HIGH COURT CASE STUDY

AUSTRALIAN CONSTITUTION CENTRE

The High Court limits Federal Government spending powers

Williams v Commonwealth of Australia (2012)

Facts of the case

The National School Chaplaincy Program (NSCP) was set up by the Commonwealth Government led by Prime Minister John Howard in 2006.

Ronald Williams was the father of four children enrolled at the Darling Heights State School in Queensland. He wanted his children to have a secular education in a public State school. He was concerned that the NSCP was providing religious teaching.

Williams challenged the validity of the NSCP in the High Court as being beyond Commonwealth power. Williams argued that the Commonwealth lacked the power to enter into the funding agreement and make the payments to NSCP providers.

No laws established the NSCP or authorised payments made by the Commonwealth Government under the funding agreements. Instead, the Commonwealth relied on its executive power in section 61 of the Constitution to spend the funds required to support the NSCP.

Issues considered by the court

This case required the Court to address the scope of the Executive Power and whether the funding of the chaplaincy program was beyond the power of the Commonwealth.

Decision

The decision was 6:1 in favour of Williams. The majority decided that the Government could not fund the chaplaincy program anywhere in Australia under the arrangement made in 2006 because it lacked a legislative basis.

The Court found that even if the Parliament had the power to enact laws to support the NSCP, the Executive could not enter into an agreement and make payments for the program until the Federal Parliament had actually made the law.

Ron Williams in the High Court of Australia. Source: © Nelson Lau, Looking Glass Photography

If the Commonwealth had power to enter into such agreements without Parliamentary backing, policies could be implemented without scrutiny from the Parliament.

The decision shed light on the federal nature of our constitutional system and the importance of responsible and representative government.

Background to the case

The National School Chaplaincy Program was created to establish or enhance chaplaincy services for schools. The program involved a school engaging a chaplain service provider (in this case, Scripture Union Queensland). The Commonwealth Government entered into an agreement with the chaplain service provider to fund the chaplains.

The Court clarified the Executive's power to spend. Most government spending, outside of the ordinary administration of government, requires statutory authorisation.

After the 2012 Williams decision the Commonwealth Parliament passed a law to fund the NSCP and hundreds of other existing unauthorised programs.

In 2012, Scripture Union Queensland launched a campaign called the "Back Our Chappies Tour". They attempted to galvanise public support. In 2014, before the second Williams Case, the SUQ conducted a 7000km, three-week-long bus trip.

In the second Williams case in 2014, the High Court ruled that the Parliament did not have the power to enact laws to fund school chaplains. The result was that the Government used the power to make grants to the States under section 96 of the Constitution to fund the program. They stipulated in the funding agreements that the States had to use it to pay the chaplaincy providers.

Did you know?

- Following the 2012 Williams case the Government enacted legislative support for over 400 executive funding schemes whose validity was jeopardised.
- The 2012 Williams case also involved a question of freedom of religion. The High Court shortly and unanimously rejected this argument, because the chaplains did not hold an "office" under the Commonwealth for the purposes of section 116 of the Constitution.
- The 2014 Williams decision has had ongoing contemporary relevance for what the Federal Parliament can fund.

Chief Justice French bench
Source: High Court of Australia