AUSTRALIAN COUNCIL FOR THE DEFENCE OF GOVERNMENT SCHOOLS

PRESS RELEASE 553#

WHERE DOES THE CONSTITUTION SAY THAT THE FEDERAL GOVERNMENT IS RESPONSIBLE FOR SCHOOL CHAPLAINS?

The weak religious freedoms of Australian citizens has been exposed by the Chaplaincy in Public Schools issue.

This issue has been upstaged in part by the Federal budget in the last week, but the Williams case in the High Court and the Coalition removal of the 'secular chaplain' option from public schools in the budget has put it back in the limelight. Angelo Gavrietatos of the AEU also notes that the Abbott Government have taken away the option of appointing secular social workers under the national chaplaincy program – for which the Coalition has found an extra $245m !

He asks: Where does the constitution say that the federal government is responsible for school chaplains?

The answer of course, is that we are supposed to have protection of and from religion in Section 116 of the Australian Constitution. But the High Court judges (with the exception of Justice Lionel Murphy) read those freedoms down and out in the DOGS case, of 1981.
Non-conformist groups have forgotten their history – if they ever knew it. The scent of taxpayers money is too strong in their nostrils.

Nevertheless, there is a groundswell of supporters of a free secular universal public education system. Some of whom have either strong religious beliefs, or strong secular commitments .They have not forgotten the hundreds of year history of persecution, and the battle for public education.

The DOGS are no longer alone.

For example:

In the Guardian of Thursday May 8 2014 Marion Maddox, in an article entitled *School chaplains challenge reveals Australia's weak religious freedoms* noted that:

In the absence of a bill of rights, we rely on the constitution to keep church and state separate. The second legal challenge to chaplains in schools shows how flimsy that protection is .

As Ron Williams, the brave Queensland parent taking the case to the High Court says:

We assume we've got a strong separation of church and state in this country, but it's actually not very strong. ... In fact, nobody's ever succeeded in the High Court in arguing for ... separation [of church and state]."

Section 116 also prohibits the Commonwealth from establishing any religion, invoked unsuccessfully in the Defence of Government Schools case in 1981. With the exception of one dissenting judge, Lionel Murphy, the court found no constitutional bar to Commonwealth funding of religious schools. Section 116's other main plank, preventing the Commonwealth from curtailing "free exercise" of religion, was tested in 1912 and 1943, and both times the Court unanimously decided that the Commonwealth's interests trumped individuals' religious freedom.

Williams' commitment has not changed. He told journalists he was back in court because "there is no place in public schools for any form of missionaries or evangelists or anything that isn't secular."

Now he and his donors must try to achieve their goal in court without invoking the constitutional provision they believe gives their cause legitimacy. They will have to be satisfied with a de facto separation, because section 116 doesn't do what it says on the box.

In actual fact, his last visit to the High Court had the same side-effect as every other section 116 case has had: the provision's potential now looks narrower, its use apparently slighter — and Australians' religious freedoms therefore flimsier — than before.

In the absence of a bill of rights, section 116 is one of the few parts of our constitution that explicitly protects citizens' rights or freedoms. For all the benefit any aggrieved citizen has been able to obtain from it, you have to wonder how much we would notice its absence.

But the issue of religious freedom has been further tested by the blatant discrimination against well trained secular guidance and welfare officers in our public systems in the recent Coalition budget.

In an interesting blog entitled ***Gladly the Cross-Eyed Bear***, at
http://thatsmyphilosophy.wordpress.com/2014/05/14/school-chaplains-making-disciples/

thatsmyphilosophy had the following to say.

In last night's budget, the Abbott government commited a further $245 million to fund the presence of religious chaplains in state schools for the next five years. This, despite the High Court having already ruled once that such funding is illegal and another decision pending, following plaintiff, Ron Williams' return to the High Court last week.

It is not for the High Court to decide on the value or otherwise of placing religious practitioners into schools at the expense of professionals with tertiary qualifications in psychology, counselling and youth work. The Williams decision will be made on the basis of whether the funding arrangements are permitted under the limited legislative parameters placed on the Federal government by the Constitution.

The argument about whether chaplaincy is a wise or responsible use of public money must take place in the public square, not the High Court. It is for the Australian public to decide whether that money could be better spent on, say, disability services in schools, text books, better IT equipment, airconditioning, swimming pools, or, God forbid, tertiary trained, welfare workers with no particular religious axe to grind.

It is up to the Australian public to exert pressure on their political representatives – both Federal and state – to end this cynical attempt to purchase the votes of an imagined 'Christian constituency'. At its worse, it is outright pork-barreling. At its best, it is pork-barreling combined with an ideological agenda to 're-Christianise' a nation which is moving rapidly away from religious faith by infiltrating the educational incubators of our next generation of workers and leaders.

The evangelistic tendencies of the mostly fundamentalist, Protestant, religious evangelists who profit from the National School Chaplaincy Program are inexplicably talked up as representing one of the key benefits of the program, while, at the same time frantically obfuscated to deflect criticism.

Chaplains are unashamedly in schools to inculcate 'values'. They are religious chaplains for a reason: (there never were many truly 'secular' welfare workers', and the new budget provides only for those of a religious bent).

John Howard said when he announced the program in 2006 that he was unashamedly calling them chaplains:

"Yes I am calling them chaplains because that has a particular connotation in our language, and as you know, I am not ever overwhelmed by political correctness. To call a chaplain a counsellor is to bow to political correctness. Chaplain has a particular connotation. People understand it, they know exactly what I am talking about."

When atheist Prime Minister, Julia Gillard, was grilled about her views on the chaplaincy program, she cowered in front of Australian Christian Lobby chief, Jim Wallace and recited a well-rehearsed:

"… my view about the chaplaincy program is yes, it would continue as a chaplaincy program, with everything that that implies."

And yet, in the face of criticism from various quarters including teachers, parents, psychologists, members of non-Christian religious groups and secularists that the program breaches the spirit of the separation of church and state and compromises the principle of Australian education as 'free, compulsory and secular', its advocates stand, hand on Bible, and swear that the religious component is 'incidental' because chaplains are expressly forbidden from proselytising in the program's guidelines.

Confusion reigned in the High Court, this week, when the Commonwealth solicitor-general and the QC representing Scripture Union Queensland made passionate representations about the value of chaplains as counselors – until it was pointed out by both one of the Justices and by Mr Williams' barrister that the guidelines expressly forbid chaplains from counseling students.

Mr Williams' barrister also questioned how the inculcation of 'values' – put forward as a benefit of the program – could be achieved when the specific values associated with religious chaplains (surely irrevocably entwined with the concept of following Christ and his teachings) were not permitted to be proselytised.

Ron Williams, Hugh Wilson and I, of course, knew the answer to this question was that chaplains routinely counsel and proselytise in a clear breach of the National School Chaplaincy Program guidelines and Education Queensland policy. If they do not, there is really very little purpose to them being in schools beyond running crazy hair days and presiding over sausage sizzles.

So, I was not surprised, this morning, when a Twitter follower sent me a link to a blog called "The crossroad – thoughts on theology, society, justice and discipleship" by Daniel Baxter, a school chaplain who appears to be working in two state schools in Brisbane.

On 12 February, this year, Daniel wrote a blog in which he confessed:

"Discipleship is a journey where we are consistently changed, renewed and restored. It is ultimately a journey deeper into a relationship with Jesus, and to becoming more effective at seeing and establishing the Kingdom of God in our world. It's a journey I am very passionate about personally, and **it is my mission to disciple others, including kids and their families in the schools I work in**, as well as those around me in church life. " [Emphasis added]

I've taken a screenshot because experience has shown me that, once spotlighted, these kinds of frank statements tend to magically disappear into the ether.

The Marion Maddox article, can be read in full at http://www.theguardian.com/commentisfree/2014/may/08/school-chaplains-challenge-reveals-australias-weak-religious-freedoms. Here are some further excerpts.

The federal funding of school chaplains has always been a scramble. It began in the last year of John Howard's government, offering amounts capped at $20,000 for schools to hire people who may not teach, counsel or evangelise, but who provide everything from breakfast clubs to support in times of grief to "supporting students who express a desire to explore their spirituality".

Even with a brief as broad as that, schools can't ask too much for $20,000: you can scramble into a chaplain's job — or the secular equivalent, as a student welfare worker — with a certificate IV qualification, equating to between six months and one year's study. Both the secular welfare workers and the minimum qualification were policy-on-the-run in response to criticism from the ombudsman about proselytising and unqualified personnel.

The chaplaincy programme's most serious battering to date was the 2011 High Court challenge brought by Queensland father Ron Williams. The court found that the Commonwealth had no power to allocate funding without either parliamentary oversight or channelling the money through the States. As much as 10% of its total spending was suddenly in jeopardy.

The federal government responded, again on the run. Senator George Brandis, now attorney-general, complained that the quick-fix legislation appeared no more constitutionally sound than the programmes it was designed to paper over, concluding that "the Commonwealth is clearly asking for another clobbering by the court".

Williams immediately announced his willingness for more. His new case is currently being heard, and several constitutional experts are tipping another clobbering for the Commonwealth.

For the few hours after the first decision was handed down, Williams and his supporters enjoyed their win, but soon after, the tone of journalists' questions changed. Instead of being asked about his David-and-Goliath victory, Williams faced questions about his "loss". Journalists focused not on the part of his case that had proved successful, but the part that had attracted by far the most attention – the church and state issue.

In addition to the Commonwealth's spending power, Williams argued in his first appearance that the national school chaplaincy programme was invalid because it breached section 116 of the constitution, which in part mandates that "no religious test shall be required as a qualification for any office or public trust under the Commonwealth."

The argument met the same fate as all three previous attempts to invoke section 116, it failed, leading constitutional lawyer George Williams (no relation) to comment:

"We assume we've got a strong separation of church and state in this country, but it's actually not very strong. … In fact, nobody's ever succeeded in the High Court in arguing for … separation [of church and state]."

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