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4 April 2023

The Parliament of the  
Commonwealth of Australia  
THE SENATE

For the attention of Senator's Antic, Canavan, Rennick, Roberts and Hanson.

**RE: DRAFT: COVID-19 Vaccine Freedom (Informed consent before the provision of medical treatments involving COVID-19 Vaccination) Bill 2023**

Dear Senators,

I am writing to you concerning the rights of all individuals lawfully residing in the Commonwealth of Australia to be provided informed consent before the provision of medical treatments involving COVID-19 Vaccination.

I am very concerned that Australia has lost its way and prescribed itself a bitter pill to swallow (no pun intended).

It is of great concern that many individuals across Australia have been pressured and coerced into receiving a provisionally approved COVID-19 vaccination without being fully informed of the adverse risks associated with the synthetic based mRNA vaccinations with a biodistribution pattern and other risks that remain undisclosed to the Australian population.<sup>1</sup>

Australian law and medical practice recognise that individuals have the right to make informed decisions about their medical treatment. However, we have received many complaints from

<sup>1</sup> See Therapeutic Goods Administration (TGA) Non-Clinical evaluation report (January 2021).

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medical professionals who were pressured by regulators to ensure that their patients were vaccinated against COVID-19.

Despite the fact that the duty to disclose information to patients is part of the overall duty of a medical practitioner to exercise reasonable skill and care, we are aware that medical professionals who did not follow the regulators advice to push the COVID-19 vaccines onto their patients were threatened with deregistration, sanctions, ordered to appear before tribunals and some deregistered.

On 9 March 2021, the Australian Health Practitioner Regulation Agency (Ahpra) wrote a letter to all practitioners and students, arguably becoming the centrepiece of regulatory intervention in the doctor patient relationship and creating situation where Doctors were provided with “expectations” as to the National Boards position on:

- being vaccinated against COVID-19,
- administering COVID-19 vaccines, and
- providing advice and information about COVID-19 vaccination being a “novel coronavirus”.

The Ahpra national boards strongly encouraged “all” registered health practitioners and students to have the full complement of covid vaccines as scheduled unless contraindicated.

Unfortunately, if a Doctor provided a contraindication certificate or provided information relating to risks of the vaccine (*which is what medical practitioners is duty bound to do*). Indeed, the risks are demonstrating significant safety signals that are backed up by empty marketing slogans such as “safe and effective” in circumstances where the vaccines are known not to stop transmission, hospitalisations and deaths.

The 9 March 2021 AHPRA effectively issued gag orders to all AHPRA regulated Health Practitioners threatening regulatory action for the “*promotion of anti-vaccination statements or health advice which contradicts the best available scientific evidence or seeks to actively undermine the national immunisation campaign*”. AHPRA has taken action based on these gag orders by suspending a number of courageous practitioners who have provided evidence-based challenges to the “*health messaging*” as well as for providing exemptions to vaccination to their patients based on evidence based medical contraindications.

We have represented doctors that have been deregistered and investigated for providing medical advice and attempting to disclose risks and benefits to patients and if a risk was identified, that doctor would exercise their clinical judgment to issue a contraindication certificate pursuant to Australian guidelines. Despite the façade that contraindications would be accepted by Ahpra, they, along with the treating practitioner, were in reality, targeted by regulatory bodies.

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As a result of AHPRA's position a large number of Health Practitioners have been targeted through suspensions that denied them their legal right to procedural fairness, thousands of Health Practitioners have been coerced into denying informed consent to their patients but even more disturbing is that some Australians have been killed, disabled and seriously injured by these vaccines including many who were medically contraindicated but unable to obtain exemptions due to the method of execution of AHPRA's non-evidenced based policy decisions that continue to target doctors almost 3 years on. The National Law states that investigations must be conducted in a timely manner, but some doctors have their Court cases and deregistration's continuing thus placing extreme pressures on their livelihoods and families, with some practitioners self-harming and others taking their lives.<sup>2</sup> This is clearly a most unsatisfactory outcome when considering the only crime committed was a Doctor doing their duty and/or endeavouring to do their duty by providing their patient with the required amount of information so they could understand enough about the injection to provide valid and informed consent:

1. What was in the injection the patient was consenting to (which is still not known);
2. Whether the vaccine remained at the site of the injection.
3. All known side effects, noting that a majority of the side effects were known by manufacturers but not disclosed to patients or the community at large.
4. The regulators, health Ministers) and Government advisers knew or ought to have known that their conduct may imperil the lives of millions of Australians by enrolling them into the world's largest clinical trial.

We note that failure to disclose information to patients or to obtain proper consent can give rise to civil liability: *Rogers v Whitaker* (1992) 175 CLR 479 and in some cases battery. Although, notable cases did have standing in Australian law prior to the Covid-19 spread, these too were cast to the side for a purported emergency (that was never declared) that had seen known off-label preventatives banned or restricted in favour of an unknown vaccine still in clinical trial phase. The second major development was *Rogers v Whittaker* (1992).<sup>4</sup> Here, the Court actually rejected the use of the expression "informed consent" as "apt to mislead", instead introducing the term "duty of disclosure". In doing so, the Court reaffirmed that doctors have a duty to disclose and warn patients of "material risk".<sup>3</sup> Furthermore, the basic duty to disclose was deemed to be present even when the patient does not seek information through specific questions. This was emphasised by Gaudron J when she wrote: "where, for example, no specific inquiry is made, the

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<sup>2</sup> Australian Medical Association (Media Release 25 March 2023) *Ahptra data confirms traumatic effect of regulatory process on doctors and need for change*.

<sup>3</sup> R Ottley, "Duty to Warn" (1993) 7 *Australasian Journal of the Medical Defence Union* 43.

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*[doctors'] duty is to provide the information that would reasonably be required by a person in the position of the patient".<sup>4</sup>*

#### Valid Consent

For consent to be valid the provider needs to ensure that the patient has:

1. the capacity to provide consent.
2. a good understanding of any side-effects, risks, benefits and alternatives
3. regarding the proposed treatment.
4. been informed about the fees involved
5. given consent voluntarily, without being pressured.<sup>5</sup>

The Australian Immunisation Handbook 8-12 states:

Valid consent is the voluntary agreement by an individual to a proposed procedure, which is given after sufficient, appropriate and reliable information about the procedure, including the potential risks and benefits, has been conveyed to that individual.

The fact that many people were mandated to undertake accept this injection (*despite many political, media and fringe medical experts claiming otherwise in the media*), the injections were applied in a manner that attracted duress, coercion and incentivised distribution, such as free donuts and media campaigns intimating that one can go and enjoy their freedom, go the pub, or see family members.

We knew then, as we know now, the injections at best had a marginal effect, but they failed to stop transmission, hospitalisations and deaths and this has been represented by the excess mortality data emerging globally at a point in time when the injections were released to the public in the worlds largest clinical trial.

In addition, Australia had seen a substantial shift from medical interventions to include pharmacists and nurses engaging in medical interventions, that is, injecting people with a vaccine that most if not all did not disclose the risks to a standard where a consumer could have reasonably understood the risks. This is based on the fact, no one knew, except for the manufacturer, and this became known by way of litigation in the USA where Pfizer was ordered to release documents pursuant to Court Order, something Australian Courts seem to be reluctant to Order for reasons as yet unknown.

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<sup>4</sup> *Rogers v Whittaker* (1992) 175 CLR 479 at 493.

<sup>5</sup> Health Care Complaints Commission NSW - <https://www.hccc.nsw.gov.au/health-consumers/frequently-asked-questions-health-consumers/consentfor-treatment>.

## Moving Forward – The Proposed Bill

In consideration of these concerns and without entering into a substantial debate on informed and valid consent, we have drafted the *COVID-19 Vaccine Freedom (Informed consent before the provision of medical treatments involving COVID-19 Vaccination) Bill 2023* for your attention as follows:

### *COVID-19 Vaccine Freedom (Informed consent before the provision of medical treatments involving COVID-19 Vaccination) Bill 2023*

1. A Bill for an Act relating to informed consent before the provision of medical.
2. treatments involving COVID-19 Vaccination.
3. The Parliament of Australia enacts:
4. **Part 1—Preliminary**
5. **Section 1 Short title**
6. This Act is the *COVID-19 Vaccine Freedom (Informed Consent) Act 2023*.
  
7. **Section 2 Commencement**
8. (1) Commencement information:
9. Provisions: The whole of this Act
10. Commencement: The day after this Act receives the Royal Assent.
  
11. **Section 3 Definitions**
12. In this Act:
13. **Commonwealth of Australia** means the Commonwealth of Australia, including all
14. States and Territories.
  
15. **COVID-19** means the coronavirus commonly known as COVID-19 (including any
16. subsequent variants of that coronavirus).
  
17. **COVID-19 vaccination** means a vaccine approved by the Therapeutic Goods
18. Administration for the purpose of purportedly immunising persons against COVID-19
19. infection. Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
  
20. **Emergency situations** means if a person is unconscious and in danger of death.
21. Note: emergency declared pandemics do not override an individual’s right to informed
22. consent.
  
23. **Health care provider** means an individual licensed or otherwise authorised by the

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- Commonwealth, State or Territory to administer vaccines.
24. ***Informed Consent*** means consent to medical treatment and the requirement to warn  
25. of material risk prior to treatment.
26. As part of their duty of care, health professionals must provide such information as is  
27. necessary for the patient to give consent to treatment, including information on all  
28. material risks of the proposed treatment. Failure to do so may lead to civil liability for  
29. an adverse outcome, even if the treatment itself was not negligent:  
30. *Rogers v Whitaker* (1992) 175 CLR 479.
31. ***Persons*** means a reference to persons as defined in section 2C of the *Acts*  
32. *Interpretation Act 1901* and includes government ministers, officers, government  
institutions, private/government institutions, chapter III institutions, corporations and  
public servants.
33. **Section 4 Binding the Crown**  
34. This Act binds the Crown in each of its capacities.
35. **Section 5 Extension to external Territories**  
36. This Act extends to every external Territory.
- International Instruments**
37. This Act is intended to give effect to and not derogate from the following international  
Treatise of which Australia, its States and Territories are signatory members:  
a. International Covenant on Civil and Political Rights  
b. Syracuse Principles  
c. Universal Declaration on Bioethics and Human Rights  
d. Nuremberg Code

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38. **Part 2—Informed consent required for medical treatments involving  
COVID-19 vaccination**
39. **Section 6 Informed consent to medical treatments involving COVID-19 vaccination:**  
40. (1) The Commonwealth must ensure that all individuals lawfully residing in the  
41. Commonwealth of Australia have the right to provide or withhold consent for any  
42. medical treatment concerning COVID-19 and related variants.  
43. (2) The decision in *Rogers v Whitaker* (1992) 175 CLR 479 established that health  
44. professionals must provide such information as is necessary for the patient to give

45. consent to treatment, including information on all material risks of the proposed  
46. treatment. Failure to do so may lead to civil liability for an adverse outcome, even if  
47. the treatment itself was not negligent.  
48. (3) The Australian Commission on Safety and Quality in Health Care,  
49. ensuring informed consent is properly obtained is a legal, ethical and professional  
50. requirement on the part of all treating health professionals and supports  
51. person-centred care.  
52. (4) Informed consent is integral to the right to information in the Australian Charter of  
53. Healthcare Rights which recognises the right of an individual to be fully informed of a  
54. recommended medical treatment to allow the individual to make an informed decision  
55. regarding the individual's course of treatment, including whether to obtain or decline  
56. a particular medical treatment.

57. **Section 7 State and Territory Hospitals and health facilities to have informed consent**  
58. **processes**

59. (1) Hospitals and health facilities are required as a condition of participation in  
60. Medicare to have in place a process for obtaining the informed consent of a patient  
61. before providing treatment to the patient and to ensure the patient or his or her  
62. representative (as allowed under State or Territory law) has the right to make  
63. informed decisions regarding his or her care.

64. **Section 8 Medical health and safety code**

65. (1) Health and Safety Code, as added by this Act, prohibits:  
66. (a) any Persons inside and outside of a State or Territory to compel or coerce  
67. individuals lawfully residing in that State or Territory into obtaining medical  
68. treatments involving the administration of a COVID-19 vaccine.  
69. (b) A person may not compel or coerce an individual lawfully residing in the  
70. Commonwealth of Australia into obtaining a medical treatment involving the  
71. administration of a COVID-19 vaccine, including a COVID-19 vaccine approved or  
72. authorised by the Therapeutic Goods Administration, contrary to the individual's  
73. vaccination preference.  
74. (c) A health care provider must not provide to an individual lawfully residing in the  
75. Commonwealth of Australia a medical treatment involving the administration of a  
76. COVID-19 vaccine, including a COVID-19 vaccine approved or authorised by the  
77. Therapeutic Goods Administration, unless the provider obtains the individual's  
78. informed consent before administering the COVID-19 vaccine.

79. Note: A Health care provider who violates this section is liable to the individual who is  
80. the subject of the violation for damages in an amount of not less than \$5,000. In an  
81. action brought under this subsection; a claimant may recover reasonable expenses

82. incurred in bringing the action, including court costs, reasonable legal fees,  
83. investigation costs, witness fees, and deposition expenses.
84. (d) For purposes of this section, an individual lacks the capacity to provide informed  
85. consent for a medical treatment involving the administration of a COVID-19 vaccine if  
86. the individual has been compelled or coerced into being vaccinated against COVID-19  
87. contrary to the individual's vaccination preference.
88. (e) A person must not take adverse action or impose a penalty of any kind against an  
89. individual lawfully residing in the Commonwealth of Australia for the individual's  
90. refusal or failure to obtain a medical treatment involving the administration of a  
91. COVID-19 vaccine.
92. Note: Health and Safety Code, as added by this Act, applies only to conduct that occurs  
93. on or after the effective date of this Act.
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94. **Part 3—Prohibition on Mandatory COVID-19 vaccination**

95. **Section 9 Commonwealth must not mandate the administration of COVID-19**

96. **Vaccination**

97. (1) The Commonwealth must not require individuals to obtain medical treatments  
98. involving the administration of a COVID-19 vaccine including a COVID-19 vaccine  
99. approved or authorised by the Therapeutic Goods Administration, contrary to the  
100. individual's vaccination preference.

101. ***Commonwealth authorities***

102. (2) A reference in this section to a Commonwealth includes a reference to an authority  
103. of a Commonwealth.

104. **Section 10 States must not mandate the administration of COVID-19**

105. **Vaccination**

106. (1) A State must not require individuals to obtain medical treatments  
107. involving the administration of a COVID-19 vaccine including a COVID-19 vaccine  
108. approved or authorised by the Therapeutic Goods Administration, contrary to the  
109. individual's vaccination preference.

110. ***State authorities***

111. (2) A reference in this section to a State includes a reference to an authority of a State.



112. **Section 11 Territories must not mandate the administration of COVID-19**  
113. **Vaccination**  
114. (1) A Territory must not require individuals to obtain medical treatments  
115. involving the administration of a COVID-19 vaccine including a COVID-19 vaccine  
116. approved or authorised by the Therapeutic Goods Administration, contrary to the  
117. individual's vaccination preference.
118. ***Territory authorities***  
119. (2) A reference in this section to a Territory includes a reference to an authority of a  
120. Territory.
121. **Section 12 Other entities**  
122. ***Employment***  
123. A person (the *first person*) must not require another person (the *second person*) to  
124. obtain medical treatments involving the administration of a COVID-19 vaccine in  
125. relation to the first person employing the second person.  
126. Penalty: 1000 penalty units.
127. ***Businesses***  
128. An employer must not require employees or volunteers to obtain medical treatments  
129. involving the administration of a COVID-19 vaccine including a COVID-19 vaccine  
130. approved or authorised by the Therapeutic Goods Administration, contrary to the  
131. individual's vaccination preference by:  
132. (a) implementing mandatory COVID-19 vaccination policies  
133. (b) compelling or coercing employees  
134. (c) Bullying, intimidating or harassing employees  
135. (d) Threatening employees with termination of employment  
136. (e) Withholding of payments, leave, superannuation or any other entitlement owing to  
137. the employee (without limitation).  
138. (f) Deducting salary or wages or otherwise penalising an employee by way of pay  
139. Entitlements for not taking a vaccine or other medical procedure (without limitation).  
140. (g) Compelling an employee to remain on unpaid leave when entitlements are  
141. exhausted.  
142. Penalty: 1,000 penalty units.
143. ***Voluntary bodies***  
144. A voluntary body must not require individuals to obtain medical treatments.  
145. involving the administration of a COVID-19 vaccine including a COVID-19 vaccine  
146. approved or authorised by the Therapeutic Goods Administration, contrary to the

147. individual's vaccination preference.  
148. Penalty: 100 penalty units.
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149. **Part 4—Miscellaneous**

150. **Section 13 Attorney-General intervention**

151. The Attorney General shall diligently investigate violations under this Act without fear or favour.

152. If the Attorney General finds that a person (including corporate body) violates this Act, the Attorney General must bring civil and/or criminal actions against that person.

153. The Attorney-General may bring an action for injunctive relief against a person to prevent the person from violating this section. In an injunction issued under this subsection, a court may:

154. (a) include reasonable requirements to prevent further violations of this section.

155. **Relief from Retaliatory actions**

156. (1) In general.--Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent or associated others in furtherance of an action under this section or other efforts to stop 1 or more violations of this Act.

157. (2) Relief.--Relief under paragraph (1) shall include reinstatement with the same seniority status that employee, contractor, or agent would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and legal fees. An action under this subsection may be brought in the appropriate district court of the District, Supreme Court or Federal Court in the States and Territories of Australia.

158. (3) Limitation on bringing civil action.--A civil action under this subsection may not be brought more than 3 years after the date when the retaliation occurred.

159. **Section 14 Operation of the Act**

160. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable.

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We thank you for your consideration of the *COVID-19 Vaccine Freedom (Informed consent before the provision of medical treatments involving COVID-19 Vaccination) Bill 2023*.

Should you require any assistance or further information please do not hesitate to contact me.

I look forward to receiving your reply.

Yours faithfully

**Tony Nikolic**  
Director  
**Ashley, Francina, Leonard & Associates**

**Ashley, Francina, Leonard & Associates**

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