



HIGH COURT OF AUSTRALIA

12 December 2013

THE COMMONWEALTH OF AUSTRALIA v THE AUSTRALIAN CAPITAL TERRITORY

[2013] HCA 55

Today the High Court decided unanimously that the *Marriage Equality (Same Sex) Act 2013*, enacted by the Legislative Assembly for the Australian Capital Territory, cannot operate concurrently with the federal *Marriage Act 1961*. The Court held that the federal Parliament has power under the Australian Constitution to legislate with respect to same sex marriage, and that under the Constitution and federal law as it now stands, whether same sex marriage should be provided for by law is a matter for the federal Parliament.

The Court held that "marriage" in s 51(xxi) of the Constitution refers to a consensual union formed between natural persons in accordance with legally prescribed requirements which is not only a union the law recognises as intended to endure and be terminable only in accordance with law but also a union to which the law accords a status affecting and defining mutual rights and obligations. "Marriage" in s 51(xxi) includes a marriage between persons of the same sex.

The *Marriage Act* does not now provide for the formation or recognition of marriage between same sex couples. The *Marriage Act* provides that a marriage can be solemnised in Australia only between a man and a woman and that a union solemnised in a foreign country between a same sex couple must not be recognised as a marriage in Australia. That Act is a comprehensive and exhaustive statement of the law of marriage.

The Court held that the object of the ACT Act is to provide for marriage equality for same sex couples and not for some form of legally recognised relationship which is relevantly different from the relationship of marriage which federal law provides for and recognises. Accordingly, the ACT Act cannot operate concurrently with the federal Act.

Because the ACT Act does not validly provide for the formation of same sex marriages, its provisions about the rights of parties to such marriages and the dissolution of such marriages cannot have separate operation and are also of no effect.

The Court held that the whole of the ACT Act is of no effect.

- *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.*