

SUPREME COURT OF QUEENSLAND

CITATION: *Lal v Mackay Hospital and Health Service & Ors* [2026]
QSC 116

PARTIES: **RAKESH LAL**
(applicant)
v
MACKAY HOSPITAL AND HEALTH SERVICE
(first respondent)
and
**AUSTRALIAN HEALTH PRACTITIONER
REGULATION AGENCY**
(second respondent)
and
**THE ROYAL AUSTRALASIAN COLLEGE OF
PHYSICIANS**
(third respondent)
and
MEDICAL BOARD OF AUSTRALIA
(fourth respondent)

FILE NO/S: BS 3256/25

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court of Queensland at Brisbane

DELIVERED ON: 11 June 2026

DELIVERED AT: Brisbane

HEARING DATE: 13 March 2026

JUDGE: Copley J

ORDER: **In respect of all the respondents, the amended originating application is dismissed.**

CATCHWORDS: ADMINISTRATIVE LAW – JUDICIAL REVIEW – PROCEDURE AND EVIDENCE – APPLICATIONS – where the applicant is an overseas-trained medical practitioner – where the applicant seeks judicial review of decisions made by the respondents, declarations against each decision, orders setting aside each decision, and the substitution of lawful determinations or the remittal of matters for consideration according to law – where the respondents have each made an application to have the amended originating application dismissed pursuant to s 48 of the *Judicial Review Act 1991* (Qld) – where the respondents contend that it would be

inappropriate for the amended originating application to continue as discloses no reasonable basis, is frivolous or vexatious, and is an abuse of process of the Court – where the respondents contend that it would be inappropriate for the amended originating application to continue as neither it nor the originating application were made within the times specified by either s 26 or 46 of the *Judicial Review Act* – whether the originating application should be dismissed as against each respondent

Health Practitioner Regulation National Law Act 2009 (Qld), s 7

Health Practitioner Regulation National Law (Queensland), s 3, s 25, s 31, s 35, s 57, s 58, s 66, s 77, s 80, s 82

Health Practitioner Regulation National Law Regulation 2018 (Qld), r 4

Judicial Review Act 1991 (Qld), s 4, s 7, s 20, s 26, s 46, s 48

Public Service Act 2008 (Qld), s 137

Australian Broadcasting Tribunal v Bond (1990) 170 CLR 321

Brisbane City Child Care Pty Ltd v Kadell (2020) 5 QR 367

Griffith University v Tang (2005) 221 CLR 99

Lal v Royal Australasian College of Physicians [2025] FCA 348

Lal v Royal Australasian College of Physicians [2025] FCA 673

COUNSEL: The applicant appeared on his own behalf
A W Duffy KC with C D Martin for the first respondent
N G Harris for the second and fourth respondents
S A Amos for the third respondent

SOLICITORS: The applicant appeared on his own behalf
Crown Law for the first respondent
Moray & Agnew for the second and fourth respondents
Corrs Chambers Westgarth for the third respondent

- [1] The respondents have each made an application on 6 December 2025 for an order under s 48 of the *Judicial Review Act 1991* (Qld) to dismiss an amended originating application made by the applicant.
- [2] The Royal Australasian College of Physicians (the College) is a public company. It is a specialist medical college. It makes recommendations to the Medical Board of Australia about whether some medical practitioners should be registered to practice. The Medical Board of Australia (the Medical Board) is established under legislation. It determines whether medical practitioners should be registered. The Australian Health Practitioner Regulation Agency (the Agency) is established under legislation. Its function is to assist the Medical Board to exercise the Medical Board's functions. The Mackay Hospital and Health Service (the Health Service) is established under legislation. It operates the Mackay Hospital. The applicant, an overseas-trained medical practitioner, obtained registration from the Medical Board following an

assessment made by the College. The applicant obtained employment at the Mackay Hospital. He worked at that hospital until he was suspended from duties there. He subsequently resigned his employment.

- [3] The Health Service seeks dismissal because: (i) it would be inappropriate for the amended originating application to continue when neither it nor the originating application (made on 24 July 2025) were made within the times specified by either s 26 or s 46 of the *Judicial Review Act* and the applicant has not provided an adequate justification for the grant of an extension of time; (ii) alternatively, it would otherwise be inappropriate for the amended originating application to continue as it discloses no reasonable basis, is frivolous or vexatious, and is an abuse of the process of the Court.
- [4] The College seeks dismissal because: (i) no reasonable basis is disclosed and it would be otherwise inappropriate for the amended originating application to continue when it has no reasonable prospect of success; (ii) the amended originating application and the originating application were not made within the times specified by either s 26 or s 46 of the *Judicial Review Act* and the applicant has not provided any adequate justification for an extension of time; and, (iii) the amended originating application is vexatious and an abuse of process.
- [5] The Agency and the Medical Board seek dismissal because (i) it would be inappropriate for the amended originating application to continue when neither it nor the originating application were made within the time specified in s 26 or s 46 of the *Judicial Review Act* and the applicant has not provided an adequate justification for the grant of an extension of time; (ii) alternatively, it would otherwise be inappropriate for the amended originating application to continue when it discloses no reasonable basis, is frivolous or vexatious, and is an abuse of process of the Court.
- [6] The applicant resisted the applications for dismissal on the basis each should fail provided he was able to point to at least one decision which could not satisfy the test for dismissal under s 48 of the *Judicial Review Act*.¹ For this purpose the applicant relied “primarily upon the decision of the Acting Chief Executive of [the Health Service] dated 18 August 2023”.²
- [7] The amended originating application will be dismissed as against each respondent for the following reasons.

The amended originating application

- [8] As against all of the respondents, the amended originating application sought judicial review of decisions made (including failures to make decisions) between 2015 and 2025 concerning the applicant’s registration, supervision, credentialing, assessment, accreditation, peer review, eligibility for independent practice and eligibility for specialist registration.³
- [9] It sought declarations each decision is affected by jurisdictional error, legal unreasonableness, denial of natural justice, relevant/irrelevant considerations,

¹ Applicant’s outline of argument paragraph 9 subparagraphs 24-28; Transcript of proceedings p 1-55 lines 50-51.

² Applicant’s outline of argument paragraph 2 subparagraph 5.

³ Amended originating application paragraph 2(b)(i).

improper exercise of power, error of statutory construction, bad faith or constructive bad faith (where applicable) and findings made without probative value.⁴

- [10] It sought orders setting aside each decision and the substitution of lawful determinations or the remittal of matters for reconsideration according to law.⁵
- [11] The only decisions allegedly made in the period 2015 to 2025 identified with any precision were: a “decision” of the Agency dated 13 December 2018 concerning the withdrawal of an application;⁶ a “decision” of the Health Service dated 30 July 2018 to suspend the applicant;⁷ and a “decision” of the acting chief executive of the Health Service dated 18 August 2023.⁸

The applicant’s interactions with the respondents

- [12] It assists to set out a chronology of the various occasions on which the applicant engaged with the respondents and a brief description of what the engagements related to.
- [13] In 2014 the applicant applied to the College for a specialist assessment in respiratory medicine. Around December 2014 the College assessed the applicant as “substantially comparable” to an Australian-trained physician in respiratory medicine.
- [14] On 6 January 2015 the College informed the applicant eligibility for specialist recognition in respiratory medicine required the completion of 12 months’ practice under peer review in respiratory medicine, in order for the College to determine whether he was practicing at the level of a consultant physician.
- [15] On 19 June 2015 the applicant applied to the Medical Board for limited registration for postgraduate training or supervised practice as a medical practitioner pursuant to s 66 of the *Health Practitioner Regulation National Law (Queensland)*. On 29 July 2015 this application was deemed to be withdrawn pursuant to s 80(5) of the *Health Practitioner Regulation National Law (Queensland)* because the applicant failed to provide the Medical Board with all the required documents to process his application.
- [16] On 23 July 2017 the applicant applied again for limited registration for postgraduate training or supervised practice as a medical practitioner pursuant to s 66 of the *Health Practitioner Regulation National Law (Queensland)*.
- [17] From 30 October 2017 the applicant was employed by the Health Service in a position as a Staff Specialist at the Mackay Hospital. His employment was subject to a condition requiring proof of a comparability assessment with the outcome as “substantially comparable” or “partially comparable” from the College.
- [18] On 31 October 2017 the Medical Board approved the application for limited registration made on 23 July 2017.

⁴ Amended originating application paragraph 2(b)(ii).

⁵ Amended originating application paragraph 2(b)(iii).

⁶ Amended originating application paragraph 3(a)(ii) and paragraph 9(b). At paragraph 3(a)(ii) the date of the “decision” is wrongly described as “18 December 2018”.

⁷ Amended originating application paragraph 9(a).

⁸ Amended originating application paragraph 9(f).

- [19] On 17 November 2017 the applicant commenced practice under peer review at the Mackay Hospital.
- [20] On 15 June 2018 the Agency sent a renewal of registration form to the applicant.
- [21] On 6 July 2018 the overseas-trained practitioners' subcommittee of the College decided the applicant's progress under peer review in respiratory medicine was unsatisfactory. The subcommittee agreed that for the applicant to be eligible for specialist registration in respiratory medicine he needed to complete 12 months of "top up" training at an accredited specialist site, followed by 12 months' practice under peer review in respiratory medicine.
- [22] On 10 July 2018 the applicant sought reconsideration of the subcommittee's decision.
- [23] On 30 July 2018 the chief executive of the Health Service informed the applicant she was giving serious consideration about whether his employment as a Staff Specialist had become frustrated by operation of law because: the College had determined his comparability had changed and the College required him to complete 12 months "top up" training in respiratory medicine at a tertiary site accredited for that training followed by 12 months' practice under peer review; and the Mackay Hospital was not a tertiary training site accredited for advanced training in respiratory medicine. The chief executive gave the applicant seven days to show cause why his employment had not become frustrated. The chief executive informed him he was suspended from employment on full pay pursuant to s 137(1) of the *Public Service Act 2008* (Qld) (since repealed).
- [24] On 28 August 2018 the subcommittee of the College upheld its original decision of 6 July 2018.
- [25] On 3 October 2018 the applicant filed a notice of industrial dispute with the Queensland Industrial Relations Commission (QIRC).
- [26] On 10 October 2018 the applicant applied for a further reconsideration of the subcommittee's decision of 6 July 2018 and the reconsideration decision of 28 August 2018.
- [27] On 19 October 2018 the Agency emailed an electronic copy of a registration renewal form to the applicant.
- [28] On 16 November 2018 the Agency requested further information from the applicant about his application for renewal of limited registration for post graduate training or supervised practice pursuant to s 80(1)(b) of the *Health Practitioner Regulation National Law (Queensland)*.
- [29] On 5 December 2018 the College review committee affirmed the subcommittee's original decision and its reconsideration decision.
- [30] On 7 December 2018 the applicant and the Health Service entered into a deed of settlement arising out of the QIRC proceeding. Pursuant to the settlement the applicant agreed to discontinue his industrial dispute before the QIRC and to resign his employment with the Health Service effective 7 December 2018.

- [31] On 13 December 2018 the applicant advised the Agency and the Medical Board he did not intend to renew his registration at that time. That day, the Agency sent the applicant correspondence noting his withdrawal of the application for registration. The correspondence erroneously referred to 16 February 2018 as the date of the applicant's correspondence.
- [32] On 19 March 2019 the applicant requested the Agency issue a certificate of registration status (certificate of good standing). On 20 March 2019 the Agency issued a certificate of registration status.
- [33] On 8 May 2019 the applicant requested the Agency issue a certificate of registration status (certificate of good standing). On 20 May 2019 a certificate of registration status was issued by the Agency.
- [34] On 26 May 2022 the applicant applied for provisional registration under part 7 division 3 of the *Health Practitioner Regulation National Law (Queensland)*. On 14 June 2022 the applicant was advised he was ineligible for assessment as a new graduate because the qualification he provided was not an approved program of study. On 21 June 2022 the applicant withdrew the application made on 26 May 2022.
- [35] On 31 August 2022 the applicant commenced proceedings in the Queensland Civil and Administrative Tribunal (QCAT) against the College and the Agency. On 11 October 2022 this proceeding was dismissed by QCAT.
- [36] On 26 October 2022 the applicant applied for general and/or specialist recognition for a current non-practising registrant pursuant to part 7 division 6 of the *Health Practitioner Regulation National Law (Queensland)*. On 10 November 2022 the applicant withdrew this application.
- [37] On 10 November 2022 the applicant applied for provisional registration pursuant to part 7 division 6 of the *Health Practitioner Regulation National Law (Queensland)*.
- [38] On 1 December 2022 the Medical Board informed the applicant he was not eligible for provisional registration. On 1 December 2022 the applicant withdrew the application for provisional registration which had been made on 10 November 2022.
- [39] On 7 May 2023 the applicant requested the issue of a certificate of registration status (certificate of good standing). On 18 May 2023 the Agency did not issue the certificate because the application included an invalid credit card number which prevented the Agency from taking a payment for the issue of the certificate.
- [40] On 7 June 2023 the applicant requested the issue of a certificate of registration status (certificate of good standing). On 9 June 2023 the Agency issued a certificate of registration status.
- [41] On 20 June 2023 the applicant applied for specialist registration for applicants who did not hold general registration pursuant to part 7 division 6 of the *Health Practitioner Regulation National Law (Queensland)*.
- [42] On 27 June 2023 the applicant requested a certificate of registration status (certificate of good standing). On 29 June 2023 the Agency issued a certificate of registration status.

- [43] On 7 July 2023 the Agency issued the applicant a notice to provide further information about his application made on 20 June 2023 pursuant to s 80(1)(b) of the *Health Practitioner Regulation National Law (Queensland)*.
- [44] On 7 July 2023 the applicant filed an application in the QIRC against the Agency and the College. On 13 July 2023 an order was made in the QIRC discontinuing that application.
- [45] On 24 July 2023 the application made on 20 June 2023 was deemed to be withdrawn pursuant to s 80(5) of the *Health Practitioner Regulation National Law (Queensland)*.
- [46] On 27 July 2023 the applicant requested a certificate of registration status (certificate of good standing). On 9 August 2023 the Agency issued a certificate of registration status.
- [47] On 18 August 2023 the acting chief executive of the Health Service wrote a letter to the applicant.
- [48] On 5 September 2023 the applicant applied to QCAT to re-open the decision of 11 October 2022. On 17 November 2023 QCAT dismissed the re-opening application.
- [49] On 28 November 2023 the applicant applied for specialist registration and a certificate of registration status (certificate of good standing). On 4 December 2023 the Agency issued a certificate of registration status.
- [50] On 19 December 2023 the application for specialist registration made on 28 November 2023 was deemed to be withdrawn pursuant to s 80(5) of the *Health Practitioner Regulation National Law (Queensland)* because no payment was received from the applicant.
- [51] On 17 October 2024 the applicant filed an originating application and statement of claim in the Federal Court of Australia against the College, the Agency and the Health Service. On 11 April 2025 the Federal Court gave judgment for the respondents.⁹
- [52] On 17 June 2025 the applicant filed an interlocutory application and an application for an extension of time within which to appeal to the Full Court of the Federal Court. On 26 June 2025 both of these applications were dismissed.¹⁰
- [53] On 24 July 2025 the applicant filed the originating application in this proceeding.
- [54] On 19 November 2025 this Court made an order requiring the applicant to file an amended originating application which clearly identified, among other things, the specific decisions he sought to have reviewed under the *Judicial Review Act*.

⁹ *Lal v Royal Australasian College of Physicians* [2025] FCA 348

¹⁰ *Lal v Royal Australasian College of Physicians* [2025] FCA 673

[55] Section 48 of the *Judicial Review Act* provides:

“48 Power of the court to stay or dismiss applications in certain circumstances

- (1) The court may stay or dismiss an application under section 20, 21, 22 or 43 or a claim for relief in such an application, if the court considers that—
 - (a) it would be inappropriate—
 - (i) for proceedings in relation to the application or claim to be continued; or
 - (ii) to grant the application or claim; or
 - (b) no reasonable basis for the application or claim is disclosed; or
 - (c) the application or claim is frivolous or vexatious; or
 - (d) the application or claim is an abuse of the process of the court.
- (2) A power of the court under this section—
 - (a) must be exercised by order; and
 - (b) may be exercised at any time in the relevant proceeding but, in relation to the power to dismiss an application, the court must try to ensure that any exercise of the power happens at the earliest appropriate time.
- (3) The court may make an order under this section—
 - (a) of its own motion; or
 - (b) on an application by a party to the proceeding.
- (4) The court may receive evidence on the hearing of an application for an order under this section.
- (5) An appeal may be brought from an order under this section only with the leave of the Court of Appeal.”

[56] In *Brisbane City Child Care Pty Ltd v Kadell* the Court of Appeal said:¹¹

“These authorities suggest that the circumstances in which the power should be exercised to dismiss summarily an application under the Act on the ground set out in s 48(1)(a) should not be read down by reference to paras (b), (c) and (d) of s 48(1). Instead s 48(1)(a) should operate fully according to its terms which makes it subject only to the constraint that the inappropriateness relates either to the continuation of the proceeding or the granting of the application. Paragraphs (b), (c) and (d) of s 48(1) are more likely to apply where there is unlikely

¹¹ (2020) 5 QR 367 at [55].

to be any error demonstrated on the part of the decision-maker, although lack of any error is not an essential pre-condition to the application of those paragraphs. Because of the breadth of the power under s 48(1)(a), that provision is not confined to cases where error is demonstrated. The authorities show that s 48(1)(a) can be used, however, even if error on the part of the decision-maker could be shown, where there is good reason for otherwise not allowing the proceeding to continue or not granting the relief sought. That may include that no practical consequences would flow from the outcome or there is an alternative practicable or preferable means for addressing an applicant's complaint which may not fall strictly within s 12 or s 13 of the Act. As the granting of any relief in respect of an application for judicial review is discretionary, it may be that where the Court foresees that in a particular case it would exercise the discretion to refuse the relief, that may also be an appropriate case for summary dismissal under s 48(1)(a). The test of 'inappropriate' makes the power under s 48(1)(a) 'a broad one'. It is not necessary for the purpose of this application to identify all the categories of cases to which it could apply. It is sufficient to say that it will include the category of case where there may have been an error, but the circumstances in which the decision was made and/or the subsequent events or the circumstances of the parties' ongoing relationship do not warrant addressing in a proceeding under the Act whether there was error by the decision-maker."

The application for dismissal by the College

[57] The College submitted that none of the decisions it made concerning the applicant are amenable to judicial review. The College also submitted the application should be dismissed because it was frivolous and vexatious¹² as the present proceeding was the fourth occasion the College had been required to respond to a proceeding connected with decisions concerning the applicant.

[58] As against the College the applicant sought:

- Judicial review of decisions made (including failures to make decisions) by the College between 2015 and 2025 concerning the applicant's registration, supervision, credentialing, assessment, accreditation, peer review, eligibility for independent practice and eligibility for specialist registration.¹³
- A declaration the statutory assessment and accreditation processes applied to him between 2015 and 2025 were procedurally defective, infected by inconsistent factual foundations advanced across QCAT, the Federal Court and internal College processes.¹⁴
- A declaration the College's contradictory statutory characterisation (*QCAT v Federal Court*) materially undermined the regulatory process applied to the applicant.¹⁵

¹² *Judicial Review Act* s 48(1)(c).

¹³ Amended originating application paragraph 2(b)(i).

¹⁴ Amended originating application paragraph 2(c)(i).

¹⁵ Amended originating application paragraph 2(c)(ii).

- Judicial review of the College’s decisions relating to his specialist pathway, peer review outcome, assessment requirements and ongoing recognition of overseas training.¹⁶
- Judicial review of the inconsistent statutory characterisation of the College’s regulatory role in QCAT and the Federal Court.¹⁷
- Judicial review of the failure to correctly apply standards governing overseas-trained position and training pathways.
- Judicial review of any decisions or failure to decide that materially affected determinations of the authority or the board.¹⁸
- Judicial review due to judicial error because decisions were made on the basis of incorrect statutory characterisations of the College’s role (*QCAT v The Federal Court*) resulting in a misunderstanding of the limits of jurisdiction.¹⁹
- Judicial review of decisions and representations of the College concerning the applicant’s specialist assessment pathway, peer review requirements, accreditation-related functions and the positions advanced in QCAT and the Federal Court that materially affected the regulatory outcomes.²⁰
- Judicial review of the decision of the College, as reflected in its position in QCAT proceedings, to assert it had no relevant statutory or accreditation role in the applicant’s assessment and its contradictory later position in its Federal Court affidavit sworn on 27 February 2025 which materially affected regulatory outcomes and constituted inconsistent, unreliable and procedurally unfair conduct.²¹
- Judicial review of any ongoing failure or refusal by the College to make a required decision relating to the applicant’s supervised practice, credentialing, assessment or registration despite statutory duties to act within a reasonable time.²²

[59] The College submitted the amended originating application was unclear and imprecise about the decisions the applicant sought to have reviewed. This submission is clearly correct. The amended originating application failed to identify the date or dates of any decisions made by the College beyond decisions made between 2015 and 2025.

[60] However, the College submitted the amended originating application should be understood as an application to review “decisions” it made in 2018 relating to determining the level of the applicant’s comparability to an Australian-trained specialist in the field of respiratory medicine. Further, the amended originating application should be understood to seek review of submissions the College made in proceedings commenced against it in both QCAT and the Federal Court. Neither the

¹⁶ Amended originating application paragraph 3(c)(i).

¹⁷ Amended originating application paragraph 3(c)(ii).

¹⁸ Amended originating application paragraph 3(c)(iv).

¹⁹ Amended originating application paragraph 4(a)(ii).

²⁰ Amended originating application paragraph 7(c).

²¹ Amended originating application paragraph 9(d).

²² Amended originating application paragraph 9(e).

2018 “decisions” nor the submissions are amenable to judicial review because they were not decisions made or required to be made under an enactment.²³

- [61] Relevant to a determination of the College’s application for dismissal are the following matters.
- [62] The College is a public company. It is a specialist medical college. It is accredited by the Australian Medical Council.²⁴ The Medical Board determines whether an accreditation function for the health profession for which the Medical Board is established is to be exercised by an external accreditation entity or a committee established by the Medical Board.²⁵ The Medical Board decided an accreditation function was to be performed by the College.
- [63] Standards for the assessment and accreditation of specialist medical programs are published by the Australian Medical Council. Standard 10 concerned the assessment of overseas-trained practitioners. It provided that the Medical Board had decided the examination or assessment of overseas-trained practitioners would be undertaken by specialist medical colleges accredited by the Australian Medical Council. The standard said the Medical Board “relies on these assessments to make decisions about whether to grant registration” to overseas-trained practitioners.
- [64] The Medical Board had guidelines to support accreditation entities, such as the College, in their role of assessing overseas-trained practitioners for comparability to an Australian-trained specialist in the same field of speciality.
- [65] The pathway for overseas-trained practitioners who sought to qualify for specialist medical registration in Australia required an overseas-trained practitioner to be assessed as “comparable”, “substantially comparable” or “partially comparable” to an Australian-trained specialist in the same field of practice. An overseas-trained practitioner assessed as substantially comparable might be required to undertake a period of up to 12 months’ practice under peer review by reviewers approved by the College. If the College assessed the overseas-trained practitioner required more than 12 months of peer review to ensure their level of performance was similar to that of an Australian-trained specialist then the overseas-trained practitioner might not be assessed as substantially comparable. In this circumstance, the overseas-trained practitioner was to be assessed either as partially comparable or not comparable. Overseas-trained practitioners assessed as partially comparable would be required to undertake upskilling with assessment under supervision. If more than 24 months of upskilling was required to reach the level of performance of an Australian-trained specialist, the overseas-trained practitioner was to be assessed as not comparable. If the overseas-trained practitioner was assessed as partially comparable or substantially comparable, the College would define the further requirements that needed to be met before “recommending” to the Medical Board that the overseas-trained practitioner be granted recognition as a specialist. The period of peer review was to enable the College to confirm or modify its interim assessment of comparability and make a final assessment about whether to recommend the overseas-trained practitioner be granted recognition as a specialist.

²³ *Judicial Review Act* s 4(a).

²⁴ *Health Practitioner Regulation National Law (Queensland)* s 48.

²⁵ *Health Practitioner Regulation National Law (Queensland)* s 43.

- [66] After an overseas-trained practitioner completed the additional requirements specified by the College, the College would confirm whether its recommendation was that the overseas-trained practitioner be granted recognition as a specialist, or be granted recognition as a specialist in a limited scope, or that the overseas-trained practitioner was considered not comparable and the reasons for that. In the event that an overseas-trained practitioner withdrew from completing the additional requirements the College was to inform the Medical Board of this. While completing the requirements specified by the College an applicant could apply for limited registration or provisional registration. A decision to grant registration was “a Board decision”.
- [67] The Medical Board required an accreditation entity to have an established appeals process for the specialist pathway. The College had a by-law for reconsideration, review and appeals. The version of the by-law applicable to assessments of overseas-trained practitioners was the version as amended to 10 February 2017. It provided for three stages in an internal process – reconsideration (by the same body that made the decision), review (by the body that oversaw the body that made the decision) and appeal (to an appeals committee). By clause 1.3 of the by-law each of these stages involved a review on the merits, reassessment of all the facts and circumstances, and the making of a new determination.
- [68] An application for registration was to be made to the Medical Board.²⁶ The Medical Board had to consider the application for registration and: grant the applicant the type of registration applied for if the applicant was eligible for that type of registration; grant the applicant a type of registration other than the type of registration applied for, for which the applicant was eligible; or, decide to refuse to grant the applicant registration if the applicant was considered by the Medical Board to be ineligible for registration or if it would be improper to register the applicant.²⁷
- [69] In 2014 the applicant applied to the College for a specialist assessment in respiratory medicine. In around December 2014 the College assessed him as substantially comparable to an Australian-trained physician in respiratory medicine.
- [70] On 6 January 2015 the College informed the applicant he had been assessed as substantially comparable to an Australian-trained physician in respiratory medicine. At that time he was also informed that, in order to be eligible for specialist recognition in respiratory medicine, the College subcommittee required him to complete 12 months’ practice under peer review in respiratory medicine so that it might determine whether he was practicing at the level of a consultant physician.
- [71] After the applicant commenced practice under peer review at the Mackay Hospital, the peer reviewers were required to report on his progress at three, six and nine months’ intervals.
- [72] After the provision of the peer reviewers’ six months reports on 26 June 2018, the College overseas-trained practitioners subcommittee determined the applicant’s progress under peer review in respiratory medicine had been unsatisfactory. On 6 July 2018 the College informed the applicant his progress under peer review had been unsatisfactory and that due to the significant concerns reported by the peer reviewers

²⁶ *Health Practitioner Regulation National Law (Queensland)* s 77(1).

²⁷ *Health Practitioner Regulation National Law (Queensland)* s 82(1).

in a number of key areas of specialist practice, a further period of peer review was unlikely to allow him to obtain the required standard for independent specialist practice in Australia. However, he was informed the subcommittee considered he was partially comparable to an Australian-trained physician in respiratory medicine. To be eligible for specialist recognition the subcommittee required him to complete 12 months of top up training in respiratory medicine at a tertiary site accredited for advanced training in respiratory medicine. Following satisfactory completion of top up training, the applicant was required to complete a period of 12 months' practice under peer review in respiratory medicine to determine if he was practicing at the level of an Australian-trained physician. The applicant was informed he had two years from the date of the notification to commence his specialist assessment requirements.

- [73] On 10 July 2018 the applicant applied to the College for a review of this determination.
- [74] On 28 August 2018 the overseas-trained practitioners subcommittee considered his application for review. It also considered the three and six months peer reviews and some feedback that had been provided by another doctor, apparently favourable to the applicant. The subcommittee upheld its original determination. The applicant was advised of the outcome on 19 September 2018.
- [75] On 10 October 2018 the applicant applied to the College for a review of both the original determination and the reconsideration determination. This application was considered by the review committee on 5 November 2018. It affirmed the original and reconsideration determinations of the overseas-trained practitioners' subcommittee. The applicant was informed of this outcome on 5 December 2018. He was then informed his progress under peer review in respiratory medicine was unsatisfactory and his performance during the six months of practice under peer review was below the level of an Australian-trained specialist. He was informed he was required to undertake the 12 months of top up training in respiratory medicine at a tertiary site accredited for advanced training in that discipline. Upon satisfactory completion of the 12 months' top up training he was required to undertake a further 12 months of practice under peer review in respiratory medicine.
- [76] On 22 May 2020 the College sent an email to the applicant informing him the College intended to provide a 12 months' extension of time for the applicant to commence top up training in view of the impact of COVID-19.
- [77] The applicant did not complete the top up training by the required dates, or at all.

Why with respect to the College the amended originating application should be dismissed

- [78] The amended originating application should be dismissed in so far as it concerns the College because no reasonable basis for the application is disclosed and it would be inappropriate for the application to continue.
- [79] A person aggrieved by a decision to which the *Judicial Review Act* applies may apply for a statutory order of review in relation to that decision.²⁸ A decision to which the

²⁸ *Judicial Review Act* s 20(1).

Act applies means, relevantly, “a decision of an administrative character made, or proposed to be made, or required to be made, under an enactment ...”.²⁹

[80] Whether a decision is made under an enactment:

“... involves two criteria: first, the decision must be expressly or impliedly required or authorised by the enactment; and secondly, the decision must itself confer, alter or otherwise affect legal rights or obligations, and in that sense the decision must derive from the enactment. A decision will only be ‘made ... under an enactment’ if both these criteria are met.”³⁰

[81] On 5 January 2015 the applicant was assessed as substantially comparable to an Australian-trained physician in respiratory medicine. The determinations made on 26 June 2018, 28 August 2018 and 5 November 2018, which arguably imposed additional requirements on the applicant if he was to achieve specialist recognition, were not decisions made, or required to be made, under an enactment. They were all determinations made in accordance with the College’s by-laws. The by-laws were the College’s own by-laws. The by-laws were not made under the *Health Practitioner Regulation National Law (Queensland)*. They were not statutory instruments for the purposes of the *Health Practitioner Regulation National Law (Queensland)*.³¹ To the extent the *Health Practitioner Regulation National Law (Queensland)* made provision for overseas-trained practitioners,³² no provision conferred a power to make decisions or determinations about comparability between overseas-trained practitioners and Australian-trained practitioners. Determinations about comparability were not either expressly or impliedly required or authorised by the *Health Practitioner Regulation National Law (Queensland)*. The Medical Board made decisions about registration. The College made recommendations. The College did not make any recommendation to the Medical Board about the applicant subsequent to January 2015 because the applicant did not complete the training the College required.

[82] The College made no decisions about the placement of the applicant at a hospital, nor did it make decisions about his employment or conditions of employment.

[83] Submissions to tribunals or courts are not decisions made under the *Health Practitioner Regulation National Law (Queensland)*. Submissions do not confer, alter or otherwise affect legal rights.³³ Submissions are arguments designed to persuade a decision-maker to a point of view. There is no reasonable basis for the application so far as it concerns submissions. To this extent it would also be inappropriate to allow the application to continue.

The application for dismissal by the Health Service

[84] The Health Service submitted it would be inappropriate for the amended originating application to continue against it because it was doomed to fail, disclosed no reasonable basis, was frivolous and vexatious and was an abuse of the process of the

²⁹ *Judicial Review Act* s 4(a).

³⁰ *Griffith University v Tang* (2005) 221 CLR 99 at [89].

³¹ *Health Practitioner Regulation National Law Act 2009 (Qld)* s 7(i).

³² *Health Practitioner Regulation National Law (Queensland)* ss 35(1), 57, 58, 77, 80 and 82.

³³ *Griffith University v Tang* (2005) 221 CLR 99 at [89].

Court. Also, the application was made many years outside the time frames specified in ss 26 and 46 of the *Judicial Review Act* and the applicant had not provided any adequate justification for the grant of such significant extensions of time.

[85] As against the Health Service, the applicant sought to review:

- Decisions made in 2017 to 2018 and thereafter relating to the applicant’s supervision, workplace credentialing, performance assessment and continuation of clinical duties.³⁴
- The failure to afford procedural fairness in connection with workplace assessments and peer review processes.³⁵
- Any administration finding or notation that adversely affected the Agency or the College decision making.³⁶
- Decisions and actions of the Health Service between 2017 and 2018 concerning the applicant’s supervision, credentialing, reporting and performance assessments.³⁷
- The decision(s) of the Health Service culminating in the applicant’s suspension on 30 July 2018 and the consequential regulatory outcomes.³⁸
- Any ongoing failure or refusal by the Health Service to make a required decision relating to the applicant’s supervised practice, credentialing, assessment, registration, despite statutory duties to act within a reasonable time.³⁹
- The decision of the acting chief executive of the Health Service, dated 18 August 2023, which reaffirmed and adopted the incorrect factual premises arising from the 2018 events, relied on inaccurate WRIG supervision records, misstated the applicant’s credentialing and registration history, and purported to finally determine matters outside the Health Service’s lawful authority; this decision was affected by jurisdictional error, legal unreasonableness, improper purpose, and reliance on facts that did not exist.⁴⁰

[86] Only two “decisions” of the Health Service were identified with any particularity in the amended originating application. One was the decision to suspend the applicant from employment on full pay on 30 July 2018, and the other was the “decision” of the acting chief executive of the Health Service contained in correspondence dated 18 August 2023.

[87] The applicant’s employment with the Health Service commenced on 30 October 2017. The offer of employment was “subject to the provision of a comparability assessment with the outcome as ‘substantially comparable’ or ‘partially comparable’ (supervision) from the Royal Australasian College of Physicians (RACP)”.

³⁴ Amended originating application paragraph 3(b)(i).

³⁵ Amended originating application paragraph 3(b)(ii).

³⁶ Amended originating application paragraph 3(b)(iii).

³⁷ Amended originating application paragraph 7(a).

³⁸ Amended originating application paragraph 9(a).

³⁹ Amended originating application paragraph 9(e).

⁴⁰ Amended originating application paragraph 9(f).

[88] On 30 July 2018 the chief executive of the Health Service wrote to the applicant. The relevant portions of the letter were as follows:

“As an Overseas Trained Physician, your employment with the Health Service was subject to the provision of proof of a comparability assessment by the Royal Australasian College of Physicians (RACP).

By letter dated 6 January 2015, the RACP advised you, relevantly, that:

- (a) the Overseas Trained Physicians Subcommittee, Adult Medicine Division had considered your application for specialist assessment of your overseas specialist qualifications, and had determined that you were ‘substantially comparable’ to an Australian trained Physician in Respiratory Medicine; and
- (b) in order to be eligible for specialist recognition in Respiratory Medicine, the Subcommittee required you to complete a period of 12 months’ practice under peer review (Peer Review) in Respiratory Medicine to determine if you are practicing at the level of a consultant physician.

As such the Medical Board of Australia, through the Australian Health Practitioner Regulation Agency, granted you limited registration for a period of twelve (12) months to practice under Peer Review in Respiratory Medicine.

Since the commencement of your employment with the Health Service, two Peer Reviews have been completed (sic) at three (3) monthly intervals, with the most recent review dated 29 May 2018 (for the period from 17 February 2018 to 26 May 2018).

Both Peer Reviews have identified that your work performance has been unsatisfactory.

By email dated 9 July 2018, the RACP wrote to Dr Somnath Sinha, Clinical Director Medicine, a copy of which is **attached**, relevantly advising that:

On 26 June 2018, the OTP Assessment Subcommittee reviewed Dr Lal’s progress under peer review in Respiratory Medicine. The Subcommittee have reviewed the three and six-month peer review reports. The Subcommittee determined that Dr Lal’s progress under peer review has been unsatisfactory to date and that, due to the significant concerns reported in the submitted peer review reports, a further period of peer review is unlikely to allow Dr Lal to obtain the required standard for independent specialist practice in Australia.

It is for this reason that the Subcommittee withdraws support for the period of peer review moving forward.

The Subcommittee did however agree that Dr Lal is partially comparable to an Australian trained physician in Respiratory

Medicine. To be eligible for specialist recognition, Dr Lal will be required to complete 12 months of top up training in respiratory medicine at a tertiary site accredited for advanced training followed by a period of 12 months of practice under peer review in respiratory medicine.

Accordingly, with the change in the RACP's comparability assessment of you from 'substantially comparable' to 'partially comparable', you are now required to complete 12 months of top up training in Respiratory Medicine at a tertiary site accredited for advanced training followed by a period of 12 months of practice under Peer Review in Respiratory Medicine.

As you would be aware the Health Service is not a tertiary training site accredited for advanced training in Respiratory Medicine.

Accordingly, as a result of the change in the RACP's comparability assessment of you, the Health Service is unable to meet the requirements that the RACP has imposed on you in relation to your supervision and training.

It is an inherent requirement of your position as a Staff Specialised (sic) that you can comply with any requirements imposed by the RACP to be eligible for specialist recognition.

Consideration of your ongoing employment

I am currently giving serious consideration as to whether your employment as a Staff Specialist with the Health Service has become frustrated, by operation of law, in circumstances where:

- the RACP has determined that your comparability assessment has changed;
- as a result of that change, you are required to complete 12 months of top up training in Respiratory Medicine at a tertiary site accredited for advanced training followed by a period of 12 months of practice under Peer Review in Respiratory Medicine; and
- the Health Service is not a tertiary training site accredited for advanced training in Respiratory Medicine.

Opportunity to respond

In accordance with the principles of natural justice, no determination has been made or will be made on whether your employment has become frustrated, by operation of law, until you have had the opportunity to respond.

Therefore, you are afforded a period of **seven (7) calendar days** from the receipt of this letter to show cause why your employment as a Staff Specialist has not become frustrated, by operation of law, as a result of the above events.

...

Suspension from duty

Section 137(1) of the *Public Service Act 2008* (the Act) provides an employee may be suspended from duty if the chief executive reasonably believes the proper and efficient management of the department might be prejudiced if the employee is not suspended,

Whilst this process is underway, accordingly, pursuant to section 137(1) of the Act, I have decided to **suspend you from duty on full pay**, effective immediately.

...

Section 137(5) of the Act provides during the period of the suspension the employee is entitled to normal pay less any amount earned by the employee from alternative employment the employee engages in during the period.”

- [89] From this letter it can be seen that the College had determined the applicant needed to undertake a further 12 months’ training at a tertiary hospital to achieve specialist recognition, however, the Mackay Hospital was not a tertiary hospital. The applicant was given an opportunity to show why his contract of employment should not be treated as frustrated. Pending him doing so he was suspended from duty but on full pay from 30 July 2018.
- [90] On 17 August 2018 the applicant’s lawyers advised the Health Service the applicant had applied to the College for a reconsideration of its determination. His lawyers asserted there was a reasonable prospect the College would reconsider the determination and the chief executive was requested to await the outcome of the reconsideration process before taking further action. The applicant’s lawyers also disputed the proposition the contract of employment may have been frustrated. On 28 August 2018 the chief executive agreed to defer any determination until the College had completed its review.
- [91] On 3 October 2018 the applicant filed a notice of industrial dispute with the QIRC. The notice of industrial dispute identified the matter in dispute as whether the Health Service had breached the applicant’s contract of employment. The applicant was represented in the QIRC proceeding.
- [92] On 7 December 2018 the applicant and the Health Service settled the QIRC proceeding. The terms of the settlement were the subject of a deed. Pursuant to clause 2.1 of the deed the applicant agreed to resign his employment effective 7 December 2018 and the Health Service agreed to accept that resignation. Pursuant to clause 9.1 of the deed the applicant and the Health Service acknowledged they had obtained or had had the opportunity to obtain independent legal advice in relation to the terms and conditions set out in the deed.
- [93] The correspondence dated 18 August 2023 was as follows:

“I have formed the preliminary view that you have engaged in the following unreasonable behaviour:

1. On 22 May 2019 you made a complaint to the Ethical Standards unit of Queensland Health regarding the Department of Medicine, Mackay Base Hospital
2. October 2019 complaint to the Fair Work Commission for unfair dismissal
3. On 18 February 2020 you raised concerns with the Office of the Premier of Queensland regarding peer review approval from RACP
4. On 10 and 29 July 2020 you emailed Jo Whitehead, Health Service Chief Executive Mackay Hospital and Health Service demanding restoration of your job or payment of legal fees.
5. On 7 July 2023 an application was filed by you in the Queensland Industrial Relations Commission in which Mackay Hospital and Health Service was named as a respondent. The outcome was this application was withdrawn by you.
6. On 3 August 2023 you emailed Ms Sharyn O'Mahoney regarding AHPRA Registration Statue (sic) asking for reinstatement to your role.
7. On 15 August 2023 you again emailed Ms O'Mahoney requesting a rescindment of the Deed of contract.

Further, I have formed the preliminary view that this unreasonable behaviour:

- has consumed a disproportionate number of resources and unreasonably interfered with the Health Services ability to provide services to other members of the public, and if it persists, will continue to do so.

Because of this I have formed the preliminary view that it is necessary to place the following restrictions on how you communicate with this Office:

- any communications regarding rescindment of the Deed and/or reinstatement to a role with Mackay Hospital and Health Service are to cease as these issues have been dealt with in numerous previous processes.

I invite you to provide submissions about: whether you have engaged in the alleged unreasonable behaviour described above; and

why you should not be subject to the communication restrictions set out above. Any submissions should be addressed to ... by 30 August 2023.

When I have received your submissions, I will make a final decision about whether you behaved unreasonably and whether the communication restrictions should continue. If you do not make submissions, I will make a final decision without them.”

Why with respect to the Health Service the amended originating application should be dismissed

- [94] It is inappropriate to allow an application to review the decision of 30 July 2018 to continue. Even if a reviewable error could be shown, an order setting aside the decisions to require the applicant to show cause and to suspend him on full pay⁴¹ would have no practical effect because the applicant resigned his employment with the Health Service in December 2018. The resignation was not the result of any administrative decision of the Health Service. It is inappropriate to allow the amended originating application to continue in relation to any other “decisions” connected with the applicant’s employment. Orders to set aside any other “decisions” made by the Health Service in 2017 to 2018, which have not been identified with any particularity, would similarly have no practical effect in view of the resignation.
- [95] The applicant was not an employee of the Health Service when the correspondence of 18 August 2023 was sent. The applicant was invited to make submissions about why he should not be required to desist from sending communications about particular issues on the basis he had engaged with the Health Service in a way which was considered unreasonable. The correspondence was not a decision of an administrative character made under an enactment. It did not create, alter or affect legal rights or obligations. The applicant was not obliged to comply with any requirement to cease particular communications. He was not obliged to reply to the acting chief executive. The correspondence did not, as the applicant submits, reaffirm any earlier decisions. There is no utility in permitting a proceeding to continue in relation to this communication. The writer conveyed a preliminary view. It does not evidence any decision at all. For these reasons it is inappropriate to allow the amended originating application to continue in relation to this correspondence. The amended originating application should also be dismissed because no reasonable basis is apparent for the application so far as it concerns this correspondence.

The application for dismissal by the Agency and the Medical Board

- [96] The Agency and the Medical Board submitted it would be inappropriate for the amended originating application to continue as it was doomed to fail, disclosed no reasonable basis, was frivolous or vexatious and was an abuse of the process of the Court. It was submitted it was also inappropriate for the amended originating application to continue in circumstances where it was not made within time as required by ss 26 or 46 of the *Judicial Review Act* and no adequate justification had been provided for a grant of extensions of time.
- [97] The Agency and the Medical Board identified 15 applications made by the applicant. A range of outcomes flowed from these applications. The Agency and the Medical Board suggested these outcomes might be described as “decisions”, however, they did not concede that a “decision” to which the *Judicial Review Act* applied was made in relation to any of the outcomes.
- [98] The object of the *Health Practitioner Regulation National Law (Queensland)* is to establish a national registration and accreditation system for the regulation of health practitioners and the registration of students undertaking programs of study that

⁴¹ *Public Service Act 2008* s 137, and decisions suspending an employee from duty on full pay were excluded from the obligation to accord natural justice, s 137(10).

provide a qualification for registration in a health profession or clinical training in a health profession.⁴² The objectives of the national registration and accreditation scheme include to provide for the protection of the public by ensuring only health practitioners who are suitably trained and qualified to practice in a competent and ethical manner are registered, and to facilitate the rigorous and responsive treatment of overseas-trained health practitioners.⁴³

- [99] The functions of the Agency (the Australian Health Practitioner Regulation Agency)⁴⁴ include providing administrative assistance and support to National Boards, establishing and administering an efficient procedure for receiving and dealing with applications for registration as a health practitioner and other matters relating to the registration of health practitioners and, in conjunction with the National Boards, keeping up to date and publicly accessible national registers of registered health practitioners for each health profession.⁴⁵
- [100] Regulations must provide for a National Health Practitioner Board for each health profession.⁴⁶ The National Boards for the health professions are set out in regulation 4 of the *Health Practitioner Regulation National Law Regulation 2018* (Qld). This regulation provides for the Medical Board.
- [101] The functions of a body such as the Medical Board include to register suitably qualified and competent persons in the health profession and, if necessary, to impose conditions on the registration of persons in the health profession, to decide the requirements for registration, or endorsement of registration in a health profession, including the arrangements for supervised practice in the profession and to oversee the assessment of the knowledge and clinical skills of overseas-trained applicants for registration in the health profession whose qualifications are not approved qualifications for the profession, and to determine the suitability of such applicants for registration in Australia.⁴⁷ The Medical Board also has the function of developing, or approving standards, codes and guidelines for the health profession.⁴⁸
- [102] Thus it can be seen that the Medical Board is the statutory body which decides whether an applicant for registration is to become registered while the Agency assists the board in matters such as registration.
- [103] Decision 1 concerned the outcome of an application filed on 19 June 2015 for limited registration for post graduate training or supervised practice as a medical practitioner. On 29 June 2015 the Agency issued a written notice to the applicant pursuant to s 80(1)(b) of the *Health Practitioner Regulation National Law (Queensland)*. The Agency required the applicant to provide: certificates of registration status from every jurisdiction in which he had been registered in the previous 10 years; a position description for any proposed position; a supervised practice plan for the proposed position; that his proposed employer complete Part C on his application form; and, evidence of approval of his proposed position from the relevant Australian Specialist College. The Agency required this information by no later than 24 July 2015. On

⁴² *Health Practitioner Regulation National Law (Queensland)* s 3(1).

⁴³ *Health Practitioner Regulation National Law (Queensland)* s 3(2)(a) and (d).

⁴⁴ Established pursuant to *Health Practitioner Regulation National Law (Queensland)* s 23.

⁴⁵ *Health Practitioner Regulation National Law (Queensland)* s 25(a), (e) and (f).

⁴⁶ *Health Practitioner Regulation National Law (Queensland)* s 31(1).

⁴⁷ *Health Practitioner Regulation National Law (Queensland)* s 35(1)(a), (b) and (e).

⁴⁸ *Health Practitioner Regulation National Law (Queensland)* s 35(1)(c).

29 July 2015 that application was deemed to be withdrawn pursuant to s 80(5) of the *Health Practitioner Regulation National Law (Queensland)* because the applicant failed to provide the Medical Board with all of the requested documents or information necessary to process the application.

- [104] Decision 2 concerned the outcome of an application filed on 23 July 2017 for limited registration for post graduate training or supervised practice as a medical practitioner. On 31 October 2017 the Medical Board approved the application for registration.
- [105] Decision 3 concerned the outcome of an “application” for annual renewal of limited registration as a health practitioner. The renewal forms were posted to the applicant by the Agency on 15 June 2018 and an electronic copy was emailed to him on 19 October 2018. The Medical Board sought further information from the applicant on 16 November 2018. On 13 December 2018 the applicant sent an email to the Agency which stated that he had decided to return to India, “hence I do not intend to renew my registration with AHPRA further at present time”. On the same day the Agency sent an email to the applicant concerning the application for renewal of limited registration. An attached letter, dated 13 December 2018, acknowledged the withdrawal of the application for registration; however, the letter erroneously referred to the email as one dated 16 February 2018.
- [106] Decision 4 concerned the outcome of a request made on 19 March 2019 for a certification of registration status (certificate of good standing). On 20 March 2019 the Agency issued a certificate of registration status.
- [107] Decision 5 concerned the outcome of a request made on 8 May 2019 for a certificate of registration status (certificate of good standing). On 20 May 2019 the Agency issued a certificate of registration status.
- [108] Decision 6 concerned the outcome of an application made on 26 May 2022 for provisional registration as a student completing an approved program of study. On 14 June 2022 the applicant was informed by the Agency he was ineligible for assessment as a new graduate as the qualification he provided was not an approved program of study. The email said “Therefore, I would like to encourage you to withdraw your application, as I am unable to assess it”. On 21 June 2022 the applicant sent an email to the Agency which stated, “I confirm my withdrawal of registration”.
- [109] Decision 7 concerned the outcome of an application made on 26 October 2022 for general and/or specialist registration for a current non-practising registrant. On 10 November 2022 the applicant withdrew his application which the Medical Board confirmed on 23 November 2022.
- [110] Decision 8 concerned the outcome of an application made on 10 November 2022 for provisional registration. On 1 December 2022 the Medical Board advised the applicant he was not eligible for provisional registration. He withdrew the application that day.
- [111] Decision 9 concerned the outcome of an application made on 7 May 2023 for the issue of a certificate of registration status (certificate of good standing). On 18 May 2023 the Agency decided not to issue the certificate due to the provision of invalid credit card details for payment of the certificate.

- [112] Decision 10 concerned the outcome of an application made on 7 June 2023 for the issue of a certificate of registration status (certificate of good standing). On 9 June 2023 the Agency issued the certificate.
- [113] Decision 11 concerned the outcome of an application made on 20 June 2023 for specialist registration by an applicant who did not hold general registration. On 7 July 2023 the Agency issued a notice to the applicant to provide further information pursuant to s 80(1)(b) of the *Health Practitioner Regulation National Law (Queensland)*. The notice informed the applicant his application was incomplete. The applicant was asked to provide: certified evidence that he held fellowship with the Royal Australasian College of Physicians; clarify whether he had identified all the countries he had lived in or been primarily based in for six consecutive months or longer since aged 18; provide criminal history checks from police authorities in India and Saudi Arabia; provide certificates of good standing from every jurisdiction, outside Australia, in which he was then or previously registered in the preceding 10 years; and, confirmation of his last period of practice. The Agency required the information by no later than 21 July 2023. On 24 July 2023 the application was deemed to be withdrawn pursuant to s 80(5) of the *Health Practitioner Regulation National Law (Queensland)*.
- [114] Decision 12 concerned the outcome of an application made on 27 June 2023 for a certificate of registration status (certificate of good standing). On 29 June 2023 the Agency issued a certificate.
- [115] Decision 13 concerned the outcome of an application made on 27 July 2023 for a certificate of registration status (certificate of good standing). On 9 August 2023 the Agency issued the certificate.
- [116] Decision 14 concerned the outcome of an application made on 28 November 2023 for a certificate of registration status (certificate of good standing). On 4 December 2023 the Agency issued a certificate.
- [117] Decision 15 concerned the outcome of an application made on 28 November 2023 for specialist registration. An application for registration had to be accompanied by the relevant fee.⁴⁹ On 5 December 2023 the Agency wrote to the applicant and informed him that if he wished to continue with his application he had to pay the required fee of \$2495.00 by 15 December 2023. He was also advised that it was “extremely unlikely” that he would be granted specialist registration because he did not have a fellowship with an Australasian college. On 19 December 2023 the application was deemed to be withdrawn pursuant to s 80(5) of the *Health Practitioner Regulation National Law (Queensland)* because no payment was received from the applicant and he did not otherwise respond to the Medical Board.

Why with respect to the Agency and the Medical Board the amended originating application should be dismissed

- [118] It is inappropriate for the amended originating application to continue in relation to designated Decision 2, a decision of the Medical Board of 31 October 2017 to approve the applicant’s application for limited registration. The applicant obtained what he

⁴⁹ *Health Practitioner Regulation National Law (Queensland)* s 77(2)(b).

sought. The applicant's interests were not adversely affected by this decision. He is not a person aggrieved by this decision.⁵⁰

- [119] The certificates of registration status (designated Decisions 4, 5, 9, 10, 12, 13 and 14), provided the applicant with the certificates he sought, except on one occasion (Decision 9). Provision of the six certificates of registration status did not constitute decisions of an administrative character made under an enactment. The certificates just set forth the applicant's registration status as at the date each was issued. They described the category of registration, the applicant's qualifications and certified there were no disciplinary proceedings on foot or contemplated. The certificates did not confer, alter or otherwise affect his legal rights or obligations.⁵¹ They were not final or operative or determinative.⁵²
- [120] On 18 May 2023 the Agency advised the applicant (designated Decision 9) it had not issued the certificate sought to be forwarded to an entity based in Philadelphia, Pennsylvania, because the applicant had not provided payment details enabling the Agency to invoice him for the certificate. He was invited to make a further application. On 27 June 2023 the applicant made another application for the issue of a certificate of registration addressed to the entity based in Pennsylvania. On 29 June 2023 the Agency issued the certificate as requested (designated Decision 12).
- [121] It is inappropriate for the amended application to continue in relation to the certificates of registration. The applicant lacks standing to review these decisions under Part 3 of the *Judicial Review Act* because he obtained the certificates he applied for. His interests were not adversely affected by the decisions to issue the certificates. He is not a person aggrieved by the decisions to issue the certificates.⁵³ The applicant did not identify any error attending the issuing of the certificates.
- [122] The applicant's election not to pursue annual renewal of registration as a health practitioner (designated Decision 3) and his withdrawal of applications for various forms of registration (designated Decisions 6, 7 and 8) were not decisions of an administrative character made under an enactment. They were actions or decisions of the applicant. There is no reasonable basis for the amended application in relation to these decisions.
- [123] Before deciding an application for registration the Medical Board could, by written notice given to an applicant, require him or her to give the Medical Board, within a reasonable time stated in the notice, further information it reasonably required to decide an application.⁵⁴ Notices were given to the applicant requesting further information about his applications for limited registration for post graduate training or supervised practice and for specialist registration. The applicant did not comply with the notices. Pursuant to s 80(5) of the *Health Practitioner Regulation National Law (Queensland)* the applicant was "taken to have withdrawn the application if, within the stated time, the applicant does not comply with a requirement under subsection (1)". The Medical Board therefore made no decisions not to grant the registrations sought. By s 80(5), the applicant was deemed to have withdrawn the

⁵⁰ *Judicial Review Act* s 7

⁵¹ *Griffith University v Tang* (2005) 221 CLR 99 at [89].

⁵² *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 at 337.

⁵³ *Judicial Review Act* s 7.

⁵⁴ *Health Practitioner Regulation National Law (Queensland)* s 80(1)(b).

applications for registration. The outcomes (designated Decisions 1, 11 and 15) were not decisions of an administrative character made under an enactment. There is no reasonable basis for the amended application in relation to these outcomes.

[124] No basis has been identified in the amended originating application for relief under part 5 of the *Judicial Review Act* as against any of the respondents.

Order

[125] The order of the Court is:

1. In respect of all the respondents, the amended originating application is dismissed.

[126] I will hear the parties as to costs.