was not an issue in the AVN case in the Supreme Court of NSW.

Section 94A of the Act is in the following terms:

*“If following an investigation, the Commission is of the view that a particular treatment or health service poses a risk to public health or safety, the Commission may cause a public statement to be issued in a manner determined by the Commission identifying and giving warnings or information about the treatment or health service.”*

The Ministry considers there is no evidence this provision is inadequate, and notes that on 30 April 2014 the HCCC issued a public warning against AVN (now known as the Australian Vaccination-skeptics Network) pursuant to s94A of the Health Care Complaints Act along with a public statement.

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**CHAIR:** Can I ask a question in relation to powers? Whilst the HCCC can do an investigation, its legal capacity to take action is quite limited. The commission can make comments or recommendations but compliance with these is voluntary. That seems to me to be a fairly major flaw in the legislation if, having done the investigation—putting aside for the moment whether they can issue interim warnings and whatever upfront—and they make a recommendation, there is no power there and, from what I can understand, the compliance is voluntary. Tell me if I am wrong. An offender does not have to comply with what the HCCC is recommending. Is that your understanding of it?

**Dr McANULTY:** I am not across the detail on that as to whether it is voluntary.

**CHAIR:** Could you have a look at that for me please, because if that is true, and I believe it is, I think it is a major issue that we need to be looking at?

**Answer:**

The Committee has sought comment as to whether the powers of the HCCC in relation to organisations such as AVN are adequate.

The Ministry notes that the Health Care Complaints Commissioner was also asked about this issue in the course of his appearance before the Committee. Whilst the Commissioner noted that his powers under the Health Care Complaints Act are “limited”, the Commissioner also appeared to raise reservations about any proposal to provide the HCCC with powers to impose prohibition orders such as those the HCCC has in respect of unregistered health practitioners. The Commissioner concluded his comments on this issue with the following statement:

*“There is no question that they will continue to do it and you have to realise that, if a similar scheme to the unregistered code is adopted, ultimately a breach of a point of our order can be prosecuted in the local courts. There is no doubt a lot of these groups would see that as a badge of honour and welcome the prosecution; they would be quite happy. I do not think it would change the information they are putting out in the case of organisations like AVN, for instance.” (Emphasis added).*

The Ministry notes that the HCCC has now published a public warning in respect of AVN. The warning, which is available on the HCCC website, contains a detailed summary of the

findings and outcome of the HCCC's investigation into AVN. It then contains a public warning in the following terms:

*"The Commission has established that AVN does not provide reliable information in relation to certain vaccines and vaccination more generally. The Commission considers that AVN's dissemination of misleading, misrepresented and incorrect information about vaccination engenders fear and alarm and is likely to detrimentally affect the clinical management or care of its readers.*

*Given the issues identified with the information disseminated by AVN, the Commission urges general caution is exercised when using AVN's website or Facebook page to research vaccination and to consult other reliable sources, including speaking to a medical practitioner, to make an informed decision.*

*The Commission has recommended that AVN amend its published information with regard to the above issues and the Commission will monitor the implementation of these recommendations."*

The Ministry of Health considers the HCCC's capacity to issue a warning provides the HCCC with an effective mechanism for responding to misleading or incorrect claims made by organisations such as AVN.

The Ministry of Health has no immediate plans to seek to change the law in this area, but will continue to monitor the effectiveness of the current powers of the HCCC in close consultation with HCCC.

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**Dr ANDREW McDONALD:** Looking at non-scientific practices, some of the medical insurance companies are now giving rebates for some of the therapies that have no great scientific basis. Has NSW Health had any complaints about people being involved in the industry?

**Dr McANULTY:** I am not aware of any, but, again, I would have to get back to you on that. I will take that on notice.

**Answer:**

NSW Health is very infrequently in receipt of complaints concerning the offering of therapies with no recognised scientific validity by non-health professionals. The Ministry of Health's Pharmaceutical Services Unit has advised that it receives approximately only one or two such complaints per year.