

THE COMMONWEALTH OF AUSTRALIA v THE AUSTRALIAN CAPITAL TERRITORY (C13/2013)

Date writ of summons filed: 23 October 2013

Date questions reserved for determination by the Full Court: 4 November 2013

The *Marriage Equality (Same Sex) Act 2013 (ACT)* (“the ACT Marriage Act”) was passed by the ACT Legislative Assembly on 22 October 2013 and commenced operation on 7 November 2013. On 23 October 2013 the plaintiff issued a writ of summons seeking a declaration that the ACT Marriage Act is of no effect or, alternatively, void.

The plaintiff claims that the ACT Marriage Act is inconsistent with the *Marriage Act 1961 (Cth)* and/or the *Family Law Act 1975 (Cth)* within the meaning of s 28(1) of the *Australian Capital Territory (Self-Government) Act 1988 (Cth)* and therefore of no effect. Further, or alternatively, the plaintiff claims that the ACT Marriage Act is repugnant to the *Marriage Act 1961 (Cth)* and/or the *Family Law Act 1975 (Cth)* and for that reason void.

The plaintiff has filed a Notice of Constitutional Matter indicating that the proceeding may involve the interpretation of s 109 of the *Constitution* and a consideration of the breadth of the powers in ss 51(xxi) and 51 (xxii) of the *Constitution*.

On 4 November 2013 Chief Justice French reserved, pursuant to s18 of the *Judiciary Act 1903 (Cth)*, the following questions for determination by the Full Court:

1. Is the *Marriage Equality (Same Sex) Act 2013 (ACT)*, in part or in its entirety:
 - (a) inconsistent with the *Marriage Act 1961 (Cth)* within the meaning of s 28(1) of the *Australian Capital Territory (Self-Government) Act 1988 (Cth)*; and/or
 - (b) repugnant to the *Marriage Act 1961 (Cth)*?
2. If the answer to question 1(a) is ‘yes’, to what extent, if any, is the *Marriage Equality (Same Sex) Act 2013 (ACT)* of no effect?
3. If the answer to question 1(b) is ‘yes’, to what extent, if any, is the *Marriage Equality (Same Sex) Act 2013 (ACT)* void?
4. Is the *Marriage Equality (Same Sex) Act 2013 (ACT)*, in part or in its entirety:
 - (a) inconsistent with the *Family Law Act 1975 (Cth)* within the meaning of s 28(1) of the *Australian Capital Territory (Self-Government) Act 1988 (Cth)*; and/or
 - (b) repugnant to the *Family Law Act 1975 (Cth)*?
5. If the answer to question 4(a) is ‘yes’, to what extent, if any, is the *Marriage Equality (Same Sex) Act 2013 (ACT)* of no effect?
6. If the answer to question 4(b) is ‘yes’, to what extent, if any, is the *Marriage Equality (Same Sex) Act 2013 (ACT)* void?
7. In light of the answers to the preceding questions what, if any, orders should be made for the final disposition of these proceedings?
8. What orders should be made in relation to costs of the questions reserved and of the proceedings generally?