# Medical law reporter

**Editor: Thomas Faunce***

## SELIM v LELE AND THE CIVIL (INDUSTRIAL) CONSCRIPTION PROHIBITION: CONSTITUTIONAL PROTECTION AGAINST FEDERAL LEGISLATION CONTROLLING OR PRIVATISING AUSTRALIAN PUBLIC HOSPITALS

*Selim v Lele (2008) 167 FCR 61; [2008] FCAFC 13 was a decision of the Federal Court which interpreted s 51(xxiiiA) of the Australian Constitution. This section accords the federal government, among other things, power to make laws with respect to the provision of "medical and dental services (but not so as to authorise any form of civil conscription)". The Federal Court decided that the phrase "civil conscription" was analogous to "industrial conscription". In that sense the Federal Court held that the prohibition was designed to preserve the employment autonomy of Australian medical practitioners or dentists, preventing federal laws that required them, either expressly or by practical compulsion, to work for the federal government or any industrial employer nominated or permitted by the federal government. The specific question in Selim v Lele was whether the imposition of standards and prohibition of "inappropriate practice" under the Health Insurance Act 1973 (Cth), ss 10, 20, 20A and Pt VAA, amounted to civil conscription. The court held they did not. The Federal Court also discussed in that context the sufficiency of "practical compulsion" in relation to the s 51(xxxiiiA) prohibition. The constitutional prohibition on "any form" of civil conscription provides one of the few rights protections in the Australian Constitution and may have an important role to play in shaping the limits of health care system privatisation in Australia.*

### INTRODUCTION

*Selim v Lele* (2008) 167 FCR 61; [2008] FCAFC 13 involved a challenge to the validity of the Professional Services Review (PSR) Scheme set up under Pt VAA of the *Health Insurance Act 1973* (Cth) (the Act).[1] Dr Selim, Dr Dimian and Dr Wong were general practitioners who had been found by a PSR committee to have engaged in inappropriate practice because they had a high volume of services and may not have provided the appropriate quality of clinical input into those services. That committee referred their conduct to the Director who was required to conduct an investigation and had the power to make an adjudicative referral to a PSR Committee (s 93) composed of at least three doctors, at least two of whom had to be general practitioners (s 95). The consequence was potentially to subject each doctor to sanctions, including reprimand, counselling and disqualification from participation in the Medicare Scheme for up to three years.

The doctors in their defence contended, among other things, that the PSR Scheme and certain other key provisions of the Act offended the constitutional prohibition (s 51(xxiiiA)) on federal legislation concerning medical or dental services that involve "any form of civil conscription". They also contended that the Act impermissibly conferred the judicial power of the Commonwealth on the Determining Authority, but that line of argument is not considered in this analysis.

In relation to civil conscription, the argument before the Federal Court focused on two questions. The first was whether there can be civil conscription when there is no legal compulsion to serve the

* BA LLB (Hons), B Med, PhD; Associate Professor, ANU College of Law and Medical School; Director, Globalisation and Health Project, The Australian National University.

[1] The appeal was from a decision of a single judge of the Federal Court in *Selim v Lele* (2006) 150 FCR 83 (which included the reference of questions to a Full Court in the matter of *Dimian v Commonwealth* [2006] HCATrans 565).



THOMSON REUTERS

© 2008 Thomson Reuters (Professional) Australia Limited
for further information visit **www.thomsonreuters.com.au**
or send an email to **LTA.service@thomsonreuters.com**

Please note that this article is being provided for research purposes and is not to be reproduced in any way. If you refer to the article, please ensure you acknowledge both the publication and publisher appropriately. The citation for the journal is available in the footline of each page.

Should you wish to reproduce this article, either in part or in its entirety, in any medium, please ensure you seek permission from our permissions officer.

Please email any queries to
**LTA.permissions@thomsonreuters.com**

Commonwealth in any respect, but the relevant statute creates a practical compulsion to do so. The second question was what degree or kind of Commonwealth interference with private medical practice is necessary before a statute will be considered to authorise civil conscription.

Section 51(xxiiiA) was inserted into the *Constitution* by the *Constitution Alteration (Social Services) Act 1946* (Cth), as approved by the electors at the 1946 referendum. It reads:

> The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:
>
> …
>
> (xxiiiA) the provision of maternity allowances, widows' pensions, child endowment, unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services (but not so as to authorize any form of civil conscription), benefits to students and family allowances.

The s 51(xxiiiA) prohibition on "any form of civil conscription" has been tested by a number of High Court challenges (discussed below) concerning federal legislation that controlled aspects of medical practice. In each such earlier instance, however, the Australian State governments retained control over funding and employment of doctors in hospitals. In recent times, a new set of challenges concerning the civil conscription exception has arisen, particularly with the establishment of the National Health and Hospitals Reform Commission (NHHRC), the federal assumption of control over a Tasmanian public hospital and the threat of federal control over all Australian hospitals if benchmark targets are not met.

This analysis explores the proposition that should an Australian federal government attempt to assume control over all public hospitals in Australia (whether or not as a prelude to their privatisation), the legislation permitting that will have to be drafted so as not to authorise "any form of civil conscription". The prohibition may be contravened, it will be argued, if "civil conscription" is held to include "industrial conscription", that is, practical compulsion on those providing medical or dental services in Australia to work for either the federal government or a privately managed care corporation controlling what used to be a public (taxation)-funded hospital.

Such an outcome may have been in the minds of the lawyers for the Commonwealth in *Selim v Lele*. The Commonwealth argued before the Federal Court that the impugned sections of the Act were all laws with respect to sickness and hospital benefits. The Commonwealth did so, the Federal Court noted (at [28]),

> because it also submitted, formally, in case an opportunity to argue the point before the High Court should arise, that the prohibition on civil conscription does not apply to a law with respect to sickness and hospital benefits, even if medical and dental services are provided in the course of providing those benefits.

The Federal Court declined to formally consider the merit of that submission or the convoluted logic underpinning it. Whether federal legislation requiring non-State financial and administrative control of Australian public hospitals, which provide core medical services to their respective communities, is somehow in a different category for the purposes of the s 51(xxiiiA) prohibition than legislation controlling medical services per se is contentious. So is the related question of what constitutes a "hospital benefit" for the purposes of such legislation.

## Facts of Selim v Lele

The agreed facts gave a valuable insight into what activities might be caught by the terms "medical services" and "hospital benefits" in s 51(xxiiiA). They relevantly included the following (at [34]):

> The principal source of remuneration of general practitioners in Australia is fees charged to patients for professional services for which Medicare benefits may be claimed …
>
> If a bulk-billing practitioner were fully disqualified for a period of time it is likely that the practitioner would lose a substantial number of patients during the period of disqualification.
>
> If a non-bulk billing practitioner were fully disqualified for a period of time it is likely that the practitioner would lose a substantial number of patients during the period of disqualification unless the practitioner reduced his or her fee to around the difference between what they previously charged and the Medicare benefit.



THOMSON REUTERS

© 2008 Thomson Reuters (Professional) Australia Limited
for further information visit **www.thomsonreuters.com.au**
or send an email to **LTA.service@thomsonreuters.com**

Please note that this article is being provided for research purposes and is not to be reproduced in any way. If you refer to the article, please ensure you acknowledge both the publication and publisher appropriately. The citation for the journal is available in the footline of each page.

Should you wish to reproduce this article, either in part or in its entirety, in any medium, please ensure you seek permission from our permissions officer.

Please email any queries to
**LTA.permissions@thomsonreuters.com**

How many of the lost patients might return to the practitioner after the period of full disqualification would depend on a number of factors, including the extent and the duration of the disqualification, the availability of other practitioners in the area, and other competitive and economic factors.

A full or partial disqualification would not prevent a general practitioner from engaging a locum tenens to continue the ongoing care of his/her patients in his/her practice (with those patients able to claim Medicare benefits), provided that a locum tenens was available, suitable and affordable for the fully or partially disqualified general practitioner.

If the practitioner were a member of a group practice that contained other general practitioners, a full or partial disqualification would not prevent other general practitioners in the group practice from continuing ongoing care of the patients (with those patients able to claim medicare benefits), provided those other practitioners were suitable and had the capacity to take on the additional patients during the relevant period of disqualification …

While fully disqualified, the practitioner would not be prevented from continuing to render medical services for which no Medicare benefit is provided in the Act or the Regulations, such as services to the following types of patients or in the following circumstances:

(a) Patients who qualify for benefits under the *Veterans' Entitlements Act 1986* (Cth);
(b) Patients whose treatment is covered by a workers' compensation scheme or other compensation scheme or by insurance;
(c) Patients who are not eligible for Medicare benefits – for example, some overseas visitors;
(d) As a medical officer in a public hospital treating inpatients and outpatients;
(e) As a medical officer contracted to the Australian Defence Force;
(f) As a medical officer in the Health Services Australia, or any similar State or Territory Government health service;
(g) As a medical officer in a corporation, such as a large industrial corporation or a mining company;
(h) As a medical officer in a speciality clinic dealing with issues such as obesity, or providing cosmetic surgery, or in a "wellness clinic" offering health checks and alternative treatments in areas such as cancer, cardiac, osteoporosis, and menopause, where these services are not covered by Medicare;
(i) As a medical officer in a correctional institution;
(j) As a medical officer on a cruise ship;
(k) As a medical officer to a professional sports team;
(l) Medical examinations for the purposes of insurance, commercial drivers' licences and some other forms of licences;
(m) Health screening and fitness tests for fitness programs and activities such as scuba diving and weight reduction programs

While fully or partially disqualified, the practitioner would not be prevented from using his or her medical training to work in circumstances such as the following:

(a) As a medical officer in a pharmaceutical company conducting promotions for general practitioners, pharmacists, dentists, etc;
(b) As a medical educator;
(c) As a medical researcher;
(d) As a medical assessor in a health benefits fund;
(e) As a medical journalist;
(f) As a medical administrator.

A fully or partially disqualified practitioner could also provide services to patients who are prepared to pay the practitioner's fee without claiming on Medicare. However, to provide services solely on this basis would rarely be economically practicable.

Central to the PSR Scheme is the concept of inappropriate practice as defined in s 82 of the Act:

(1) A practitioner engages in inappropriate practice if the practitioner's conduct in connection with rendering or initiating services is such that a Committee could reasonably conclude that:
  (a) if the practitioner rendered or initiated the services as a general practitioner – the conduct would be unacceptable to the general body of general practitioners; or
  …
(2) A person (including a practitioner) engages in *inappropriate practice* if the person:
  (a) knowingly, recklessly or negligently causes, or knowingly, recklessly or negligently permits, a practitioner employed by the person to engage in conduct that constitutes inappropriate practice by the practitioner within the meaning of subsection (1); or



THOMSON REUTERS

© 2008 Thomson Reuters (Professional) Australia Limited
for further information visit **www.thomsonreuters.com.au**
or send an email to **LTA.service@thomsonreuters.com**

Please note that this article is being provided for research purposes and is not to be reproduced in any way. If you refer to the article, please ensure you acknowledge both the publication and publisher appropriately. The citation for the journal is available in the footline of each page.

Should you wish to reproduce this article, either in part or in its entirety, in any medium, please ensure you seek permission from our permissions officer.

Please email any queries to
**LTA.permissions@thomsonreuters.com**

(b) is an officer of a body corporate and knowingly, recklessly or negligently causes, or knowingly, recklessly or negligently permits, a practitioner employed by the body corporate to engage in conduct that constitutes inappropriate practice by the practitioner within the meaning of subsection (1).

(3) A Committee must, in determining whether a practitioner's conduct in connection with rendering or initiating services was inappropriate practice, have regard to (as well as to other relevant matters) whether or not the practitioner kept adequate and contemporaneous records of the rendering or initiation of the services.

As defined by s 81, in Pt VAA, "service" means:

(a) a service for which, at the time it was rendered or initiated, medicare benefit was payable; or

(b) a service rendered by way of a prescribing or dispensing of a pharmaceutical benefit by a medical practitioner, a dental practitioner or an optometrist.

The *Report of the Review Committee of the Professional Services Review Scheme*[2] had identified various categories of conduct as involving inappropriate practice. General professional issues included clinical competence and performance and aberrant professional behaviour and beliefs. It also identified:

- high number of services per patient;
- unusual incidence of specific types of services;
- inappropriate prescribing;
- inappropriate ordering of diagnostic and imaging pathology; and
- inappropriate use of Medicare item numbers when making claims.

The Full Federal Court was asked to consider whether ss 10, 20, 20A and Pt VAA (or any provision of Pt VAA) of the *Health Insurance Act 1973* (Cth) amounted to "civil conscription" within the meaning of s 51(xxiiiA) of the *Constitution*, and fell outside the legislative power of the Commonwealth. Sections 10 and 20 of the Act set out who is eligible to receive Medicare benefits, the circumstances under which they are entitled to a benefit and the amount to be paid (by reference to Schedule fees). Section 20A allows for the assignment of Medicare benefits, establishing the "bulk billing" scheme by which benefits may be paid directly to a medical practitioner if the practitioner accepts the benefit as full payment for the service provided.

## "CIVIL" IS ANALOGOUS TO "INDUSTRIAL" CONSCRIPTION

The Full Court of the Federal Court (in a joint judgment of Black CJ and Finn and Lander JJ) in *Selim v Lele* stated (at [18]):

> The term "civil conscription" is ambiguous. Dixon J noted in *British Medical Association v Commonwealth* (1949) 79 CLR 201 at 262 (the *BMA case*), that the concept "is described by a metaphor and therefore must rest upon analogy". Dixon J continued: "The difficulty is that, so far as I am aware, it is not an expression which has gained general currency or has acquired a recognized application." He described the prohibition as "a qualification of an unexampled kind" (at 259) and called it a "vague and figurative expression [which] carries with it no clear conception" (at 261).

The court then considered to what extent referendum materials may be used in interpreting the provisions of the *Constitution* that have been altered (or as here introduced) by amendment. It considered *Kartinyeri v Commonwealth* (1998) 195 CLR 337 which concerned the scope of the race power in s 51(xxvi) of the *Constitution* after its amendment by the *Constitution Alteration (Aboriginals) Act 1967* (Cth) (where Gaudron, Gummow, Kirby and Hayne JJ all referred to the "Yes" case prepared for the 1967 referendum). The court then held (at [17]):

> Whether the issue is approached from the viewpoint of a committed originalist or from that of one who accepts that the *Constitution* is a "living instrument", to be interpreted in light of the fact that its legitimacy stems from its "original adoption (by referenda) and subsequent maintenance (by acquiescence) of its provisions by the people" (*Theophanous v Herald & Weekly Times Ltd* (1994) 182 CLR 104 at 171 per Deane J), if the Convention Debates of the 1890s have a legitimate use in constitutional interpretation, it would seem hard to deny that referendum materials and related parliamentary debates must serve the same purpose in relation to amendments to the *Constitution*.

[2] (Commonwealth, 1999).



THOMSON REUTERS

© 2008 Thomson Reuters (Professional) Australia Limited
for further information visit **www.thomsonreuters.com.au**
or send an email to **LTA.service@thomsonreuters.com**

Please note that this article is being provided for research purposes and is not to be reproduced in any way. If you refer to the article, please ensure you acknowledge both the publication and publisher appropriately. The citation for the journal is available in the footline of each page.

Should you wish to reproduce this article, either in part or in its entirety, in any medium, please ensure you seek permission from our permissions officer.

Please email any queries to
**LTA.permissions@thomsonreuters.com**

At the time of the 1946 referendum the Commonwealth was already providing maternity allowances, widows' pensions, child endowments, unemployment, sickness and hospital benefits, benefits to students and pharmaceutical benefits. After the High Court declared in *Attorney-General (Vic) (Ex rel Dale) v Commonwealth* (1945) 71 CLR 237 (*Pharmaceutical Benefits case*) that the *Pharmaceutical Benefits Act 1944* (Cth) was invalid, the federal government's tactic in obtaining a successful constitutional referendum was to achieve political consensus (only three members of Parliament voted against the Bill) and argue (in the "Vote Yes" case) that:

> None of the benefits set out in the Bill are named in the Constitution, as it stands at present. This means that, exactly like the *Pharmaceutical Benefits Act*, *they are all in danger of being declared invalid* too at any moment
>
> …
>
> Strictly, no Act of the Commonwealth Parliament is invalid until it has been so held by the Courts. Therefore the Government, though it thinks that the principles laid down by the High Court in the *Pharmaceutical Benefits case* would also apply to these other payments if they were challenged, has taken the responsibility of continuing them for the time being. But they are all open to attack at any time. This is why the government has taken this early opportunity of consulting the electors at a referendum. *By voting "Yes" you will put these other payments out of danger*.[3]

The "Yes" case explained the purpose of the prohibition under the heading "No question of socializing medical and dental services"):[4]

> [T]here is one thing the Parliament will not be able to do. It will not be able to bring in any form of civil conscription … This means that doctors and dentists cannot be forced to become professional officers of the Commonwealth under a scheme of medical and dental services.

The Chifley Government had originally proposed to put the s 51(xxiiiA) amendment to the electors without the prohibition on civil conscription. As the "Yes" case records under the heading "This referendum not a political matter":[5]

> The idea that doctors and dentists might be conscripted was the only real objection of the Opposition parties in Parliament. The Government has set that doubt at rest by agreeing to the insertion of a clause in the power itself that there shall be no conscription.

The real issue becomes what is meant by the term "civil conscription" and why the words "any form of" are added before it. The Hon Robert Menzies, then Leader of the Opposition, moved the amendment to the Bill that inserted the words "(but not so as to authorize any form of civil conscription)". In his brief speech he said:

> I have no objection to the Commonwealth having power to make proper laws in relation to medical and dental services, but so long as there is no doubt – and I entertain grave doubts on the matter – as to whether that power does not authorize the nationalization of these two professions, their members are entitled to be protected against conscription just as are the industrial workers under the bill I have mentioned.[6]

The court made much of the fact that Mr Menzies, in proposing the "civil conscription" exception, based the language of that prohibition on the *Constitution Alteration (Industrial Employment) Bill* (Cth), which proposed to give the Commonwealth power to make laws with respect to "[t]erms and conditions of employment in industry but not so as to authorize any form of industrial conscription", but which did not have the support of the Opposition and was narrowly defeated at the 1946 referendum. In reply to Mr Menzies in the parliamentary debate, the Hon HV Evatt, then Attorney-General, observed that "the Government had previously borrowed the same set of words from the *National Security Bill* introduced by the right honourable gentleman [Mr Menzies] when he

[3] Chief Electoral Officer for the Commonwealth, *Referendums to be Taken on the Proposed Laws Constitutional Alteration (Social Services) 1946, Constitutional Alteration (Organised Marketing of Primary Products) 1946, Constitutional Alteration (Industrial Employment) 1946: The Case For and Against* (20 July 1946) p 6 (emphasis in original).

[4] Chief Electoral Officer for the Commonwealth, n 3, p 8.

[5] Chief Electoral Officer for the Commonwealth, n 3, p 8.

[6] Commonwealth, House of Representatives, *Parliamentary Debates* (10 April 1946) p 1214 (Hon Mr Robert Menzies, Leader of the Opposition).



THOMSON REUTERS

© 2008 Thomson Reuters (Professional) Australia Limited
for further information visit **www.thomsonreuters.com.au**
or send an email to **LTA.service@thomsonreuters.com**

Please note that this article is being provided for research purposes and is not to be reproduced in any way. If you refer to the article, please ensure you acknowledge both the publication and publisher appropriately. The citation for the journal is available in the footline of each page.

Should you wish to reproduce this article, either in part or in its entirety, in any medium, please ensure you seek permission from our permissions officer.

Please email any queries to
**LTA.permissions@thomsonreuters.com**

was Attorney-General".[7] Section 5(7) of the *National Security Act 1939* (Cth) read:

> Nothing in this section shall authorize the imposition of any form of compulsory naval, military or air-force service, or any form of industrial conscription.

The Federal Court then noted that the history of the *National Security Act* provides examples of what was meant by "industrial conscription", an expression evidently seen as analogous to "civil conscription". The *National Security Act* was amended in 1940 to insert s 13A which read:

> Notwithstanding anything contained in this Act, the Governor-General may make such regulations making provision for requiring persons to place themselves, their services and their property at the disposal of the Commonwealth, as appear to him to be necessary or expedient for securing the public safety, the defence of the Commonwealth and the Territories of the Commonwealth, or the efficient prosecution of any war in which His Majesty is or may be engaged: Provided that nothing in this section shall authorize the imposition of any form of compulsory service beyond the limits of Australia.

The section was relied upon to support what were known as the "Man Power" regulations. Regulation 15(1) of the *National Security (Man Power) Regulations 1942* (Cth) provided:

> The Director-General may direct any person resident in Australia to engage in employment under the direction and control of the employer specified in the direction, or to perform work or services (whether for a specified employer or not) specified in the direction.

In *Reid v Sinderberry* (1944) 68 CLR 504, Sinderberry and McGrath unsuccessfully challenged their convictions under the *National Security Act* for failing to comply with a direction (under reg 15) to respectively work for a private employer as a factory hand and as a stenographer-secretary to a private industry production manager. In holding s 13A and the regulation to be within the scope of the defence power, Latham CJ and McTiernan J noted that the regulation "imposes a very wide form of industrial conscription" (at 509).

The court in *Selim v Lele* then came to its most significant conclusion in holding (at [23], emphasis added):

> This brief history of the expressions "civil conscription" and "industrial conscription" suggests that the s 51(xxiiiA) prohibition was intended to prevent the nationalisation of medical and dental services, and that "civil conscription" *was intended to convey a meaning analogous to "industrial conscription", which included situations like the Man Power regulations of World War II.*

## LEGISLATION CONTROLLING MEDICAL SERVICES AS HOSPITAL BENEFITS CANNOT AUTHORISE CIVIL CONSCRIPTION

The High Court has examined the meaning of the prohibition on civil conscription in s 51(xxiiiA) in only two cases: *Federal Council of the British Medical Association in Australia v Commonwealth* (1949) 79 CLR 201 (the *BMA case*) and *General Practitioners Society v Commonwealth* (1980) 145 CLR 532 (*General Practitioners Society case*). Some obiter comments on the provision were also made in *Alexandra Private Geriatric Hospital Pty Ltd v Commonwealth* (1987) 162 CLR 271 (*Alexandra v Commonwealth*), a case which concerned whether sections of the *National Health Act 1953* (Cth) imposing administrative controls over approved private nursing homes were substantially connected with the subject matter of sickness or hospital benefits.

In the *BMA case* the court held invalid federal legislation requiring doctors, when prescribing any medicine listed in a Federal Formulary, to use a particular form provided by the Commonwealth. In the *General Practitioners Society case*, the court unanimously upheld the validity of federal legislation which imposed conditions on medical practitioners wishing to be approved so that medical benefits would be payable in respect of certain pathology services. The conditions included providing an undertaking to adhere to a code of conduct and requiring that the request to perform a pathology service be made in writing and be retained for 18 months.

The Federal Court in *Selim v Lele* confirmed that the prohibition on civil conscription only applies directly to laws for the provision of medical and dental services, and not to laws for the provision of

[7] Commonwealth, House of Representatives, *Parliamentary Debates* (10 April 1946) p 1215 (Hon Dr Herbert Evatt, Attorney General).



THOMSON REUTERS

© 2008 Thomson Reuters (Professional) Australia Limited
for further information visit **www.thomsonreuters.com.au**
or send an email to **LTA.service@thomsonreuters.com**

Please note that this article is being provided for research purposes and is not to be reproduced in any way. If you refer to the article, please ensure you acknowledge both the publication and publisher appropriately. The citation for the journal is available in the footline of each page.

Should you wish to reproduce this article, either in part or in its entirety, in any medium, please ensure you seek permission from our permissions officer.

Please email any queries to
**LTA.permissions@thomsonreuters.com**

the other allowances, pensions and benefits described in s 51(xxiiiA). It also stated, however, that to the extent that any law made under s 51(xxiiiA) (say provision of a hospital benefit) involves the provision of medical or dental services, it must not authorise civil conscription.[8] Stephen J in the *General Practitioners Society case* explained the point as follows (at 563-564):

> Let it … be supposed that a law for the provision of "sickness benefits" may include the provision of medical or dental services: such a law may not disregard the qualification which subs-s (xxiiiA) expressly attaches to the provision of such services. That qualification restricts the permitted modes in which those services may be provided. To disregard part of the law's content, treating the whole as an exercise of the unqualified power to provide sickness benefits and failing to recognize the character of those parts which provide medical and dental services, is to ignore the specific restriction imposed by Parliament and People when the *Constitution* was amended by the insertion of subs-s (xxiiiA).

In *Alexandra v Commonwealth* the High Court held (at 279) that although the words of the civil conscription exception apply to medical and dental services, they

> are not irrelevant to the scope of the other matters described in the paragraph at least to the extent that whenever medical or dental services are provided pursuant to a law with respect to the provision of some other benefit, for example, sickness or hospital benefits must not authorize any form of civil conscription of such services.

## PRACTICAL COMPULSION AND CIVIL CONSCRIPTION

The Federal Court noted in *Selim v Lele* that the distinction between legal compulsion and practical compulsion is not always straightforward. A federal statute may impose a fine (legal compulsion) but the impetus to participate in the scheme it creates may ultimately be a practical one – doctors can only carry on practice if they comply.

In the *BMA case* Latham CJ stated (at 253):

> There could in my opinion be no more effective means of compulsion than is to be found in a legal provision that unless a person acts in a particular way he shall not be allowed to earn his living in the way, and possibly the only way, in which he is qualified to earn a living … in determining whether there is compulsion it is proper to consider not only the bare legal provision but also the effect of that provision in relation to the class of persons to whom it is applied in the actual economic and other circumstances of that class.

While Webb J said (at 292-293):

> To require a person to do something which he may lawfully decline to do but only at the sacrifice of a whole or substantial part of the means of his livelihood would, I think, be to subject him to practical compulsion amounting to conscription in the case of services required by Parliament to be rendered to the people. If Parliament cannot lawfully do this directly by legal means it cannot lawfully do it directly by creating a situation, as distinct from taking advantage of one, in which the individual is left no real choice but compliance.

In the *General Practitioners Society case* Barwick CJ expressed a more circumspect view (at 537-538):

> I do not read the decision of the majority in the *British Medical Association case* as deciding that, without legal compulsion either by direct command or the imposition of penalties, civil conscription could result from practical or economic considerations. In that case, there was legal compulsion directly applied in relation to the act to be performed. But that is not to say that, in my opinion, civil conscription could not in any case result from the coercive force of circumstance: but, in my opinion, to make out such a case would need an extremely strong set of circumstances which, in real terms, left the individual with no choice but to submit to what the statute required, though it did not command it.

Gibbs J also stated (at 550):

[8] *General Practitioners Society v Commonwealth* (1980) 145 CLR 532 at 549 (Gibbs J) (Aickin and Wilson JJ agreeing at 571 and 572 respectively), at 563-564 (Stephen J), at 536-537 (Barwick CJ, not deciding but preferring this interpretation), Mason and Murphy JJ not deciding the point. See also *Federal Council of the British Medical Association in Australia v Commonwealth* (1949) 79 CLR 201 at 254-255 (Rich J), at 261, 269 and 277 (Dixon J), at 281-282 (McTiernan J), at 286-287 (Williams J); and *Alexandra Private Geriatric Hospital Pty Ltd v Commonwealth* (1987) 162 CLR 271 at 279-280 per curiam.



THOMSON REUTERS

© 2008 Thomson Reuters (Professional) Australia Limited
for further information visit **www.thomsonreuters.com.au**
or send an email to **LTA.service@thomsonreuters.com**

Please note that this article is being provided for research purposes and is not to be reproduced in any way. If you refer to the article, please ensure you acknowledge both the publication and publisher appropriately. The citation for the journal is available in the footline of each page.

Should you wish to reproduce this article, either in part or in its entirety, in any medium, please ensure you seek permission from our permissions officer.

Please email any queries to
**LTA.permissions@thomsonreuters.com**

> The question whether a law imposes civil conscription cannot be answered in the negative simply because the law does not create any legal liability to perform any medical or dental service; the effect of the law in the economic and other circumstances must be considered, and practical compulsion is enough … In my opinion the circumstance that no medical practitioner is legally obliged to become an approved pathology practitioner is not decisive of the question whether the provisions in question impose a form of civil conscription within s 51(xxiiiA).

Aickin J held (at 565-566, emphasis added):

> I agree that the limitation embodied in the grant of power in s 51(xxiiiA) of the *Constitution* extends to practical as well as legal compulsion … *No doubt a legal obligation to perform particular medical or dental services, or to perform medical or dental services at a particular place, or to perform such services only as an employee of the Commonwealth would be clear examples of civil conscription. An equally clear example would be the prohibition of the performance of medical or dental services by particular qualified practitioners other than in some designated place*, though no punishment was attached to failure to practice in that place. Other forms of "practical compulsion" are easy enough to imagine, particularly those which impose economic pressure such that it would be unreasonable to suppose that it could be resisted. The imposition of such pressure by legislation would be just as effective as legal compulsion, and would, like legal compulsion, be a form of civil conscription. To regard such practical compulsion as outside the restriction placed on this legislative power would be to turn what was obviously intended as a constitutional prohibition into an empty formula, a hollow mockery of its constitutional purpose.

Stephen J agreed (at 563-564). Murphy J stated (at 565) that practical compulsion "is enough to satisfy the concept of 'civil conscription'". Mason J (at 564) and Wilson J (at 571) left the question open.

After considering such authority, the Federal Court in *Selim v Lele* then held (at [35]):

> Although all of the observations about practical compulsion in the *BMA case* and the *General Practitioners Society case* could be considered obiter dicta, all of the justices of the High Court who have considered the issue have allowed for at least the possibility that a statute that imposed a practical compulsion to provide medical services might authorise civil conscription … It may be accepted that if patients cannot claim medical benefits in relation to the services that a doctor provides, that a doctor will have few, if any, opportunities to practise as a general practitioner in private practice. The Act thus imposes a practical compulsion on those who wish to practise as general practitioners in private practice to participate in the Medicare Scheme and, as a result of Pt VAA, to conduct their practice in such a way as to avoid committing inappropriate practice. They therefore must not, in relation to the rendering or initiating or [sic] services for which medical benefits are payable, do anything that would be unacceptable to the general body of general practitioners. The other ways in which those with medical training could practise their profession were also available, to some extent, when the High Court heard the *BMA case* and the *General Practitioners Society case*, and are not sufficient to avoid the practical compulsion upon all, or virtually all, of those wishing to practise as general practitioners in private practice.

The ramifications of such reasoning for federal legislation either allowing federal or private control of all public hospitals within a region or nationally are significant. Such legislation could create a situation where a medical practitioner trained to work in a hospital-based speciality such as emergency medicine or intensive care had no practical option but to accept employment in a federal or private corporate-run hospital. In such a situation the civil conscription prohibition would operate not just to protect the individual employment rights of doctors, but the diversity of control that was implicit in considerations about the balance of public and private interests in the Australian health system of those framing the referendum inserting s 51(xxiiiA). Essentially, the policy vision underlying the civil conscription prohibition in s 51(xxiiiA) is of a health system allowing medical and dental practitioners the maximum opportunity to choose the nature and circumstances of their professional employment. The s 51(xxiiiA) prohibition, in other words, was designed to protect the "small business" nature of Australian medical practice. Section 51(xxiiiA) guaranteed Australian doctors in private practice the ongoing capacity to make individual contractual arrangements with their patients and protected them against the practical compulsion, eg, of having those contractual arrangements organised for them through a health management corporation. Considered in these terms, any legislation associated with the federal government's decision to "liberalise" (that is, to open to foreign corporate ownership) Australian medical or dental services under the World Trade



THOMSON REUTERS

© 2008 Thomson Reuters (Professional) Australia Limited
for further information visit **www.thomsonreuters.com.au**
or send an email to **LTA.service@thomsonreuters.com**

Please note that this article is being provided for research purposes and is not to be reproduced in any way. If you refer to the article, please ensure you acknowledge both the publication and publisher appropriately. The citation for the journal is available in the footline of each page.

Should you wish to reproduce this article, either in part or in its entirety, in any medium, please ensure you seek permission from our permissions officer.

Please email any queries to
**LTA.permissions@thomsonreuters.com**

Organisation's *General Agreement on Trade in Services* (GATS)[9] would be unconstitutional to the extent that it creates a practical compulsion on an Australian doctor or dentist to work for a private corporate entity or the Australian federal government.

## MEANING OF CIVIL CONSCRIPTION

In the *BMA case*, the members of the majority took a view of civil conscription which included but went beyond industrial conscription. Latham CJ said (at 249, emphasis added):

> *The term "civil conscription" is wider than industrial conscription*. It is applicable in the case of any civilian service, ie non-military, work or service. It could properly be applied to any compulsion of law requiring that men should engage in a particular occupation, perform particular work, or perform work in a particular way.

And later (at 251):

> Section 7A is a provision compelling a doctor who is in practice to practise his profession, in so far as the important element of writing prescriptions is concerned, in a particular way. If this is not a form of civil conscription, it would equally not be a form of civil conscription in relation to "medical services" to prescribe by law that a doctor should carry on his practice at a particular place, or at a particular time, or for a particular class of patients and not for other patients, and that he should follow a prescribed routine in dealing with his patients. If laws imposing such requirements were held not to be civil conscription the result would be that, without infringing the prohibition of civil conscription, the whole practice of a doctor could be completely controlled, not merely by negative provisions, but also by positive provisions requiring him to do certain acts in his practice.

Williams J had a similar view, stating (at 290):

> When analysed, the submission of the defendants appears to imply that a law only authorizes a form of civil conscription of medical services when it operates directly to compel medical practitioners to work for some civil authority or in some particular locality or for some particular class of patients, and that a law which merely compels medical practitioners to act in some particular manner in the course of or incidental to the carrying on of their profession does not authorize any form of civil conscription. This submission, if accepted, would mean that medical practitioners could be compelled in the course of their practice to perform all sorts of medical duties as, for instance, to give certificates, keep records, and give information, confidential or otherwise, about the health of their patients provided the certificates &c were reasonably incidental to the execution of a law with respect to the provision of any of the allowances or benefits specified in the paragraph. In my opinion such a submission unduly narrows the effect of the wide words "any form of" in the expression in parenthesis.

Webb J said (at 292):

> I think the electors would have taken the proposed law to emphasize, in the use of the words "any form," that legislation for the provision of benefits or services of the kind referred to could not authorize compulsory service of any kind, at least in the provision of medical or dental services, either independently or as incidental to pharmaceutical or other benefits, and that compulsion, to any extent or of any nature, whether legal, by the imposition of any penalties, or practical, by any other means, direct or indirect, could not be authorized.

Dixon J, however, said (at 278, emphasis added):

> It is difficult indeed to say with confidence what is essential to the meaning of the expression "any form of civil conscription," to ascribe to the expression any definite requirement as part of its connotation. But compulsion to serve seems to be inherent in the notion conveyed by the words. No doubt the service may be irregular or intermittent. A duty to give medical attention to outpatients at a hospital for two hours once a fortnight if imposed by law would no doubt be a form of civil conscription. It need not involve the relation of employer and employee. *A law imposing an obligation to perform medical services for patients at a practitioner's own rooms would doubtless be bad as involving a form of civil conscription*. But I cannot escape the conviction that a wide distinction exists between on the one hand a regulation of the manner in which an incident of medical practice is carried out, if and when it is done, and on the other hand the compulsion to serve medically or to render medical services. The former does not appear to me within the conception; the latter does.

[9] World Trade Organisation Council for Trade in Services. *Health and Social Services: Background Note by the Secretariat*, Table 3, p 25 (18 September 1998) S/C/W/50.



THOMSON REUTERS

© 2008 Thomson Reuters (Professional) Australia Limited
for further information visit **www.thomsonreuters.com.au**
or send an email to **LTA.service@thomsonreuters.com**

Please note that this article is being provided for research purposes and is not to be reproduced in any way. If you refer to the article, please ensure you acknowledge both the publication and publisher appropriately. The citation for the journal is available in the footline of each page.

Should you wish to reproduce this article, either in part or in its entirety, in any medium, please ensure you seek permission from our permissions officer.

Please email any queries to
**LTA.permissions@thomsonreuters.com**

McTiernan J said (at 283):

> Conscription is not equivalent to compulsion … Any form of civil conscription does not mean any form of compulsion or control of conduct.

In the *General Practitioners Society case* the High Court took a view of the meaning of "civil conscription" that was more consistent with that of Dixon and McTiernan JJ. In *Selim v Lele* the doctors submitted (at [40]) that:

> [t]he narrow construction of "civil conscription" discussed in [the *General Practitioners Society*] case is wrong and should not be accepted by the Court. The wider view of "civil conscription," namely, the broader views of Latham CJ, Rich, Williams and Webb JJ in *British Medical Association* on the placitum, should be preferred to the views expressed in *General Practitioners Society*.

In the *General Practitioners Society case* Gibbs J considered his own decision to be consistent with the ratio decidendi in the *BMA case*. He said (at 556-557):

> [In the *British Medical Association case*] some members of the majority went further and held that a law which compels people to perform services in a particular manner is a law which imposes civil conscription … With the greatest respect, I am unable to agree with those observations by Latham CJ and Williams and Webb JJ. as to the meaning and effect of the expression "any form of civil conscription" … it does not in my opinion necessarily follow, as Latham CJ and Webb J feared, that if the construction which those Justices adopted is rejected, it would be possible for the Parliament, without infringing the prohibition of civil conscription, to provide that a doctor or dentist should carry on his practice at a particular place, or at a particular time, or only for a particular class of patients. In some circumstances, at least, provisions having that result might well be regarded as imposing a form of civil conscription … That expression, used in its natural meaning, and applied, as the context of par (xxiiiA) requires, to medical and dental services, refers to any sort of compulsion to engage in practice as a doctor or a dentist or to perform particular medical or dental services. However, in its natural meaning it does not refer to compulsion to do, in a particular way, some act in the course of carrying on practice or performing a service, when there is no compulsion to carry on the practice or perform the service. It would be an abuse of language to say that a soldier who has voluntarily enlisted in the army becomes a conscript because he is obliged to obey orders as to the manner in which he performs his military duties. Similarly it could not properly be said that it would be a form of civil conscription to require a person who had voluntarily engaged in civilian employment to perform the duties of that employment in accordance with the instructions given to him by his employers … There is nothing in the Constitution that would indicate that the expression "any form of civil conscription" where it appears in s 51(xxiiiA) should be given an enlarged meaning which its words do not naturally bear. The words "any form of" do not, in my opinion, extend the meaning of "conscription", and that word connotes compulsion to serve rather than regulation of the manner in which a service is performed.

The last sentence above, with respect, must surely be wrong, both as a matter of language and legal logic. Constitutional expressions cannot just be deleted by judicial reasoning in this manner, possibly because the judge in question has not been stimulated sufficiently to think of circumstances in which they might become significant. The prospect of a managed care, overarching privatised system of health care in Australia is one scenario in which the words "any form of" could become vital in construing the breadth of the prohibition involved in s 51(xxiiiA). Many others may in time evolve, in each such situation, this prohibition operating to ensure optimal flexibility and choice in the manner in which medical and dental services are provided within the Australian federal system.

The Federal Court in *Selim v Lele* held (at [47]-[48]. [50]-[51]) that the legislation in question did not compel a medical practitioner to render any professional service to any person.

> Those sections assume that a medical practitioner has rendered a professional service to an eligible person and has rendered a fee for that service, and provides a scheme whereby either the eligible person, if he or she has paid that fee, becomes entitled to a Medicare benefit or, if the eligible person has not paid that fee, the medical practitioner becomes entitled to the Medicare benefit. Those sections provide for the payment of a medical practitioner's fee for a professional service when that professional service has been rendered in response to an eligible person's request.
>
> … The purpose of Part VAA is to regulate the manner in which any professional service for which a Medicare benefit is payable is performed but only so as to prevent any "inappropriate practice" on the part of



THOMSON REUTERS

© 2008 Thomson Reuters (Professional) Australia Limited
for further information visit **www.thomsonreuters.com.au**
or send an email to **LTA.service@thomsonreuters.com**

Please note that this article is being provided for research purposes and is not to be reproduced in any way. If you refer to the article, please ensure you acknowledge both the publication and publisher appropriately. The citation for the journal is available in the footline of each page.

Should you wish to reproduce this article, either in part or in its entirety, in any medium, please ensure you seek permission from our permissions officer.

Please email any queries to
**LTA.permissions@thomsonreuters.com**

> the medical practitioner. Part VAA does not render a medical practitioner's failure to perform a professional service an inappropriate practice. It does not thereby compel a medical practitioner to provide a professional service …
>
> … To the extent that there is a practical compulsion for general practitioners to participate in the Medicare Scheme, what is compelled is not service of the Commonwealth. Rather, it is that they conduct their practices with the care and skill that would be acceptable to the general body of practitioners. Such a condition is "clearly necessary to the effective exercise of the power conferred by s 51(xxiiiA)". The Act does not authorise civil conscription.

## CONCLUSION

The Commonwealth assumed ownership of the Mersey Community Hospital from the Tasmanian Government on 23 November 2007 without passing legislation to do so. The constitutional legality of that federal takeover is now not likely to be tested.

The hospital is located near Devonport, Tasmania. It is a 100-bed hospital that provides services including ambulatory and emergency, general adult medicine, general paediatric medicine, general surgery including orthopaedic, ear, nose and throat, ophthalmological, certain oncology services, limited rehabilitation services and allied health support. The hospital works cooperatively with other health services in its surrounding region and State, including public and private hospitals.

On 7 March 2008, the Federal Minister for Health and Ageing announced:

> Management of the Mersey Community Hospital is to be moved on to a sounder footing, ending the current interim arrangements so that the hospital can deliver on the commitment made to the local community and provide more certainty for hospital staff. The Australian Government will maintain and continue to fund the Mersey Hospital. We remain committed to ensuring the safety of patients and the sustainability of clinical services provided at the hospital. We are seeking a religious and charitable or private sector organisation experienced in managing public hospitals to operate the Mersey as a public hospital from 1 July 2008. There are numerous examples around Australia where religious and charitable or private sector organisations have contracts with State Governments to operate public hospitals. There will be an immediate expression of interest (EOI) process, followed by a select tender. The successful tenderer will be required to provide high-quality clinical services, and to consult the community regularly. The clinical services to be provided at the Mersey will be fully integrated with the public hospital services provided throughout Tasmania. The Australian Government will be looking to sign a three-year contract … A condition of the contract with the new provider will be to employ staff on the same terms and conditions as staff in other Tasmanian public hospitals.[10]

A media release of the Federal Health Minister on 6 May 2008 confirmed recommendations from a committee of inquiry that high dependency rather than intensive care facilities be funded at the hospital, but also that federal control would continue. In July 2008 the Federal Health Minister appeared to move away from the idea of federal or private control of the Mersey Hospital, instead transferring control back to the Tasmanian Government:

> The Australian Government has been negotiating with the Tasmanian Government about the ongoing management arrangements at the Mersey Community Hospital and we hope to have these finalised in the coming days. Throughout the negotiations we have ensured that the local community and the hard working staff of the Mersey Community Hospital were given the high priority they deserve. We also recognise that providing certainty about the Hospital's future is important and have sought a three year management arrangement with the Tasmanian Government The Australian Government are seeking to have all staff currently working at the Mersey offered employment with the Tasmanian Department of Health and Human Services. We are also seeking to have a continuation of the current services, with the

[10] Department of Health and Ageing, *Independent Report on Mersey Community Hospital Released Today*, http://www.health.gov.au/internet/main/publishing.nsf/Content/mersey-community-hospital viewed 7 July 2008; and *Future Management Arrangements for the Mersey Community Hospital Close to Finalisation*, http://www.health.gov.au/internet/ministers/publishing.nsf/Content/mr-yr08-nr-nr101.htm?OpenDocument&yr=2008&mth=7 viewed 7 July 2008.



THOMSON REUTERS

© 2008 Thomson Reuters (Professional) Australia Limited
for further information visit **www.thomsonreuters.com.au**
or send an email to **LTA.service@thomsonreuters.com**

Please note that this article is being provided for research purposes and is not to be reproduced in any way. If you refer to the article, please ensure you acknowledge both the publication and publisher appropriately. The citation for the journal is available in the footline of each page.

Should you wish to reproduce this article, either in part or in its entirety, in any medium, please ensure you seek permission from our permissions officer.

Please email any queries to
**LTA.permissions@thomsonreuters.com**

financial offer also allowing an expansion of the range of services provided to the local community within the allocated budget. These services could include renal dialysis, rehabilitation, transition care for older patients, and more elective surgery.[11]

Perhaps a realisation of the constitutional problems created by s 51(xxiiiA) was one factor in this shift of focus. The natural question to ask in this context when considering the new Mersey Hospital arrangements is whether they could ever provide a template for more widespread federal assumption of control over public hospitals and thereafter (perhaps in the future under a different political regime) outsourcing them to the private sector. Should an Australian federal government ever assume control of Australian public hospitals, then the politically powerful United States Coalition of Service Industries (CSI) is likely to immediately lobby the Australian government to "liberalise" such public hospital services.[12] This would involve subjecting them to GATS Arts XVI, XVII and XV which prohibit limitations on the number of service suppliers, require equal treatment for foreign corporations and preventing service subsidies.

Yet, it has been argued that the s 51(xxiiiA) "civil conscription" prohibition may prevent such steps towards the creation of a managed care style health system in Australia.[13] Such a United States-style health system involves pools of doctors who have no option but to work for large health provider corporations. The corporate-contracted physician has a contractual relationship with a private insurance fund and/or private hospital, not with a patient. Managed care plans restrict patients to panels of physicians who have agreed to accept lower reimbursements or who claim to have exhibited a history of practising (relatively) low-cost care. They claim to create economies of scale by coordinating care among physicians and hospitals and mandating the use of practice guidelines. This privatised system costs twice as much as the mixed public-private health care systems of most other developed nations.[14] Managed care plans routinely conscript doctors in a civil or industrial sense by linking their salaries or bonus schemes to effective limitation of medical services in the form of reducing diagnostic tests, referrals to other physicians or institutions, length of admission and use of treatments outside those for which the hospital claims to have negotiated a discount.[15]

The civil conscription prohibition in s 51(xxiiiA) of the federal *Constitution* provides a guarantee that Australian medical and dental practitioners will retain the practical choice of being either independent business people or salaried servants of the community. In this sense the guarantee in s 51(xxiiiA) operates like the "just terms" guarantee in s 51(xxxi). Neither can be circumvented by attempts to base federal legislation nominally on other heads of power unless the constitutional expression of that latter power expressly exempts it from the operation of the guarantee.[16] The potential "gap" between the price that a private health insurer reimburses a client and the fee charged by a medical practitioner providing that service, may be the price that our society pays to avoid the

[11] Federal Health Minister, Nicola Roxon, Media release, 6 May 2008, http://www.health.gov.au/internet/ministers/publishing.nsf/Content/5DB7038DBAA0D38ECA257441000F5826/$File/nr060.pdf viewed 13 May 2008.

[12] Waitzkin H and Iriart C, "How the United States Exports Managed Care to Third World Countries" (2000) 52(1) *Monthly Review* 1.

[13] Mendelson D, "Devaluation of a Constitutional Guarantee: The History of Section 51(xxiiiA) of the Commonwealth Constitution" (1999) 23 MULR 308.

[14] Starfield B, "Insurance and the US Health Care System" (2005) 353 NEJM 418; Sekhon JS, Reinhardt UE, Cheng T, Navarro V, Tuckson R, Woolhandler S, Campbell T, Himmelstein DU and Aaron HJ, "Costs of Health Care Administration in the United States and Canada" (2003) 349 NEJM 2461.

[15] Council of Ethical and Judicial Affairs, American Medical Association, "Ethical Issues in Managed Care" (1995) 273(4) JAMA 330.

[16] *Attorney-General (Cth) v Schmidt* (1961) 105 CLR 361; *Trade Practices Commission v Tooth & Co* (1979) 142 CLR 397; Zines L, *The High Court and the Constitution* (4th ed, Butterworths, Sydney, 1997).



THOMSON REUTERS

© 2008 Thomson Reuters (Professional) Australia Limited
for further information visit **www.thomsonreuters.com.au**
or send an email to **LTA.service@thomsonreuters.com**

Please note that this article is being provided for research purposes and is not to be reproduced in any way. If you refer to the article, please ensure you acknowledge both the publication and publisher appropriately. The citation for the journal is available in the footline of each page.

Should you wish to reproduce this article, either in part or in its entirety, in any medium, please ensure you seek permission from our permissions officer.

Please email any queries to
**LTA.permissions@thomsonreuters.com**

creeping introduction in this nation of an expensive managed care health system that performs badly against systems involving a mixture of public-private control in the health care sector on all critical measures of health outcomes.

*Thomas Faunce*
*Associate Professor, College of Law and College of Medicine and Health Sciences,*
*The Australian National University*



THOMSON REUTERS

© 2008 Thomson Reuters (Professional) Australia Limited
for further information visit **www.thomsonreuters.com.au**
or send an email to **LTA.service@thomsonreuters.com**

Please note that this article is being provided for research purposes and is not to be reproduced in any way. If you refer to the article, please ensure you acknowledge both the publication and publisher appropriately. The citation for the journal is available in the footline of each page.

Should you wish to reproduce this article, either in part or in its entirety, in any medium, please ensure you seek permission from our permissions officer.

Please email any queries to
**LTA.permissions@thomsonreuters.com**