SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE
NUMBER: 14178/22

Applicant:	Dr William Anicha Bay
	AND
First Respondent:	AUSTRALIAN HEALTH PRACTITIONER REGULATION AGENCY
	AND
Second Respondent:	THE MEDICAL BOARD OF AUSTRALIA
	AND
Third Respondent:	STATE OF QUEENSLAND

APPLICATION FOR REVIEW

The applicant claims:

1. An administrative decision made by the Australian Health Practitioner Regulation Agency (AHPRA) and the Medical Board of Australia (the Board) on 17 August 2022 under s156 of the *Health Practitioner Regulation National Law* (Queensland) to suspend my medical practitioner registration; and to undertake an investigation into me under s160(1) of the *National Law* is invalid because it is affected by multiple errors of law including jurisdictional errors, jurisdictional and non-jurisdictional errors on the face of the record and as such the decision including the interpretation and application of the law was ultra-vires. This has severely impacted, my right to work and earn a living in my chosen profession.

2. This harm and further abrogation of my right to work is being exacerbated by the compliance letter I received on 18 August 2022. This compliance letter is beyond the power of AHPRA and the Board as they are using it to regulate my employment outside of my registered profession and to stop me working in healthcare in any capacity, not just in the profession relevant to my suspension. Because of the compliance letter I have been unable to pursue work in the healthcare industry generally, and specifically the encouragement of my previous employer to apply for the medical receptionist position they had advertised.

2. The impugned decision is directly affected by Queensland Parliament legislation that is invalid due to jurisdictional error such that, regarding the regulation of health practitioners, the Queensland Parliament is enacting Commonwealth/national jurisdiction and is passing

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legislation as applied legislation, that automatically applies in other states and territories and this gives rise to questions of the interpretation and application of the *Constitution* including the interplay between the jurisdiction of the Commonwealth Parliament with the jurisdiction of the Queensland Parliament. The impugned Queensland legislation includes:

a. *Health Practitioner Regulation National Law Act* 2009
b. *Schedule* to the *Health Practitioner Regulation National Law Act* 2009
c. *Health Practitioner Regulation National Law* (Queensland)
d. *Health Practitioner Regulation National Law Regulation* 2018

Such legislative processes including applied legislation are contrary to our system of constitutional and democratic, representative government as it results in legislation bypassing the houses of parliament (comprised of elected members) in all the states and territories of Australia whereby Queensland's legislation and legislative amendments automatically apply (except for Western Australia, which must pass its own separate legislation, and South Australia, where amendments must be made by regulation once passed by the Queensland Parliament.). As such, the name of these impugned laws is misrepresenting the lawful jurisdiction of the Acts and Regulation by including the word "National" in their title.

3. The *Health Practitioner Regulation National Law Regulation* 2018 clearly demonstrates that the Queensland Parliament is acting in jurisdictional error as this Regulation purports to modify a number of Commonwealth Acts of Parliament including the *Ombudsman Act 1976* Cth (s24), the *Freedom of Information Act* 1982 (Cth) (s13), the *Australian Information Commissioner Act* 2010 (s6), and the *Federal Court of Australia Act* 1976 (s19 (d)(i)).

4. The impugned Queensland legislation (the *National Law)* purports to create one single national entity to regulate health practitioners and this constitutes a jurisdictional error as only the Commonwealth Parliament can create one single national entity to regulate the Commonwealth of Australia. This further raises the jurisdictional issue as to the true identity and lawful name of the First Respondent (the Australian Health Practitioner Regulation Agency) and the Second Respondent (the Medical Board of Australia).

As the Queensland Parliament does not have jurisdiction to create one single national entity to regulate health practitioners, the first and second respondents are misrepresenting their true identity by including the word Australia in their names. This affects the ability of the court to correctly identify the parties and thus affects the ability of the courts to undertake their lawful jurisdiction and to create joinder between the parties.

5. The decision made against me under s156 of the *National Law* is affected by jurisdictional error because the alleged conduct occurred in the state of New South Wales and the decision has been made under s156 of the *National Law* Queensland rather than under s150 of the *National Law* NSW.

6. The decision made against me is affected by jurisdictional error on the face of the record because multiple reasons for the decision indicate that this decision is being made as a result of AHPRA and the Board reading in to the *National Law* a new standard for the duty to warn and this standard is not the lawful standard per the High Court in *Rogers v Whitaker* [1992]

HCA 58; 175 CLR 479 at [12] and it is beyond the power of AHPRA and the Board to replace the lawful standard for the duty to warn per the High Court in *Rogers v Whitaker* at [16].

7. The decision made against me is affected by jurisdictional error on the face of the record because multiple Reasons for decision indicate that AHPRA and the Board have made this decision under s156 of the *National Law*, in order to limit or remove the right of health practitioners to politically communicate if they do not agree with government or AHPRA and Board policies and positions. The express wording of AHPRA and National Boards position statement titled, 'Position statement 9 March 2021 Registered health practitioners and students and COVID-19 vaccination' is being read in to the *National Law* by AHPRA and the Board (which the Reasons for decision show) as the required standard for the political communication of health practitioners. The breach of this unlawful reading in has resulted in the suspension that I am experiencing under s156 of the *National Law*. This involves errors of statutory interpretation, and also a jurisdictional error, because it is beyond the power for s156 to limit or remove the implied right to a freedom of political communication of health practitioners.

8. In *Craig v South Australia* [1995] HCA 58; 184 CLR 163 at [14] the High Court held that, "If such an administrative tribunal falls into an error of law which causes it to identify a wrong issue, to ask itself a wrong question, to ignore relevant material, to rely on irrelevant material or, at least in some circumstances, to make an erroneous finding or to reach a mistaken conclusion, and the tribunal's exercise or purported exercise of power is thereby affected, it exceeds its authority or powers. Such an error of law is jurisdictional error which will invalidate any order or decision of the tribunal which reflects it."

9. The decision made against me is affected by multiple jurisdictional and non-jurisdictional errors of law on the face of the record and jurisdictional errors not on the face of the record, and are errors of law based on the following grounds:

Ground One

An error of law was involved in making the decision whether it appears on the face of the record or not.

I) Identity of the Parties

I submit that as there is no Commonwealth head of power under the *Constitution* for the Commonwealth to regulate health practitioners, thus it is ultra-vires for the Board, to be named a national Board, I.e., the 'Medical Board of Australia' and take regulatory action under that name.

II) Jurisdictional error

A) State Parliaments have no authority to exercise the legislative powers of the Commonwealth parliament.

B) If no jurisdiction on the part of the States exists to create a Commonwealth Act, then they also have no jurisdiction to create one single national entity and thus no national regulatory body can exist to administer the National Law, thus the National Boards have no lawful existence and no lawful jurisdiction.

C) The Commonwealth has no head of power under the Constitution to create any Act that regulates health practitioners.

D) If no jurisdiction on the part of the Commonwealth exists to regulate health practitioners, then there can be no National Law to regulate health practitioners; and no national regulatory body such as AHPRA can exist to administer it. Notably, AHPRA as one single national entity was created by a legislative Act of the Queensland Parliament and thus, they lawfully only have jurisdiction in Queensland. Thus, AHPRA in representing itself as an Australian/Commonwealth entity has no lawful existence and no lawful jurisdiction outside of Queensland.

III) The *National Law* is beyond the legislative power of the State of Queensland and extra-territorial operation of state Acts does not confer a power for a state or territory parliament to create national laws

No head of power exists under the *Constitution* for state or territory parliaments to create a national law which is by definition a law of the Commonwealth parliament. Further, there is no head of power under the *Constitution* that allows the Commonwealth Parliament to regulate health practitioners. Therefore, the term or label "national law" must be severed from the state act to save it from invalidity or the entire Act must be ordered invalid.

Ground Two

Taking an irrelevant consideration into account/failing to take a relevant consideration into account

Irrelevant considerations taken into account

I) My vaccination status

AHPRA and the Board expressly state they have formed a reasonable belief regarding my vaccination status and contravention of Qld State law and decide to take immediate action against me, but such a belief has been formed without any facts or evidence to support it, and without any enquiry with me to clarify the facts and evidence.

II) AHPRA and National Boards Position statement

AHPRA and the Board are taking unlawful action against me because I am speaking against government public health policies and against the AHPRA and Board March 9 Position Statement.

Ground Three

Failure to consider mandatory relevant considerations

I) If my alleged conduct is not professional conduct, AHPRA and the Board do not have jurisdiction over personal conduct outside of the realms of direct clinical care as per *Pridgeon v Medical Council of New South Wales* [2022] NSWCA 60.

II) AHPRA and the Board have failed to consider that the doctor-patient relationship is sacrosanct and is a contract at law which is protected by privity of contract.

III) AHPRA and the Board have failed to consider that my political protest activities and social media presence was consistent with section 7.4 of the 'Code of Conduct for doctors in Australia' which says my duty is to promote the health of the community via education and health education.

IV) AHPRA and the Board have failed to consider how my public statements were

protecting the health and safety of the public which is the paramount concern of the *National Law*.

V) AHPRA and the Board are failing to take into consideration that patients, are members of the public, and are the paramount concern in the provision of medical care per s3A(1)(a) of the *National Law*.

VI) AHPRA and the Board have failed to consider the mandatory consideration that there is no head of power under the Constitution to support mandatory vaccination and that the correct interpretation of the Human Rights Act 2019 QLD results in the *PHA* not operating to support COVID-19 vaccine mandates.

Ground Four

Exercising a power for an improper purpose/in bad faith

I) AHPRA and the Board are using the s156 power to stop me from undertaking political communication and this demonstrates that the decision is exercising the power for an improper purpose/ in bad faith.

II) AHPRA and the Board are using the immediate suspension power as a threat to all practitioners who dare speak out about dangers of the COVID-19 vaccine and its widespread and indiscriminate use under penalty of loss of employment and loss of profession.

III) AHPRA and the Board has taken this disciplinary action against me as a form of official retaliation for exercising one's freedom of political speech, via bad faith investigation and legal harassment (via a complaint lodged with the Office of the Health Ombudsman regarding my political protest activities by AHPRA itself).

IV) The s156 power is not being used in the public interest, it is being used in the Government's interest to suppress political criticism of its unlawful health policies.

V) Jurisdictional error constitutes a failure of the decision maker to comply with one or more statutory preconditions or condition to an extent which results in a decision which has been made in fact lacking characteristics necessary for it to be given force and effect by statute pursuant to which the decision–maker purported to make it (per *Hossain v Minister for Immigration and Border Protection* (2018) 359 ALR 1 at [24]). The jurisdictional error made by AHPRA and the Board in misinterpreting a statute has occurred when AHPRA and the Board have read in to the *National Law* the new standard for the duty to warn which limits or removes the implied right to a freedom of political communication for health practitioners, as expressly written in the March 9 position statement. This constitutes jurisdictional error as it has caused AHPRA and the Board to misconstrue the limits of its power.

Ground Five

The Decision and conduct of AHPRA and the Board are affected by errors of law

I) Improper use of a discretionary power

The exercise of a discretionary power must be according to law and not be exercised in an

arbitrary manner, and in The Reasons for decision given by AHPRA and the Board, it demonstrates that they are not exercising their discretionary power in accordance with applicable law.

II) Discretionary Power must be in accordance with the *Constitution*

There is no head of power under the Constitution to compel any medical service such as vaccination.

III) The *National Law* is invalid due to jurisdictional error

The four pieces of legislation forming the *National Law* are nothing more than state Acts and regulations; and by the use of the term *'National Law'*, it implies that they are laws of the Commonwealth Parliament and operate nationally, when they cannot lawfully do so.

IV)State of Queensland health powers have been applied unlawfully

There is no state authority to compel vaccination under its quarantine power.

V) The *National Law* improperly regulates the doctor-patient relationship

It is beyond the power of AHPRA and the Board to replace or alter the lawful standard of the duty to warn which has been correctly defined by the High Court in *Rogers v Whitaker* at [16].

VI)Fair Work Act makes Public Health Directives inoperable

Section 355 of the *Fair Work Act* 2009 (Cth) (*FWA)* invalidates or makes inoperable the Public Health Directives made under s362B of the *Public Health Act* 2005 (Qld) by reason of s109 of the *Constitution*.

VII) The duty to warn is defined by the High Court not AHPRA and the Board

Public health stems from the duty to warn is a duty required of individual health practitioners and is a duty that cannot be abrogated, removed or abandoned. The duty to warn is not bestowed by the government and the government cannot lawfully interfere with the duty as defined by the High Court in *Rogers V Whitaker*. AHPRA does not have a role to warn the public; it is the health practitioner who owes the duty.

VIII) Public interest provides no authority for grounds to impose any penalty

The case of Dr Pridgeon, a medical practitioner from NSW (*Pridgeon v Medical Council of NSW*) is illustrative of the argument that AHPRA and the Board cannot rely on the "public interest" to deprive me of my ability to work as a health practitioner absent proof of facts that I now no longer have the ability to perform my duties as a doctor with the necessary skills according to the standards of my peers of similar training and experience, the legal test under the act.

IX)The *National Law* only regulates the doctor-patient relationship and no further

The *National Law*'s field or scope of operation is and must be limited to the regulation of the private contractual relationship between doctor and patient and no further.

X) Implied public right to a freedom of political communication

AHPRA and the Board's application of s156 of the *National Law* is an error at law due to its unconstitutional burden on the implied public right to a freedom of political communication and thus s156 is invalid in its operation in my case. Further, the statutory interpretation that creates a requirement that not speaking against the government, AHPRA, or the Board's policies or positions is required to be in compliance with the purpose of the *National Law;* is also invalid.

9. The grounds of the claim are set out in the accompanying affidavit.

The applicant also claims by way of interlocutory relief -

1. I request an interlocutory injunction to restrain AHPRA and the Board from enforcing their compliance letter against me to stop me from working in health care outside of my suspended professional registration as to do so is beyond power and is unfairly and unjustly limiting my ability to work and provide for my family while suspended.

2. I request an interlocutory injunction to restrain AHPRA and the Board from taking any further action against me until my judicial review is finalised as they may seek to deregister me as a way of removing my standing to proceed with this matter.

3. I request an order that each party bear their own costs as I have been unemployed since this decision and the compliance letter has made it very difficult to gain employment. Further, this matter is in the public interest as it impacts not just the people of Queensland but it impacts people across Australia who are impacted by the Queensland Parliament acting with Commonwealth jurisdiction and thus bypassing the elected houses of parliament of the other states and territories which is contrary to the *Commonwealth Constitution* and to our system of elected representative democratic government.

The applicant also claims by way of final relief -

1. An order of Certiorari to quash the decision of AHPRA and the Board to take immediate action against me under s156 of the *National Law* as it is affected by jurisdictional errors and errors of law on the face of the record per Atkin LJ in *R v Electricity Commissioners; Ex parte London Electricity Joint Committee Co* [1924] 1 KB 171 at [205].

2. An order of Certiorari to quash the decision of AHPRA and the Board to undertake an investigation into me under s160 of the *National Law* as it is affected by jurisdictional errors and errors of law on the face of the record per Atkin LJ in *R v Electricity Commissioners; Ex parte London Electricity Joint Committee Co* [1924] 1 KB 171 at [205].

3. An order of Certiorari to quash the decision of AHPRA and the Board to enforce me to comply with the compliance letter as it is affected by jurisdictional errors and errors of law on the face of the record per Atkin LJ in *R v Electricity Commissioners; Ex parte London Electricity Joint Committee Co* [1924] 1 KB 171 at [205].

4. An order of Prohibition to stop AHPRA and the Board from acting under the defective decisions, as listed above at requested order 1,2 & 3, and to restrain AHPRA and the Board from exceeding their lawful powers in the same manner in the future per *R v Murray and Cormie; Ex Parte Commonwealth* (1916) 22 CLR 437 at [446].

5. An order of Prohibition to stop AHPRA and the Board from misrepresenting their jurisdiction through their names and to restrain them from using the word Australia in their names per *R v Murray and Cormie; Ex Parte Commonwealth* (1916) 22 CLR 437 at [446].

6. An order of Prohibition to stop AHPRA and the Board from exercising jurisdiction outside of the limits of the state or territory in which the alleged conduct occurred and to restrain AHPRA and the Board from taking action against a practitioner under the *National Law* of any state or territory other than that of the state or territory where the conduct occurred per *R v Murray and Cormie; Ex Parte Commonwealth* (1916) 22 CLR 437 at [446].

7. An order of Prohibition per *R v Murray and Cormie; Ex Parte Commonwealth* (1916) 22 CLR 437 at 446; to stop AHPRA and the Board from reading in a new standard for the duty to warn, derived from position statements, the *National Law* or from any source other than the High Court; that is contrary to the lawful standard for the duty to warn as defined by the High Court in *Rogers v Whitaker* at [16].

8. An order of Prohibition per *R v Murray and Cormie; Ex Parte Commonwealth* (1916) 22 CLR 437 at 446; to stop AHPRA and the Board from using their regulatory powers under s156 and s160 and any other sections of the *National Law* to limit or remove the implied right to a freedom of political communication for health practitioners.

9. An order of Prohibition per *R v Murray and Cormie; Ex Parte Commonwealth* (1916) 22 CLR 437 at 446; prohibiting the Queensland Parliament from enacting or enforcing legislation and regulations which have national/Commonwealth jurisdiction/application or that modify Commonwealth legislation and to restrain them from exceeding their lawful jurisdiction in this manner in the future.

10. An order of Mandamus to require AHPRA and the Board to remake the decision according to law as Jurisdictional error is present per *Plaintiff S157/2002 v Commonwealth* (2003) 211 CLR 476 at [82]-[83] citing *Re Refugee Review Tribunal; Ex parte Aala* (2000) 204 CLR 82.

11. An order of Mandamus that AHPRA and the Board must review their compliance letters to ensure that they correctly reflect that they are only enforcing lack of practice in the affected registered profession and its associated roles which require registration in order to fulfil them per *Plaintiff S157/2002 v Commonwealth* (2003) 211 CLR 476 at [82]-[83] citing *Re Refugee Review Tribunal; Ex parte Aala* (2000) 204 CLR 82.

12. A Declaration that the Queensland Parliament does not have Commonwealth/national jurisdiction.

13. A Declaration that the *Health Practitioner Regulation National Law Act* 2009 is invalid in its entirety or that the sections of the Act that purport to bestow national jurisdiction are invalid and must be severed from the Act.

14. A Declaration that the *Schedule* to the *Health Practitioner Regulation National Law Act* 2009 is invalid in its entirety or that the sections of the Schedule that purport to bestow national jurisdiction are invalid and must be severed from the Act.

15. A Declaration that the *Health Practitioner Regulation National Law* (Queensland) is invalid in its entirety or that the sections of the Act that purport to bestow

national jurisdiction are invalid and must be severed from the Act.

16. A Declaration that the *Health Practitioner Regulation National Law Regulation* 2018 is invalid in its entirety or that the sections of the Act that purport to modify Commonwealth Legislation including the *Ombudsman Act 1976* Cth (s24), the *Freedom of Information Act* 1982 (Cth) (s13), the *Australian Information Commissioner Act* 2010 (s6), and the *Federal Court of Australia Act* 1976 (s19 (d)(i)) are invalid and must be severed from the Regulation.

17. A Declaration that the word 'National' must be severed from:
a. *Health Practitioner Regulation National Law Act* 2009
b. *Schedule* to the *Health Practitioner Regulation National Law Act* 2009
c. *Health Practitioner Regulation National Law* (Queensland)
d. *Health Practitioner Regulation National Law Regulation* 2018
to ensure that the names of these enactments accurately reflect their lawful jurisdiction.

18. A Declaration that the 'Position statement 9 March 2021 Registered health practitioners and students and COVID-19 vaccination' is invalid to the extent that it replaces or amends the lawful standard for the duty to warn; and that health practitioners have a right and a duty, "to warn a patient of a material risk inherent in the proposed treatment; a risk is material if, in the circumstances of the particular case, a reasonable person in the patient's position, if warned of the risk, would be likely to attach significance to it or if the medical practitioner is or should reasonably be aware that the particular patient, if warned of the risk, would be likely to attach significance to it." as per the High Court in *Rogers v Whitaker* at [16].

19. A Declaration that the 'Position statement 9 March 2021 Registered health practitioners and students and COVID-19 vaccination' is invalid to the extent that it abrogates, limits, removes or negatively impacts the implied right to a freedom of political communication of health practitioners or of any other person.

20. A Declaration that position statements and codes and guidelines cannot be read in to the *National Law* as new required standards as this involves the Executive acting as the Legislature and that is a jurisdictional error and is unlawful pursuant to the separation of powers and the rule of law.

21. A Declaration that the *Public Health Act* 2005 does not empower any use of a discretionary power that abrogates the absolute non-derogable human rights including the right to religious beliefs per s 21 of *the Human Rights Act* 2019 and the right to informed consent per s17 of *the Human Rights Act* 2019.

TO THE RESPONDENT.
A directions hearing in this application (and any claim by the applicant for an interlocutory order) will be heard by the Court at the time, date and place specified below. If there is no attendance before the Court by you or by your counsel or solicitor, the application may be dealt with and judgment may be given or an order made in your absence. Before any attendance at that time, you may file and serve notice of address for service.

APPOINTMENT FOR DIRECTIONS HEARING
Time and date: 10:00am 30/11/2022
Place: BRISBANE

Signed:

Dated: 15 NOV 22

PARTICULARS OF THE APPLICANT:

Name: Dr William A. Bay
Applicant's Residential or Business Address: PO Box 860, Mango Hill, Qld, 4509.
Applicant's Address for service: PO Box 860, North Lakes, Qld, 4509.
Applicant's telephone number or contact number: 0459788772
Applicant's fax number: N/a
Applicant's E-mail address: williamabay@proton.me

Signed:

Description: Dr William A. Bay

Dated: 15/11/2022

This application is to be served on:

AUSTRALIAN HEALTH PRACTITIONER REGULATION AGENCY (AHPRA)
The Proper Officer
National Legal Services
Level 4, 192 Ann Street
Brisbane Queensland 4000 Email: niru@ahpra.gov.au

And

THE MEDICAL BOARD OF AUSTRALIA (Queensland)
The Proper Officer
National Legal Services
Level 4, 192 Ann Street
Brisbane Queensland 4000 Email: niru@ahpra.gov.au

And

STATE OF QUEENSLAND
CROWN SOLICITOR GPO Box 5221
Brisbane Qld 4001 Email: crownlaw@qld.gov.au

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE
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Applicant:	Dr William Anicha Bay
	AND
First Respondent:	AUSTRALIAN HEALTH PRACTITIONER REGULATION AGENCY
	AND
Second Respondent:	THE MEDICAL BOARD OF AUSTRALIA
	AND
Third Respondent:	STATE OF QUEENSLAND

AFFIDAVIT OF Dr William Anicha Bay

AFFIRMED ON 14th November 2022

Dr William Anicha Bay, suspended medical practitioner at Aussie Home Doctor, Mango Hill, Queensland solemnly and sincerely affirms and declares:

1. I have been a Medical Practitioner for 6 years and 10 months after having completed my medical studies with Honours at Monash University Medical School in late 2015.

....

Deponent Witness

AFFIDAVIT
Filed on Behalf of the (party)

Form 46, Version 2, approved on 25 August 2022
Uniform Civil Procedure Rules 1999
Rule 431

Name: Dr William Anicha Bay
Address: PO Box 860
Mango Hill Qld 4509

Phone No: 0459788772
Fax No: N/a
Email: williamabay@proton.me

2. On 2 August 2022, I received from the Australian Health Practitioner Regulation Agency (AHPRA) and the Medical Board of Australia (the Board) a "Notice of proposed immediate action to make submission" with associated enclosures due to three notifications I received regarding my social media presence and associated political protest conduct.

3. The Notice I received from AHPRA and the Board on the 2nd of August 2022, invited me to provide a written submission in response to the Notice. The email from AHPRA (exhibited and marked **A-1**) that contained the notice said "The Board will meet again on Tuesday 16 August 2022. **You and your representative are able to attend this meeting** and provide verbal submissions if you would like. At this meeting, after considering your submissions, the Board will make a decision about whether to take immediate action or not."

4. The Notice stated as follows: "Providing a submission to the Board gives you an opportunity to: 1. Address any concerns raised in the notification and provide the Board with relevant evidence to support your view, and 2. Provide evidence to the Board as to why your alleged conduct does not pose a serious risk to persons and why it is not necessary to take immediate action to protect public health and safety and why it is otherwise not necessary to take immediate action in the public interest."

5. With the help of Peter Fam, Principal Lawyer at Maat's Method, I subsequently completed a 45-page written submission emailed to AHPRA on the 15th of August 2022 (a copy of this can be provided if required) to clarify that my alleged conduct did not pose a serious risk to persons, but instead I was in fact, complying with the Code of Conduct for my profession by acting in the way that I had.

6. I clarified with this written submission to AHPRA and the Board that my primary intention in undertaking the alleged conduct was and is the protection of public safety, and as a result, any immediate action to be taken against me cannot be said to be in the public interest.

7. I also provided AHPRA and the Board with ample medical evidence to substantiate my opinions regarding the safety and effectiveness of the Covid-19 vaccines. It was these opinions that the content of AHPRA and the Board's allegations about me were based on. Notably, in their Reasons for decision (exhibited and marked **B-1**) to this affidavit is the AHPRA Notice of decision to take immediate action.) AHPRA and the Board failed to pass comment on the significant amount of medical evidence I provided to support my assertions and concerns regarding the provisionally approved COVID-19 vaccines, except to agree at Reason 10 that "there have been deaths associated with the vaccine".

8. On 5 August I received an email from AHPRA indicating that I was not going to be allowed to attend my hearing in person. The email (exhibited and marked **C-1**)

....

Deponent Witness

stated that "The Board will then reconvene on Tuesday, 16 August 2022, to consider your submissions and make a decision about the proposed immediate action. You are able to attend that meeting by video link to provide verbal submissions if you like.

9. On the morning of 15 August as part of my written submission, my solicitor Peter Fam wrote to AHPRA (exhibited and marked **D-1**) stating that "Dr Bay would like to clarify that he would appreciate the opportunity to attend any such meeting in person.".

10. On the evening of 15 August AHPRA replied via email (exhibited and marked **E-1**) that "I refer to your request that you attend in person before the Medical Board of Australia Immediate Action Committee. This committee is a virtual Committee constituted with members from various different states. As a result, the Committee meets via Zoom and not in person." and then gave me the login details of the Zoom meeting.

11. At 2:30pm on Tuesday the 16th of August 2022, having been denied the previously confirmed then withdrawn opportunity to present in person; I attended the Medical Board of Australia hearing via Zoom as requested.

12. During this meeting the Medical Board of Australia did not allow me to make any verbal submissions because they (falsely) accused me of livestreaming the hearing. After some verbal exchanges on the matter between me and Dr Anne Tonkin the Chair of the Medical Board (which can be viewed here: https://rumble.com/v1pned1-this-is-the-moment-we-said-no-to-ahpra-and-the-bullies-ran-away-.html). Dr Tonkin ejected me from the virtual Zoom meeting before I could make any verbal submissions because I was accused to have refused to stop livestreaming (which I could not do because I was, in fact, merely participating in a Zoom virtual meeting that they themselves had organised and I was not livestreaming as shown by the video of the event in question referenced above.)

13. On the 17th of August 2022, AHPRA on behalf of the Medical Board of Australia, sent me a Notice of decision to take immediate action, with the decision being to suspend my medical registration and to begin a s160(1) investigation of my conduct under the *National Law*. This notice of decision included forty-five reasons for the decision.

14. The AHPRA Notice of decision stated: "the Board considered your submission and decided to take immediate action under section 156 of the *Health Practitioner Regulation National Law* (*National Law*). Specifically, the Board has decided to suspend your registration. The decision takes effect from today, 17 August 2022. Under section 159 of the *National Law* this decision will continue to have effect until the suspension is revoked by the Board".

....

Deponent Witness

15. On the 18th of August 2022, AHPRA emailed me a Compliance letter entitled Compliance monitoring (exhibited and marked **F-1**) stating that I could not work in any paid or unpaid roles in healthcare. They wrote, "The suspension of your registration means that you must not practise as a medical practitioner. Practise means any role, whether remunerated or not, in which the individual uses their skills and knowledge as a practitioner in their regulated health profession. Practice is not restricted to the provision of direct clinical care. It also includes using professional knowledge in a direct non-clinical relationship with patients or clients, working in management, administration, education, research, advisory, regulatory or policy development roles and any other roles that impact on safe, effective delivery of health services in the health profession."

16. I have received no further correspondence from AHPRA or the Board regarding the status of my s156 immediate action suspension or the s160(1) investigation.

Background

17. I am currently expelled from the Royal Australian College of General Practitioners (RACGP), and forcibly withdrawn from the Australian Federal Government's Australian General Practice Training Program (AGPT) by the actions of their local corporate representative General Practice Training Queensland (GPTQ), and have been made unemployed and without income due to the immediate action suspension by AHPRA and the Board under s156 of the *Health Practitioner Regulation National Law* (Queensland) of my medical practitioner registration and the limitations placed on potential employment in the healthcare field due to the inferences of AHPRA's subsequent Compliance letter (exhibited and marked **F-1**).

18. At the time of my suspension, I worked as a GP Registrar at Woody Point Medical Centre and as a telehealth doctor with Telehealth North Queensland and an after-hours Deputised General Practitioner with National Home Doctors.

19. After successfully completing intern and residency years PGY1 (2016) and PGY2 (2017) respectively, I began my medical career working as a locum surgical and medical resident, then progressed to working in after-hours urgent care as a deputised GP from 2018, and then I enrolled in the Australasian College of Emergency Medicine (ACEM) training program in 2019 before leaving to join the Royal Australian College of General Practitioners (RACGP) fellowship training in 2020.

20. I was successfully completing my RACGP fellowship training in 2021 until an email from AHPRA in March 2021 made me question the ethics and legality of my chosen career path.

21. On 9 March 2021 AHPRA and the National Boards (the Boards) published a Position statement that was forwarded to me on my work email; the Position statement was titled: 'Position statement - Registered health practitioners and

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students and COVID-19 vaccination'. Exhibited and marked **G-1** to this affidavit is AHPRA and the Board's position statement.

22. In their Position statement AHPRA and the Boards stated: "Any promotion of anti-vaccination statements or health advice which contradicts the best available scientific evidence or seeks to actively undermine the national immunisation campaign (including via social media) is not supported by National Boards and may be in breach of the codes of conduct and subject to investigation and possible regulatory action".

23. The Position statement from AHPRA made me consider resigning from my GP Registrar role because I found it morally untenable that I should be prevented from giving all the information I knew to be relevant to a patient when advising them on the merits of receiving a Covid-19 vaccine. I chose to continue working however, so I could legally effect the most positive change for my patients and the public from within a system that I perceived was becoming increasingly corrupt.

24. During my time working as a GP Registrar (and after-hours Deputised GP) throughout 2021 I (regrettably) authorised dozens of Covid-19 vaccinations and (ashamedly) administered some as well, and then (frighteningly) began to witness many adverse effects (like death, chest pain, difficulty breathing, difficulty walking, and unusual bleeding) subsequent to the administration of the vaccines as well. I also witnessed patients openly admitting to me in my clinical rooms and at their homes that they had been pressured or forced into taking the vaccines to keep their job or for study purposes. I was also cognisant of the implicit pressure being placed on me to 'toe-the-line" and not mention the deleterious effects of the vaccines by statements from the AMA, the RACGP, my colleagues, and my supervisor.

25. I was also firmly aware of the consequences of not "toeing-the-line" and speaking out against the safety and effectiveness of the vaccines due to my reading of AHPRA press-releases, and reading articles in the media, such as the AusDoc medical practitioner magazine (which I was later banned from) about the unjust and outrageous situations of Dr Mark Hobart and Dr Paul Oosterhuis (and other practitioners) being indefinitely suspended for independent clinical actions and statements on social media that contravened AHPRA and the Government's narrative on the Covid-19 vaccines. This, for a time, suppressed my courage to speak out against the dangers of these vaccines.

26. My career as a GP Registrar was significantly derailed however in December 2021 when The Chief Health Officer of Queensland issued a direction which mandated COVID-19 vaccination for all healthcare workers. This direction was initiated by Dr Peter Aiken, on 10 November 2021 that required "by 15 December 2021, a worker in healthcare has received the prescribed number of doses of a COVID-19 vaccine". Exhibited and marked **H-1** to this affidavit is the Superseded – Workers in healthcare setting (COVID-19 Vaccination Requirements) Direction.

27. I resigned from Strathpine 7 Day Medical Centre on 7 December 2021 for personal reasons primarily due to the imposition of the Chief Health Officer's (CHO)

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direction for mandatory vaccination. It is true that I remain unvaccinated for Covid-19 to this day, but it is not true that I breached any State or Commonwealth laws pertaining to the vaccination of health care workers.

28. From December 2021 I worked as a telehealth GP and then later in March 2022 I resumed work as an after-hours Deputised GP work, and then in-clinic GP Registrar work when my covid-vaccination exemption allowed me to do so.

29. As a medical practitioner I continued to witness (in increasing numbers) serious and wide-reaching harm in my patients post-vaccination which I attributed to a likely consequence of the administration of the provisionally approved Covid-19 vaccines. Despite the intimidation from AHPRA and the Government, and because of my understanding that many of my senior colleagues were failing to uphold their lawful duty to warn as a direct consequence of AHPRA's position statement and the enforcement of the s156 power; my personal ethics and religious views, and my commitment to professional ethics under the Code of Conduct for Australian Doctors regarding the protection of the public compelled me to speak out publicly and repeatedly to warn others of the inherent material risks associated with the Covid-19 vaccines. I communicated via social media and via peaceful political protest as the founder and leader (under Jesus Christ's authority) of the Queensland Peoples' Protest to warn as many people as possible about the dangers of the vaccines before the impending (and unlawful) regulatory action of AHPRA and the Board would try to silence my message.

30. I have now brought an originating application for review under Part 4 s43 of the *Judicial Review Act* 1991 (the Act), seeking review of the decision of the first and second respondent, AHPRA and the Board, to suspend my registration as a registered medical practitioner. The decision is affected by multiple errors of law and this cause of action raises primary jurisdictional questions with reference to the true identity of the first and second respondents and serious questions regarding the validity of the relevant enactments; specifically, the *Health Practitioner Regulation National Law Act* 2009, *Schedule - Health Practitioner National Law*, *Health Practitioner Regulation National Law* (Queensland), *Health Practitioner Regulation National Law Regulation* 2018 and the *Public Health Act* 2005(*PHA*); and this cause of action raises questions regarding the *Commonwealth of Australia Constitution Act* (the *Constitution*) and its interpretation or application.

31. The express wording within the relevant versions of the *National Law* and within the *Health Practitioner Regulation National Law Regulation* 2018 demonstrate that the Queensland Parliament is enacting Commonwealth/national jurisdiction by passing legislation with national application and is actively undertaking to modify multiple Acts of the Commonwealth Parliament through the *Health Practitioner Regulation National Law Regulation* 2018. This is beyond the lawful power of the Queensland Parliament and is contrary to the *Constitution*. The implications of these jurisdictional questions in affecting the validity of the relevant enactments necessarily involves questions regarding the legislative jurisdiction of the Queensland Parliament and thus requires the involvement of the third respondent

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the State of Queensland. These primary jurisdictional matters could not be raised on appeal to the Queensland Civil and Administrative Tribunal (QCAT) and are matters for which QCAT is not a Court of appropriate jurisdiction.

Reasons for decision

32. Many of AHPRA and the Board's forty-five reasons for decision constitute errors of law requiring judicial review.

33. AHPRA and the Board's decision dated 17 August 2022 states:

"On the basis of the evidence before it, the Board reasonably believes that because of your conduct, you pose a serious risk to persons, and it is necessary to take immediate action to protect public health or safety; and taking immediate action in respect of your registration is otherwise in the public interest."

34. The Boards claims, when taken as a whole relate to **public protest and political communication online using social media.** This is perhaps best exemplified in Reason 2:

"Specifically, the notifications raise concerns that: a) You feature in videos posted to social media disseminating anti-vaccination information, making a number of anti-covid vaccine statements and statements which go against the public health response to COVID."

and Reason 2 b):

"You aggressively interrupted an AMA National Conference with approximately 400 doctors in attendance on 29 July 2022. The notifier states that you yelled anti-vaccination statements to attendees during a discussion about Australia's management of the COVID-19 pandemic and live streamed the incident on social media in an effort to falsely undermine public confidence in the COVID-19 vaccines."

35. I note that AHPRA and the Board are making assumptions of fact without any evidence to support such as when they discuss my motive in speaking at the AMA conference. As such this reason demonstrates that they have considered an irrelevant consideration. As a supposition without evidentiary support is by its nature be irrelevant to the facts as reliance on it is unlawful.

At Reason 2 it is stated: "The notifications raise concerns about aspects of your behaviour, which is in the public domain, that appear inconsistent with the Board's Good Medical Practice: A code of conduct for doctors in Australia (the Code of Conduct).

36. Similarly, for decision 2, 2a, 2b,5,6, 12,16 & 17, AHPRA and the Board refers to its Code of Conduct as though the Code of Conduct constitutes the lawful standard of

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care. The law does not support such an assertion. The legal test for the standard of a practitioner's conduct relevant to diagnosis and treatment is the Bolam Principle whereby the practice of a practitioner is judged against the standard of their peers of similar training and experience, not against Board codes or guidelines per *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582; [1957] 2 All ER 118. Further, the alleged conduct relevant to this decision made against me does not enliven this standard of practice because the alleged conduct entirely involves warning of risks, not performance of medical procedures or diagnosis or treatment, and thus the relevant standard is the standard related to the duty to warn.

37. Reasons for decision 5: states "The Code of Conduct for medical practitioners published by the Board sets out the principles that characterise good medical practice and makes explicit the standards of ethical and professional conduct expected of doctors by their professional peers and the community". This statement is not congruent with the standard as defined by law and as stated within the Code of Conduct itself at 1.3. Thus, this statement at reason 5 demonstrates that AHPRA and the Board have taken an irrelevant consideration into account in making their decision. The Good Medical Practice Code of Conduct for Doctor's in Australia Oct 2020 at 1.3 states "**What the code does not do - This code is not a substitute for the provisions of legislation and case law. If there is any conflict between this code and the law, the law takes precedence**". This statement within the Good Medical Practice Code of Conduct for Doctor's in Australia Oct 2020 directly refutes the reason for decision no. 5 and also supports that AHPRA, the Board and the Queensland Parliament cannot lawfully use the *National Law*, or codes, guidelines or position statements to replace the lawful standard for the duty to warn as determined by the High Court in *Rogers v Whitaker* [1992] HCA 58; 175 CLR 479 at [16].

38. Reason for decision 2, 2a, 2b,5,6, 12,16 & 17 were irrelevant considerations. I owe no fiduciary obligation either to my patients or the public at large (*Breen v Williams* [1996] HCA 57; 186 CLR 71) to promote the health of the community. My only legal duty of care is owed to the patients that I treat to either "maintain or improve their heath". Moreover, I am under no legal obligation whatsoever to promote any Board or government health policy, on the contrary, I do have an ethical duty and in accordance with my religious beliefs to speak out against such policy having no basis in fact or law, as all practitioners must, to act as a watch dog over government health policy. To remain silent on such important health Joint statement on COVID-19 and COVID-19 vaccines from the nation's regulators issues would give the general public that the government health position is based in fact and law, when it is not.

39. Further, Justice Parker in *Thiab v Western Sydney University* [2022] NSWSC 760 at [109] held with reference to the Nursing Codes and guidelines relevant to a health professional discussing risks of COVID-19 vaccine in the workplace:

"The next question is how far the Code goes in preventing the dissemination of "misinformation". The Code repeatedly and understandably requires nurses to act

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on the "best scientific evidence". But to question the scientific evidence for the safety of a vaccine, so long as it is done rationally, could hardly, if ever, be regarded as contravening this requirement. Nor would pointing to the possibility of long-term effects or the possibility of adverse effects in some clinical situations. It must be acknowledged that, although Covid-19 vaccines have been administered to millions of people with apparent success, this has happened too recently for those vaccines' long-term effects to have been exhaustively investigated."

Thus, it follows that AHPRA and the Board have taken an irrelevant consideration into account at reason for decision 2, 2a, 2b,5,6, 12,16 & 17.

40. The Board claims my **public commentary and the manner I chose to deliver my message** lacks "professionalism". The High Court has held that the manner of political communication, if it causes a public safety risk, may justify a limit on the freedom of political communication per *Wotton v Queensland* [2012] HCA 2; 246 CLR 1. There is no evidence to support that my manner is causing a public safety risk. Rather, it is necessary in order to protect public safety for me to warn the public of the risks associated with the government vaccine program and ongoing legislative amendments to the *National Law* that seek to remove the patient as the priority in the doctor patient relationship. The most effective method for me to warn as many people as possible has been to undertake public political protests. The implied freedom of political communication guaranteed under the *Constitution*, to be discussed at length later, makes no requirement that the communication be delivered in a "professional manner". Further, the standard required of me in upholding the duty to warn as a doctor does not have a professionalism requirement per *Rogers v Whitaker* at [16]. As such this demonstrates that AHPRA and the Board have considered an irrelevant matter.

41. The Board then continues to say that my statements about the Covid 19 program "might be framed as well meaning, but they are indiscriminate and come from an individual trusted by the community to provide truthful, reliable advice". By indiscriminate, I will take it to mean that I cover a broad overview about the Covid-19 program, and yes it does come from a trusted individual, a medical practitioner, who is in a far better position than the general public to make such comments because of specialised skills and training. This further raises the issue that the general public absolutely trusts its medical professionals over the word of any government representative when it comes to their health, and rightly so. The public will turn to the medical profession for matters that directly affect their health, to make sure that the information being broadcast by government and its agencies is truthful in fact, supported by law, and is directed towards promoting their health and safety. None of these criteria are satisfied by the government's policy on Covid-19 information suppression, and it is this suppression of information that is causing the public interest to be harmed. If medical practitioners are not allowed to speak truthfully with regard to the risk of certain treatments the faith the public has in the health system and medical professionals will be eroded entirely.

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42. At Reason 10, the Board does acknowledge that my "statements represent personal views on matters that might have some, limited elements of fact (for instance, there have been deaths associated with the vaccine).". A risk of death as a side effect from the COVID-19 vaccines is acknowledged by AHPRA and the Board and is an inherent material risk that a person in the position of a patient would find significant. I would be in breach of my lawful obligations under the duty to warn; and it would be unethical for me to remain silent regarding the inherent material risks of the COVID-19 vaccines that I have witnessed are harming large numbers of people in our communities. It is an irrelevant consideration that government policy still supports the use of these provisionally approved vaccines. My lawful requirement is to tell the truth and to protect the health and safety of the public is my ethical duty. I have chosen to do so at great personal and professional cost.

43. Another issue raised by the Board at Reason 20 is the "reputation of the profession." I have witnessed that it is the gagging of health practitioners in an effort to enforce support of government health policies at all costs that is the primary cause of reputation damage to the profession. Many families are first-hand experiencing the harm that occurs as a side effect of these provisionally approved COVID-19 vaccines. In circumstances where health practitioners fail to uphold their duty to warn or to provide care in a manner that is in the best interests of the patient rather than in the best interests of government policy, the result is that people do not trust medical advice and rather turn to friends, family or complete strangers to guide them. My experience is that the manner in which AHPRA and the Board are enacting the s156 *National Law* immediate action power is creating this very circumstance. AHPRA and the Board have been very public in informing health practitioners that if they breach the March 9 Position Statement and speak 'anti-vaccination' messages or against government policies and positions then the health practitioner will be reprimanded. My case is a key example of what this means. Many good health practitioners have left the professions because they are unable to lawfully or ethically continue to practice under such dangerous requirements. If any practitioner speaks out, it is very likely they will face the same fate I have met, a suspension that invariably lasts years, and destroys a person's livelihood and their ability to practise their profession.

44. The Board also makes the following concession at Reason 23; they state, "you may have some reasonable bases to disagree with Australia's or Queensland's response to the pandemic.". This statement demonstrates that AHPRA and Board have deemed the basis for my conduct as reasonable which conversely results in their decision to take immediate action being unreasonable.

45. They further state that **the manner** in which I have chosen to deliver my message has (at Reason 25) "the potential to damage the professional reputation of medical practitioners", in that I have not engaged in (at Reason 24) "professional, respectful and reasonable debate about your concerns, as a medical practitioner, with public health policy or specific COVID-19 advice." This statement is a false representation of the facts as I have actively sought to have a respectful and reasonable debate

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about my concerns on many occasions and even publicly invited the Premier of Queensland Annastacia Palaszczuk, the Health Minister Yvette D'Ath, and the Chief Health Officer of Queensland Dr John Gerrard to a debate to no avail. Notably, the March 9 Position Statement which is referred to repeatedly in the reasons for decision does not specify that professional, respectful and reasonable debate is acceptable, rather it expressly states that any disagreement with government policies and positions may result in regulatory action. Further, professional, respectful, and reasonable debate is not a lawful requirement of the implied right to the freedom of political communication which derives from the *Constitution*.

46. Furthermore, as will be discussed at length later, because the *National Law* is lawfully limited to jurisdiction that ends at the boundaries of the individual state or territory within which it is in force; the Medical Board of Australia operating under the *National Law* of Queensland does not have lawful jurisdiction to be regulating my conduct in New South Wales where the AMA conference was held. As this alleged conduct occurred in NSW it is a jurisdictional requirement for the *Health Practitioner Regulation National Law* (NSW) to be applied to this matter. There is no head of power under the *Constitution* to allow national regulation of health practitioners.

47. At Reason 40 in the decision, it was "At the time for the submission you appeared via video link. You were standing outside of Ahpra's Brisbane office holding a megaphone, in front of a crowd of protestors. You were live streaming the video via your phone". I submit that the allegation I was live streaming is a false statement. This can be seen clearly from a live-streamed video of the event (which was not recorded by myself) at the following webpage link: https://rumble.com/v1pned1-this-is-the-moment-we-said-no-to-ahpra-and-the-bullies-ran-away-.html. I was not personally live streaming at all during the hearing. I was talking with the Board on my phone at all times in a closed circuit Zoom video conference. Thus, Reason 40 constitutes an irrelevant consideration.

48. Further, Reason 41 states "when **invited** by the Chair of the Board to cease live streaming in order to commence the meeting and provide submissions, you attempted to converse with the Chair through the megaphone directed at your phone and also at the protestors surrounding you. We understood you to be refusing to end the live stream of the proceedings. Meetings at which show cause submissions are received are **not public hearings,** and this was explained to you". I submit that this allegation regarding live streaming is false; and this allegation has no connection to my ability to practice my profession in the required manner and as such this is an irrelevant consideration.

49. It is not unlawful for me to stand outside public buildings and it is not unlawful for me to converse with the Board, as agreed by a pre-arranged video link. I requested in writing to have a face-to-face meeting with the Board (exhibited and marked **D-1)** and this request was denied. I was advised that I must attend via zoom link. I

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did so. Where I was physically located at the time is an irrelevant consideration. I waived my right to privacy, and public officials can have no expectation of a right to privacy in the performance of their duties and the principle of law that justice must not only be done but must be seen to be done, applies to public officers. Moreover, the *National Law* pursuant to s3A (2)(a) requires that "the scheme is to operate in a **transparent**, accountable, efficient, effective and fair way". If the Board's intent was to operate the system in a transparent and fair way, there was nothing stopping it from doing so and was obligated to continue with the hearing in the interests of my right to natural justice and procedural fairness.

Form of action

50. In Reason 44 the Board states: "notwithstanding your submissions , having regard to the above , and noting the Board's paramount role of public protection , it is necessary to take immediate action now by way of suspending your registration" and 45 a. " on the basis of the evidence currently available, and subject to further enquiries , you have behaved in a manner that demonstrates a general absence of qualities essential for a medical practitioner, including the ethical exercise of judgment and integrity , and respect ; and b. " this form of immediate action is proportionate to the alleged conduct , and lesser forms of regulatory action would be insufficient to protect public confidence in the reputation of the medical profession whilst the matter is being further considered".

51. At Reason 32 it is written "The Board has had regard to that (my) submission in reaching its decision." The *National Law* compels the Board to meaningfully engage with my submissions under s157 but the Board has failed to meaningfully engage with my submission as it seems to believe that if it simply mentions the word "regard" then its legal obligation to take my submission into account has been discharged. In almost all cases, the Board in its Reasons for decision have not engaged with anything in my submission or demonstrated by way of example how my arguments or reasoning may be flawed. Therefore, the Board has failed to take into account relevant information in the making of its decision, and there was no evidence presented to have made the decision.

52. Having evidence is important at law because the s156 power uses the words "reasonably believes" as a precondition to the exercise of that power. The High Court in *George v Rockett* [1990] HCA 26; 170 CLR 104 at [8] has addressed what a reasonable belief means:

    When a statute prescribes that there must be **"reasonable grounds"** for a state of mind - **including suspicion and belief - it requires the existence of facts which are sufficient to induce that state of mind in a reasonable person.** That was the point of Lord Atkin's famous, and now orthodox, dissent in Liversidge v. Anderson (1942) AC 206: see Nakkuda Ali v. M.F. De S. Jayaratne (1951) AC 66, at pp 76-77; Reg. v. I.R.C.; Ex parte Rossminster (1980) AC 952, at pp 1000,1011,1017-1018; Bradley v. The Commonwealth (1973) 128 CLR 557, at pp 574-575; W.A. Pines Pty. Ltd. v. Bannerman (1980) 41 FLR 169, at pp 180-181. **That requirement**

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opens many administrative decisions to judicial review and precludes the arbitrary exercise of many statutory powers: see, for example, Attorney-General v. Reynolds (1980) AC 637. Therefore, it must appear to the issuing justice, not merely to the person seeking the search warrant, that reasonable grounds for the relevant suspicion and belief exist.... It follows that the issuing justice needs to be satisfied that there are sufficient grounds reasonably to induce that state of mind.

The Board has failed to have the reasonable grounds (existence of facts) sufficient to induce the necessary state of mind to take action against me under s156.

53. The suspension is not in relation to my actual practise of the medical profession. The Board has not raised any question as to my ability to perform my duties as a doctor, which is to examine, diagnose, treat, plan, or perform any medical procedure with the requisite skill. Further, at Reasons for decision 10 AHPRA and the Board state "Your statements represent personal views on matters...". The precedent of *Pridgeon v Medical Council of New South Wales* [2022] NSWCA 60 limits the Medical Boards set up under the National Scheme to confine its regulatory power to the "conduct of the practice of medicine". The decision of AHPRA and the Board demonstrates a failure to consider a mandatory or relevant consideration such that AHPRA and the Board do not have jurisdiction over personal conduct.

54. At Reason 11 "... your statements undermine public confidence in health directives and **positions in relation to the COVID-19 vaccine** that have been implemented to protect public health and safety during a global pandemic.". To assert that the position of federal and state governments in relation to COVID-19 vaccination is a source of authority requiring me to endorse the widespread and indiscriminate mandating of the COVID-19 vaccine where no law exists either at state or federal level to compel any medical service is an error at law. To render a medical service without correctly warning patients of relevant material risks automatically invalidates the doctor-patient relationship, a contract in law, and any health practitioner that administers the vaccine without ensuring genuine understanding and consent made absent fear, duress, coercion and undue influence potentially commits the crime of assault and or battery.

55. The Board by taking serious regulatory action under s156 of the *National Law*, is acting to silence the medical profession, whom the public must be able to trust to tell them the truth about inherent material risks (my lawful duty to warn demands this). In this regard, the medical profession is the public's safeguard against possible harm from government health policies or from any other source. It is common sense that silencing health professionals causes a serious risk to public health and safety and is the very thing that undermines public confidence in the health care system. In essence, the Board is attempting to compel me to abandon my duty of care to my patients and my moral and ethical duty to the public to tell them the truth.

56. I will now demonstrate how these Reasons for decision are contrary to law and therefore how the preconditions necessary to exercise the immediate action power did not and do not exist.

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The Grounds for the application for review

57. The decision of AHPRA and the Medical Board to immediately suspend my medical registration based on s156 of the *Health Practitioner Regulation National Law* (Queensland) and start a s160 (1) investigation of my conduct on the 17th of August 2022 and enforce a Compliance Letter (exhibited and marked **F-1**) are affected by errors of law based on the following grounds:

    1) An error of law was involved in making the decision whether it appears on the face of the record or not. 2) Taking an irrelevant consideration into account/failing to take a relevant consideration into account. 3) Failing to consider mandatory relevant considerations. 4) Exercising a power for an improper purpose/in bad faith. 5) The Decision and conduct of AHPRA and the Board are affected by errors of law.

58. In *Craig v South Australia* [1995] HCA 58; 184 CLR 163 at [14] the High Court held that, "If such an administrative tribunal falls into an error of law which causes it to identify a wrong issue, to ask itself a wrong question, to ignore relevant material, to rely on irrelevant material or, at least in some circumstances, to make an erroneous finding or to reach a mistaken conclusion, and the tribunal's exercise or purported exercise of power is thereby affected, it exceeds its authority or powers. Such an error of law is jurisdictional error which will invalidate any order or decision of the tribunal which reflects it."

Ground One

59. **An error of law was involved in making the decision whether it appears on the face of the record or not** (e.g., *Craig v South Australia* (1995) 184 CLR 163; [1995] HCA 58 at [5] & [8].

Identity of the Parties

60. I submit that as there is no Commonwealth head of power under the *Constitution* for the Commonwealth to regulate health practitioners, thus it is ultra vires for the Board, to be named a national Board, I.e., the 'Medical Board of Australia' and take regulatory action under that name.

61. In this regard there is a jurisdictional error relevant to the identity of the parties; such that the first respondent (AHPRA) and the second respondent (the Board) are representing themselves as national/Commonwealth entities as demonstrated by their respective names and by the jurisdiction they are professing to hold; however, the first and second respondent can only be lawfully identified as Queensland entities with associated Queensland jurisdiction; not one single national entity (as s7 of the *National Law* states); as their existence was established by a law of Queensland (the *Health Practitioner Regulation National Law Act* 2009) not by a law of the Commonwealth; and because the *Constitution* has no head of power to

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enable the Commonwealth Parliament to regulate health practitioners per *Wong v The Commonwealth* [2009] HCA 3; 236 CLR 573 at [60].

62. The ABN for AHPRA is 78 685 433 429. When this number is searched on ABN Lookup at abr.business.gov.au it is evident that AHPRA was registered by ABN in Victoria in 2009 and the history attached to their ABN number identifies them as a State Government Statutory Authority entity type. Thus, per the abr.business.gov.au website AHPRA is a State Government Authority not a Commonwealth Government Authority and is registered only in Victoria and not in any other State. Victoria does not have jurisdiction to create a corporation for another State or Territory, as only States and Territories have the jurisdiction to create a corporation. The Commonwealth power under s51(xx) of the *Constitution* only extends to the regulation of corporations not to their creation. Section 31A (2) of the *National Law* states "Status of National Board.... (2) **A National Board represents the State**". Exhibited and marked **F-1** to this affidavit is ABN number for AHPRA and Historical Details of the ABN number from ABN Lookup.

63. Page 25 of the '2020-25 Health Profession Agreement - Medical Board of Australia and AHPRA' (exhibited and marked **J-1**) states "Over the years, we have moved from strictly state-based regulation to a more national approach. In the early days of the Scheme, decisions about practitioners were made by the state or territory board or committee in which the practitioner practised. We now move cases around the country...".

64. Clarification from the Federal Health Ministry confirms in writing that AHPRA is not a Commonwealth agency. Exhibited and marked **K-1** to this affidavit is the Response to my correspondence from the office of Minister for Health and Aged Care, the Hon Mark Butler MP. "AHPRA is not a Commonwealth Government agency, rather it is an independent body established under complementary Acts passed by each Australian state and territory (Health Practitioner Regulation National Law). As AHPRA operates independently of the Australian Government, neither the Minister nor the Department of Health and Aged Care can intervene in individual matters of practitioner regulation or complaints."

Jurisdictional error

65. The State of Queensland regulates health practitioners across the entire country of Australia through the enactment in Queensland of the *Health Practitioner Regulation National Law Act* 2009 and its automatic application of the Schedule to the *Health Practitioner Regulation National Law Act* 2009 to each state and territory. This legislative set-up purports to create a consistent 'National Law' in each state and territory, with each state or territory applying the law from Queensland as if it were the law of their state or territory, and in so doing the other states and territories are bypassing the democratic processes required to pass valid legislation within their state or territory. Queensland itself also applies its host legislation to itself resulting in the creation of the *Health Practitioner Regulation*

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National Law (Queensland) which is the Act I have been regulated under. i.e., *the National Law*. Amendments of the *Health Practitioner Regulation National Law Act* 2009 by the Queensland Parliament (operating with only one house of parliament and thus no house of review), apply automatically in all other states and territories, except for Western Australia and South Australia. Such conduct results in the usurpation of the Commonwealth legislative powers and is achieved by collusion between the states and territories through COAG which has now been replaced by the Australian Federal Relations Architecture (AFRA) (exhibited and marked **L-1**) and its Health Ministers' Meetings (formerly known as the Ministerial Council), to usurp Commonwealth power and on its face constitutes a jurisdictional error of law and results in all versions of the *National Law* being invalid due to jurisdictional error.

66. **Jurisdictional issues:**
    a. State Parliaments have no authority to exercise the legislative powers of the Commonwealth parliament.
    b. If no jurisdiction on the part of the States exists to create a Commonwealth Act, then they also have no jurisdiction to create one single national entity and thus no national regulatory body can exist to administer the *National Law*, thus the National Boards have no lawful existence and no lawful jurisdiction.
    c. The Commonwealth has no head of power under the *Constitution* to create any Act that regulates health practitioners.
    d. If no jurisdiction on the part of the Commonwealth exists to regulate health practitioners, then there can be no *National Law* to regulate health practitioners; and no national regulatory body such as AHPRA can exist to administer it. Notably, AHPRA as one single national entity was created by a legislative Act of the Queensland Parliament and thus, they lawfully only have jurisdiction in Queensland. Thus, AHPRA in representing itself as an Australian/Commonwealth entity has no lawful existence and no lawful jurisdiction outside of Queensland.

    In summary, therefore neither the Commonwealth or the States and Territories have the legislative authority to create a national law to regulate health practitioners.

67. I am being regulated under the *Health Practitioner Regulation National Law* (Queensland) (aka the *National Law*) which is an enactment as applied legislation of the Schedule to, and sections of the *Health Practitioner Regulation National Law Act* 2009. The manner in which the *Health Practitioner Regulation National Law Act* 2009 is being administered as the host of applied legislation (a structure purportedly allowing for the application of one law across many Australian jurisdictions); results in jurisdictional error, as it seeks to confer powers on the Queensland Parliament, that lawfully belong only to the Commonwealth Parliament. Through this host legislation (the *Health Practitioner Regulation National Law Act* 2009), the Queensland Parliament is passing a law the amendments of which "apply automatically in all other states and territories, except for Western Australia, which must pass its own separate legislation, and South

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Australia, where amendments must be made by regulation" (as per the explanatory notes to the *Health Practitioner Regulation National Law and Other Legislation Amendment Bill* 2022. This is contradictory to the jurisdiction of the State of Queensland pursuant to the Constitution and further is not compatible with the maintenance of the constitutionally prescribed system of representative and responsible government and thus is a manner of legislating that does not serve a legitimate end and thus the *Health Practitioner Regulation National Law Act* 2009 is not reasonably appropriate and adapted per *Wotton v Queensland* [2012] HCA 2 at [81]. By hosting the initiating act for the applied legislation, the Queensland Parliament is usurping the powers of the Commonwealth Parliament which is invalid and beyond their power pursuant to s51 of the Constitution. Only the Commonwealth has jurisdiction to pass laws that have national application. This raises a question as to the validity of *Health Practitioner Regulation National Law Act* 2009, and its Schedule, the *National Law* (Queensland) and *Health Practitioner Regulation National Law Regulation* 2018.

68. The *Health Practitioner Regulation National Law Regulation* 2018 expressly demonstrates that the Queensland Parliament is actively exerting Commonwealth jurisdiction as the express wording of this Queensland regulation is such that the Queensland Parliament is modifying multiple Commonwealth Acts including the 1976 *Ombudsman Act 1976* Cth (s24), the *Freedom of Information Act* 1982 (Cth) (s13), the *Australian Information Commissioner Act* 2010 (s6), the *Federal Court of Australia Act* 1976 (s19 (d)(i)); and other Acts of Commonwealth Parliament, and the modifications have the effect (amongst other things) of removing particular rights of affected parties and gives the Queensland Parliament total control over the appointment and removal (without requirement to give reasons) of the National Health Practitioner Ombudsman who is the nominated overseer of the actions of AHPRA and the National Boards per Part 5 s27(e) of *Health Practitioner Regulation National Law Regulation* 2018. Furthermore, Part 4 s19(d)(iii) or the Regulation purports to affect the FOI Act's application to the Federal Circuit Court of Australia determinations. It is entirely unconstitutional for the Parliament of Queensland to create or to modify Commonwealth legislation whether through legislative enactments or through regulations.

69. Notably, based on s109 of the *Constitution* the *Health Practitioner Regulation National Law Regulation* 2018 is invalid as it expressly professes to modify Commonwealth legislation and as such it is in direct conflict and contradiction with the legislation that it seeks to modify.

70. The *Health Practitioner Regulation National Law Regulation* 2018 are purported to have immediate national application through the Queensland Parliament through the mode of applied legislation per Division 4 Regulations s245 National Regulations of the *National Law*. Section 245(i) states "The Ministerial Council may make regulations for the purposes of this Law".

71. Further, s246 2) of the *National Law* states that individual participating jurisdictions cannot disallow these regulations. "A regulation disallowed under subsection (1)

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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."

72. The concept of national jurisdiction as separate from Commonwealth and state or territory jurisdiction is a fiction, a nullity, is unconstitutional and is contrary to the system of democratic and representative government within the Westminster system that governs Australia. At paragraph 37 of *Australian Capital Television Pty Ltd v The Commonwealth* [1992] HCA 45; 177 CLR 106, MASON C.J states that 'The very concept of representative government and representative democracy signifies government by the people through their representatives.". Consequently:

the *Health Practitioner Regulation National Law Act* 2009 is invalid because it is empowering the Queensland Parliament to act as the Commonwealth Parliament and disenfranchising the citizens of other states and territories which is unconstitutional.

73. Consequently:
    a) The Schedule to the *Health Practitioner Regulation National Law Act* 2009 is invalid because (through the *Health Practitioner Regulation National Law Act* 2009) it is empowering the Queensland Parliament to act as the Commonwealth Parliament which is unconstitutional.
    b) The *Health Practitioner Regulation National Law* (Queensland) is invalid because (through the *Health Practitioner Regulation National Law Act* 2009) it is empowering the Queensland Parliament to act as the Commonwealth Parliament which is unconstitutional.
    c) The *Health Practitioner Regulation National Law Regulation* 2018 is invalid because (through the *Health Practitioner Regulation National Law Act* 2009) it is empowering the Queensland Parliament to act as the Commonwealth Parliament which is unconstitutional.

The *National Law* is beyond the legislative power of the State of Queensland and extra-territorial operation of state Acts does not confer a power for a state or territory parliament to create national laws

74. No head of power exists under the *Constitution* for state or territory parliaments to create a national law which is by definition a law of the Commonwealth parliament. Further, there is no head of power under the *Constitution* that allows the Commonwealth Parliament to regulate health practitioners. Therefore, the term or label "national law" must be severed from the state act to save it from invalidity or the entire Act must be ordered invalid.

75. *Section* 2(1) of the *Australia Act* 1986 (Cth) provides no source of authority for states to create Acts that operate against residents of another state in general unless a connection based on facts extending beyond the territorial limits of the state can be established. This is not the same as having the power to create a national law.

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Clause 5 of the *Constitution* only provides such an authority to the Commonwealth Parliament, not the parliaments of the states.

76. A national law is by definition a law made by the Commonwealth Parliament, not a law of the states and territories. A national law is uniform and binding throughout the Commonwealth by reason of clause 5 of the *Constitution*. Clause 5 states:

> **"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."

77. The Commonwealth cannot confer any national law-making power unto the states as no head of power exists under the *Constitution* for them to do so. The national law-making powers of the Commonwealth Parliament are mainly conferred upon it by s51 and s52 of the *Constitution*. These sections state the fields or subject matters upon which the Commonwealth Parliament can legislate on and clause 5 (Operation of the Constitution and laws) says to whom they apply. Higgins J in *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd [1920] HCA 54; 28 CLR 129*, at page 166 stated:

> "In connection with this subject, much argument has been addressed to sec. V. of the Constitution Act—what we call the "covering sections" of the Constitution. It provides that that Act, and all laws made under the Constitution "shall be binding on the Courts, Judges, and people of every State ... notwithstanding anything in the laws of any State." I take sec. 51 of the Constitution as defining subject matters for legislation, and covering sec. V. as defining the persons who are to obey the legislation."

78. Section 2(1) of the *Australia Act* 1986(Cth) does not and nor can it provide for the creation of national law-making powers for the states as no head of power exists under the *Constitution* for the Commonwealth Parliament to confer such powers. Moreover, there is no head of power under the *Constitution* for the Commonwealth to create any act that regulates health practitioners, and this is why the regulation of health practitioners is a state power only and therefore limited within its state boundaries. Thus, any law regulating health practitioners is also limited to jurisdiction within the states boundaries and regarding conduct that occurs within state boundaries.

79. The legislative powers of the states are derived from their constitutions and only have operational effect within their territorial limits and no further. **Extra-territorial operation of such acts can only have operation against a person if a state can demonstrate a connection with a person that involves a matter which extends beyond state borders.** This power has been derived or implied from the

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state's ability to make laws for the peace, order, and good government of that state, long before the creation of the *Australia Act* 1986 Cth). In this regard, s2(1) adds nothing to the existing and very limited extra- territorial powers of states.

80. The extra-territorial powers of states, whether expressly stated in Commonwealth legislation or drawn by implication from state constitutions for the peace, welfare and good government of the state **does not confer a power to create national laws, that is, state laws are not binding on residents of other states except in very limited and narrow circumstances.** Such circumstances have almost always been in relation to the criminal law as crime can be committed across state borders by people from other states. In such cases, issues of jurisdiction arise between the states and is often determined by which state has a greater connection to the accused of the crime. This can be important if the penalty for the same crime varies between the States. In criminal matters, where a person's liberty of freedom of movement may be at stake, the accused is extradited back to the state that has made a connection to their actions to be tried under that state's law. **In this sense, the state act never had operation against all of the other residents of the other state at all, only the accused.**

81. Excluding the rare exceptions stated above, **state acts have no extra-territorial operation against any person in another state whatsoever**. This is so because the state cannot prove any necessary connection between itself and residents of other states and therefore the state act can have no operation outside of its territorial limits.

82. Therefore, neither s2(1) of the *Australia Act* 1986 (Cth) nor an implication derived from the state's power to make laws for the peace, order and good government can provide any basis whatsoever for the states to rely upon for the creation of national laws, and nor does any such power of the states exist under the *Constitution*.

83. All of the states and territories have affixed the term or label "*National Law*" to their acts that regulate the health professions. As stated above, a national law is by definition a law of the Commonwealth Parliament and not that of the states. **Therefore, the *Health Practitioner Regulation National Law* Acts of the states and territories are all invalid**, as it is ultra-vires the states and territories to create any national law, that is; to exercise the legislative making powers of the Commonwealth Parliament. Thus, the term "national law" must be severed from these state and territorial acts to save them from invalidity, or the acts in their entirety be ordered unconstitutional and thus invalid.

84. Furthermore, state acts that regulate health practitioners operate within that state's territorial boundaries and no further. A practitioner who is registered to practice in one state cannot lawfully rely on that registration to practice in another state. To lawfully practice health practitioners must register in each individual state and territory in which they wish to practice in accordance with the lawful jurisdiction of the states and territories. The practitioners are then subject to the individual state acts in which they practice. The extra-territorial operation of laws that regulate

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health practitioners lawfully operates to regulate conduct that occurred within the border of the state or territory regardless of where the health practitioner currently resides.

85. Moreover, the application or operation of a decision made against a practitioner in the jurisdiction of one state does not lawfully extend or operate in another state. Decisions of a state board, tribunal or court should only have operational effect within that state's boundaries and no further, with perhaps the exception of the criminal law. Conditions, suspensions, or cancellation of licence to practice only apply within the state boundaries of the decision maker and not within the jurisdiction of another state.

86. The term "extra-territorial operation" does not describe the true operation of a state Act, which is limited to its territorial boundaries, but is a loose term where in practical terms there are two competing states acts that may have jurisdiction over the one individual(s) based on their conduct. Deane J, at [5] in *Thompson v the Queen* 1989 HCA:

> "...When inconsistency would otherwise exist between the statutory laws of different elements of the Federation, the Constitution itself resolves it: in the case of inconsistency between a Commonwealth law and a State law, by the paramountcy of Commonwealth law under s.109; **in the case of inconsistency between the laws of different States, by the confinement of the operation of State laws by reference to territorial (or predominant territorial) nexus** under the constitutional structure and the mandatory full faith and credit directive of s.118..."

87. The **jurisdictional dispute** is resolved if one state can prove a greater relevant connexion between the circumstances on which the legislation operates and the state in relation to the other state who also makes such a claim and nothing more. **The Commonwealth cannot grant or enlarge the legislative making powers of the States by their mere request.** This is contrary to the very text and structure of the *Constitution* and the hierarchy of legislative powers created under it, notably by clause 5, s106, and s109 of the *Constitution*.

88. The term "extra-territorial operation" is not an expansive term at all, but rather a restrictive one, **where the laws of the states and territories remain confined or limited within their territorial boundaries**. It is the peculiar circumstances where a necessary nexus must be proven between those circumstances and the state in order to bring the accused within the jurisdiction of the courts of that state, which enliven that state act's operation. **It is the facts and circumstances of a matter that create the "extra territorial" operation of the State Acts.** Once these questions of fact and degree are resolved, only then is the venue of jurisdiction ascertained, including the court and the Act under which the accused is to be adjudged. Once the jurisdictional facts have been determined, then and only then does that state act have any operational effect against the accused. **No state act of its own accord operates within the territorial boundaries of another state**

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unless the necessary preconditions exist for it to do so. The only Acts that operate within or transcend the territorial boundaries of all the States and Territories throughout the country, are the laws of the Commonwealth Parliament, not the laws of the States or Territories.

89. Section 51(xxxviii.) of the *Constitution* does not provide a head of power for the Commonwealth to confer a power. Thus, the Commonwealth cannot bestow national or Commonwealth jurisdiction on the states or territories individually or as a group. It states:

    "The exercise within the Commonwealth, at the request or with the concurrence of the Parliaments of all the States directly concerned, of any power which can at the establishment of this Constitution be exercised only by the Parliament of the United Kingdom or by the Federal Council of Australasia:"

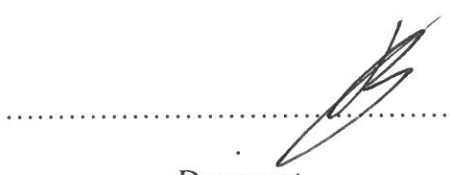
90. The *National Law* of Queensland applies to me (if not found entirely invalid by review through this court), only for a nexus of connection to acts that I have alleged to have committed in Queensland. AHPRA and the Board have unlawfully sought to regulate my behaviour in Sydney (at Reason for decision 2b) which is located in the state of New South Wales (despite the notification mentioning that the Queensland Police were involved, which also was not true as the Queensland Police were not involved, but merely the International Convention Centre Sydney private security). As the alleged conduct occurred in the state of New South Wales, any action taken against me must be taken under the legislation of New South Wales as the Queensland Act has no jurisdiction under such circumstances.

91. A state act having "extra-territorial operation" in circumstances that cross state borders is one thing, but creating an act and calling it a "National Law" with the intent of creating a national accreditation and registration scheme (a power which belongs to the Commonwealth), is quite another. The states cannot exercise the legislative powers of the Commonwealth, and as there exists no head of power under the *Constitution* to create a national law that regulates health practitioners there can be no valid state act that seeks to create a new head of power that does not exist under the *Constitution.*

92. The State of Queensland via the *Health Practitioner Regulation National Law* (Queensland) cannot purport to give me registration Australia-wide because such a power, if it existed (and it does not under the *Constitution)*, would be a Commonwealth power. Thus, registration to practice is limited to within the boundaries of the state in which a practitioner has registered to practice and does not apply interstate.

93. States have no authority to create national laws as was held in the following High Court cases:

    1. *Lipohar v The Queen* [1999] HCA 65; 200 CLR 485 at [97].
    2. *Union Steamship Co of Australia Pty Ltd v King* [1988] HCA 55; 166 CLR 1; MASON C.J., WILSON, BRENNAN, DEANE, DAWSON, TOOHEY AND



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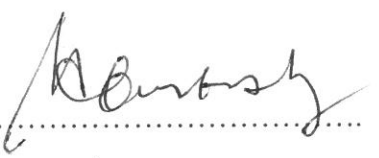

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GAUDRON JJ at [1], [2], [4], [8], [11], [12], [14], [17], [18], [19], [22], [23], [24], [25].

3. *Thompson v The Queen* [1989] HCA 30; 169 CLR 1 MASON C.J. AND DAWSON J. at [27], [30], and BRENNAN J. Per [12] and Deane J At [5].
4. *Ward v The Queen* [1980] HCA 11; 142 CLR 308 GIBBS J At [4]

94. As I have raised a jurisdictional issue on the part of the State of Queensland to create a national law, this threshold issue (of the validity of the Act under which my suspension to practice medicine was effected) **must be decided before the validity of action taken under it, is decided by the court.**

Ground Two

Taking an irrelevant consideration into account/failing to take a relevant consideration into account

95. This ground arises as a result of the decision maker taking an irrelevant consideration into account/failing to take a relevant consideration into account per R v Trebilco; Ex parte FS Falkiner & Sons Ltd (1936) 56 CLR 20; Murphyores Inc Pty Ltd v Commonwealth (1976) 136 CLR 1; Minister for Aboriginal Affairs v Peko-Wallsend Ltd [1986] 162 CLR 24; HCA 40, Pollentine v Attorney General [2019] QSC 200.

Irrelevant considerations taken into account

My vaccination status

96. AHPRA and the Board expressly state they have formed a reasonable belief regarding my vaccination status and contravention of Qld State law and decide to take immediate action against me, but such a belief has been formed without any facts or evidence to support it, and without any enquiry with me to clarify the facts and evidence.

97. The Board notes however, that it had regard to my submission. That regard it had only extended to the fact that I am currently practising as a GP Registrar, and that I am not vaccinated against COVID-19. Both of these factors have no relevance to the Board taking action under s156 of the Act. Therefore, the decision maker has taken into account an irrelevant consideration in the exercise of the s156 power. It has further failed to engage whatsoever in the factual or legal aspects as they relate to the COVID-19 vaccine and my vaccination or lack thereof, and thus failed to take into account relevant considerations of my submission. It is on these factors alone that the decision is invalid, the preconditional facts necessary for the exercise of the power not existing.

98. In Reason 35, the Board states "in circumstances where you have publicly stated that you have made the choice to remain unvaccinated and have confirmed that you are currently practising as a GP registrar, the Board reasonably believes that you

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have been practising in **contravention of Public Health Directions,** and are **likely to do so in the absence of regulatory action.".**

99. The Board has clearly exceeded its jurisdictional powers on this point as a basis for my suspension. Firstly, as a matter of fact, I have not been charged with any offence under the *PHA* for breaching any directions made under it. The recent case of *Pridgeon v Medical Council of New South Wales* [2022] NSWCA 60 is instructive, where the NSW Civil & Administrative Tribunal (NCAT) proceeded to only provide "lip service" to Dr Pridgeon's presumption to innocence when charged with a criminal offence, and could not take action under s150, NSW's equivalent of the immediate action power to s156 in Queensland, simply because he may be found innocent of the charges.

100. The Board has in my case exceeded its jurisdictional powers by substituting its own opinion for that which would properly be within the jurisdictional powers of a court, having passed judgement where I have not in the first instance been charged with any offence under the *PHA*, and even if that were so, it still could not presume me to be guilty of any such offence pending a decision of a court. Thus, the precondition for the s156 power to be exercised has not been met on this ground either and as such the decision maker has taken an irrelevant consideration into account.

101. Reason 36 and 37 makes reference to "medical practitioners are required to practise in accordance with the laws in place in Australia and its federation of states and territories", and "you do not have to be vaccinated against COVID-19, but it is a contravention of the declaration made under the *PHA* to practise the profession of medicine while unvaccinated." respectively. The Board states at Reason 38 "on this further basis, the Board believes that it is in the public interest to take immediate action.".

102. Firstly, the presumption is that the *PHA*, in its practical operation the health direction, is valid, when it is not. The State of Queensland has certain powers in relation to health (which will be discussed at great length later). Firstly, the power of quarantine, which is a highly constrained power only applicable to those labouring under infectious disease to prohibit or restrict their movement, and even if properly subject to this power, **which I am not**, no medical services such as vaccination, can be forced onto any person under fear, duress, and coercion which the health direction clearly provides. If genuine understanding and consent is absent this would invalidate the doctor-patient relationship, a contract in law (*Breen v Williams* 1996 HCA). This latter fact, the doctor-patient relationship being a contract in law and invalid if entered into under fear, duress or coercion is a fact that the Board must be cognisant of, as it regulates this very relationship. As I am not properly subject to the State's quarantine power, the health direction can have no operation against me, as the power does not extend to creating a situation or compelling vaccination as a requirement for work, and as a matter of law only extends to those labouring under infectious disease and only to their movement.

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The order has grossly exceeded the exercise of the legitimate quarantine powers of the state and cannot be authorised by the act itself.

103. The regulation of health practitioners under the *National Law* only extends to those registered under the Act in the practise of the health profession (*Pridgeon v Medical Council*) and does not give the regulatory body power to take action against a person to suspend their registration, simply because they have (in fact) exercised their lawful rights by refusing to be vaccinated. At no stage was I accused of breaking the law in Queensland by any Queensland authority, and at no stage did AHPRA ask for evidence to ascertain my vaccination status or the existence of a reasonable excuse. Furthermore, it is a reasonable excuse not to comply with the health order requiring COVID-19 vaccination in order to work if no valid doctor-relationship can be established in law, and any doctor administering the COVID-19 vaccine commits the crime of assault if consent has not been validly given. **My vaccination status and the legality of it was a presumption made by AHPRA without any reference to facts or evidence and thus constitutes taking an irrelevant consideration into account.**

AHPRA and National Boards Position statement

104. If my alleged conduct is characterised as professional conduct; AHPRA and the Board are taking unlawful action against me because I am speaking against government public health policies and against the AHPRA and Board March 9 Position Statement. Their Position statement says, "This position statement states the National Boards' expectations of Australian registered health practitioners in regard to: • being vaccinated against COVID-19, • administering COVID-19 vaccines, and • **providing advice and information about COVID-19 vaccination**.". In doing this AHPRA and the Board **have unlawfully replaced the lawful standard of the duty to warn** as defined in *Rogers v Whitaker [*1992] HCA 58; 175 CLR 479 at [16]; **with a new standard** as defined by the 'Position statement 9 March 2021 Registered health practitioners and students and COVID-19 vaccination' (Exhibited and marked **G-1**) as demonstrated by reason for decision 2a, 3, 11, & 12. (Notwithstanding that the assertions made at reason 3 remain unreferenced and thus remain unsubstantiated) This consideration of the Position statement on my lawful ability to practice constitutes AHPRA and the Board taking an irrelevant consideration into account.

105. My alleged conduct is conduct that upholds the lawful standard for the duty to warn which puts patient safety in the position of prominent consideration per *Rogers v Whitaker* at [16]. Doctors are required to tell the truth per *Rogers v Whitaker* at [11]; and are required to warn of inherent material risks that a person in the position of the patient would find significant or that a doctor should know that a person in the position of the patient would find significant at [16]. As such the Position statement that purports to replace the lawful standard for the duty to warn; and seeks to put support of government and AHPRA and Board positions in the position of prominent concern; **is an irrelevant consideration with regard to the making of the decision, because it is an unlawful consideration**.

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106. The High Court of Australia has jurisdiction to determine the standard for the duty to warn, the standard is not determined by a responsible body of opinion in the relevant profession *per Rogers v Whitaker* at [12]. At reason 12 AHPRA and the Board state: "Your failure to behave in a professional, respectful manner when making false claims about the important, patient centred care provided by your peers, has the potential to cause harm to the community and your public commentary and the manner in which you deliver it is inconsistent with your professional obligations under the Code of Conduct, including the Board's guidance on social media[1] and the joint statement of AHPRA and the Board". This reason demonstrates that AHPRA and the Board are seeking to replace the lawful standard for the duty to warn with their position statement and the Code of Conduct and such replacement is unlawful per *Rogers v Whitaker* at [14] & [16] and thus this constitutes an irrelevant consideration. Further, this reason has no relevance to my duties as a practitioner and demonstrates AHPRA and the Board seeking to regulate personal conduct and opinion which is beyond their power and is an irrelevant consideration per *Pridgeon v Medical Board of Australia"*.

107. At Reason 11 it AHPRA and the Board states, "Because of this", ('this' being my statements about **my concerns about the COVID-19 vaccination program**) "your statements undermine public confidence in health directives and positions in relation to the COVID-19 vaccine that have been implemented to protect public health and safety during a global pandemic". I submit that in circumstances where the public are being harmed as a result of health directives and positions in relation to the COVID-19 vaccine; it is an irrelevant consideration that that "the directives and positions in relation to the COVID-19 vaccine have been implemented to protect public health and safety during a global pandemic"; my duty as a practitioner is to warn of inherent material risks that I believe a person in the position of the patient would find significant. Notably AHPRA and the Board agreed at reason 10 that death is an inherent material risk of the administration of these vaccines and so it is a serious concern that AHPRA and the Board are using the s156 immediate action power to intimidate health practitioners and to stop them from warning patients and the public.

108. Implied irrelevant considerations must be determined by interpreting the legislation by reference to 'the subject-matter, scope and purpose of the Act' per Mason J in *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24 at [40]. There is nothing in the subject matter, scope, or purpose of the *National Law* to suggest that the standard for the duty to warn can or should be replaced. In contrast, with reference to s3A of the *National Law* at the time of my alleged conduct; the object of the Act states "3A Paramount guiding principle- The main principle for administering this Act is that the health and safety of the public are paramount". Following the amendment of the *National Law* on 21 October 2022, the paramount principle in s3A was changed to "(1) The main guiding principle of the national registration and accreditation scheme is that the following are

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paramount— (a) protection of the public; (b) public confidence in the safety of services provided by registered health practitioners and students.".

109. These guiding principles are broad and thus must be interpreted with reference to relevant law including High Court precedent in order to enable lawful interpretation and application. The High Court has set the lawful standard for the duty to warn in *Rogers v Whitaker* and clarified that the standard is lawfully set by the Courts. This standard does not include a requirement only to warn of risks that are not contrary to government, AHPRA or Board policies or positions. The commonsense reason for this standard is to protect public health and safety. Such a standard also protects the confidence of the public in the system of health care as health care professionals are perceived as speaking honestly about risks and benefits of procedures and drugs without interference from vested interests who do not have knowledge or insight into the personal risk profile of the individual patient. It would be an unlawful and dangerous interpretation to require the discussion of risks to omit honest disclosure if such disclosure of risks was incongruent with a government or agency policy or position. Further, any interpretation that the standard can be replaced would be contrary to law as it would allow a third-party interloper to interfere in the sacrosanct Doctor patient relationship.

110. The irrelevant consideration which is the new standard for the duty to warn as imposed by the AHPRA and Board position statement was considered by the board in their decision as they stated at reason 11 in the reasons for decision AHPRA and the Board stated "10. Your statements about concerns around the COVID-19 vaccine program might be framed as well meaning, but they are indiscriminate and come from an individual trusted by members of the public to provide truthful, reliable advice. Your statements represent personal views on matters that might have some, limited elements of fact (for instance, there have been deaths associated with the vaccine). However, they are made as if they are authoritative, coming from a medical practitioner, and without any suggestion that the advice is not reliable for everyone. 11. Because of this, your statements undermine public confidence in health directives and positions in relation to the COVID-19 vaccine that have been implemented to protect public health and safety during a global pandemic. This is a clear statement that the decision to take the action against me is because I am causing the public to doubt the position statements. The AHPRA position statement represents a new purported standard for the duty to warn which is putting the support of government and AHPRA and Board positions in a paramount position of importance at detriment of the importance of the duty to warn being required to always put the safety of the public in the paramount position. As such the new position statement is an irrelevant consideration as the lawful standard has been set out by The High Court in *Rogers v Whitaker*.

111. Furthermore, the Medical Board's Code of Conduct encourages me to warn patients of risks, not to follow unpublished and unlegislated position statements (as

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explained in my submission to AHPRA). Section 7.4 of the Code of Conduct for Doctors in Australia (Public health) says that "Doctors have a responsibility to promote the health of the community through ... education... (and) Good medical practice involves: 7.4.2 Participating in efforts to promote the health of the community … ". This section demonstrates that my efforts to warn the public were consistent with the Code of Conduct regarding public health. I had no duty to follow Government policy or position statements as they are not part of the responsibilities for medical practitioners regarding public health as demonstrated by the Medical Board's very own Code of Conduct.

112. At Reason 2(b) AHPRA and the Board stated that "You aggressively interrupted an AMA National Conference with approximately 400 doctors in attendance on 29 July 2022. The notifier states that you yelled anti-vaccination statements to attendees during a discussion about Australia's management of the COVID-19 pandemic and live streamed the incident on social media in an effort to falsely undermine public confidence in the COVID-19 vaccines". I submit that this reason is demonstrative that the reason for the decision is to stop me from politically communicating and that AHPRA and the Board are seeking to replace the lawful standard for the duty to warn and as such this demonstrates taking an irrelevant consideration into account.

113. At Reason for decision 18 it is stated, "The Board considered that knowledge of your profession may lend credibility to your position which is in contrast with and has the potential to undermine reasonable public health positions. I submit that this reason demonstrates an irrelevant consideration as if I as a health practitioner reasonably believe that public health positions are harming the public then I have a professional, moral and ethical duty to warn the public. Notably, at reason 10, AHPRA agree that an inherent material risk of these vaccines is death. I submit that this reason constitutes an irrelevant consideration as AHPRA and the Boards position and the position of local, state and federal government and health authorities and their directives do not constitute the lawful standard for the duty to warn no matter why they were implemented. This is for important patient and public safety reasons.

114. At Reason for decision 2(a) it is stated, "You feature in videos posted to social media disseminating anti-vaccination information, making a number of anti-covid vaccine statements and statements which go against the public health response to COVID". I submit that this reason is again demonstrative that the overarching reason for the decision is to remove my ability to politically communicate which is contrary to law and is further unlawful as it demonstrates that AHPRA and the board have replaced the lawful standard for the duty to warn with their own new standard which is unlawful per *Rogers v Whitaker* at [12] and [14] .

115. At [14] the High Court held "Whether a medical practitioner carries out a particular form of treatment in accordance with the appropriate standard of care

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is a question in the resolution of which responsible professional opinion will have an influential, often a decisive, role to play; whether the patient has been given all the relevant information to choose between undergoing and not undergoing the treatment is a question of a different order. Generally speaking, it is not a question the answer to which depends upon medical standards or practices." Thus, it is unlawful for AHPRA, the Board or the Queensland Parliament to replace the lawful standard for the duty to warn.

116. Further, in *Rogers v Whitaker* per Gaudron J at [4] it was held "The matters to which reference has been made indicate that the evidence of medical practitioners is of very considerable significance in cases where negligence is alleged in diagnosis or treatment. However, even in cases of that kind, the nature of particular risks and their foreseeability are not matters exclusively within the province of medical knowledge or expertise. Indeed, and notwithstanding that these questions arise in a medical context, they are often matters of simple common sense. And, at least in some situations, questions as to the reasonableness of particular precautionary measures are also matters of common sense." I submit that the level of risk to the health and safety of the public that I witnessed during my work as a GP and what I perceived as very effective gagging of many of my colleagues resulted in my common sense decision that I must uphold my duty to warn and my moral, ethical and faith based requirements by warning the public of the possible harm likely being caused by the provisionally approved COVID-19 vaccines and the associated government legislation and policies of enforcement of vaccine mandates.

117. Therefore, this irrelevant consideration (of whether I have followed the position statement guidance or supported government public health policies) deprives me of the possibility of a lawful application of the *National Law* to my circumstances.

118. If I am going to uphold my lawful duty to warn of inherent material risks such as "the risk of death associated with the vaccine"; which is a risk that I as a doctor believe a person in the position of the patient would find significant; then I am going to be reprimanded and sanctioned ongoing and can never achieve a successful outcome if I practice in a manner that upholds the law of the duty to warn.

119. Further, AHPRA have taken the irrelevant consideration of the manner in which I have communicated the risks of the vaccine program and the policies of the Government into account as demonstrated by Reasons for decision 8, 12, 21, 25, & 45a. This poses the question of what is the manner in which I have communicated.

120. I have communicated publicly as part of peaceful political protest though the Queensland Peoples' Protest organisation within which I have communicated my legitimate concerns regarding federal and state government policy and legislation

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and the harm that I have witnessed resulting from the COVID-19 vaccines, and the *PHA* mandates, and from the gagging of health practitioners through the AHPRA and Board March 9 Position Statement and its enforcement. In speaking about these issues of significant concern, I upheld my duty to warn and in so doing I have also shared my religious beliefs.

121. The law requires me to uphold the duty to warn per *Rogers v Whitaker* at [16] & [11]. The law protects an implied public right to a freedom of political communication which has been implied from the *Constitution* per *Nationwide News v Wills* 1992 177 CLR 1 and *ACTV v Commonwealth* 1992 177 CLR 106.

122. My right to hold and practice my religious beliefs is protected by the *Constitution* s116 and the *Human Rights Act* 2019(Qld) s21. Protecting the professional reputation of doctors as stated in the reasons for decision particularly at reason 45a is not the lawful paramount concern for the standard required in fulfilling the duty to warn per *Rogers v Whitaker* at [1] & [16].

123. Furthermore, the manner of my political communication is an irrelevant consideration because there was no evidence produced or considered by AHPRA and the Board demonstrating my manner put public safety at risk and at law manner is not relevant to the lawfulness of political communication unless it threatens public safety (*Wotton v Queensland* (2012) 246 CLR 1) or unless the burdened freedom is otherwise legitimately consistent with a legislative purpose as stated in *Lange v Australian Broadcasting Corporation* (1997) and explained by a majority of the High Court in *McCloy v New South Wales* [2015] HCA 34; 257 CLR 178 and *Brown v Tasmania [2017] HCA 43; 261 CLR 328.*

124. Working in the profession of a medical doctor does not lawfully exclude members of the profession from being able to speak freely on political matters or on patient and public safety matters. The law as determined by the High Court in *Rogers v Whitaker* bestows a duty to warn on medical doctors. Further, the High Court decisions relevant to the implied right to a freedom of political communication protect all Australians in expressing their political opinions regardless of their profession. This decision of AHPRA and the Board requires me not to communicate my political views in order to continue working as a doctor. I have a lawful right and lawful requirement to do what I am doing, and I am being sanctioned for it.

125. It is the use of the s156 immediate action power in this way that is causing other health practitioners to be afraid to uphold their duty to warn and this is causing a serious risk to public health and safety. The second question in Lange (*Lange v Australian Broadcasting Corporation* [1997] HCA 25; 189 CLR 520) requires that the fulfilment of the statutory objective or purpose (the "legitimate end") be compatible with the maintenance of the constitutionally prescribed system of

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representative and responsible government. As expressed, it may be read as a test of statutory purpose. However, if a statute's objective was not so compatible, that would be an end to the matter. There would be no occasion for testing the statute as "reasonably appropriate and adapted" or proportionate to its purpose and that aspect of the second question in Lange would be otiose (paragraph 81 at Wotton V Qld 2012). In my case the use of the s156 immediate action power to replace the lawful standard for the duty to warn results in the s156 power not being reasonably appropriate and adapted or proportionate to the purpose of the legislation. The purpose of the *National Law* must be interpreted narrowly in order to uphold the lawful standard for the duty to warn and to avoid interference in the sacrosanct doctor patient relationship and to ensure that the public are protected from harm.

126. At reason for decision 2, 2a, 2b,5,6, 12,16 & 17, AHPRA and the Board refers to its Code of Conduct as though the Code of Conduct constitutes the lawful standard of care. The law does not support such an assertion. The legal test for the standard of a practitioner's conduct is the Bolam Principle whereby the practice of a practitioner is judged against the standard of their peers of similar training and experience, not against Board codes or guidelines per *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582; [1957] 2 All ER 118. Reasons for decision 5: states "The Code of Conduct for medical practitioners published by the Board sets out the principles that characterise good medical practice and makes explicit the standards of ethical and professional conduct expected of doctors by their professional peers and the community". This statement is not congruent with the standard as defined by law and as stated within the Code of Conduct itself at 1.3 which states "1.3 What the code does not do. This code is not a substitute for the provisions of legislation and case law. If there is any conflict between this code and the law, the law takes precedence. "Thus, this statement at reason 5 demonstrates that AHPRA and the Board have taken an irrelevant consideration into account in making their decision. Notably, the alleged conduct relevant to this decision made against me does not enliven the standard of the Bolam principle for practice because the alleged conduct entirely involves warning of risks, not performance of medical procedures or diagnosis or treatment, and thus the relevant standard is the standard related to the duty to warn. Further, my alleged conduct is congruent with the code of conduct and the code of ethics. This further supports that AHPRA and the Board have taken an irrelevant consideration into account.

127. Therefore, AHPRA and the Board have used the *National Law* s156 immediate action power to unlawfully limit or remove my ability to communicate politically. The strong coercion applied to me by the immediate action power and the associated commentary surrounding my alleged actions and their consequences is a manner by which AHPRA and the Board are also using the threat of the s156 power to also limit or remove the ability of other health practitioners to communicate politically. Thus, the implied right to a freedom of political communication results in the

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National Law being incapable of being validly relied upon to limit, restrict or remove the freedom to communicate politically. As such the manner in which I have communicated is an irrelevant consideration which deprives me of the opportunity of a successful outcome as my manner does not negative the implied right.

Ground Three

Failure to consider mandatory relevant considerations

128. AHPRA and the Board have failed to consider mandatory relevant considerations per *R v Australian Broadcasting Tribunal; Ex parte Hardiman* (1980) 144 CLR 13 at [34].

129. If my alleged conduct is not professional conduct, then AHPRA and the Board do not have jurisdiction to exercise the s156 immediate action power as the preferred method of statutory interpretation demonstrates that there is a primary requirement of professional conduct to enliven the jurisdiction of AHPRA and the Board. As such if my alleged conduct is not professional conduct then AHPRA and the Board have failed to take this mandatory jurisdictional requirement into account. This failure invalidates the decision as AHPRA and the Board do not have jurisdiction over personal conduct outside of the realms of direct clinical care as per *Pridgeon v Medical Council of New South Wales*.

130. AHPRA and the Board have failed to consider that the doctor-patient relationship is sacrosanct and is a contract at law which is protected by privity of contract. The protection of this private contractual relationship is vital to maintain patient safety, public confidence, and the rule of law.

131. AHPRA and the Board have failed to consider s7.4 "Public health Doctors have a responsibility to promote the health of the community through disease prevention and control, education and screening" of the *Good medical practice: a code of conduct for doctors in Australia* which demonstrates that my political protest activities and social media presence was consistent with the Code of Conduct.

132. AHPRA and the Board have failed to consider how my public statements were protecting the health and safety of the public which is the paramount concern of the *National Law* at the time of my suspension and must remain the paramount consideration after the amendments to the *National Law* when a preferred method of statutory interpretation is undertaken. By way of this, not only were the benefits of warning the public not considered but my submission to AHPRA and the Board from my employer (Exhibited and marked **M-1**) was ignored and not considered.

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Deponent Witness

133. The reasons for AHPRA and the Board's decision to suspend me under s156 powers demonstrate that they are taking their action against me because I am speaking against the government public health policy and against the AHPRA and Board March 9 Position Statement. This reason demonstrates that AHPRA and the Board are failing to take into consideration that patients are members of the public and are the paramount concern in the provision of medical care per s3A(1)(a) of the *National Law*. Support of government policy or AHPRA and Board positions is not the paramount concern as s3A(1)(A) of the *National Law* at the time of my suspension stated that, "The main principle for administering this Act is that the health and safety of the public are paramount". Notwithstanding that even since the recent amendments to s3A (3A Guiding principles (1) The main guiding principle of the national registration and accreditation scheme is that the following are paramount— (a) protection of the public; (b) public confidence in the safety of services provided by registered health practitioners and students.) the new s3A requirements must be interpreted narrowly in a manner that upholds the lawful duty to warn which is a duty to warn of inherent material risks that a person in the position of the patient would find significant or that a doctor should know they would find significant and is not a duty to warn only of risks that agree with government or AHPRA and board policies and positions.

134. If the patient is removed from the position of most paramount concern in care provision and is replaced with government policy or AHPRA and Board position statements, it will result in a significant risk to public health and safety as care will no longer be patient centred. Further, it will result in a destruction of public confidence in the safety of services provided as registered health practitioners and students will no longer speak honestly and openly about inherent material risks for fear of professional sanction; and it will result in all health practitioners being required to breach their lawful duty to warn and thus to be exposed to a risk of liability in negligence. Thus, the failure to consider this is significant enough to invalidate the decision.

135. AHPRA and the Board have failed to consider the mandatory consideration that there is no head of power under the Constitution to support mandatory vaccination and that the correct interpretation of the Human Rights Act 2019 QLD results in the *PHA* not operating to support COVID-19 vaccine mandates which is further supported when correct interpretation of s362B of the *PHA* is undertaken which demonstrates that the relevant power bestowed in the quarantine power only and not a power to mandate vaccination. It is unlawful for me to be sanctioned for speaking against policies and position statements that have no law to justify them and thus the failure to consider this is significant enough to invalidate the decision.

Ground Four

Exercising a power for an improper purpose/in bad faith

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136. The decision enlivens the ground of exercising a power for an improper purpose/in bad faith per *R v Toohey (Aboriginal Land Commissioner); Ex parte Northern Land Council* (1981) 151 CLR 170 ([1981] HCA 74), *Kwiksnax Mobile Industrial & General Caterers Pty Ltd v Logan City Council* [1994] 1 Qd R 291.

137. AHPRA and the Board must exercise their power only for the purpose for which it was conferred; an exercise of power for a different or ulterior purpose may invalidate the decision per *Brownells Ltd v Ironmongers Wage Board* (1950) 81 CLR 108 at 119-20.

138. Reason 26 states "You have been widely observed to be making disrespectful and disparaging comments about your peers, in relation to the medical profession generally, individual political leaders and the regulation of medicine as a whole". I submit that this reason demonstrates that AHPRA and the Board are using the s156 power to stop me from undertaking political communication and this demonstrates that the decision is exercising the power for an improper purpose/ in bad faith.

139. Reason 1 states "The Office of the Health Ombudsman (OHO) have received a number of notifications about you, a generally registered medical practitioner from Queensland. Online, you are described as the leader of the Queensland Peoples' Protest. You have a prominent social media presence". I submit that this reason indicates that the overarching reason for the impugned decision; is that I am accused on the basis of conduct that is political communication and as such, the overarching reason for decision, can reasonably be perceived as being to remove my ability to politically communicate in any manner contrary to the position of the current sitting government; and to act as a strong deterrent to any other health practitioner who may consider speaking in any manner contrary to the position of the current sitting government. I submit that this reason is contrary to law and is not in the public interest.

140. At Reason 18 it is stated, "The Board considered that knowledge of your profession may lend credibility to your position which is in contrast with and has the potential to undermine reasonable public health positions. Further, you have made denigrating public comments about medical practitioners and others that are inconsistent with core requirements of professional standards set for the profession". I submit that this reason demonstrates that AHPRA and the Board are using the s156 power to stop me from undertaking political communication and this demonstrates that the decision is exercising the power for an improper purpose/ in bad faith.

141. Section 156, of the *National Law* is being used for an illegitimate purpose. AHPRA and the Board are using the immediate suspension power as a threat to all practitioners who dare speak out about dangers of the COVID-19 vaccine and its widespread and indiscriminate use under penalty of loss of employment and loss of profession. The same strategy is being employed by the *Public Health Act*

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2005(Qld) against the recipients of the medical service of COVID-19 vaccination, the patient, by also creating great economic pressure to vaccinate or else suffer the penalty of job loss. In this regard, both acts work hand in hand, to allow the state of Queensland to put into practical operation its COVID-19 vaccination policy where there is no basis in fact or law for it do so. Thus, the head of power postulate, targeted by these two state acts, namely the *National Law* and the *Public Health Act* 2005 (Qld), under the doctor-patient relationship has been disturbed in the most remarkable way, and is certainly contrary to law.

142. It is apparent that AHPRA and the Board has taken this disciplinary action against me as a form of official retaliation for exercising one's freedom of political speech, via bad faith investigation and legal harassment (via a complaint lodged with the Office of the Health Ombudsman regarding my political protest activities by AHPRA itself), which constitutes an infringement of that freedom, and has caused me an injury , the loss of income and reputation through the exercise of the suspension power pursuant to s156 of the *National Law* that would chill a person of ordinary firmness from continuing to engage in that activity. To abandon legal owed duty owed by me to patients is what 156 is asking me to do. The board has co-liability if guidelines were law that's why they are not.

143. In *Coleman v Power* [2004] HCA 39; 220 CLR 1 Kirby J stated:

At [214] "Since it was propounded, the principle expressed in Lange has been accepted by this Court, and repeatedly applied. It was given effect by members of the Court in Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd [178] and in Roberts v Bass [179]. No party in those earlier proceedings, or in this, questioned the correctness, and application, of the rule in Lange. This Court should not cut back the constitutional freedom whilst pretending to apply it. That freedom is defensive of the core institutions established by our basic law. Representative democracy would be neutered in Australia if we had the buildings that house our Parliaments and went through the forms of regular elections but restricted the robust free debates amongst citizens that are essential to breathe life into the accountability of parliamentary government in Australia to the people who are sovereign.

At [226] "Together, the principles convince me that "insulting" should not be given its widest meaning in the context of s 7(1)(d) of the Act. Specifically, the word should be read so that it does not infringe the implied constitutional freedom of political communication. Thus, words are not "insulting" within s 7(1)(d) of the Act if they appear in, or form part of, a communication about government or political matters. It follows that the construction explained in the joint reasons should be preferred. Thus, "insulting" means words which are intended to provoke unlawful physical retaliation or are reasonably likely to provoke unlawful physical retaliation [207].

At [238] "Reading the description of civilised interchange about governmental and political matters in the reasons of Heydon J [228], I had difficulty in recognising the Australian political system as I know it. His Honour's chronicle appears more

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like a description of an intellectual salon where civility always (or usually) prevails. It is not, with respect, an accurate description of the Australian governmental and political system in action.

At [239] "One might wish for more rationality, less superficiality, diminished invective and increased logic and persuasion in political discourse. But those of that view must find another homeland. From its earliest history, Australian politics has regularly included insult and emotion, calumny, and invective, in its armoury of persuasion.

At [229] "They are part and parcel of the struggle of ideas. Anyone in doubt should listen for an hour or two to the broadcasts that bring debates of the Federal Parliament to the living rooms of the nation. This is the way present and potential elected representatives have long campaigned in Australia for the votes of constituents and the support of their policies. It is unlikely to change. By protecting from legislative burdens governmental and political communications in Australia, the Constitution addresses the nation's representative government as it is practised. It does not protect only the whispered civilities of intellectual discourse. "Insulting" therefore requires a more limited interpretation in order for s 7(1)(d) to be read so as not to infringe the constitutional freedom defined in Lange.

At [254] "It follows that s 7(1)(d) can, and should be, construed so that it conforms to the Lange test as reformulated in this appeal. As so construed, "insulting" words in the context of the Act are those that go beyond words merely causing affront or hurt to personal feelings. They refer to words of an aggravated quality apt to a statute of the present type, to a requirement that the insulting words be expressed "to" the person insulted, and to a legislative setting concerned with public order. They are words intended, or reasonably likely, to provoke unlawful physical retaliation [264]. They are words prone to arouse a physical response, or a risk thereof [265]. They are not words uttered in the course of communication about governmental or political matters, however emotional, upsetting or affronting those words might be when used in such a context.

At [255] "In such communication, unless the words rise to the level of provoking or arousing physical retaliation or the risk of such (and then invite the application of the second limb of the Lange test) a measure of robust, ardent language and "insult" must be tolerated by the recipient. In Australia, it must be borne for the greater good of free political communication in the representative democracy established by the Constitution.

At [256] "If s 7(1)(d) is confined to the use in or near a public place of threatening, abusive or insulting words that go beyond hurting personal feelings and involve words that are reasonably likely to provoke unlawful physical retaliation[266], the proportionality of the contested provision and the legitimate ends of State government in the context of the fulfilment of those ends and of the system of representative and responsible government provided in the federal Constitution becomes clear. The Act, so interpreted, is confined to preventing and

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sanctioning public violence and provocation to such conduct. As such, it deals with extreme conduct or "fighting" words [267]. It has always been a legitimate function of government to prevent and punish behaviour of such kind. Doing so in State law does not diminish, disproportionately, the federal system of representative and responsible government. On the contrary, it protects the social environment in which debate and civil discourse, however vigorous, emotional, and insulting, can take place without threats of actual physical violence.

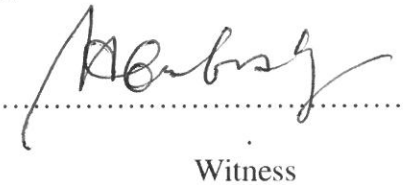
At [258] "It also follows that the paragraph has been misinterpreted by the courts below. It has therefore been misapplied in the appellant's case. There was no prospect that the respondent police officers would be provoked to unlawful physical violence by the words used. At least the law would not impute that possibility to police officers who, like other public officials, are expected to be thick skinned and broad shouldered in the performance of their duties. Nor would others nearby be so provoked to unlawful violence or the risk thereof against the appellant by words of the kind that he uttered.

At [259] "Some, who heard the appellant's words would dismiss them, and his conduct, as crazy and offensive. Others, in today's age, might suspect that there could be a grain of truth in them. But all would just pass on. Arguably, if there is an element of insult in this case, it lies in the use of police powers by and for the very subject of the appellant's allegations. The powers under the Act were entrusted to police officers by the Parliament of Queensland for the protection of the people of the State. They were not given to police officers to sanction, or suppress, the public expression of opinions about themselves or their colleagues or governmental and political issues of corruption of public officials."

144. In this paragraph, Kirby J best sums up the conduct of the Board, in that they were not given the power to suspend or sanction a practitioner to suppress the public expression of opinions about themselves or their colleagues or governmental and political issues of corruption, inaction or deception by public officials. **The s156 power is not being used in the public interest, it is being used in the Government's interest to suppress political criticism of its unlawful health policies**. The implied freedom does not protect or shield government officials or my colleagues from such incisive political speech. On the contrary, it operates to freely expose such behaviours. The freedom matters the most when they like it the least, and they should develop a thick skin if in public life.

145. Jurisdictional error constitutes a failure to comply with one or more statutory preconditions or condition to an extent which results in a decision which has been made in fact lacking characteristics necessary for it to be given force and effect by statute pursuant to which the decision–maker purported to make it (per *Hossain v Minister for Immigration and Border Protection* (2018) 359 ALR 1 at [24]).

146. The jurisdictional error made by AHPRA and the Board in misinterpreting a statute has occurred when AHPRA and the Board have read in to the National



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Law the new standard for the duty to warn which limits or removes the implied right to a freedom of political communication for health practitioners, as expressly written in the March 9 position statement. This constitutes jurisdictional error as it has caused AHPRA and the Board to misconstrue the limits of its power. AHPRA and the Board are misconstruing that they have power to replace or amend the lawful standard of the duty to warn which is incorrect as this power belongs to the High Court per Rogers v Whitaker at [12]. Further AHPRA and the Board are misconstruing that they can read into the National Law joint position statement of 9 March and this has resulted in AHPRA and the Board exceeding the limits of their power by using the regulatory powers under the National Law including but not limited to s156 & s160 to abrogate, restrict, limit or remove the implied right to a freedom of political communication of health practitioners.

Ground Five

The Decision and conduct of AHPRA and the Board are affected by errors of law

i) Improper use of a discretionary power

147. AHPRA and the Board's suspension of my registration pursuant to s156 of the *National Law* is an exercise of a discretionary power as evidenced by the inclusion of the word "may" within s156 of the *National Law*. The word '**may**' as written in s156(1) of the *National Law* indicates that the immediate action power being exercised by AHPRA and the Board is a **discretionary power** per *Bernadt v Medical Board of Australia* [2013] WASCA 259 at [286].

148. The High Court in *Minister for Immigration and Citizenship v Li* [2013] HCA 18; 249 CLR 332 addressed how discretionary powers are to be exercised at paragraph [23],[24] and [65]. This was addressed further in *Palmer v Western Australia* [2021] HCA 5; 246 CLR 182 at [201]. In these cases, the High Court of Australia has been clear that the exercise of a discretionary power must be according to law and not be exercised in an arbitrary manner.

149. The Reasons for decision given by AHPRA and the Board demonstrate that they are not exercising their discretionary power in accordance with applicable law, and as such, they are conducting themselves outside of the limits of their jurisdiction (ultra-vires) and are acting contrary to law because:

a) There is no head of power under the *Constitution Act* 1900 (the *Constitution*) that allows the Commonwealth or the Parliament to compel any medical service such as mandatory vaccination. The two heads of power the Commonwealth holds with regard to health are the s51(ix) quarantine power and the s51(xxiiiA) funding power and both are impotent to support mandatory vaccination.

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b) The *PHA* is the practical operation of the quarantine power this is demonstrated by the express wording of s362B and this power is only a power to limit the movement of a person who is labouring under an infectious disease and does not extend to a power to compel either in a legal or practical sense, the medical service of COVID-19 vaccination per the *Biosecurity Act* s3. As such the CHO order for mandatory vaccination which purports to mandate or require the medical service of vaccination in order to attend work with power derived from the *PHA* is an unlawful exercise of a discretionary power incongruent with the limits on the application of the quarantine power. I submit that because the patient is unable to reject a health service without suffering any detriment or punishment and without being subjected to coercion and duress with the effect of creating a practical compulsion to undertake a medical treatment thus the *PHA* is inconsistent with Commonwealth law.

c) The *National Law* regulates the Doctor patient relationship, and this is a relationship which is a contract in law, and thus is voluntary in nature and is protected by privity of contract. The duty owed to the patient under this contract, is a single comprehensive duty, which includes the provision of advice and information, such as the duty to warn of inherent material risks; and is independent of any government health policies. The State has trespassed upon this private contract as an interloper through the exercise of the s156 immediate action power on the stated basis; and through the *PHA* s362B being operated to empower mandatory vaccination. These particular applications of both discretionary powers are applications of the power contrary to law and are invalid on this basis. Any medical service undertaken while the consent gained is affected by fear, duress, or coercion, not only invalidates the contract but also attracts the interests of the criminal law in particular the crimes of assault and battery.

d) The s362B of the *PHA* power is being exercised by the Chief Health Officer (CHO) for purposes or given an operation, which goes outside the power authorised under the *PHA*. On its proper construction with reference to the express wording of the provision as a whole, it is clear that s362B amounts to the operation of the State's Quarantine powers and this power does not lawfully extend to empower mandatory vaccination and thus a mandatory vaccination power is not enlivened by the discretion provided at 362B(2)(e) and is ultra vires of the State's power.

e) The s156 immediate action power is being exercised for purposes or given an operation which goes outside the power authorised under the *National Law* as the *National Law* does not provide the power for AHPRA and the Boards to compel or superimpose their codes, guidelines, and position statements as the standard of care; *National Law* s35(c)(iii), s38, s39, s41 and per the High Court in *Rogers v Whitaker.*

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ii) Discretionary Power must be in accordance with the *Constitution*

150. It is clear the exercise of the discretionary power pursuant to s156 of the *National Law* must be in accordance with any applicable law(s) and this first and foremost includes the *Constitution* and any laws created under it. This *Constitution* is binding upon the courts, judges, and people of every State by reason of clause 5 and s106 of the *Constitution*.

151. On the basis of Clause 5 and s106 of the *Constitution*:

"State powers are to give way to the requirements of the Federal Constitution. If they are repugnant to that Constitution, then they pro tanto cease to exist.", per Justice Isaacs at page 172 in *Attorney-General for Queensland v Attorney-General for the Commonwealth* [1915] HCA 39; 20 CLR 148.

152. **There is no head of power under the *Constitution* to compel any medical service such as vaccination.**
There are only two heads of Commonwealth power under the *Constitution* in relation to health, the Quarantine power pursuant to s51(ix) and the power to fund the provision of medical services but not so as to authorise any form of civil conscription which is a forced legal or practical compulsion to provide such a service, pursuant to s51(xxiiiA).

153. Neither of these heads of power permit the Commonwealth Parliament to make any law compelling, either directly or indirectly the forced provision of a medical service such as vaccination and therefore any position the Commonwealth may have in relation to the merits of vaccination is not only immaterial, but it is also an unenforceable and unlawful requirement that I must support an unlawful exercise of government power.

154. The quarantine power pursuant to s51(ix) of the *Constitution* does not permit compelled mass vaccination.

155. The Commonwealth Parliament has created an Act, the *Biosecurity Act* 2015 (Cth) in relation to its quarantine power pursuant to s51(ix). The Act does not and cannot compel any person to undergo any medical service whilst subject to the quarantine power as such a power only limits a person's movement who is labouring under an infectious disease and nothing more. The quarantine power does not extend to the examination, testing, medication, or vaccination of any person subject to such a power absent the persons genuine understanding and full, free, and informed consent. It is only the movement of the person properly subject to the quarantine power that falls within the police powers of the State or Commonwealth. To vaccinate a person subject to the quarantine power who is under undue influence or without their genuine understanding and full, free, and informed consent would attract the interest of the criminal law where a charge of assault and or battery could be made.

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156. Section 95 of the *Biosecurity Act* states that force cannot be used to compel a person showing signs or symptoms of an infectious disease to undergo an examination, provide body samples, receive medication, vaccination, or treatment. Section 96 states the only power the Commonwealth has over international travellers and that is to quarantine. More precisely only to prohibit or restrict the movement of a person showing signs or symptoms of a listed disease, for example by quarantine at a specific medical facility for up to 28 days and no longer as per the control order.

157. It is immaterial if the purpose of the *PHA* is for public safety if it is in contravention of a constitutional guarantee, in particular s51(xxiiiA), because the authority to create such an Act is derived from the State constitution, which pursuant to s106 "is subject to this *Constitution"* and any restraints upon legislative power it prescribes; per Justice Starke, in *Gratwick v Johnson* [1945] HCA 7; 70 CLR 1 at page 17.

158. To be clear I do not submit that there is any inconsistency argument pursuant to s109 of the *Constitution* because the *Biosecurity Act* (Cth) operates on the external border of Australia and the *PHA* operates within the State of Queensland. The argument advanced is in support of how the quarantine power is to be properly exercised in Queensland and the Commonwealth's interpretation as outlined in the *Biosecurity Act* is the correct interpretation; and is relevant to the interpretation of the Quarantine power under the *PHA* (2005) as extrinsic material per s14B (1) of the *Acts Interpretation Act* 1954 (Qld).

159. Furthermore, the Commonwealth's interpretation of the quarantine power, that is; applying only to a person labouring under an infectious disease, extends only to prohibiting or restricting their movement within strictly defined limits which is consistent with High Court case law see *Palmer v WA* per Edelman J at [291]. Furthermore, the quarantine power does not extend to creating a condition where a person has no real choice due to economic pressure, other than to comply with vaccination mandates, thereby seriously affecting a person's movement, their ability to refuse a medical service and their ability to participate in trade and commerce per *BMA* at p 253 per Latham CJ.

160. Edelman J in *Palmer v Western Australia* [2021] HCA 5; 246 CLR 182, further supports my contention that the State's quarantine powers are to only have a limited operation in time. From *Palmer* at [291], quarantine powers can only lawfully operate for months, before they impermissibly interfere with my right to participate in commerce, which includes my ability to go to work and earn a living, which is now in jeopardy due to the action taken under s156 of the *National Law*. The *PHA*, is the practical operation of the State's quarantine powers as indicated by the express wording of s362B.

161. The *Biosecurity Act* 2015 (Cth) states:

"s94 Appropriate medical or other standards to be applied" and

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"s95 No use of force to require compliance with certain biosecurity measures"

162. This is an express recognition by parliament that even in emergency situations involving an infection risk the professional standards regarding informed consent to vaccination and the duty to warn remain in place and continue to apply. As such my statements to this effect when I spoke publicly and on social media are in support of the Commonwealth government policy and position, notwithstanding that this is an irrelevant consideration and requirement, as the government policy does not constitute the lawful standard for the duty to warn per *Rogers v Whitaker* at [11]. Thus, the decision of the Board is affected by an error of law as there is no law to support mandatory vaccination or a replacement or alteration of my lawful duty to warn.

163. The Commonwealth has properly interpreted and demonstrated how the Quarantine power is to be exercised according to law as expressly stated in s85-s95 of the *Biosecurity Act* 2015. Section 95 is clear that no force can be used to require compliance with any of s85-s93, and this is consistent with preserving the contractual nature of the doctor- patient relationship and is consistent with High Court rulings such as Marion's Case: *Secretary, Department of Health and Community Services v JWB and SMB* [1992] HCA 15; 175 CLR 218 which recognises the absolute authority of an individual over their own body. Furthermore, the *Biosecurity Act* properly defines the quarantine power as being limited to controlling the movement of a person labouring under an infectious disease or showing signs and symptoms thereof; and as such the State of Queensland has improperly and arbitrarily applied the Quarantine power. Quarantine lawfully means the same thing regardless of where in the country of Australia it is applied; and the manner in which the Commonwealth has interpreted and prescribed the enactment of the quarantine power is correct and consistent with the case law as stated by Edelman J at [291] in *Palmer v WA,* in *Breen v Williams* at [3] in *Breen v Williams* [1996] HCA 57; 186 CLR 71 and in *Marion's Case.* As such any contrary interpretation would not be the preferred interpretation as it is incongruent with High Court case law on the matter.

164. To enable correct interpretation and application of the *Constitution* it is necessary to consider the legislative history of the s51(xxiiiA) power and how it came into existence as an amendment to the *Constitution*, in order to understand that it is a fiscal power to provide funding for the provision of medical services. Such a power notably comes with a limit upon it, such that it cannot be enacted to create any form of civil conscription, the Court settled this to mean any legal or practical compulsion or coercion per *Wong v The Commonwealth* [2009] HCA 3; 236 CLR 573 at [60]. As such S51(xxiiiA) does not provide any power to compel or mandate vaccination and thus the Board's claim purporting support for its exercise of the s156 power against me cannot draw support from s51(xxiiiA).

165. The case that led the Commonwealth to alter the *Constitution* by referendum in 1946 was *Attorney-General (Vict) v The Commonwealth* [1945] HCA 30; 71 CLR

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237. It is of great significance in that this case highlighted an important principle of constitutional law: **whenever the Commonwealth makes any legislative Act, there must be a traceable source of authority back to the Constitution.** French CJ and Gummow J in *Wong v The Commonwealth* at [43] stated,

> "... On 19 November 1945 this Court held in Attorney General (Vict) v The Commonwealth[48] that the legislation was not authorised under the power of appropriation found in s81 of the Constitution or by the incidental power conferred by s51(xxxix). **It followed that the statute was invalid."**

166. On its proper construction s51(xxiiiA) makes it clear that it is a provision that provides the mechanism for the appropriation of funds by the Commonwealth, a power it did not possess prior to the 1946 referendum. The words 'allowances', 'pensions', 'endowments', and 'benefits are instructive as to the provisions meaning and therefore it is a **fiscal provision**, supported by French CJ and Gummow J in *Wong v The Commonwealth* [2009] HCA 3; 236 CLR 573 at [12]. This paragraph also defined civil conscription as meaning "compulsion to serve".

167. Dr Evatt was cited in *Wong v Commonwealth* at [272] as stating:

> "...under s51(xxiiiA) **"no authority will be vested in the Commonwealth to control health generally or the general practice of medicine or dentistry"** and that "**any regulation or control would be the province of State law only**". Dixon J stated at [273] that "No one would doubt that an attempt to impose upon a medical practitioner or a dentist an obligation to serve in the employment of the Government would fall within the words." and "It is also likely that contemporaries saw those **types of control, compulsorily imposed, as equally falling within civil conscription even if the doctor was not placed in an employment relationship".**

168. Further, the regulation of health practitioners is a State power and as such the Commonwealth government policies and positions do not constitute the standard of care required of me as a health professional. Notably, the Commonwealth has no head of power under the *Constitution* to create a *National Law* to regulate health practitioners as this power is a State power per *Wong v Commonwealth* at [272] in quoting Dr Evatt who stated, "**any regulation or control would be the province of State law only**".

169. The 'Queensland Legislation Handbook' governing Queensland exhibited and marked at **N-1** at 1.4.2 states "... **the legislative powers of the Parliament of each Sate include full power to make laws for** the peace, order and **good government of that State...".** This statement constitutes the recognition of the Queensland Parliament of the limits of the powers of the State such that State Parliaments may only pass laws for the **"Government of that State".** As such, the State and Territories of Australia such as Queensland do not have jurisdiction to exercise the legislative powers of the Commonwealth to create 'National Laws' which create legislation for other States and Territories.

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170. A power for the Parliament of one State or Territory to pass legislation which also changes the legislation of other States and Territories, is beyond the power of State and Territory Parliaments: as an exercise of such power results in the relevant State or Territory operating with Commonwealth jurisdiction. Justice Starke, in *Gratwick v Johnson* [1945] HCA 7; 70 CLR 1 at page 17 stated "the authority to create State Acts is derived from the State constitution, which pursuant to s106 "is subject to this *Constitution"* (i.e., the *Constitution*) and any restraints upon legislative power it prescribes. In this regard, the Constitution has no head of power to allow national regulation of health practitioners, notwithstanding that it is beyond the power of the States and Territories to pass legislation that alters the legislation of other States and Territories. Thus, the *National Law Act* 2009 and the *Health Practitioner Regulation National Law* 2009 (Qld) and the *Health Practitioner Regulation National Law Regulation* (2018) are State Acts masquerading as Commonwealth Acts and as such these laws and regulations are invalid.

171. Given that the States have no authority to exercise the legislative powers of the Commonwealth to create a national law which alters the laws of other States and Territories; it follows that there can be no one single national administrative entity created that administers such an Act. Such entities are in fact entities with jurisdiction lawfully limited to the State or Territory only, as that is the jurisdiction afforded to them by law. The Commonwealth has no head of power under the *Constitution* to regulate health practitioners and thus it is beyond power for States and Territories to create one single National Entity to administer legislation that is limited to State or Territory jurisdiction. As such it is a jurisdictional error to refer to the Boards as "National Boards". Such names indicate that they are State entities masquerading as national/ Commonwealth entities. Thus, I submit that the word 'Australia' must also be severed from the name 'the Medical Board of Australia' and should be replaced with 'Queensland' in order for the Board to be correctly identified and to operate without jurisdictional error created by their misidentification, and in order for joinder to be created absent jurisdictional error.

iii) The *National Law* is invalid due to jurisdictional error

172. The State of Queensland has created Acts for the regulation of health practitioners, the *Health Practitioner Regulation National Law Act* 2009, the *Health Practitioner Regulation National Law* (Queensland) and the *Health Practitioner Regulation National Law Regulation* 2018 with its accompanying Regulations. These are nothing more than state Acts and regulations; and by the use of the term *'National Law'*, it implies that they are laws of the Commonwealth Parliament and operate nationally, when they cannot lawfully do so. The term "national" is misleading and deceptive as the Commonwealth Parliament is the only legislative authority that can create such a law that is binding upon all States and Territories and operates uniformly throughout the states and territories of Australia; such that no State or Territory can operate the *National Law* independent of the other States

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and Territories. Furthermore, the Commonwealth has no authority under the Constitution to regulate health practitioners as that is a State and Territory power. Accordingly, the term "National" must be severed from the *Health Practitioner Regulation National Law Act* 2009, the *Health Practitioner Regulation National Law* (Queensland) and the *Health Practitioner Regulation National Law Regulation* 2018 with its accompanying Regulations to save them from invalidity.

173. The 'Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions' shows how the National Law has been applied beyond its powers. At 6.3 it states "The State of Queensland will host the substantive legislation to give effect to the national scheme, which will be subject to the *approval of the AHMC. Once approved by the AHMC, the State of Queensland will take the lead in enacting the primary legislation to establish the scheme. 6.4 The State of Western Australia will, as soon as reasonably practicable, enact corresponding legislation, substantially similar to the agreed model, so as to permit the scheme to be established on 1 July 2010. The States of New South Wales, Victoria, South Australia and Tasmania and the Australian Capital Territory and the Northern Territory will, as soon as reasonably practicable following passage of the Queensland legislation, use their best endeavours to enact legislation in their jurisdictions applying the Queensland legislation as a law of those jurisdictions, so as to permit the scheme to be established on 1 July 2010".* Exhibited and marked **O-1** to this affidavit is INTERGOVERNMENTAL AGREEMENT FOR A NATIONAL REGISTRATION AND ACCREDITATION SCHEME FOR THE HEALTH PROFESSIONS.

174. According to the *Constitution* it is beyond power for Queensland to "host the substantive legislation to give effect to the national scheme" as in so doing Queensland is acting with Commonwealth jurisdiction. Thus, the host legislation the *Health Practitioner Regulation National Law Act* 2009 is invalid on its face. The *Constitution* only recognizes Commonwealth powers and State/ Territory powers. There is no recognition of 'national' powers within the *Constitution.* National powers originating from intergovernmental agreements are not powers as allowed by the *Constitution* and as such all such agreements and legislation resulting from them are invalid.

175. The Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions at 6.5 states "each of the States and Territories will use their best endeavours to repeal their existing registration legislation which covers the health professions that are subject to the new national scheme. This will have the effect of abolishing the current State and Territory based registration boards for those health professions". *Wong v Commonwealth* at [272] in quoting Dr Evatt who stated, "**any regulation or control would be the province of State law only**". Thus, this Intergovernmental agreement is unlawful on its face and is invalid ab initio which thus all legislation and Regulations resulting from this agreement are invalid to the extent that they purport to bestow national/ Commonwealth jurisdiction of the Queensland Parliament.

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176. The Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions at 7.1 states "The Parties shall establish in legislation the Ministerial Council to be known as the Australian Health Workforce Ministerial Council and will comprise the Commonwealth Health Minister and the Ministers with responsibility for health from each State and Territory". This demonstrates the line of accountability such that AHPRA is accountable to the Ministerial Council which got its authority from the Australian Health Ministers' Conference. The Ministerial Council has now been renamed as the Health Ministers' Meeting. (Exhibited and marked **P-1**)

177. The Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions at 13 states "ALTERATION OF THE SCHEME AND AMENDMENTS TO THE LEGISLATION 13.1 Any of the Parties may propose amendments to the national scheme by communicating the proposed amendments to the other Parties and the justification for seeking them. 13.2 The Ministerial Council will consider any proposed amendments and agree to such amendments as it sees fit. If the changes agreed at 13.2 require legislative amendment, the State of Queensland will: (a) submit to its Parliament a bill in a form agreed by the Ministerial Council which has the effect of amending the legislation in the manner agreed; and (b) take all reasonable steps to secure the passage of the bill and bring it into force in accordance with a timetable agreed by the Ministerial Council. 13.4 If the amendment is passed through the Queensland Parliament, legislation of the States of New South Wales, Victoria, South Australia and Tasmania and the Australian Capital Territory and the Northern Territory will incorporate the changes by applying the amendment as a law of those jurisdictions. In the State of Western Australia, agreed amendments to the legislation will be carried out via changes to the corresponding Western Australian legislation. The State of Western Australia will use its best endeavours to secure the passage of any agreed amendments and bring them into force to ensure ongoing consistency with the national scheme".

178. This description of the manner that amendments to the *National Law* happen clearly shows that the Queensland Parliament is undertaking to unlawfully exercise Commonwealth jurisdiction. This parliament may have been chosen to do so because Queensland is the only state that has a unicameral Parliament, thus enabling an easy passage of proposed legislation, and resulting in a complete bypass of the checks and balances provided by the bicameral Parliament of the other States. This is further denying the citizens of those States the Parliamentary process they voted for and lawfully expect under our system of Government.

iv) State of Queensland health powers have been applied unlawfully

179. The State of Queensland with regard to health holds the quarantine power, which is the practical operation of the *PHA*; and the regulation of Health practitioners as enacted through the *National Law*. The quarantine power is a power to limit the movement of a person who is labouring under an infectious disease and

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does not extend to a power to compel either in a legal or practical sense, the medical service of COVID-19 vaccination or any other medication or medical experimentation. Furthermore, the *National Law* provides no power to regulate the recipients of a medical service, the patient, which notably is what the practical operation of the *PHA* is doing in purporting to mandate or require the medical service of vaccination in order to attend work. I submit that the patient is free and remains free to choose not to accept a health service without suffering any detriment or punishment and without being subjected to coercion and duress with the effect of creating a practical compulsion to undertake a medical treatment.

180. There is no State authority to compel vaccination under its quarantine power. *The PHA* is nothing more than the practical operation of the State's quarantine power in relation to COVID-19 and for the same reasons listed above the quarantine power is impotent to affect the compelled or mandatory uptake of COVD-19 vaccination per *Kable v Director of Public Prosecutions* (NSW) [1996] HCA 24; 189 CLR 51 at [27], [29], [44] & [45]. The State has three police powers to prohibit or restrict a person's movement and include if a person has committed or is suspected of committing a crime; the mental illness power and the quarantine power enforceable when a person is labouring under an infectious disease. The latter two are not considered punitive in nature, however, if for example the quarantine power is improperly or arbitrarily exercised it then does become punitive in nature. I draw the Courts attention to *Kable v DPP* citing Chu Kheng Lim at [45] and moreover, Edelman J in *Palmer v WA* at [291].

Edelman J in *Palmer v WA* at [291] stated:

> "By parity of reason addressed to the protection of the public health, **states may exercise their police powers to the extent of prohibiting both persons and animals, when labouring under contagious diseases, from entering their territory**. They may pass any sanitary laws deemed necessary for this purpose and enforce them by appropriate regulations. It is upon this reserved right of self-protection, that **quarantines** are permitted to interfere with the freedom of commerce and of human intercourse. But this power is not without its limitations, and **its exercise must be restricted to directly impending dangers to health, and not to those who are only contingent and remote.** Hence, **while diseased persons or diseased animals**, and those presumedly so from **contact with infected bodies or localities**, may be prevented from entering a state, **any general law of exclusion, measured by months, or operating in such a way as to become a barrier to commerce or travel, would be a regulation of commerce forbidden by the constitution. Such a statute being more than a quarantine regulation, transcends the legitimate powers of a state**."

181. As quoted above Edelman J is clearly defining the nature and limits of the quarantine power including to whom it applies and for what period and in what manner it can be enforced. The quarantine power of the State is therefore highly constrained. Clearly the power of quarantine is a police power to only prohibit or

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restrict a person's movement; and applies only to persons labouring under an infectious disease and not to those who are contingent and remote. Further, the power is only exercisable for a time measured in months not years, and this ensures it does not operate in such a way as to become a barrier to commerce or travel. Such a statute being more than Quarantine powers transcends the legitimate powers of the State of Queensland. Any health order or direction made consecutively or in perpetuity with effect of extending its application of the quarantine powers are invalid because they transcend the legitimate powers of the State.

182. What is being weighed up in *Palmer* at [291] is the effect of the quarantine power on the freedom of commerce and travel and the latter must always prevail over the former as a person's ability to sustain themselves must always have paramount importance over the quarantine power.

a. The *Biosecurity Act* defines disease to mean:

"(a) the **signs or symptoms of an illness or infection caused by a disease agent**; or

(b) **a collection of signs or symptoms** that is clinically defined, for which the causal agent is unknown; or

(c) a disease agent that has the potential to cause, either directly or indirectly, an illness or infection. "

b. The mechanism or main method of managing risks to human health is by imposing a human biosecurity control order.

c. A person properly subject to the control order cannot be compelled to provide body samples (s91), to undergo an examination(s90), to receive medication(s93), or vaccination or treatment without their full, free, and informed consent(s92).

d. Section 95 makes it clear that no use of force to require compliance with the above measures can be used other than in response to an isolation or movement measure.

183. Part 7A of the *PHA* was inserted in order to enable a response to the COVID-19 emergency. Section 362B(2)(a)(b)(c) &(d) which provides the CHO's power has express wording that clearly demonstrates that this section is the practical operation of the States' quarantine power. The lawful manner in which the quarantine power is to be enacted, is comprehensively described by the Commonwealth in s85-s95 of the *Biosecurity Act* 2015. Notably the proper exercise of the quarantine power has been correctly interpreted by the Commonwealth but arbitrarily by the State of Queensland; and the Commonwealths interpretation of the quarantine power is clearly supported by High Court case law with regard to consent, bodily autonomy, trespass, assault and battery.

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184. Further, the High Court has clearly identified the law with regard to body autonomy and the lawful requirement of consent which also determines that vaccine mandates are unlawful as they have the effect of creating a practical compulsion, duress, coercion and undue influence, and thus vaccine mandates are not a lawful application of the quarantine power and are not a lawful exercise of a discretionary power. The quarantine power is highly constrained and only permits the State to prohibit and restrict a person's movement who is labouring under an infectious disease and does not extend to compelling or mandating the provision of health services. **Thus, it is unlawful for me to be sanctioned professionally by AHPRA and the Board for not supporting a policy and position which is unlawful on its face.**

185. The High Court cases include:

Secretary, Department of Health and Community Services v JWB and SMB (1992)175 CLR 218 **(Marion's Case),**[10] stated:

> **"(T)he law cannot draw the line between different degrees of violence, and therefore totally prohibits the first and lowest stage of it; every man's person being sacred, and no other having a right to meddle with it, in any the slightest manner"**

and [11]; and *British Medical Association v The Commonwealth* [1949] HCA 44; 79 CLR 201 at page 253 and 292-293

186. In *Thorne v Kennedy* [2017] HCA 49; 263 CLR 85 at [26] [30] and [31].

At [26] it was held,

> "**The vitiating factor of duress** focuses upon the effect of a particular type of pressure on the person seeking to set aside the transaction. It **does not require that the person's will be overborne. Nor does it require that the pressure be such as to deprive the person of any free agency or ability to decide**. The person subjected to duress is usually able to assess alternatives and to make a choice. The person submits to the demand knowing "only too well" what he or she is doing. As Holmes J said in *Union Pacific Railroad Co v Public Service Commission of Missouri*:
>
> "It always is for the interest of a party under duress to choose the lesser of two evils. **But the fact that a choice was made according to interest does not exclude duress.** It is the characteristic of duress properly so called.".

187. Also, at [30]
"Importantly, however, since pressure is only one of the many sources for the influence that one person can have over another, **it is not necessary that the pressure which contributes to a conclusion of undue influence be characterised as illegitimate or improper**".

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188. At [31]

"... a person can be subjected to undue influence where the effect of factors such as pressure is that the person "has no free will but stands *in vinculis* [in chains]". He explained that "**the constant rule in Equity is, that, where a party is not a free agent, and is not equal to protecting himself, the Court will protect him"** ... "In *Johnson v Buttress*, Dixon J described how undue influence could arise from the "deliberate contrivance" of another (which naturally includes pressure) giving rise to such influence over the mind of the other that the act of the other is not a "free act". And, in *Bank of New South Wales v Rogers*, McTiernan J characterised the absence of undue influence as a "free and well-understood act" and Williams J referred to "the free exercise of the respondent's will"; and at

189. At [34]

"...Latham CJ described the relationships that could give rise to the presumption as including parent and child, guardian and ward, trustee and beneficiary, solicitor and client, **physician and patient,** and cases of religious influence..."

And at [47] "... Every bargaining chip and every power was in Mr Kennedy's hands. **Either the document, as it was, was signed,** or the **relationship was at an end**. The husband made that clear."

190. The *Human Rights Act* 2019 (Qld) at s17(c) states, "A person must not be- ... subjected to medical or scientific experimentation or treatment without the *person's* full, free and informed consent".

191. The *Covid –19 Emergency Response Act* 2020 (Qld) at *s*4 states,

"Application of Act (1) This Act applies despite any other Act or law other than the *Human Rights Act* 2019. (2) A reference in section 25(3) to being inconsistent with an Act does not include a reference to being inconsistent with the *Human Rights Act* 2019".

192. I submit the economic pressure applied by vaccination mandates is illegitimate and unsupported by law as the *Biosecurity Act* 2015, lawful standards of medical care, the wide body of case law surrounding body autonomy and consent, and the *Criminal Code* 1899 (Qld) require free, full, and informed consent in the absence of duress, coercion, and undue influence or unconscionable conduct.

193. I submit that the effect of the CHO directions and employer directions is the regulation of the civilian population, and the quarantine power does not extend to allow such regulation of civilians. The quarantine power is strictly limited to controlling the movement of persons but has no lawful operation or effect to compel any person to receive a COVID-19 vaccine or any other form of medical treatment or test. The quarantine power is just a movement power. As such the quarantine power as currently operated through the *PHA* by the exercise of the CHO discretionary power, is being exercised in excess of its lawful limits and for an

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