

## **WILLIAMS v COMMONWEALTH OF AUSTRALIA & ORS (S154/2013)**

Writ of summons filed: 8 August 2013

Date special case referred to the Full Court: 13 December 2013

In carrying out its National School Chaplaincy and Student Welfare Program (“the Program”) the First Defendant (“the Commonwealth”) provides funding for schools to have the services of a school chaplain or a student welfare worker. In December 2011 Scripture Union Queensland (“SUQ”) entered into an agreement (“the SUQ Funding Agreement”) with the Commonwealth under which SUQ receives payments under the Program until January 2015 for the chaplaincy and student support services that it provides to many schools.

One of the schools to which SUQ provides services is the Darling Heights State School, whose students include four children of Mr Ronald Williams (“the Plaintiff”). The Plaintiff opposes the spending of Commonwealth funds on school chaplains. In August 2013 he commenced proceedings in the Court, challenging the validity both of the SUQ Funding Agreement and of payments made under it by the Commonwealth. The Plaintiff also challenges the constitutional validity of certain legislative provisions which purportedly authorise the Commonwealth to make payments under the Program. (In previous proceedings in this Court, the Plaintiff successfully challenged the constitutional validity of an earlier funding agreement between the Commonwealth and SUQ: *Williams v Commonwealth of Australia* [2012] HCA 23.)

A Notice of a Constitutional Matter was filed on 9 August 2013. The Attorney-General of every State is intervening in these proceedings.

The parties filed a Special Case, which Chief Justice French referred to the Full Court for hearing. The parties filed, by leave, an Amended Special Case on 1 May 2014.

The questions stated in the Amended Special Case for the opinion of the Full Court are:

1. Was the SUQ Funding Agreement:
  - (a) as made, and as varied by the First to Fourth Variation Deeds, authorised by *Appropriation Act (No 1) 2011-2012* (Cth)?
  - (b) as varied by the Fifth to Tenth Variation Deeds, authorised by *Appropriation Act (No 1) 2012-2013* (Cth)?
  - (c) as varied by the Eleventh to Fourteenth Variation Deeds, authorised by *Appropriation Act (No 1) 2013-2014* (Cth)?
2. If not, are:
  - (a) s 32B of *Financial Management and Accountability Act 1997* (Cth) (“FMA Act”);
  - (b) Part 5AA and Schedule 1AA of the *Financial Management and Accountability Regulations 1997* (“FMA Regulations”); and
  - (c) item 9 of Schedule 1 to the *Financial Framework Legislation Amendment Act (No 3) 2012* (Cth) (“Financial Framework Amendment Act”);wholly invalid?

3. If not, is the SUQ Funding Agreement, as varied by the First to Fourteenth Variation Deeds, authorised by:
  - (a) s 32B of the FMA Act; and
  - (b) Part 5AA of, and item 407.013 of Schedule 1AA to, the FMA Regulations; and
  - (c) where applicable, Item 9 of Schedule 1 to the Financial Framework Amendment Act?
4. Was the Commonwealth's entry into, and expenditure of monies under, the SUQ Funding Agreement, as varied by the First to Fourteenth Variation Deeds, supported by the executive power of the Commonwealth?
5. Does the Plaintiff have standing to challenge the making of:
  - (a) the January 2012 Payment; and
  - (b) the June 2012 Payment?
6. Was the making of the January 2013 Payment and the February 2014 Payment and, to the extent that the answer to question 5 is "Yes", the January 2012 Payment and the June 2012 Payment, unlawful because it was not authorised by statute and was beyond the executive power of the Commonwealth?
7. What, if any, of the relief sought in the Writ of Summons should the Plaintiff be granted?
8. What orders should be made in relation to the costs of this Special Case and of the proceedings generally?