



[2017] HCA Trans 176

IN THE HIGH COURT OF AUSTRALIA

Office of the Registry
Melbourne

No M105 of 2017

B e t w e e n -

ANDREW DAMIEN WILKIE

First Plaintiff

FELICITY JENNIFER MARLOWE

Second Plaintiff

PFLAG BRISBANE INC

Third Plaintiff

and

THE COMMONWEALTH OF
AUSTRALIA

First Defendant

MINISTER FOR FINANCE

Second Defendant

TREASURER

Third Defendant

AUSTRALIAN STATISTICIAN

Fourth Defendant

ELECTORAL COMMISSIONER

Fifth Defendant

Office of the Registry
Melbourne

No M106 of 2017

B e t w e e n -

AUSTRALIAN MARRIAGE
EQUALITY LTD

First Plaintiff

SENATOR JANET RICE

Second Plaintiff

and

MINISTER FOR FINANCE MATHIAS
CORMANN

First Defendant

AUSTRALIAN STATISTICIAN

Second Defendant

KIEFEL CJ
BELL J
GAGELER J
KEANE J
NETTLE J
GORDON J
EDELMAN J

TRANSCRIPT OF PROCEEDINGS

AT MELBOURNE ON THURSDAY, 7 SEPTEMBER 2017, AT 2.15 PM

(Continued from 6/9/17)

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KIEFEL CJ: In matter M105/2017, the Court is unanimously of the view that the application should be dismissed with costs. The order of the Court is:

1. Application dismissed.
2. The plaintiffs pay the costs of the first to third defendants.

I publish that order. The Court will publish its reasons at a subsequent date.

In matter M106/2017, the Court is unanimously of the view that questions 2, 3 and 5 of the Special Case dated 21 August 2017 be amended and the questions stated in the Special Case (as so amended) should be answered as follows:

Question 1

Do either of the plaintiffs have standing to seek the relief sought in the Amended Statement of Claim?

Answer

Inappropriate to answer.

Question 2

Is the Advance to the Finance Minister Determination (No 1 of 2017-2018) (Cth) (“the Determination”) invalid by reason that the criterion in s 10(1)(b) of the *Appropriation Act (No 1) 2017-2018* (Cth) (“the 2017-2018 Act”) was not met such that the Finance Minister’s power to issue the Determination was not enlivened?

Answer

No, it is not invalid.

8000 **Question 3**

(a) Does question 3(b) raise an issue which is justiciable by a court and within the scope of any matter which the Court has authority to decide?

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(b) If the answer to question 3(a) is yes, is the Determination invalid by reason that:

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(i) on its proper construction, s 10 of the 2017-2018 Act does not authorise the Finance Minister to make a determination, the effect of which is that the 2017-2018 Act takes effect as if Schedule 1 thereto were amended to make provision for expenditure that is outside the ordinary annual services of the Government; and

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(ii) the expenditure on the ABS Activity (being the activity described in the Census and Statistics (Statistical Information) Direction 2017 (Cth) is not within the meaning of “ordinary annual services of the Government”?

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Answer

(a) The proper construction of s 10 of the 2017-2018 Act is justiciable.

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(b) No. Section 10, on its proper construction, did authorise the Finance Minister to make the Determination.

Question 4

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If the answer to question 2 or question 3(b) is yes:

(a) does question 4(b) raise an issue which is justiciable by a court and within the scope of any matter which the Court has authority to decide?

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(b) if the answer to question 4(a) is yes, would the drawing of money from the Treasury of the Commonwealth for the ABS Activity in reliance on the appropriation for the departmental item for the [Australian Bureau of Statistics] in the 2017-2018 Act be unauthorised by the 2017-2018 Act on the basis that the expenditure is not within the meaning of “ordinary annual services of the Government”?

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Answer

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The question does not arise.

Question 5

8050 What, if any, relief sought in the Amended Statement of Claim should the plaintiffs be granted?

Answer

8055 None.

Question 6

8060 Who should pay the costs of this special case?

Answer

The plaintiffs should pay the costs of the special case.

8065 I publish that order. The Court will publish its reasons at a subsequent date and adjourns until 10.00 am tomorrow.

8070 **AT 2.20 PM THE MATTERS WERE CONCLUDED**