



Australian Government
Attorney-General's Department

MC23-028261

20 September 2023

Ms Elizabeth Hart
elizmhart@gmail.com

Dear Ms Hart

Thank you for your email of 15 August 2023 regarding section 51(xxiiiA) of the Constitution to the Attorney-General, the Hon Mark Dreyfus KC MP. The Attorney-General has requested that the Attorney-General's Department respond to you on his behalf. We apologise for the delay in doing so.

Neither the Attorney-General nor officers of the Attorney-General's Department provide legal advice to the public. If you have concerns about any particular laws or have legal queries, you may wish to seek independent legal advice. However, we provide the following general comments for your information.

The prohibition 'but not so as to authorise any form of civil conscription' in s 51(xxiiiA) has generally been regarded by the High Court as requiring either legal or practical compulsion requiring a person to provide medical or dental services (see, for example, *Wong v Commonwealth* (2009) 236 CLR 573 at [60], [209]).

You may be aware that immunisation is not mandatory and individuals may choose not to be vaccinated. We note that the part of the Australian Health Practitioner Regulatory Agency statement to which you refer relates to anti-vaccination statements and does not purport to require a health practitioner to vaccinate patients. Questions relating to immunisation or health policy are appropriately directed to the Minister for Health and Aged Care. We note that you have copied your letter to the Minister for Health and Aged Care, the Hon Mark Butler MP, and the Chief Medical Officer, Professor Paul Kelly.

Thank you again for bringing your concerns to the Attorney-General's attention. We hope this information is of assistance to you.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'D. Lewis'.

David Lewis
General Counsel (Constitutional)
Office of Constitutional Law