



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD52/2022

AUSTRALIAN VACCINATION-RISKS NETWORK INCORPORATED

Applicant

SECRETARY, DEPARTMENT OF HEALTH

Respondent

ORDER

JUDGE: JUSTICE PERRY

DATE OF ORDER: 31 March 2022

WHERE MADE: Sydney

THE COURT ORDERS THAT:

1. The interlocutory application filed by the applicant on 24 February 2022 for Mr Mark Neugebauer to be joined as the Second Applicant is refused.
2. The notice of objection to competency filed by the respondent on 18 February 2022 is upheld.
3. The amended originating application filed on 8 March 2022 (the **Application**) is dismissed.
4. Pursuant to rule 35.13(b) of the *Federal Court Rules 2011* (Cth) and to the extent necessary, time will commence to run for the purposes of any application for leave to appeal and for any appeal on the day after orders are made as to costs (including any order that there be no order as to costs).
5. In the absence of agreement on costs:
 - a) the applicant and Mr Mark Neugebauer are to file and serve written submissions as to costs within fourteen days of the date of publication of the reasons for these orders;
 - b) the respondent is to file and serve written submissions as to costs within seven days of receipt of the submissions on costs referred to in subparagraph (a) above; and
 - c) the applicant and Mr Mark Neugebauer are to file and serve any submissions in reply on costs within three working days of receipt of the respondent's submissions.



6. The written submissions referred to in orders 5(a) and (b) are not to exceed five pages in length with double spacing and no less than 12 point font, and those referred to in order 5(c) are not to exceed three pages in length subject to the same formatting requirements.
7. The question of costs will be determined on the papers in the absence of agreement on costs.

THE COURT NOTES THAT:

8. As provided for in order 5 above, no order will be made as to costs until the parties have been afforded an opportunity to be heard on the question of costs in light of the published reasons for these orders.
9. In so far as the Application seeks an order quashing or setting aside the decision of the Therapeutic Goods Administration (**TGA**) made on or about 3 December 2021 to grant provisional approval with respect to Comirnaty (tozinameran) (Pfizer), being the COVID-19 vaccine sponsored by Pfizer Australia Pty Ltd, for use among children aged 5 to 11 years from 10 January 2022 (the **TGA Decision**), or any determination made by the respondent pursuant to s 22D of the *Therapeutic Goods Act 1989* (Cth) (**TG Act**) to the effect pleaded in ground 3A of the prayer for relief in the Application:
 - a) the Application is not competent in so far as it is made under the *Administrative Decisions (Judicial Review) Act 1977* (Cth) (**ADJR Act**) as the applicant is not a “person aggrieved” for the purposes of s 5 of the **ADJR Act**;
 - b) in so far as the Application is made under s 39B of the *Judiciary Act 1903* (Cth) (**Judiciary Act**), the applicant does not have standing to challenge the TGA Decision; and
 - c) by reason of the ground identified in paragraph 9(b) above, the Application does not involve a real justiciable controversy as to some immediate right, duty or liability between the applicant and the respondent such as to constitute a “matter” in respect of which the Court has jurisdiction vested in it in accordance with Chapter III of the *Constitution*.
10. In so far as the Application seeks mandamus or declaratory relief for the exercise of powers or discharge of statutory duty by the respondent under ss 9A(1), 29D, 30(1)(a) and 30(2)(a) of the **TG Act** with respect to the three vaccines as defined in the Application:
 - a) the Application is not competent in so far as it is made under the **ADJR Act** as the applicant is not a “person aggrieved” for the purposes of s 7 of the **ADJR Act**;



- b) in so far as the Application is made under s 39B of the Judiciary Act, the applicant does not have standing; and
- c) by reason of the ground identified in paragraph 10(b) above, the Application does not involve a real justiciable controversy as to some immediate right, duty or liability between the applicant and the respondent such as to constitute a “matter” in respect of which the Court has jurisdiction vested in it in accordance with Chapter III of the *Constitution*.

Date that entry is stamped: 31 March 2022

Sia Lagos
Registrar