

Investigation Report No. 3240

File No.	ACMA2014/640
Licensee	Swan Television & Radio Broadcasters Pty Ltd
Station	STW-9 (Perth)
Type of Service	Commercial Television
Name of Program	<i>Nine News Perth</i> (promotion and program) <i>Today</i>
Dates of Broadcast	<i>Nine News Perth</i> (promotion) – 2 June 2014 <i>Nine News Perth</i> (segment) – 2 June 2014 <i>Today</i> (Interview and subsequent story) – 3 June 2014 <i>Nine News Perth</i> (follow-up segment) – 3 June 2014
Relevant Code	Clauses 4.3.1, 4.3.2 and 4.5 of the <i>Commercial Television Industry Code of Practice 2010</i>
Date finalised	4 December 2014
Decision	No breach of clause 4.3.1 (factual accuracy/fair representation of viewpoints) No breach of clause 4.3.2 (creating public panic) No breach of clause 4.5 (factual accuracy/unfair representation of viewpoints in promotions)

The complaint

In August 2014, the Australian Communications and Media Authority (the ACMA) commenced an investigation into a complaint about the following programs broadcast by Swan Television & Radio Broadcasters Pty Ltd, the licensee of STW-9 (Perth):

- a segment (and associated promotion) of the program *Nine News Perth* broadcast on 2 June 2014
- two separate segments of the *Today* program broadcast on 3 June 2014
- a segment of *Nine News Perth* broadcast on 3 June.

The complaint, submitted by a vaccination support group, alleged the broadcasts were factually inaccurate, failed to represent viewpoints fairly, and caused public panic.

The programs

Nine News Perth is a news program, broadcast on weeknights from 6:00pm to 6:30pm.

Today is a breakfast current affairs program that contains a mixture of news, interviews and entertainment news, and is broadcast from 5:30am to 9:00am on weekdays.

On 2 June 2014, a three-minute segment was broadcast on *Nine News*, 'Vaccine danger' (Segment 1). It looked at the story of a Perth man (B) who had been vaccinated against whooping cough, but subsequently contracted Acute Disseminated Encephalomyelitis (ADEM), a rare inflammatory disease of the central nervous system which causes the body's immune system to attack the brain.¹ This segment featured interviews with B and his wife (T) at their home, as well as a comment from a representative of the Australian Medical Association. It looked at the seriousness of B's medical condition, as well as going into the financial difficulties that his family faced as a result of it.

A 30-second promotion for this segment was also broadcast on 2 June 2014 (the promotion). The promotion briefly touched upon the contents of the first segment, opening with the words 'How vaccination destroyed this man's life'.

On 3 June 2014 at 7:02am, a segment appeared on *Today* discussing B's situation (Segment 2). A news segment very similar to the first segment was shown, which was followed by an interview with a medical practitioner who gave his views on B's situation, and the issue of vaccination more generally. The second segment was five and a half minutes long.

At 8:12am during the same broadcast of *Today*, a further segment featuring B was broadcast (Segment 3). This segment featured an interview with B and T discussing what had happened to B and how it had affected their lives. It was six minutes long.

Later that evening, another segment discussing B appeared on *Nine News Perth* (Segment 4). It contained excerpts from the first three segments and focussed on the family's financial situation. It was two and a half minutes long.

A transcript of the four segments and of the promotion is at **Attachment A**.

Assessment

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

¹ <http://myelitis.org/symptoms-conditions/acute-disseminated-encephalomyelitis/>

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

Australian courts have considered an 'ordinary, reasonable' 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 affairs.²

The ACMA considers the natural, ordinary meaning of the language, context, tenor, tone, visual images and any inferences that may be drawn. In the case of factual material which is presented, the ACMA will also consider relevant omissions (if any).

Once the ACMA has applied this test to ascertain the meaning of the material that was broadcast, it then assesses compliance with the Codes.

Issue 1: Factual accuracy

Relevant code provision

News and Current Affairs

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;

4.3.1.1 An assessment of whether the factual material is accurate is to be determined in the context of the segment in its entirety.

Complainant's submissions

The complainant's submissions concerning factual accuracy are at **Attachment B**.

Licensee's submissions

The licensee's submissions are at **Attachment C**.

Finding

The ACMA finds that the licensee did not breach clause 4.3.1 of the Code.

Reasons

In determining whether a statement complained about is factual, the ACMA has regard to the considerations set out at **Attachment D**. In addition, when assessing accuracy under the Code, the ACMA must consider the factual material in the context of each segment in its entirety (clause 4.3.1.1).

The complaint is that the segments were not factually accurate because they did not state:

- how rarely, if ever it has been shown that ADEM can be caused by vaccination and evidence to support the allegation - the story should have featured an infectious disease expert to provide the facts about ADEM and the real life risk of developing ADEM but were given the family's own assertion that it was caused by vaccination
- why adults require the whooping cough booster – including that immunity wanes from the vaccine or natural infection and newborns rely on adults to be up-to-date on their boosters to protect them

² *Amalgamated Television Services Pty Limited v Marsden* (1998) 43 NSWLR 158 at pp 164–167.

- the relative risk to babies of whooping cough versus the risk of the alleged vaccine reaction – one in 200 babies who catch it will die and the risk of whooping cough to babies should have been compared with the risk of ADEM.

The context of each segment was B and his family's experience of him contracting ADEM, following a whooping cough vaccination on the premature birth of his baby son, that nearly killed him and left him debilitated and unable to earn an income. The focus was the health and financial impact of ADEM which the family believe was caused by the whooping cough vaccination, as opposed the merits or otherwise of vaccination more generally.

Segment 1

In segment 1, B's wife T states that his ADEM was caused by the vaccination. This is followed by the reporter stating that the Australian Medical Association (the AMA), 'says it's difficult to prove a link between the vaccination and the illness' and Dr Richard Choong of the AMA stating: 'This has been studied and there's no evidence to say that it is linked, but equally there is no evidence to say that it's not linked.'

The reporter states that B signed a 'legal waiver' before the vaccination and will not be compensated. This is followed by T saying: 'I'm not against vaccinations, I do understand why they do them, but they need to inform people of the possibility of what can happen.'

There is no dispute that B contracted ADEM and the ACMA accepts that the segment focussed on his subjective account of his experience.

The ordinary reasonable viewer would have understood the factual assertions concerning vaccination to be:

- B contracted ADEM after receiving a vaccination for whooping cough.
- A link has not been established between the disease and the vaccination

There is no dispute that B became ill days after the vaccination.

The assertion that B's illness was caused by the vaccination was followed by a statement from the AMA that a causal link has not been established by the medical evidence. The broadcaster did not endorse or corroborate B's view as to the source of his illness. It would therefore have been understood as contestable and not as incontrovertible fact.

Accordingly, the licensee has not breached clause 4.3.1 of the Code in relation to the broadcast of segment 1.

Segment 2

In segment 2, the presenter notes that 'occasionally people have a bad reaction' to vaccination. 'One 'Western Australian family is counting the cost after a freak one in 80 million reaction left a father of five temporarily paralysed' Dr Choong of the AMA is quoted: 'We truly do not know if there's a causal relationship between it or not. We're making sure that this patient with this devastating condition is helped and assisted as much as possible.'

The health and financial impact on B is outlined and followed by a studio discussion. The Presenter says: 'No doubt people will seize upon this as a reason not to vaccinate.' Dr Joe Kosterich is then interviewed and says that 'there's no intervention in medicine ...that doesn't have side effects...and with immunisations it's contributed greatly to the reduction in infectious diseases. However some people can and do experience side effects.'

The presenter notes that B's wife is not anti-vaccination and Dr Kosterich continues 'We can be pro-vaccination, but we can recognise that people do experience harm, and those people do need some help and support.' The discussion moves to compensation issues.

The ordinary reasonable viewer would have understood the factual assertions concerning vaccination to be:

- the risk of contracting ADEM following a vaccination for whooping cough is one in 80 million

- the medical profession does not know if there is a causal relationship
- some people will suffer side effects but the risk of infection is outweighed by the benefits.

Again, the assertion that B's illness was caused by the vaccination was followed by a statement from the AMA that a causal link has not been established by the medical evidence. The broadcaster did not endorse or corroborate B's view as to the source of his illness. It would therefore have been understood as contestable and not as incontrovertible fact.

The remaining assertions were specific, unequivocal and capable of independent verification.

There is no dispute as to the accuracy of these assertions.

Accordingly, the licensee has not breached clause 4.3.1 of the Code in relation to the broadcast of segment 2.

Segment 3

In segment 3, B and T are interviewed and it is made clear that B was required to be vaccinated on the premature birth of his son, before entering the nursery, despite not being sick. This was because there was a whooping cough outbreak and it was necessary to prevent the risk of infection to babies in the nursery. Following a discussion of the impact of his illness, B says, 'it's a very rare immune system attack'. They discuss his progress and T says: 'I would just like to say, we are not anti-vaccinations. We are just trying to give people the right to be informed.'

The ordinary reasonable viewer would have understood the factual assertions concerning vaccination to be:

- at times of a whooping cough outbreak, adults coming into contact with newborn babies are required to be vaccinated in order to protect them from risk of the disease.
- B's illness following his vaccination was very rare
- B is recovering from the illness but his improvements are slow and limited

These assertions are specific, unequivocal and capable of independent verification.

There is no dispute as to the accuracy of these assertions.

Accordingly, the licensee has not breached clause 4.3.1 of the Code in relation to the broadcast of segment 3.

Segment 4

Segment 4 opened with calls for compensation for B including from the State Opposition, the Hon. Roger Cook MP, and the response from the Government by Hon. Dr Kim Desmond Hames MLA.

The reporter states that a year ago B 'was lying in the hospital a quadriplegic after a whooping cough vaccination almost killed him' and later: 'What B and T certainly don't want is for their experience to create hysteria around vaccinations.' T says: 'And I really, really hope that they don't think we are anti-vaccinations. We're just trying to give people the right to be informed of what can happen. And it has quite literally destroyed our lives.'

Dr Hames states, 'The risk of dying from whooping cough, for example, is far higher than the risk of getting medical conditions from the vaccination.'

The ordinary reasonable viewer would have understood the factual assertions to be:

- B was initially made a quadriplegic and nearly died after being vaccinated for whooping cough

- B and his family are not opposed to vaccination
- The risk of dying from whooping cough is far higher than the risk of medical conditions from vaccination.

These assertions are specific, unequivocal and capable of independent verification.

There is no dispute as to the accuracy of these assertions and they are not inconsistent with the matters set out in the complaint, including that the risk of whooping cough is higher than the risk of ADEM.

Accordingly, the licensee has not breached clause 4.3.1 of the Code in relation to factual accuracy.

Issue 2: Fair representation of viewpoints

Relevant code provision

News and Current Affairs

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;

4.3.1.1 An assessment of whether the factual material is accurate is to be determined in the context of the segment in its entirety.

Complainant's submissions

The complainant's submissions concerning representation of viewpoints are at **Attachment B**.

Licensee's submissions

The licensee's submissions are at **Attachment C**.

Finding

The ACMA finds that the licensee did not breach clause 4.3.1 of the Code.

Reasons

The complainant submitted that viewpoints were represented unfairly during the segments because the segment did not provide more factual information from medical experts about the low risks of ADEM from vaccination and the relative risks of whooping cough to babies. It argued the segments provided false balance by focusing on an extremely low, unproven vaccine risk without any context of the proven disease risks [that] could deter adults from having the booster and place vulnerable newborns at high risk.

In determining whether or not a licensee has represented a viewpoint fairly (having regard to the circumstances at the time of preparing and broadcasting the program), the ACMA takes into account that the Code does not require a licensee to present all material which it obtains. The overriding requirement is that the program (that is, whatever goes to air in its entirety), must represent viewpoints fairly. A program may omit material, but must not misrepresent a viewpoint in doing so.

As noted above, the context of the segment was the particular experience of one patient who had contracted ADEM. The factual assertions concerning vaccination and ADEM were accurate. Further, in each of the four segments, either:

- B or T made it clear that they were not opposed to vaccination, and that they understood why the practice occurs; or
- the rare nature of B's condition was outlined.

The factual assertions concerning vaccination in the segments were qualified by the views of health experts who spoke about:

- The absence of proof of a causal link between ADEM and the whooping cough vaccination
- The benefits of vaccination
- The higher risk of dying from whooping cough than suffering side effects from vaccination.

There is no material before the ACMA to suggest that the viewpoints of any party were misrepresented.

The ACMA is satisfied that, to the extent viewpoints were represented during the four segments, they were done so fairly.

The ACMA has noted in a previous investigation that 'false balance' is not an issue explicitly dealt with in the Code.³ In this case, the segments touched on the issue of the safety of vaccination. However, the opinions of the medical and health experts were accurately reported and 'balanced' the opinions of B and his family.

There were no opinions from anti-vaccination groups in the segments or discussion of the views of those in the non-medical community who oppose vaccination. Therefore, the segments did not elevate an anti-vaccination position above that of the medical community. Although the focus was on B's symptoms and the health and financial impact of his illness, his views on vaccination were not treated in such a way that the ordinary reasonable viewer would have been misled as to the true position on the safety of immunisation.

Accordingly, the licensee has not breached clause 4.3.1 of the Code in respect of the representation of viewpoints.

Issue 3: Causing public panic

Relevant Code clause

News and Current Affairs

4.3 In broadcasting news and current affairs programs, licensees:

4.3.2 must not present material in a manner that creates public panic.

Complainant's submissions

The complainant's submissions are set out at **Attachment B**.

Licensee's submissions

The licensee's submissions are set out at **Attachment C**.

Finding

The ACMA finds that the licensee did not breach clause 4.3.2 of the Code.

Reasons

³ Investigation 2883

The intention of clause 4.3.2 is to prevent licensees from presenting material in a news and current affairs program that would have the result of causing relatively widespread fear and terror in the general community.

Further, the language of clause 4.3.2 is such that for a breach to have occurred, it must be demonstrated that the broadcast actually had the effect of causing panic within the community.

The complaint is that the story 'could cause public panic about vaccines and place newborn babies at risk'.

The ACMA acknowledges that, based on the experience of B, the segments had the potential to create concern over the vaccination of healthy adults for whooping cough. Although there is no discussion about the risks of vaccination in newborn babies (other than information that B was required to have a vaccination before entering the nursery because of a risk of passing whooping cough to them), the segments may also have had the potential to raise concerns over vaccination of babies and children.

However, in this instance, there is no evidence that the broadcast caused panic in the general community, and it did not meet the high threshold of 'public panic' envisaged by clause 4.3.2 of the Code. The ACMA is not aware of any evidence that suggests that vaccination levels in the licence area have dropped as a result of the broadcast.

In addition, at a number of points during the segments, presenters and interviewees specifically addressed the issue of public panic, stating that they hoped that the story would not affect public attitudes towards vaccinations:

- From Segment 1:
 - **T:** I'm not against vaccinations; I do understand why they do them, but they need to inform people of the possibility of what can happen.

- From Segment 2:
 - **Presenter:** No doubt people will seize upon this as a reason not to vaccinate.
 - **Presenter:** It's worth noting that [B's] wife in that story did say she is not anti-vaccine.

- From Segment 3:
 - **T:** I would just like to say, we are not anti-vaccinations. We are trying to just give the people the right to be informed of what can happen.

- From Segment 4:
 - **Reporter:** What [B] and [T] certainly don't want is for their experience to create hysteria around vaccinations.

T: And I really, really hope that they don't think that we are anti-vaccinations. We are just trying to give the people the right to be informed of what can happen. And it has quite literally destroyed our lives.

The Hon. Dr Kim Desmond Hames MLA, Western Australia Deputy Premier; Minister for Health; Training and Workforce Development: The risk from dying of whooping cough, for example, is far higher than the risk of getting medical conditions from the vaccination.

As stated at Issue 1, the focus of the segments was on the particular case of B, as opposed to vaccinations amongst the public more generally and the broader debate in the community

about vaccination. As outlined above, the extremely rare nature of B's condition was also made apparent. In addition, much of the focus of the segments was on B's family's financial situation as opposed to a warning against vaccination.

The ACMA is therefore satisfied that the licensee did not breach clause 4.3.2 of the Code.

Issue 4: Factual Accuracy and fair representation of viewpoints in Promotions

Relevant Code clause

4.5 In broadcasting a promotion for a news or current affairs program, a licensee must present factual material accurately and represent featured viewpoints fairly, having regard to the circumstances at the time of preparing and broadcasting the program promotion, and its brevity. A licensee is not required by this clause to portray all aspects or themes of a program or program segment in a program promotion, or to represent all viewpoints contained in the program or program segment.

Complainant's submissions

The complainant's submissions are at **Attachment B**.

Licensee's submissions

The licensee's submissions are at **Attachment C**.

Finding

The ACMA finds that the licensee did not breach clause 4.5 of the Code.

Reasons

A transcript of the promotion is at **Attachment A**.

It included:

Announcer: How vaccination destroyed this man's life—

B: Struck me down, nearly killed me 3 times.

Announcer: One shot left him crippled.

B: It will put people in wheelchairs.

Announcer: Housebound.

T: A shell of the man he used to be.

Announcer: Broke.

T: Very, very close verge of losing our home.

Announcer: A father of five without hope.

B: It destroys people's lives.

Announcer: Exclusive.

T: Completely on your own, there is no support.

Announcer: Tonight on Nine News.

This dialogue was accompanied by footage of B lying in a hospital bed and excerpts of interviews with T. Text transcribing the announcer's words also appeared on the screen, overlaid with an image of a dripping syringe.

As demonstrated above, it was not factually inaccurate for the licensee to have reported that B's illness occurred after he was vaccinated, that he believed it was caused by the vaccination and that it left him ill and unable to work.

Unlike the segments discussed above, the promotion does not refer to the benefits of vaccination and does not include medical experts stating that the causal link with vaccination is unproven.

Clause 4.5, however, provides that licensees are 'not required by this clause to portray all aspects or themes of a program or program segment in a program promotion, or to represent all viewpoints contained in the program or program segment'. Within the brief time period usually allocated for program promotions, not all contextualising information can necessarily be presented.

In this case, the statements made by the announcer tended to corroborate B's view that his illness was caused by vaccination. However, they were provided in the context of B's surrounding comments, and it was clear enough that they were a restatement of his subjective account of his reaction to vaccination, rather a discussion of vaccination issues more broadly.

It could have been made clearer that the causal link was questioned by medical experts as occurred in the segments being promoted, and that B's comments concerned his reaction to the illness rather than vaccination. However, on balance, the ordinary, reasonable viewer would have understood that the promotion was presenting a story which dealt specifically with B's illness following a vaccination, and that his remarks would have conveyed his opinion as to what vaccination can do to people, based on his own personal and subjective account.

Accordingly, the promotion did not breach clause 4.5 of the Code.

Transcript of segment 1 – Nine News Perth – 2 June 2014

In the headlines at the start of the program

Presenter: Exclusive: how a single vaccination shot destroyed a WA father's life.

B: Couldn't move my legs, I couldn't feel them—

T: He is a shell of the man he used to be.

[This was accompanied by the text 'VACCINE NIGHTMARE' appearing at the bottom of the screen].

Later on during the news bulletin

[The presenter spoke with the backdrop of the words 'VACCINE DANGER' and an image of a syringe].

Presenter: A WA father of five says his life has been ruined by a single vaccination. [B] became a quadriplegic, unable to work, and is now at risk of losing everything. [Reporter] with this exclusive report.

Reporter: It should be the happiest years for [T and B] raising their five children. But any chance of normality ended when baby [name] was born eight weeks premature. Before [B] could see his newborn, he needed to be vaccinated for whooping cough. It almost killed him.

B: For a good six months in hospital, I couldn't move a thing. It was just a general, general tiny movements in limbs. I couldn't move my legs, I couldn't feel them.

Reporter: He became a quadriplegic.

T: Horrendous, absolutely horrendous. Watching your husband go from the big, Aussie man that he was to a complete quad. I'm now no longer a wife; I'm now his carer. Umm, yeah, it's been very, very hard.

Reporter: [B] spent the next 10 months in hospitals, most of the time at Royal Perth's Rehabilitation Hospital where intense steroids, blood treatment and physio four times a day helped him to walk again. What [B] has is an extremely rare condition called ADEM, with 1 in 80 million people never fully recovering.

T: Nobody has ever heard of ADEM, its Acute Disseminated Encephalomyelitis, is what it's called, he's got and it was caused from the vaccination.

Reporter: But the Australian Medical Association says it's difficult to prove a link between the vaccination and the illness.

Dr Richard Choong, Australian Medical Association: This has been studied and there's no evidence to say that it is linked, but equally there is no evidence to say that it's not linked.

Reporter: While he's now up and about again, he's a very sick man with no bladder or bowel, and minimal function of his liver and kidneys, needing 12 tablets plus vitamins every day.

T: He is a shell of the man he used to be. He's got no short-term memory, which is very frustrating. 90% of the time he's in bed or laying down.

Reporter: [B] is basically house ridden. He has no immune system. So a basic sickness like a cold has the potential to kill him.

B: I can't go anywhere, that's just exposing my health, and it's not worth it.

Reporter: [B] signed a standard legal waiver before the vaccination. Despite the efforts of two of Australia's biggest law firms, there is little chance of the family receiving any compensation.

T: I'm not against vaccinations; I do understand why they do them, but they need to inform people of the possibility of what can happen.

Reporter: The family of seven live off a pension of around \$950 a week. [B's] weekly medical costs are \$500. They've lost their car; their home is next.

B: Can't afford to make the payments on the pension and five kids.

Reporter: The [family] have just one wish.

T: Help, help please I don't know who, who to go through. I've tried all avenues, I've tried. All I want to do is have our home. Keep our home and support our children.

Reporter: [Reporter's name], *Nine News*.

Transcript of segment 2 – Today – 3 June 2014, 7:02am

Presenter: Well, vaccines are touted as one of the great marvels of modern medicine, saving countless lives. But, very occasionally, people can suffer a bad reaction. One Western Australian family is counting the cost after a freak one in 80 million reaction left a father of five temporarily paralysed.

Reporter: In should be the happiest years for [T and B] raising their five children. But any chance of normality ended when baby [name of baby] was born 8 weeks premature. Before [B] could see his newborn, he needed to be vaccinated for whooping cough. It almost killed him.

B: It's horrifying, for myself and other people that surround you. It's very shocking.

Reporter: He became a quadriplegic.

B's mother in law: Seeing, seeing him like that as a quad, from going from the strong man that he was to what he was in the hospital and the emergency part was just devastating.

Reporter: [B] spent the next 10 months in hospitals, where intense steroids, blood treatments and physio four times a day helped him to walk again. What [B] has is an extremely rare condition called ADEM, with 1 in 80 million people never fully recovering. But the Australian Medical Association says it's difficult to prove a link between the vaccination and the illness.

Dr Richard Choong, Australian Medical Association: We truly do not know if there's a causal relationship between it or not. We're making sure that this patient with this devastating condition is helped and assisted as much as possible.

Reporter: While he's now up and about again, he's a very sick man with no bladder or bowel and minimal function of his liver and kidneys, needing 12 tablets plus vitamins every day.

T: We don't have friends over, we don't have— we can't leave the house. We've gotta do shopping online. We can't leave the house, literally. He's lost so much. As a man, and as a husband and a father, he has lost so much.

B: It's a blessing to be here today, obviously. I mean, you consider each day as something that you didn't have. I died three times, that I know of.

Reporter: The family of seven live off a pension of around \$950 a week. [B's] weekly medical costs are \$500. They've lost their car - their home is next.

T: I don't know who, who to go through. I've tried all avenues, I've tried. All I want to do is have our home.

Reporter: [Reporter's name], *Nine News*.

Presenter: It's a topic that always provokes vigorous debate. Dr Kosterich joins us now in the studio, stepping into the coal mouth as it were on this one. Look, this is just an incredibly sad story. No doubt people will seize upon this as a reason not to vaccinate. Where do you stand after seeing this story? What's your position on it?

Dr Joe Kosterich: Sadly vaccination debates often generate a lot more heat than light. There's no intervention in medicine that we have that doesn't have side effects. Whether its medications, or surgery have complications, and with immunisations it's contributed greatly to the reduction in infectious diseases. Not the only factor, as is sometimes claimed, but a major

one. However, some people can and do experience side-effects. Most are fairly mild, but occasionally you do get a case such as this where people do suffer serious harm. That needs to be acknowledged and those people are entitled to some form of, I suppose, recognition and - you know, arguably, recompense.

Presenter: It's worth noting that [B's] wife in that story did say she is not anti-vaccine. Given everything that's happened, I think one of their issues is that when you talk about a bad reaction or a severe reaction, even that word doesn't come close to the sort of catastrophic response his body had to that vaccination.

Dr Joe Kosterich: And again, a lot of these discussions about whether we're pro or anti something, we can be very supportive of doing vaccinations and for all the right reasons. But that doesn't mean that there aren't people who will suffer harms. And I think where, I suppose, things get into trouble, or where the passions arise is that people say: 'Well, because there has been a bad reaction, you know, therefore we should be anti-vaccination'. No. We can be pro-vaccination, but we can recognise that people do experience harm, and those people do need some help and support. And at the moment, they fall into a fairly large crack - there is nothing there to support them.

Presenter: Well, I know that they've had two law firms look at their options as far as pursuing compensation - they have hit dead-ends, essentially, because he signed a fairly standard legal waiver that now excludes him from pursuing compensation. Is that normal, and if so, is there something wrong with the system that means that this man who now has irreversible damage cannot pursue financial compensation for what's happened to him?

Dr Joe Kosterich: There is a problem in that one has to establish - and obviously I'm not a lawyer, [presenter's name] - but one has to establish negligence. When one has side-effects, and people have been told about the potential for side-effects, it can be argued, I suppose, in a court of law, that that doesn't constitute negligence. The nurse who's administered the vaccine has done it, you know, in accordance with all the proper ways. However - and this is one of the arguments, I suppose, that people have put up for a no-fault scheme - that says: all right, not because anybody has done anything wrong, the hospital hasn't done the wrong, if you like, thing, and neither has the nurse, somebody still suffered harm. You know, perhaps this is the case where some sort of *ex gratia* payment could come in. When we have something that's maybe not quite mandated, but almost mandated by government and we know that a small percentage of people will suffer, it does need to be something in place for those small percentage of people [sic].

Presenter: It would seem so. Father of five, now can't work, he's probably going to have to sell his house. It doesn't seem quite right does it?

Dr Joe Kosterich: Oh look, I would agree [presenter's name]. And I think this case is very tragic and really does highlight that there is a gap in the system.

Newsreader: Alright. Dr Kosterich, thank you for your time this morning.

Transcript of the segment 3 – Today – 3 June 2014, 8:12am

Host: Well the arrival of a brand new baby should have been a time of celebration for [T and B]. But before [B] could even see his baby, he was told he needed a vaccination, which almost killed him. To explain what happened, we're joined now by [T], [B] and baby [name]. Good morning to all of you.

B & T: Good Morning.

Host: Now [T], if I could start with you, let's go back to when this occurred. Can you talk us through what happened?

T: Umm, yes. Umm, I went into labor 8 weeks early with our little boy. Umm, we had him in umm King Edward Memorial Hospital. Umm, later on the next day, umm, the nurse came up to us with the injections and the consent forms and asked us to sign the forms to have the shots. My husband argued with them, as umm, his Mum's a midwife and he's had all of his vaccinations and he was very fit and healthy. She then went on to inform us that unless he

had the shot, umm, he wouldn't be able to go and see his son in the nursery, at the risk of putting all the other babies at risk. So, naturally, he had the shot. 11 days later, he fell extremely sick.

Host: So the shot, just to be clear here, the shot was for what?

T: It was a 3-in-1. It was the whooping cough, diphtheria and tetanus.

Host: And, and even though he was up-to-date with his vaccinations, how could they explain to you that he needed another shot?

T: They said that there was umm, there was an outbreak of umm whooping cough and to have the shot to go and see his little boy, umm, was to save all the, all the other babies in the intensive care nursery.

Host: Ok. So you just had a baby and you discover that your husband is now a paraplegic [sic] as a result of that. I can't even imagine how difficult that time was for you.

T: That, that was the most horrific news I had ever received. I was actually in the Kalgoolie hospital with our son at the time. Umm, my husband got flown to Perth via Kalgoolie with the Royal Flying Doctors, umm, and then I got a phone call from Royal Perth Hospital to the hospital where I was at in Kalgoolie to inform me to umm, get there now because he wasn't going to live through the night.

Host: And this wasn't the only medical problem that [B] was facing though was it?

T: No.

B: Not at this stage. I've, there's been ongoing medical effects that can severely affect my health or, and or die I guess, in the worst case scenario. Ahh, very rare but I've learnt how to control that sort of thing and manage it through what they've taught me at Sheton Park, which is really amazing being there.

Host: And [B], have the doctors explained to you how this could have happened?

B: It's a very rare immune system attack which has been outlined in the petrusis vaccination as one of the side effects. And there's quite a few other side-effects that are possibly linked to it. Although it's so rare they're not looking into why it causes it or what happens because it's not worth funding the research for it, I suppose. But I don't believe that. I think there's a lot more people out there with, with the same problems that have been misdiagnosed, or things like that. So that's hopefully what our story is going bring across today.

Host: And, and you signed, as we heard, a medical waiver for this. How is that affecting the case you've got against the hospital?

B: Ahh the lawyers, pretty much, waive you that, yeah it's put down to, [sic] I did sign it and that acknowledges that it could be a severe reaction which I didn't consider to be catastrophic, which it has been. A severe reaction – sore arm, a bit sick, you know, crook a week later you're all fine—

T: High temperature—

B: Yeah, high temperature, but that wasn't the case. It led to further things.

Host: And so, umm, you couldn't walk for six months. How are you recovering now?

B: Ahh, it's still an uphill battle. It's more adapting to what I've got now. The actual myelitis attack on my spine has subdued and healed. It takes about 2 years to settle down and reduce the swelling. There's no swelling, you can't swell anywhere in your brain or your spine so there is nowhere to relieve the pressure, so it's a very, very slow and long process for it to get balanced again. I'm nearly up to the 2 year mark and that's about all the improvements I'm going to get.

Host: Right, ok.

B: As far as healing goes, yeah.

Host: All right well [B] we wish you all the very best and of course to you too as well [T] with whatever lies ahead. But all strength to you both.

B: Yeah, thanks very much.

T: No worries, thanks very much.

B: And thanks to all the people who have helped us. [Car dealership name] and [the name of a hotel]. We stayed there for months while I was in hospital and they looked after the wife.

Host: Oh, good for them.

B: Yeah. There's been a lot of supportive people throughout the process and I'd like to thank them. There's still a long way to go.

T: I would just like to say, we are not anti-vaccinations. We are just trying to give the people the right to be informed of what can happen.

Host: Indeed. Ok.

T: I just need to stress that.

Host: Yeah. No, we're glad you did.

B: And if you are going to get vaccinated make sure your insurance policy is covered by it, even though it's so rare, if something does happen it will destroy your life, and family life and what you know. Your career's gone, everything. You just— it's very, extremely hard on everyone, families and friends and it's a very hard disease to explain to people. It's hard.

Host: Indeed. Well [T] and [B], as I said we wish you all strength, and we're glad to hear you are getting that support there from the community. Thank you very much for your time this morning.

Together: Thank you.

Host: Over to you [name].

Presenter: Yeah they've had a hell of a run by sound of things [host], thank you.

Transcript of segment 4 – Nine News Perth – 3 June 2014

In the headlines at the start of the program

Presenter: Hell for a family left shattered by a single vaccination shot.

Later on during the news bulletin

Presenter: There are calls tonight for a compensation payment to be made the Kalgoolie dad left quadriplegic after a whooping cough vaccination. [B] almost died, and spent six months in hospital recovering.

Reporter: Today, a big step for [B].

Today host: And [B] have the doctors explained to you how this could have happened?

B: It's a very rare immune system attack.

Reporter: Just over a year ago, the father of five was lying in the hospital a quadriplegic after a whooping cough vaccination almost killed him.

B: And it's been a very hard struggle trying to get through it.

Reporter: But the Kalgoolie family believe they had a break through after meeting GP Dr Joe Kosterich this morning.

Dr Joe Kosterich: Those people do deserve and need some support, you know, from, if you like, the state.

Reporter: The [family] have five children under 14, and with [T] now [B's] full-time carer, neither mum or dad can work. And the bank is closing in.

T: It's now in legal proceedings, they're going to be taking our house off us.

Reporter: The State Opposition is calling on the government to intervene.

The Hon. Mr Roger Cook MP, Western Australian Shadow Minister for Health & Science: [B] did the right thing. When his son came into the world prematurely, he went out and got a whooping cough vaccination. The government should consider an *ex gratia* payment to the [family] because they're in a very difficult situation.

Reporter: A situation that the Health Minister says will be looked at by the government.

The Hon. Dr Kim Desmond Hames MLA, Western Australia Deputy Premier; Minister for Health; Training and Workforce Development: Well, everybody is eligible for consideration for an *ex gratia* payment. There's a process it goes through where someone's lawyer says we want to have an *ex gratia* payment and that goes through to the Minister for Commerce to consider.

Reporter: What [B] and [T] certainly don't want is for their experience to create hysteria around vaccinations.

T: And I really, really hope that they don't think that we're anti-vaccinations. We're just trying to give the people the right to be informed of what can happen. And it has quite literally destroyed our lives.

Dr Hames: The risk from dying of whooping cough, for example, is far higher than the risk of getting medical conditions from the vaccination.

Presenter: And [Reporter's name] joins us now. [Reporter's name], there's some good news tonight for the [family].

Reporter: There certainly is [presenter], after *Nine News* broke the story last night, this afternoon on 6PR, [name] from [car dealership] has offered to donate a vehicle so [T] can drive the kids to and from school, and we've had a number of phone calls in relation to last night's story with our viewers offering to help. So if you can help [T], [B] and their five children, please head to the *Nine News Perth* Facebook page. That's just by searching 'Nine News Perth' on Facebook, [Presenter's name].

Transcript of the promotion – *Nine News Perth* – 2 June 2014

Announcer: How vaccination destroyed this man's life—

B: Struck me down, nearly killed me 3 times.

Announcer: One shot left him crippled.

B: It will put people in wheelchairs.

Announcer: Housebound.

T: A shell of the man he used to be.

Announcer: Broke.

T: Very, very close verge of losing our home.

Announcer: A father of five without hope.

B: It destroys people's lives.

Announcer: Exclusive.

T: Completely on your own, there is no support.

Announcer: Tonight on *Nine News*.

Complainant's submissions

The complainant submitted the following to the licensee:

The story breaches the [code].

Section 4.3.1: The article was not factual or accurate and did not represent viewpoints fairly. It did not state:

- How rarely, if ever, it has been shown that ADEM can be caused by vaccination
- Any evidence to support this allegation
- Why adults require the whooping cough (pertussis) booster
- The relative risk to babies of whooping cough versus the risk of the alleged vaccine reaction

Section 4.3.2: It could cause public panic about vaccines and place newborn babies at risk

Why adults require whooping cough boosters

The [family] were offered a free booster as Australia was experiencing the world's largest Whooping Cough epidemic. This peaked at 38,500 cases in 2011. In response to thousands of babies being hospitalized and tragically over ten babies dying nationally, State governments have distributed millions of doses of the vaccine for free to new parents since 2009. Without the program, the number of grieving families would have been significantly higher.

Our group includes families whose babies have died from whooping cough and have worked hard to raise awareness of the need for adult boosters. This has saved lives, particularly vulnerable premature babies, and there are precedent cases where Australian babies have been infected in hospitals.⁴

Adults need a booster because immunity wanes from the vaccine or natural infection – with recent research stating as quickly as four years.⁵ Unfortunately less than 12%⁶ of adults nationally have had one. This means if there is an outbreak, an adult is susceptible to catching the disease and passing it on to others. For most adults, it will be an irritating coughing illness; however it can be deadly for a baby. A baby is not protected until they have had at least two doses of the vaccine, which is a four month old. Newborns rely on adults to be up-to-date on their boosters to protect them.⁷

Risk of whooping cough to babies

The story did not state the risk of ADEM following vaccination versus the risk of whooping cough to babies.

- Approximately 70% of babies that catch whooping cough are hospitalised
- 1 in 200 who catch it will die⁸
- There is no cure for whooping cough. Babies face months of coughing fits and can only be supported by oxygen, and for critical cases, must be intubated or placed on ECMO machines.

Thankfully new research has shown that if a woman gets vaccinated when pregnant, this will halve⁹ the risk of the baby catching whooping cough. However, we are concerned the program will impact on uptake of this vital preventative measure.

⁴ <http://www.chainofprotection.org/adultimmunisation>

⁵ <http://www.ncbi.nlm.nih.gov/pubmed/15876927>

⁶ <http://www.aihw.gov.au/publication-detail/?id=10737418409>

⁷ <http://www.chainofprotection.org/adultimmunisation>

⁸

<http://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/health+topics/health+conditions+prevention+and+treatment/infectious+diseases/whooping+cough/whooping+cough+pertussis+-+symptoms+treatment+and+prevention>

⁹

http://www.medicalobserver.com.au/news/prepregnancy-pertussis-vaccination-most-effective-study?utm_medium=email&utm_campaign=Daily+Enews+-+20032011&utm_content=Daily+Enews+-+20032011+CID_a95d45b499788c6b0e6dd817275f5bb8&utm_source=Email+marketing+software&

The risk of whooping cough in babies should have been compared to the risk of ADEM.

The facts about ADEM

The story should have featured an infectious disease expert to provide the facts about ADEM. Without context of how rarely ADEM occurs following after vaccination, this omission could be greatly damaging to public confidence in the vaccination program.

The alarmist headlines used - "Routine Vaccination Almost Fatal" "Vaccine Danger" "Man becomes quadriplegic following routine vaccination" "One shot left him crippled" "destroyed his life" and "Vaccination Nightmare" were grossly irresponsible and were not counterbalanced with the real-life risk of developing ADEM. Instead, we were given the [family's] own assertion that it was caused by the vaccination.

ADEM may or may not be associated with some vaccines. We know that it occurs at such an extremely low rate it is impossible to determine causality with any scientific accuracy. The statistical risk from vaccination is not detectable.

Indeed it is so rare the risk is something like 8 out of 1 million risk to the general population. Out of those cases, less than 5 per cent follow immunisation. There are many common and not-so-common bacteria and viruses that induce ADEM at much higher rates than those associated with vaccination.

The only vaccine proven to induce ADEM is the Semple form of the rabies vaccine. Other vaccines have all been implicated, most commonly the MMR vaccine, but the majority of the studies that correlate vaccination with ADEM onset use small samples or case studies (because there are so few cases to begin with). Large scale epidemiological studies do not show increased risk of ADEM following vaccination.

Also misleading was the implication [B] had "no immune system" and "no kidney or liver function" from the vaccine. ADEM should not cause organ dysfunction or immune suppression (although medication used to treat it can), and the paralysis it causes is usually temporary. [B] was alleged to have been made a "complete quad" "crippled" by just one shot, giving the impression his condition is permanent. However long-term prognosis for this condition is generally good.

We take vaccine safety and transparency about their safety very seriously. However, providing false balance by focusing on an extremely low, unproven vaccine risk without any context of the proven disease risks could deter adults from having the booster and place vulnerable newborns at high risk.

It subsequently submitted the following to the ACMA:

I am extremely unhappy with the insinuations and conclusions made by this broadcast and the subsequent response to my complaint to the broadcaster.

[...]

Channel Nine's compliance department completely ignored the major concerns of my complaint:

1. The rarity of the condition, ADEM.
2. The complete lack of substantiation that the pertussis booster vaccine can cause ADEM.
3. The complete lack of confirmation by an expert or medical diagnosis that the vaccine was the cause of the ADEM.

Instead, the story focused on the man's own claims and his need for financial assistance. The claim was unconfirmed, unsubstantiated and unsupported by medical evidence. ADEM... is incredibly rare, with a risk of 8 out of a million risk to the general population. But out of those 8 cases, less than 5% follow immunisation. It is not a certainty and cannot be proven that vaccination can cause ADEM. It is far more likely to follow infection by one of the vaccine preventable diseases or many common bacteria and viruses. The only vaccine proven to induce ADEM is the Semple form of the rabies vaccine. Large scale studies have not shown an increased risk of ADEM following other vaccines.

Licensee's submissions

The licensee responded to the complainant as follows:

For the reasons set out below, Nine maintains that it has not breached the Code in this instance.

Accuracy and viewpoints

The [ACMA] regulates compliance with the Code. In prior investigations, the ACMA has held that the requirement to represent viewpoints fairly does not prevent news and current affairs programs from taking a particular editorial stance or presenting only a particular point of view.

We have reviewed the footage of the promotion and the [four segments]. Together, they conveyed the personal experiences of [B] and his family, following his diagnosis with ADEM after receiving a whooping cough vaccination. In all of [the segments], the [family] iterated strongly that they are not anti-vaccination and are not trying to cause hysteria by telling their story publicly. They repeated several times throughout the [segments] that their intent in going public was to raise awareness about [B's] condition and the economic plight of his family and assist in their campaign for compensation from the Western Australian Government.

The promotion alerted viewers to [B's] horrific experience and encouraged them to watch the full story on Nine News. Accordingly, either watched together as they're intended or separately, the promotion and the [segments] are an accurate and fair portrayal of the [family]'s plight.

For the above reasons, we believe that we broadcast the factual material presented in the [segments] accurately and fairly.

Public panic

Nine also maintains that the [segments] were not presented in a manner that caused public panic for similar reasons to the above. Firstly, as noted above, each of the [segments] showed [T and/or B] stating that they were not intending to cause hysteria or panic in going public with their story.

Further, the [segments] stated several times that [B's] experience was very rare. One of the [segments] also showed footage of an interview with the Health Minister in Western Australia, Kim Hames, in which he strongly stated that the risk of dying from whooping cough was far higher than the risk of contracting a medical condition from the whooping cough vaccination.

For the reasons presented in this letter above, Nine maintains that the [segments] do not breach the Code.

The licensee subsequently submitted the following to the ACMA:

...We note that the [segments] related to the symptoms experiences by one man after having received a vaccination for whooping cough, which he required for the protection of his premature baby. The [segments] related primarily to the experience of this man, the physical, emotional and financial hardships faced by him and his family as a consequence of his medical condition, and whether he should receive compensation. They were not, and did not purport to be, anything else.

4.3.1

[...]

In their letter of complaint to Nine, the complainants alleged that the [segments] were not factual or accurate and did not represent viewpoints fairly as they did not state:

- (a) How rarely, if ever, it has been shown that ADEM can be caused by vaccination
- (b) Any evidence to support this allegation
- (c) Why adults require the whooping cough (pertussis) booster
- (d) The relative risk to babies of whooping cough versus the risk of the alleged vaccine reaction

In prior investigations,¹⁰ the ACMA has acknowledged that clause 4.3.1 of the Code does not require broadcasters to include all factual details in relation to the subject matter. Provided the information that a licensee presents as fact is presented accurately, this does not amount to a breach of the Code.

Accordingly, Nine firstly submits as an overall assertion in response to the complainant's allegations... above that it is not required to provide all factual details about the subject presented, as long as factual material broadcast in the [segments] is presented accurately.

In response to the complainant's specific allegations as set out... above, Nine also submits the following:

- In relation to the allegation in [paragraph (a) above], Nine denies that the [segments] did not state 'how rarely, if ever, it has been shown that ADEM is caused by vaccination'. The rarity of the condition was properly and accurately communicated in each of the [first segment] (by the reporter and Dr Richard Choong of the Australian Medical Association) and the [second segment] (in the Nine News Perth segment – by the reporter, Dr Richard Choong of the Australian Medical Association, the newsreader and Dr Kosterich, and in the [third segment] – by [B and T] and the interviewer)...

Nine acknowledges that the [fourth segment] did not contain an express representation as to the rarity of the condition, however submits that:

- i. As stated above Nine is under no obligation under clause 4.3.1 of the Code to include all relevant information;
 - ii. The omission of this information did not affect the accuracy of factual material presented, or fairness of viewpoints expressed, in the [segment]; and
 - iii. From the context of the [fourth segment] as a whole, the ordinary reasonable viewer would not be misled in that [segment] or otherwise form any view as to the prevalence or rarity of the condition from the material that was presented in the [fourth segment];
 - iv. Nine further denies that it was under any obligation to 'feature an infectious disease expert to provide facts about ADEM' as alleged, or that the failure to do so resulted in the [fourth segment] being in breach of clause 4.3.1, for the reasons above.
- In relation to the allegation at [paragraph (b) above], Nine notes this appears to be an allegation of factual inaccuracy by omission, and assumes that the complainant is referring to an alleged failure to provide evidence supporting either or both allegations that [B] was diagnosed with ADEM, and that the ADEM was caused by the vaccination.
 - [B] and his wife informed Nine of his medical history, the symptoms he experienced upon having received the vaccination, his diagnosis with ADEM and their belief that it was caused by the vaccination, and this information was reasonable relied on by Nine. Nine included such information in the broadcast of the [first segment] as well as the [second segment]. However, the [segments] also included express references to the rarity of the condition and the absence of any established causal relationship between

¹⁰ Investigation Report 3093

ADEM and the vaccination, including a statement to that effect from a representative of the Australian Medical Association...

ADEM was not referred to in the [fourth segment]. That report did include a statement from [B] in which he describes his condition as a 'very rare immune system attack'. Nine maintains that this is an accurate statement having regard to the circumstances at the time of preparing and broadcasting the [fourth segment].

- In relation to the allegation in [paragraph (c) above], Nine submits that this is not an allegation of factual inaccuracy. It is not alleged the [segments] falsely suggested or conveyed that there was no valid basis for adults to be vaccinated.

However, we note that most of the [segments] did in fact contain material expressly representing that there was a valid basis for adults to receive a whooping cough vaccination. The reason was communicated in various ways in the [first segment] (including through excerpts of an interview with [T] about why her husband was given the vaccination) and the [third segment] (when [T] explained what the vaccination was for and why [B] was made to take it by the hospital).

Nine acknowledges that the [fourth segment] did not expressly state *why* adults require the whooping cough vaccination, however submits that:

- i. The validity of the basis upon which adults should receive the vaccination is assumed, is not questioned and is certainly implied to the ordinary reasonable viewer throughout the [fourth segment], including material such as the statement from the Shadow Health Minister that '*[B] did the right thing: when his son came into the world prematurely, he went out and got a whooping cough vaccination...*'
 - ii. As stated above Nine is under no obligation under clause 4.3.1 of the Code to include all relevant information;
 - iii. The omission of this information did not affect the accuracy of factual material presented, or fairness of viewpoints represented, having regard to the circumstances at the time the [segment] was prepared and broadcast; and
 - iv. The ordinary reasonable viewer would be taken to have this knowledge, either through a viewing of the previous [segments] and/or their own extrinsic knowledge, noting that no material in the [second segment] makes any attack on that assumption...
- In relation to the allegation in [paragraph (d) above], Nine denies that it reported any factual material inaccurately in relation to this matter. The [fourth segment] included an interview with the Health Minister of Western Australia, Kim Hames, that '*the risk of dying from whooping cough is far higher than the risk of dying from the medical vaccination*', as well as the statement from the Shadow Health Minister referred to... above.

Nine further submits that as stated above clause 4.3.1 of the Code does not require Nine to include all relevant information and that the omission of this information from the [second segment] and [fourth segment] did not affect the accuracy of the factual material presented or viewpoints represented, having regard to the circumstances at the time the [segments] were prepared and broadcast.

The complainants also claim that the [segments] were misleading in that they allegedly implied that '*[B] had "no immune system" and "no kidney or liver function" from the vaccine*'. Nine denies these imputations were conveyed, and assumes this is a reference to the following statements by the reporter in the [first segment]:

While he's now up and about again... He's a very sick man with no bladder or bowel and minimal function of his liver and kidneys... Needing 12 tablets plus vitamins every day.

[...]

[B] is basically house ridden. He has no immune system so a basic sickness like a cold has the potential to kill him.

Nine denies the complainants' allegation that these statements were misleading. They were accurate statements of [B]'s medical condition at the time of the broadcast and further, were not stated to be conclusively caused by the vaccination. In fact, these statements were made by the reporter directly after he reported that the Australian Medical Association found it difficult to prove a link between the vaccination and the ADEM illness.

The complainants also alleged that by stating that he was a 'complete quad' and 'crippled' by just one shot, the [segments] gave the impression that his condition was permanent. Nine assumes that the complainant is referred to in the statements made in the [first segment] and the [second segment]. Nine refutes this allegation and submits in response that these statements were made in the context of [B]'s early condition when he was first diagnosed not his condition at the time of broadcast. Further, each of these [segments] informed viewers of [B]'s current medical condition and portrayed that he had recovered somewhat since his early diagnosis after significant medical treatment and therapy.

Nine otherwise maintains that factual material broadcast in the [segments] was presented accurately and viewpoints were represented fairly having regard to the circumstances at the time of preparing and broadcasting the program. Accordingly, Nine maintains that in broadcasting the [segments], it has not breached clause 4.3.1 of the Code.

4.3.2

[...]

In their letter of complaint to Nine, the complainants alleged that the [segments] could cause public panic about vaccines and place newborn babies at risk. The complainant specifically alleged that the [segments] contained 'alarmist headlines'.

The ACMA has previously stated in investigations¹¹ that clause 4.3.2 is intended to prevent broadcasters from presenting material that would have the result of causing relatively widespread fear and terror in the general community in the form of the high threshold of 'public panic;':

In this context, Nine maintains that the [segments] were not presented in a manner that caused public panic in breach of clause 4.3.2 for the following reasons:

- In all [of the segments], the [family] iterated strongly that they are not anti-vaccination and are not trying to cause hysteria by telling their story publicly. The [family] repeated several times throughout the [segments] that their intent in going public was to raise awareness about [B]'s condition and the desperate economic plight of his family and assist in their campaign for compensation from the Western Australian Government. Relevant particulars include without limitation:

- i. [T]'s statement in the [first segment]:

I'm not against vaccinations. I understand why they do them but they need to inform people of the possibility of what can happen...

¹¹ Investigation Reports 2742 and 2883

Help help please, I don't know who to go through, I've tried all avenues... all I want to do is have our home... keep our home and support our children.

- ii. The following statements in the [third segment]:

I don't know who to go through, I've tried all avenues... all I want to do is have our home...

We are not anti-vaccinations. We are just trying to give the people the right to be informed as to what can happen. I want to stress that.

- iii. The following statements in the [fourth segment]:

Reporter: *What [B and T] certainly don't want is for their experience to create hysteria around vaccinations.*

T: *I really, really hope that they don't think we are anti-vaccination. We are just trying to give people the right to be informed of what can happen and it has quite literally destroyed our lives.*

- Further, the [second segment] presented an interview with Dr Kosterich. In that interview Dr Joe Kosterich stated:

We can be very supportive of doing vaccinations and for all the right reasons. But that doesn't mean that there aren't people who will suffer harms. And I think where things get into trouble or where the passions arise is that people say because there's been a bad reaction, therefore we should be anti-vaccination. No – we can be pro-vaccination but we can recognise that people do experience harm and those people do need some help and support and at the moment they fall into a fairly large crack – there's nothing there to support them.

Nine submits that this statement would be understood by the ordinary reasonable viewer to mean that people should not refuse to take the whooping cough vaccination as a result of viewing the [second segment], but rather understand that even though such adverse reactions are rare, for those who *do* suffer them, there is an increased need for public help and support.

- The [segments] also stated several times that [B]'s experience was very rare...
- The [fourth segment] also presented an excerpt of an interview with the Health minister in Western Australia, Kim Hames, in which he stated that the risk of dying from whooping cough was far higher than the risk of contracting a medical condition from the whooping cough vaccination;
- The ordinary reasonable viewer considers the headlines in the context of the whole broadcast. Nine denies the headlines specified in the complainants' letter were 'alarmist' when viewed in context, which Nine submits was about raising awareness for the [family's] shocking and sad plight – not causing relatively widespread fear and terror in the general community about vaccinations;
- The promotion alerted viewers to watch the full story on Nine News later that night. The ordinary reasonable viewer understands that a promotion simply gives a hint as to the content of the full report and that in order to get the full story and be presented with more information about the issues contained in the promotion, they should watch the full report. The ordinary reasonable viewer would not have drawn any final conclusions about such a complex subject matter from a promotion; and
- Having regard to all of the above, an ordinary, reasonable viewer would not panic or perceive that there was any threat to the public at large in regards to getting the whooping cough vaccination as a result of viewing the [segments].

We also note that ACMA has previously stated in an investigation that the language in clause 4.3.2 is such that for a breach to have occurred, it must be demonstrated that the broadcast actually had the effect of causing panic within the community. Nine is not aware of any evidence of actual instances of public panic regarding this matter caused by the broadcast of the [segments].

Accordingly, Nine maintains that in broadcasting the [segments] and the promotion, it did not present material in a manner that created public panic and therefore did not breach clause 4.3.2 of the Code.

4.5

[...]

Nine maintains that the promotion accurately presented factual material and fairly represented the [family's] viewpoint, having regard to the circumstances at the time of preparing and broadcasting the promotion, and its brevity. The promotion was in relation to the [first segment], which introduced viewers to the [family], informed viewers of [B]'s medical complications following a whooping cough vaccination and reported on how the family were in financial difficulty and desperate for assistance. Each of these issues were summarised briefly in the promotion and were presented accurately or fairly as applicable.

The promotion also alerted viewers to watch the full story on *Nine News* later that night as stated above, Nine believes that an ordinary reasonable viewer understands that a promotion is merely a teaser for the full report and that in order to get the full story and be presented with more conclusions on the subject matter, they must watch the full report.

Nine therefore maintains that the promotion presented factual material accurately and represented viewpoints fairly having regard to the circumstances at the time of preparing and broadcasting the promotion, and its brevity. Accordingly, Nine maintains that in broadcasting the promotion, it did not breach clause 4.5 of the Code.

Attachment D

Some considerations to which the ACMA has regard in assessing whether or not particular content is factual material for the purposes of broadcasting codes of practice

- In practice, distinguishing between factual material and other material, such as opinion, can be a matter of fine judgement.
- The ACMA will have regard to all contextual indications (including subject, language, tenor and tone and inferences that may be drawn) in making its assessment.
- The ACMA will first look to the natural and ordinary meaning of the language used.
- Factual material will usually be specific, unequivocal and capable of independent verification.
- The use of language such as 'it seems to me' or 'we consider/think/believe' will tend to indicate that the content is contestable and presented as an expression of opinion or personal judgement. However, a common sense judgement is required and the form of words introducing the relevant content is not conclusive.
- Statements in the nature of predictions as to future events will rarely be characterised as factual material.
- Statements containing hyperbole will rarely be characterised as factual material.
- The identity of the person making a statement (whether as interviewer or interviewee) will often be relevant but not determinative of whether a statement is factual material.
- Where it is clear in the broadcast that an interviewee's account is subjective and contestable, and it is not endorsed or corroborated, their allegations will not be considered as factual assertions.
- Where an interviewee's stance is separately asserted or reinforced by the reporter or presenter, or proof of an allegation is offered so that it becomes the foundation on which a program or a critical element of the program is built, it may be considered a factual assertion.¹²
- Sources with expertise may be relied on more heavily than those without, in determining whether material is factual, but this will depend on:
 - o whether the statements are merely corroborative of 'lay' accounts given by other interviewees,
 - o the qualifications of the expert,
 - o whether their statements are described as opinion,
 - o whether their statements concern past or future events¹³ and
 - o whether they are simply comments made on another person's account of events or a separate assertion about matters within their expertise.

¹² See investigation 2712; *Channel Seven Adelaide Pty Limited v Australian Communications and Media Authority* [2014] FCA 667;

¹³ See investigations 3066, 2961
