

**AUSTRALIAN COUNCIL FOR THE DEFENCE OF
GOVERNMENT SCHOOLS
STATE AID USED FOR CHURCH PURPOSES
A BREACH OF SECTION 116 OF THE CONSTITUTION?
PRESS RELEASE 952**

The DOGS received the following message from a 3CR listener:

Message:

Are you aware that there is a move in some Catholic Diocese (eg Maitland-Newcastle) to change the structure of Catholic Schools? Schools will become subject to control by parish priests, many aspects of school service will be integrated with other Church functions and schools will be required to pay rent to parishes for use of premises. It should be noted that all of these premises have been updated in one way or another with public money. There would have to be serious doubt that Section 116 of the Constitution is not being breached.

DOGS note that in the DOGS High Court case of 1964-1981 the Catholic Church argued, in 1979, in a 26 day Trial of Facts, that their schools were no more religious than State schools. They argued that they were educational rather than religious institutions, in spite of the fact that they were an integral part of the church 's asset and enterprise structures.

Evidence was presented to the Court IN 1979 and 1980 which indicated that the situation described by our correspondent was rife throughout Australia. All of the judges, with the notable exception of Justice Lionel Keith Murphy, ignored it.

Justice Murphy made the following statement in his dissenting judgement. It rings as true today as it did in 1981.

Paragraph 41. The fact is that under the Commonwealth laws vast sums of money are being expended for the support of church schools. The result of the capital grants Acts is that great and increasing sums are being given to churches to acquire property, which can then lawfully be used for religious purposes apart altogether from schooling. Although the States Grants (Schools Assistance) Act 1978 forbids approval of projects (for grants) "if the sole or one

of the principal objects" is "to provide facilities for use, wholly or principally, for in relation to religious worship" (s. 15), this does not prevent a grant for a project as long as religious worship is not the sole or principal object, or one of the principal objects and the Act does not prevent subsequent use of the property for any purpose, even exclusive use for religious worship. The evidence showed that two Catholic parish school buildings, at Churchill and Corio in Victoria although not used wholly or principally for or in relation to religious worship, have been used for religious purposes (apart from schooling). Eighty per cent of the Catholic primary school building at Churchill in the Latrobe Valley, in Victoria was contributed by the payment of Commonwealth grants. The building is also used as the local parish church. A nearby street sign indicates that the building is a Catholic church. \$127,000 of the \$180,000 cost of construction of the parish primary school in Corio outside Geelong, was provided out of Commonwealth grants. Both these buildings have been used for celebration of mass for the local parish each Sunday, and for confessions each Saturday, and occasionally for other religious services. There is nothing in the challenged Acts to restrict similar use of other property obtained with moneys given to the churches pursuant to these Acts. The effect of the Grants Acts is that the wealth of the churches is increased annually by many millions of dollars of taxpayers' moneys. They have the effect of establishing religion. As Douglas J. observed "In common understanding there is no surer way of 'establishing' an institution than by financing it" (Wheeler v. Barrera [1975] USSC 117; (1974) 417 US 402, at p 430). (at p633).

DOGS agree with our correspondent and Justice Murphy. Unfortunately the majority judges in 1981, in a political judgement, did not do so. As a consequence Australia is dogged by every growing problems of inequity and sectarianism and an underfunded public education system.

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