

*WITTHAHN & ORS*  
v  
*JOHN WAKEFIELD IN HIS CAPACITY AS CHIEF EXECUTIVE OF  
HOSPITALS AND HEALTH SERVICES AND DIRECTOR GENERAL OF  
QUEENSLAND HEALTH & ORS*  
[2025] HCADisp 272  
B37/2025

- 1       The applicants seek an order under s 40(1) of the *Judiciary Act 1903* (Cth) that the whole of the cause pending in the Court of Appeal of the Supreme Court of Queensland, being proceeding numbered CA 3666/2025 , be removed to this Court.
- 2       The applicants were paramedics in the Queensland Ambulance Service. The first applicant is one of the representative parties who instituted a representative proceeding in the Supreme Court of Queensland under Pt 13A of the *Civil Proceedings Act 2011* (Qld) in relation to employment directions given by the first respondent to Queensland Ambulance Service staff requiring the employees to obtain a COVID-19 vaccination. One of those directions was determined to be of no effect. In the representative proceeding, the applicants make claims arising out of action taken against them based on the employment directions, alleging breach of contract and the tort of misfeasance in public office against certain public office holders, and seeking relief under the *Industrial Relations Act 2016* (Qld) in the form of payment of compensation and lost remuneration and reinstatement.
- 3       The representative proceeding was stayed by the Supreme Court on the basis that the proper forum for the dispute is the Queensland Industrial Relations Commission ("the QIRC"). The applicants unsuccessfully opposed the stay on the basis that the proceeding falls within the scope of s 75(iv) of the *Constitution* and therefore invokes federal jurisdiction, and federal jurisdiction cannot be invested in the QIRC.
- 4       The appeal is listed for hearing before the Court of Appeal on 21 November 2025. The parties have filed their written submissions. The applicants contend that the respondents, by a notice of contention, have raised a new argument in the Court of Appeal which concerns the second limb of s 75(iv) of the *Constitution*, which was not a ground relied upon by the primary judge. The applicants contend that this argument raises constitutional issues of fundamental importance concerning this Court's original jurisdiction under s 75(iv) and seek leave to reopen this Court's decision in *Watson and Godfrey v Cameron* (1928) 40 CLR 446.
- 5       In the light of the complexity of the procedural history, the applicants have not identified sufficient reason to warrant this Court's interference with the

ordinary progression of the proceeding in the Court of Appeal. An order removing the proceeding would deny this Court the benefit of the reasons of the Court of Appeal on the constitutional issues: *Bienstein v Bienstein* (2003) 195 ALR 225 at 234 [45]. It is also possible that the appeal will be determined on a basis that will render it unnecessary to decide the issues the applicants seek to agitate in this Court. Accordingly, the applicants have not shown sufficient cause for the removal of the proceeding to this Court.

6           The application for removal is refused with costs.

Gordon J  
Beech-Jones J

14 November 2025