

Senate Committee: Education and Employment

**QUESTION ON NOTICE
Additional Estimates 2014 - 2015**

Outcome: Schools and Youth

Department of Education and Training Question No. SQ15-000084

Senator Ludwig, Joe provided this question in writing.

This question relates to Senator Ludwig's questions to the Finance and Public Administration Legislation Committee at the Supplementary Estimates Hearing on 20 November 2014. The discussion is at [Attachment A](#).

Australian Research Alliance for Children and Youth programme

Question

During Supplementary Estimates in 2014, Finance flagged changes to the Australian Research Alliance for Children and Youth program (Q F83).

1. Could you please provide a summary of these changes?
2. What is the timeframe for implementation?
3. Who is the responsible agency for actioning these changes?
4. When was the minister last briefed on this item? Was this briefing requested or initiated by the Minister or was it initiated by the department?
5. What action has the minister taken on this policy?

Answer

1. Following the decision of the High Court in *Williams vs Commonwealth* in June 2014 (RONALD WILLIAMS v COMMONWEALTH OF AUSTRALIA & ORS HCA 23), many Commonwealth programmes were assessed for constitutional risk, including the draft funding agreement with the Australian Research Alliance for Children and Youth (ARACY).

The draft agreement with ARACY was amended following Australian Government Solicitor (AGS) advice on 8 August 2014. The amendments ensured that funding for ARACY would be for research projects for the specific purpose of informing the Commonwealth, in reliance on the Commonwealth's executive power. Consequently, the ARACY grant agreement has a low constitutional risk.

2. The varied grant agreement with ARACY was executed on 4 November 2014 and will conclude on 30 June 2018.
3. The Department of Education and Training, in consultation with the AGS, was responsible for drafting the amended grant agreement with ARACY.
4. Following the High Court decision, in late 2014, there was a Government decision to redesign programmes according to AGS advice on Constitutional authority for expenditure. The Hon Christopher Pyne MP, Minister for Education and Training, was last briefed on updates to this process on 30 March 2015. This brief was initiated by the department in response to the Government decision to redesign the ARACY agreement in line with constitutional authority for expenditure.

5. Minister Pyne wrote to Senator the Hon Mathias Cormann, Minister for Finance, on 1 April 2015, seeking his agreement to an amendment of the Financial Framework (Supplementary Powers) (FF(SP)) Regulations, to include an item in Schedule 1AB authorising expenditure on the redesigned funding for ARACY.

FINANCE AND PUBLIC ADMINISTRATION LEGISLATION COMMITTEE

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Senator LUDWIG: I might put some more questions on notice about that, if I turn my mind to a little bit more. In terms of the Williams case and the second case in relation to the chaplaincy program, I understand that you were heavily involved in the work that is finance after the first Williams case. What work have you done in relation to the second case?

Ms Halton: I am sorry, Senator, but I missed that.

Senator LUDWIG: That is all right. I am sure Mr Suur can help.

Mr Suur: There was a framework put in place after the first Williams case to manage the consequences of that case for government programs. That framework has continued. There is a steering committee which is chaired by Dr Helgeby, from the Department of Finance, and includes the Attorney-General's Department, the Prime Minister's department, the Treasury and representatives from the Australian Government Solicitor and the Office of Parliamentary Counsel. That committee continued its work leading up to the second Williams case and after the second Williams case. Underneath that committee is a working group which I chair and the representatives on that working group are from the same departments. Those two committees coordinate government actions that arise as a result of the Williams case.

Senator LUDWIG: Has the second Williams case required additional work or a change in the direction of the work?

Mr Suur: In many ways, the second Williams case reaffirmed the High Court's decision in the first Williams case. The High Court, however, gave more clarity to its thinking and was more specific in relation to particular Commonwealth powers that were the subject of litigation. The direction is the same. If you are going down the path of asking what the constitutional or legal ramifications of the Williams case, I would be more comfortable with those questions being steered towards the Attorney-General's Department.

Senator LUDWIG: No, I am happy not to ask you those. I would ask the Attorney-General's Department those questions if I were minded to. So the work that you are doing will reflect how? Could you give me an example? Will you require departments to consider different ways of funding projects or programs? Are they going through an audit of the programs that they fund to ensure that they are compliant with the High Court? Are you just giving them advice as to whether the specific programs are within the competency of the Commonwealth to do?

Mr Suur: There are a couple of things that are happening. The first is that the High Court has been clear that, in addition to a valid appropriation to support a government activity, a valid government activity also needs legislative support. As a result of the first Williams case an amendment was made to the then *Financial Management and Accountability Act* which has continued through into the new financial framework under the *Financial Framework (Supplementary Powers) Act*. That is what was called the section 32B mechanism. I think that you are familiar with that. From time to time schedules are made and are presented to the parliament. Those schedules describe the government activity in question and also the purpose of that activity. After the first Williams case, Senator, and after many long nights and many gallons of coffee the bureaucracy managed to bring to the parliament over 500 programs which needed legislative support.

Senator LUDWIG: I do recall that report. Can I express appreciation for the work that you did.

Mr Suur: That process in a more orderly fashion has been continued since that time. Now we drink tea rather than coffee.

Ms Halton: At least it's not gin, Senator.

Senator LUDWIG: I moved to green tea for that same reason.

Ms Halton: Did you? Ms Huxtable is into the tea as well.

Mr Suur: We have managed to systematically bring schedules up to the parliament to give legislative authority to government activities as they are put in place. In addition to that, we are going through a process of reviewing programs to ensure that they have a valid constitutional basis, and that is ongoing work that is being undertaken by the government.

Senator LUDWIG: For the individual program, like the chaplaincy program, would I go to the department to see how they funded that?

Mr Suur: The chaplaincy program has been recast to take account of the High Court decision. Again, questions about that program are best asked of the education department.

Senator LUDWIG: Yes. I would ask them how they now provides the funding and what mechanism they have used. It would have been the Department of Education that would have done that.

Mr Suur: Yes, Senator.