IN THE HIGH COURT OF AUSTRALIA
SUPREME COURT, BRISBANE

No. 14178/22

BETWEEN:

Dr William Anicha Bay
Applicant

and

AUSTRALIAN HEALTH PRACTITIONER REGULATION AGENCY
THE MEDICAL BOARD OF AUSTRALIA
STATE OF QUEENSLAND
Respondents

NOTICE OF CONSTITUTIONAL MATTER

1. The Applicant, Dr William Anicha Bay, gives notice that this proceeding involves a matter arising out of the *Constitution* or involving its interpretation within the meaning of Section 78B of the *Judiciary Act* 1903.

Nature of the matter

2. I have (as the applicant) brought an originating application for review under Part 4 s43 of the *Judicial Review Act* 1991 in the Supreme Court of Queensland, seeking a review of the decision of the first and second respondents, AUSTRALIAN HEALTH PRACTITIONER REGULATION AGENCY (AHPRA) and THE MEDICAL BOARD OF AUSTRALIA (the Board), to suspend my registration as a registered medical practitioner.

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3. This application for review has a Directions Hearing scheduled for the 30th of November 2022 at 10am.

4. The decision is affected by multiple errors of law and this cause of action raises primary jurisdictional questions with reference to the true identity of the first and second respondents and serious questions regarding the constitutional validity of the relevant enactments; specifically, the *Health Practitioner Regulation National Law Act* 2009 (the *National Law*), *Schedule - Health Practitioner National Law*, *Health Practitioner Regulation National Law* (Queensland), *Health Practitioner Regulation National Law Regulation* 2018, and the *Public Health Act* 2005(*PHA*).

5. This cause of action also raises questions specifically regarding the *Commonwealth of Australia Constitution Act* (the *Constitution*) and its interpretation or application, in particular with reference to a s109 inconsistency between the *Fair Work Act* 2009 (Cth) and the *PHA* of Queensland, and the constitutional legality of s156 of the *National Law* burdening, limiting, or removing the implied freedom of political communication of health practitioners due to an error of AHPRA and the Board in statutory interpretation regarding the limits of the discretionary power under s156 of the *National Law*.

6. These questions of jurisdiction regarding the identity of the first and second respondents and the constitutional validity of the relevant enactments involve constitutional application and interpretation. Questions regarding jurisdiction are questions which are fundamental issues that must be determined prior to the Supreme Court being able to proceed with my matter, as a failure to resolve a question as to jurisdiction over the parties and/or jurisdiction over the subject matter results in no jurisdiction, and also results in a failure to create joinder. Thus, any decisions of the Supreme Court that proceed following such a failure to resolve the questions of the validity of the impugned legislation and the true identity of the respondents, would be a nullity and would have no lawful force or application. Therefore, this matter of jurisdiction must be addressed first.

7. Furthermore, the questions raised are instrumental to determining what the limits of Federal and State and Territory power are to create an Act that regulates health

practitioners. These are constitutional issues that are ripe for decision as these matters have been in issue since 2010 when the *Health Practitioner Regulation National Law Act* 2009 first commenced, and yet these issues have never been considered by the High Court.

8. Thus, consideration of these constitutional and jurisdictional questions is an issue of great national importance and in the public interest because it goes to the heart of what the limits of the Federal, State and Territory powers are as they relate to the regulation of health practitioners and thus the doctor-patient relationship, and thus public health outcomes as a consequence of that.

9. The jurisdictional and constitutional questions are raised on the following basis:

10. There is no head of power under the *Constitution* that allows the Commonwealth to create an Act to regulate health practitioners. Dr Evatt was cited in *Wong v The Commonwealth* [2009] HCA 3; 236 CLR 573 at [272] as stating:

"...under s51(xxiiiA) "no authority will be vested in the Commonwealth to control health generally or the general practice of medicine or dentistry".

11. At [272] in *Wong v The Commonwealth* Heydon J states that the underlying assumption of the above statement was that "any regulation or control would be the province of State law only".

12. Clause 5 of the *Constitution* states "this Act, and all laws made by the Parliament of the Commonwealth under the *Constitution*, shall be binding on the courts, judges, and people of every State and of every part of the Commonwealth, notwithstanding anything in the laws of any State; and the laws of the Commonwealth shall be in force on all British ships, the Queen's ships of war excepted, whose first port of clearance and whose port of destination are in the Commonwealth". This clearly demonstrates that pursuant to the *Constitution,* Acts with national operation are only within the power of the Commonwealth to create. The States and Territories do not have the power to create laws with national operation. Any Act of a State or Territory that asserts a national operation would constitute an encroachment on

Commonwealth jurisdiction and legislative power and is ultra vires the State or Territory Parliament.

13. Section 3 of the *National Law* states "Objectives and guiding principles (1) The object of this Law is to establish a national registration and accreditation scheme for— (a) the regulation of health practitioners". This intention is clear in demonstrating the intention of the State of Queensland and Queensland Parliament to initiate a national law which is in excess of the powers of the State of Queensland and its Parliament, as only the Commonwealth Parliament has jurisdiction to create a national law per clause 5 and s51 of the *Constitution* and as discussed in *Wong v The Commonwealth* [2009] at [272].

14. This object of the Act, as stated in s3 of the *National Law,* is beyond the power of the State of Queensland and its Parliament as the power to regulate health practitioners resides with the states and territories, not the Commonwealth per *Wong v Commonwealth* at [272]; and the power to create laws with national application resides with the Commonwealth per Clause 5 and s51 of the *Constitution.* Thus, s3(1) of the *National Law* is invalid.

15. The State of Queensland regulates health practitioners across the entire country of Australia through the enactment in Queensland of the *Health Practitioner Regulation National Law Act* 2009 and its automatic application of the Schedule to the *Health Practitioner Regulation National Law Act* 2009 to each state and territory. This legislative set-up purports to create a consistent 'National Law' in each state and territory, with each state or territory applying the law from Queensland as if it were the law of their state or territory, and in so doing the other states and territories are bypassing the democratic processes required to pass valid legislation within their state or territory. Queensland itself also applies its host legislation to itself resulting in the creation of the *Health Practitioner Regulation National Law* (Queensland) which is the Act I have been regulated under. i.e., *the National Law*. Amendments to the *Health Practitioner Regulation National Law Act* 2009 by the Queensland Parliament (operating with only one house of parliament and thus no house of review), apply automatically in all other states and territories, except for Western Australia and South Australia. Such conduct results

in the usurpation of the Commonwealth legislative power and is achieved by collusion between the states and territories through COAG which has now been replaced by the Australian Federal Relations Architecture (AFRA) (exhibited and marked **L-1** in my affidavit to the proceedings) and its Health Ministers' Meetings (formerly known as the Ministerial Council). This action usurps Commonwealth power and, on its face, constitutes a jurisdictional error of law and results in all versions of the *National Law* being invalid due to jurisdictional error.

16. It is interesting to note that Western Australia, being the only state or territory in Australia that requires the passage of equivalent Health Practitioner Regulation National Law legislation through its Parliament (with South Australia only requiring amendment by regulation), is exempt from the National Accreditation and Regulation Scheme (the Scheme) enacted by the *National Law* until such legislation is passed. This is congruent with the manner in which s51(xxxii) of the Constitution operates when referring power from states and territories upon the Commonwealth, but it is beyond power for the Queensland Parliament to exercise such legislative power.

17. This is significant because this adds further evidence to my assertion that Queensland is purporting to hold and exercise unconstitutional Commonwealth power by mimicking the provisions of the *Constitution* in regards to referral of state power to the Commonwealth (at s51(xxxvii)) where it states that "the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law:".

18. The *Health Practitioner Regulation National Law Regulation* 2018 (which is subordinate legislation under the *National Law*) expressly demonstrates that the Queensland Parliament is actively exerting Commonwealth jurisdiction as the express wording of this Queensland regulation is such that the Queensland Parliament is modifying multiple Commonwealth Acts including the 1976 *Ombudsman Act 1976* Cth (s24), the *Freedom of Information Act* 1982 (Cth) (s13), the *Australian Information Commissioner Act* 2010 (s6), the *Federal Court of Australia Act* 1976 (s19 (d)(i)); and other Acts of Commonwealth Parliament, and the modifications have the effect (amongst other things) of removing particular

rights of affected parties and gives the Queensland Parliament total control over the appointment and removal (without requirement to give reasons) of the National Health Practitioner Ombudsman who is the nominated overseer of the actions of AHPRA and the National Boards per Part 5 s27(e) of *Health Practitioner Regulation National Law Regulation* 2018. Furthermore, Part 4 s19(d)(iii) or the Regulation purports to affect the FOI Act's application to the Federal Circuit Court of Australia determinations. It is entirely unconstitutional for the Parliament of Queensland to create or to modify Commonwealth legislation whether through legislative enactments or through regulations.

19. An example of a lawful and constitutional establishment of a national scheme is the referral of powers from the states to the Commonwealth in the creation of a new national industrial relations system via the enactment of the Fair Work Act 2009 (Cth). In the area of industrial relations there was agreement that national regulation was desirable and thus the Commonwealth Parliament accepted the powers referred to it by the states and territories and created a Commonwealth Act to enable national regulation. Such processes are within the limits of the powers of the state, territory and Commonwealth parliaments and are not repugnant to the Constitution. This is the Constitutionally valid manner in which national laws can be created.

20. The Australian Law Reform Commission has said that "From 1 January 2010, all states other than Western Australia referred their industrial relations powers to the Commonwealth, essentially creating a new national industrial relations system." This contrasts with the National Accreditation and Registration Scheme in which the states and territories have not referred their powers to a Commonwealth body to create a national law. Rather, the powers of states and territories have been referred to the Parliament of Queensland and thus it is acting-in-place of the Commonwealth (unconstitutionally and ultra vires).

21. The correct and constitutional manner that the states and territories of Australia could have enacted the National Scheme was by way of s51(xxxvii) powers of the *Constitution* (by referring their health practitioner regulation powers to the Commonwealth.) However, as there is no head of power under the *Constitution* for

the Commonwealth Parliament to regulate health practitioners (per *Wong v Commonwealth* at [272]), then any such referral under s51(xxxvii) would have been unconstitutional and thus of no utility. Thus, national regulation of health practitioners is repugnant to the *Constitution*, and it is beyond the power of the Queensland Parliament to enact legislation that automatically applies in other states and territories through applied legislation.

22. In enacting the *National Law,* the Queensland Parliament is acting as though it is the Commonwealth Parliament who is receiving a referral of power from other states and territories and subsuming them to create national regulation of all participating jurisdictions exactly as s51(xxxvii) allows the Commonwealth Parliament to do, but notably does not allow state or territory Parliaments to do. The manner in which the Queensland Parliament is acting is unconstitutional and is contrary to the system of democratic representative government in Australia.

23. Sections 245, 246, and 247 of the *National Law* demonstrate how the Queensland Parliament is acting in excess of their power by creating a state Act with national operation.

24. Of particular note s246;

(2) states,

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

(3) states,

> "If a regulation is disallowed in a majority of the participating jurisdictions, it ceases to have effect in all participating jurisdictions on the date of its disallowance in the last of the jurisdictions forming the majority."

25. This clearly demonstrates that the *National Law* is being used to undertake national regulation of health practitioners which is beyond the power of the States and Territories as the power to create national laws resides with the Commonwealth per

Clause 5 and s51 of the *Constitution* and the *Constitution* provides no head of power for the Commonwealth to regulate health practitioners per *Wong v Commonwealth* at [272].

26. The State of Queensland had created an Act for the national regulation of health practitioners, namely the *Health Practitioner Regulation National Law Act* 2009. This Act is lawfully nothing more than a State Act and by the use of the term 'National Law', it implies that it is a law of the Commonwealth Parliament and that it operates nationally to regulate health practitioners, when it is beyond power for a state Act to operate nationally.

27. The term 'National' in the title for the Act is misleading and deceptive, as the Commonwealth Parliament is the only legislative authority that can create a law that is binding and operates uniformly throughout the states and territories of Australia. It is also misleading in that the Commonwealth Parliament has no head of power under the Constitution to regulate health practitioners, so even if it were a national/Commonwealth law being enacted; it too would be unconstitutional.

28. The State of Queensland and its Parliament do not have jurisdiction to create Commonwealth or national laws, thus it is beyond the power of the Queensland Parliament to do so. Accordingly, the term 'National' must be severed from the name of the State Act and its provisions to save it from invalidity and to avoid jurisdictional error. Further, s3(1), s245, s246 and s247 must be severed from the *National Law* to save it from invalidity and to avoid jurisdictional error as these sections purport to give the Queensland Act (the *National Law*) a national operation and it is beyond the power of the Queensland Parliament for it to create such an Act per the *Constitution* clause 5 & s51.

29. Given that it is ultra vires for the States and Territories to create national laws, and that the Commonwealth has no power under the *Constitution* to regulate health practitioners, it naturally follows that there cannot exist "one single national entity" to administer such a law.

30. It appears that the Queensland Parliament is relying on s7 of the *National Law* and on a COAG Agreement in an attempt to justify the States and Territories creating

Commonwealth entities such as AHPRA and the Medical Board of Australia and a "national law".

31. Section 7 of the *National Law* states: "S7 Single national entity

(1) It is the intention of the Parliament of this jurisdiction that this Law as applied by an Act of this jurisdiction, together with this Law as applied by Acts of the other participating jurisdictions, has the effect that an entity established by or under this Law is one single national entity, with functions conferred by this Law as so applied.

(2) An entity established by or under this Law has power to do acts in or in relation to this jurisdiction in the exercise of a function expressed to be conferred on it by this Law as applied by Acts of each participating jurisdiction.

(3) An entity established by or under this Law may exercise its functions in relation to—

(a)one participating jurisdiction; or

(b) 2 or more or all participating jurisdictions collectively.

(4) In this section, a reference to this Law as applied by an Act of a jurisdiction includes a reference to a law that substantially corresponds to this Law enacted in a jurisdiction."

32. Section 5 of the *National Law* indicates how the States and Territories have undertaken to enact a Commonwealth Jurisdiction at a State level. Specifically, this appears to have been undertaken as a "COAG Agreement" as stated in s5.

S5 of the *National Law* states "***S5 Definitions***

participating jurisdiction means a State or Territory—

(a) that is a party to the COAG Agreement; and

(b) in which—

(i) this Law applies as a law of the State or Territory; or

(ii) a law that substantially corresponds to the provisions of this Law has been enacted"; and

"COAG Agreement means the agreement for a national registration and accreditation scheme for health professions, made on 26 March 2008 between the Commonwealth, the States, the Australian Capital Territory and the Northern Territory.

Note.

A copy of the COAG Agreement is available on the Council of Australian Governments' website."

33. As there is no head of power under the *Constitution* to empower the Commonwealth to regulate health practitioners (per *Wong v The Commonwealth* [2009] at [272]), the Commonwealth cannot lawfully enter such a COAG agreement as to do so would not be congruent with the *Constitution*; and as the States and Territories cannot lawfully exercise a Commonwealth jurisdiction, they cannot lawfully enter into this COAG Agreement as it is beyond the power of the State and Territory governments to do so when it is beyond the power of the State and Territory Parliaments to enact legislation with national operation i.e. Commonwealth legislation. Thus, the COAG agreement is invalid and void abinitio as it is ultra vires and is unlawful on its face, and all reference to it within the *National Law* must be severed from the *National Law* and its content and provisions to save the *National Law* from invalidity.

34. COAG (Council of Australian Governments) consisted of 12 COAG Councils and per s3(1), s5, s7, s245, s246, s247 of the *National Law* it is evident that the COAG agreement was entered into with the intention and purpose of the States and Territories to enact national/Commonwealth regulation of health practitioners which it is beyond their power to do, and which the Commonwealth has no power to do. Thus, the COAG agreement was entered into for an unlawful purpose and with an unlawful intention.

35. The *Health Practitioner Regulation National Law (Victoria) Act* 2009 states in Part 2 section 4 that the "Application of Health Practitioner Regulation National Law – The Health Practitioner Regulation National Law, as in force from time to time, set out in the Schedule to the Health Practitioner Regulation National Law Act 2009 of Queensland- (a) applies as a law of Victoria; and (b) as so applying may be referred to as the Health Practitioner Regulation National Law (Victoria); and (c) so applies as if it were part of this Act.".

36. This provision within the Victorian version of the *National Law* clearly indicates that the States and Territories are acting ultra vires by enacting legislation that has Commonwealth jurisdiction. The Queensland version of the *National Law* is unlawfully operating as having Commonwealth jurisdiction by applying its law-making powers to the other States and Territories. The consequence of this beyond-powers approach is that the checks and balances that apply under the rule of law (whereby laws are presented to the various houses of Parliament in the individual States and Territories for assessment prior to being passed) are themselves being bypassed. Notably, Queensland has a unicameral legislature which provides even fewer checks and balances on proposed legislation.

37. Further, there is no head of power under the *Constitution* to allow Commonwealth regulation of health practitioners and thus if the Commonwealth does not have the power to do so; the States and Territories also do not have power to undertake national/Commonwealth regulation of health practitioners through "one single National Entity" or a "*National Law*". Any agreement to do so is unlawful and invalid, as is any "one single National Entity" and any "*National Law*" for the regulation of health practitioners.

38. Because the Queensland Parliament has no jurisdiction to create a law or entity with Commonwealth jurisdiction; and because the Commonwealth has no head of power under the *Constitution* to regulate health practitioners, then the relevant COAG agreement which purports to establish the "one single National Entity" is invalid and has no lawful operation. Thus, I submit that the *National Law's* s5 definition of participating jurisdictions must be amended to clarify that jurisdiction

resides with only an individual State or Territory and all reference to a COAG agreement must be severed in order to save the *National Law* from invalidity.

39. AHPRA is not a Commonwealth body, and its correct jurisdiction is as a State or Territory body. I submit that the jurisdiction of AHPRA has been attested to in a letter dated 31 August 2022 from the office of Minister for Health and Aged Care, the Honourable Mark Butler Member of Parliament, which was written to me, Dr William Bay, a registered, but indefinitely suspended Queensland medical practitioner (and has been exhibited and marked K-1 to my affidavit submitted to Supreme Court on 15 November 2022.)

40. The letter from the Minister for Health and Aged Care stated that "AHPRA is not a Commonwealth Government agency, rather it is an independent body established under complementary Acts passed by each Australian state and territory (Health Practitioner Regulation National Law). As AHPRA operates independently of the Australian Government, neither the Minister nor the Department of Health and Aged Care can intervene in individual matters of practitioner regulation or complaints."

41. Notably the *National Law* s5 definition of National Agency states "National Agency means the Australian Health Practitioner Regulation Agency established by section 23 while Part 4 Division 1 s23(2)(3) states "The National Agency represents the State".

42. The ABN for AHPRA is 78 685 433 429. When this number is searched on ABN Lookup at abr.business.gov.au it is evident that AHPRA was registered by ABN in Victoria in 2009 and the history attached to their ABN number identifies them as a State Government Statutory Authority entity type.

43. While Part 4 Division 1 s27 and s28 of the *National Law* purport to give AHPRA Commonwealth/national jurisdiction. It is clear that, per the Ministerial letter and the abr.business.gov.au website, that AHPRA is a State Government Authority not a Commonwealth Government Authority and is registered only in Victoria and not in any other State.

44. Victoria does not have jurisdiction to create a corporation or a State Government Statutory Authority for another State and Territory Government; and only the States and Territories have the jurisdiction to create a corporation as the Commonwealth power under s51(xx) only extends to the regulation of corporations not to their creation. Furthermore, the Queensland Parliament does not have jurisdiction to create one single national entity to regulate health practitioners.

45. I am asking the Court how AHPRA is operating lawfully in any State or Territory other than Victoria as it is only registered by ABN in Victoria and Victoria cannot lawfully create a corporation or a State Government Statutory Authority entity type for any other State or Territory.

46. It is beyond the power of State or Territory Parliaments to create "one single National Entity" (as stated in s7 of the *National Law)* which is, in practical operation, and by any reasonable logical definition, a Commonwealth entity. Furthermore, state and territory governments cannot conspire to do what the Constitution forbids the Commonwealth to do. What cannot be done directly is also prohibited indirectly.

47. National regulation of health practitioners is not lawful and is beyond the power of AHPRA and the Board as there is no head of power under the *Constitution* for one national entity to exist to perform such function. Furthermore, it is absurd to assert that "one single national entity" is not a Commonwealth entity, or AHPRA is not purporting to operate with Commonwealth jurisdiction. Indeed, it is my conduct across more than one state (i.e., at a national or Commonwealth level) that has formed the basis of AHPRA and the Board's constitutionally invalid decision to take punitive action against me under s156 of the *National Law* to indefinitely suspend my medical registration.

48. My case is congruent with the issues raised in the *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Queensland Rail* [2015] HCA 11; 256 CLR 171 where the Queensland Parliament created an entity that had all of the attributes of a trading corporation

however the Queensland Parliament sought to retain control over such an entity by mislabelling it and in so doing the Queensland Parliament was trying to avoid the application of an applicable federal law to the federal *Fair Work Act* 2009.

> At [23] it was held "…. Rather, it was an intention to apply, or in this case not to apply, a particular label. A labelling intention of this kind provides no satisfactory criterion for determining the content of federal legislative power.".
>
> At [28] it was held "... More particularly, it would be necessary to observe that whether an entity is a corporation of a kind referred to in s 51(xx) presents an issue of substance, not mere form or label. But s 6(2) has a larger purpose than simply attaching a label designed to avoid the application of an otherwise applicable federal law.".
>
> At [30] it was held "The exclusion of the application of the GOC Act by s 6(2) of the QRTA Act providing that the Authority is not a body corporate means that the provision is more than mere labelling. Section 6(2) takes its place, and is to be given its meaning and application, in the context provided by the Queensland statute book generally and the GOC Act in particular.".

49. The High Court in *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Queensland Rail [2015] HCA 11; 256 CLR 171* decided that the federal Act applied regardless of the mislabelling of the corporation as the attributes of the corporation defined it. In this regard "one single National Entity" such as AHPRA and the Medical Board of Australia and the "*National Law*" are labelled to indicate that they are exercising Commonwealth/national jurisdiction and the provisions within the *National Law* clearly indicate that they intended to have Commonwealth/national jurisdiction and operation per s3(1), s5, s7, s245, s246, s247 & per The *National Law* of Victoria 2009 at Part 2 s4.

50. It is beyond the legislative powers of the States and Territories to exercise such jurisdiction, regardless of any agreement between the Commonwealth, States and

Territories for them to do so. National/Commonwealth jurisdiction resides solely with the Commonwealth Parliament per clause 5 and s51 of the *Constitution* and any State and Territory agreement or legislation that acts to enforce a national jurisdiction is invalid to the extent that it does so as this is *ultra vires* the State and Territory Parliaments.

51. Further, because there is no head of power under the *Constitution* for the Commonwealth to create any Act that regulates health practitioners (as per s51(xxiiiA) being interpreted by the High Court as purely a funding provision per *Wong v Commonwealth* at [60]); it is beyond the powers of the Commonwealth Parliament to create a national law or a national body to regulate health practitioners.

52. If it is beyond the powers of the Commonwealth to create a national law or a national body then it follows that it is beyond the legislative competency of the Queensland Parliament to create same. The Queensland parliament cannot purport to act in place of the Commonwealth by name or practical operation.

53. As such, and at present, AHPRA and the Board are impersonating Commonwealth bodies through their name and their function (as defined by the *National Law)* notwithstanding that according to the government registration attached to the ABN, they are identified as a State Government Statutory Authority Entity Type.

54. This is significant in that the Court, when creating joinder between the parties can only do so when the parties are correctly named and identified, and jurisdiction over the correct parties is a threshold issue that the Court must overcome and can only do, by severing the use of the word "Australia" from the name of AHPRA and severing all associated provisions within the *National Law* that purport to give AHPRA Commonwealth jurisdiction.

55. Further, Section 31A of the *National Law* states "Status of National Board. At point (2) A National Board represents the State; while s5 Definitions states "National Board means a National Health Practitioner Board continued or established by regulations made under section 31."

56. Notably, the *National Law* at Part 5 Division 1 s31(1) is clear that "a National Board represents the State"; while s5 definitions & s31(3) purports to give the National Board Commonwealth jurisdiction by stating "The National Board may exercise any of its functions in co-operation with or with the assistance of a participating jurisdiction or the Commonwealth, including in co-operation with or with the assistance of any of the following- (a) a government agency of a participating jurisdiction or of the Commonwealth; .....(c) a co-regulatory authority; (d) a health complaints entity; (e) an educational body or other body established by or under a law of a participating jurisdiction or the Commonwealth.

57. The *National Law* at ss35(1) (g), (h), (j), (k), (q), & s35(2) indicates that the National Boards are purporting to undertake Commonwealth regulation of health practitioners.

58. The *National Law* at Part 4 Division 1 s25(a), (b), (c), (d), (e), (h) & Division 2 s35(2) demonstrates that the Board are colluding with AHPRA to undertake Commonwealth regulation of health practitioners; despite there being no head of power under the *Constitution* for the Commonwealth to do so.

59. It is alleged that AHPRA and the Medical Board Australia are either State bodies impersonating Commonwealth bodies, or, alternatively, they are Commonwealth bodies created *ultra vires* the power of the States and Territories.

60. Regardless to the true nature of their origin and identity, what is unconstitutional is that their powers and creation have been conferred *ultra vires* of the Commonwealth and Queensland Parliaments, as no power to regulate health practitioners exists under the *Constitution,* and Queensland cannot exercise Commonwealth/national jurisdiction.

61. In summary, therefore neither the Commonwealth nor the States and Territories currently have the constitutional authority or jurisdiction:

    a. to create a *National Law* to regulate health practitioners, or

b. to create Commonwealth or national entities to regulate health practitioners, or consequently
c. to regulate health practitioners.

62. Notwithstanding this, I have been suspended by AHPRA and the Board's application of s156 of the *National Law* to censure my political speech. The face of the record of this decision indicates that in doing so AHPRA and the Board have limited or removed the implied right to a freedom of political communication of health practitioners as implied into the *Constitution* by the High Court.

63. AHPRA and the Board has made an administrative decision on the basis that they have made it a requirement of registration under the *National Law* that health practitioners not speak out against the Government, AHPRA, or the Board's policies or positions. This requirement is expressly stated within the March 9, 2021 'Position statement - Registered health practitioners and students and COVID-19 vaccination' exhibited and marked G-1 to my affidavit.

64. 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 detrimental effect on our democracy and representative government thus rendering the application of the legislation unconstitutional and invalid.

65. These three questions need to be addressed in the High Court (or the Supreme Court of Queensland operating in its federal jurisdiction) to determine the constitutional legality of s156 of the *National Law* burdening, limiting, or removing the implied freedom of political communication of health practitioners due to an error of AHPRA and the Board in statutory interpretation regarding the limits of the discretionary power under s156 of the *National Law*.

66. The conduct in which I have engaged in and have been sanctioned upon, is political communication which would not have taken place if the Chief Health Officer had not been enforcing Covid-19 vaccinations made under Public Health Directions (an example being exhibited and marked H-1 to my affidavit) under s362B of the *PHA* in Queensland.

67. As the Board relies on the validity of this Act to support its actions taken against me under s156 of the *National Law;* the s362 B of the *PHA* discretionary power is invalid or inoperable due to a direct inconsistency with s355 of the *FWA* by reason of s109 of the *Constitution.*

68. The relevance of the Public Health Directions under the *PHA* being unconstitutional is that AHPRA and the Board relied on Public Health Directions i.e., state health orders or its position in relation to vaccination as a basis for their decision against me under s156 of the *National Law* to suspend my registration.

69. The Public Health Directions are coercive because a failure to comply with it comes with a severe sanction and loss of ability to work and earn an income. It is this quality of the Public Health Directions that make their legal operation a coercive law and therefore invalid or inoperable due to a direct inconsistency with s355 of the *FWA* by reason of s109 of the *Constitution.* Without the Public Health Directions 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*.

The Facts to which Section 78B of the Judiciary Act 1903 applies

70. The facts stated above under the heading 'Nature of the matter' indicate that my case for an application for judicial review currently before the Supreme Court of Queensland "involves a matter arising under the *Constitution* or involving its interpretation" per s78B(1) of the *Judiciary Act* 1903.

Dated

23rd November 2022

.....

Dr William Anicha Bay

To:

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and

Second Respondent 2: THE MEDICAL BOARD OF AUSTRALIA

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