

## **WILLIAMS v COMMONWEALTH OF AUSTRALIA & ORS (S307/2010)**

Writ of summons filed: 21 December 2010

Special case referred into the Full Court: 9 May 2011

Special case filed: 18 May 2011

The Plaintiff is the parent of four children currently enrolled at the Darling Heights State Primary School ("the School"). The Fourth Defendant, Scripture Union Queensland ("SUQ") has provided chaplaincy services in Queensland schools for reward since at least 1991. The National School Chaplaincy Program ("NSCP") was introduced by former Prime Minister, Mr John Howard, in 2006. In 2010 the current Prime Minister, Ms Julia Gillard, pledged \$222 million to extend that program for four years.

In 2007 the Commonwealth entered into a funding agreement ("the Darling Heights Funding Agreement") with SUQ for the provision of funding under the NSCP with respect to the School. Neither the Plaintiff, nor any of his children, has participated in any program or chaplaincy service at the School provided pursuant to the NSCP. There is also no obligation for them to have done so.

The Plaintiff seeks to stop the Federal Government from spending taxpayer's money on the NSCP. He argues that that funding breaches s 116 of the Constitution which states:

*"The Commonwealth shall not make any law for establishing any religion or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth".*

On 9 May 2011 Justice Gummow referred this matter into the Full Court by way of a special case.

The questions of law reserved for the consideration of the Full Court include:

- Does the Plaintiff have standing to challenge:
  - a) the validity of the Darling Heights Funding Agreement?
  - b) the drawing of money from the Consolidated Revenue Fund for the purpose of making payments pursuant to the Darling Heights Funding Agreement during the following financial years:
    - i) 2007-2008;
    - ii) 2008-2009;
    - iii) 2009-2010;
    - iv) 2010-2011?

- c) the making of payments by the Commonwealth to SUQ pursuant to the Darling Heights Funding Agreement during the following financial years:
  - i) 2007-2008;
  - ii) 2008-2009;
  - iii) 2009-2010;
  - iv) 2010-2011?
- If the answer to Question 1(a) is Yes, is the Darling Heights Funding Agreement invalid, in whole or in part, by reason that the Darling Heights Funding Agreement is:
  - a) beyond the executive power of the Commonwealth under s 61 of the Constitution?
  - b) prohibited by s 116 of the Constitution?

Notices pursuant to s 78B of the *Judiciary Act* 1903 have been filed on behalf of both the Plaintiff and the First, Second and Third Defendants. The Attorneys-General for New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania have all advised the Court that they will be intervening in this matter.

On 5 May 2011 the Churches Commission on Education Incorporated filed a summons, seeking leave to intervene in this matter.