

Investigation Report No. 2976

File No.	ACMA2013/251
Broadcaster	Australian Broadcasting Corporation
Station	ABN Sydney
Type of service	National broadcaster
Name of program	<i>Media Watch</i>
Date of broadcast	1 October 2012
Relevant code	Standards 2.1 and 4.1 of the <i>ABC Code of Practice 2011</i>
Date Finalised	3 May 2013
Decision	No breach of clauses 2.1 (accuracy) or 4.1 (impartiality)

The complaint

On 30 November 2012, the Australian Communications and Media Authority (the ACMA) received a complaint regarding a segment of the program, *Media Watch*, broadcast on 1 October 2012 by the Australian Broadcasting Corporation (the ABC). The segment discussed a *WIN News* report, broadcast on 16 August 2012, concerning measles vaccinations.

The complainant raised concerns that the *Media Watch* segment contained factual inaccuracies and was not impartial.

The ACMA has investigated the ABC's compliance with standards 2.1 and 4.1 of the ABC *Code of Practice 2011* (the Code).

Matters not pursued

This investigation concerns matters raised by the complainant with the ABC.

The complainant submitted that the *WIN News* report omitted certain information. The ACMA only has jurisdiction to investigate a complaint about a Code matter where the issue has been raised with the broadcaster in the first instance. Given that a complaint was not made to WIN regarding the news broadcast, this issue was not considered in the course of this investigation.

The complainant also raised concerns about various statements made by the ABC in its response to the complaint dated 5 February 2013. The ACMA's jurisdiction only extends to matters broadcast. As such, the ABC's response to the complainant was not considered in this investigation.

The program

Media Watch is described on the ABC's website as:

Australia's leading forum for media analysis and comment'. [...]¹

On 1 October 2012, the presenter quoted statements made in a news report on a measles outbreak and immunisation broadcast by *WIN News*, which the ACMA was investigating² at the time:

Reporter: There remains heated discussion about possible links between the jab and the development of autism.

MD: All vaccinations in the medical literature have been linked with the possibility of causing autism, not just the measles/mumps/rubella vaccine.

Reporter: Choice groups are calling for greater research into the measles vaccine

The presenter commented that '[MD]'s claim about the medical literature linking vaccination and autism is pure, unadulterated baloney'. He then quoted statements made by the NSW Director of Health Protection and the NSW Minister for Health disputing the view that there is a link between vaccinations and autism.

¹ <http://www.abc.net.au/mediawatch/more.htm>

² Investigation Report 2883

The presenter concluded the segment by quoting a statement made by WIN TV that the broadcast was ‘accurate, fair and balanced and presented the views of the medical practitioners and of the choice groups’. In response, the presenter commented:

Medical practitioners – choice groups. One opinion as valid as the other. It’s a classic example of what many – especially despairing scientists – call ‘false balance’ in the media. As the British Medical Journal put it last year in an editorial about the “debate” in the UK:

...the media’s insistence on giving equal weight to both the views of the anti-vaccine camp and to the overwhelming body of scientific evidence ...made people think that scientists themselves were divided over the safety of the vaccine, when they were not.

— *British Medical Journal, When balance is bias, Christmas Edition, 2011*

To put it bluntly, there’s evidence, and there’s bull-dust. It’s a journalist’s job to distinguish between them, not to sit on the fence and bleat ‘balance’, especially when people’s health is at risk. That’s my view.

A transcript of the segment is at Attachment A.

Assessment

This investigation is based on submissions from the complainant and the licensee and a copy of the broadcast provided to the ACMA by the licensee. Other sources used have been identified where relevant.

In assessing content against the Code, the ACMA considers the meaning conveyed by the relevant material broadcast. This is assessed according to the understanding of an ‘ordinary, reasonable’ viewer.

Australian courts have considered an ‘ordinary, reasonable reader’ (or listener or viewer) to be:

A person of fair average intelligence, who is neither perverse, nor morbid or suspicious of mind, nor avid for scandal. That person does not live in an ivory tower, but can and does read between the lines in the light of that person’s general knowledge and experience of worldly affairs³.

The ACMA examines what the ‘ordinary, reasonable viewer’ would have understood the Segment to have conveyed. It considers the natural, ordinary meaning of the language, context, tenor, tone and inferences that may be drawn, and in the case of factual material, relevant omissions (if any).

Once this test has been applied to ascertain the meaning of the broadcast material, it is for the ACMA to determine whether there has been a breach of the Code.

³ *Amalgamated Television Services Pty Limited v Marsden* (1998) 43 NSWLR 158 at 164–167.

Issue 1: Accuracy

Relevant Code standard

- 2.1 Make reasonable efforts to ensure that material facts are accurate and presented in context.

The Code requires that the standards are interpreted and applied in accordance with the Principles applying in each Section. Relevant Principles in relation to factual accuracy include the following:

Types of fact-based content include news and analysis of current events, documentaries, factual dramas and lifestyle programs. The ABC requires that reasonable efforts must be made to ensure accuracy in all fact-based content. The ABC gauges those efforts by reference to:

- the type, subject and nature of the content;
- the likely audience expectations of the content;
- the likely impact of reliance by the audience on the accuracy of the content; and
- the circumstances in which the content was made and presented.

The ABC accuracy standard applies to assertions of fact, not to expressions of opinion. An opinion, being a value judgement or conclusion, cannot be found to be accurate or inaccurate in the way facts can. The accuracy standard requires that opinions be conveyed accurately, in the sense that quotes should be accurate and any editing should not distort the meaning of the opinion expressed.

The efforts reasonably required to ensure accuracy will depend on the circumstances. Sources with relevant expertise may be relied on more heavily than those without. Eyewitness testimony usually carries more weight than second-hand accounts. The passage of time or the inaccessibility of locations or sources can affect the standard of verification reasonably required.

The ABC should make reasonable efforts, appropriate in the context, to signal to the audience gradations in accuracy, for example by querying interviewees, qualifying bald assertions. Supplementing the partly right and correcting the plainly wrong.

The considerations which the ACMA generally applies in assessing whether particular broadcast material is factual in character are set out at Attachment D.

In applying standard 2.1 of the Code the ACMA usually adopts the following approach:

- Was the particular material (the subject of the complaint) factual in character?
- Did it convey a 'material' fact or facts in the context of the relevant segment?
- If so, were those facts accurate?
- If a material fact was not accurate, (or its accuracy cannot be determined) did the ABC make reasonable efforts to ensure that the 'material' fact was accurate and presented in context?

Finding

The ABC did not breach standard 2.1 of the Code.

Reasons

Omission of material

The complainant submitted that the *Media Watch* segment failed to broadcast 'the serious side effects that are associated with the measles vaccine in a percentage of individuals'.

While the ABC is not required to present all factual material available to it, if the omission of some factual material means that the factual material actually broadcast is not presented accurately, this may amount to a breach of the obligation in the Code.

In this case, the presenter referred to a statement made in a *WIN News* report by a representative from the anti-vaccine group, Australian Vaccination Network regarding the link between vaccinations and autism. He also discussed the weight given to the views of that group, and to the views of medical practitioners in the report, as an example of what he believed to be 'false balance'. It is made clear by the presenter that the focus of the segment was to comment on the issue of 'false balance':

So why on earth, we asked WIN TV, did it include the AVN's misleading claims in a news story about a measles outbreak?

...

To put it bluntly, there's evidence, and there's bullsh*t. It's a journalist's job to distinguish between them, not to sit on the fence and bleat 'balance'.

The purpose of the segment was not to examine the issue of measles vaccinations.

As such, the ACMA does not consider that the omission of information relating to side effects of the measles vaccine resulted in factual material being presented inaccurately.

Accordingly, the ACMA finds that the ABC complied with standard 2.1 of the Code.

MD's statement

The complainant submitted that the following statement made by MD is accurate:

All vaccinations in the medical literature have been linked with the possibility of causing autism, not just the measles/mumps/rubella vaccine.

The ACMA understands the complaint to be that the following statement made by the presenter is inaccurate:

...[MD]'s claim about the medical literature linking vaccination and autism is pure, unadulterated baloney.

The first issue to determine is whether the presenter's statement amounts to fact or opinion, the latter of which is not subject to the accuracy requirements in the Code.

While the presenter quoted statements made by the Director of Health Protection and Minister for Health disputing MD's claim, the ACMA considers that the presenter's statement is an

expression of opinion. In this regard, it is noted that use of the word 'baloney' is a colloquial word for 'nonsense'⁴ and is subjective in nature.

To the extent that the presenter's statement contained factual elements and conveyed to the audience that MD's statement was incorrect, the ACMA has recently completed its investigation into the accuracy of MD's statement⁵ and found that WIN Television NSW Pty Ltd had breached clause 4.3.1⁶ of the *Commercial Television Industry Code of Practice 2010*.

Accordingly, the ACMA finds that the ABC complied with standard 2.1 in this instance.

The British Medical Journal

The presenter quoted a statement made in the British Medical Journal's (BMJ) article, 'When balance is bias', as follows:

...the media's insistence on giving equal weight to both the views of the anti-vaccine camp and to the overwhelming body of scientific evidence ...made people think that scientists themselves were divided over the safety of the vaccine, when they were not.

The complainant submitted that the BMJ 'is incorrect to suggest that presenting arguments provides 'false balance' to this debate'.

The ACMA considers that the statement was clearly presented as a quote from BMJ.

The statement was made as part of an Editorial to the BMJ. An 'editorial' is defined as follows:

editorial noun, 1. an article, in a newspaper or the like, presenting the opinion or comment of an editor or a leader-writer in the name of the publication⁷

There is contention that the BMJ statement was not accurately reported or presented out of context,

Accordingly, the ABC complied with standard 2.1 of the Code.

'bulldust' and 'baloney'

The complainant submitted that the presenter's reference to 'bulldust' and 'baloney' in relation to 'consumer arguments' is 'factually untrue'.

As indicated above, the ACMA considers the reference to 'baloney' to be an expression of opinion, as opposed to a statement of fact.

The reference to 'bulldust' was made directly after the quote from the BMJ as follows:

To put it bluntly, there's evidence, and there's bulldust. It's a journalist's job to distinguish between them, not to sit on the fence and bleat 'balance', especially when people's health is at risk. That's my view.

Having considered the context in which it was made, the ACMA considers that the reference to 'bulldust' refers to the views of the 'anti-vaccine camp' referred to in the BMJ editorial. The presenter makes it clear that this is his 'view'. As such, the ACMA is satisfied that the

⁴ *Macquarie Dictionary (Fifth Edition)*

⁵ See footnote 2.

⁶ 4.3 In broadcasting news and current affairs programs, licensees:

4.3.1 must broadcast factual material accurately and represent viewpoints fairly, having regard to the circumstances at the time of preparing and broadcasting the program.

⁷ *Macquarie Dictionary (Fifth Edition)*

comment amounts to an expression of opinion and is not subject to the accuracy requirements in the Code.

The ACMA considers that the material facts in the segment were accurate and presented in context.

Issue 2: Impartiality and diversity of perspectives

Relevant Code standards

4.1 Gather and present news and information with due impartiality.

The Code requires that the standards are interpreted and applied in accordance with the Principles applying in each Section. Relevant Principles in relation to impartiality include the following:

Judgements about whether impartiality was achieved in any given circumstances can vary among individuals according to their personal and subjective view of any given matter of contention. Acknowledging this fact of life does not change the ABC's obligation to apply its impartiality standard as objectively as possible. In doing so, the ABC is guided by these hallmarks of impartiality:

- > a balance that follows the weight of evidence;
- > fair treatment;
- > open-mindedness; and
- > opportunities over time for principal relevant perspectives on matters of contention to be expressed.

The ABC aims to present, over time, content that addresses a broad range of subjects from a diversity of perspectives reflecting a diversity of experiences, presented in a diversity of ways from a diversity of sources, including content created by ABC staff, generated by audiences and commissioned or acquired from external content-makers.

Impartiality does not require that every perspective receives equal time, nor that every facet of every argument is presented.

Assessing the impartiality due in given circumstances requires consideration in context of all relevant factors including:

- > the type, subject and nature of the content;
- > the circumstances in which the content is made and presented;
- > the likely audience expectations of the content;
- > the degree to which the matter to which the content relates is contentious;
- > the range of principal relevant perspectives on the matter of contention; and
- > the timeframe within which it would be appropriate for the ABC to provide opportunities for the principal relevant perspectives to be expressed, having regard to the public importance of the matter of contention and the extent to which it is the subject of current debate.

The considerations which the ACMA generally applies in assessing impartiality and diversity of perspective for the purpose of standard 4.1 of the Code are set out at Attachment E.

Finding

The ABC did not breach standard 4.1 of the Code.

Reasons

The complainant submitted that the segment did not present impartial information:

There is a dispute within the medical fraternity and amongst consumers about the science in vaccination policies and the public needs to be accurately informed of this fact. This is evidenced on the 2 website links above.

[The presenter] stated in this episode that consumer arguments were 'bullshit' and 'baloney'. This is factually untrue and it is not presenting impartial information to the public on a very important health issue. The 'undone science' in government policy is scientific evidence that has not been provided to prove or disprove a link between autism and vaccines. The link cannot be debunked without this evidence.

As indicated at Attachment E below, a program that presents a perspective that is opposed by a particular person or group is not inherently partial. Whether or not a breach of standard 4.1 of the Code has occurred will depend on the themes of the segment, any editorial comment, the overall presentation of the segment and the circumstances in which *Media Watch* is prepared and broadcast.

The Code makes it clear that impartiality does not require that every perspective receives equal time, nor that every facet of every argument is presented.

In this case, the presenter explored what he claimed to be 'false balance' in relation to a statement made in a *WIN News* report relating to measles vaccinations. He expressed the view, consistent with the BMJ editorial, that MD's statement, 'All vaccinations in the medical literature have been linked with the possibility of causing autism, not just the measles/mumps/rubella vaccine,' should not be given 'equal weight' to scientific evidence.

While the presenter used emotive words such as 'bullshit' and 'baloney' in respect of MD's claims and those of anti-vaccine groups, the ACMA does not consider that he portrayed prejudgement or personal affection or enmity in a manner or to an unacceptable degree in this context. In this regard, the ACMA notes that the presenter followed the 'weight of evidence' of the Director of Health Protection, NSW and the NSW Minister for Health who both disputed the view that there is a link between vaccinations and autism.

The fact that the segment expressed a view on the 'false balance' issue and in turn, questioned the statement made by MD, did not make it inherently partial. Further, *Media Watch* is a program that routinely calls into question the actions of the media and of journalists. The ordinary, reasonable viewer would be cognisant of this fact and would set his or her expectations accordingly.

There is no evidence that the criticism of MD's statement and those of anti-vaccine groups was improperly influenced by political, sectional, commercial or personal interests, or that it was reflective of undue partiality or prejudgement.

Accordingly, standard 4.1 of the Code has not been breached.

Transcript, *Media Watch*, 1 October 2012

Well, let's move on. Another complaint to the ACMA came to our attention last week. A month ago, WIN TV in Wollongong aired a news story about a measles outbreak in South-West Sydney. It started off well enough:

Reporter: 40 cases in two and a half months, the Macarthur region is facing an outbreak of measles of worrying proportions. ...

Dr CA: as doctors we recommend that everyone is immunised.

— *WIN News Illawarra, 16th August, 2012*

But the doctor's advice was then contradicted by this...

Reporter: There remains heated discussion about possible links between the jab and the development of autism.

MD: All vaccinations in the medical literature have been linked with the possibility of causing autism, not just the measles/mumps/rubella vaccine.

Reporter: Choice groups are calling for greater research into the measles vaccine

— *WIN News Illawarra, 16th August, 2012*

'Choice groups'. They actually only quoted one group, which claims that it's in favour of the public having a choice. But [MD]'s deceptively -named Australian Vaccination Network is in fact an obsessively anti-vaccination pressure group that's immunised itself against the effect of scientific evidence. [MD]'s claim about the medical literature linking vaccination and autism is pure, unadulterated baloney.

On our website is a long statement by the NSW Director of Health Protection, Dr [JM]. He says that:

Any link between measles vaccine and autism has been conclusively discredited by numerous in-depth studies and reviews by credible experts, including the World Health Organisation, the American Academy of Paediatrics and the UK Research Council.

— *Dr [JM] Director of Health Protection, NSW Health, 28th September, 2012*

The NSW Minister for Health, [JS], told state parliament last week that:

The Australian Vaccination Network has not provided accurate information to parents about the risks and benefits of immunisation.

— *NSW Parliament, [JS], NSW Minister for Health, 26th September, 2012*

So why on earth, we asked WIN TV, did it include the AVN's misleading claims in a news story about a measles outbreak? WIN TV couldn't find time to answer that question. But it wrote this to a viewer who complained:

The story presented was accurate, fair and balanced and presented the views of the medical practitioners and of the choice groups.

— [SB], *Group Business Director*, 4th September, 2012

Medical practitioners – choice groups. One opinion as valid as the other. It's a classic example of what many – especially despairing scientists – call 'false balance' in the media. As the *British Medical Journal* put it last year in an editorial about the "debate" in the UK:

the media's insistence on giving equal weight to both the views of the anti-vaccine camp and to the overwhelming body of scientific evidence ...made people think that scientists themselves were divided over the safety of the vaccine, when they were not.

— *British Medical Journal*, *When balance is bias*, Christmas Edition, 2011

To put it bluntly, there's evidence, and there's bullsh*t. It's a journalist's job to distinguish between them, not to sit on the fence and bleat 'balance', especially when people's health is at risk. That's my view. We'll let you know what the ACMA rules some time next year. For more on this, and our other stories, visit our website. Until next week, goodnight.

Complainant's submissions

The complainant submitted to the ACMA that:

[...]

I would like to make a formal complaint about the ABC's standards of accuracy and impartiality which have allowed Media Watch to present misinformation to the public about vaccination. Here is the response I have received from the ABC re my complaint about Jonathon Holmes's comments on Media Watch (1st October 2012). The ABC's response is inadequate for the reasons which I will list below and I would like to request that you investigate this information. The suggestion that 'the broadcast is in keeping with the ABC's editorial standards' is a serious concern.

The program 'False Balance leads to Confusion' was not fair minded and did not promote open mindedness and discussion on a very important health topic. In addition, it was factually incorrect and did not display impartiality. The response below from the ABC does not address the complaint that I made but instead paraphrases the same incorrect statements that were made in the Media Watch program.

The ABC's response starts with information that was presented by WIN TV (16th August 2012) regarding a measles outbreak but this information also lacks balance. For example,

1. The program on WIN TV discusses a 'measles epidemic' but it does not inform the public whether the individuals who caught measles were vaccinated or unvaccinated. The efficacy of the vaccine can be demonstrated with this information.
2. Measles (in developed countries) is only serious in the small percentage of children who get a complication of measles such as pneumonia or encephalitis. The majority of children in developed countries are not at risk from this disease and this disease declined before the vaccine was used.
3. The ABC's response states that 'mortality is 3% in wealthy countries'. This statistic needs to be referenced. Please provide me with a reference for this claim.
4. The ABC's response claims 'the vaccine, if widely distributed is very effective in preventing the spread of the disease'. Claiming this does not make it true. Evidence is needed to support this statement. It is well known that vaccinated people are still getting the diseases they are vaccinated against – the question is what percentage? (Refer to point 1). Here is a link that illustrates the problems with this unsupported statement: <http://www.thelibertybeacon.com/2013/02/03/children-worldwide-are-contracting-the-very-diseases-they-are-being-vaccinated-against/>
5. Neither Win TV nor Media Watch mentioned the serious side-effects that are associated with the measles vaccine in a percentage of individuals. The actual percentage of individuals is unknown due to a lack of research: the 'undone science'. These side-effects include permanent nervous system damage and thrombocytopenia, meningitis, central nervous system disorders, peripheral neuropathies, Guillane-Barre syndrome and transverse myelitis (a paralysing disease of the spinal cord). Long-term effects are unknown. There have been no long-term safety studies regarding MMR to date (World Association for Vaccine Education (WAVE) website).

This information is being presented by doctors and scientists on the WAVE website here http://www.novaccine.com/vaccine-risks/index.asp?sv_id=22 and also on the International Medical Council for Vaccination (IMCV) <http://www.imcv.info/>

Comments made by [MD]: The ABC states that it is important to publicise 'the type of organisation [MD] belongs to, her qualifications and therefore the weight of the arguments presented.' Whilst this information can be relevant, the weight of the arguments is not dependent upon the qualifications of the presenter. It is the science that is presented and the validity of the science. Consumers are entitled to present scientific arguments and these are equally valid to other stakeholders in the issue, e.g. the medical profession and industry. Science from all perspectives must be debated because the risk/benefit equation will be weighed differently by different stakeholders.

6. [MD]'s statement that 'All vaccinations in the medical literature have been linked with the possibility of causing autism, not just measles/mumps/rubella vaccine' is true and the public is entitled to know this. The combined effects of the vaccines in the government's childhood vaccination schedule have never been trialled for long-term health effects. That is, the science has not been funded that would prove or disprove this link. This is referred to as 'undone science'. A consensus in science is not obtained by removing the science that does not fit the desired outcome.
7. *There is a dispute within the medical fraternity and amongst consumers about the science in vaccination policies and the public needs to be accurately informed of this fact. This is evidenced on the 2 website links above.*
8. The BMJ is incorrect to suggest that presenting consumers arguments provides 'false balance' to this debate. This statement infers that the science is unscientific and this is not the case. The government's vaccination policies are founded on 'undone science' and this science still needs to be included in the debate to protect the health of the population. Presenting a case of 'false balance' is a way of selecting the science that will be used to form a 'consensus' and this is dangerous to population health. This fallacious argument of false balance is not necessary in a true academic debate where the arguments are addressed on validity.
9. Jonathon Holmes stated in this episode that consumer arguments were 'bullshit' and 'baloney'. This is factually untrue and it is not presenting impartial information to the public on a very important health issue. The 'undone science' in government policy is scientific evidence that has not been provided to prove or disprove a link between autism and vaccines. The link cannot be debunked without this evidence.

The ABC's claim that the broadcast was in keeping with the ABC's standards of accuracy and impartiality needs investigating based on the misinformation that has been provided. The community has also observed that many subscribers of the Skeptics lobby group are providing misinformation to the public by presenting false information on blogs and websites and through influencing the mainstream media which is their stated goal. This false information has been documented here <http://www.vaccinationdecisions.net/lobby-groups.php>

If the ABC is requiring that information about a spokespersons 'organisations and qualifications' is needed when they provide information to the public then this rule must apply to all lobby groups. It has been noted that Dr. [RD] has presented information on vaccination on Channel 10's The Project and the public was not informed that she was the vice-president of the Australian Skeptics lobby group. This is significant because many subscribers of this

organisation have put out false information about vaccines on the internet and Dr {RD] herself has participated in preventing the public from seeing valid scientific information. This is documented here <http://www.vaccinationdecisions.net/immunisation-updates/channel-10-s-and-the-misinformation-provided-by-dr-rachael-dunlop-on-vaccination>

Coercive strategies in government vaccination policies are unethical whilst there is no consensus on the science and if the media is not demonstrating impartiality and open mindedness in presenting information to the public...

ABC's submissions

The ABC submitted to the complainant that:

[...]

The WIN news story which was broadcast on 16 August 2012 raised awareness of a measles epidemic in the area. Medical authorities were urging people to immunise their children in an effort to reduce the impact of the “worrying” outbreak. In addition to an interview with Dr [CA] from Shell Cove Family Health, the reporter aired comments from [MD], Head of the Australian Vaccination Network (AVN). It is worth remembering that measles can be a very serious illness causing death and long-term disability. Mortality varies from about 3% in wealthy countries to above 25% in very poor communities and even higher among immuno-suppressed victims. The vaccine, if widely distributed, is very effective in preventing spread of the disease.

Media Watch did not question the right of the AVN to promote their views on vaccination. The role of *Media Watch* is to analyse and comment on the media, in this case WIN TV. *Media Watch* examined whether it was appropriate for WIN to include Ms [MD]'s views in a news story without clarification of what the AVN is, what qualifications [MD] has and how much weight her views hold.

WIN allowed the statement by [MD] “*All vaccinations in the medical literature have been linked with the possibility of causing autism, not just the measles/mumps/rubella vaccine*” to go unchallenged, giving viewers the impression that the statement was true.

The WIN reporter stated “*in NSW just over 6% of 2 year olds and 9% of 5 year olds have not received the recommended vaccination. There remains heated discussion between possible links between the jab and the development of autism*” and ended the story by saying “*Choice groups are calling for greater research into the measles vaccine*”.

By including these unchallenged statements in the story, a viewer of the report may have gained an impression that there was some dispute within the medical fraternity about the safety of vaccination. As Dr [JM], Director of Health Protection, NSW Health, said in a statement on 28th September, 2012:

“Any link between measles vaccine and autism has been conclusively discredited by numerous in-depth studies and reviews by credible experts, including the World Health Organisation, the American Academy of Paediatrics and the UK Research Council.”

The point of the *Media Watch* story was to examine “false balance” in the media. As Jonathan Holmes said in the program:

“It's a classic example of what many – especially despairing scientists – call ‘false balance’ in the media. As the British Medical Journal put it last year in an editorial about the “debate” in the UK :

“the media's insistence on giving equal weight to both the views of the anti-vaccine camp and to the overwhelming body of scientific evidence ...made people think that scientists themselves were divided over the safety of the vaccine, when they were not.”

While we have enormous sympathy for anyone who suffers from autism and their families, the link between the MMR vaccine and autism has not been established. Mr Holmes was not arguing that consumer groups should have no voice or that AVN is the only anti-vaccination group, but he was arguing that unproved and unscientific contentions should not be given the same weight as good quality scientific evidence.

In summary, the program made a valid point about the need for the media to present important information in a responsible way that reflects the real balance of weight of evidence. It contained no factual inaccuracies.

Accordingly, while noting your concerns, Audience and Consumer Affairs are satisfied the broadcast was in keeping with the ABC's editorial standards for accuracy and impartiality. Nonetheless, please be assured that your comments have been noted and conveyed to the producers of the program.

Considerations to which the ACMA has regard in assessing whether or not broadcast material is factual in character

- The primary consideration is whether, according to the natural and ordinary meaning of the language used and the substantive nature of the message conveyed, the relevant material is presented as a statement of fact or as an expression of opinion.
 - In that regard, the relevant statement must be evaluated in its context, i.e. contextual indications from the rest of the broadcast (including tenor and tone) are relevant in assessing the meaning conveyed to the ordinary reasonable listener/viewer.
 - The use of language such as 'it seems to me', 'we consider/think/believe' tends to indicate that a statement is presented as an opinion. However, a common sense judgment is required as to how the substantive nature of the statement would be understood by the ordinary reasonable listener/viewer, and the form of words introducing the relevant statement is not conclusive.
- Inferences of a factual nature made from observed facts are usually still characterised as factual material (subject to context); to qualify as an opinion/viewpoint, an inference reasoned from observed facts would usually have to be presented as an inference of a judgmental or contestable kind.
- The identity of the person making the statement would not in and of itself determine whether the statement is factual material or opinion, i.e. it is not possible to conclude that because a statement was made by an interviewee, it was necessarily a statement of opinion rather than factual material.
- Statements in the nature of prediction as to future events would nearly always be characterised as statements of opinion.

Considerations to which the ACMA has regard in assessing whether or not broadcast material is impartial

In determining whether or not material complained of is compliant with the ABC's obligations under standard 4.1 of the Code, the ACMA generally has regard to the following considerations:

- Achieving impartiality requires a broadcaster to present content in a way which avoids conveying a prejudgement, or giving effect to the affections or enmities of the presenter or reporter in respect of what is broadcast. In this regard:
 - The ACMA applies the ordinary English meaning of the word 'impartial' in interpreting the Code. The *Macquarie Dictionary* (Fifth Edition)⁸ defines 'impartial' as: 'not partial; unbiased; just'. It defines 'partial' to include: 'biased or prejudiced in favour of a person, group, side, etc., as in a controversy'. 'Bias' is defined as: 'a particular tendency or inclination, especially one which prevents unprejudiced consideration of a question'.
 - The ACMA considers that a helpful explanation of the ordinary English usage of the term 'bias' is set out by Hayne J in *Minister for Immigration and Multicultural Affairs v Jia Legeng*⁹ as follows:

'Bias' is used to indicate some preponderating disposition or tendency, a 'propensity; predisposition towards; predilection; prejudice'.¹⁰ It may be occasioned by interest in the outcome, by affection or enmity, or, as was said to be the case here, by prejudgement. Whatever its cause, the result that is asserted or feared is a deviation from the true course of decision-making, for bias is 'anything which turns a man to a particular course, or gives the direction to his measures'.
- The relevant provision requires the ABC to 'gather and present news and information with due impartiality'. Inclusion of the word 'due' indicates an element of flexibility depending on the particular context: for example, the gathering and presentation of factual information for a news bulletin may be materially different from an interview of a political figure, where challenging questions are ordinarily appropriate.
- A program that presents a perspective that is opposed by a particular person or group is not inherently partial. Whether a breach of the Code has occurred will depend on the themes of the program, any editorial comment, the overall presentation of the story and the circumstances in which the program was prepared and broadcast.
- Presenters and reporters can play a key role in setting the tone of a program through their style and choice of language. The manner in which a report is presented or reported can influence the conclusions that an ordinary reasonable listener would draw from a broadcast.
- The nature of current affairs reporting requires reporters and presenters to be questioning, and at times sceptical, in their analysis of important issues. However, while probing and challenging questions may be used to explore an issue, programs must demonstrate a willingness to include alternative perspectives without prejudgement.

⁸ Online edition at <http://www.macquariedictionary.com.au>

⁹ (2001) 205 CLR 507 at 563 [183] Gleeson CJ and Gummow J at 538 [100] agreeing.

¹⁰ *Oxford English Dictionary* (Second Edition), meaning 3(a).