

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 14/12/2021 11:46:00 AM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

### Filing and Hearing Details

Document Lodged:	Originating Application Starting a Representative Proceeding under Part IVA Federal Court of Australia Act 1976 - Form 19 - Rule 9.32
File Number:	NSD1303/2021
File Title:	LORETTA KIKUYU v BRADLEY RONALD HAZZARD, MINISTER FOR HEALTH NSW & ANOR
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



A handwritten signature in blue ink that reads 'Sia Lagos'.

Dated: 14/12/2021 1:30:20 PM AEDT

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



**Originating application starting a representative proceeding under  
Part IVA of the Federal Court of Australia Act 1976**

No.                      of 20

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Loretta Kikuyu**

Applicant

**Bradley Ronald Hazzard, Minister for Health NSW and another**

Respondents

To the Respondent

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

**Time and date for hearing:**

**Place:**

The Court ordered that the time for serving this application be abridged to

Date:

Signed by an officer acting with the authority  
of the District Registrar

Filed on behalf of (name & role of party) Loretta Kikuyu, Applicant  
Prepared by (name of person/lawyer) Peter Maatouk  
Law firm (if applicable) Maatouks Law Group  
Tel (02) 9601 7222 Fax \_\_\_\_\_  
Email peter@maatouks.com.au  
**Address for service** 80 Terminus Street,  
(include state and postcode) Liverpool NSW 2170



### **Details of claim**

Capitalised terms in this Originating Application have the meanings given to them in the accompanying Statement of Claim.

On the grounds set out in the Statement of Claim, the Applicant claims, on her behalf and on behalf of the Class Members:

1. A declaration that each of the Orders is invalid.
2. An order quashing the Second Order.
3. Alternatively, an order varying the Second Order so as to provide that the operation of clauses 4, 5 and 6 are subject to rights and entitlements for the worker consistent with the BSC Act requirements.
4. A declaration that the Determination is invalid.
5. An order quashing the Determination.
6. Alternatively, an order varying the Determination so as to provide that vaccination is subject to rights and entitlements for NSW Health Service Employees consistent with the BSC Act requirements.
7. Costs.
8. Such other orders as the Court deems fit.

### **Questions common to claims of group members**

The questions of law or fact common to the claims of the group members are:

1. Whether the Minister exceeded the powers conferred under section 7 of the *Public Health Act 2010* (NSW) in making the Orders, including:
  - (a) whether and to what extent the powers under s.7 are limited by the operation of the *Biosecurity Act 2015* (Cth);
  - (b) whether the power to make the Orders must be exercised consistent with the national emergency provisions of the *Biosecurity Act 2015*;
  - (c) whether the power to make the Orders was conditional on the declaration of a state of emergency in NSW under the circumstances;
  - (d) whether the exercise of power to make the Orders was consistent with the requirements of s.478(3) of the *Biosecurity Act 2015*;
  - (e) whether the Minister acted unreasonably in making the Orders;



- (f) whether the power to make the Orders must be exercised consistent with the provisions of Parts 3 and 4 of Chapter 2 of the *Biosecurity Act 2015*;
  - (g) whether the power to make the Orders in respect of vaccination must be exercised consistent with s.92 of the *Biosecurity Act 2015*;
  - (h) whether and to what extent the Orders are invalid.
2. Whether the Secretary exceeded the powers conferred under section 116A of the *Health Services Act 1997* (NSW) in making the Determination, including:
- (a) whether the Determination is *ultra vires* s.116A;
  - (b) whether and to what extent the powers to make the Determination under s.116A are limited by the operation of the *Biosecurity Act 2015* (Cth).
  - (c) whether the power to make the Determination must be exercised consistent with the national emergency provisions of the *Biosecurity Act 2015* (Cth);
  - (d) whether the power to make the Determination was conditional on the declaration of a state of emergency in NSW under the circumstances;
  - (e) whether the exercise of power to make the Determination was consistent with the requirements of s.478(3) of the *Biosecurity Act 2015*;
  - (f) whether the Secretary acted unreasonably in making the Determination;
  - (g) whether the power to make the Determination must be exercised consistent with the provisions of Parts 3 and 4 of Chapter 2 of the *Biosecurity Act 2015*;
  - (h) whether the power to make the Determination in respect of vaccination must be exercised consistent with s.92 of the *Biosecurity Act 2015*;
  - (i) whether and to what extent the Determination is invalid.

### **Representative action**

The Applicant brings this application as a representative party under Part IVA of the *Federal Court of Australia Act 1976*.

The group members to whom this proceeding relates are persons affected by the Orders.

### **Applicant's address**

The Applicant's address for service is:

Place: Peter Maatouk, Maatouks Law Group, 80 Terminus Street, Liverpool NSW 2170.

Email: [peter@maatouks.com.au](mailto:peter@maatouks.com.au)



The Applicant's address is C/- Peter Maatouk, Maatouks Law Group, 80 Terminus Street,  
Liverpool NSW 2170.

**Service on the Respondent**

It is intended to serve this application on all Respondents.

Date: 14 December 2021

A handwritten signature in black ink, appearing to read "P. Maatouk", written over a horizontal line.

Signed by Peter Maatouk  
Lawyer for the Applicant

**PETER MAATOUK**  
SOLICITOR  
Law Society No 33509

**Schedule**

No. of 20

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Respondents**

First Respondent: **Bradley Ronald Hazzard, Minister for Health NSW**  
Second Respondent: **Elizabeth Koff, Secretary for NSW Health**

Date: 14 December 2021