HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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IN THE HIGH COURT OF AUSTRALIA

BRISBANE REGISTRY

BETWEEN:

In the matter of an application by
William Anicha Bay
for leave to appeal

APPLICATION FOR LEAVE TO APPEAL

The applicant applies for leave to appeal from the whole of the judgment of the High Court, Chief Justice Kiefel given on 13th October 2023.

Part I: The proposed grounds of appeal and the orders that will be sought

1. **Ground One** – Chief Justice Kiefel erred at law in the decision to dismiss the applicant's application for leave to file an application for a constitutional or other writ by **not affording procedural fairness** because her Honour did not give sufficient evidence nor reasoning to explain how the reasons for her decision at [4][1] equate to an abuse of process[2].
2. **Ground Two** – Chief Justice Kiefel erred at law in the decision to dismiss the applicant's application for leave to file an application for a constitutional or other writ by **making a mistake of fact** that under Regulation 6.07.1 of the *High Court Rules 2004* (Cth) that the applicant's application was "an abuse of process"[3].
3. **Ground Three** – Chief Justice Kiefel erred at law in the decision to dismiss the applicant's application for leave to file an application for a constitutional or other writ by making **errors of fact** regarding the substance of the applicant's application.
4. **Ground Four** – Chief Justice Kiefel erred at law in the decision to dismiss the applicant's application by taking into consideration an **irrelevant consideration,** that being the content of a previous unfiled application and conflating it with this application's argument, lending the decision to a **reasonable apprehension of bias**.

[1] Court document B54/2023 – 'Reasons for decision (Single Justice).
[2] Court document B54/2023 – 'Reasons for decision (Single Justice) at [5].
[3] Court document B54/2023 – 'Reasons for decision (Single Justice) at [5].

5. **Orders Sought**

    1) This matter be expedited for hearing.
    2) An order that leave to appeal the whole of the judgment of the High Court, Chief Justice Kiefel given on 13th October 2023, is granted.
    3) An order that the whole of the judgment of the High Court, Chief Justice Kiefel given on 13th October 2023, to refuse leave to issue or file an application for a constitutional or other writ, be set aside.
    4) An order that the applicant's Form 12, application for a constitutional or other writ, be filed.

Part II: A concise statement of the leave or special leave questions said to arise

6. **Question One:** As an element of procedural fairness under natural law, did Chief Justice Kiefel provide insufficient evidence and/or reasons as to why the applicant's application for leave to file an application for a constitutional or other writ amounted to an abuse of process? If not;
7. **Question Two:** Was Chief Justice Kiefel incorrect to decide that an application for leave to file an application for a constitutional or other writ under Regulation 6.07.1 of the *High Court Rules 2004* did not require evidence or sufficient reasoning to deny that leave? If not;
8. **Question Three:** Did Chief Justice Kiefel make a mistake of fact that the applicant's application encompassed proceedings which could be clearly seen to be foredoomed to fail? If not;
9. **Question Four:** Did Chief Justice Kiefel make an error of law when determining the reasons for finding the application amounted to an abuse of process by committing errors of fact, and/or taking into account an irrelevant consideration which lent itself to a reasonable apprehension of bias?
10. **Question Five**: If the answer is yes to any of the above four questions; do these errors of fact and/or law produce sufficient doubt attended to the decision to dismiss the applicant's application, and if so, would this error produce a substantial injustice if this decision was left to stand? And if so;
11. **Question Six**: Does the applicant's application have prospects of success demonstrating sufficient cause by disclosing a matter of importance and urgency? If so; for the benefit of the administration of justice, leave to appeal ought to be granted.

Part III: Argument in support of the grant of leave

Ground One Reasoning

12. There has been a breach of natural justice and procedural fairness because her Honour Chief Justice Kiefel has not explained how the reasons for her decision at [4][4] amount to an abuse of process at [5][5].

13. Rather, the reasons provided by her Honour do not demonstrate an abuse of process. Her Honour gave the reasons[6] of i) "…adds nothing of substance"; ii) "The fact that the short title was used in the writ could not conclude the matter."; and iii) "No requirement is to be found in s 128 by implication.". These three reasons do not demonstrate how this constitutes an abuse of process to the public or to the applicant.

14. It is an error of fact that the applicant's application did not add anything of substance. Her Honour failed to consider most of the arguments in Ground Two at [8] of the applicant's Form 12 application[7] including; Ground 2 a): incorrect text on the ballot paper; Ground 2 c): a misleading reference that cannot be found on the Federal Register of Legislation; Ground 2 d): no supplementary voting materials provided to electors; Ground 2 e): polling booths not having supplementary voting materials, and; Ground 2 f): no corresponding reference in the official referendum booklet.

15. Furthermore, her Honour has not explained how the writ did not conclude the issue, and the connection between the matter of the writ not concluding the issue and the relevance of a previous unfiled application to this matter and why s 128 of the *Constitution* is not relevant, and how this amounts to an abuse of process.

16. This failure to explain her reasons gives sufficient grounds for leave to appeal since the applicant cannot fairly or lawfully be expected to contest (or clearly understand) her Honour's reasons without knowing the lawful and logical basis on how that conclusion was arrived at. As such, in the interests of justice; leave should be granted forthwith.

17. In the alternative, if the Court finds sufficient explanation to conclude that Chief Justice Kiefel had in fact given sufficient and lawful reasons as to why the applicant's matter was an abuse of process then grounds two to five for leave to appeal have been provided (with toil) as further explanation as to why leave to file should be granted[8].

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[4] Court document B54/2023 – 'Reasons for decision (Single Justice).
[5] Ibid.
[6] At [4[of Court document B54/2023 – 'Reasons for decision (Single Justice).
[7] Court document B54/2023 – In the matter of an application by William Anicha Bay for leave to issue or file
[8] Notwithstanding that this need to counter arguments that have not been declared is most likely a breach of procedural fairness and natural justice, thus making the lawfulness of leave to appeal self-evident.

Ground Two Reasoning

18. Chief Justice Kiefel erred at law in the decision to dismiss the applicant's application by making the mistake of fact that the applicant's application was an abuse of process. It was a mistake of fact because no explicit evidence was provided by Her Honour to demonstrate that the applicant had committed an abuse of process.
19. Matters may be characterised as an abuse of process should those matters encompass proceedings which are "clearly foredoomed to fail"[9]. Chief Justice Kiefel erred at law in the decision to dismiss the applicant's application because the applicant's matter **cannot clearly be seen to be**, or is, foredoomed to fail"[10] since;

a) Without testing the merits of the applicant's arguments in court, and by not taking into account that the applicant has a prima facie case based on a preponderance of verifiable evidence[11], it is argued that Her Honour has not considered Chief Justice Dixon's statement in the case of *General Steel Industries Inc. v. Commissioner for Railways* (N.S.W.) (1964) HCA 69; 112 CLR 125 at [10] that, "A case must be very clear indeed to justify the summary intervention of the court to prevent a plaintiff submitting his case…" Indeed, the applicant would rely on the intellectually robust concept that, "for even the very wise cannot see all ends"[12].

b) Also, unlike in the case of *Ridgeway v The Queen* (1995) 184 CLR 19[13] there is not an absence of crucial evidence in the applicant's matter but rather a preponderance of it[14].

c) Additionally, in *Jago v. District Court of New South Wales* ((26) (1989) 168 CLR 23) Chief Justice Mason quoted with approval Justice Richardson's view that "the second aspect of the public interest which is in the maintenance of public confidence in the administration of justice." The applicant contends that public confidence in the administration of justice will be damaged if this matter is not allowed to have the merits of the legality of the execution of the machinery provisions of the 2023 Referendum tested in Court. For public confidence to be maintained justice must not only be done but **be seen to be done** and as such, the refusal of filing of the applicant's Form 12 will only lend itself to the perception that justice is **not** being maintained.

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[9] *Walton v Gardiner* (1993) 177 CLR 378 at 393; "… proceedings will constitute an abuse of process if they can be clearly seen to be foredoomed to fail…".
[10] *Walton v Gardiner* (1993) 177 CLR 378 at 393.
[11] See Court document Affidavit of Dr William Anicha Bay 9th October 2023.
[12] Gandalf the Grey counsel to Frodo Baggins in '*Lord of the Rings'*, J.R.R. Tolkien 1954.
[13] Chief Justice Mason and Justices Deane and Dawson at [40-41].
[14] See Court documents – Affidavits of Dr William Anicha Bay 9th and 10th October 2023.

d) Furthermore, in the case of *Metropolitan Bank v. Pooley* (1885) 10 App Cas 210, at pp 220-221 it was determined that the Court has the inherent power to "see that its process was not abused". The applicant does not dispute this long-held law. He would rather, seek to persuade Your Honours that he is not abusing the processes of this Court by pointing to the reasonable uncertainty that his substantive application **may or may not** succeed on its merits, and when the underlying issue of his matter is so significantly in the public interest, the benefit of any doubt ought be granted to the applicant for the clear benefit of the public interest and confidence in the supreme law, that being the *Constitution*.

e) Finally, in the case of *General Steel Industries Inc. v. Commissioner for Railways* (N.S.W.) (1964) HCA 69; 112 CLR 125 there is to be found much support for the applicant's matter to be filed and to proceed. At [10] Chief Justice Dixon said, "…once it appears that there is a real question to be determined whether of fact or law and that the rights of the parties depend upon it, then it is not competent for the court to dismiss the action as frivolous and vexatious and an abuse of process.".

f) Consequently, as the applicant's matter contains prima facie verifiable facts that qualified electors may have been disenfranchised[15], and an argument as to whether the Commissioner failed in his duty to abide by statute and the *Constitution* is not clearly foredoomed to fail*;* then it is entirely competent and in the interests of justice for this Court to find that the applicant's filing of his matter does not amount to an abuse of process and therefore leave to file should be allowed.

Ground Three Reasoning

20. Chief Justice Kiefel at [4] of the 'Reasons for decision' made errors of fact when concluding that the applicant's application had no substance.

21. By her Honour making the declaration at [4] that, "the short title was used in the writ could not conclude the matter" demonstrates ipso facto that there is a matter **needing to be further concluded,** thus the application cannot be discarded on the face of it because there is a justiciable controversy to be heard regarding lawful compliance to the issue of the writ. The existence of such a controversy necessarily defeats the conclusion that the application is without any substance to amount to an abuse of process.

[15] See Exhibit A5, Affidavit of My Le Trinh, to Affidavit of Dr William Anicha Bay 9th October 2023.

22. This mistake of fact inevitably leads to a consequent mistake of fact and law by her Honour at [4] that "no requirement is to be found in s 128 by implication".
23. Furthermore, a mistake of fact was made by Chief Justice Kiefel at [3] that, "The applicant essentially seeks to agitate the question about the requirements of s 128 regarding the content of the proposed law again." The applicant is not seeking to agitate about the content of the proposed law. This was made clear in Ground One and all of subsections a) to f) of Ground Two of the applicant's Form 12 application.
24. The applicant, for the avoidance of doubt, again declares that he is not challenging the power of the Parliament to create the content of the proposed law to alter the *Constitution*. The applicant has instead challenged the Commissioner's execution of the requirements of the *Referendum (Machinery Provisions) Act 1984* and the *Constitution*.

Ground Four Reasoning

25. Chief Justice Kiefel erred at law in the decision to dismiss the applicant's application by taking into consideration the irrelevant consideration of the applicant's unfiled previous application and then conflating the two applications arguments as one.
26. Chief Justice Kiefel has made a decision on jurisdictional facts ultra vires to this matter. The content of the applicant's previous application referred to at [3] of the 'Reasons for decision' that was not filed, cannot lawfully be considered in this present matter because that matter was never filed and its arguments were not tested in Court, nor even were they the same arguments in this present application.
27. Without the filing of that previous matter, a matter does not, and did not legally exist, and therefore cannot be taken into consideration when considering this current matter.
28. If it were true that that matter could be considered, then that would negate the lawfulness of the refusal to file that previous matter in the first instance. It would therefore be a compounded miscarriage of justice to deny an applicant the second in-time of two applications based on the evidence of the first application which was not legally allowed to be filed in the first place. In other words, if the earlier application was lawfully a matter, then it necessarily follows that this matter is lawfully a matter too, and worthy of being filed and judged in Court for the benefit of the public interest.
29. In the alternative, if this Court finds that the previous unfiled application by the applicant is a relevant consideration in determining the merits of this application; it is argued that Chief Justice Kiefel's statement at [4] that, "The applicant's further

contention...” demonstrates that CJ Kiefel is erroneously conflating the applicant’s previous application with the content of this application by use of the word ‘further’ to imply continuance of arguments. Rather, and lawfully, this application and its grounds should be allowed to stand on its own merits, and to deny leave for filing based wholly or on even partially on arguments from a previous filing would be certainly unjust.

30. Furthermore, Chief Justice Kiefel at [4] said that the applicant’s current application, “… adds nothing of substance to his argument.” Again, Chief Justice Kiefel has made the error at law of judging the merits of the applicant’s application for leave to file based on the merits of, or the perception of merits of, a previous (unfiled) application.
31. In these circumstances, a fair-minded observer with knowledge of the facts might entertain a reasonable belief that Chief Justice Kiefel might not have brought an impartial and unprejudiced mind to the determination of the applicant’s application for leave to file or issue his Form 12 application for a constitutional or other writ.
32. Thus, this irrelevant consideration of conflating an unfiled matter with this matter predisposes the dismissal of the applicant’s application to the reasonable perception of apprehended bias. The principles of natural justice therefore require leave to appeal from this decision of Chief Justice Kiefel to correct this substantial injustice.

Sufficient doubt

33. Sufficient doubt has attended the decision to dismiss the applicant’s Form 31 application (which provides for one of the two principles that govern the grant of leave.[16]) because of the substantive mistakes of fact and law, and the lack of procedural fairness and natural justice described above.

Substantial injustice

34. A substantial injustice would result if leave to appeal the decision to not file the applicant’s Form 31 application was not granted, which provides for the second of the two principles that govern the grant of leave.[17]
35. The current and future legal foundation of the Commonwealth of Australia would be harmed by failing to have this matter’s extremely important constitutional issues examined by this Court. Citizens should not be dissuaded from having valid constitutional concerns over s 128 tested in court; thus to dismiss the applicant’s matter without allowing filing would send a message that such examinations are unwanted and invite the perception of injustice into one of the key branches of lawful society.

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[16] *Bienstein v Bienstein* [2003] HCA 7; 195 ALR 225 at [29].
[17] *Bienstein v Bienstein* [2003] HCA 7; 195 ALR 225 at [29].

36. It is vitally important to the applicant and to the confidence of the public in its system of government that the lawfulness of the 2023 Referendum ballot paper and whether it disenfranchises electors of their constitutional guarantee to vote in future referenda is examined before this Court. A finding that the ballot paper and/or the Electoral Commissioner did not comply with law would provide future constitutional clarity and maintain the outcome of the 2023 Referendum since no change to the *Constitution* was enacted by the electorate. Not proceeding in this case would be a substantial injustice.
37. To deny qualified electors the right to full details on the proposed alterations to referenda is not what the framers of the *Constitution* intended when they declared that the Australian people ought to be allowed to decide for themselves this most important of matters. [18] The fact that the referendum is now decided does not detract from the utility of this controversy being decided as future referenda will benefit from constitutional clarity on the issues this application raises.
38. Additionally, to not allow leave to file this substantive matter would in effect give sanction to a very loose interpretation of s 128, thus changing the meaning of s 128 without a referendum itself. If there is the slightest prospect that the applicant's matter has any merit, then as strict defenders of the law and the *Constitution*, this Court ought to entertain the filing of his substantive application; thus, making the granting of this leave to appeal (and leave to file) the proper and lawful course of action for the sake of the *Constitution*, future referenda, and the public interest.

The applicant has standing

39. The applicant has standing because he is a qualified elector, has arguably had his constitutional right to vote removed, and in spite of s 100 of the *Referendum Act*, the applicant continues to have standing. This is because his Form 12 matter was refused filing on the 9th of October, five days before the vote taking day (October 14th) of the 2023 Referendum, thus making this a contested constitutional matter antecedent to the referendum and one that does not and should not be categorised as a disputed return.

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[18] As reported at page 987 of Quick and Garran, 'The Annotated Constitution of The Australian Commonwealth' (1901). In the original s 128 clause presented to the Sydney Convention of 1891 the Committee removed the wording, ""Conventions to be elected by," in order that the question should be submitted to the electors." This highlights the importance of the electors being fully debriefed aware and sovereign in the exercise of constitutional amendment. Indeed, the counter argument was put that the constitutional amendments were too complicated to be put to the electors, but this was not upheld in committee. "Mr Deakin pointed out that the Conventions could only say yes or no, and the electors ought to be allowed to yes or no themselves…" i.e., full electoral informed consent was the spirit of this section.

40. Furthermore, Chief Justice Mason in *Boland v Hughes* (1988)[19] said in that very similar case that, "It just strikes me as perhaps a little odd that an elector and a citizen lacks standing to raise the validity of a constitutional amendment." He further said, "if there is a defect in the procedure and that defect is essential to the validity of constitutional amendment, I do not see how a statute can give it immunity from challenge...".
41. The applicant has a real controversy to contest because he has been injured in his constitutional rights by not being afforded a lawful ballot paper to mark his voting intention on, thus depriving him of his most valuable political asset: his franchise to participate in authorship of the Commonwealth *Constitution*.
42. The plaintiff also has a special interest in the constitutional and lawful validity of the 2023 Referendum and the ballot paper above that of the average elector as he is pursuing a defamation claim in the District Court of Brisbane[20] which revolves around the fact of whether the 2023 Referendum is constitutionally valid or not.
43. Thus, there is a direct connection between the purportedly faulty, unlawful, and unconstitutional wording of the ballot paper published by the Electoral Commissioner, and the past and present (and ongoing) injury sustained to the plaintiff's reputation. Consequently, the plaintiff has suffered damage greater than that of the general public and has a ""special interest" over and above that enjoyed by the public" [21], and thus has the requisite standing in this matter for it to proceed.

Matter of importance and public interest

44. This matter has significant public importance because the 2023 Referendum ballot paper did not comply with the requirements of the Writ for a Referendum issued by the Governor-General on September 11th 2023, nor with the *Referendum Act*. This failure by the Commissioner to follow the law is contrary to the public's interest in having its machinery of government (including referenda) conducted strictly according to law, especially the highly important s 128 of the *Constitution*.
45. As the wording on the ballot paper derives its base authority from s 128 of the *Constitution*, this is the most important section of the *Constitution* to examine and defend as it holds the power to change the *Constitution* itself. Section 128 is the social compact upon which the power of the Australian people and its governance rests,

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[19] 83 ALR 673
[20] See Affidavit of Dr William Anicha Bay 9th October 2023 at [10-11].
[21] *Australian Institute of Marine & Power Engineers v Secretary, Department of Transport* [1986] FCA 636; 13 FCR 124, Justice Gummow at [22].

therefore; its application must be interpreted strictly and correctly, and there can be no doubt attended to the legality of the Commissioner's fealty to it. To do otherwise is to undermine the very bedrock of our democracy which ought not occur.

46. To return to Chief Justice Mason in *Boland v Hughes*[22], His Honour said that there is, "the notion of constitutional amendment based on the ascertainment or true reflection of the will of the people". Thus, this matter has significant public importance because the lack of accurate wording of the proposed law on the ballot paper is contrary to the public's interest in being fully informed of the changes to *Constitution* and expressing their will.
47. Furthermore, the applicant and other qualified electors are being disenfranchised. The applicant (and all other qualified electors) have had their constitutionally guaranteed right as Australian citizens to vote on the 2023 Referendum, denied. Despite the applicant being a qualified elector, it is argued he was not **provided with a lawful ballot** to cast his vote on and thus a justifiable and justiciable controversy exists.
48. Furthermore, despite the constitutionally appointed power of the Parliament to determine the content of the proposed law to alter the *Constitution*, the wording on the ballot form is **the mode** of altering the *Constitution*. Therefore, the ballot paper wording is governed by an implicit requirement, derived from s 128, that the ballot paper's proposed law sufficiently corresponds to the content of the proposed law so that an affirmative answer to it can be interpreted under s 128 of the *Constitution* as an elector's approval of the proposed law. Whilst s 128 confers on Parliament some discretion as to the manner on how a vote regarding a proposed law shall be taken[23], there is still a point at which a question would fail to correspond to the proposed law to such a degree that an affirmative answer to the question could not be understood as an approval by an elector of the proposed law.
49. Thus, the applicant and indeed, all Australian electors, have been potentially disenfranchised because the ballot paper did not adequately reflect the proposed law. The ballot paper did not submit the proposed law to the electors as was required by s 128 of the *Constitution.* It was therefore a legal impossibility to cast a valid vote in this referendum as the ballot paper did not comply with s 128 of the *Constitution*.

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[22] 83 ALR 673

[23] This discretion, however, must be contained within the limits of the wording and meaning of s 128 of the *Constitution.*

A matter of urgency

50. There is much urgency in allowing this matter to be heard as soon as possible as the time allowed for disputed returns in the 2023 Referendum concludes 40 days, "after the publication in the *Gazette* of the statement by the Electoral Commissioner showing the result of the referendum."[24]. Thus, if any Attorney-General wishes to intervene in this matter it would be in the public interest for it to be heard as soon as possible. Hearing this matter quickly would allow for a determination on the matter before the writ for the referendum is due to be returned[25].
51. Furthermore, there is no insurmountable impediment to the Electoral Commissioner appearing in this matter. The remaining relevant declarations[26] sought in the prayer for relief, if granted, will not affect the result of the 2023 Referendum since the No vote was victorious. What relief in this matter will provide for the applicant, the Parliament, and the public is constitutional clarity and certainty on future referenda as well as providing immediate relief to the applicant for his (ongoing) reputational damage.
52. In conclusion, by this Court acting urgently to determine the lawful validity of the 2023 Referendum ballot paper by allowing this appeal, it will help to settle the controversy between the parties, whilst simultaneously helping to ensure future lawful, constitutional amendments to the *Constitution*, and **prevent** questions about the legitimacy of future referenda; all of which is firmly in the public interest and of paramount legal and social importance.

Good prospects of success

53. The applicant's matter is neither vexatious, frivolous, nor is it outside the jurisdiction of this High Court. This was determined as being so due to the absence of findings to the contrary in the judgment of Chief Justice Kiefel on 13th October 2023[27]. The only issue preventing a socially useful examination of the ballot paper and the Commissioner's adherence to law; is the question of the applicant's 'abuse of process' which he firmly disputes there were lawful grounds for this unexplained finding.
54. It is the applicant's contention that no abuse of process has occurred and mistakes of both fact and law has been made regarding this. These errors form the legally

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[24] *Referendum (Machinery Provisions) Act 1984* s 101 ss (d). No publication has been made at the time of this application.
[25] Currently scheduled for 20th December 2023.
[26] Since the 2023 Referendum vote taking day has now passed and the Yes case was unsuccessful, the only relevant relief still sought by the applicant are Orders 1, 2, and 3 from the Form 12 application.
[27] Court document B54/2023 – 'Reasons for decision (Single Justice).

justifiable reason why this application for, and leave to file, should be granted, and underpin why it is firmly in the public (and the applicant's private) interest to do so.

Constitutional issues ripe for decision

55. The constitutional and lawful validity of the title used on the ballot paper as it pertains to the *Referendum Act* and s 128 of the *Constitution* has not been challenged before. This is a novel and important case that affects the sovereign power of the Australian people[28] to be authors of the supreme law of their nation. Only a hearing of these very important issues will ensure public confidence in future referenda, the High Court, and the *Constitution* itself.

Part IV: Arguments as to costs

56. The plaintiff's matter is one of immense public interest and importance owing to the potential widespread disenfranchisement of qualified electors, and an unlawful change to the *Constitution* for future referenda. As such, it would be against the public interest for a plaintiff acting in good faith to be penalised[29] for aiming to protect his and Australia's foundational democratic rights.

Part V: A list of the authorities on which the applicant relies upon

57. *Australian Institute of Marine & Power Engineers v Secretary, Department of Transport* [1986] FCA 636; 13 FCR 124, Justice Gummow at [22]; *Bienstein v Bienstein* [2003] HCA 7; 195 ALR 225 at [29]; *Boland v Hughes* (1988) 83 ALR 673; *General Steel Industries Inc. v. Commissioner for Railways* (N.S.W.) (1964) HCA 69; 112 CLR 125 Chief Justice Dixon at [10]; *Gerner v Victoria* [2020] HCA 48; 270 CLR 412 at [24]; *Jago v. District Court of New South Wales* ((26) (1989) 168 CLR 23); *Metropolitan Bank v. Pooley* (1885) 10 App Cas 210, at pp 220-221; *Oshlack v Richmond River Council* [1998] HCA 11; 193 CLR 72, Chief Justice Brennan at [1]; *Ridgeway v The Queen* (1995) 184 CLR 19 Chief Justice Mason and Justices Deane and Dawson at [40-41]; *Walton v Gardiner* (1993) 177 CLR 378 at 393.

Part VI: The applicable provisions and statutes are set out in the Annexure.

Dated 5th November 2023

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William Anicha Bay

The applicant is self-represented.

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[28] *Gerner v Victoria* [2020] HCA 48; 270 CLR 412 at [24].
[29] *Oshlack v Richmond River Council* [1998] HCA 11; 193 CLR 72, Chief Justice Brennan at [1].

Annexure

- Regulation 6.07.1 of the *High Court Rules 2004* (Cth)

  6.07 Refusal to issue or file a document

  6.07.1 If a writ, application, summons, affidavit or other document (the ***document***) appears to a Registrar on its face to be an abuse of the process of the Court, to be frivolous or vexatious or to fall outside the jurisdiction of the Court, the Registrar may seek the direction of a Justice.

- The *Constitution* at s 128

  128. Mode of altering the Constitution.

  This Constitution shall not be altered except in the following manner:—

  The proposed law for the alteration thereof must be passed by an absolute majority of each House of the Parliament, and not less than two nor more than six months after its passage through both Houses the proposed law shall be submitted in each State and Territory to the electors qualified to vote for the election of members of the House of Representatives.

  But if either House passes any such proposed law by an absolute majority, and the other House rejects or fails to pass it or passes it with any amendment to which the first-mentioned House will not agree, and if after an interval of three months the first-mentioned House in the same or the next session again passes the proposed law by an absolute majority with or without any amendment which has been made or agreed to by the other House, and such other House rejects or fails to pass it or passes it with any amendment to which the first-mentioned House will not agree, the Governor-General may submit the proposed law as last proposed by the first-mentioned House, and either with or without any amendments subsequently agreed to by both Houses, to the electors in each State and Territory qualified to vote for the election of the House of Representatives.

  When a proposed law is submitted to the electors the vote shall be taken in such manner as the Parliament prescribes. But until the qualification of electors of members of the House of Representatives becomes uniform throughout the Commonwealth, only one-half the electors voting for and against the proposed law shall be counted in any State in which adult suffrage prevails.

And if in a majority of the States a majority of the electors voting approve the proposed law, and if a majority of all the electors voting also approve the proposed law, it shall be presented to the Governor-General for the Queen's assent.

No alteration diminishing the proportionate representation of any State in either House of the Parliament, or the minimum number of representatives of a State in the House of Representatives, or increasing, diminishing, or otherwise altering the limits of the State, or in any manner affecting the provisions of the Constitution in relation thereto, shall become law unless the majority of the electors voting in that State approve the proposed law.

In this section, "Territory" means any territory referred to in section one hundred and twenty-two of this Constitution in respect of which there is in force a law allowing its representation in the House of Representatives.

- Section 100 of the *Referendum (Machinery Provisions) Act 1984*

100 Disputing validity of submission or return

The validity of any referendum or of any return or statement showing the voting at a referendum may be disputed by the Commonwealth, by any State, by the Australian Capital Territory or by the Northern Territory by petition addressed to the High Court.

- Section 101 subsection (d) of the *Referendum (Machinery Provisions) Act 1984*

101 Requisites of petition

(1) A petition disputing the validity of a referendum or of a return or statement showing the voting at a referendum shall:

(d) be filed in the Registry of the High Court within 40 days after the publication in the *Gazette* of the statement by the Electoral Commissioner showing the result of the referendum.