

IN THE HIGH COURT OF AUSTRALIA  
SYDNEY REGISTRY

No S307 of 2010

BETWEEN:

RONALD WILLIAMS

Plaintiff

and

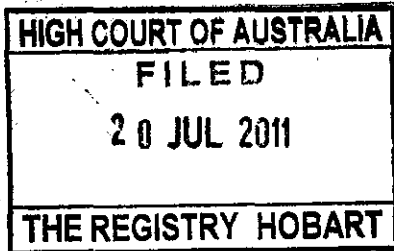
COMMONWEALTH OF AUSTRALIA

First Defendant

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MINISTER FOR SCHOOL  
EDUCATION, EARLY CHILDHOOD  
AND YOUTH

Second Defendant



MINISTER FOR FINANCE AND  
DEREGULATION

Third Defendant

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SCRIPTURE UNION QUEENSLAND

Fourth Defendant

WRITTEN SUBMISSIONS OF THE ATTORNEY-GENERAL  
OF TASMANIA (INTERVENING)

PART I: SUITABILITY FOR PUBLICATION

- 30 1. These submissions are in a form suitable for publication on the Internet.

PART II: BASIS OF INTERVENTION

2. The Attorney-General for Tasmania intervenes pursuant to s 78A of the *Judiciary Act 1903* (Cth) and seeks to make submissions only with respect to questions 2(a) and 4(a) of the Special Case [SCB, Vol 1, 35-36].
3. The Attorney-General for Tasmania supports the Plaintiff's contentions that the Darling Heights Funding Agreement is beyond the executive power of the Commonwealth conferred by s 61 of the *Constitution*, and beyond the executive power of the Commonwealth conferred by s 61 of
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Date of Document: 20<sup>th</sup> July 2011

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Solicitor for the Attorney-General of Tasmania

the *Constitution* when read with s 51(xx) of the *Constitution*. The Attorney-General for Tasmania makes no submissions in relation to the contention that the Darling Heights Funding Agreement is beyond the executive power of the Commonwealth conferred by s 61 of the *Constitution* when read with s 51(xxiiiA) of the *Constitution*.

### PART III: WHY LEAVE TO INTERVENE SHOULD BE GRANTED

4. Not applicable.

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### PART IV: APPLICABLE LEGISLATION

5. The applicable constitutional and statutory provisions are those identified in [85]-[86] of the Plaintiff's Amended Submissions.

### PART V: SUBMISSIONS

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6. The Attorney-General for Tasmania adopts and supports the submissions of the Attorney-General for New South Wales that the making by the Commonwealth of the Darling Heights Funding Agreement and the incurring of expenditure pursuant to it, are each beyond the executive power of the Commonwealth conferred by s 61 of the *Constitution* standing alone.

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7. The Attorney-General for Tasmania also adopts and supports the submissions of the Attorney-General for New South Wales that the making by the Commonwealth of the Darling Heights Funding Agreement and the incurring of expenditure pursuant to it, are each beyond the executive power of the Commonwealth conferred by s 61 of the *Constitution* when read with s 51(xx) of the *Constitution*; both by reason of Scripture Union Queensland not being a trading corporation within the meaning of s 51(xx), and even if it were, because the making by the Commonwealth of the Darling Heights Funding Agreement is not authorized by s 61 of the *Constitution* when read with s 51(xx).

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8. The Attorney-General for Tasmania makes no submissions with respect to whether the making by the Commonwealth of the Darling Heights Funding Agreement or the incurring of expenditure pursuant to it, is supported by the executive power of the Commonwealth conferred by s 61 of the *Constitution* when read with s 51(xxiiiA) of the *Constitution*.

9. The Attorney-General for Tasmania makes no submissions with respect to the remainder of the questions posed by the Special Case.

Dated: 20<sup>th</sup> July 2011



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Leigh Sealy SC

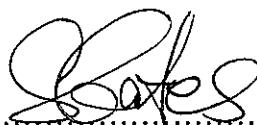
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