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Mr Scott Morrison MP
Prime Minister
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By registered post and by email

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Conflict between the *Constitution of Australia Act 1901* (Cth) and the *Australian Immunisation Register Act 2015* (Cth) and suite of 'No Jab' laws

Dear Prime Minister,

As the self -proclaimed architect of the suite of 'No Jab' laws, the purpose of this letter is to bring to your attention that the *Australian Immunisation Register Act 2015* (Cth), and the suite of state and Commonwealth 'No Jab' laws, appear to operate in conflict with s51(xxiiiA) of the *Constitution of Australia Act 1901* (Cth) (*Constitution)*. This letter provides you with an opportunity to remedy this conflict.

This letter is not a debate as to the risks or effectiveness of being injected with a vaccine. Nor is this letter about polarising pro-vax v anti-vax labels.

The letter is to illustrate to you, the Commonwealth legislature, and the Australian community, the constitutional protection afforded to each Australian, against any legislature seeking to advance a health policy through civil conscription.

Health policies come and go, and legislation that is enacted to advance a particular health policy is always subordinate to the *Constitution.* Health policies are always subordinate to each Australian's constitutional guarantee to not have medical procedures forced upon them by government.

Being injected with a vaccine is an assault, made lawful by consent. The decision to be injected with a vaccine occurs within the confidential, consensual and contractual relationship that exists between a health practitioner and their patient. This freedom of consent as to medical procedures is enshrined in our *Constitution.*

A number of areas of law prohibits third party interference in the private contractual doctor/patient relationship, and the prohibition on such interference is expressly stated in s51(xxiiiA) of our *Constitution.*

In Australia people must freely consent to being injected with a vaccine. Freely given consent means freedom from coercive and punitive laws that interfere with the doctor/patient relationship.

S51(xxiiiA) of the *Constitution* expressly prohibits the provision of medical and dental services in circumstances that amount to any form of civil conscription. This includes the coercive and punitive No Jab laws, and the laws that compel private medical information to be conscripted onto the Australian Immunisation Register.

S51(xxiiiA) states:

> ***51 Legislative powers of the Parliament***
>
> *The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:*
>
> *…*
>
> *(xxiiiA) the provision of maternity allowances, widows' pensions, child endowment, unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services (but not so as to authorize any form of civil conscription), benefits to students and family allowances;*
>
> *…*

S51(xxiiiA) provides an express constitutional protection against forced medication. This protection prohibits State, Territory and Commonwealth legislators from enacting laws to conscript people into undergoing medical procedures.

The injecting of a patient by their doctor with a vaccine is a medical service. Any laws that operate to civilly conscript a patient to be injected with a vaccine are expressly prohibited by the Constitution.

What is shown in the following is that the current operation of Australia's suit of No Jab laws, and the Australian Immunisation Register amounts to a form of civil conscription.

Constitutional guarantee against civil conscription into medical services.

The High Court has stated that the s51(xxiiiA) prohibition against civil conscription is a constitutional guarantee. This constitutional guarantee operates to protect personal liberty and freedom, and to ensure that people are not conscripted into medical and dental treatments against their will, or absent their consent.

In *Wong v Commonwealth*,[1] a case concerning s51(xxiiiA), Heydon J at 252 clearly states that the prohibition on any form of civil conscription concerns the protection of individual freedom:

> *"the phrase "any form of civil conscription" operates to confer a type of constitutional guarantee. It creates a deliberate constitutional restraint on a head of Commonwealth legislative power. It relates to individual freedom. It should thus be treated as a matter of substance. It should be read purposively. It should not be construed narrowly. The Commonwealth accepted this ... "*

Also in *Wong,* Kirby J at 127 describes each individual's constitutional protection from medical and dental conscription.

> *'the prohibition on "any form of civil conscription" is designed to protect patients from having the supply of "medical and dental services", otherwise than by private contract, forced upon them without their consent'.*

This statement of law makes clear that any infringement upon a person's ability to freely consent to a medical procedure is prohibited by our *Constitution.*

French CJ and Gummow J at 60 in *Wong* described civil conscription as involving practical compulsion and coercion.

> *'The legislative history and the genesis of s 51(xxiiiA) supports a construction of the phrase "(but not so as to authorize any form of civil conscription)" which treats "civil conscription" as involving some form of compulsion or coercion, in a legal or practical sense, to carry out work or provide services ...'.*

The numerous judgements of High Court Justices' concerning s51(xxiiiA) are clear; s51xxiiiA expressly guarantees an individual's constitutional right to not be coerced or compelled into receiving medical services.

[1] *Wong v Commonwealth* [2009] HCA 3.

Wide interpretation of civil conscription

The Justices of the High Court of Australia have made it clear that the words 'any form of' means that civil conscription is to be given a wide interpretation. In *General Practitioners*, Aickin J stated:

> *'any form of civil conscription' indicates to my mind an intention to give the term a wide rather than a narrow meaning, the precise extent of which cannot be determined in advance.*[2]

Further, as Dixon J pointed out in *British Medical Association v The Commonwealth*[3]

> *the meaning of an indefinite expression like "civil conscription" "cannot often be determined in the abstract [and it] is only by settling what application an expression like 'civil conscription' has to definite situations that its exact scope can be worked out".*

What is not civil conscription

A distinction was drawn in *General Practitioners* between the permissible regulation of matters incidental to providing medical services, and impermissible intrusion into the doctor/patient relationship. The distinction shows that It is permissible to regulate incidental and administrative matters, so that medical services are delivered with due care and skill. It is not permissible to compel practitioners or their patients to perform or undergo a particular type of procedure.[4]

Supporting Dixon J in the *BMA* Case, Gibbs J in *General Practitioners* described the distinction between the permissible regulation of practitioners' activities that are incidental to the provision of medical services, and the prohibition on attempts to regulate the medical service itself.[5]

> *"The provisions in question in these proceedings do compel medical practitioners to perform certain duties in the course of carrying out their medical practices, but they do not go beyond regulating the manner in which some of the incidents of those practices are carried out, and they do not compel any medical practitioner to perform any medical services. Most of the duties imposed relate only to things done incidentally in the course of practice, rather than to a medical service itself."*

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[2] *General Practitioners Society v The Commonwealth* [1980] HCA 30[33], cited by French CJ and Gummow J in *Wong v Cth 2009* [25].
[3] *British Medical Association v The Commonwealth* (1949) 79 CLR 201 at 262.
[4] *Wong v Cth* (2009) HCA 3 [11].
[5] *General Practitioners Society v The Commonwealth* [1980] HCA 30 [28].

What the case law shows is that regulating activities incidental to the provision of medical and dental services and regulating to ensure such services are carried out with due care and skill, does not amount to civil conscription.

In contrast however, legally or practically compelling an individual to be injected with a vaccine does amount to civil conscription and is prohibited by s51(xxiiiA). Also amounting to civil conscription is compelling or coercing an individual's vaccination history to be entered onto the Australian Immunisation Register.

Coercion and legal or practical compulsion

S51(xxiiiA) prohibits legislation that operates to coerce or compel a practitioner to perform, or their patient to receive, a medical service.

In his Judgement in *Wong* Kirby J also provides a test to determine instances of civil conscription. Again, the protection of an individuals' right to choose their medical and dental services is clear.

> ***Test for the prohibition****: The test for attracting the prohibition contained in s 51(xxiiiA) is whether the impugned regulation, by its details and burdens, intrudes impermissibly into the private consensual arrangements between the providers of "medical and dental services" and the individual recipients of such services. It is this consensual feature of those arrangements which the head of power postulates will be undisturbed.*

In applying this test for prohibition, Kirby J found that the impugned laws in that particular case were lawful. The reason they were lawful was the laws did not attempt to force health professionals to engage in a particular form of medical practice in a manner inconsistent with the proper conduct of the individual arrangements between the patient and their healthcare provider.[6] Moreover, that particular practice was not an attempt to advance a particular health policy.

The corollary of Kirby's J statement is that legislating to coerce or compel a medical service upon an individual, under the guise of a health policy, amounts to a form of civil conscription. This is especially so in circumstances where the legislation seeks to advance a health policy.

Health policies come and go, but they are always subordinate to the constitutional guarantee that medical services cannot be forced upon a person without their free consent.

It this prohibition of any form of civil conscription that renders invalid any measures legislated by Government that coerce people into being injected with a vaccine, or coerced into having their vaccination history entered into the Australian vaccination register.

[6] *Wong v Cth (2009)* HCA 3 [158].

There was some debate in *General Practitioners* as to whether "practical compulsion" as distinct from 'legal compulsion' would satisfy the constitutional conception of 'civil conscription.' However, in *Wong* the Commonwealth accepted that 'practical compulsion' would suffice.[7]

Thus the Commonwealth acknowledges that practical compulsion into a medical service is unlawful.

This is acknowledgement that No Jab laws that operate to practically compel a person to have their children injected with a vaccine are unlawful.

This is acknowledgement that laws that operate to practically compel a person to have their medical history entered into the Australian Vaccine Register are unlawful.

What is the liability of public officers who enact or administer unlawful laws with actual knowledge that those laws are unlawful? Misfeasance of a public office?

What is coercion?

The Macquarie Dictionary defines coerce as:

1. To restrain or constrain by force, law, or authority; force or compel, as to do something.

2. To compel by forcible action.

The New Shorter Oxford English Dictionary defines coerce as:

1. Forcibly constrain or impel (into obedience, compliance, etc); force or compel to do.

2. Enforce obedience; use coercive measures.

Coercion is defined in the New Shorter Oxford English Dictionary as:

I. The controlling of a voluntary agent or action by force.

2. The faculty or power of coercing or punishing; the power to compel assent.

3. Government by force.[8]

In *Ellis v Barker* (1871)[9] Lord Romilly MR accepted that coercion may take an infinite number of forms. However, he noted that the moment that a person who influences another does so by threatening to take away something he then possesses, or by preventing him from obtaining an advantage he would otherwise have obtained, it then becomes coercion and ceases to be persuasion.

[7] Ibid [17].
[8] These definitions were considered in *National Tertiary Education Industry Union v Commonwealth* [2002] FCA 441 [99].
[9] *Ellis v Barker* (1871) 40 LJ Ch 603.

One reason this statement of law by Lord Romilly concerning coercion is important to the No Jab laws is that the Commonwealth payments to lower income families for child-care support, and financial support, predated the immunisation requirements. Immunisation requirements were added to various pieces of assistance legislation by amendments made circa 1997/98.

These means that families that receive financial assistance, were thenceforth punished financially if they chose to not have their children injected with some or all of the dozens of vaccines mandated by the Government.

In the words of Lord Romilly, the withholding of payments these families are ordinarily entitled to, moved the Commonwealth measures from persuasion to coercion, and coercion amounts to a form of civil conscription prohibited by the *Constitution.*

According to the Explanatory Memorandum of *A New Tax System (Family Assistance) (Consequential and Related Measures) Bill (No.1) 1999* the family assistance measures contained within the Bills that consolidated family assistance payments were:

> '*designed to increase financial support to working families with dependents earning low levels of income' and 'help with the costs of child care.*'[10]

This statement expresses the obvious reason as to why low income and poorer families receive assistance – the Commonwealth and community recognises that working families with dependants earning low levels of income need financial support.

Thus any financially punitive measures levelled against poorer families will have a greater bearing on their decision as to whether they submit to being injected with a vaccine, or forgo financial assistance they have been identified as needing. The financial pressure applied is no doubt proportional to a particular family's financial needs.

It would be difficult to argue that families receiving financial assistance are not coerced into the Commonwealth's vaccine agenda under threat of forfeiture of needed financial assistance. It is difficult to support the argument that the threat of financial penalty does not practically compel poorer families into being civilly conscripted into the Government's vaccine health policy and agenda.

There have been many instances of admission by Ministers that financially punitive measures are designed to coerce and influence decisions on health care. For example, in 2015 commenting on the

[10] *A New Tax System (Family Assistance) Bill 1999* explanatory memorandum 31 Mar 1999 https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr800_ems_68c5ae18-6e6f-4056-b0d6-71a9ab4544f9%22

stricter No Jab laws the then Human Services Minister was reported in the media as saying it is much more difficult to coerce wealthier families into vaccinating their kids, and that

> *'Obviously we've got one significant lever and that is the welfare dollar and we're utilising that and have been having tremendous impacts.'*[11]

The removal of the ability of parents to freely decide on the risks and benefits of having their children being injected with vaccines, brought about by the removal of conscientious objection, resulted in 210,000 families having their children injected with vaccines.

The financial penalty used to conscript lower income families to have their children injected with vaccines is approximately $15,000 per year. It is difficult to argue in support of such a large financial penalty not being a coercive measure against those families identified as needing financial assistance.

$15,000 is a significant amount of income for a low-income family. It is difficult to argue that withholding $15,000 from a family needing financial assistance is not a coercive measure that negates real choice and operates to practically compel lower income families into having their children injected with vaccines.

There is no threshold to search for. Where a law operates to impose a coercive financial penalty upon on a single family or individual to undergo a medical procedure, that law is in conflict with s51(xxiiiA), and is therefore unconstitutional.

Medical decisions should be left on the risk and benefits alone. If vaccines are safe and effective people will use this product.

The decision to be injected with a vaccine should not be subject to financial interference by a third party, especially a third party that is expressly prohibited from enacting legislation that interferes with the private contractual doctor patient relationship.

[11] https://www.kidspot.com.au/parenting/real-life/in-the-news/proposed-changes-to-the-no-jab-no-pay-laws-will-hit-parents-even-harder/news-story/eb6b8ee06f66490c5a644b8330f60e2f

Mechanisms to challenge - Impermissible burden on the Constitutional protection from forced medication

The laws that infringe upon the express Constitutional guarantee to not be subjected to forced medication can be challenged directly.

Cases such as *Brown v Tasmania, Lange*, and *McCloy* show that where a law impermissibly infringes upon a Constitutional right, those laws can be challenged directly as to their validity.[12] These particular cases concerned challenges to state and Commonwealth laws that 'impermissibly burdened' the implied general Constitutional right to freedom of political communication.

Aspects of the *Australian Immunisation Register Act 2015* (Cth) and the suite of No Jab laws infringe upon the express constitutional guarantee to not be subject to forced medication – an express personal freedom, as opposed to an implied general right. These laws and their operation can be challenged directly as to their constitutional validity.

Mechanism to challenge – s109 conflict between Commonwealth and state law

Pursuant to s109 of the *Constitution,* where there is an inconsistency between a state law and a law of the Commonwealth, the State law is invalid to the extent of that inconsistency.

> ***109 Inconsistency of laws***
>
> *When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.*

The Constitution of Australian Act 1901 is the primary law of the Commonwealth. All Commonwealth and state and territory laws are subject to the *Constitution*. Laws that conflict with s51(xxiiiA) can be rendered invalid by operation of s109 of the *Constitution*.

How to act

The constitutional conflicts raised herein involve the assault upon millions of infants and children. The matters raised are serious.

Being the self-proclaimed architect of the No Jab suite, and currently holding the office of Prime Minister, it is incumbent upon you to ascertain the extent to which the suite of No Jab laws operate in conflict with the *constitution.* I have provided as an addendum to this letter examples of State and Commonwealth legislative provisions to illustrate instances of conflict with s51(xxiiiA).

[12] *Brown v Tasmania* [2017] HCA 42; *McCloy v New South Wales* [2015] HCA 34; *Lange v Australian Broadcasting Corporation* [1997] HCA 2

Ideally your Government will immediately take measures ascertain any Constitutional conflict and repeal or amend all No Jab and Australian Immunisation Register provisions identified as conflicting with s51(xxiiiA).

Should no steps be made by you or your government to remedy provisions operating in conflict with s51(xxiiiA), then legal action to compel their invalidation will commence. Legal action is likely to be accompanied by actions in tort against individuals occupying relevant public office, should they act with reckless indifference to the extent of their statutory powers, having now been put on notice of the constitutional conflicts raised herein.

I look forward to your timely response to the important matters raised.

Yours sincerely

Matthew Hopkins

LLB, BEnvM

Addendum illustrating select provisions operating in conflict with s51(xxiiiA)

1. *Australian Immunisation Register Act 2015* (Cth)

For the *Australian Immunisation Register Act 2015* (Cth) (*AIR*)to be able to operate without contravening s51(xxiiiA) individuals would have to voluntarily disclose their medical history. Any compulsion or coercion applied upon an individual to participate by a third party would likely amount to a form of civil conscription.

There are many provisions within the *AIR Act* that likely operate as outrightly conscriptive or rendered conscriptive if applying coercion. The s10 purposes of the Register provides a useful illustration

S10 Purposes of the Register

(1) The purposes of the AI register are to facilitate the following:

…

g) checking an individual's vaccination status:

(i) by (or on behalf of) the Commonwealth; and

(ii) to the extent that this is necessary for determining eligibility for family assistance;

…

h) **certifying** when a course of vaccination has been completed;

…

k) <u>payments relating to vaccines;</u>

2. *A New Tax System (Family Assistance) Act 1999* (Cth)

The following illustrates some of the coercive provisions within *A New Tax System (Family Assistance) Act 1999* that operate in conflict with s51(xxiiiA).

61A Reduction in FTB child rate unless health check requirement satisfied

61B Reduction in FTB child rate unless immunisation requirements satisfied

(1) An individual's FTB child rate in relation to an FTB child is reduced under subclause 7(2) or (3) or 26(3) or (4) of Schedule 1 if:

…

(b) the child does not meet the immunisation requirements set out in section 6:

…

If s61A and s61B are deemed Constitutionally invalid, then subclauses 7(2) and (3), and subclauses 26(3) and (4) of the Schedule 1 calculator are rendered meaningless.

Schedule 1 Family tax benefit rate calculator

Division 2—Standard rate

7 Standard rate

…

Reduction during reduction period for failing to have health check or meet immunisation requirements

(2) ***If either or both section 61A and subparagraph 61B(1)(b)(ii) apply*** *in relation to an individual and an FTB child of the individual, the annual FTB child rate in relation to the child is reduced by $737.30 for each day in the FTB child rate reduction period (except any day in a past period to which subclause (3) applies).*

Reduction of past period claims for failing to meet immunisation requirements

(3) The annual FTB child rate in relation to an FTB child of an individual is reduced by $737.30 ***if subparagraph 61B(1)(b)(i) applies*** *in relation to the individual and the child.*

…

26 Standard rate

…

Reduction during reduction period for failing to have health check or meet immunisation requirements

(3) ***<u>If either or both section 61A and subparagraph 61B(1)(b)(ii) apply</u>*** *in relation to an individual and an FTB child of the individual, the annual FTB child rate in relation to the child* ***is reduced by $737.30 for each day*** *in the FTB child rate reduction period (except any day in a past period to which subclause (4) applies).*

Reduction of past period claims for failing to meet immunisation requirements

(4) The annual FTB child rate in relation to an FTB child of an individual is reduced by $737.30 ***<u>if subparagraph 61B(1)(b)(i) applies</u>*** *in relation to the individual and the child.*

…

Part 4A—Child care subsidy

Division 1—Introduction

85AA Simplified outline of this Part

… Generally, for CCS, the eligibility criteria relate to the child's relationship to the individual, the child's age ***and immunisation status*** *and the individual's residency status.*

…

Division 2—Eligibility for child care subsidy

85BA Eligibility for CCS

(1) An individual is eligible for CCS for a session of care provided by an approved child care service to a child if:

…

(iii) the child meets the immunisation requirements in section 6;

…

Division 3—Eligibility for additional child care subsidy

Subdivision A—Eligibility for ACCS (child wellbeing)

85CA Eligibility for ACCS (child wellbeing)

Eligibility of approved provider

(2) The approved provider of an approved child care service is eligible for ACCS for a session of care provided by the service to a child if:

…

(b) (iii) the child meets the immunisation requirements in section 6*;*

3. ***Public Health Act 2010*** **(NSW)**

The NSW *Public Health Act 2015* provides an example of No Jab laws operating at the State level.

86 Responsibilities of principals of schools with respect to immunisation (cf 1991 Act, s 42B)

> *(1) When a child is enrolled at a school, and on such other occasions as may be prescribed by the regulations,* ***the principal of the school must ask a parent*** *of the child to lodge with the principal an* ***immunisation certificate for the child****, unless satisfied that the certificate can be obtained under subsection (2).*
>
> *…*
>
> ***(3) The principal of a school must record in the approved form the immunisation status of each child*** *enrolled at the school, as indicated by the* ***child's immunisation certificate****, and, for that purpose, a child for whom no immunisation certificate has been lodged is taken not to have been immunised against any of the vaccine preventable diseases.*
>
> *(4)* ***The principal of a school must retain an immunisation certificate*** *lodged with the principal in safe custody for such period as may be prescribed by the regulations and must produce it* ***for inspection on request by the public health officer****.*

This provision civilly conscripts school principals into collecting private medical information and making this information available to other persons outside the private doctor/patient relationship.

87 Responsibilities of principals of child care facilities with respect to immunisation

> *(1)* ***Certificates for immunisation or exemption must be provided before enrolment*** *The principal of a child care facility* ***must not enrol a child****, or permit a child to enrol, at the child care facility unless the parent of the child, or the principal of another child care facility, has provided to the principal—*
>
> *…*
>
> *Maximum penalty—50 penalty units.*

This provision also operates to civilly conscript private medical information by persons outside the doctor/patient relationship, and imposes a penalty for non-compliance.