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22 March 2024

Federal Court, Melbourne Registry
305 William St
Melbourne
VIC 3000
Australia

U R G E N T

Also via email:
vicreg@fedcourt.gov.au

Attention Chief Justice Mortimer

Dear Chief Justice Mortimer,

Complaint against Her Honour Justice Helen Rofe

Re DR JULIAN FIDGE v PFIZER AUSTRALIA PTY LTD & ANOR
(**'the Fidge proceedings'**)
VID510/2023

1. We act for Dr Julian Fidge, the Applicant in the above matter.

2. The above matter was heard before Justice Rofe on 20 October 2023 and the decision handed down on 1 March 2024. The decision summarily dismissed the Applicant's case on the grounds that it has no prospects of success as Dr Julian Fidge is not "any other aggrieved person" for the purposes of the *Gene Technology Act 2000* (Cth).[1]

3. We must immediately request the Chief Justice order pursuant to Rule 35.22 that no further steps are to be taken on the papers filed 22 March 2024 (an extension of time under Rule 35.14 and an application seeking leave to appeal under Rule 35.12) until further directions are issued by the Chief Justice pending a resolution of this Complaint, in circumstances where (further detailed below) the decision of 1 March 2024 appears to be unappealable.

[1] See Schedule 1, Section B. for fuller explanation and Case Summary.

4. For your urgent attention we bring the following complaint[2] pursuant to section 15(1AA)(c) of the *Federal Court of Australia Act 1976* (Cth) against a Judge of the Federal Court of Australia, Justice Helen Rofe:

> Misconduct by the failure to disqualify or disclose, where withholding information required to be disclosed gives rise to the inference of intentional concealment of information required to be disclosed to the parties by the Judge, connoting dishonesty.[3]
>
> Namely, the failure to disclose a significant prior relationship with the First Respondent as well as interests, affiliations, and associations reaching back four decades for her Honour personally, and over a century when extended family interests of great significance are understood.[4]
>
> Where the potential implications of the case proceeding clearly involve significant and long lasting reputational damage and possibly very significant financial consequences for all Australian governments and political parties and their lead members in power throughout the COVID period, particularly those in positions of authority and responsible for the introduction and deployment of the COVID-19 products of Pfizer and Moderna to Australian citizens.[5]

5. A reasonable observer could and can conclude the intention to not disclose the prior and significant relationship with the First Respondent, and close working relationships and familial ties, created and creates a perception her Honour intended to conceal her prior relationship with the First Respondent, and ostensibly from the Applicant.

6. Where the complaint giving rise to allegation of misbehaviour by a Judge attaches to the creation of a decision purportedly in the performance of judicial duties, the question of confirming or dismissing the alleged misbehaviour cannot be adjudicated upon by sitting Judges of the Federal or High Court of Australia, being as it is the sole responsibility and jurisdiction of the Houses of Parliament to determine such allegations pursuant to section 72(2) of the Constitution.[6]

7. Further, the complaint in this instance is *incapable* of being raised on appeal, as the misconduct complained of commenced at the case management hearing and continued through to the hearing of the summary dismissal application making that decision *void ab initio*[7] and therefore making an appeal impossible[8] in our view.

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[2] See Schedule 1, section A. Complaint.
[3] See Schedule 1, section E. Elements of the Complaint and F. Judicial Conduct.
[4] See Schedule 1, section C. Extra-Judicial Interests, Affiliations, and Extended Family.
[5] See Schedule 1, section D. Case Implications.
[6] See Schedule 1, section A. Complaint pursuant to Federal Court of Australia Act.
[7] Ibid.
[8] Ibid for further details.

8. For the further detailed reasons and analysis set out in Schedule 1, and in the circumstances, the following relief is sought as soon as possible but before 27 March 2024 before any other steps are necessary:

    a. A declaration the decision of Justice Rofe dated 1 March 2024 was *void ab initio*.

    b. A declaration the decision of Justice Rofe dated 1 March 2024 is unappealable.

    c. An order wholly vacating the decision of Justice Rofe dated 1 March 2024.

    d. A declaration the Summary Dismissal hearing of 23 October 2023 was void and of no judicial effect.

    e. An order requiring the Federal Court to pay all costs of the parties relating to the Summary Dismissal application on an indemnity basis.

    f. An order requiring any work performed by the Applicant in preparation of appealing the 1 March 2024 decision to cease, with all costs incurred to the date of the order payable by the Federal Court on an indemnity basis.

    g. An order directing the Fidge proceedings VID510/2024 be allocated to a new judge and to be set down for an initial case management hearing.

    h. An order requiring the Federal Court to pay all costs of this complaint on an indemnity basis.

    We look forward to hearing from you as a matter of urgency.

Kind regards

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CC: All sitting Commonwealth Senators and Members of Parliament
CC: Respondents

Schedule 1

A. Complaint pursuant to Federal Court of Australia Act

1. Where *complaint* is understood and defined under section 15(1AA)(c) of the *Federal Court of Australia Act 1976* (Cth) (**the Act**):

> (1AA) In discharging his or her responsibility under subsection (1) (and without limiting the generality of that subsection) the Chief Justice:
>
> (c) may deal, as set out in subsection (1AAA), with a complaint about the performance by another Judge of his or her judicial or official duties;

2. A 'Judge' means a Judge of the Court including the Chief Justice (Section 4).

3. Sections 15(1AAA) and 15(1AAB) of the Act outlines the process to be followed by the Chief Justice in dealing with a complaint.

4. The Explanatory Memorandum introducing the complaints amendments to Section 15 of the Act makes note:

> The Bill [Act] does not limit the ability of a complaint which may warrant removal of a judge from office under paragraph 72(ii) of the Constitution to be considered by the Parliament at any time.

5. Consequently, it is proper and appropriate to simultaneously inform and place on Notice all sitting Senators and Members of Parliament (MPs) of an allegation of misbehaviour enlivening section 72(ii) of the Constitution, and of their individual and collective responsibility under section 72(ii) when an allegation and evidence of misbehaviour is presented to them.

6. To wit, this letter also informs and places on Notice all sitting Senators and MPs of the Australian Parliament who have each received a copy of this complaint by registered mail.

7. Senators and Honourable Members have been simultaneously informed due to evidence capable of leading to a relevant belief the circumstances giving rise to the complaint when assessed in light of contemporary values[9] justify consideration of removal of her Honour in accordance with paragraph 72(ii) of the Constitution.

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[9] The Honourable Geoffrey Nettle AC QC, *Removal of Judges from Office*, [2021] MelbULawRw 14; (2021) 45(1) Melbourne University Law Review 241, at page 262.

8. In such circumstances the Chief Justice may be required to concede the end of the jurisdiction of the Federal Court of Australia, requiring aspects of the complaint to transferred to both Houses of Parliament.

9. The Explanatory Memorandum further notes:

> 121. A complaint about performance by another judge of his or her judicial or official duties will not include complaints about matters in cases ***that are capable of being raised in an appeal***. Such complaints are properly matters for judicial determination. It may be necessary for the Chief Justice (or other complaint handler) to ***consider whether the complaint relates to a matter capable of being raised on appeal***. (emphasis added)

10. The circumstances giving rise to the complaint in this instance cannot be raised on appeal because an appellant court lacks jurisdiction to determine a complaint submitted to the Chief Justice under section 15(1AA)(c) of the Act.

11. Matters capable of being raised on appeal concern errors of fact or law. In this instance the matters constituting the complaint do not involve errors of fact or law but involves conduct of a judicial officer capable of being deemed misbehaviour.

12. Where allegations of misbehaviour by a Judge attach to the creation of a decision purportedly in the performance of the judicial duties, the question of confirming or dismissing the alleged misbehaviour cannot be adjudicated upon by sitting Judges of the Federal or High Court of Australia, being as it is the sole responsibility and jurisdiction of the Houses of Parliament to determine such allegations pursuant to section 72(2) of the Constitution.

13. Further, the complaint in this instance is *incapable* of being raised on appeal, as the misconduct complained of arose in a case management hearing *before* at a later date, hearing a summary dismissal application, being misconduct capable of being viewed as misbehaviour that continued throughout the hearing of the summary dismissal application thereby affecting the whole decision returned for that summary dismissal application, making that decision *void ab initio* - making an appeal impossible.

14. In *QYFM v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2023] HCA 15 (17 May 2023), there Honours Kiefel CJ and Gageler J observed:

> 26. The question arising in the circumstances of the present case falls to be resolved at the level of principle within the framework established in *Ebner v Official Trustee in Bankruptcy*. Foundational to that framework are two propositions. One is that impartiality is an indispensable aspect of the exercise of judicial power. The other is that "[b]ias, whether actual or apprehended,

connotes the absence of impartiality". Leaving to one side exceptional circumstances of waiver or necessity, an actuality or apprehension of bias is accordingly inherently jurisdictional in that ***it negates judicial power***. (emphasis added)

15. Where circumstances arise *prior to* a hearing, in this case the hearing of a summary dismissal application, involving evidence of the intentional concealment of information required to be disclosed to the parties by the Judge, being conduct possibly rising to *misbehaviour*, then no judicial power was reposed in the summary dismissal hearing or subsequent decision seeking to determine the hearing. Judicial power for the hearing of the summary dismissal application had been negated; made ineffective; nullified.

16. A decision flowing from an exercise normally deemed proceedings where there was an absence of judicial power in the person purporting to conduct those proceedings, is not a decision capable of appeal, as it is a decision wholly invalid by the absence of judicial power and must be vacated for being *void ab initio*.

17. A decision lacking judicial power and authority is a decision incapable of appeal, as a court of appeal only has jurisdiction to hear appeals on a decision from a single Judge. In the circumstances present here, there was no judicial power in the Judge when purporting to render the decision, therefore there is no decision from a single Judge.

18. Under these circumstances the complaint being received here by the Chief Justice under section 15(1AA)(c) the Act is incapable of being raised on appeal.

B. Case Summary

19. In brief, the applicant Dr Fidge alleges/alleged in proceedings VID510/2023:

    a. The COVID-19 products of Pfizer and Moderna deployed in Australia from early 2021 are or contain *genetically modified organisms* (**GMOs**) as defined under the *Gene Technology Act 2000* (Cth) (**GT Act**).

    b. Two forms of GMO are alleged:

        i. Lipid Nano Particle-modRNA complexes;
        ii. Lipid Nano Particle-modDNA complexes being synthetic DNA contamination subsequently found in the COVID-19 products of Pfizer and Moderna.

    c. As a consequence, the Respondents, Pfizer and Moderna were required to seek the grant of GMO licences under the GT Act before seeking provisional approval from the Therapeutics Goods Administration;

d. Pfizer and Moderna always possessed knowledge their COVID-19 products required the grant of GMO licences before they could be *imported*, *transported*, *stored*, or *disposed* of (individually and together 'dealings') in Australia;

e. Having failed to apply for and obtain GMO licences for dealing with their COVID-19 products in Australia, both Pfizer and Moderna continue to commit serious criminal offences under the GT Act (sections 32 and 33);

f. Proving the above elements pursuant to section 147 of the GT Act provides jurisdiction to the Federal Court to grant injunctions restraining Pfizer and Moderna from engaging in any further dealings with their COVID-19 products in Australia.

20. The proceedings:

a. At the first case management hearing on 10 July 2023, Justice Snaden referred the matter for allocation to a docket judge.

b. Thereafter, sometime after 10 July 2023 Justice Helen Rofe was allocated the matter.

c. A case management hearing was convened before Justice Rofe on 10 August 2023.

d. The 10 August 2023 case management hearing began at 9.30am and took approximately 25 minutes before her Honour adjourned the Court.

e. Much of the discussion before her Honour concerned both respondents broadly outlining the elements of a summary dismissal application they proposed to file in the proceedings.

f. Before adjourning the hearing Justice Rofe issued 10 orders detailing the timeline for filing of materials by the parties for a summary dismissal application hearing set down for 20 October 2023.

g. The interlocutory hearing of the summary dismissal application took place over a full day on 20 October 2023, with the judgment reserved.

h. On 1 March 2024, her Honour handed down her decision on the summary dismissal application finding for Pfizer and Moderna, and dismissing the proceedings initiated by Dr Fidge.

C. Extra-Judicial Interests, Affiliations, and Extended Family

21. Justice Rofe was appointed to the Federal Court on 12 July 2021 after being called to the Bar in 2001.

22. When at the Bar Justice Rofe directly and indirectly represented Pfizer in at least five separate matters:

    a. *Eli Lilly and Company v Pfizer Research and Development Company* NV/SA [2003] FCA 988 (19 September 2003)

    b. *Eli Lilly & Company v Pfizer Ireland Pharmaceuticals* (No 2) [2004] FCA 850 (30 June 2004)

    c. *Eli Lilly and Company v Pfizer Overseas Pharmaceuticals* [2005] FCA 67 (10 February 2005)

    d. *Pfizer Italia SrL v Mayne Pharma Pty Ltd* (VID439/2003: discontinued)

    e. *Pharmacia Italia SpA v Mayne Pharma Pty Ltd* [2006] FCA 305 (29 March 2006)

23. The above matters were considerable and lengthy.

24. Her Honour possibly represented Pfizer interests in a sixth matter *Mayne Pharma Pty Ltd v The Commissioner of Patents & Anor* (VID892/2005: note the affidavits filed by Pharmacia Italia SpA with whom Pfizer had/has Australian patent licenses and other business dealings).

25. The above work by her Honour with Pfizer is what is currently available in the public domain. Any chambers work undertaken for Pfizer is presently unknown.

26. Her Honour completed a Bachelor of Science in 1988 with a major in genetics.

27. The subject matter of the Fidge proceedings involve genetics, genetically modified organisms, and the COVID-19 drugs of Pfizer and Moderna alleged to contain unlicenced GMOs, and another form of GMOs as a contaminate.

28. Until September 2021, her Honour was a member of the Bolton Clarke Human Research and Ethics Committee for up to a decade, required and responsible for the oversight of Bolton Clarke Group clinical research projects involving humans.

29. The cousin of her Honour, Sir Andrew Grimwade, supported the medical research endeavours of Bolton Clark with the provision of grant monies from the Felton Trust in 2018 to 2021, where Sir Andrew was the Chairman of the Felton Bequests

Committee (from 2004) until his death in 2023. Sir Andrew was a member of the Felton Bequest for 50 years.

30. Sir Andrew Grimwade was a guest of her Honour at the ceremonial sitting of the Full Federal Court to welcome her Honour on 6 May 2022. It is fair to say her Honour enjoyed a good relationship with Sir Andrew understandably sharing Sir Andrew's known, renowned, and lifelong interest in science and scientific research.

31. Sir Andrew Grimwade was the great-grandson of Frederick Sheppard Grimwade who founded the Grimwade family pharmaceutical industry fortune in Australia.

32. Sir Andrew served as the honorary President of the Walter and Eliza Hall Institute (**WEHI**) for 14 years before retiring in 1992. Sir Andrew had been on the Institute Board since 1963, and appears to have maintained a close relationship with the WEHI right up until his death in January 2023, as one may discern in the tributes bestowed him.

33. Established in 1915 the WEHI has been ranked Australia's leading biomedical research institute. It can be broadly stated the WEHI has received 100s of millions of dollars, if not billions of dollars, in research grants from the Australian government and various State governments.

34. The WEHI has since 2007 received over US$30MM in grants from the Bill & Melinda Gates Foundation, where that Foundation and Mr Gates invested heavily in and promoted the COVID-19 products of Pfizer and Moderna (more here and here).

35. The Bill & Melinda Gates Foundation has also provided over US$180MM to Pfizer, BioNTech, and Moderna over the years.

36. It can be reasonably observed WEHI's relationship with the Bill & Melinda Gates Foundation as being not only highly valued, but as also representing real opportunities for future significant funding. It is also reasonable to assume the WEHI supports all of the efforts of Mr Gates and the Bill & Melinda Gates Foundation in respect of their support of the COVID-19 products of Pfizer and Moderna.

37. The WEHI also received $13.5MM in Australian government funding for COVID related projects.

38. The Australian government is also in partnership with the second respondent, Moderna, where together with the Victorian government, billions of dollars have been promised in research monies to Australian research institutions. Details here, here, here, and here. It is reasonable to assume the WEHI stands to possibly receive significant monies from this Australian government partnership with Moderna. Prime Minister Anthony Albanese has spoken in strong support of this partnership.

39. To date the WEHI has received over $600,000 from the Victorian government as part of the **mRNA Victoria** program, stated as:

> mRNA Victoria is responsible for establishing a mRNA and RNA industry in Victoria. This includes supporting:
>
> i. supply chain
> ii. research and development for pre and clinical research
> iii. commercialisation
> iv. manufacturing investments.

40. It is entirely reasonable in light of enduring family ties and her Honour's own scientific background and interests, particularly in the same field of genetic sciences shared by both Pfizer and Moderna, that her Honour has long been aware of the sources of funding to the WEHI, and the very public statements of support of the mRNA technologies of Pfizer and Moderna expressed by Victorian and Commonwealth Ministers, including the Prime Minister of Australia, all of whom are able to exert enormous influence over future budgets and funding allocations towards the WEHI and mRNA technologies.

41. In totality the above interests, affiliations, and associations reaching back four decades for her Honour personally, and over a century when extended family interests of great significance are factored in, all of which an observer can reasonably assume was and is known to her Honour, suggests to a reasonable observer her Honour having and holding indirect and direct interests of support for, and of, what can be broadly termed Big Pharmaceutical interests, both domestic and international, with Pfizer having a long and significant presence both domestically and internationally, the interests of which company her Honour meaningfully and significantly assisted to protect, grow, and further establish in Australia. Via extended family ties evidencing decades of unfailing support towards the WEHI, we also observe her Honour associated with support for the COVID-19 modRNA technology platform, involving significant present sums of money and real prospects for further significant sums of research monies to the WEHI, whose modRNA endeavours are supported and endorsed by the Prime Minister of Australia, no less.

42. A reasonable observer can conclude from the above that it was more likely than not her Honour would seek to see the science and technology promoted by Pfizer and Moderna, and Australian governments, that stand to significantly benefit medical research institutes like the WEHI, survive and flourish in Australia.

43. Judicial proceedings of the type brought by Dr Fidge would, if successful, strike a damning blow against all the above interests, and much more.

D. Case Implications

44. In the event the Fidge proceedings were/are successful, potential implications include:

a. Injunctions issued by the Federal Court restraining Pfizer and Moderna from any further dealings with their COVID-19 products in Australia, and by extension, the practical halt of COVID-19 products being moved, used, or administered anywhere in Australia by any persons.

b. Serious criminal charges brought against Pfizer and Moderna.

c. Initiation of investigations over the operations, processes, and personnel of the Office of the Gene Technology Regulator, including at all relevant times, all meetings and correspondence with the Department of Health and Aged Care, and in particular the former Secretary of Health, Dr Brendan Murphy, due to his being responsible for the provisional approval of the COVID-19 products of Pfizer and Moderna at all relevant times.

d. Initiation of an examination to answer whether the failure to seek and obtain GMO licences by Pfizer and Moderna resulted in a failure of legally valid Informed Consent in respect of Australian recipients of the Pfizer and Moderna COVID-19 products:

    (i) If and once confirmed, examination of the Medical Negligence implications for Australian health practitioners, and in turn health authorities who did not inform health practitioners as to the GMO status of the drugs and the GMO risk profiles and GMO risk assessments not performed by health authorities in relation to same.

e. Considerations of the possibility the Pfizer and Moderna COVID-19 products may never have been granted GMO licences due to assessed GMO risks.

f. Potential civil liability in the Commonwealth Government due to failure to ensure GMO licencing processes in respect of the COVID-19 products of Pfizer and Moderna.

g. Potential civil liability in Pfizer and/or Moderna due to their failures to undertake GMO licencing process.

h. Potential civil liability in Commonwealth, State, and Territory governments and/or Pfizer and /or Moderna for injuries, disease, or deaths shown to be caused by the genetically modified properties of the GMOs contained in the COVID-19 products of Pfizer and Moderna, for example:

i. Ribosomal frameshifting caused by N1-methylpseudouridylation of mRNA, potentially leading to amyloids and prion-like diseases (Mulroney et al, 2023; Chung et al, 2023).

ii. Modification of modRNA using N1-methylpseudouridylation leading to half-life of stabilised modRNA extended to months, making it impossible to assess effective dose delivered per vaccine vial (Ogata et al, 2022; Magen et al, 2022; Roltgen et al, 2022).

iii. Uncontrolled distribution of LNPs across the body, accumulation in organ systems across blood barriers without known metabolic pathways for elimination (TGA Report, page 45).

iv. Accumulation of LNPs including nucleic acid payload across blood-placenta and blood-testis barriers in sexual organs, impacting Australian reproductive health (Wang et al, 2018).

v. Nuclear Localisation Signal (NLS) sequences contained in synthetic Spike protein causing binding of Spike protein to modRNA and chaperoning of the complex into cell nucleus, resulting in as yet to be determined damage and/or disruption to cellular gene expression (Sattar et al, 2023).

vi. Plasmid DNA contaminations in the modRNA leading to LNP-modDNA complexes delivering synthetic DNA into cells in excessive quantities, which was not disclosed to Australian recipients (McKernan et al, 2023).

vii. Pfizer plasmid DNA contaminations in the modRNA vaccines carrying SV40 sequences optimize nuclear entry, which was not disclosed to Australian recipients (McKernan et al, 2023; Dean et al, 1999).

viii. Preliminary findings suggesting genomic integration and expression of the inserted DNA fragments by transfected cells (Lim et al, 2023; Wang et al, 2021).

ix. Findings confirming entry into the nucleus and genomic integration and expression of modRNA (Qin et al, 2022).

x. Possible damage to natural DNA through insertion of linear DNA fragments derived from either reverse transcribed modRNA or plasmid DNA contamination.

xi. Disruption to natural DNA expression in transfected cells by potential insertion of vaccine-derived fragments into an Open Reading Frame (ORF).

xii. Real risk of reverse-transcription of modRNA into natural DNA driven by LINE-1 elements or Polymerase theta (Alden et al, 2022; Domazet-Lošo, 2022).

i. Loss of trust in Australian health authorities leading to vaccine hesitancy as a reasonable and proportionate response by the Australian public.

j. The necessity to initiate many forms of clinical studies to assess the real world damage, disease, or fatal outcomes associated with the GMO products of Pfizer and Moderna, and any observed medium-to-long term disease and adverse reproductive health outcomes associated with the GMO products of Pfizer and Moderna, for those Australian citizens who were not informed they were receiving GMOs.

45. The above list of potential implications flowing from a successful outcome in the proceedings brought by Dr Fidge are not exhaustive.

46. The above list of potential implications clearly involve significant and long lasting reputational damage and possibly very significant financial consequences for all Australian political parties and their lead members in power throughout the COVID period, particularly those in positions of authority and responsible for the introduction and deployment of the COVID-19 products of Pfizer and Moderna to Australian citizens.

47. Though not needing to be definitively answered in this letter, it can be speculated that one or more or indeed other implications beyond those outlined above, may have served as motivating factors for the conduct the subject of this complaint, which conduct affected the decision of her Honour returned on 1 March 2023.

E. Elements of the Complaint

48. As detailed under the section above (**C. Extra-Judicial Interests, Affiliations, and Extended Family**), her Honour Justice Rofe had significant prior dealings with Pfizer when a barrister, and through her science learnings and the interests of her extended family, significant professional and personal interest in seeing the continued success of those institutions her extended family and science colleagues had been involved with, and perhaps continue to be involved with.

49. As detailed under the section below entitled **Judicial Conduct**, her Honour had a positive duty and obligation to disclose to all parties in the Fidge proceedings those

prior dealings with Pfizer, and her Honour was required to invite submissions from any party wishing to raise grounds supporting why her Honour should disqualify herself from the Fidge proceedings.

50. The duty to disclose the prior dealings with Pfizer needed to be discharged at the earliest opportunity it was convenient to do so.

51. Once that opportunity presented itself her Honour was required to discharge the duty of disclosure within a reasonable time.

52. On the face of the public record the first and earliest opportunity convenient and appropriate for her Honour to discharge her duty of disclosure presented itself at the opening of the case management hearing held on 10 August 2023, beginning at 9.30am.

53. The 10 August 2023 case management hearing ran for approximately 25 minutes, with her Honour adjourning the matter at approximately 10am.

54. With the benefit of hindsight, her Honour should have within the opening moments and minutes of taking to the bench for the case management hearing, and before any items of business could be raised by the parties, then taken the opportunity and time to make a full disclosure of the prior relationship her Honour had with Pfizer, while providing sufficient details for the parties to locate and identify every instance of those prior dealings, for the purpose of inviting the parties at their discretion to provide written submissions or seek to present orally, any basis upon which a party believed her Honour should disqualify herself from the Fidge proceedings.

55. At no time during the 25 minute case management hearing did her Honour discharge the duty of disclosure.

56. Between the case management hearing and the scheduled hearing of the summary dismissal application on 23 October 2023, 74 days passed without her Honour discharging the duty of disclosure concerning the prior relationship with Pfizer.

57. During the full day hearing of the summary dismissal application on 23 October 2023, again her Honour failed to discharge her duty of disclosure concerning her prior dealings with Pfizer.

58. After a reasonable period of time had passed during the case management hearing on 10 August 2023 and her Honour had failed to discharge the duty of disclosure, a reasonable observer could and can conclude her Honour had chosen not to disclose her prior relationship with Pfizer.

59. As the following section on **Judicial Conduct** confirms, there was no basis upon which her Honour could choose not to discharge her duty of disclosure in all of the circumstances present.

60. A reasonable observer could and can conclude the intention to not disclose the prior and significant relationship with Pfizer created and creates a perception her Honour intended to conceal her prior relationship with Pfizer, and ostensibly from the applicant and opponent of Pfizer (and Moderna), Dr Fidge.

61. A reasonable observer perceiving her Honour concealing information required to be disclosed to the parties, and especially the applicant Dr Fidge, can reasonably connote such an intention to conceal information required to be disclosed as an act of dishonesty. Quite simply her Honour was not being open and honest with parties about her prior dealings with Pfizer.

62. In the result the conduct of her Honour created a perception of intentional concealment of information required to be disclosed, which conduct connoted and created a further perception of her Honour being dishonest.

63. Lastly, and it must be noted and acknowledged the respondent Pfizer well knew of its past professional relationship with her Honour and appears to have provided no instructions to their solicitors nor counsel on the matter, despite being a company with vast litigation experience. Further, and with the greatest respect to my learned colleagues but it necessarily must be raised, and a question remains as to the knowledge in the solicitors and counsel for both respondents as to her Honour's prior professional relationship with Pfizer.

F. Judicial Conduct

64. The Australian Law Reform Commission notes in its report *Ethics, Professional Development, and Accountability*[10]:

> In Australia, the Council of Chief Justices of Australia and New Zealand has agreed on a set of guidelines about the standards of ethical and professional conduct expected of judicial officers in the Guide to Judicial Conduct ('Guide'). The first edition of the Guide, published in 2002, was based on a survey of judicial attitudes to issues of judicial conduct. The third and current edition was published in 2017.

65. The *Guide to Judicial Conduct*[11] ('Guide') is in its third edition having been revised in 2023.

[10] *Ethics, Professional Development, and Accountability* (JI5) [2021] ALRCBP 4, at [19].
[11] *Guide to Judicial Conduct* – Third Edition (Revised)

66. The Guide contains a Preface by former Chief Justice Susan Kiefel AC which reads in part:

> The Guide provides principled and practical guidance to judges as to what may be an appropriate course of conduct, or matters to be considered in determining a course of conduct, in a range of circumstances. It is by maintaining the high standards of conduct to which the Guide aspires that the reputation of the Australian judiciary is secured and public confidence in it maintained.

67. At **7.1 The Overriding Objective** the Guide reinforces and confirms:

> The proper administration of justice includes that justice must be done and seen to be done and public confidence in the independence, impartiality and integrity of the judiciary must be maintained. This is the **overriding objective**.

68. At **2.1 Impartiality** the Guide notes:

> It is easy enough to state the broad indicia of impartiality in court – to be fair and even-handed, to be patient and attentive, and **to avoid** stepping into the arena or **appearing to take sides.** (emphasis added)

69. At **2.3 Conduct generally and integrity** the Guide notes:

> Judges must conform to the standard of conduct required by law **and expected by the community**. (emphasis added)

70. At **3 IMPARTIALITY** the Guide confirms:

> The apprehension of bias principle is that "**a judge is disqualified if a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial mind to the resolution of the question the judge is required to decide**" (*Ebner* [2000] HCA 63; 205 CLR 337 at 344 [6], *Charisteas v Charisteas* [2021] HCA 29; 273 CLR 289 at 296 [11]). The principle gives effect to the requirement that justice should be both be done and be seen to be done, reflecting a requirement fundamental to the common law system of adversarial trial – that it is conducted by an independent and impartial tribunal. (emphasis added)

71. At **3.1 Associations and matters requiring consideration** the Guide confirms:

> **Professional** or business **associations requiring consideration include those**, **past** and current, **involving directly** or indirectly:

- **Litigants**;
  (emphasis added)

72. Critically, **3.2 Activities requiring consideration** confirms and emphasises:

> **The guiding principles are**:
>
> - **Whether an appearance of bias or a possible conflict of interest is sufficient to disqualify a judge from hearing a case <u>is to be judged by the perception of a reasonable well-informed observer</u>**. Disqualification on trivial grounds creates an unnecessary burden on colleagues, parties and their legal advisers;
>
> - **<u>The parties should always be informed by the judge of facts which might reasonably give rise to a perception of bias or conflict of interest</u> but the judge must himself or herself make the decision whether it is appropriate to sit.** (emphasis added)

73. At **3.3.4. Personal Relationships** the Guide observes:

> (e) Past professional association with a party as a client is not of itself a reason for disqualification **unless the judge has been involved in the subject matter of the litigation prior to appointment or unless the past association gives rise to some other good reason for disqualification**.
>
> If the judge has been involved in the subject matter of the litigation, the judge should not sit, but otherwise the decision to sit or not to sit may depend upon the extent of previous representation and when it occurred. **It may be desirable to disclose the circumstances of such representation to the parties before deciding what to do.** The nature and content of anything learned, or any views formed, bearing upon the credibility of the party may need to be considered.
> (emphasis added)

74. Her Honour's prior representations for Pfizer involved intellectual property and patent law. A central subject matter of the Fidge proceedings requires the Court to discern the intellectual property qualities and attributes of the COVID-19 products of Pfizer (and Moderna), for determining whether those properties fulfill Australian legal definitions under the *Gene Technology Act* 2000 for deeming the products to be or contain genetically modified organisms / GMOs.

75. The nature of the intellectual property in the prior Pfizer litigation differs from the nature of the intellectual property in the Fidge proceedings, however, in both the prior and present proceedings a similar undertaking is required, namely, discerning and

presenting an accurate account of the qualities and attributes of the intellectual property of Pfizer.

76. In the Fidge proceedings her Honour was differently placed to her *prior* representations as Counsel for Pfizer, where now her Honour could directly determine as the Court the qualities and attributes of the intellectual property of Pfizer after receiving submissions from (her prior client) Pfizer.

77. In the Fidge proceedings her Honour was required to judge subject matter (qualities and attributes of the intellectual property of Pfizer) that was the subject matter of her prior litigations for Pfizer.

78. Under these circumstances paragraph 3.3.4. directs two outcomes:

> If the judge has been involved in the subject matter of the litigation, the judge should not sit, but otherwise the decision to sit or not to sit may depend upon the extent of previous representation and when it occurred. **It may be desirable to disclose the circumstances of such representation to the parties before deciding what to do.** (emphasis added)

79. Whereas here the Judge chose not to adopt the first course of *not* sitting, her Honour was then required to **disclose the circumstances of such representation to the parties before deciding what to do** and invite submissions from the parties in the Fidge proceedings to assist her Honour in making a decision. Inexplicably, this remaining course of judicial responsibility was not followed by her Honour.

80. Additionally, and in respect of the second part to 3.3.4.(e), '**the past association gives rise to some other good reason for disqualification'** - there has since the global release of the COVID-19 products of Pfizer (and Moderna) since 2020 also been an accompanying global controversy concerning the purported *safety* and *efficacy* of the products, a controversy involving medical and scientific experts about the globe, being a controversy sustained and maintained due to the medical and scientific experts presenting data and medical evidence of historic and unprecedented levels of injuries, disease, and deaths said to be due to the COVID-19 products of the respondents. This unabating controversy has manifested in countless legal challenges both in this country and globally and directly involves or concerns the COVID-19 products of Pfizer.

81. In the circumstances of this well-known and continuing global controversy, and in order to not further inflame and heighten the controversy, her Honour *and* the Federal Court, fully aware of the prior history with Pfizer, was required to disqualify her Honour and have the case allocated to another Judge. Her Honour should never have taken to the Bench with this case – the depth of the prior relationship alone was always in the circumstances of the continuing global controversy sufficient to warrant

disqualification, particularly where the same Pfizer representation continues to be lauded as one of her Honour's great career achievements as evidenced during the ceremonial sitting of the Full Court to welcome her Honour to the Federal Court of Australia on 6 May 2022. The 6 May 2022 ceremony had the effect of unequivocally informing the Federal Court of the prior relationship her Honour had with Pfizer, where very high terms of admiration were used to describe that relationship.

82. That her Honour carried the case to the Bench and undertook hearing same without the required disclosure of having worked for Pfizer, allowed reasonable observers to view that non-disclosure as required information intentionally withheld, and thereby concealed, importing thereby an element and therefore appearance of dishonesty, naturally raising within reasonable observers the further question of premeditation both by her Honour and the Federal Court, in light of the 6 May 2022 ceremony.

83. Intentionally withholding information required to be disclosed, resulting in the further adverse elements that flow from that decision being perceptions of concealment suggesting dishonesty, leads reasonable observers to naturally apprehend bias, others to perceive actual bias, naturally causing all such observers to lose confidence in the Federal Court and the independence, impartiality and integrity of the judiciary.

84. Guide section **3.5 Disqualification procedure** reinforces the steps her Honour failed to take in the discharge of her judicial duties.

85. Part 3.5(a):

> (a) If a judge considers that disqualification is required, the judge should so decide. Prior consultation with judicial colleagues is permissible and may be helpful in reaching such a decision. The decision should be made at the earliest opportunity to minimise costs or delay attributable to disqualification, should that occur.

86. Presently there is no evidence her Honour considered whether disqualification was required. Reasonable observers may assume her Honour did consider the issue of disqualification in light of Pfizer having in large part 'made the career' of her Honour. Evidence of any consideration of her Honour's prior relationship with Pfizer is possibly to be found in prior consultation with judicial colleagues in light of the shared knowledge of the Pfizer history in the Federal Court. The investigation performed by the Chief Justice should determine whether prior consultation with judicial colleagues on the issue took place.

87. Part 3.5(b):

> (b) In cases of uncertainty where the judge is aware of circumstances that may warrant disqualification, the judge should raise the matter at the earliest opportunity with:

(i) The head of the jurisdiction
(ii) The person in charge of listing;
(iii) The parties or their legal advisers;
not necessarily personally, but using the court's usual methods of communication.

88. Presently there is no evidence her Honour was uncertain about whether disqualification was warranted. Part (b)(iii) was not utilised by her Honour. There is presently no evidence on whether parts (b)(i) or (ii) were utilised by her Honour. The investigation performed by the Chief Justice should determine whether parts (b)(i) or (ii) were followed.

89. Part 3.5(d):

> (d) It may be appropriate for the judge to be informed by correspondence, **or for the judge to inform the parties by correspondence, that a question of disqualification has arisen or <u>may</u> arise**. Subject to that, the matter should be dealt with in open court.
>
> A transcript of what is said in court should be taken. **It will generally be <u>appropriate</u> for the judge to hear submissions from the parties.**
> (emphasis added)

90. Her Honour failed to observe the procedure laid down in 3.5(d) entirely.

91. Part 3.5(e):

> (e) **The judge should be mindful of circumstances that <u>might</u> not be known to the parties but <u>might</u> require the judge not to sit, and of the possibility of the parties raising relevant matters of which the judge <u>may</u> not be aware**. It is not appropriate for a judge to be questioned by parties or their advisers.
> (emphasis added)

92. Her Honour failed to observe the procedure laid down in 3.5(e) entirely.

93. Part 3.5(f):

> (f) **If the judge decides to sit, the reasons for that decision <u>should be</u> recorded in open court. <u>So should</u> the disclosure of all relevant circumstances.**
> (emphasis added)

94. Her Honour failed to observe the procedure laid down in 3.5(f) entirely.

95. Part 3.5(g):

> (g) **Consent of the parties <u>is relevant</u> but not decisive in reaching a decision to sit.** The judge should avoid putting the parties in a situation in which it might appear that their consent is sought to cure a ground of disqualification. Even where the parties would consent to the judge sitting, if the judge, on balance, considers that disqualification is the proper course, the judge should so act.
> (emphasis added)

96. Her Honour failed to observe the procedure laid down in the opening sentence to 3.5(g) entirely.

97. Part 3.5(h):

> (h) **Even if the judge considers no reasonable ground of disqualification exists, <u>it is prudent to disclose any matter</u> that might possibly be the subject of complaint**, not to obtain consent to the judge sitting, but **to ascertain whether, contrary to the judge's own view, there is any objection**.
> (emphasis added)

98. Her Honour failed to observe the procedure laid down in 3.5(h) entirely.

99. The above seven parts (a), (b), (d), (e), (f), (g), and (h) are unambivalent and do not require expert and specialised learning to comprehend. Each part reinforces from slightly different positions the same common-sense view:

> Where there is a prior relationship with a party, the judicial duty is to disqualify oneself or *disclose* the relationship before all the parties. If in doubt about disqualification, *disclose* the relationship before all the parties and invite submissions.

100. Despite the clarity of the procedures seen above her Honour failed completely to observe those procedures and appears to have gone further from the point of view of a reasonable observer, and intentionally avoided observing the procedures.

101. Returning to the guidance and clear expression of principle by the High Court in *Ebner* [2000] HCA 63, Chief Justice Gleeson and Justices McHugh, Gummow, and Hayne were unequivocal and emphatic when they stated at [7]:

> The apprehension of bias principle may be thought to find its justification in the importance of the basic principle, that the tribunal be independent and impartial. **So important is the principle that even the appearance of**

> **departure from it is prohibited lest the integrity of the judicial system be undermined.** (emphasis added)

102. In this matter a departure from the *apprehension of bias* principle had already occurred, manifested first with the intention not to disclose, which act immediately connoted concealment, which concealment connoted dishonesty. Judicial conduct connoting concealment which in turn raises the spectre of dishonesty is the identified matter here perceived by the reasonable observer, which naturally leads a reasonable observer to perceive and question and indeed apprehend such concealment and dishonesty was undertaken in order to decide the case other than on its legal and factual merits.

103. In the circumstances of *Ebner* their Honours approached the analysis of *the reasonableness of the asserted apprehension of bias* at [8]:

> Its application requires two steps. First, it requires the identification of what it is said might lead a judge (or juror) to decide a case other than on its legal and factual merits. The second step is no less important. There must be an articulation of the logical connection between the matter and the feared deviation from the course of deciding the case on its merits. The bare assertion that a judge (or juror) has an "interest" in litigation, or an interest in a party to it, will be of no assistance until the nature of the interest, and the asserted connection with the possibility of departure from impartial decision making, is articulated.

104. The conduct complained of in the Fidge proceedings surpasses notions of *apprehended bias*. In the circumstances of this matter, the identification of her Honour having concealed her prior relationship with Pfizer ends the application of the two step requirement laid down by the High Court for being an entirely inappropriate process, as here we are concerned with conduct actually evidencing judicial wrongdoing that neutralises and removes jurisdiction from the Court.

105. By her recent conduct her Honour moved any question of *apprehended bias* arising from a *prior* professional relationship to a *present* matter of what could be *perceived concealment* in the sense of detected and discovered conduct. Where relevant and important information is not disclosed in the proceedings, this gives the inference of dishonesty. In these circumstances, a judicial inquiry and determination by the Federal and High Courts of Australia cannot proceed, as jurisdiction and the adjudication of the matter moves wholly to the Houses of Parliament under section 72(ii) of the Constitution. Consequently *Ebner* does not apply in this case.

106. In our respectful submission, the Federal Court could state in the circumstances of this matter is that it appears her Honour acted prohibitively *prior to* and throughout

the hearing of the summary dismissal application, making the decision on the application *void ab initio*, and unable to be appealed.

107. As a consequence, the issue of the conduct of her Honour giving rise to this outcome is otherwise beyond the jurisdiction of this Court, save as to the Chief Justice expressing a part (a) relevant belief in respect of the conduct of her Honour. This ends the jurisdiction of the Court in respect of the conduct, requiring the conduct to be referred to the enlivened jurisdiction of both Houses of Parliament under Section 72(ii) of the Commonwealth of Australia Constitution Act for a final determination.