

**Submission
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THE PROMOTION OF FALSE OR MISLEADING HEALTH-RELATED INFORMATION OR PRACTICES

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NSW Health's comments on the Committee on the Health Care Complaints Commission's inquiry into the promotion of false or misleading health-related information or materials

Term of Reference A

The publication and/or dissemination of false or misleading health-related information that may cause general community mistrust of, or anxiety toward, accepted medical practice)

AND

Term of Reference B

The publication and/or dissemination of information that encourages individuals or the public to unsafely refuse preventative health measures, medical treatments, or cures

NSW Health's response:

NSW Health is concerned that the Australian Vaccination Network (AVN) and other anti-vaccination groups actively discourage parents from vaccinating their children using misleading information that has been discounted in the medical literature.

For example, a paper published in *The Lancet* in 1998 that asserted that measles vaccine caused autism has been discredited by numerous well-conducted studies and expert panel reviews, including the World Health Organization (WHO), the United States' Institute of Medicine (IOM) and the UK Medical Research Council. In addition, ten of the 13 authors of the paper retracted the paper's findings, *The Lancet* subsequently retracted the original paper and an investigation by the British General Medical Council (GMC) found that the original data was found to be fraudulent.

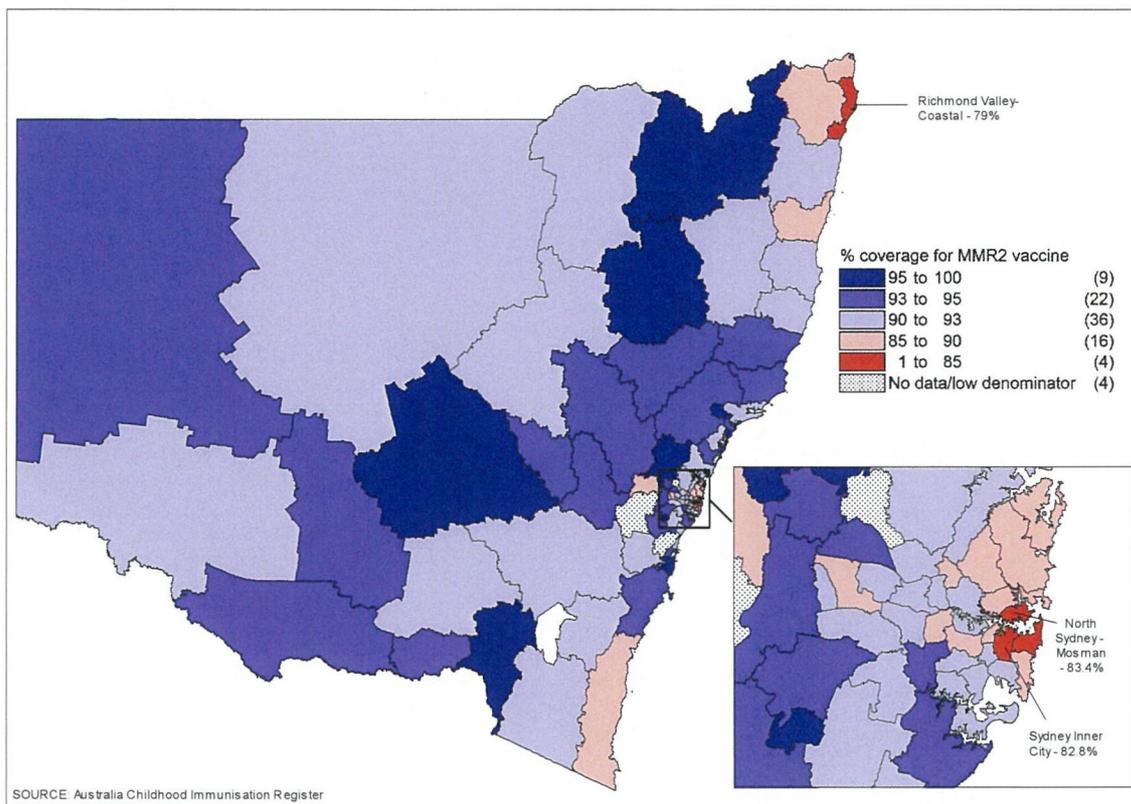
However, the AVN continues to actively promote the existence of a causative link between vaccination and autism on its website, in the print, radio and television media, and in community forums. The AVN website selectively links only to articles that purportedly support the existence of such a link and do not reference authoritative sources with a dissenting view.

It is noted that NSW Health's concerns are shared by members of the community. A review of NSW Health correspondence found that, in the period January 2009 to December 2012, the Ministry received 23 letters or emails that complained or expressed concerns about the activities of the AVN, including multiple correspondence from the same authors. It is understood that the Health Care Complaints Commission (HCCC) received 9 complaints regarding the AVN during the same period.

The activities of organisations like the AVN have led to community concerns about the safety and efficacy of vaccines. Lower vaccination coverage can result in increased morbidity and mortality associated with vaccine-preventable diseases in the broader community, particularly in children too young to be vaccinated.

The variation in uptake of routine childhood vaccinations across NSW is illustrated by the figure below, which shows that fewer than 85% of 5 year old children in Richmond Valley, North Sydney-Mosman, and inner Sydney CBD have received their second dose of measles containing vaccine compared to over 90% in most regions of the state. At least 90% two-dose measles coverage is necessary to eliminate measles².

Second dose MMR vaccine coverage at 60 months of age, by statistical area level 3, NSW, for the cohort of children born in 2007



In particular, NSW Health has been concerned that an ordinary member of the public would be likely to be misled into thinking that, based on the name of the AVN, one of its objectives is to give a pro-vaccination message or to provide comprehensive information about vaccination. In December 2012, the Commissioner for Fair Trading issued a formal order to the AVN that it change its name on the grounds that it is misleading. The AVN appealed this order and in November 2013 the Administrative Decisions Tribunal upheld the order. It is understood that the AVN is in the process of registering a new name.

Rather than engage directly with anti-vaccination groups, NSW Health's strategy is to make appropriate and accurate information available in the public domain to support informed decision-making and to implement strategies to promote timely, age-appropriate vaccination. In 2013, NSW Health released the 'Save the Date to Vaccinate' campaign to promote the timely vaccination of children and the NSW Public Health Act was amended to prevent child care centres from enrolling children from 1 January 2014 unless immunisation certificates proving that the child is fully immunised, or has a specified exemption, are provided at enrolment.

Term of Reference D

The adequacy of the powers of the Health Care Complaints Commission to investigate such organisations or individuals

AND

Term of Reference E

(The capacity, appropriateness, and effectiveness of the Health Care Complaints Commission to take enforcement action against such organisations or individuals)

NSW Health supports the important role of the Health Care Complaints Commission (HCCC) in protecting public health and safety by dealing with complaints about health service providers in NSW.

NSW Health has been closely following developments between the HCCC and the AVN, including:

- In 2009, the HCCC received two complaints alleging that the AVN engaged in misleading and deceptive conduct to dissuade people from being vaccinated or having their children vaccinated. Following an investigation, the HCCC issued a public warning and determined that the AVN include a disclaimer on its website. The AVN sought a declaration that the HCCC's investigation and public warning were outside its powers on the basis that the complaints were not complaints within the meaning of the Health Care Complaints Act.
- In 2012, the Supreme Court determined in *Australian Vaccination Network Inc. v Health Care Complaints Commission* that the Health Care Complaints Act only granted the HCCC the power to investigate complaints where the health service in question affects the clinical management or care of an individual client. As a result, the HCCC investigation and public warning relating to the AVN were found to be outside its jurisdiction.
- In 2013, Section 7 of the Health Care Complaints Act was amended as part of the *Health Legislation Amendment Act 2013* to make it clear that the HCCC can assess, investigate and prosecute complaints against health services that affect, or are likely to affect, the clinical management or care of an individual client.

NSW Health supports the intent of the amendment in relation to developing the capacity of the HCCC to investigate complaints against health services like the AVN that can impact on public health. While it is considered likely that this amendment will support the HCCC to investigate and take enforcement actions in these circumstances, it is noted that this new provision is untested and it is appropriate to monitor implementation of these broadened powers over time.

References

¹ World Health Organisation 2014, *Health Topics: Immunization*, viewed 22 January 2014, <<http://www.who.int/topics/immunization/en/>>

² Australian Government Department of Health 2013, *The Australian Immunisation Handbook* (10th edn.), Canberra.

³ Australian Government Department of Health 2013, *Myths and Realities: Responding to Arguments against Immunisation – A Guide for Providers* (5th edn.), Canberra.