

**Submission
No 24**

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

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Date Received: 22/01/2014

The Promotion of False or Misleading Health-Related Information or Practices (Inquiry)

Submission by the Australian Vaccination Network Inc. (AVN)
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22nd January 2014

The AVN is a not-for-profit community organisation which disseminates information and provides a forum for the discussion of the practice of vaccination. It also endeavours to represent the concerns of its members to relevant official bodies.

The AVN recognises the important role played by the Health Care Complaints Commission (HCCC) and considers it vital that health practitioners are held to high standards of safety and professional conduct, and that the services they provide have a reasonable expectation of benefit to consumers. The HCCC provides an important avenue for consumers to complain when these standards appear to have been violated. The AVN considers it is of paramount importance that the HCCC operate independently, as outlined in the Act which created it, without undue influence from any industry-group.

This inquiry seeks to address "the promotion of health-related information by individuals or organisations who are not recognised health service providers". The information of concern is described as "unscientific health-related information or practices which may be detrimental to individual or public health".

The AVN strongly opposes any proposal to grant powers to the HCCC to regulate public or private discussion of health issues. The following three points summarise our opposition to any such proposal:

1. We are deeply concerned that the proposal may give the HCCC powers to regulate free speech. Australians enjoy freedom of assembly, speech and expression, and this includes the freedom to discuss any health-related issues wherever, whenever, and with whomever they choose. The right to these freedoms is internationally recognised and guaranteed. That the Committee is considering curtailing them suggests a disrespect of this core value of democracy.
2. The inquiry proposes targeting individuals or organisations which are not recognised health service providers (i.e. the general public). This is a fundamental departure from the stated objective of the Commission, as outlined in the Health Care Complaints Act 1993:

Object and principle of administration of Act

(1) The primary object of this Act is to establish the Health Care Complaints Commission as an independent body for the purposes of:

- (a) receiving and assessing complaints under this Act relating to health services and health service providers in New South Wales, and*
- (b) investigating and assessing whether any such complaint is serious and if so, whether it should be prosecuted, and*
- (c) prosecuting serious complaints, and*
- (d) resolving or overseeing the resolution of complaints.*

http://www.austlii.edu.au/au/legis/nsw/consol_act/hcca1993204/s3.html

It is clear that this inquiry does not propose a simple expansion of powers within the spirit of the Act. It proposes changes which are outside the original intent of the Act. The HCCC was created to oversee the professional conduct of health providers — not the conduct of the general public.

3. The key phrase "unscientific health-related information or practices which may be detrimental to individual or public health" raises several concerns. What is 'unscientific'? Who will decide what is and is not unscientific? When issues are under debate 'science' is frequently used to bolster each of the opposing viewpoints. If we allow one school of thought to dominate discussion, via regulation, we will not be acting in the interest of the community, but in the interest of that school of thought. By using 'accepted medical practice' as the standard against which viewpoints are to be assessed (Terms of Reference *a* and *c*) the proposal will effectively supplant the independence of the HCCC, offering this important body to be used as a tool by the dominant industry-group for the purpose of silencing its critics.

Further, the phrase "which may be detrimental to individual or public health" is so broad that it fails to have specific meaning. Virtually all information and practices have the capacity to be detrimental to health. Certainly all 'accepted medical practice' carries risk. This is well accepted. Therefore the advice to seek such care may in itself be considered detrimental to health.

Indeed the advice to seek any of the various modes of healthcare "may be detrimental" to health. Advice to drink more fluids, get more exercise, lose weight, eat more meat, eat less meat etc, may similarly be detrimental to health.

As virtually anything "may be detrimental" to health, the proposal currently being considered by the inquiry effectively gives the HCCC power to silence any and all discussion it chooses, opening a wide door to censorship. Such loose wording in this phrase permits the HCCC to easily justify any subjective judgement it may make, opening a door to corruption. Together with the above concerns regarding loss of independence these threaten to turn a vitally important body into a corruptible tool of industry.

TERMS OF REFERENCE

Following are our specific comments in relation to the inquiry terms 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;

Again, who will decide what is false or misleading? The term 'accepted medical practice' suggests it will be representatives from mainstream western medicine. But such a move will censor critics of western medical treatments and recommendations. It will place ultimate power in the hands of one industry-group. Although the current role of this industry-group is to serve the community, the proposal under consideration will permit the reversal of that relationship, allowing the industry-group to rule the community, deciding what may and may not be discussed. Such a move is contrary to public interest.

At present information and discussion are enjoyed by those who seek them. There is a registration system in place for health service providers. This system grants status to those individuals and organisations whose opinions are considered sound by community leaders. All consumers have this registration system to guide them in their search for information on the many hotly debated topics in health. This system is sufficient and it respects the democratic principle of freedom of speech.

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

There has always been opposition to medical treatments and there likely always will be. This is a normal and acceptable situation. There is opposition to accepted practice in many areas: taxation systems, education reforms, foreign policy, religious beliefs, farming practices, laws, wars and countless others. Freedom of thought is alive and well in Australia, as it is in all other democratic nations of the world. At least, that is how it should be.

Typically, when a dominant industry-group declares their particular approach 'accepted', those who disagree express their opposition. The freedom to engage in such opposition and expression is one of the core values which determines a free and democratic society. With healthcare, the fact that a particular approach is accepted by the industry-group which champions it is not evidence that it is accepted by everyone.

We cannot afford, as a society, to lose our freedom of speech or assembly to any industry-group, regardless of its perceived dominance. All opposition must be respected and permitted to exist, both privately and publicly. If a demonstrable community safety issue results from this it must be addressed with full respect for the inalienable right of individuals to lawfully express their views, both individually and as an assembly. The only way to reasonably address legitimate concerns in this area is via education.

(c) the promotion of health-related activities and/or provision of treatment that departs from accepted medical practice which may be harmful to individual or public health;

As above. In addition, the phrase "which may be harmful" is too broad to have any specific meaning. 'Accepted medical practice' itself may be harmful. Indeed it often is, and this fact is well accepted by the industry which practices it. That other modes of health care "may be harmful" is likewise unequivocal.

To enact law which hands a monopoly of practice and thought regarding health matters to one industry-group is not responsible government.

(d) the adequacy of the powers of the Health Care Complaints Commission to investigate such organisations or individuals;

The HCCC exists to investigate and pursue consumer concerns regarding registered health practitioners. This inquiry does not address whether its powers are adequate for this purpose. Instead it proposes creating an entirely new and objectionable purpose for the HCCC.

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

Capacity: The HCCC has sufficient powers to perform the role for which it was created. We strongly oppose granting powers which extend this role in the direction of censorship.

Appropriateness: It is not appropriate to dictate what members of the community may think and express. It is further inappropriate to allow one industry group (albeit a powerful group) to define which views are worthy of expression and which are not. It is not appropriate for government to intervene preferentially in an arena where competing viewpoints are currently supported by the community.

Effectiveness: The HCCC was not created to censor free speech and therefore is not currently effective in this pursuit. That is as it should be. No such powers should be given to any government agency for the purpose of censoring free speech.

(f) any other related matter.

The AVN is itself the subject of ongoing HCCC investigation and attempted suppression, and has been for several years. The HCCC's initial investigation of the AVN was ruled unlawful by the NSW Supreme Court in February 2012. The scope of the Act was subsequently changed by Parliament for the express purpose of continuing the pursuit of our organisation.

Our members find this incongruous since we are not practitioners, nor do we represent practitioners. In addition, we do not advise consumers to pursue any particular course of action regarding any facet of their healthcare, other than to seek the opinions of health practitioners. Indeed the AVN's true relationship with a body such as the HCCC should be as a consumer of its services. We are well-positioned to refer consumer concerns to a body with such powers.

Regarding the ongoing investigation of our organisation, we have frequently appealed to the HCCC to work co-operatively with us. We have offered many times to meet with the Director of Investigations and his staff to discuss their concerns with our published information. We have offered to immediately remove any information published by us which is incorrect or misleading. Remarkably, we have had no response whatsoever to these appeals and offers.

Our organisation was formed to critically discuss one of the cornerstones of western medicine's overall approach to healthcare. As noted above, this is an inalienable right of members of a democratic society. We have been likened to whistle-blower, watchdog, and advocate. How can an organisation which performs these roles in the community be subjected to such prolonged, relentless, tax-payer funded investigation by a body charged with regulating practitioners? Since when do such organisations become the target of other watchdogs? We believe that the influence of the dominant industry-group over the HCCC is the reason our organisation has been targeted.

We are concerned that the independence of the HCCC is already compromised. The current proposal will have the effect of extending this. That it proposes powers which may be used to curtail freedom of speech is of grave concern to our members. We believe such concern would be felt by all citizens who are aware that such a proposal is being considered.

Thank you for the opportunity to make a submission to this inquiry.

Greg Beattie
President