illegitimate and arbitrary purpose making such exercise invalid. Thus, it is unlawful to take regulatory action against me under the s156 immediate action power on the basis of me not supporting an unlawful government policy and position.

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

194. The High Court in *Breen v Williams* at [3] made it clear that the doctor-patient relationship is a private contract at law. As such, if the doctor patient relationship is entered into in fear, duress, or coercion that contract is invalid. The CHO mandatory vaccination directions and employer directions create the condition of fear, duress, and coercion such that if a person does not submit to a covid vaccination they lose their ability to earn a living and sustain themselves. On this basis the CHO health direction and employer directions are invalid, and this constitutes a **reasonable excuse** not to comply with a health order or direction as no valid contract can be created, and no valid consent can be obtained.

195. The doctor-patient relationship as a **contract** in law, 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 that the patient would likely attach significance to *(Rogers v Whitaker);* 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 regarding government policies and positions; and through the *PHA* s362B being operated beyond its power 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.

196. 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]. As *Rogers v Whitaker* at [16] held "We agree that the factors referred to in F v. R. by King C.J. ((39) (1983) 33 SASR, at pp 192-193) must all be considered by a medical practitioner in deciding whether to disclose or advise of some risk in a proposed procedure. The law should recognize that a doctor has 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. This duty is subject to the therapeutic privilege.".

197. Because of this jurisdictional error the exercise of the s156 power is affected by an error of law as it is ultra vires, and it is demonstrative of AHPRA and the Board

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exercising a power for an improper purpose and exercising a power by taking an irrelevant consideration into account.

198. The National Law was applied with regards to an improper purpose by requiring a new (unlawful) standard of the duty to warn. AHPRA and the Board's reliance on the joint position statement 'Position statement - Registered health practitioners and students and COVID-19 vaccination' and the objectives of the National Law Section to act against me amount to taking an irrelevant consideration into account. This is because it is unlawful to for AHPRA and the Board to alter the lawful standard for the duty to warn, with their consideration of their new standard being an irrelevant consideration. It is also a failure to take a relevant consideration into account; that consideration being the lawful standard as defined in *Rogers v Whitaker* at [16].

199. *Breen v Williams* at [3]

> "...the doctor undertakes by the contract between them to advise and treat the patient with reasonable skill and care. ... A duty, similar to the duty binding on the doctor by contract, is imposed on the doctor by the law of torts. The advice and treatment required to fulfil either duty depends on the history and condition of the patient, the facilities available and all the other circumstances of the case."

Section 32 of the *National Law* states that the Boards cannot enter into contracts and thus they cannot lawfully enter into the doctor-patient relationship.

vi) Fair Work Act makes Public Health Directives inoperable

200. 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*.

201. The conduct in which I have engaged, when properly understood is political communication would not have taken place if the health orders made under s362B of the *PHA* were not in force.

202. Moreover, the Board relies on the validity of this Act to support its actions taken under s156 of the *National Law*. Not only is the former act invalid for exceeding the legitimate and lawful exercise of the quarantine powers of the state, the practical operation of the *PHA* but it is also invalid or inoperable for inconsistency with s355 of the *FWA* by reason of s109 of the *Constitution*.

203. Section 355 of the Fair Work Act 2009 (Cth) states:

355 Coercion—allocation of duties etc. to particular person

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A person must not organise or take, or **threaten** to organise or take, **any action against another person with intent to coerce the other person**, or a third person, to:

(a) **employ**, or **not employ**, **a particular person**

(b) engage, or not engage, **a particular independent contractor**; or

(c) allocate, or not allocate, particular duties or responsibilities to a particular employee or independent contractor; or

(d) designate a particular employee or independent contractor as having, or not having, particular duties or responsibilities.

204. The relevance of the Health order under the *PHA* is that the Board relies on state health orders or its position in relation to vaccination as a basis for action under s156 to suspend my registration. The health orders are **coercive because a failure to comply with it comes with a sanction.** It is this quality of the Public health orders that make their practical or legal operation **a coercive law** and therefore **invalid or inoperable for direct inconsistency with s355 of the *FWA* by reason of s109 of the *Constitution*. Without the health orders in place, I would have no real occasion to engage in the conduct I did, and therefore would not be subject to s156 of the *National Law*.**

205. The Chief Health Officer's Public Health Directive is invalid on this basis as the order is an action taken against another person with the intent to create pressure on the other person to submit to their will. That is, the CHO is unduly influencing the employer, to not employ a particular person or not engage a particular independent contractor who is not vaccinated.

206. By the use of the word "coercion" in s355 of the *FWA* it is not to be read as to the exclusion of words belonging to words of a similar class as parliament would not intend it to be so (words including duress, undue influence and unconscionable conduct). At its heart they all operate to ensure that those engaging in employment contracts do so in good conscience and act in an honest manner **without pressure from other persons**.

207. In circumstances where an employer does not rely on the health order but rather their policy for employees to be vaccinated or else face job loss is invalid on two grounds. Firstly, corporation policy is not law nor does any corporation have legislative powers, they belong to the parliament. Secondly for the same reasons that the conduct of the Health Minister amounts to unconscionable conduct, it applies equally to a corporation and its staff. It is the employer that is exploiting the weakness in the employee for their dependence on their employment which constitutes unconscionable conduct on the part of the employer exerting undue influence to procure the entry of the employee into another private contract, the doctor patient relationship. The commonality between the Health Minister and the

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employer is that they occupy positions of authority or are in a superior position over the employee and are both taking advantage of their position over the employee.

208. An inconsistency arises pursuant to s109 of the *Constitution* between the s355 of the *FWA* and the *PHA* in its practical operation as per the CHO Public Health Directive for Healthcare Workers (exhibited and marked **H-1**), and the employer must obey the federal act, the Fair Work Act 2009 (Cth). This is a **direct inconsistency** where the state act in its legal or practical effect alters, impairs, or detracts from the operation of the federal act, the state act requires an employer to take action against another person with the intent to coerce the other person to be vaccinated or else not be employed, is invalid or inoperable to the extent of the inconsistency.

209. The legal or practical effect of the health order by the CHO has the effect of **undue influence** for the public to be vaccinated arising from **their unconscionable conduct** to procure their entry into the doctor-patient relationship which is vitiated under such conditions or else suffer loss of employment. Therefore, the CHO has breached s355 of the *FWA* because they are a person that **must not organise or take**, or **threaten** to organise or take, **any action against another person with intent to coerce the other person**, or a third person, to **employ**, or **not employ**, **a particular person.** The Health Directive (exhibited and marked **H-1**) clearly has this legal or practical effect.

210. In this regard the Health Directive made pursuant to s 362B of the *PHA* is invalid by reason of direct inconsistency pursuant to s 109 of the *Constitution*. This is so because the State Health Order alters impairs or detracts from the operation of the Federal Act.

211. All employers who answer the description of a trading corporation within the meaning of s51(xx) of the *Constitution* are subject to regulation between it and its employees under the *FWA* and not the *PHA*, (see Outback Ballooning case, also cited in Kassam below):

At [290] of *Kassam v Hazzard; Henry v Hazzard* [2021] NSWSC 1320; 393 ALR 664 states:

> The test for applying s 109 binding on this Court is set out in the following passage from *Work Health Authority v Outback Ballooning Pty Ltd* (2019) 266 CLR 428; [2019] HCA 2 at [32]-[34] (per Kiefel CJ, Bell, Keane, Nettle and Gordon JJ):
>
> "**The first approach** has regard to when **a State law would 'alter, impair or detract from' the operation of the Commonwealth law.** *This effect is often referred to as* ***a direct inconsistency'***. Notions of 'altering', impairing' or 'detracting from' the operation of a Commonwealth law have in common the idea that a State law may be

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said to conflict with a Commonwealth law if the State law in its operation and effect would **undermine the Commonwealth law.**

The second approach is to consider whether a law of **the Commonwealth is to be read as expressing an intention to say 'completely, exhaustively, or exclusively, what shall be the law governing the particular conduct or matter to which its attention is directed'**. *This is usually referred to as an* ***'indirect inconsistency'.*** A Commonwealth law which expresses an intention of this kind is said to **'cover the field'** or, perhaps more accurately, to 'cover the subject matter' with which it deals. A Commonwealth law of this kind leaves no room for the operation of a State or Territory law dealing with the same subject matter. There can be no question of those laws having a concurrent operation with the Commonwealth law.

212. The question whether a State or Territory law is inconsistent with a Commonwealth law is to be determined as a matter of construction. In a case where it is alleged that a State or Territory law is directly inconsistent with a Commonwealth law it will be necessary to have regard to both laws and their operation. Where an indirect inconsistency is said to arise, the primary focus will be on the Commonwealth law in order to determine whether it is intended to be exhaustive or exclusive with respect to an identified subject matter." (Footnotes omitted.)

Section 109 of the Constitution states:

> Inconsistency of laws.
>
> When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.

213. **What is a coercive law?**

The case of *The State of Victoria v The Commonwealth* [1957] HCA 54; 99 CLR 575 ("Second Uniform Tax case") where the Commonwealth merely offering an incentive to the states does not prevent them from collecting state taxes, did not mean the Commonwealth act was coercive in nature. But in the case of the health order requiring persons to be vaccinated or else be unable to attend the workplace is not to be considered as a mere incentive to act in a certain way, because if a person does not act in this way, that is if they do not vaccinate, they suffer the loss of employment and the catastrophic results it entails **is coercive in nature**.

Extracts of the case are cited below, and regardless of whether the state accepted the incentive or inducement or not it had no bearing as to the state's ability to collect state taxes i.e., **the state suffered no financial detriment** and hence the Commonwealth act was not coercive in nature. However, **an act that does result in financial loss if a command is not followed is**

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coercive in nature as a person suffers a detriment for non-compliance. See McTiernan J at [3] "...The Tax Reimbursement Act contains no provision commanding a State to cease imposing tax on incomes and to take the financial assistance instead. **The State may choose between these alternatives without exposing itself to any sanctions."**

214. Persons cannot choose to not be vaccinated without suffering or exposing themselves to sanctions resulting in financial loss. The state act does demand obedience or else be exposed to sanctions and financial loss. It is not a case where a person is still working and the employer decides to offer an incentive, for example an increase in salary if certain training and further qualifications are obtained on the part of the employee. In this instance, the employee still retains their employment if they refuse the inducement, but in the circumstances created by the health order, where a person who does not comply with it loses their job. It is not a case of gaining another "perk" of the job, but rather losing your job entirely if not vaccinated.

215. The order does not say that persons who choose to be vaccinated will receive some form of compensation, say for example in a tax break where it could then be said the order is not coercive in nature, because a person can refuse to comply with it without exposing themselves to a sanction such as job loss. On the contrary, **the order is coercive because a failure to comply with it comes with a sanction.** It is this quality of the Public Health Directives that make their practical or legal operation **a coercive law** and therefore **invalid or inoperable for direct inconsistency with s355 of the *FWA* by reason of s109 of the *Constitution*.**

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

216. It is vital to public health and safety and to confidence in the system of health care that the lawful standard of the duty to warn be maintained and that the freedom for health practitioners to speak out against harmful government policies be protected. This is demonstrated by the foundational and seminal public health case involving Dr John Snow regarding his work on public drinking water sanitation in the 1854 Broad Street cholera outbreak. This cholera outbreak was causing a serious risk to public safety and was called the 1846 to 1860 Cholera pandemic. This case was taught to me in medical school to demonstrate the foundations of epidemiology and public health (which involved a duty to warn and to disagree with government policy (in this case their theory of "miasma" rather than the later proved correct: theory of microbiology aka the "Germ theory'). At the time of the Cholera pandemic the government were telling the public that the infections were being caused by "miasma" such that cholera was being spread in the community from particles in the air known as "miasma". Dr Snow through documenting the cases of Cholera determined a correlation between the cholera cases and the geographical

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proximity of the Broad Street water pump which was a pump that was extracting drinking water from the River Thames. At this time in history sewage was leaking into the River Thames. Dr Snow through his data collection determined that the most likely cause of the Cholera pandemic was the consumption of contaminated water rather than what the government were saying was the cause: the miasma, or specifically; air-borne particles. This government position that the cause of Cholera was "miasma" was "thinking that dominated official government statements and the recently created General Board of Health was amongst those that believed in this theory". (Royal College of Surgeons of England, Fahema Begum, 9 Dec 2016 'Mapping disease: John Snow and Cholera (Exhibited and marked **Q-1**)

217. Dr Snow mapped the clusters of cases and showed members of the public that they were located around the Broad Street water pump and he communicated this by publishing an essay in 1849 titled "On the mode of communication of Cholera". This publication directly disagreed with the government position of the cause of Cholera and notably Dr Snow's suggested cause was correct and his communication of his findings resulted in the end of the Cholera pandemic and resulted in the sparing of thousands of lives in a world-wide pandemic. Dr Snow's conduct in speaking publicly against the government position on the world-wide health pandemic, resulted in massive development in the science and understanding of the germ theory which continues to save lives to this very day. If we fail to protect health professionals implied right to a freedom of political communication, we risk widespread harm to the health and safety of the public and we will stagnate any future development in the science. The court will forever inhibit the freedom of scientific innovation and public health policy if it finds that freedom of political communication is not in the public's interest when it comes to the discussion of competing theories of health management by doctors in Australia.

218. 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. AHPRA does not have a role to warn the public it is the health practitioner who owes the duty. This is even evidenced by s7 of the code of conduct (marked and exhibited at **R-1**); "7.4 Public health Doctors have a responsibility to promote the health of the community through disease prevention and control, education and screening. Good medical practice involves: 7.4.1 Understanding the principles of public health, including health education, health promotion, disease prevention and control and screening. 7.4.2 Participating in efforts to promote the health of the community and being aware of your obligations in disease prevention, screening and reporting notifiable diseases."

219. All doctors and all health practitioners have a duty to warn the public of the dangers of the Covid-19 vaccines. I found it terrible that government messaging was interfering with my treatment of patients and warning others. I had to speak out publicly because my patients were members of the public. **The public was my patient**. The government was imposing on my professional role and interfering in the doctor-patient relationship and replacing the lawful duty to warn with their

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Position statement which are actions that have caused significant public harm and substantially reduced confidence in the public health system.

220. Furthermore, there is a duty to warn imposed upon the health practitioner by the law of torts notably the **tort of negligence** and it is unlawful for AHPRA and the Board to compel a health practitioner to abandon or deviate from their lawful duty to warn and it is unlawful for AHPRA and the Board to reprimand a health professional for acting in accordance with their lawful duty to warn of inherent material risks that the patient is likely to attach significance to; even if such warning is contrary to the AHPRA and Board position statement on COVID-19 vaccines.

221. The High Court in *Rogers v Whitaker* addressed the tort of negligence in relation to the provision of advice and information relative to the duty to warn of inherent material risks of medical procedures. It was held by Mason CJ, Brennan, Dawson, Toohey and McHugh JJ that there is a duty to warn of an inherent material risk that: "a reasonable person in the patient's position, if warned of the risk, would be likely to attach significance to it" or if "the health practitioner is, or should reasonably be, aware that the particular patient, if warned of the risk, would be likely to attach significance to the risk."

222. *Rogers v Whitaker* is a case about negligence, not assault. The High Court held that Dr Rogers owed a duty of care to warn Maree Whitaker of an inherent material risk of the eye surgery she underwent, **the risk being material if the patient would attach significance to it** (at [16]). Notably this does not make it lawful for AHPRA and the Boards to substitute their own opinions of what constitutes a material risk for the opinions of the patient and their health practitioners.

223. In *Rogers v Whitaker,* Miss Whitaker had one eye with poor vision and one good eye, and she made it clear to Dr Rogers that she did not want her vision in her good eye to be negatively affected. **The Court found that Dr Rogers owed a duty of care, which is single comprehensive duty that includes the provision of advice and information.** He was found guilty of the tort of negligence not assault, for failing to warn Miss Whitaker that there was a 1:14,000 risk of her good eye developing a condition called sympathetic ophthalmia which unfortunately manifested and caused her to go blind in the good eye. Clearly a 1:14,000 risk is a rare risk and even so the duty to warn existed because the patient was likely to attach significance to the risk.

224. Further, the High Court in *Rogers v Whitaker* requires a warning to be given of risks that a health professional reasonably believes a person in the position of the patient would attach significance to. As such I have a duty to disclose inherent material risks of the vaccines that I reasonably believe a person in the position of a patient would attach significance to and this is what I did. AHPRA and the Boards cannot lawfully use the s156 power to compel me to abandon or alter by duty to warn and tell the truth regarding inherent material risks. **My duty of to warn compels me to tell patients the truth independent of any government health policies** per *Breen v Williams* and *Rogers v Whitaker*. Thus, it is unlawful for

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AHPRA and the Board to take regulatory action against me under circumstances where I have lawfully upheld my duty to warn. It is unlawful for AHPRA and the Board to act to limit or remove the duty to warn through the use of strong duress and coercion as created by their current use of the s156 immediate action power.

225. Assault as a trespass upon the body is a touch upon the body absent consent and battery includes penetration of the body for example by a needle giving the COVID-19 vaccine. Miss Whitaker did not go and see Dr Rogers under fear, duress, or coercion that if she did not undergo the procedure, she would lose her job. In the event that this was the case, it would automatically invalidate the contractual relationship and therefore would invalidate the voluntary nature of the doctor patient; and would enliven liability for the health professional under assault and or battery if a medical procedure is undertaken in the absence of free consent; and liability in negligence if a failure to warn results in harm due to the manifestation of an inherent material risk. As such it is unlawful for AHPRA and the Board to require me to abandon or limit my duty to warn of inherent material risks and thus their conduct in exercising the s156 power under these circumstances is also unlawful.

226. A failure by a practitioner to comply with their duty to warn can give rise to liability under the tort of negligence per *Rogers v Whitaker*. Where a practitioner fails to obtain informed consent of patient absent **fear, duress, and coercion**; and proceeds to perform the invasive procedure of vaccination, the health professional commits to crime of assault and or battery. If AHPRA and the Board are allowed to limit or remove the lawful duty to warn or are allowed to substitute their own standard for the duty to warn, then health practitioners and insurance companies are exposed to a risk of liability and patients and the public are exposed to a risk or harm. This is unlawful.

227. When a patient visits their health practitioner and tells them that they are there to be vaccinated only because of the health order or employer direction or else face loss of their ability to work, this logically places the patient under great economic pressure such that it would be almost impossible to resist (*British Medical Association v The Commonwealth*, Latham CJ said at page 253). In these cases, the patient is requesting vaccination under fear, duress and coercion created by the health order and employer direction. "But for" the duress created by the health orders and employer directions the patient would not be vaccinated. As such any consent given only because of a requirement made by a CHO or employer direction is negatived as it is not freely given.

228. Those who wish to voluntarily be vaccinated are free to do so and thus the CHO and employer directions have no operation upon them. Evidently, the health order and employer directions only have operation upon those who do not wish to be vaccinated. As such the CHO and employer directions are an unlawful operation of the *PHA* as all discretionary powers must be exercised according to law and the law in this regard is that consent must be free from fear, duress, and coercion. If the doctor now proceeds to swab the arm or inject such a patient who is there under

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fear, duress, and coercion the doctor commits an assault and or a battery. **Marion's Case**: [10] & [12]. At [12] it was held that "**The factor necessary to render such treatment lawful when it would otherwise be an assault is, therefore, consent". ...**" the principle of personal inviolability echoed in the well-known words of Cardozo J. in *Schloendorff v. Society of New York Hospital* (17) (1914) 105 NE 92, at p 93:

> "Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient's consent commits an assault".

229. No matter how much information is given before a procedure, if there is fear, duress and coercion that leads to the consent, then the consent is negatived and **automatically invalidates the doctor-patient relationship, a contract in law, and would form a reasonable excuse not to comply with the health orders or directions**. An absence of free, full, and informed consent prior to treatment, enlivens liability in assault and or battery regardless of how much information is provided about the procedure before it is performed per *Thorne v Kennedy* [2017] HCA 49; 263 CLR 85. If there is a failure to warn of inherent material risks of a medical procedure and the risk manifests resulting in harm this enlivens liability in negligence. I cannot be forced by statute into acts of negligence.

230. Discharge of the duty to warn of inherent material risks of a procedure cannot overcome a failure to obtain valid consent. The failure in the duty to warn can only give rise to the tort of negligence. **Upholding the duty to warn does not negative liability for assault and or battery where consent is obtained under fear, duress, coercion, undue influence, or unconscionable conduct.** The fear, duress, coercion, undue influence, or unconscionable conduct which is created by the practical operation of the *PHA* cannot be overcome by the duty to warn of inherent material risks and therefore the practitioner commits the assault or battery on the person's body, as consent has not been obtained absent fear, duress, coercion, undue influence, or unconscionable conduct.

231. Thus, it is clear that upholding informed consent as an absolute non- derogable right; and maintaining the lawful standard of the duty to warn as defined by the High Court; is essential in protecting public health and safety; in protecting health practitioners from liability; and in protecting insurance companies and governing bodies such as AHPRA and the Board from liability. If AHPRA and the Board replace the lawful standard for the duty to warn they then share liability for the harm suffered as a result.

232. The CHO and employer directions create a condition where the patient visits their doctor under fear duress and coercion, the doctor by proceeding absent consent, committing the crime of assault and or battery and the patient is the victim of the crime. Consent is vitiated by fear, coercion, and duress and once consent is absent all further actions of a doctor in administering a vaccine amounts to assault

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and battery regardless of how much information about the vaccine is given per *Thorne v Kennedy & Marion's Case.*

233. The legal standard of care for medical practitioners has been determined according to High Court in case law (such as *Rogers v Whitaker* at [12] and *Nitschke v Medical Board of Australia* [2015] NTSC 39; 36 NTLR 55 at [90] & [91]) and the *National Law* (at s5(a) definition of professional misconduct and s5(b) definition of unprofessional conduct) which references the standard as that of ones' peers of similar training and experience. The legal standard of care is not according to AHPRA and the Boards guidelines, codes, or position statements even though their use may be considered as per s41 of the *National.* This is because (as discussed further below) these standards, codes, or guidelines must still be in accordance with the law, that law being already adjudicated by the High Court of Australia. Thus, the application of s156 suspension due to the stated Reasons for decision (e.g. Reason 12) that indicate that AHPRA and the Board are taking their action against me for contravention to standards of AHPRA, the Board and the Government (in regards to their policies, guidelines, and position statements) is unlawful; and thus, **their conduct in making the decision to suspend my registration is also unlawful**.

234. This unlawful decision making is made clear by *Nitschke v Medical Board of Australia* [2015] at [90] & [91] where it was determined that when the s156 power is exercised the board must have determined that professional misconduct or unprofessional conduct has occurred to enliven the immediate action power.

235. The *National Law* s5 Definitions:

> **"professional misconduct**, of a registered health practitioner, includes—
> (a) unprofessional conduct by the practitioner that amounts to conduct that is substantially below the standard reasonably expected of a registered health practitioner of an equivalent level of training or experience; and
> (b) more than one instance of unprofessional conduct that, when considered together, amounts to conduct that is substantially below the standard reasonably expected of a registered health practitioner of an equivalent level of training or experience; and
> (c) conduct of the practitioner, whether occurring in connection with the practice of the health practitioner's profession or not, that is inconsistent with the practitioner being a fit and proper person to hold registration in the profession."

236. Furthermore, AHPRA and the Board are creatures of statue meaning that they can only do what the statute permits. Section 41 of the *National Law* gives AHPRA and the Board authority to create codes and guidelines, to guide the practice of

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health practitioners but not to act in place of the lawful standard of care (according to one's peers of similar training and experience) or the lawful standard of the duty to warn (duty to warn of inherent material risks that the patient would likely attach significance to or that the health professional should reasonably believe the patient would attach significance to). Consequently, **s41 of the *National Law*, does not provide authority to enforce them onto the professions as the standard of practice.**

237. Section 41 of the *National Law* states:

> **"Use of registration standards, codes, or guidelines in disciplinary proceedings**
> An approved registration standard for a health profession, or a code or guideline approved by a National Board, is admissible in proceedings under this Law or a law of a co-regulatory jurisdiction against a health practitioner registered in a health profession for which the Board is established as evidence of what constitutes appropriate professional conduct or practice for the health profession."

238. Section 41 of the *National Law* does not provide a source of authority for the Board to enforce its codes and guidelines in my case because such a standard has no legal effect in relation to the provision of advice and information per *Rogers v Whitaker* at [12]. The duty to warn is determined by the significance a patient attaches to the risks of a procedure or what the health professional believes the patient would attach significance to and the Courts have jurisdiction to determine whether the practitioner met the standard of the duty to warn per *Rogers v Whitaker* at [12]. There is no special skill required of the practitioner to provide such information and the Court does not require special skill to pass such judgement either per *Rogers v Whitaker* at [14]. As such the codes, guidelines and position statements can only be applied to the extent that their application is consistent with the lawful standards of the duty to warn as defined by the High Court per *Rogers v Whitaker* at [12], [13] & [16]. According to *Rogers v Whitaker* the duty to warn is determined by what risks the patient attaches significance to and thus the AHPRA and Board COVID-19 position statement is invalid to the extent it is incongruent with the lawful standard for the duty to warn as defined by the High Court.

239. Interpreting s41 of the *National Law* in accordance with consideration of relevant risks was demonstrated by Justice Parker in *Thiab v Western Sydney University* [2022] NSWSC 760 at [109] who held with reference to the Nursing Codes and guidelines relevant to the discussion of COVID-19 vaccine risks:

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

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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".

240. The standard for the duty to warn is clearly defined by High Court case law such as in *Rogers v Whitaker* at [16] which states "The law should recognize that a doctor has 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.", and is not defined by AHPRA and the Board.

241. In *Rogers v Whitaker* at [13] Mason C.J., Brennan, Dawson, Toohey and McHugh JJ agreed with King C.J. in *F v. R.* ((26) (1983) 33 SASR 189), (which was decided by the Full Court of the Supreme Court of South Australia) held with regard to the duty to warn:

> "The ultimate question, however, is not whether the defendant's conduct accords with the practices of his profession or some part of it, but whether it conforms to the standard of reasonable care demanded by the law. **That is a question for the court and the duty of deciding it cannot be delegated to any profession or group in the community**."

242. At [13] in *Rogers v Whitaker* the High Court dispenses with the Bolam principle (which is the standard for the performance of a procedure) and distinguishes it from the standard for the duty to warn which is determined to be the perspective of a reasonable person in the place of a patient themselves at [16], and not by the standard of one's peer or by the Board codes, guidelines, or position statements. Per Gaudron J at [4],

> "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 matter's exclusively within the province of medical knowledge or expertise. Indeed, and notwithstanding that these questions arise in a medical context, t**hey 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**. Accordingly, even in the area of diagnosis and treatment there is, in my view, no legal basis for limiting liability in terms of the rule known as "the Bolam test" ((42) This test derives from the charge to the jury by McNair J. in Bolam v. Friern Hospital Management Committee (1957) 1 WLR, at p 587) which is to the effect that a doctor is not guilty of negligence if he or she acts in accordance with a practice accepted as proper by a responsible body

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of doctors skilled in the relevant field of practice. That is not to deny that, having regard to the onus of proof, "the Bolam test" may be a convenient statement of the approach dictated by the state of the evidence in some cases. As such, it may have some utility as a rule-of-thumb in some jury cases, but it can serve no other useful function."

243. In *Rogers v Whitaker* at [12] Mason C.J, Brennan, Dawson, Toohey and McHugh JJ held:

> "Further, and more importantly, particularly in the field of non-disclosure of risk and the provision of advice and information, the Bolam principle has been discarded and, instead, the courts have adopted ((24) Albrighton v. Royal Prince Alfred Hospital (1980) 2 NSWLR, at pp 562-563; F v. R. (1983) 33 SASR 189, at pp 196, 200, 202, 205; Battersby v. Tottman (1985) 37 SASR, at pp 527, 534, 539-540; E v. Australian Red Cross (1991) 99 ALR, at pp 648-650) the principle that, while evidence of acceptable medical practice is a useful guide for the courts, it is for the courts to adjudicate on what is the appropriate standard of care after giving weight to "**the paramount consideration that a person is entitled to make his own decisions about his life**" ((25) F v. R. (1983) 33 SASR, at p 193)."

244. The reasons for AHPRA and the Boards decision stated "...your public commentary undermines AHPRA and the Board's position on COVID-19 and the COVID-19 vaccinations, and further contravenes the position of local, state and federal government and health authorities and their directives which are in place to protect public health and safety...". This reason demonstrates the "new standard" for the duty to warn that AHPRA and the Board are seeking to impose on health practitioners with strong force as enabled through their use of the s156 immediate action power. Furthermore, there is no support for such substitution or removal of the duty to warn under the *National Law*. Furthermore, there is no support for such substitution, limit, or removal of the duty to warn under the *National Law*.

245. Further the Reason for decision 12 demonstrates an unlawful replacement of the lawful standard of the duty to warn with the standard prescribed by AHPRA's Position Statement. This unlawful standard is being held out by AHPRA and the Boards as the standard against which conduct is assessed rather than the lawful standard which requires that a patient be warned of inherent material risks that the patient would likely attach significance to per *Rogers v Whitaker* at [16].

246. This conduct by AHPRA and the Board effectively results in support of government policy being the primary/ paramount concern of AHPRA, the Boards and health practitioners. It results in health practitioners putting support of government policy in a precedential position over public health and safety and over speaking honestly about risks, because health practitioners are being required to do so by the regulatory authority at risk of penalty of loss of their profession and ability to practice the profession.

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247. This is in direct contradiction with the purpose stated under s 3A of the *National Law* that

> "**Paramount guiding principle**
> **The main principle for administering this Act is that the health and safety of the public are paramount.**
> Editor's note—
> This section is an additional Queensland provision."

Thus, in accordance with statutory interpretation principles such acts and interpretations are unlawful and invalid as they do not achieve the stated purpose of the *National Law.*

248. As a matter of law health practitioners have no obligation to endorse or promote the health policies of the government and it would be incongruent with the purpose of acting in the interest of public health and safety to imposes such an obligation.

249. Clearly, the act of AHPRA and the Board substituting their own standard which seeks to limit or remove the duty to warn is unlawful and is creating serious patient safety risk and harm. The AHPRA and Board position statement is not congruent with the High Court standard for the duty to warn as described in *Rogers v Whitaker* at [16] and the jurisdiction for determining the standard for the duty to warn remains with the Court per *Rogers v Whitaker* at [12]. Thus the 'Registered health practitioners and students and COVID-19 vaccination' position statement is invalid as it is affected by errors of law and is unable to be lawfully enforced or used to support the decision to suspend my registration. As such the decision to suspend my registration is unlawful as my alleged conduct is lawful conduct and my conduct was upholding my lawful duty to warn in accordance with my professional requirements and had I failed to do what I did I would have failed in my duty to protect public health and safety and to first do no harm.

250. The public health order derives its practical operation through the improper use of the s156 power, by targeting the person or mechanism by which Covid-19 vaccinations are administered. The *National Law* and the *PHA* work in concert to achieve the end goal of mass vaccination.

251. 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 per *Breen v Williams* [at [3]. 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 that the patient would likely attach significance to** (per *Rogers v Whitaker.* at [16]); 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 as outlined in their reasons for decision; and through the *PHA* s362B being operated to empower mandatory

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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.

252. The legal standard of care as stated in *Rogers v Whitaker* at [12] is according to the standard of ones' peers of similar training and experience and is not according to AHPRA and the Board's guidelines, codes, or position statements as found in the *National Law s*35(c)(iii), s38, s39, and s41.

253. Section 362B 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 s362B(2)(e) and thus mandating vaccination is ultra vires of the State's power. This enlivens the grounds quoted above under 18(a), (b) & (c).

254. 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 use the s156 immediate action power to compel or superimpose their codes, guidelines and position statements as the standard of care; *National Law s*35(c)(iii), s38, s39, s41 and per the High Court in *Rogers v Whitaker.*

255. The *National Law* does not empower AHPRA and the Boards to replace the lawful standard for the duty to warn with their own 'new' standard which limits the duty to warn. The 'new' standard is expressed in the 'Registered health practitioners and students and COVID-19 vaccination' position statement and is contrary to the lawful standard for the duty to warn; per the High Court in cases such as *Rogers v Whitaker* per the majority at [16] & [12] & per Gaudron J at [4]. As such the reliance of AHPRA and the Board on this 'new' standard as justifying their decision to take the s156 immediate action against me is unlawful as they are applying an unlawful standard to my practice.

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

256. The court's jurisdiction is limited to the facts in evidence, not personal opinions cloaked under the term "public interest". The only interest the public has in relation to health practitioners is that they have the necessary recognised qualifications and can practice the profession according to the standards of their peers of similar training and experience, the legal test as determined by the *High Court*.

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257. Arguments based on this woolly and amorphous term have no basis in law, as any decision made on this basis would be arbitrary and not based on proven facts; a fact being something that has probative evidence to support it. Section 156 cites a criminal conviction as a basis for satisfying the public interest, the Board carrying the burden of proof must prove by factual evidence that because of this conviction the student practitioner has all of a sudden lost their ability to examine, diagnose and treat a patient according to the standards of their peers. Absent such factual evidence, the suspension or cancellation of licence power would be exercised arbitrarily and not according to the principles of law, and contrary to the exercise of a discretionary power- the court's jurisdiction is limited to facts in evidence, not personal opinions or someone's "interest from the public".

258. It is in the public's interest that a person is not deprived of their liberties predicated upon the arbitrary exercise of power cloaked under such a term, which is contrary to the lawful exercise of a discretionary power, in an attempt by the state to extend its punitive powers where no facts exist to support any claim under such a term.

259. If for example, a health practitioner is convicted of a crime and short of incarceration, the state cannot proceed once more to extract further penalty from this person by another agency of government, for example a Board to prevent them from earning a living in their chosen profession. The practitioner has paid their debt to society in full and goes back to life as if the crime did not happen. This includes any publication on any forms of media designed to defame the person for the rest of their lives. The penalty prescribed by the court is the only penalty sufferable by the person – it would be a case of double jeopardy in a way, being punished twice for the same act. Moreover, the penalty from the court is finite, whereas publication on any media, the internet in particular lasts for the term of a person's natural life. The rule of law does not provide for punishment twice handed out.

260. The case of Dr Pridgeon, a medical practitioner from NSW (*Pridgeon v Medical Council of NSW*) is illustrative of the above argument. Even if he is convicted of the alleged crimes, and short of incarceration, another agency of government such as the Medical Council cannot rely on the "public interest" to deprive him of his ability to work as a health practitioner absent proof of facts that he now no longer has the ability to perform his duties as a doctor with the necessary skills according to the standards of his peers of similar training and experience, the legal test under the act. Thus, the full bench of the court at [67] said, "From our consideration of these matters, the following errors emerge."

261. And at [68]:

> "First, in the context of Subdivision 7, the reference to the **"public interest"** should be understood as a reference to the public interest in the protection of the public's health and safety. **The content to be given to that protection must take its meaning from the conduct of the practice of medicine in respect of which a medical practitioner's registration is granted.** In the present case,

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the relevant public interest must be in the conduct by Dr Pridgeon of his profession as a medical practitioner. There may, arguably, be some wider, unspecified public interest in limiting the potential for **the rule of law** to be undermined by conduct of a medical practitioner that is said to be in defiance of an order of the court, **but which is unrelated to the practice of medicine which the *National Law* regulates. However, the honourable reputation of the medical profession that is said possibly to be affected by conduct of that description is not a concern that relevantly informs the particular public interest in the protection of the public with which s 150 is concerned."**

262. My alleged conduct of inappropriate political speech was not conduct of the practice of medicine in respect of which a medical practitioner's registration is granted. **In the present case, as in the Pridgeon case, the relevant public interest must be in the conduct of my profession as a medical practitioner.** As per *Pridgeon V Medical Council of New South Wales*, the *National Law* does not regulate my conduct in my personal or private life, but only a legally established contract between myself and a patient. **None of my alleged conduct is in connection with such a relationship and therefore there are no preconditions necessary for the exercise of the suspension power pursuant to s156 of the act, my suspension therefore being rendered invalid.**

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

263. In order for the Act to have operation, the state must prove that a doctor-patient relationship has in the first instance been established before s156 can have any operational effect upon the practitioner. Absent this factual precondition, the exercise of the power would have no basis in law.

264. 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. The act does not and cannot regulate any other aspect of a practitioner's private life, as this is regulated by other acts as with all other members of society for example the criminal law, the public health act the exercise of the state's quarantine powers in relation to Covid-19 but to name a few. If a practitioner breaches such an act they are punished under that act and pay a penalty under that act alone. The state has no authority to extract further penalty through another act, effectively punishing the practitioner twice.

265. The case of *Nitschke v Medical Board of Australia* is relevant , Higgins J making it clear that the exercise of the immediate action power to suspend must be in relation to a legally established doctor-patient relationship, for which the act regulates before any action can be taken under s156 of the *National Law* and that codes or guidelines are only "aspirational" and do not have the force of law behind them at [38], [39], [56], [115],[116], [117], [118],[119], [120], [121], [129], [130], [140], and [163] cited below:

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266. Rather the present matter concerned whether the conduct relied upon by the Board could be conduct within the scope of the *National Law* and whether because of that conduct the practitioner posed a serious risk and whether immediate action was necessary. The Tribunal needed to have a reasonable belief about each of these three components.

267. *In Nitschke v Medical Board of Australia* at [39] it is stated that "The serious consequences of imposing immediate action required that the conduct asserted be clearly identified and that the practitioner be able to respond to those particular allegations." In *Shahinper v Psychology Board of Australia* the Queensland Civil and Administrative Tribunal quoted the following passage from *R v Medical Board of Australia*:

> "Obviously, the taking of immediate action, particularly when it comprises a suspension of the practitioner's registration, will have serious consequences for the practitioner's reputation and his capacity to earn a livelihood. He is, therefore, entitled to know the case sought to be made against him and to be given the opportunity to reply to it."

268. At [56], "The second part of the letter had the subheading "Mr Nigel Brayley" and referred to what Dr Nitschke had said about his contact with Mr Brayley during the ABC's 7.30 on 3 July and email communications between him and Mr Brayley. The letter stated at [56] that "the Board considers that you were in a patient/doctor relationship with Mr Brayley, or at least giving Mr Brayley advice as a medical practitioner."

269. At [115], "Although a major focus of the Code is directed and can only apply to doctors in the course of a doctor patient relationship (e.g. clauses 2 and 3) the Code also covers a wide range of other matters including working with other health care professionals and within the health care system (clauses 4 and 5), minimising risk and maintaining professional performance (clauses 6 and 7), professional behaviour (clause 8), ensuring doctors' health (clause 9), teaching, supervising and assessing (clause 10) and undertaking research (clause 11)."

270. At [116], "That the Code is intended to apply to all doctors registered to practice medicine in Australia is apparent from many of the statements in clause 1."

Effect of the clause 1.4 paragraph

271. At [117]. "In my opinion, the clause 1.4 paragraph does not impose an obligation, standard or duty the breach of which would constitute professional misconduct or unprofessional conduct. Such an obligation, standard or duty needs to be found elsewhere in the Code or shown to be an obligation, standard or duty generally accepted within the medical profession at the relevant time."

272. At [118], "With the exception of clause 1.6 which is a definitional provision clause 1 is of a general and introductory nature. So much is apparent from the subheadings to clauses 1.1 to 1.5 and their respective content. For example, clause

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1.3 makes it clear the Code is not a substitute for the provisions of legislation and case law, does not address in detail the standards of practice within particular medical disciplines, and is not a charter of rights. Clause 1.5 refers to the "principles underpinning" the Code as applying to doctors who have little or no patient contact."

273. At [119], "The clause 1.4 paragraph is expressed in very general and aspirational terms. It is not couched in imperative terms and does not prescribe and identify any specific obligations. It has no clearly identifiable content."

274. At [120], "As counsel for the appellant pointed out, if the clause 1.4 paragraph was to impose professional obligations upon every doctor irrespective of his or her relationship with a particular person or community, every doctor would be liable to sanction every time he or she became aware that a person or community was not acting to the best of his, her or its health. Counsel gave the example of a doctor becoming aware that a person who was not his or her patient was proposing to smoke or do something else that may not be good for his or her health. Moreover, such a doctor would be under such broad and unspecified obligations even where the person does have, and indeed may have been treated by, his or her own doctor."

275. At [121], "In particular the clause 1.4 paragraph does not identify general or specific obligations of the kind asserted by the Board, namely obligations to promote or protect the health of any person and to assess and treat or refer any person irrespective of that person's relationship, if any, with the doctor. Other provisions of the Code, primarily those in clauses 2 and 3, do impose such obligations where the person is a patient of the doctor. There is no reason to suppose that those provisions necessarily apply where there is no doctor patient relationship."

276. At [129], "If the clause 1.4 paragraph was intended to apply to and impose a professional obligation upon all "doctors", and to all "individuals" and any "community", irrespective of the relationship between them if any, and irrespective of the circumstances of interaction if any between the doctor and an individual or community, there would be no need for the rest of the Code. A doctor would constantly need to fear that any interaction with any other individual or community, including an individual who is not and never has been his or her patient, may be in breach of the clause 1.4 paragraph, even if the doctor did nothing in circumstances where there was no other obligation to do something."

277. At [130], "Such a construction of the clause 1.4 paragraph would completely defeat the whole purpose of having a code at all. It would also render otiose most parts of the carefully worded definitions of professional misconduct and unprofessional conduct. "

278. At [134], "The existence and content of a generally accepted standard or duty would usually need to be established by calling expert evidence from a person of good repute and competence within the medical profession. I say "usually" because

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some standards and duties, for example, general obligations upon a medical practitioner to a patient who is in his or her care to obtain further information from or about the patient, assess the patient's medical condition and provide treatment or refer the patient for specialist care, may be commonly accepted without the need for expert evidence. Even then a doctor's obligations to maintain or improve the health of his or her patient and to use reasonable skill and care in doing so may be qualified in particular circumstances.[100] Although the Board contended that the appellant owed those kind of obligations to Mr Brayley there was no basis for applying to the appellant the same general standards as may apply in a doctor patient relationship." See for example *Breen v Williams* pp 78-79 and 102-105.

279. At [140] "Because there was no evidence, and no evidence to support an inference, that the conduct alleged by the Board could be in breach of the Code or the National Law, the Tribunal could not have formed a reasonable belief that the conduct alleged could be conduct of a kind that could be the subject of the National Law. The Tribunal could not have formed a reasonable belief that because of that conduct the appellant posed a serious risk to persons, and it was necessary to take immediate action to protect public health or safety."

280. At [141], "I conclude that the Tribunal misconstrued the Code in holding that it imposed upon the appellant the obligations standards and duties asserted by the Board. I also conclude that the Tribunal misconstrued the Code in holding that it imposed the obligations standards and duties asserted by it, to the extent that they differed from those asserted by the Board. They are errors of law.[106] I therefore allow the appeal on the basis of grounds 1 and 4."

281. At [163], "In light of my conclusion that the Tribunal has misconstrued the Code and purported to apply the clause 1.4 paragraph without the existence of any expert or other evidence which could possibly give that provision any content and relevance, there was no basis for the Tribunal, or for the Board, to form a reasonable belief of the kind required by s 156(1)(a) of the National Law."

x) Implied public right to a freedom of political communication

282. 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.

283. The High Court in *Brown v Tasmania* [2017] HCA 43; 261 CLR 328, and *Clubb v Edwards* [2019] HCA 11; 267 CLR 171, and *McCloy v New South Wales* (2015) 257 CLR 178 held that **there are three questions** that must be asked as a test **to determine whether the impugned legislation impermissibly burdens the implied freedom of political communication** which would in turn have a

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detrimental effect on our democracy and representative government thus rendering the application of the legislation unconstitutional and invalid. A discussion regarding each of these questions is addressed below.

284. **Question 1: Does the law effectively impact the implied freedom in its terms, operation or effect per *Mc Cloy v New South Wales* at [2.B.1.].** In *McCloy* at [23] it was held that *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520 is the authoritative statement of the test to be applied to determine whether a law contravenes the freedom.

285. At [40] in *Unions NSW v New South Wales* [2013] HCA 58; 252 CLR 530 it was held that, "Questions as to the extent of the burden and whether it is proportionate to the legitimate purpose of a statutory provision arise later in connection with the second limb enquiries. The question at this point is simply whether the freedom is in fact burdened."

286. In *Lange* it was noted that Mason CJ in *Australian Capital Television Pty Ltd v The Commonwealth* [35] ("ACTV") and by the joint judgment in Unions NSW [36] held that "Only by uninhibited publication can the flow of information be secured and the people informed ... Only by freedom of speech ... and of association can people build and assert political power". At [12] if was held "The *Lange* test requires a more structured, and therefore more transparent, approach. In the application of that approach it is necessary to elucidate how it is that the impugned law is reasonably appropriate and adapted, or proportionate, to the advancement of its legitimate purpose".

287. In *Brown v Tasmania* [2017] HCA 43; 261 CLR 328 Gageler J at [171] stated, "Pivotal to the operation of each of ss 6, 8, 11 and 13(3) is the definition of a "protester". By virtue of that definition, a person answers that description if, but only if, the person is engaging in "a protest activity". Apart from an added geographical requirement that the activity occur relevantly on forestry land or on a business access area in relation to forestry land, **the defining characteristic of a protest activity is that it is an activity in furtherance of or for the purpose of promoting awareness or support for "an opinion, or belief, in respect of a political, environmental, social, cultural or economic issue"**. Rarely, if ever, would an activity answering that statutory description not amount to political communication within the protection of the implied freedom. An activity which would otherwise answer that description is nonetheless excluded from the statutory definition of a protest activity in a number of circumstances. One is where it is protected industrial action within the meaning of the *Fair Work Act* 2009 (Cth) or part of lawful industrial action undertaken by a State Service officer or State Service employee. Another relevantly is where Forestry Tasmania has given its expressed or implied consent to the activity."

288. In *Brown v Tasmania* at [182] it was held "Since Levy v Victoria[122] was decided contemporaneously with Lange, there can have been no doubt that political

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communications include non-verbal political communications and that non-verbal political communications include assembly and movement for the purpose of political protest[1123]. **A law which has the direct and substantial effect of prohibiting or limiting assembly and movement for the purpose of political protest is accordingly a law which effectively burdens freedom of political communication".**

289. It is clear from the Reasons for decision which frequently references the political nature of my communication and my disagreement with government policies and positions (referenced at Reasons for decision: 1, 2a, 2b, 3, 8, 10, 11, 12, 13, 14, 15, 16, 18, 19, 23, 24, 26, 40); that AHPRA and the Board are relying s156 of the *National Law* to restrict health practitioners from undertaking "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".

290. This required standard is expressly stated within the Position statement as the new standard AHPRA and the Board are requiring of health practitioners since March 9th, 2021. The use of the wording "or seeks to actively undermine the national immunisation campaign (including via social media)" clearly demonstrates that AHPRA and the Board are actively stopping health professionals from discussing public affairs and political policies regarding the "national immunisation campaign" and are using the regulatory action process the power for which is granted by the *National Law* to achieve this goal.

291. Thus, the *National Law* does effectively impact the implied freedom in its terms, operation or effect per *Mc Cloy v New South Wales* at [23] as it severely impairs the freedoms enjoyed by citizens to discuss public and political affairs and to criticize federal institutions. The interpretation of the purpose of the *National Law*, the Codes of Conduct and the joint position which form the basis of enlivening the s156 immediate action power, restricts health practitioners generally from expressing views with respect to public and political affairs on radio, television, and social media.

292. Thus, the interpretation of the *National Law* purpose, the Codes of Conduct, the joint statement and s156 "contravenes an implied guarantee of freedom of communication, at least in relation to public and political discussion", per *Mc Cloy* at [25]:

"Central to the questions posed by *Lange* is how the impugned Act affects the freedom per *McCloy* at [24]. The High Court in *Australian Capital Television Pty Ltd v The Commonwealth* [1992] HCA 45; 177 CLR 106 at [16] per Mason CJ held "the consequence is that Pt IIID severely impairs the freedoms previously enjoyed by citizens to discuss public and political affairs and to criticize federal institutions. Part IIID impairs those freedoms by restricting the broadcasters'

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freedom to broadcast and by restricting the access of political parties, groups, candidates, and persons generally to express views with respect to public and political affairs on radio and television." ... "but, on the view which I take of these actions, Pt IIID contravenes an implied guarantee of freedom of communication, at least in relation to public and political discussion."

293. **Question 2: Is the purpose of the law legitimate, in the sense that it is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government per *Mc Cloy v New South Wales* at [2B2].** The High Court held that "the answer to that question will be in the affirmative if the purpose of the law and the means adopted are identified and are compatible with the constitutionally prescribed system in the sense that they do not adversely impinge upon the functioning of the system of representative government"; and "If the answer to question 2 is "no", then the law exceeds the implied limitation and the enquiry as to validity ends", per *Mc Cloy v New South Wales* at [2B2].

294. The relevant purpose that must be considered in answering McCloy test question 2 necessarily involves a consideration of the statutory interpretation of the purpose of the *National Law* that AHPRA and the Board have undertaken in making this decision against me. The purpose of the *National Law* as stated at s 3A "Paramount guiding principle The main principle for administering this Act is that the health and safety of the public are paramount" is an extremely broad purpose and thus necessitates a process of statutory interpretation by the decision maker when they are making a decision with regard to the conduct of health practitioners. The process and manner in which AHPRA and the Board have undertaken this statutory interpretation is expressly stated within the reasons for decision.

295. Reason 12 in the Reasons for decision demonstrates the purpose that must be considered in answering the McCloy test question 2, as the Reason for decision 12 demonstrates that AHPRA and the Board are undertaking a purpose through use of the regulatory powers under the *National Law* to stop health practitioners from undertaking political communication as that is the public commentary that forms the basis of the complaints against me and they frequently reference my disagreement with government policies and positions in their reasons for decision. Further, AHPRA and the Board are reading into the *National Law* "the joint statement of Ahpra and the Board" and are applying this as a standard I am required to uphold to avoid being in breach of my obligations under the *National Law*. "Prohibiting political speech is not compatible with a system of representative government." (*McCloy v New South Wales* [2015] HCA 34; 257 CLR 178 at [21]).

296. In *Brown v Tasmania* [2017] HCA 43; 261 CLR 328 at [90] the High Court held "this Court has said more than once[42] that the freedom spoken of is not a personal right or freedom. The freedom is better understood as affecting communication on

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the subjects of politics and government more generally and as effecting a restriction on legislative power which burdens communications on those subjects[43]. As stated above at 273 the purpose and practical operation of the March 9 position statement and the code of conduct, and s156 and the other regulatory provisions of the *National Law* is to burden communication of health practitioners, on the subject of politics and government.

297. Reason 12 expressly demonstrates that AHPRA and the Board are reading the joint statement into the Code of Conduct and thus are including compliance with the joint statement as a requirement under the *National Law;* and they say multiple times in their reasons for decision that my alleged failure to comply with the joint statement enlivens their s156 immediate action power under the *National Law.*

298. Reason 12 states "...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". The "joint statement of Ahpra and the Board" is the "Position statement 9 March 2021 Registered health practitioners and students and COVID-19 vaccination" as notably this is the only joint statement of AHPRA and the Board that is directly relevant to my acts. Notably, *Brown v Tasmania* [2017] HCA 43 held that use of social media is an effective manner of politically protesting

299. Multiple Reasons for decision (including reason: 1, 2a, 2b, 3, 8, 10, 11, 12, 13, 14, 15, 16, 18, 19, 23, 24, 26, 40) and the joint statement which states regarding communication "... 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", demonstrate that AHPRA and the Board are reading into the *National Law* a requirement not to speak politically against the government immunisation campaign (regardless of if credible evidence supports the assertions as demonstrated by the use of the word "or" in the position statement), that is, health practitioners are not to speak against the national immunisation campaign (per Reason 12) or government, AHPRA or Board policies and positions (at Reasons: 1, 2a, 2b, 3, 8, 10, 11, 12, 13, 14, 15, 16, 18, 19, 23, 24, 26, 40) This demonstrates that AHPRA and the Board are purporting to replace the lawful standard of the duty to warn with the standard outlined in the joint position statement and they are requiring health practitioners to be in compliance with this joint position statement in order to be in compliance with the very broad purpose of the *National Law* as stated in Reason for decision 21.

300. At Reason 21 AHPRA and the Board has stated "The objectives of the national registration and accreditation scheme include providing for the protection of the public by ensuring that (amongst other things) only registered health practitioners who are able to practise in an ethical manner are registered." The other reasons for

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decision including reason 1, 2a, 2b, 3, 8, 10, 11, 12, 13, 14, 15, 16, 18, 19, 23, 24, 26, 40 define the specific standard that AHPRA and the Board deem as being required to be compliant with that objective and this demonstrates their manner of statutory interpretation of the broad purpose of the *National Law*. Given that these Reasons for decision and the joint position of AHPRA and the Board expressly demonstrate that their required standard is that health practitioners communicate only in a manner that supports government, AHPRA and Board policies, positions and the national immunisation campaign; it is clear that this purpose and the manner in which AHPRA and the Board are interpreting it is not legitimate; as such a purpose **is not compatible with the maintenance of the constitutionally prescribed system of representative and responsible government per *Mc Cloy v New South Wales* at [2B2].**

301. The High Court decided in *ACTV* at [38] that "Indispensable to that accountability and that responsibility is freedom of communication, at least in relation to public affairs and political discussion. Only by exercising that freedom can the citizen communicate his or her views on the wide range of matters that may call for, or are relevant to, political action or decision. Only by exercising that freedom can the citizen criticize government decisions and actions, seek to bring about change, call for action where none has been taken and in this way influence the elected representatives. By these means the elected representatives are equipped to discharge their role so that they may take account of and respond to the will of the people. Communication in the exercise of the freedom is by no means a one-way traffic, for the elected representatives have a responsibility not only to ascertain the views of the electorate but also to explain and account for their decisions and actions in government and to inform the people so that they may make informed judgments on relevant matters. Absent such a freedom of communication, representative government would fail to achieve its purpose, namely, government by the people through their elected representatives; government would cease to be responsive to the needs and wishes of the people and, in that sense, would cease to be truly representative".

302. Further, the joint position statement expressly states, "**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**". This express statement within the position statement about the effect of the position statement clearly demonstrates that AHPRA and the Board are using the position statement to at worst replace and at best to amend the lawful standard for the duty to warn as was lawfully determined by the High Court in *Rogers v Whitaker* at [16]. **This is not a legitimate purpose** as the High Court in R*ogers v Whitaker* at [12] held that the standard for the duty to warn is set by the Courts and not primarily by a responsible body of opinion in the relevant profession. Thus, it is beyond the power of AHPRA and the Board to replace the lawful standard for the duty to warn and as such **it is not a legitimate purpose for AHPRA and the Boards to replace or amend this lawful standard of the duty to warn per**

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***Rogers v Whitaker* at [12].** Notably, such replacement or amendment causes a significant risk to public safety as it interferes with health practitioners upholding the lawful standard of the duty to warn by speaking honestly with regard to inherent material risks that a person in the position of the patient would find significant and as such the replacement of this standard with the standard outlined in the joint position statement is contrary to the purpose of the *National Law* as stated at s3A.

303. In *Rogers v Whitaker* at [12] it was held "In Australia, it has been accepted that the standard of care to be observed by a person with some special skill or competence is that of the ordinary skilled person exercising and professing to have that special skill. ... But, that standard is not determined solely or even primarily by reference to the practice followed or supported by a responsible body of opinion in the relevant profession or trade. ... Further, and more importantly, particularly in the field of non-disclosure of risk and the provision of advice and information, the Bolam principle has been discarded and, instead, the courts have adopted .... the principle that, while evidence of acceptable medical practice is a useful guide for the courts, it is for the courts to adjudicate on what is the appropriate standard of care after giving weight to "the paramount consideration that a person is entitled to make his own decisions about his life".

304. The lawful standard for the duty to warn is stated in *Rogers v Whitaker* at [16] specifically, "the law should recognize that a doctor has 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.".

305. There is no legitimate purpose in s156 preventing free communication of doctors because it is the very communication of doctors that protects the publics' health and safety. To argue in the contrary would be an absurdity. They are arguing medical speech is dangerous to the public.

306. Government and its agencies such as Board's and AHPRA are not above criticism by the public, which includes medical practitioners. In *Nationwide News Pty Ltd v Wills [1992] HCA 46; 177 CLR 1* Brennan J continues at [21] below:

"... the Constitution prohibits any legislative or executive infringement of the freedom to discuss governments and governmental institutions and political matters except to the extent necessary to protect other legitimate interests and, in any event, not to an extent which substantially impairs the capacity of, or opportunity for, the Australian people to form the political judgments required for the exercise of their constitutional functions. Although s.51(xxxv) empowers the Parliament to enact a law protecting the Commission's capacity to perform its functions, that power does not extend so far as to authorize a law prohibiting justifiable and fair and reasonable criticism of the Commission as an important instrument of government. As Dixon

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J. said in Australian Communist Party v. The Commonwealth ((99) (1951) 83 CLR , at pp 187-188):
"In point of constitutional theory the power to legislate for the protection of an existing form of government ought not to be based on a conception, if otherwise adequate, adequate only to assist those holding power to resist or suppress obstruction or opposition or attempts to displace them or the form of government they defend."

307. Brennan J continues at [25], "finding in the Constitution an implication which limits legislative power to the extent stated, I would hold that s.299(1)(d)(ii) exceeds the legislative power of the Commonwealth. The preservation of public confidence in the Commission and acceptance of the authority of the Commission and its members in the exercise of their respective powers is an interest which the Parliament is empowered to protect, and the Parliament clearly has power to enact a law protecting the repute of the Commission and its members against unwarranted attack. But s.299(1)(d)(ii) goes much further than is needed to achieve a proper protection of repute. By prohibiting justifiable revelations of any corruption or other vice affecting the workings of the Commission and by prohibiting criticisms made fairly and reasonably, par.(d)(ii) purports impermissibly to prevent public discussion about an important agency of social regulation. It purports to stifle that free discussion, which is essential to expose defects in, and to maintain the integrity of, any institution vested with power to affect the lives of the people living in a representative democracy. Had the Act prohibited speech and writing that is calculated to bring the Commission or its members into disrepute only when the speech or writing fails to state the critical facts truly or when the criticism is unreasonable or unfair, the provision would have been clearly valid, even though the freedom of discussion was curtailed to some extent. The balance between curtailment of the freedom and the protection of the Commission and its members against unwarranted attacks would have been appropriately struck. But s.299(1)(d)(ii) does not attempt to strike a balance. Unless it be possible, by operation of s.15A of the Acts Interpretation Act 1901 (Cth), to sever the invalid application of s.299(1)(d)(ii) from the area in which such a provision could legitimately operate, s.299(1)(d)(ii) must be held invalid in its present form. Before turning to the question of severance, however, it is desirable to examine the alternative basis on which the validity of that provision was challenged, namely, that s.92 of the Constitution guarantees a freedom to communicate ideas and that that freedom is infringed by application of s.299(1)(d)(ii) to the publication of the article mentioned in the information. If s.92 contains such a guarantee within the concept of "intercourse among the States", the Constitution could not be construed to imply a broader guarantee of the same kind. The implication could not override any limits imposed by s.92."

Question 3: Is the law reasonably appropriate and adapted to advance that legitimate object?

308. This is also known as **the proportionality test**. I.e., Was the practical operation of the law **(1) suitable; (2) necessary; and (3) adequate in its balance**. The

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proportionality test involves consideration of the extent of the burden effected by the impugned provision on the freedom (McCloy at [2.B.3.]), and was reaffirmed in *Clubb v Edwards* [2019] HCA 11; 267 CLR 171 at [462] where the majority utilised a structured three-stage proportionality assessment.

309. First, to determine the *National Law's* **suitability**, the Court must find a rational connection between the *National Law's* purported purpose and the means used. As per *McCloy v New South Wales* [2015] HCA 34; 257 CLR 178 at [67] "It requires, at the outset, that consideration be given to the purpose of the legislative provisions and the means adopted to achieve that purpose in order to determine whether the provisions are directed to, or operate to, impinge upon the functionality of the system of representative government. If this is so, no further enquiry is necessary. The result will be constitutional invalidity.".

310. The object of the *National Law* on its face appears legitimate however, such a broad object is open to wide interpretation and application to specific facts such that the legitimacy of the object can only be determined by consideration of the statutory interpretation undertaken in making the decision relevant to if the alleged conduct has breached this object and the id the decision upholds the object. In this regard paragraph 271 to 279 above demonstrate the flawed interpretation of the object of the *National Law* that has been undertaken by AHPRA and the Board in my case. A correct interpretation of the object of the *National Law* must include that it is vital to public health and safety and to confidence in the system of health care that the lawful standard of the duty to warn be maintained and that the freedom for health practitioners to speak out against harmful government policies be protected. As per McCloy at [31] "Prohibiting political speech is not compatible with a system of representative government."

311. This is demonstrated by the foundational and seminal public health case involving Dr John Snow regarding his work on public drinking water sanitation in the 1854 Broad Street cholera outbreak. This cholera outbreak was causing a serious risk to public safety and was called the 1846 to 1860 Cholera pandemic. This case was taught to me in medical school to demonstrate the foundations of epidemiology and public health (which involved a duty to warn and to disagree with government policy (in this case their theory of "miasma" rather than the later proved correct: theory of microbiology aka the "Germ theory'). At the time of the Cholera pandemic the government were telling the public that the infections were being caused by "miasma" such that cholera was being spread in the community from particles in the air known as "miasma". Dr Snow through documenting the cases of Cholera determined a correlation between the cholera cases and the geographical proximity of the Broad Street water pump which was a pump that was extracting drinking water from the River Thames. At this time in history sewage was leaking into the River Thames. Dr Snow through his data collection determined that the most likely cause of the Cholera pandemic was the consumption of contaminated water rather than what the government were saying was the cause: the miasma, or specifically; air-borne particles. This government position that the cause of Cholera was "miasma" was "thinking that dominated official government statements and the

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recently created General Board of Health was amongst those that believed in this theory". (Royal College of Surgeons of England, Fahema Begum, 9 Dec 2016 'Mapping disease: John Snow and Cholera. (Exhibited and marked Q-1)

312. Dr Snow mapped the clusters of cases and showed members of the public that they were located around the Broad Street water pump and he communicated this by publishing an essay in 1849 titled "On the mode of communication of Cholera". This publication directly disagreed with the government position of the cause of Cholera and notably Dr Snow's suggested cause was correct and his communication of his findings resulted in the end of the Cholera pandemic and resulted in the sparing of thousands of lives in a worldwide pandemic. Dr Snow's conduct in speaking publicly against the government position on the world-wide health pandemic, resulted in massive development in the science and understanding of the germ theory which continues to save lives to this very day. If we fail to protect health professionals implied right to a freedom of political communication, we risk widespread harm to the health and safety of the public and we will stagnate any future development in the science. The court will forever inhibit the freedom of scientific innovation and public health policy if it finds that freedom of political communication is not in the public's interest when it comes to the discussion of competing theories of health management by doctors in Australia.

313. Moreover, it is in the public's interest to receive political communication by trusted health practitioners who are best qualified in our community about the potential adverse effects of these novel and untested vaccines, so that they may be able to make informed decisions based on true and correct information as to whether to undergo or not COVID-19 vaccination. The medical profession as a whole provides the necessary oversight and restraint upon government health policy and the public expects the profession to perform this important public role and without undue external influence or pressure exerted by government.

314. Even if the suitability test is met in the affirmative the courts must then consider the extent of the burden effected by the impugned provision on the freedom; and specifically, **was it necessary** in the sense that there is no obvious and compelling alternative, reasonably practicable means of achieving the same purpose which has a less restrictive effect on the freedom per *Mc Cloy* at 2.B.3.

315. The case of *Coleman v Power* [2004] HCA 39; 220 CLR 1 has great relevance to the conduct alleged by the Board and to their dissatisfaction as to the manner in which I was politically protesting as they claim my speech would be offensive or insulting to other members of the medical profession and thus it was necessary to take immediate action under s156 of the *National Law*. Briefly, the ability to protest against government policy or actions is derived by implication from sections 7, 24 and 128 of the Constitution. It is not an absolute right, the Court deciding in various cases that it is not a defence to the law of trespass (*Brown v Tasmania* [2017] HCA 43; 261 CLR 328), defamatory conduct (*Lange v Australian Broadcasting*

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Corporation [1997] HCA 25; 189 CLR 520), breaches of privacy (*Clubb v Edwards* [2019] HCA 11; 267 CLR 171), or incitement to violence or riot (*Wotton v Queensland* [2012] HCA 2; 246 CLR 1).

316. *Coleman v Power* [2004] HCA 39; 220 CLR 1 was a case as to whether s 7(1)(d) of the Vagrants, Gaming and other Offences Act 1931(Qld) ("Vagrants Act") was invalid to the extent that it penalised persons using insulting words where those words had a political content or purpose, and the penalty constituted a burden on the freedom of political communication. This case has great relevance to my circumstances as the Board contends the manner in which I conveyed my message, in particular before the AMA meeting, was demeaning, disrespectful or insulting to my peers. The High court decided that insulting language is protected under the implied freedom, and conduct inciting, or threatening violence is not. I did not engage in the latter conduct and nor does the Board make such a contention.

317. The practical operation of the *National Law*, through the delegation of a discretionary power operated to suspend my registration pursuant to s156 of the Act is Constitutionally invalid as it has impermissibly imposed a suspension of my registration for my alleged use of insulting words or conduct directed against my peers. Those words had a political content or purpose, and the penalty constituted an impermissible burden on the freedom of political communication derived by implication from the Constitution. This is freedom of political communication is protected as held in *Coleman v Power.*

318. *In Coleman v Power* GLEESON CJ held at [1], "The appellant was **protesting** in Townsville. He was distributing pamphlets which contained charges of corruption against several police officers, including the first respondent. The first respondent approached the appellant and asked to see a pamphlet. The appellant pushed the first respondent, and said loudly: "This is Constable Brendan Power, a corrupt police officer". The magistrate who dealt with the case said that the appellant was not protesting against any laws or government policies but was conducting a "personal campaign related to particular officers of the Townsville Police". Although there was a dispute as to the precise sequence of events, the prosecution case against the appellant, which was substantially accepted by the magistrate, **was that the pushing and the verbal insult** were intended to provoke an arrest. They did so.

319. At [2], "The appellant was convicted of the offence of **using insulting words** to the first respondent in a public place. The primary issue in the appeal is whether he was rightly convicted. **The appellant contends that the legislation creating the offence is invalid, as an unconstitutional restriction on freedom of speech."**

320. At [13], **"There is a similar problem in applying the concept of offensive behaviour, which often arises in relation to conduct undertaken in the exercise of political expression and action**. In *Ball v McIntyre*, Kerr J considered the conduct of a student who demonstrated against the Vietnam War by hanging a placard on a statue in Canberra. He decided that the behaviour was not offensive

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within the meaning of the *Police Offences Ordinance* 1930-1961 (ACT) even though some people may be offended by it. He said:

"The word 'offensive' in [the Ordinance] is to be found with the words 'threatening, abusive and insulting', all words which, in relation to behaviour, carry with them the idea of behaviour likely to arouse significant emotional reaction."

He said that what was involved **had to be behaviour that would produce, in the reasonable person, an emotional reaction (such as anger, resentment, disgust or outrage) beyond a reaction that was no more than the consequence of a difference of opinion on a political issue**."

321. At [15], "It is impossible to state comprehensively and precisely the circumstances in which the use of defamatory language in a public place will involve such a disturbance of public order, or such an affront to contemporary standards of behaviour, as to constitute the offence of using **insulting words** to a person. **An intention**, or likelihood, **of provoking violence** may be one such circumstance. The deliberate inflicting of serious and public offence or humiliation may be another. **Intimidation and bullying** may constitute forms of disorder just as serious as the **provocation of physical violence**. But where there is no threat to the peace, and no victimisation, **then the use of personally offensive language in the course of a public statement of opinions on political and governmental issues would not of itself contravene the statute**. However, the degree of personal affront involved in the language, and the circumstances, may be significant."

322. Thus, I argue that any speech falling short of an intention to provoke or incite physical violence is speech that is permissible and protected under the implied freedom of political communication, **AHPRA and the Board having no authority to interfere with it.**

323. In *Coleman v Power* MCHUGH J held at [36], "In my opinion, the appeal must be allowed in respect of all charges. Section 7(1)(d) made it an offence to utter insulting words in or near a public place. Nothing in the *Vagrants, Gaming and Other Offences Act* 1931 (Q) ("the Vagrants Act"), or any other relevant Queensland law, provided any defence to a charge under s 7(1)(d). Once such words were uttered in or near a public place, the offence was committed. **Under the Constitution, a law that, without qualification, makes it an offence to utter insulting words in or near a public place cannot validly apply to insulting words that are uttered in the course of making statements concerning political or governmental matters.** The appellant's conviction for uttering such words must be quashed. Furthermore, **a law that seeks to make lawful the arrest of a person on such a charge is as offensive to the Constitution as the law that makes it an offence to utter insulting words in the course of making statements concerning political or governmental matters.** Consequently, the appellant's convictions for obstructing and resisting arrest must also be quashed."

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324. The facts of the *Coleman v Power* case are as follows at [42], 'In March 2000, the appellant, Patrick John Coleman, was handing out pamphlets in a mall in Townsville. The mall was a public place. One of the headings in the pamphlet was in capital letters and in bold type stated: "GET TO KNOW YOUR LOCAL CORRUPT TYPE COPS". Behind the appellant was a placard upon which were written the words: "Get to know your local corrupt type coppers; please take one". The second and third lines in the body of the pamphlet declared that the appellant was "going to name corrupt cops". One of the police officers named in the pamphlet was the first respondent, Brendan Jason Power. The second page of the pamphlet contained the following statement:

> "Ah ha! Constable Brendan Power and his mates, this one was a beauty – sitting outside the mall police beat in protest at an unlawful arrest – with simple placards saying TOWNSVILLE COPS – A GOOD ARGUMENT FOR A BILL OF RIGHTS – AND DEAR **MAYOR – BITE ME** – AND **TOWNSVILLE CITY COUNCIL** THE ENEMY OF FREE SPEECH – the person was saying nothing just sitting there talking to an old lady then BAMMM arrested dragged inside and detained. Of course not happy with the kill, the cops – in eloquent prose having sung in unison in their statements that the person was running through the mall like a madman belting people over the head with a flag pole before the dirty hippie bastard assaulted and [sic] old lady and tried to trip her up with the flag while ... while ... he was having a conversation with her before the cops scared her off ... boys boys boys, I got witnesses so KISS MY ARSE YOU SLIMY LYING BASTARDS."

325. In *Coleman v Power* MCHUGH J continued at [58], "However, words are not insulting merely because they provoke anger or annoyance or show disrespect or contempt for the rights of other persons. Thus, in *Cozens v Brutus*, the House of Lords held that it was open to magistrates to find that the defendant was not guilty of insulting behaviour although he angered spectators at a tennis match at Wimbledon. The defendant and nine other persons interrupted the match by running onto the court with banners and placards and blowing whistles and throwing leaflets around. Lord Reid said that, if he had to decide the question of fact, he would have agreed with the magistrates even though the spectators "may have been very angry and justly so".

326. MCHUGH J continued at [80], "However, in my view the concessions made by the respondents were properly made. **For the purposes of ss 7, 24, 64 and 128 of the Constitution – the sections that give rise to the constitutional implication – the relevant subjects of political and governmental communication include the activities of the executive arm of government.** For that purpose, the Executive includes Ministers, public servants and "statutory authorities and public utilities which are obliged to report to the legislature or to a Minister who is responsible to the legislature". The conduct of State police officers is relevant to the system of representative

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and responsible government set up by the Constitution. State police officers are involved in the administration and enforcement of federal as well as State criminal law. Members of the police forces of the States and Territories are included in the definitions of "constable" and "law enforcement officer" in the *Crimes Act* 1914 (Cth). That Act empowers State police officers to execute search warrants and to make searches and arrests without warrant. Similarly, State and Territory police officers are included in the definition of "investigating official" for the purposes of investigation of Commonwealth offences, including detention for questioning. Moreover, persons convicted of offences – State or federal – punishable by imprisonment for a year or more are disqualified from sitting in the federal Parliament by s 44(ii) of the Constitution. Public evaluation of the performance of Federal Ministers, such as the Attorney-General, the Minister for Justice and the Minister for Customs, may be influenced, therefore, by the manner in which State police officers enforce federal law and investigate federal offences. Allegations that members of the Queensland police force are corrupt may reflect on federal Ministers as well as the responsible State Ministers. Such allegations may undermine public confidence in the administration of the federal, as well as the State, criminal justice system."

327. MCHUGH J continued at [81], "The concession that the words used by the appellant were a communication on political or government matters was also correctly made. **It is beside the point that those words were insulting to Constable Power**. **Insults are as much a part of communications concerning political and government matters as is irony, humour, or acerbic criticism.** Many of the **most biting and offensive political insults are as witty as they are insulting.** When Lloyd George said that Sir John Simon had sat for so long on the fence that the iron had entered his soul, the statement was as insulting as it was witty, for it insinuated that Sir John was a political coward who failed to take sides on controversial issues."

328. AHPRA and the Board's central complaint was that it did not approve of the **manner** in which I politically communicated my views about COVID-19 vaccination and that formed the basis for my suspension. **My suspension was not necessary.** There were two other less drastic approaches it could have taken to address this perceived deficiency: Firstly, it could have proposed an **undertaking** on my part to alter the manner in which I conveyed my political message. Failing an acceptance of any such undertaking on my part, it could have imposed **conditions** on my registration to prescribe that I must refrain from engaging in certain political protest. Either of these measures would have needed to have been implemented in the least restrictive way possible to balance the necessity for preserving the public implied right to political communication, but were certainly options for AHPRA and the Board who did not exercise them, and **thus rendered their decision to suspend me in the first instance, invalid at law.**

329. This consideration of alternatives is best described at [89], in *Wotton v Queensland,* where it was held that, "In the measures s 132 adopts, the section goes

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no further than is reasonably necessary in seeking to achieve the relevant objectives of the *Corrective Services Act* and is proportionate. A test of this kind has been applied in decisions of this Court. It is evident in what was held in *Australian Capital Television*, to which McHugh J referred in the passage from *Coleman v Power* set out above. **It could not be said that the means employed by a statute were reasonably necessary if there were other, less drastic, means available by which the legislative objective could be achieved.**"

330. Further, at [90] in *Wotton v Queensland*, it was held that "In some cases the extent of the burden imposed by legislation on the freedom of communication on government and political matters, and the importance of the particular aspect of the freedom burdened, might require further consideration, in order to determine whether a legislative provision is proportionate. It has been said that a burden might in some cases require a "**compelling justification**" or a "'**substantial' reason**". A requirement that a burden be justified or explained suggests that substantial importance is attributed to the aspect of the freedom burdened and that the burden is significant. It also directs attention to the statutory objective sought to be achieved, as the source of the justification or explanation.".

331. No compelling justification or substantial reason exists in my case to justify burdening the freedom of political communication. This is because to burden the freedom also involves a replacement or amendment of the lawful standard for the duty to warn which would result in increasing risks to public health and safety (as demonstrated by the overwhelming public health benefit of allowing Dr Snow to warn others freely in the 1854 cholera pandemic).

332. At [80] in *Wotton v Queensland*, it was also held that, "The nature and aspect of the communication affected by the impugned provisions are not to be discerned by reference to restrictions upon the plaintiff's ability to communicate **or the manner in which he communicates**. The question is how the legislative provisions, which are sought to be impugned, may affect the freedom generally. The freedom is not a personal right, although its protection may serve also to ensure that citizens are able to communicate freely on the matters the subject of the freedom. The issues which the plaintiff identifies as those which he wishes to discuss may nevertheless assist in the identification of the area of communication which may be affected by the statutory provisions, and they are relevant to his standing. I agree with the joint reasons that the communications which may be affected by the provisions in question concern matters relating to Aboriginal and Indigenous affairs. These are matters which are the concern of both State and Commonwealth governments and involve communications at both levels.".

333. The importance of political protest protected by the implied freedom is that in Australia the structure and text of the *Constitution* provides for a requirement of freedom of communication in relation to government actions and politics. The implication is drawn from **ss7,24,62,64,128 and related sections of the *Constitution.*** It is not a personal right. The implied freedom operates directly upon

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the legislation rather than upon the exercise of executive power that has as its source in that legislation.

334. In my circumstances, applying s156 of the *National Law* to silence my political communication is invalid because it silences any political discussion that is contrary to the beliefs of the Board, AHPRA, or governments (both state and federal) in relation to compelled vaccination and/or their safety, and therefore impermissibly contravenes the implied freedom of political communication under the *Constitution*.

335. 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, due to a bad faith investigation and legal harassment (where AHPRA directly filed a complaint against me to the Office of the Health Ombudsman in Queensland about none other than my political communication actives I.e. peaceful political protest on a public street on a weekend (exhibited and marked **S-1**), and this therefore constitutes a clear infringement of the implied freedom of political communication protected by the *Constitution*.

336. **Adequate in its balance** — As per McCloy at [2.B.3.] the final step of the McCloy test is analysing "a criterion requiring a value judgment, consistently with the limits of the judicial function, describing the balance between the importance of the purpose served by the restrictive measure and the extent of the restriction it imposes on the freedom.". A majority of the High Court in *Clubb v Edwards* [2019] HCA 11; 267 CLR 171 at [64] reiterated that even insubstantial burdens on the implied freedom require robust scrutiny because "any effective burden on the freedom must be justified.". Critically, a majority of the High Court refused to accept an argument advanced at [260] by the Victorian Solicitor-General, and a number of intervening Solicitors-General from other states, that a law need only be "rationally connected" in cases where its purpose is compelling and the burden slight.

337. AHPRA and the Board at Reasons for decision 19 and 25 assert that my conduct has likely affected the good reputation of the medical profession. I submit that the medical profession (as a whole or as its individual members) is not above criticism of its actions. An analogy can be drawn with criticism of a judge that is fairly made and not actuated by malice does not amount to contempt of the court. The case of *Nationwide News Pty Ltd v Wills* [1992] HCA 46; 177 CLR 1 illustrates this point at [5] per Brennan J:

338. "The scope of par.(d)(ii) is significantly broader than the scope of that part of the law of contempt by which the repute of courts is protected. That part of the law of contempt known, archaically, as "scandalizing the court", is designed to prevent public confidence in the courts from being shaken by attacks that are baseless and unwarrantable (Gallagher v. Durack (1983) 152 CLR 238, at p 243). The jurisdiction to punish for contempt, as Rich J. said in R. v. Dunbabin; Ex parte Williams ((1935) 53 CLR 434, at p 442) - "is not given for the purpose of protecting the Judges personally from imputations

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to which they may be exposed as individuals. It is not given for the purpose of restricting honest criticism based on rational grounds of the manner in which the Court performs its functions. The law permits in respect of Courts, as of other institutions, the fullest discussions of their doings so long as that discussion is fairly conducted and is honestly directed to some definite public purpose." Thus it has been said (R. v. Fletcher; Ex parte Kisch (1935) 52 CLR 248, at pp 257-258) that it is no contempt of court to criticize court decisions when the criticism is fair and not distorted by malice and the basis of the criticism is accurately stated. To the contrary, a public comment fairly made on judicial conduct that is truly disreputable (in the sense that it would impair the confidence of the public in the competence or integrity of the court) is for the public benefit (See R. v. Nicholls (1911) 12 CLR 280, at p 286). It is not necessary, even if it be possible, to chart the limits of contempt scandalizing the court. It is sufficient to say that the revelation of truth - at all events when its revelation is for the public benefit - and the making of a fair criticism based on fact do not amount to a contempt of court though the truth revealed, or the criticism made is such as to deprive the court or judge of public confidence. The critical difference between the scope of s.299(1)(d)(ii) and the scope of contempt of court is that the latter does not purport to suppress justifiable or fair and reasonable criticism which exposes grounds for loss of official repute, but s.299(1)(d)(ii) purports to suppress all criticism which is likely to bring the Commission into disrepute including criticism that is justifiable, fair and reasonable".

339. In summary, I argue that the extent of the restriction s156 of the *National Law* imposes on medical practitioners' freedom of political communication (including mine) and how adequate that restriction was to balance the purpose served by limiting that implied freedom, is a value judgment (if necessitated) to be made by the Court, and cases like *Nationwide News Pty Ltd v Wills* would suggest that AHPRA and the Board have been overly restrictive in their actions and thus my suspension was invalid at law.

Questions of law

340. Did AHPRA and the Board exercise its administrative power "in the public interest" by purporting to suspend my medical registration pursuant to s 156 of the National Law.

341. Did AHPRA and the Board err in law by acting without any factual basis upon which the exercise of the emergency power contained in s 156 depends.

342. Is there a necessary head of power under the *Constitution* to compel a medical service such as COVID-19 vaccination? If no such power exists, is a position as to the merits of COVID-19 vaccination immaterial as such a position or belief on the part of the Commonwealth lacks the force of law behind it?

343. Is the *Public Health Act* 2005 (Qld) *PHA* in relation to the infectious disease COVID-19 nothing more than the exercise of the state's quarantine power?

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344. Is s362B of the *PHA* invalid either expressly or in its practical operation by compelling COVID-19 vaccination, through all current and previous CHO Health directions with the effect of enforcing mandatory vaccination, as it exceeds the State's legitimate exercise of its quarantine power's, the power to limit a person's freedom of movement who is labouring under infectious disease?

345. Is it beyond the jurisdiction of AHPRA and the Board to enforce any position or belief as to the merits of COVID -19 vaccination onto registered health practitioners under the Act such that it limits their duty to warn? If no jurisdiction exists, has the Board exceeded its regulatory powers and therefore improperly and unlawfully exercised the immediate action power to suspend my registration pursuant to s156 of the Act?

346. Is the standard of practice for medical practitioners according to the common law standard of the practitioner's peer of similar training and experience or is it according to AHPRA and the Boards codes, guidelines, and position statements?

347. Is the standard required for the duty to warn the standard as determined by *Rogers v Whitaker* at [16]?

348. Are the CHO directions invalid, because they create a legal or practical compulsion to be vaccinated against COVID-19, as this exceeds the State's legitimate regulatory powers of quarantine under the *PHA*? If so, does that leave any person with the freedom to refuse COVID-19 vaccination without any limitation on a person's movement including their ability to participate in trade and commerce?

349. Has the State impermissibly disturbed the head of power doctrine of the doctor-patient relationship (privity rule of contract law) by compelling, either by legal or practical compulsion, to undergo the medical service of COVID-19 vaccination induced by fear, duress, and coercion? Is the *PHA* invalid on this basis?

350. If no valid contract between doctor and patient in relationship to COVID-19 vaccination can be established, because of fear, duress and coercion, imposed by the health order upon the recipients of the medical service, does this form a reasonable excuse to not comply with such orders?

351. What authority does the State of Queensland have to create a 'National Law', that is to exercise the legislative powers of the Commonwealth Parliament? If no such power exists, should the words 'national law' be severed from the Act in order to save it from invalidity? Or should the Act be ordered invalid? Moreover, should the word 'Australia' also be severed from the name of the first and second respondents as it implies that it is a Commonwealth body when it is not, to preclude any act of impersonation, misrepresentation, or unlawful application of powers?

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352. Is the *Health Practitioner Regulation National Law Regulation 2018* invalid as it purports to empower the Queensland Parliament to act as the Commonwealth Parliament by modifying Commonwealth Acts.

353. Is the discretionary power granted pursuant to s156 being operated in way that goes beyond what is authorised by the *National Law* where AHPRA and the Board are substituting their own standard for the lawful standard for the duty to warn as prescribed relevant law?

354. Is the decision of the Board pursuant to s156 of the *National Law* invalid; as its application exceeds the jurisdictional powers of the Board provided by the *National Law;* as there is no authority under the *National Law* to enforce government health policies, or Board codes and guidelines, in relation to mandatory vaccination.

355. Is the Court able to clarify which states and territories AHPRA is operating lawfully in?

356. What authority exists under the Constitution to create a national law that regulates the health professions at a Commonwealth level? If none, does the Queensland parliament have jurisdiction to create a *National Law* to regulate health practitioners which automatically applies in other states and territories?

357. Can a State Act of one state that regulates health practitioners have any operation against a health practitioner in another state where inter-state issues do not arise?

358. What is the limit of the extraterritorial operation of the *National Law* Queensland?

359. Is it beyond the legislative powers of the states and territories to create a national accreditation and registration scheme (and Act for the regulation of health practitioners) as the creation of a national law is by definition the exercise of the legislative powers of the Commonwealth Parliament and therefore ultra-vires the states or territories? Should the term "national law" be severed from the Queensland Act to save it from invalidity?

360. Is the *Health Practitioner Regulation National Law Act* 2009 invalid because it is empowering the Queensland Parliament to act as the Commonwealth Parliament which is unconstitutional?

361. Is the *Schedule* to the *Health Practitioner Regulation National Law Act* 2009 invalid because it is empowering the Queensland Parliament to act as the Commonwealth Parliament which is unconstitutional.

362. Is the *Health Practitioner Regulation National Law* (Queensland) invalid because (through the Health Practitioner Regulation *National Law* Act 2009) it is

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empowering the Queensland Parliament to act as the Commonwealth Parliament which is unconstitutional?

363. Is the *Health Practitioner Regulation National Law Regulation* 2018 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.

364. Is s2(1) of the Australia Act 1986 (Cth) invalid as it is beyond the legislative powers of the Commonwealth Parliament to confer extra-territorial legislative making powers upon the states as no head of power exists under the Constitution to do so? Are the extra-territorial legislative making powers of the states derived from the power of the parliament of a state to make laws for the peace, welfare, and good government of the state?

365. Does s2(1) of the *Australia Act* 1986 (Cth) provide the legal authority for a State act to operate and be binding on residents of different states or to operate within another state where no issues extending across state borders arise? Are State acts confined within their territorial limits, meaning they have no operation as a national law?

366. Does s2(1) of the *Australia Act* 1986 (Cth) provide the legal authority for a State to create national laws? Is a national law by definition a law of the Commonwealth Parliament and therefore ultra-vires the States and Territories?

367. Does registration of a practitioner in one state or Territory allow them to practice in another state or Territory, or must they register in the other state or Territory to practice there? Does the *Health Practitioner Regulation National Law* (Queensland) have extra-territorial operation against a practitioner who becomes resident in another state and registers in that other state?

368. Is the jurisdiction of state and territory legislation limited to the borders of that state or territory except when required to enforce liability for conduct undertaken within the state or territory by someone who is now residing outside of the state or territory?

369. Did the *Health Practitioner Regulation National Law (*Queensland) have any operation in relation to my conduct outside the state of Queensland when I was in attendance at a conference in the state of NSW? Did the circumstances or conduct I was engaged in, the constitutionally protected activity of political communication, come within the reach of said act being conduct proscribed under s156? Were the preconditions necessary present for the exercise of the s156 suspension power in these circumstances?

370. Is s362B of the *Public Health Act 2005* (Qld) in its practical or legal effect a coercive act to be vaccinated and therefore invalid or inoperable for direct

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inconsistency with s355 of the *Fair Work Act* 2009 (Cth) by reason of s109 of the Constitution?

371. Does s362B of the *Public Health Act* 2005 (Qld) in its practical or legal effect create fear, duress, coercion, undue influence, or unconscionable conduct on the part of the state officer to procure the entry of a person into the doctor-patient relationship who does not consent to be vaccinated and thereby automatically invalidates this relationship? If no valid contract between doctor and patient can be established in law under these circumstances, does this form a reasonable excuse in law to not comply with the health order?

372. Is s156 of the *Health Practitioner Regulation National Law* (Queensland) invalid in its practical operation or legal effect in relation to the conduct of a health practitioner because it impermissibly contravenes the implied public right to a freedom of political communication implied within the Constitution?

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Pridgeon v Medical Council of New South Wales [2022] NSWCA 60	Supreme Court of New South Wales - Court of Appeal
Kassam v Hazzard; Henry v Hazzard [2021] NSWSC 1320; 393 ALR 664	Supreme Court of New South Wales
Palmer v Western Australia [2021] HCA 5; 246 CLR 182	High Court of Australia
Pollentine v Attorney General [2019] QSC 200; 2 QR 34	Supreme Court of Queensland
Clubb v Edwards [2019] HCA 11; 267 CLR 171	High Court of Australia
Work Health Authority v Outback Ballooning Pty Ltd [2019] HCA 2; 266 CLR 428	High Court of Australia
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Australian Capital Television Pty Ltd v The Commonwealth [1992] HCA 45; 177 CLR 106	High Court of Australia
Nationwide News Pty Ltd v Wills [1992] HCA 46; 177 CLR 1	High Court of Australia
Secretary, Department of Health and Community Services v JWB and SMB [1992] HCA 15; 175 CLR 218	High Court of Australia
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Unknown case title 37 SASR 527	South Australian State Reports
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R v Toohey; ex parte Northern Land Council [1981] HCA 74; 151 CLR 170	High Court of Australia
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R v Australian Broadcasting Tribunal; Ex Parte Hardiman [1980] HCA 13; 144 CLR 13	High Court of Australia
Ward v The Queen [1980] HCA 11; 142 CLR 308	High Court of Australia
W A Pines Pty Ltd v Bannerman [1980] FCA 16; 41 FLR 169	Federal Court of Australia
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Inland Revenue Commissioners v Rossminster Ltd [1979] UKHL 5; [1980] AC 952	House of Lords
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Attorney-General for Queensland v Attorney-General for the Commonwealth [1915] HCA 39; 20 CLR 148	High Court of Australia
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Acts Interpretation Act 1954 (QLD)	1 citation: Section 14B
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Australian Information Commissioner Act 2010 (Cth)	1 citation
Biosecurity Act 2015 (Cth)	11 citations: Section 3, 95, 362B
Constitution of Australia (Cth)	87 citations: Clause 5, Section 7, 24, 44(ii), 51, 51(ix), 51(x
Crimes Act 1914 (Cth)	1 citation
Criminal Code Act 1899 (QLD)	1 citation
Fair Work Act 2009 (Cth)	6 citations: Section 355
Federal Court of Australia Act 1976 (Cth)	1 citation
Freedom of Information Act 1982 (Cth)	1 citation
Health Practitioner Regulation National Law (NSW) (NSW)	3 citations: Section 156
Health Practitioner Regulation National Law Act 2009 (QLD)	22 citations
Health Practitioner Regulation National Law (Queensland)	Multiple
Health Practitioner Regulation National Law Regulation 2018	Several
Human Rights Act 2019 (QLD)	5 citations
Judicial Review Act 1991 (QLD)	1 citation: Part 4, Section 43
Ombudsman Act 1976 (Cth)	1 citation
Public Health Act 2005 (QLD)	7 citations: Section 362B
Vagrants, Gaming and Other Offences Act 1931 (QLD)	2 citations: Section 7(1)(d)

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Witness

The contents of this affidavit are true, except where they are stated on the basis of information and belief, in which case they are true to the best of my knowledge.

I understand that a person who provides a false matter in an affidavit commits an offence.

AFFIRMED by

WILLIAM ANICHA BIN
.....
[insert full name of deponent]

at Magistrates Court, Pine Rivers
.....
[insert place where deponent is located]

.....
[signature of deponent]

14/11/2022
.....
[date]

BEFORE ME:

Philip Adrian Curbishley JP (Qual)
.....
[insert full name of witness]

.....
[insert type of witness]

12347
.....
[insert witness's place of employment]

JUSTICE OF THE PEACE (QUALIFIED) QUEENSLAND GOVERNMENT Reg.No. DEPT OF JUSTICE & ATTORNEY-GENERAL

.....
[signature of witness]

14 NOV 2022
.....
[date]

[who certifies that the affidavit was read in the presence of the deponent who seemed to understand it, and signified that that person made the affidavit. (*If required: see R. 433(1)*].

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