

HIGH COURT OF AUSTRALIA

STEWARD J

IN THE MATTER OF AN APPLICATION BY
MARK HOBART, VALERIE PEERS AND
DENES BORSOS FOR LEAVE TO ISSUE OR FILE

[2024] HCASJ 30
Date of Judgment: 19 July 2024
C8 of 2024

ORDER

- 1. Application for leave to issue or file the proposed writ of summons dated 14 May 2024 dismissed.*

Representation

The applicants are unrepresented

1 STEWARD J. On 20 May 2024, Gordon A-CJ directed the Registrar, pursuant to
r 6.07.2 of the *High Court Rules 2004* (Cth), to refuse to issue or file the applicants'
writ of summons without the leave of a Justice of the Court first had and obtained.
The applicants now seek that leave. They rely on three affidavits filed on 24 May
2024, sworn or affirmed by each of the applicants respectively.

2 The facts and legal claims underlying the applicants' proposed writ of
summons are as follows.

3 The applicants, who are self-represented, seek to commence proceedings in
the original jurisdiction of this Court against the Chief Executive Officer of the
Australian Health Practitioner Regulation Agency ("AHPRA") and the Chair of
the Medical Board of Australia ("the Board").

4 Each of the applicants formerly practised as a registered health practitioner
in Victoria. In November 2021, the Medical Board of Australia suspended the
registration of each of the applicants pursuant to s 156 of the *Health Practitioner
Regulation National Law* ("the National Law");¹ namely on the basis that the Board
reasonably believed that, because of each applicant's conduct, each applicant posed
a serious risk to persons and it was necessary to take immediate action to protect
public health and safety. Pursuant to s 159(2) of the National Law, the suspension
of each applicant will remain in place until, relevantly, the decision to suspend it
is set aside on appeal or the suspension is revoked by the Board. The affidavit
evidence before me indicates that the applicants' suspensions are continuing.

5 The Board's stated reasons for the applicants' suspensions were
substantially similar in respect of each of the applicants. In short, the Board alleged
that each applicant had: issued COVID-19 vaccine exemption certificates to
patients who did not meet the requisite criteria to receive such certificates; and/or
promoted, in consultation with patients, "unjustifiable, misleading and/or non-
factual claims" in accordance with the applicant's medical and/or personal
opinions. With respect to the first and second applicants, the Board alleged that
they failed to comply with public health directives in the conduct of each
applicant's respective medical practice. With respect to the first applicant, the
Board further alleged that the first applicant had participated in the online
publication or dissemination of information relating to COVID-19 that
contravened "the position of local, state and federal government and health
authorities".

6 The Board informed each applicant that their conduct reflected a "complete
disregard" for the Board's position on COVID-19 vaccination and further

1 The National Law is contained in the schedule to *Health Practitioner Regulation
National Law Act 2009* (Qld) and was enacted in Victoria pursuant to the *Health
Practitioner Regulation National Law (Victoria) Act 2009* (Vic), s 4.

2.

contravened "the position of local, state and federal government and health authorities". The Board considered that, by reason of the alleged conduct, each applicant posed a serious risk to public safety and public confidence in the medical profession and brought into question each applicant's "ability to behave in accordance with the standards of the profession and broader health system", including the Board's Code of Conduct.

7 The Board's position on COVID-19 vaccination was communicated in a joint position statement dated 9 March 2021, issued by the Board and AHPRA, as well as State, Territory, and other medical boards. The position statement encouraged registered health practitioners to be vaccinated against COVID-19. It further stated that registered health practitioners were expected to be appropriately qualified and trained to administer COVID-19 vaccines if authorised, and to provide accurate information and advice about COVID-19 vaccination, including in social media and advertising. The position statement also acknowledged the possibility of conscientious objection by practitioners with respect to receiving, authorising, prescribing or administering the COVID-19 vaccination, and provided guidance to practitioners as to the appropriate steps to be taken in relation to such objections.

8 By the proposed writ of summons, the applicants contend, in substance, that each suspension decision made by the Board in respect of the applicants amounted to an improper use of the suspension power contained in s 156 of the National Law, and constituted an act of misfeasance in a public office by the defendants that was "calculated to cause damage" to the applicants. The applicants further contend that the power of suspension contained in s 156 of the National Law, together with the joint position statement, was used to "interfere" in the doctor-patient relationship and to replace it with "government enforced and controlled medical services". The position statement and the National Law (either as a whole, as enacted in the States and Territories, or in respect of s 156) are therefore said to amount to "civil conscription" contrary to s 51(xxiiiA) of the *Constitution*, which empowers the Commonwealth Parliament to make laws with respect to, relevantly, "medical and dental services (but not so as to authorize any form of civil conscription)".

9 The applicants seek damages and various declarations, including declarations regarding the operation of s 51(xxiiiA) of the *Constitution* both generally and with respect to the National Law and the Commonwealth's "funding [of] the medical service of Covid-19 vaccination".

10 As noted above, Gordon A-CJ directed the Registrar to refuse to issue or file the writ of summons without the leave of a Justice of the Court first had and obtained. The grounds of the application for leave to issue or file are stated in affidavits sworn or affirmed by each of the applicants. The grounds stated largely repeat or supplement the substance of the proposed writ of summons. The applicants do not advance any further argument as to why leave to issue or file should be granted.

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11 The discretion conferred by r 6.07.3 of the *High Court Rules* to refuse leave to issue or file a document will ordinarily be exercised where the document appears "on its face" to be "an abuse of the process of the Court, to be frivolous or vexatious or to fall outside the jurisdiction of the Court".² The concept of abuse of process, which cannot be confined within closed categories, encompasses "an attempt to invoke the original or appellate jurisdiction of the High Court on a basis that is confused or manifestly untenable".³ Exercise of the discretion to refuse leave to issue or file a document is appropriate "only in the clearest of cases".⁴

12 It is plain on the face of the proposed writ of summons that the applicants seek to invoke this Court's jurisdiction on a basis that is "confused or manifestly untenable". Neither the proposed writ of summons, nor the affidavits filed in support of the application for leave to issue or file, disclose an arguable basis for the relief sought. The claims described in the proposed writ of summons would be an abuse of process if the document was filed. Accordingly, it should not be issued or filed.

13 I direct that the application for leave to issue or file the writ of summons dated 14 May 2024 be dismissed without an oral hearing.

2 *Re Young* (2020) 94 ALJR 448 at 451 [10]-[11] per Gageler J; 376 ALR 567 at 570; see also *High Court Rules*, r 6.07.1.

3 *Re Young* (2020) 94 ALJR 448 at 451 [13] per Gageler J; 376 ALR 567 at 570.

4 *Re Young* (2020) 94 ALJR 448 at 451 [13] per Gageler J; 376 ALR 567 at 570.