

**AUSTRALIAN MARRIAGE EQUALITY LTD & ANOR v MINISTER FOR FINANCE
MATHIAS CORMANN & ANOR (M106/2017)**

Date Special Case referred to Full Court: 21 August 2017

On 9 August 2017, the Commonwealth Treasurer directed the second defendant (the Australian Statistician) to collect statistical information about the proportion of participating electors who are in favour of, and who are against, the law being changed to allow same-sex couples to marry (“the postal survey”). On the same day the first defendant (“the Minister”) had issued an “Advance to the Finance Minister Determination” (“the Determination”) under s 10 of the *Appropriation Act (No1) 2017-2018* (Cth) (“the Act”) to increase the departmental item for the Australian Bureau of Statistics (“the ABS”) by \$122 million to pay for the postal survey.

The plaintiffs are seeking declarations under s 75(v) of the *Commonwealth Constitution* that the drawing of money from the Consolidated Revenue Fund of the Commonwealth to pay for the conduct of the postal plebiscite by the ABS is not authorised by the departmental item for the ABS in the Act. They are also seeking an order restraining the Minister or his delegates from making available to the ABS or the second defendant any funds to pay for the postal plebiscite. They contend that expenditure on the postal plebiscite is not within the ordinary annual services of the Government, as required by s 10(1)(b) of the Act. Alternatively, they contend that the expenditure was not “unforeseen” within the meaning of that section.

The defendants contend that the question of the characterisation of the Act, and the appropriations for which it provides, as appropriations for the ordinary annual services of Government, is one for determination by the Houses of Parliament and is not justiciable by a court. Alternatively, they say that, on the proper construction of s 10 of the Act, expenditure which is provided for by a determination made pursuant to s 10 must be taken to be expenditure which is for the ordinary annual services of the Government. They deny that the expenditure was not unforeseen. The defendants also contend that the plaintiffs do not have standing to seek the relief claimed.

On 21 August 2017 Kiefel CJ referred the Special Case for consideration by the Full Court, together with the matter of *Wilkie & Ors v The Commonwealth & Ors* (M105/2017). Notices of Constitutional Matter have been served. The Attorney-General for the Commonwealth has filed a Notice of Intervention.

The questions in the Special Case include:

- Is the Determination invalid by reason that the criterion in s 10(1)(b) of the 2017-2018 Act was not met such that the Finance Minister’s power to issue the Determination was not enlivened?