HIGH COURT OF AUSTRALIA

NOTICE OF FILING

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Details of Filing

File Number:	B13/2023
File Title:	Bay v. Australian Health Practitioner Regulation Agency & Or
Registry:	Brisbane
Document filed:	Form 17 - Application for removal
Filing party:	Applicant
Date filed:	06 Mar 2023

Important Information

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IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY

BETWEEN: William Anicha Bay
Applicant

and

AUSTRALIAN HEALTH PRACTITIONER REGULATION AGENCY
First Respondent
THE MEDICAL BOARD OF AUSTRALIA
Second Respondent
STATE OF QUEENSLAND
Third Respondent

APPLICATION FOR REMOVAL

The applicant applies for an order under section 40 of the *Judiciary Act* 1903 removing the whole of the cause now pending in the Supreme Court of Queensland (the **Matter**) which is proceeding number 14178/22 between Dr William Anicha Bay (the **Applicant**), and Australian Health Practitioner Regulation Agency, the Medical Board of Australia, and the State of Queensland (the **Respondents**).

Part I: Orders Sought

1. The whole of the Matter be removed to the High Court for adjudication.
2. Consideration of this application be expedited[1].
3. There be issued in the first instance, a writ of Prohibition stopping the State of Queensland from enacting or enforcing legislation and regulations which have Commonwealth jurisdiction, or that modify Commonwealth legislation, and to restrain them from exceeding their lawful jurisdiction in this manner in the future.
4. In the alternative, a Declaration that the State of Queensland does not have National or Commonwealth legislative or executive power.

[1] Due to antecedent constitutional questions involved in the Matter underfoot and the Respondents' application for a summary dismissal (as will be explained in Parts III and IV of this application).

5. A Declaration that the COAG agreement 'Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions'[2] is void ab initio.
6. In the first instance, a writ of Prohibition to stop the First and Second Respondents from misrepresenting their jurisdiction and their identity through their names by restraining them from using the word 'Australia' in their titles.
7. In the alternative, a Declaration that The First and Second Respondents are correctly identified as State government entities and to that extent the word 'Australia' should be removed from their names.
8. A Declaration that the *Health Practitioner Regulation National Law Act* 2009 (the ***National Law)*** is invalid in its entirety or that the sections of the Act that purport to bestow Commonwealth jurisdiction are invalid and must be severed from the Act.
9. A Declaration that the *Health Practitioner Regulation National Law* (Queensland) (the ***National Law (Queensland)***) is invalid in its entirety or that the sections of the law that purport to bestow Commonwealth jurisdiction are invalid and must be severed from the law.
10. A Declaration that the *Schedule* to the *Health Practitioner Regulation National Law Act* 2009 (the ***Schedule***) is invalid in its entirety or that the sections of the *Schedule* that purport to bestow Commonwealth jurisdiction are invalid and must be severed from the *Schedule*.
11. A Declaration that the *Health Practitioner Regulation National Law Regulation* 2018 (the ***Regulations***) is invalid in its entirety or that the sections of the Regulation that purport to modify Commonwealth legislation including the *Ombudsman Act 1976* Cth (s 24), the *Freedom of Information Act* 1982 (Cth) (s 13), the *Australian Information Commissioner Act* 2010 (s 6), and the *Federal Court of Australia Act* 1976 (s 19 (d)(i)) are invalid and must be severed from the *Regulations*.
12. A Declaration that the word 'National' must be severed from:

    A) the *Health Practitioner Regulation National Law Act* 2009

    B) the *Schedule* to the *Health Practitioner Regulation National Law Act* 2009

    C) the *Health Practitioner Regulation National Law* (Queensland)

    D) the *Health Practitioner Regulation National Law Regulation* 2018

    to ensure that the names of these legislative instruments accurately reflect their lawful jurisdiction.

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[2] Exhibit A3

13. There be issued in the first instance, a writ of Certiorari directed to the First and Second Respondents quashing their 17 August 2022 s 156 National Law immediate action decision and their s 160 National Law investigation against the Applicant.
14. A writ of Mandamus, directed to the First and Second Respondents, requiring them to remake the s 156 National Law immediate action decision to suspend the Applicant and the concomitant s 160 decision to investigate, according to law.
15. In the alternative, a Declaration that the First and Second Respondents' s 156 and s 160 National Law decisions made on 17th August 2022 were made unlawfully.
16. A declaration that QCAT does not have the requisite federal judicial power to make determinations on matters involving the *Constitution*.
17. Each party to bear their own costs.
18. Such other or further orders as the High Court deems fit.

Part II: The Three Constitutional Questions

19. Question One: Does Clause 5, and Chapter I Part I s 1, and Chapter VI s 122 of the *Constitution* so limit the exercise of the plenary legislative power of the Parliament of the State of Queensland (**Queensland**) to invalidate the legislative instruments: the *Health Practitioner Regulation National Law Act* 2009 (the ***National Law***), the *Schedule* to the *Health Practitioner Regulation National Law Act* 2009 (the ***Schedule***), the *Health Practitioner Regulation National Law* (Queensland) (the ***National Law (Queensland)***, and the *Health Practitioner Regulation National Law Regulation* 2018 (the ***Regulations***); where such legislative instruments purport to exercise Commonwealth legislative power by utilizing the singularly irrevocable legislative powers of the *Schedule's* Part 11 s 245 ss 1 and s 246 ss 2 provisions, and the extraterritorial powers of Part 1 s 8 and Part 8 s 38 of the *Schedule* to overcome absent enabling Commonwealth legislation and an absent Constitutional s 51(xxxvii.) referral of powers, to apply *the Schedule* as a 'National' law in all other States and Territories by the use of each State and Territory's 'National Law' adopting acts[3]?

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[3] *Health Practitioner Regulation National Law (Victoria) Act* 2009 No. 79 of 2009; *Health Practitioner Regulation National Law (Tasmania) Act* 2010; *Health Practitioner Regulation National Law (South Australia) Act* 2010; *Health Practitioner Regulation National Law (WA) Act* 2010; *Health Practitioner Regulation National Law (ACT) Act* 2010; *Health Practitioner Regulation National Law (NSW)* No 86a of 2009 & *Health Practitioner Regulation (Adoption of National Law) Act* 2009 *(NSW); Health Practitioner Regulation (National Uniform Legislation) Act (NT)* 2010

20. Question Two: By way of Chapter II s 61 and s 62 of the *Constitution* is it ultra vires the State of Queensland's executive power to nationally regulate health practitioners via the National Registration and Accreditation Scheme[4] (the **Scheme**), and create "one single national entity"[5] named the Australian Health Practitioner Regulation Agency[6] (**AHPRA**) and the Medical Board of Australia[7] (the **Board**) where s 51(xxiiiA.) of the *Constitution* does not provide a head of power for the national (i.e. Commonwealth) regulation of health practitioners, and the Commonwealth Parliament is omitted from the Scheme, and where neither AHPRA nor the Board can be correctly or lawfully identified as an Australian entity, and whereby there is a lack of Commonwealth legislative oversight on the exercise of executive power held by these national entities and one State (Queensland) has been given the authority to regulate health practitioners at a national, that is Commonwealth level[8]?

21. Question Three: Does the Queensland Civil and Administrative Tribunal (**QCAT**) have the requisite federal judicial power to interpret and make binding rulings on matters involving the interpretation and application of the *Commonwealth Constitution* relevant to purported jurisdictional errors of law (as held by *Owen v Menzies* (2012)[9] in the Queensland Court of Appeal despite *Kable v The Director of Public Prosecutions for New South Wales* (1996)[10] holding otherwise) so that access to the Queensland Supreme Court and the High Court of Australia (the **Court**) in its original jurisdiction is limited?

Part III: Factual Background to the Application

1. The Matter before the Supreme Court involves an administrative decision under s 156 and s 160 of the 'National Law'[11].

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[4] Part 1 s 3 ss 1 and Part 1 s 5 of the *Schedule*

[5] Part 1 s 7 of the *Schedule*

[6] Part 4 Division 1 s 23 of the *Schedule*

[7] Part 5 Division 1 s 31 ss (1) of the *Schedule*

[8] Part 1 s 7 ss 3 (b) of the Schedule

[9] QCA 170; [2013] 2 Qd R 327 at [52] and [61]

[10] HCA 24; 189 CLR 51, Justice McHugh at [7]

[11] Although determining which and what this law is forms one of the bases of this application for order of removal. For current purposes the Applicant will determine this is the *Schedule*. See Exhibit A1 of the Bay Affidavit to view the absence of specification of the law by the First and Second Respondents.

2. The very identity, jurisdiction, and constitutional validity of the 'National Law' is the central question to this Matter[12].
3. There is an application for a summary dismissal before the Supreme Court of Queensland[13] which is supported by the Respondents[14] which has for its grounds a s 13 or s 48 of the *Judicial Review Act* 1991 (Qld) argument that the Matter should be dismissed because of lack of merit and the Applicant was free to raise his constitutional questions with QCAT[15] as "QCAT is a chapter III court and is therefore capable of exercising judicial power to decide matters with federal jurisdiction (including matters involving the interpretation of the Constitution)."[16].
4. Part A of the Third Respondents' Submission C[17] sets out the nature of the Scheme and would constitute an agreement on the facts of the matter except for the Respondent's qualification that the impugned *National Law* only applies up to the amendments of Oct 21, 2022. Since the Applicant is still subject to a live (and indefinite) suspension decision and an ongoing investigation based on this law's purported authority; this restriction is not accurate.
5. The Applicant submits that the State of Queensland enacts unlawful legislation and delegated executive authority to AHPRA and the Board to regulate (or purport to regulate) health practitioners throughout the country by utilising the drafting mechanism of the Queensland host *Schedule* in combination with the text "applies as if it were a law of this jurisdiction" (or text to that effect[18]) used in the adoption acts of the several States and Territories to act-in-place of the Commonwealth[12].

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[12] See Exhibit A2 Submission Two - Bay v AHPRA & Ors for a detailed & up-to-date explanation of the Matter. This document lays out in detail all the Applicant's arguments for this application.

[13] See Exhibit BI Application for Summary Dismissal

[14] See Exhibits B2 and B3 for the Respondents' full argument in support.

[15] Exhibit B3 at paragraph 16

[16] Exhibit B2 at paragraph 8. This is held to be in support of the authority relied on by the AHPRA and the Board's submission (*Owens v Menzies* (2012)) as referenced in Footnote 16 at paragraph 16 of the First and Second Respondents' Submission. The Applicant contends this authority is not authoritative.

[17] Exhibit B4 from paragraph 4

[18] *Health Practitioner Regulation National Law (Victoria) Act* 2009 No. 79 of 2009 Part 2, s 4; *Health Practitioner Regulation National Law (Tasmania) Act* 2010 Part 2, s 4; *Health Practitioner Regulation National Law (South Australia) Act* 2010 Part 2, s 4; *Health Practitioner Regulation National Law (WA) Act* 2010 Part 2 s 4, ss (1) (with the Schedule in this jurisdiction (only) being the Schedule enacted in Western Australia; *Health Practitioner Regulation National Law (ACT) Act* 2010 Part 2 s 6; *Health Practitioner Regulation National Law (NSW)* No 86a of 2009 'Status Information' 'Notes" & *Health Practitioner Regulation (Adoption of National Law) Act* 2009 (NSW) Part 2 s 4; *Health Practitioner*

6. This unlawful utilisation of National power is evidenced by, amongst other things, the use of the word 'National' in the title of the Queensland legislative instruments, and by the *Regulations*, which purport to modify current in force Commonwealth Acts of Parliament[19].
7. In essence[20], the Applicant argues that only the Commonwealth Parliament may enact 'national' legislation or legislation operating throughout the Commonwealth. It follows that, by enacting the *National Law*, the Third Respondent has purported to exercise Commonwealth legislative power.
8. Therefore, the *National Law*, the *Schedule*, the *National Law (Queensland)* and the *Regulations* are constitutionally invalid because Queensland is acting beyond powers and the scheme is absent lawful empowering Commonwealth legislation.

Part IV: Argument in Support of the Removal

9. In *Palmer v Western Australia* [2021][21] Justice Edelman said, "…the starting point in an assessment of the validity of any administrative action or delegated legislation is the source of authority for that administrative or legislative act.". Only after that assessment is complete can the administrative act then be examined further. This is the reason the Applicant seeks the assistance of the Court in this Matter.
10. The question of the National Law's validity (as a juridical framework and in specific reference to the *National Law*, the *Schedule*, the *National Law (Queensland)*, and the *Regulations*) is antecedent to all other questions in the Matter. It is for this reason that the Applicant seeks to remove the entire Matter.
11. The need for expedited High Court intervention is accentuated by the recently filed application for summary dismissal in Queensland by the Respondents[22] focusing on the merit (or lack thereof) of the constitutional arguments and/or because that a tribunal (QCAT) could have or should have heard these constitutional questions[23].
12. The Respondents contend the Applicant's critique of the constitutionality of the *National Law* is without any merit[24]. Queensland has argued[25], "There is no

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Regulation (National Uniform Legislation) Act (NT) 2010 Part 2 s 4

[19] *Regulations* Part 3 Application of AIC Act, Part 4 Application of FOI Act, Part 5 Application of Ombudsman Act, Part 6 Application of Privacy Act

[20] See Part 3 Exhibit A2 for a full explanation.

[21] *Palmer v Western Australia* [2021] HCA 5; 246 CLR 182 at [225]

[22] Exhibit B1

[23] See Exhibit B3 for a detailed explanation of the Respondents' reasons.

[24] Exhibit B1 paragraph 2 b), Exhibit B2 paragraph 2, B3 paragraph 1

constitutional objection to such schemes. Subject to the Commonwealth Constitution, the Parliaments of the States have legislative power 'as ample and plenary as the power possessed by the Imperial Parliament itself. Nothing in the Commonwealth Constitution prevents the States legislating to create a national scheme through an 'application of laws' model. The States, like the Commonwealth, have power to apply, as their own law, a law of another jurisdiction.".

13. Whilst it has been found in High Court cases[26] that States can indeed apply the law of another jurisdiction; that law has always been a Commonwealth Act, and for that reason the Respondents' argument is distinguishable from this Matter.

10 14. To counter the accusation of invalidity, the Respondents have argued[27] that the extra-territorial powers of s 8 of the impugned *Schedule* is a lawful provision of a part of a suite of lawful State laws and does not constitute purported Commonwealth jurisdiction. This argument results in a law being named a 'National Law' but not actually being a National Law (or even national laws).

15. The proper understanding of this confusing situation is that the naming of the National Law as the *National Law* is a misrepresentation of the truth; the truth being that the National Law (as an ill-defined and misidentified juridical concept) is an unlawful creation of a multitude of different parental non-Federal legislatures, enacted by a novel drafting mechanism of individual and inconsistent State and

20 Territory laws (with the State of Queensland sitting at the head of this unconstitutional family[28]) purporting to act if it were the Nation (or Commonwealth) by enacting National (or Commonwealth) laws.

16. Therefore, the *National Law* is **neither a lawful national (or Commonwealth) law in name or in substance** and is therefore demonstrably unconstitutional and must be removed from the Australian polity in favour of reversion to lawful State-based laws (or by the use of other suitable constitutional remedies) to effect lawful Commonwealth regulation of health practitioners.

17. The *National Law* when viewed from a different angle, is best seen not as a State law or a number of State laws. This is only true so far as to their creation.

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[25] At paragraph [18] of the Third Respondent's' submission (Exhibit B4)

[26] *R v Hughes* [2000] HCA 22; 202 CLR 535 involves the famous *Corporations Law* National Scheme and its concomitant constitutional crisis that required a s 51 (xxxvii.) referral to resolve it.

[27] At paragraph 40, 45, 47, 48 and 49 of Exhibit B3, and paragraph 24 of Exhibit B4

[28] Even as the Chair of the Ministerial Council currently known as the HHM. See Exhibit A2 at [385].

Everything else beyond their drafting[29] demonstrates that this law exists and operates at a National (or Commonwealth) level with unlawful national legislative and executive powers. Therefore, the 'National Law' (even though never truly identified or specified[30]) is not a true Commonwealth law, but neither is it a State law, nor is it even a National Law, **in actuality it is not a law at all**[31].

18. The Applicant contents that apart from these important constitutional issues, the inspection of horizontal adoption-of-laws models[32] is ripe for review by the Court.

19. Commentary on unresolved issues pertaining to adoption-of-laws models were highlighted in *Gould v Brown* [1998][33] by Justice Gummow at [159], "The laws of two or more States, by their terms or in their operation, may affect the same persons, transactions or relationships and do so by laws which are in conflict. The Constitution contains no express paramountcy provision by reference to which such conflicts are to be resolved. **As yet, no decision of this Court has remedied the deficiency**." (emphasis added). This makes this case ripe for decision furthermore.

20. In the *Qld Rail case*[34] it was determined that the States cannot determine the limits of federal power. It seems that Queensland has not learnt from this and yet again the limits of state and federal legislative (and executive) powers under the *Constitution* are (at best) being tested, and (at worst) being subverted[35].

21. For this reason, the Applicant suggests that there may be significant judicial interest at a federal level in this Matter[36], and this is certainly a matter arising under the *Constitution* or its interpretation thereof, pursuant to s 76 (i) of the *Constitution*.

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[29] As per the *Qld Rail case* and Ha v New South Wales [1997] the substance of a law must not evade by a drafting mechanism a proper constitutional examination.

[30] See paragraph 1 a) of Exhibit B4, and 'Decision' of Exhibit A1.

[31] Which is incontrovertibly proved by that there is, in fact, **no 'National Law' as so named** to be found **on any** of the Parliamentary Counsel websites of Australia.

[32] With but one exception all former and current National Schemes involved the Commonwealth in a vertical co-operative federalism model. This newer breed omits the Commonwealth in place of a singular State.

[33] *Gould v Brown* [1998] HCA 6; 193 CLR 346

[34] *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Queensland Rail* [2015] HCA 11; 256 CLR 171 at [28], "… it would be necessary to observe that a State Parliament cannot determine the limits of federal legislative power."

[35] Especially when such important questions and matters are being attempted to be summarily dismissed or remitted to a Tribunal.

[36] The Applicant awaits the Cth Attorney-General's decision accordingly. See Affidavit at [2].

22. It also clear that there is significant public interest in this Matter. The Matter not only concerns the proper interpretation of the *Constitution*, but also:
    a) the authority of the *Constitution* to restrain the States and Territories' federal law-making power, *and;*
    b) the rights of citizens of Queensland to have proper legal recourse to have constitutional questions heard in an appropriate Court instead of a tribunal, and;
    c) the rights of citizens of all the several States and Territories (except Queensland) to keep their democratic right to responsible and representative Government now removed by a horizontal "application of laws" model, and;
    d) the constitutionality of allowing State-based *Regulations* to modify Commonwealth Acts, and;
    e) the constitutionality of legislative and executive power vested in a single State acting in place of the Commonwealth, *and;*
    f) the validity of a disparate suite of State laws acting in place of an absent Commonwealth law yet still being called and treated as a singular and National (that is Commonwealth) Law', *and;*
    g) the ability for mislabelled and jurisdictionally questionable administrative bodies, to use the name "Australia" in their title to impersonate Commonwealth bodies to regulate health practitioners at a national (that is Commonwealth) level absent a lawful Commonwealth head of power to do so, and;
    h) for those entities to then use that unlawfully begotten power to abrogate the implied right to a freedom of political communication which is inherent and absolutely vital to a medical practitioner's duty to warn[37] being executed.
23. This abrogation of the Applicant's duty to warn his patients and the public is the heart of this Matter, both at the level of the base of the decision against the Applicant as seen in the s 156 immediate (and indefinite) suspension decision made against him, and in the Applicant's determination to take this Matter to the Supreme and this High Court for the obtainment of justice and the fulfilment of his sacred duty as a medical practitioner.

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[37] As determined by the High Court in *Rogers v Whitaker* [1992] at [16], and yet denied by AHPRA and the Board in Exhibit B3 at [70], "…any common law principle can …always be overridden by legislation, State or Commonwealth.", and as impinged upon in their Reasons for Decision in Exhibit A1 as explained in great detail in the Applicant's originating application to the Matter – Exhibit C2.

24. Notably, the Applicant considers that his duties as a medical practitioner continue (despite the unlawful suspension decision) and he continues to act in the best interests of his patients and the public through the progress of this Matter.
25. It is therefore vital, not only to the Applicant but all patients, health practitioners, and Australians to have these absolutely vital constitutional, political, and medical matters heard before this Court.
26. Indeed, due to wide-ranging (that is National/Commonwealth) application of these impugned powers by the First and Second Respondents, and because of the large number of practitioners they purport to regulate, one valuable reason in support of this Matter's removal to the Court would be in the efficiency gained by avoiding a multiplicity of proceedings in regards to these key public interest matters.
27. There are to the Applicant's knowledge 31 currently suspended health practitioners in Australia due to Covid-19 related issues, including several of those for impugned political communications. The Applicant is personally aware of several health practitioners all with matters involving AHPRA before different courts across the country. Having all these cases decided uniformly and nationally by examining the core of the issue, i.e. the validity of the *National Law* and the purported authority of AHPRA and the Board is wise.
28. Furthermore, the public interest in these matters has been recently heightened due to a Covid-19 senate inquiry, multiple estimate committee hearings on AHPRA and the Board, and even hearings concerning this Applicant himself.[38]
29. Expediency is requested in the consideration of this Application because the Applicant fears that an adverse finding against him in the Queensland Supreme Court would not allow these very important public interest issues to be heard. The fact that the First and Second Respondents have moved for a summary dismissal has only heightened those concerns.
30. Furthermore, the Applicant now seeks recourse to the Court's authority because he contends there is no other decision that the Supreme Court could make regarding the authority of QCAT to act as Court for the purposes of Chapter III. This is because they are understandably bound by the decision already so decided by their own division of the Queensland Court of Appeal in *Owens V Menzies* (2012).
31. The Applicant's appeal rights are therefore likely very limited if the Supreme Court determines that the Applicant could have or should have gone to QCAT.

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[38] See Hansard 10 Nov 2022, as per Exhibit A2 at paragraph 484, footnote 11.

Alternatively, it may inevitably result in a direct appeal to the High Court, thus adding further weight to the timeliness and efficiency of this application.

32. It is therefore of the upmost importance that the High Court of Australia carries out (and is seen to carry out) its duty to allow these foundational constitutional questions to be heard before a Court of competent jurisdiction, a purpose for which this Court was ultimately created for.

33. In summary, the Applicant seeks relief by way of an Order to Remove this Matter before this Court so its paramount issues of public importance (i.e. the constitutional questions, the jurisdictional matters, the impermissibly burdened freedom of political communication, the affected right to a representative democracy, and an unlawful imposition on a medical practitioner's duty to warn) are heard and adjudicated wholly and solely in this Court so a remedy may be applied nationwide and thus for the benefit of the entire Australian body polity.

34. Ultimately, it is argued that the only constitutionally lawful 'National Law' is that of the Commonwealth, and at its apex; the *Constitution* itself. It is upon this foundational document's authority and the Court's authority to interpret it, that the Applicant relies upon for this Matter and this application to succeed.

Part V: Orders for Costs

35. In the event this application is refused, it is argued that an order of costs should not be made in favour of the Respondents because of the significant public interest in this Matter requiring an authoritative and nationwide answer.

36. Furthermore, by bringing the entirety of this Matter before the Court in an early part of the Matter before the Supreme Court, shows the Applicant's desire for costs to be minimised for all parties and to avoid a multiplicity of proceedings. This should weigh strongly in a finding for parties to bear their own costs.

37. Additionally, due to the Applicant suffering financial hardship due to the very suspension decision at the heart of this matter, it would be a further penalty imposed on the Applicant if he were also required to pay for the costs of the Respondents, especially in the context of where the Applicant has sought to minimise his own costs (with necessity) by being self-represented.

38. Finally, since it is the guiding principle of the *National Law*[39] that the Scheme operate in a "transparent, accountable, efficient, effective and fair way", it is argued that the Applicant's lawful process of questioning the validity of the *National Law*

[39] Schedule – Part 1 Section 3A ss 2 (a) Guiding principles

and its administrative entities is in accordance with that principle. Therefore, in the event this application is refused, and insofar as that would mean the 'National Law' is constitutionally valid; then those provisions must hold, and consequently the Applicant must be relieved of any potential for an adverse Order for costs.

Part VI: List of Authorities

39. *Owen v Menzies* (2012) QCA 170; [2013] 2 Qd R 327 at [52] and [61].
40. *Kable v The Director of Public Prosecutions for New South Wales* (1996) HCA 24; 189 CLR 51, Justice McHugh at [7].
41. *Gould v Brown [1998] HCA 6; 193 CLR 346* by Justice Gummow at [159].
42. *Palmer v Western Australia* [2021] HCA 5; 246 CLR 182 Justice Edelman at [225].
43. *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Queensland Rail* [2015] HCA 11; 256 CLR 171, French CJ, Hayne, Kiefel, Bell, Keane and Nettle JJ at [28].
44. *R v Hughes* [2000] HCA 22; 202 CLR 535 at [26].

Part VII: Statutory Provisions

45. See the Annexure to this application for the relevant provisions in this application.

Dated 4 March 2023

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Dr William Anicha Bay

To: The First and Second Respondents
McCullough Robertson Lawyers

The Third Respondent
GR Cooper
Crown Solicitor

TAKE NOTICE: Before taking any step in the proceedings you must, within **14 DAYS** after service of this application, enter an appearance and serve a copy on the applicant.

The applicant is self-represented.

Annexure

- *Judiciary Act 1903* (Cth) Part VII – Removal of causes

40 Removal by order of the High Court

(1) Any cause or part of a cause arising under the Constitution or involving its interpretation that is at any time pending in a federal court other than the High Court or in a court of a State or Territory may, at any stage of the proceedings before final judgment, be removed into the High Court under an order of the High Court, which may, upon application of a party for sufficient cause shown, be made on such terms as the Court thinks fit, and shall be made as of course upon application by or on behalf of the Attorney-General of the Commonwealth, the Attorney-General of a State, the Attorney-General of the Australian Capital Territory or the Attorney-General of the Northern Territory.

- The *Constitution* Clause 5. Operation of the Constitution and laws.

This Act, and all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the courts, judges, and people of every State and of every part of the Commonwealth, notwithstanding anything in the laws of any State; and the laws of the Commonwealth shall be in force on all British ships, the Queen's ships of war excepted, whose first port of clearance and whose port of destination are in the Commonwealth.

- The *Constitution* Chapter I. – The Parliament. Part I. – General. 1. Legislative Power.

The legislative power of the Commonwealth shall be vested in a Federal Parliament, which shall consist of the Queen, a Senate, and a House of Representatives, and which is hereinafter called "The Parliament," or "The Parliament of the Commonwealth."

- The *Constitution* Chapter VI s 122. Government of territories.

The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit.

- *Health Practitioner Regulation National Law Act* 2009 (***the National Law***)

See: https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-2009-045

- the *Schedule* to the *Health Practitioner Regulation National Law Act* 2009 (***the Schedule***)

See pages 58 – 355 of the *Health Practitioner Regulation National Law Act* 2009 (***the National Law***) at

https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-2009-045

- the *Health Practitioner Regulation National Law* (Queensland) (the ***National Law (Queensland)***

See: https://www.legislation.qld.gov.au/view/whole/pdf/inforce/current/act-2009-hprnlq

- the *Health Practitioner Regulation National Law Regulation* 2018 (***the Regulations***)

See: https://www.legislation.qld.gov.au/view/pdf/inforce/current/sl-2018-0168

- *Schedule* Part 11 s 245 National Regulations ss 1

(1) The Ministerial Council may make regulations for the purposes of this Law.

- *Schedule* Part 11 s 246 ss 2

(2) A regulation disallowed under subsection (1) does not cease to have effect in the participating jurisdiction, or any other participating jurisdiction, unless the regulation is disallowed in a majority of the participating jurisdictions.

- *Schedule* Part 1 s 8 Extraterritorial operation of Law

It is the intention of the Parliament of this jurisdiction that the operation of this Law is to, as far as possible, include operation in relation to the following— (a) things situated in or outside the territorial limits of this jurisdiction; (b) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of this jurisdiction; (c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Law, be governed or otherwise affected by the law of another jurisdiction.

- *Schedule* Part 8 Application to coastal sea s 38

38 Application This Law has effect in and in relation to the coastal sea of this jurisdiction as if that coastal sea were part of this jurisdiction.

- The *Constitution* s 51(xxxvii.)

Matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law:

- The *Constitution* Chapter II. – The Executive Government s 61

61. Executive power.

The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth.

- The *Constitution* Chapter II. – The Executive Government s 62

62. Federal Executive Council.

There shall be a Federal Executive Council to advise the Governor-General in the government of the Commonwealth, and the members of the Council shall be chosen and summoned by the Governor-General and sworn as Executive Councillors, and shall hold office during his pleasure.

- *Schedule* Part 1 s 3 ss 1

3 Objectives (1) The object of this Law is to establish a national registration and accreditation scheme for— (a) the regulation of health practitioners; and (b) the registration of students undertaking— (i) programs of study that provide a qualification for registration in a health profession; or (ii) clinical training in a health profession.

- *Schedule* Part 1 s 5 Definitions

In this Law -

national registration and accreditation scheme means the scheme— (a) referred to in the COAG Agreement; and (b) established by this Law.

- *Schedule* Part s 7 Single national entity

(1) It is the intention of the Parliament of this jurisdiction that this Law as applied by an Act of this jurisdiction, together with this Law as applied by Acts of the other participating jurisdictions, has the effect that an entity established by or under this Law is one single national entity, with functions conferred by this Law as so applied. (2) An entity established by or under this Law has power to do acts in or in relation to this jurisdiction in the exercise of a function expressed to be conferred on it by this Law as applied by Acts of each participating jurisdiction. (3) An entity established by or under this Law may exercise its functions in relation to— (a) one participating jurisdiction; or (b) 2 or more or all participating jurisdictions collectively. (4) In this section, a reference to this Law as applied by an Act of a jurisdiction includes a reference to a law that substantially corresponds to this Law enacted in a jurisdiction.

- *Schedule* Part 4 Division 1 s 23 National Agency

(1) The Australian Health Practitioner Regulation Agency is established. (2) The National Agency— (a) is a body corporate with perpetual succession; and (b) has a common seal; and (c) may sue and be sued in its corporate name. (3) The National Agency represents the State. (4) Schedule 3 sets out provisions relating to the National Agency

- *Schedule* Part 5 Division 1 s31 ss (1)

31 Regulations must provide for National Boards (1) The regulations must provide for a National Health Practitioner Board for each health profession.

- The *Constitution* s 51(xxiiiA.)

51. Legislative powers of the Parliament.

The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:—

(xxiiiA.) The provision of maternity allowances, widows' pensions, child endowment, unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services (but not so as to authorize any form of civil conscription), benefits to students and family allowances:

- *Schedule* s 156

156 Power to take immediate action (1) A National Board may take immediate action in relation to a registered health practitioner or student registered in a health profession for

which the Board is established if— Schedule Health Practitioner Regulation National Law Act 2009 Page 186 Current as at 21 October 2022 Authorised by the Parliamentary Counsel (a) the National Board reasonably believes that— (i) because of the registered health practitioner's health, conduct or performance, the practitioner poses a serious risk to persons; and (ii) it is necessary to take immediate action to protect public health or safety; or (b) the National Board reasonably believes that— (i) the student poses a serious risk to persons because the student— (A) has been charged with an offence, or has been convicted or found guilty of an offence, that is punishable by 12 months imprisonment or more; or (B) has, or may have, an impairment; or (C) has, or may have, contravened a condition of the student's registration or an undertaking given by the student to a National Board; and (ii) it is necessary to take immediate action to protect public health or safety; or (c) the registered health practitioner's registration was improperly obtained because the practitioner or someone else gave the National Board information or a document that was false or misleading in a material particular; or (d) the registered health practitioner's or student's registration has been cancelled or suspended under the law of a jurisdiction, whether in Australia or elsewhere, that is not a participating jurisdiction. (e) the National Board reasonably believes the action is otherwise in the public interest. Example of when action may be taken in the public interest— A registered health practitioner is charged with a serious criminal offence, unrelated to the practitioner's practice, for which immediate action is required to be taken to maintain public confidence in the provision of services by health practitioners. Schedule Health Practitioner Regulation National Law Act 2009 Current as at 21 October 2022 Page 187 Authorised by the Parliamentary Counsel (2) However, the National Board may take immediate action that consists of suspending, or imposing a condition on, the health practitioner's or student's registration only if the Board has complied with section 157.

- *Schedule* s 160

160 When investigation may be conducted (1) A National Board may investigate a registered health practitioner or student registered in a health profession for which the Board is established if it decides it is necessary or appropriate— (a) because the Board has received a notification about the practitioner or student; or (b) because the Board for any other reason believes— (i) the practitioner or student has or may have an impairment; or (ii) for a practitioner— (A) the way the practitioner practises the profession is or may be unsatisfactory; or (B) the practitioner's conduct is or may be unsatisfactory; or (c) to ensure the practitioner or student— (i) is complying with conditions imposed on the

practitioner's or student's registration; or Schedule Health Practitioner Regulation National Law Act 2009 Page 190 Current as at 21 October 2022 Authorised by the Parliamentary Counsel (ii) an undertaking given by the practitioner or student to the Board. (2) If a National Board decides to investigate a registered health practitioner or student it must direct an appropriate investigator to conduct the investigation

- *Judicial Review Act 1991* (Qld) s 13

13 When application for statutory order of review must be dismissed Despite section 10, but without limiting section 48, if— (a) an application under section 20 to 22 or 43 is made to the court in relation to a reviewable matter; and (b) provision is made by a law, other than this Act, under which the applicant is entitled to seek a review of the matter by another court or a tribunal, authority or person; the court must dismiss the application if it is satisfied, having regard to the interests of justice, that it should do so.

- *Judicial Review Act 1991* (Qld) s 48

48 Power of the court to stay or dismiss applications in certain circumstances (1) The court may stay or dismiss an application under section 20, 21, 22 or 43 or a claim for relief in such an application, if the court considers that— (a) it would be inappropriate— [s 49] Judicial Review Act 1991 Part 6 Miscellaneous Page 34 Current as at 1 March 2023 Authorised by the Parliamentary Counsel (i) for proceedings in relation to the application or claim to be continued; or (ii) to grant the application or claim; or (b) no reasonable basis for the application or claim is disclosed; or (c) the application or claim is frivolous or vexatious; or (d) the application or claim is an abuse of the process of the court. (2) A power of the court under this section— (a) must be exercised by order; and (b) may be exercised at any time in the relevant proceeding but, in relation to the power to dismiss an application, the court must try to ensure that any exercise of the power happens at the earliest appropriate time. (3) The court may make an order under this section— (a) of its own motion; or (b) on an application by a party to the proceeding. (4) The court may receive evidence on the hearing of an application for an order under this section. (5) An appeal may be brought from an order under this section only with the leave of the Court of Appeal

- *Schedule* Part 1 S 7 Single national entity ss (3) (b)

(3) An entity established by or under this Law may exercise its functions in relation to— (b) 2 or more or all participating jurisdictions collectively.

- *Health Practitioner Regulation National Law (Victoria) Act* 2009 No. 79 of 2009 Part 2, s4

4 Application of Health Practitioner Regulation National Law The Health Practitioner Regulation National Law, as in force from time to time, set out in the Schedule to the Health Practitioner Regulation National Law Act 2009 of Queensland— (a) applies as a law of Victoria; and (b) as so applying may be referred to as the Health Practitioner Regulation National Law (Victoria); and (c) so applies as if it were part of this Act.

- *Health Practitioner Regulation National Law (Tasmania) Act* 2010 Part 2, s4

4. Adoption of Health Practitioner Regulation National Law

The Health Practitioner Regulation National Law, as in force from time to time, set out in the Schedule to the Health Practitioner Regulation National Law Act 2009 of Queensland –

(a) applies as a law of this jurisdiction; and

(b) as so applying may be referred to as the Health Practitioner Regulation National Law (Tasmania); and

(c) so applies as if it were part of this Act.

- *Health Practitioner Regulation National Law (South Australia) Act* 2010 Part 2, section 4

4—Application of Health Practitioner Regulation National Law

(1) In this section—

South Australian Health Practitioner Regulation National Law text means—

(a) until a regulation is made under subsection (3)—the text set out in the schedule to the Health Practitioner Regulation National Law Act 2009 of Queensland as in force on 1 July 2010;

(b) thereafter—the Health Practitioner Regulation National Law (South Australia) set out in the Schedule inserted under subsection (3) (as in force for the time being).

(2) The South Australian Health Practitioner Regulation National Law text—

(a) applies as a law of South Australia; and

(b) as so applying may be referred to as the Health Practitioner Regulation National Law (South Australia); and

(c) as so applying, forms a part of this Act.

- *Health Practitioner Regulation National Law (WA) Act* 2010 Part 2 s 4, ss (1)

4. Application of Health Practitioner Regulation National Law (1) The Health Practitioner Regulation National Law set out in the Schedule — (a) applies as a law of this jurisdiction; and (b) as so applying, may be referred to as the Health Practitioner Regulation National Law (Western Australia); and (c) as so applying, is a part of this Act. (2) The power conferred by the Health Practitioner Regulation National Law (Western Australia) section 245 to make regulations for the purposes of that Law does not extend to making a regulation relating to the safe operation or use by a medical radiation practitioner of an electronic product, irradiating apparatus or radioactive substance as those terms are defined in the Radiation Safety Act 1975 section 4. (3) The Health Practitioner Regulation National Law (Western Australia) sections 295 to 297 do not apply to an asset, liability, contract, property or record of the Council that relate to the management of the unincorporated Pharmaceutical Society by the Council. (4) In subsection (3) — Council means the Pharmaceutical Council of Western Australia referred to in the Pharmacy Act 1964 section 7(1); unincorporated Pharmaceutical Society means the Pharmaceutical Society of Western Australia referred to in the Pharmacy Act 1964 section 6(1).

- *Health Practitioner Regulation National Law (ACT) Act* 2010 Part 2 s 6

6 Application of Health Practitioner Regulation National Law The Health Practitioner Regulation National Law, as in force from time to time, set out in the schedule to the Qld Act— (a) applies as a territory law, as modified by schedule 1; and (b) as so applying may be referred to as the Health Practitioner Regulation National Law (ACT); and (c) so applies as if it were a part of this Act.

- *Health Practitioner Regulation National Law (NSW)* No 86a of 2009 'Status Information' 'Notes

Note

The Health Practitioner Regulation National Law is applied and modified as a law of NSW by the NSW *Health Practitioner Regulation (Adoption of National Law) Act 2009*. This version is the Law as it applies in NSW.

- *Health Practitioner Regulation (Adoption of National Law) Act* 2009 (NSW) Part 2 s4

4 Adoption of Health Practitioner Regulation National Law

(1) The Health Practitioner Regulation National Law, as in force from time to time, set out in the Schedule to the Health Practitioner Regulation National Law Act 2009 of Queensland—

(a) applies as a law of this jurisdiction, with the modifications set out in Schedule 1, and

(b) as so applying may be referred to as the Health Practitioner Regulation National Law (NSW), and

(c) so applies as if it were a part of this Act.

(2) If, after the commencement of this subsection, the Parliament of Queensland amends the Schedule to the Health Practitioner Regulation National Law Act 2009 of Queensland, the amendment (the Queensland amendment) does not apply in New South Wales until a regulation is made applying the Queensland amendment as an amendment to the Health Practitioner Regulation National Law (NSW), with or without modification.

(3) A regulation made under subsection (2) that applies a Queensland amendment with modification may, for that purpose, amend the Schedule to this Act.

(4) Despite the Interpretation Act 1987, section 39, a regulation made under subsection (2) may commence on the day the Queensland amendment commences, including a day that is earlier than the day the regulation is published on the NSW legislation website.

(5) A regulation made under subsection (2) is repealed on the day after all of its provisions have commenced.

(6) The repeal of a regulation under subsection (5) does not affect the application of the Queensland amendment, with or without modification, provided for by the regulation.

- *Health Practitioner Regulation (National Uniform Legislation) Act (NT)* 2010 Part 2 s 4

4 Adoption of Health Practitioner Regulation National Law The Health Practitioner Regulation National Law, as in force from time to time, set out in the Schedule to the Health Practitioner Regulation National Law Act 2009 (Qld):(a) applies as a law of this jurisdiction; and(b) as so applying may be referred to as the Health Practitioner Regulation National Law (NT); and (c)so applies as if it were a part of this Act.

- The *Constitution* s 76 (i)

76. Additional original jurisdiction.

The Parliament may make laws conferring original jurisdiction on the High court in any matter—

(i.) Arising under this Constitution, or involving its interpretation:

- Schedule – Part 1 Section 3A Guiding principles ss 2 (a)

10 (2) The other guiding principles of the national registration and accreditation scheme are as follows— (a) the scheme is to operate in a transparent, accountable, efficient, effective and fair way;