



HIGH COURT OF AUSTRALIA

Manager, Public Information

7 July 2009

BRYAN REGINALD PAPE v THE COMMISSIONER OF TAXATION OF THE
COMMONWEALTH OF AUSTRALIA & ANOR
[2009] HCA 23

On 3 April 2009 the High Court announced its answers to the questions raised in an application by Mr Bryan Pape for relief including declarations that the *Tax Bonus for Working Australians Act (No 2) 2009 (Cth)* was invalid and that the payment of the "tax bonus" to him under that Act was unlawful. The Court now publishes its reasons.

When Mr Pape filed his proceedings he was a taxpayer who was entitled to receive \$250 under the Bonus Act. The parties agreed to submit four questions to the High Court for determination, by way of a special case under the Rules of the Court:

1. Does Mr Pape have standing to seek the relief claimed in his Writ of Summons and his Statement of Claim?
2. Is the *Tax Bonus for Working Australians Act (No 2) 2009 (Cth)* valid because it is supported by one or more expressed or implied heads of legislative power under the Commonwealth Constitution?
3. Is payment of the tax bonus to which Mr Pape is entitled under the Bonus Act supported by valid appropriation under sections 81 and 83 of the Constitution?
4. Who should pay the costs of the special case?

Question 1: The Commonwealth conceded that Mr Pape had standing to contend that the payment to him under the Bonus Act was unlawful, but submitted that he did not have sufficient special interest to argue the broader issue that the Bonus Act was invalid in its application to other persons. No member of the Court accepted this submission. A finding by the Court that the payment of the bonus to Mr Pape was unlawful because the Bonus Act was invalid would be binding in any subsequent disputes concerning the validity of the Bonus Act. All members of the Court determined that Mr Pape had standing to seek a declaration of invalidity.

Question 2: The Court, by majority, held that the Bonus Act was a valid law of the Commonwealth Parliament, supported by s 51(xxxix) of the Constitution as being incidental to the exercise by the Commonwealth Government of its executive power under s 61 of the Constitution.

Question 3: Mr Pape argued that the money that was to be paid to taxpayers under the Bonus Act had not been appropriated from the Consolidated Revenue Fund by law, as required by s 83 of the Constitution. He also argued that, even if there had been an appropriation by law, it was not an appropriation "for the purposes of the Commonwealth". Section 81 of the Constitution states: "All revenues or moneys raised or received by the Executive Government of the Commonwealth shall form one Consolidated Revenue Fund, to be appropriated for the purposes of the Commonwealth in the manner and subject to the charges and liabilities imposed by this Constitution."

The Court held by majority that there was an appropriation by law. Section 16 of the *Taxation Administration Act 1953 (Cth)* appropriated the Consolidated Revenue Fund for the payment of

certain amounts the Commissioner is required to pay under any "taxation law". Section 3 of the Bonus Act had the effect of making the Bonus Act a "taxation law". The Bonus Act increased the amount of money to be withdrawn from the Consolidated Revenue Fund under an existing appropriation. That was sufficient to meet the requirement of s 83.

The Court held that sections 81 and 83 do not themselves authorise any expenditure; rather they require that the spending of government funds be authorised by Parliament.

Question 4: In accordance with an agreement between the parties the Court made no order for costs.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*