IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

No. S154 of 2013

BETWEEN:

RONALD WILLIAMS
Plaintiff

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and

COMMONWEALTH OF AUSTRALIA
First Defendant

MINISTER FOR EDUCATION
Second Defendant

SCRIPTURE UNION QUEENSLAND
20 Third Defendant

ANNOTATED REPLY OF THE ATTORNEY-GENERAL FOR SOUTH AUSTRALIA TO THE SUBMISSIONS OF THE FIRST AND SECOND DEFENDANTS

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Part I: Certification

1. This submission is in a form suitable for publication on the internet.

Part II: Submissions in reply

Re-opening *Williams (No 1)*

2. The decision in *Williams (No 1)* should not be re-opened. South Australia adopts the Written Submissions of New South Wales ([50]-[55]) and Victoria ([7]-[8]).

The decision in *Williams (No 1)*

3. At issue in *Williams (No 1)* was the power of the Commonwealth Executive to contract and spend in circumstances where the prerogative was not engaged, where doing so was not necessary and incidental to the execution and maintenance of a law of the Commonwealth or the Constitution, where the inherent authority derived from the character and status of the Commonwealth as a national government was not engaged, and where no statutory authority to do so existed. Accepting that none of those aspects of Commonwealth executive power were applicable, the Commonwealth argued that the executive power vested by s61 extended to empowering the Executive to engage in activities or enterprises that could be authorised by or under a law made by the Parliament, even if no such law was in existence (referred to as the ***common assumption*** or in the judgments as the ***narrow basis*** upon which the Commonwealth sought to support the power to contract and to spend[1]), and, in the alternative, was as broad as the power of any natural person provided that a valid appropriation existed and the legal rights and duties of others were not interfered with (***the capacities*** or ***broad basis argument***[2]).

4. *Williams (No 1)* rejected the capacities or broad basis argument. Six Justices determined that s61 of the Constitution did not permit the Commonwealth Executive to contract and to spend free of limitations derived from (a) the legislative powers reposed in the Commonwealth by the Constitution; (b) the implications of representative and responsible government; and (c) the federal distribution of powers effected by the Constitution.[3] Subject to re-opening that issue for re-determination, the capacities argument is foreclosed in this case.

5. A majority of the Court constituted by French CJ, Gummow, Crennan and Bell JJ also rejected the common assumption or narrow basis argument. That is, French CJ, Gummow, Crennan and Bell JJ decided that, as a matter of principle, questions as to the scope of the power reposed in the Commonwealth Executive by s61 of the Constitution were not to be determined by reference to an *assumption* that the power of the executive branch was co-extensive with the power of the legislative branch. Such an approach was regarded as too broad.[4] Therefore, subject to re-opening that issue for re-determination, the Commonwealth is foreclosed from submitting such an argument in this case.

6. While Hayne J and Kiefel J also held that s 61 did not authorise the entry into the SUQ Funding Agreement, their Honours did so on the basis that Commonwealth legislative power in ss51(xx) and 51(xxiiiA) of the Constitution would not support a law giving effect to that Agreement. Accordingly, their Honours did not decide whether Commonwealth executive power included the narrow basis or common assumption.[5] To the extent that Heydon J's dissent was based on the principle that the common assumption should be accepted,[6] only three Justices in *Williams (No 1)* would permit the Commonwealth to have recourse to the narrow basis argument in this case. Consequently, that argument is foreclosed in this case.

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1 *Williams v Commonwealth* (2012) 248 CLR 156 ("*Williams (No 1)*") at [26] (French CJ), [125] (Gummow and Bell JJ), [176] (Hayne J), [491] (Crennan J), [567] (Kiefel J).

2 *Williams (No 1)* at [35] (French CJ), [138], [150] (Gummow and Bell JJ), [177] (Hayne J), [488] (Crennan J), [576] (Kiefel J).

3 *Williams (No 1)* at [27], [35], [83] (French CJ), [150]-[159] (Gummow and Bell JJ), [182], [252]-[253] (Hayne J), [524] (Crennan J), [576]-[595] (Kiefel J).

4 *Williams (No 1)* at [4] (French CJ), [134] (Gummow and Bell JJ), [544] (Crennan J).

5 *Williams (No 1)* at [262], [267], [269], [272]-[273], [288] (Hayne J), [569] (Kiefel J).

6 *Williams (No 1)* at [403] (Heydon J).

7. That is not to deny, however, that a majority of the Court[7] left open the possibility that s61 of the Constitution permitted the Commonwealth to enter into some contracts in the absence of statutory authority.[8] However, *Williams (No 1)* was not a case that required that general question to be authoritatively determined in order to determine the issue before the Court and South Australia submits that *Williams (No 2)* is not either.

8. Therefore, at least with respect to the funding agreements in issue in *this* case, a majority of the Court in *Williams (No 1)* forecloses the argument that s61 of the Constitution authorises the Commonwealth Executive to contract and spend in relation to chaplaincy services in the absence of specific statutory authority.

9. In light of the above, if the Commonwealth relies upon an argument falling within the first and second arguments identified at [3] above as support for the SUQ Funding Agreement, it may only proceed to do so if the correctness of *Williams (No 1)* is reconsidered.

The derivation of the scope of executive power under the Constitution

10. There are two overarching flaws in the Commonwealth's approach. First its analysis commences with a negative assumption (that there is power absent identified restraints) in order to establish a positive conclusion: the Commonwealth is authorised to contract and spend with respect to this funding program. The underlying fallacy of this approach was exposed in *Williams (No 1)*. The scope of the Commonwealth's executive power is to be ascertained from the affirmative grant of power contained in s61 of the Constitution understood within the text, context and structure of the Constitution.[9] Second, it invites the Court to provide an advisory opinion on the scope of Commonwealth executive power[10] rather than decide whether the Commonwealth is authorised to contract and spend with respect to the SUQ Funding Agreement.

11. The determinative question is whether the executive power of the Commonwealth is of sufficient scope to support the SUQ Funding Agreement. That question only need be answered if the relevant Appropriations Acts do not provide statutory authority supporting the SUQ Funding Agreement. As a matter of construction it is a question that needs to be answered before consideration of s32B of the *Financial Management and Accountability Act 1997* (Cth). Here it is not contended that the SUQ Funding Agreement is supported by an exercise of prerogative power, in the execution and maintenance of a law of the Commonwealth, by s64 of the Constitution, or in the exercise of inherent authority derived from the character and status of a national government as understood in *Pape* and *Williams (No 1)*.[11] In what follows those aspects of executive power falling within s61 are not considered and all references to executive power should be understood as exclusive of those aspects.

12. Any consideration of the content of Commonwealth executive power commences with s61. That section marks the boundaries of the power but "leaves entirely untouched the definition of that power and its ascertainment in any given case".[12]

13. The significance of text, context and structure, and the extent to which historic notions of the executive power of the English monarch may be interleaved, has given rise to three alternative hypotheses of the scope of Commonwealth executive power in s61. Those three hypotheses are that, in addition to the aspects referred to at [11] above, the content of Commonwealth executive power:

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7 *Williams (No 1)* at [83] (French CJ), [139]-[140], [150]-[159] (Gummow and Bell JJ), [527]-[534] (Crennan J), [288] (Hayne J), [569] (Kiefel J).

8 Such as those required to administer a government department contemplated by s64 or in cases involving the ordinary and well recognised functions of government; *Williams (No 1)* at [83] (French CJ), [139]-[140], [150]-[159] (Gummow and Bell JJ), [527]-[534] (Crennan J).

9 *Ruddock v Vardarlis* (2001) 110 FCR 491 at [179] (French J); *Re Ditfort; ex parte Deputy Commissioner of Taxation* (1988) 19 FLR 347 at 369 (Gummow J); *The Commonwealth v Colonial Combing, Spinning and Weaving Co Ltd* (1922) 31 CLR 421 at 431 (Knox CJ and Gavan Duffy J), 437-438 (Isaacs J), 453 (Higgins J), 461 (Starke J).

10 Annotated Submission of the First and Second Defendants, [108], [118].

11 *Pape v Commonwealth* (2009) 238 CLR 1.

12 *The Commonwealth v Colonial Combing, Spinning and Weaving Co Ltd* (1922) 31 CLR 421 at 437 (Isaacs J), see also 440 (Isaacs J), 461 (Starke J).

(a) is not limited to the defined powers vested in the Commonwealth Parliament but extends to doing anything that does not involve the exercise of coercive power and does not offend any applicable law;

(b) is equivalent to the scope of Commonwealth legislative power whether exercised or not;

(c) is that conferred by a valid law made by the Commonwealth Parliament.

14. Irrespective of which hypothesis is relied upon, the Commonwealth asserts that any concomitant power to spend need only be supported by a valid appropriation. Aside from these three hypotheses, no other workable hypothesis has been identified.

15. It will be apparent that [13(a)] is akin to the capacities or broad basis argument in *Williams (No 1)* and [13(b)] the common assumption or narrow basis argument.

16. That the Commonwealth has executive power extending *"to all those matters that are reasonably capable of being seen as of national benefit or concern; that is, all those matters that befit the national government of the federation"*[13] is no more than a re-formulation of the unlimited hypothesis identified at [13(a)] above. That view is subject to the same textual and structural objections as the hypothesis. Moreover, it is not drawn from the language of the *Constitution.* Its amorphous character would potentially permit the Commonwealth to recite itself into power by the assertion of matters of national character or benefit outside its power. As much is demonstrated by the suggestion that chaplaincy services fall within what is said to be of national benefit.

17. Which of the alternative views of the limit of executive power is correct turns on the significance given to structural and textual indicators contained within the Constitution. That is not to ignore the intention of the framers, but is to recognise that it is the language that must be given primacy. Nor does it eschew the experience of governance prior to the drafting of the Constitution. That experience forms a relevant background. But, care must be taken not to assume the existence of previous arrangements into a structure which was by design *sui generis.* Constitutional norms are to be "traced to Australian sources."[14] In this regard it is of first importance to bear in mind that s61 is a power conferred as part of a negotiated federal compact expressed in writing.[15] The very notion of a federation is to fragment and circumscribe power. Thus, if an assumption of power is to be imported it must necessarily arise from the Constitution. Of equal rank in importance is the observation that the Commonwealth Executive is not an entity that exists independent of the other branches of the federal government.[16] Further, it cannot be equated to a natural person.[17] As to the contemporary meaning of s61 itself, an analysis of the intention of the framers discloses a lack of consensus of the scope of Commonwealth executive power and an avoidance of specification.[18]

18. Structural and textual considerations when drawn together enable the limit of executive power to be deduced. The structural and textual indicators provide the basis of the answer to the scope of s61: the answer is not to be derived by an assertion that seeks to explain away the significance of those indicators. The first four considerations identified below ([19]–[29]) – all tied to the

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13 Annotated Submission of the First and Second Defendants, [152].

14 *Attorney-General (WA) v Marquet* (2003) 78 ALJR 105 at 116, [166] (Gleeson CJ, Gummow, Hayne and Heydon JJ).

15 *Ruddock v Vardarlis* (2001) 110 FCR 491 at [183] (French J); see also the resolutions moved by Sir Henry Parkes, *Official Report of the Australasian Federal Convention* (Sydney) 1891, pp 23, 499.

16 *Williams (No 1)* at [21] (French CJ), [152]-[153] (Gummow and Bell JJ), [515]-[516] (Crennan J), [577] (Kiefel J).

17 *Williams (No 1)* at [38] (French CJ), [151] (Gummow and Bell J),[204]-[205], [215]-[217] (Hayne J), [518] (Crennan J), [577] (Kiefel J).

18 *Williams (No 1)* at [60] (French CJ); M Crommelin, The Commonwealth Executive: A Deliberate Enigma, in Craven, The Convention Debates 1891-1898: Commentaries, Indices and Guide (Legal Books Sydney, 1986). Sir Samuel Griffiths' remarks in moving his amendment to Chapter II Cl 8 of the draft Constitution at the 1891 Federal Australasian Convention must be understood in the light of his earlier remarks; *Official Report of the Australasian Federal Convention* (Sydney) 1891, 31 March 1891 at p527. It cannot be said that he was advocating a position akin to the common assumption. He simply did not say that the scope of executive power was co-extensive with legislative power that had not been exercised. Chief Justice French is correct, with respect, in his observations in *Williams (No 1)* at [50].

distribution of powers - point away from unlimited power, but are equally compatible with the second and third hypotheses [13(b)&(c)] above. The remaining three considerations - concerned with responsible and representative government - are incompatible with any view other than requiring executive power to be conferred by a valid law [13(c)] above.

Section 61, defined grants in ss51 and 52, and the effect of s51(xxxix)

19. Most significant to the analysis of any unlimited view ([13(a)] above) is the connection between executive power in s61 and the grants of legislative power, including s51(xxxix).[19] Any inflation of executive power in s61 carries with it a corresponding expansion of the power to make laws with respect to matters "incidental to the execution of any power vested by this Constitution ... in the Government of the Commonwealth."[20] A suggestion that executive power extends to a subject matter not limited to the defined powers, therefore means that both:

    (a) the making of defined grants of power to the Commonwealth under ss51 and 52 circumscribed by subject matter and purpose is undermined; and

    (b) the scope of Commonwealth legislative power is capable of expansion by an executive act.

20. If it is suggested that s61 does not lead to a correlative expansion of legislative power, then a supervisory gap would emerge. If the Executive were to act outside Commonwealth legislative power, it would have the capacity to act beyond the authority of the Parliament. Constitutional coherence would be undermined.

21. The considerations arising from the connection between ss61 and 51(xxxix) are consistent with accepting either of hypotheses 13(b) or (c), but not 13(a), because neither work to expand the defined grants of legislative power.

22. Acceptance of the unlimited hypothesis ([13(a)] above) also has the consequence that the predominance of legislative power is undermined[21] and the protection afforded by s109 curtailed.[22]

Sections 61 and 96

23. The interaction between ss61 and 96 is also significant.[23] Section 96 permits the Commonwealth Parliament to make grants of financial assistance to any State with consent of the State. Such grants are not restricted to matters the subject of heads of legislative power.

24. If s61 provided unlimited power to the Commonwealth Executive to fund programs beyond Commonwealth legislative power it would permit the Commonwealth Executive to avoid the requirement of consent and act to unilaterally implement programs by contract with private entities. Such a reading of s61 renders s96 superfluous. It also upsets the balance fixed by the distribution of powers to the Commonwealth government.

25. With respect to the Commonwealth's submission regarding s96[24], Mason J's view with respect to the relationship between ss61 and 96 was that the latter confirmed "that there is a very large area of activity which lies outside the executive power of the Commonwealth"[25] which may become subject to s96.

Sections 61 and 106

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19 *Williams (No 1)* at [242] (Hayne J), [581] (Kiefel J).
20 *Williams (No 1)* at [63] (French CJ), [197] (Hayne J).
21 *Williams (No 1)* at [77]-[78] (French CJ), [136] (Gummow and Bell JJ), [581] (Kiefel J).
22 *Williams (No 1)* at [522] (Crennan J).
23 *Williams (No 1)* at [147] (Gummow and Bell JJ), [243]-[248] (Hayne J), [501] (Crennan J), [592]-[593] (Kiefel J); *Pape v Federal Commissioner of Taxation* (2009) 238 CLR 1 at [569] (Heydon J).
24 Annotated Submission of the First and Second Defendants at [142.2].
25 *Victoria v The Commonwealth and Hayden* (1975) 134 CLR 338 at 398.

26. The grant of executive power in s61 has to be construed in the context of the continuation of the States as independent entities with their own executive power.[26] The observations of Dixon J in the *Melbourne Corporation case* are relevant.[27]

27. The coexistence of the States and the Commonwealth as independent polities and the distribution of power between those polities also raises complex issues. The wider the scope of Commonwealth executive power, the wider is the potential area of immunity from interference by State law. The suggestion in support of the unlimited view that there are "large areas in which there can be a concurrent exercise of Commonwealth and State executive power"[28] assumes the answer to large and complex questions concerning the interaction of multiple polities within the federation, which gave rise to the *Cigamatic*[29] doctrine and informed the result in *Re Residential Tenancies Tribunal.*[30] Those questions concern, at a minimum: (a) whether non-statutory "executive power" beyond the prerogatives is protected by an immunity; and (b) whether there is utility in the distinction between a law affecting the 'capacities' and one affecting their exercise.

28. Further, an unlimited view of Commonwealth executive power suggests that the Commonwealth Executive can operate on the same subject matter as State executive power. As French CJ observed in *Williams (No 1)* expenditure administered and controlled by the Commonwealth "*in fields within the competence of the executive governments of the States has, and always has had, the potential, in a practical way of which the Court can take notice, to diminish the authority of the States in their fields of operation.*"[31] That there may be no legal conflict is not to the point.[32] There is no reason why on this approach Commonwealth action under contract may not operate to frustrate or defeat the ends sought to be achieved by State action.

Sections 61 and 99 (preference) and sections 61 and 94 (surplus revenue)

29. Section 61 is to be understood bearing in mind the limits on Commonwealth legislative power prohibiting "discrimination" or "the giving of preference" to a State.[33] Those limits apply to "laws" or "regulation" by the Commonwealth, but do not apply to executive action that is not taken pursuant to statutory authority, including contracts consensually entered into. The unlimited view of Commonwealth executive power would permit preference to be afforded to a State by executive action, when it could not be permitted by executive action made pursuant to legislation subject to that limit. As is also the case with respect to s94 of the Constitution, which provides for the distribution of surplus revenue of the Commonwealth to the States, this points away from the conclusion that the power to spend is unlimited.[34]

Section 61, responsible government (ss1, 2, 63 and 64) and representative government

30. Section 61 operates in the context of arrangements for the exercise of Parliamentary control over the Executive established by the Constitution. Unlimited Commonwealth executive power diminishes Parliamentary engagement and supervision of executive action.[35]

31. Section 64 and its surrounding provisions establish a relationship described by the expression "responsible government". The substance of that arrangement is parliamentary oversight over the exercise of executive power. That suggests that not only must legislative power be as extensive as executive power, but must govern the interpretation of provisions that concern the ability of Parliament to control or curtail executive action. In particular, the view that the Commonwealth has executive power where legislative power *could* be exercised, would leave an arrangement

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26 *Williams (No 1)* at [37] (French CJ), [522] (Crennan J), [590] (Kiefel J); *Pape v Commonwealth* (2009) 238 CLR 1 at [214] (Gummow, Crennan and Bell JJ).

27 *The Lord Mayor, Councillors and Citizens of the City of Melbourne v The Commonwealth* (1947) 74 CLR 31 at 82.

28 Annotated Submission of the First and Second Defendants at [143.1].

29 *Commonwealth v Cigamatic Pty Ltd (In Liquidation)* (1962) 108 CLR 372.

30 *Re Residential Tenancies Tribunal (NSW) and Henderson; Ex parte Defence Housing Authority* (1997) 190 CLR 410.

31 *Williams (No 1)* at [37] (French CJ).

32 *Davis v The Commonwealth* (1988) 166 CLR 79 at 92 (Mason CJ, Deane and Gaudron JJ); *Williams (No 1)* at [37] (French CJ).

33 Constitution, s 99.

34 *Williams (No.1)* at [250] (Hayne J).

35 *Williams (No 1)* at [60]-[61] (French CJ), [136] (Gummow and Bell JJ), [508]-[516] (Crennan J), [581] (Kiefel J).

whereby, save for appropriation, executive action could occur without authorisation by an Act of Parliament. That represents at least a weakening of legislative predominance, and undermines responsible government. The correlative reduction in legislative control also weakens representative government.[36] That is so because it reduces the participation of elected representatives, and in particular the intended States House, in the control of decision making.[37]

32. As the law of contract permits the entry by the Commonwealth into an unlimited form of non-coercive bargains, the practical consequences of a view that executive power may be exercised without parliamentary control become apparent. Contract provides a means of the Commonwealth exercising administrative power.[38] Reliance upon an appropriation as a mean of control must in turn bear in mind the limits of control by appropriation. The Court in *Combet*[39] held that an appropriation Act will validly appropriate funds for advertisements, notwithstanding that the expenditure for that program of advertisements was not specifically identified in the appropriation Act or Portfolio Budget Statement. That being so, it is hard to see how appropriation, and the generality and abstraction it permits, represents more than a partial engagement with the parliamentary process.[40] Moreover, the absence of an appropriation does not deprive a contract of its validity, nor in any practical sense is a Parliament freely able after the event to extricate itself from a contractual obligation entered into without its participation.

Section 61 and the Senate

33. A view of executive power where the Parliament *could* legislate particularly diminishes the participation of the Senate, and accordingly undermines the legislative arrangement and the role of the Senate provided for in Chapter 1, Part II of the Constitution.[41] That follows because the limit of the Senate's effective participation would be in addressing an appropriation, there not being a law on which the executive action is authorised. On addressing an appropriation, the Senate by reason of ss53 and 54 of the Constitution could not introduce or amend the law (assuming the program is disclosed in the appropriation), leaving it with the blunt option of returning it to the House of Representatives. The significance of the Senate returning an appropriation bill, and blocking supply, cannot be understated.

Section 61 and the prerogative

34. Section 61 is to be understood bearing in mind that Commonwealth executive power includes defined prerogative powers.[42] Their definition in Australia has been marked by a restraint reflecting the place of prerogative powers in a written Constitution. An unlimited view of Commonwealth executive power [(13(a)]) under s61 has the potential to entirely subsume those defined limits. That is so because restraint in the definition of the prerogatives is defeated by a view that assimilates with them a form of executive power to be exercised outside a grant made by statute.

Conclusion

35. The foregoing discussion of the constitutional text and structure which must be accommodated to ascertain the scope of Commonwealth executive power in s61 supports the majority view in *Williams (No 1)*, which, as discussed above, was clear in its rejection of the unqualified and unlimited approach to Commonwealth executive power which the Commonwealth seeks to re-agitate in this case. Hypothesis 13(a) must be rejected. So too, South Australia contends, the same considerations support the four Justices in *Williams (No 1)* who rejected the narrow basis argument or common assumption – hypothesis 13(b). Here, as in *Williams (No 1)*, the SUQ Funding Agreement is not supported by s61.

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36 *Williams (No 1)* at [136]-[137], [145] (Gummow and Bell JJ).
37 *Williams (No 1)* at [145] (Gummow and Bell JJ).
38 Seddon, The Interaction of Contract and Executive Power (2003) 31 Fed Law Rev 541; *Williams (No 1)* at [158] (Gummow and Bell JJ).
39 *Combet v Commonwealth* (2005) 224 CLR 494.
40 *Williams (No 1)* at [222] (Hayne J).
41 *Williams (No 1)* at [60]-[61] (French CJ), [136] (Gummow and Bell JJ), [487] (Crennan J).
42 *Williams (No 1)* at [544] (Crennan J).

State executive power

36. *Williams (No 1)* did not require consideration of the scope of State executive power to contract and to spend in the absence of State legislation. The Commonwealth contention that any implication limiting Commonwealth executive power would be 'mirrored' in State executive power does not fall for determination in this case. This Court only decides constitutional questions where there exists a state of facts which makes it necessary to do so in order to do justice between the parties.[43]

37. In any event, differences in the source of Commonwealth and State executive power and in the implications operating on s61 of the Constitution, suggest that the powers are to be distinguished. In particular:

    (a) the starting point for any consideration of State executive power is not a new arrangement of power found in s61 of the Constitution which is of a new kind. State Constitutions were continued in operation under the Constitution by s106, and

    (b) the features of the legislative, executive and judicial power of the Commonwealth as identified above are not replicated in State Constitutions. Some features are absent entirely. In some respects what is a constitutional requirement at the Commonwealth level represents parliamentary practice at a State level. Most significantly, given that the limit to s61 is an implication from other features of the Constitution, the relationship between those powers is not the same either between the Commonwealth Constitution and State Constitutions, or even between State Constitutions.

38. Finally, on a separate issue, it is not an issue of any moment to say that a result of legislation being enacted to authorise Commonwealth executive action may give rise to s109 inconsistency. Federal-State co-operation has always been premised on the basis that if the Commonwealth validly legislates inconsistent State laws will be inoperative to that extent. This is a contemplated consequence of federation.

Dated 17 April 2014

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[43] *Lambert v Weichelt* (1954) 28 ALJ 282 at 283 (Dixon CJ for himself, McTiernan, Webb, Fullagar, Kitto and Taylor JJ). See also *Attorney-General for NSW v Brewery Employees Union of NSW* (1908) 6 CLR 469 at 491-492 (Griffith CJ), 553-554 (Isaacs J); *Cheng v The Queen* (2000) 203 CLR 248 at 270 [58] (Gleeson CJ, Gummow and Hayne JJ); *Re Patterson; Ex parte Taylor* (2001) 207 CLR 391 at 473-474 [250]-[252] (Gummow and Hayne JJ); *O'Donoghue v Ireland* (2008) 234 CLR 599 at 614 [14] (Gleeson CJ).