



## HIGH COURT OF AUSTRALIA

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#### Details of Filing

File Number: B50/2023  
File Title: In the matter of an application by William Anicha Bay for leav  
Registry: Brisbane  
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#### Important Information

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Matter No B50 of 2023

IN THE MATTER OF AN APPLICATION BY WILLIAM ANICHA BAY  
FOR LEAVE TO ISSUE OR FILE

JUDGMENT

KIEFEL CJ

Matter No B50 of 2023IN THE MATTER OF AN APPLICATION BY WILLIAM ANICHA BAY  
FOR LEAVE TO ISSUE OR FILE

1. On 4 September 2023 the applicant filed an application for a constitutional or other writ. In it he sought declarations that Form B of Schedule 1 "Forms" of the *Referendum (Machinery Provisions) Act 1984* (Cth) ("the Referendum Act") is constitutionally invalid, a writ of mandamus, and an injunction with respect to ballot papers for the referendum to be held on 14 October 2023. On 5 September 2023 Justice Jagot directed, pursuant to r 6.07.2 of the *High Court Rules 2004* (Cth), that the Registrar refuse to issue or file the application without the leave of a Justice first had and obtained by the applicant. The applicant now seeks that leave by way of an ex parte application, filed on 11 September 2023, pursuant to r 6.07.3 of the *High Court Rules*.
  
2. Form B of Schedule 1 of the Referendum Act provides that part of the wording on ballot papers is to contain the title of the proposed law. The *Constitution Alteration (Aboriginal and Torres Strait Islander Voice) Bill 2023* (Cth) was passed by both Houses of Parliament on 19 June 2023. The long title of the Bill is "A Bill for an Act to alter the Constitution to recognise the First Peoples of Australia by establishing an Aboriginal and Torres Strait Islander Voice". This is what the applicant takes to be intended as inserted

on the referendum ballot paper, by reference to materials published by the Australian Electoral Commission.

3. The applicant's first basis for the orders sought is that a reference to the title of an Act, the subject of a referendum, is inconsistent with the requirement of s 128 of the *Constitution* that "the proposed law" is to be submitted to electors. He contends that s 128 does not specify that the title of the proposed law is to be submitted to electors.
4. As observed by Mason CJ in *Boland v Hughes*,<sup>1</sup> s 128 does not deal with the content or form of a proposed law or the form in which the question should be submitted on a referendum. The applicant concedes that the Parliament has the power to define the content of the proposed law to alter the *Constitution*. That being the case, there would seem to be no reason why the content of the proposed law cannot be provided by reference, through its title, to the Bill incorporating the proposed constitutional amendment to be submitted to the electors at a referendum.<sup>2</sup>
5. Despite the applicant's concession, his application does challenge what is to be stated as the content of the proposed law. He contends that more information including the "substance and

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1 (1988) 83 ALR 673.

2 *Boland v Hughes* (1988) 83 ALR 673 at 674.

spirit" of the law is required. The argument is not put as an alternative and no basis is articulated for it.

6. The applicant's second basis for the orders sought is that the Referendum Act, in the provision it makes in Form B, impermissibly hinders the implied freedom of political communication. The submission misapprehends the nature of the implied freedom and the communication to which it is addressed. The concern of the implied freedom is that what persons are able to say about matters of politics (and government) is not unduly restricted or burdened. The applicant's argument is about the need for further information to be supplied to the electorate to inform their decision on the referendum and to enable him to speak to electors.
7. The applicant contends that he has standing to bring the application because he will be a candidate for the Queensland State election and he has made representations to electors about the substance of the proposed constitutional alteration.
8. It is not necessary to consider the question of standing, here in the context of a referendum. By r 6.07.1 leave to issue or file should be refused where the document would amount to an abuse of process. The latter term encompasses proceedings which are foredoomed to fail,<sup>3</sup> as the proposed proceedings are.

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<sup>3</sup> *Walton v Gardiner* (1993) 177 CLR 378 at 393.

9. There will be an order that the ex parte application filed on 11 September 2023 for leave to issue or file an application for a constitutional or other writ be refused.



This page and the preceding three pages comprise my reasons for judgment in Matter No B50 of 2023, *In The Matter Of An Application By William Anicha Bay For Leave To Issue Or File.*

**File No B50/2023**

**IN THE MATTER OF AN APPLICATION  
BY WILLIAM ANICHA BAY FOR LEAVE  
TO ISSUE OR FILE**

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**JUDGMENT**

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Judgment delivered in Canberra on  
Friday, 15 September 2023