[Same-sex marriage Act of ACT found to be invalid by High Court](http://blog.sl.nsw.gov.au/hsc_legal_studies/index.cfm/2013/12/31/samesex-marriage-act-of-act-found-to-be-invalid-by-high-court)

Tuesday, 31 December 2013 **at** 9.33 am | **Posted by:** Sarah Condie | **Categories:** [Family](http://blog.sl.nsw.gov.au/hsc_legal_studies/index.cfm/Family), [Same-sex couples](http://blog.sl.nsw.gov.au/hsc_legal_studies/index.cfm/Samesex-couples),[Law Reform in Action](http://blog.sl.nsw.gov.au/hsc_legal_studies/index.cfm/Law-Reform-in-Action), [LIAC Civil Library](http://blog.sl.nsw.gov.au/hsc_legal_studies/index.cfm/LIAC-Civil-Library), [Constitution](http://blog.sl.nsw.gov.au/hsc_legal_studies/index.cfm/Constitution) | [[http://blog.sl.nsw.gov.au/hsc_legal_studies/images/comment.gif](http://blog.sl.nsw.gov.au/hsc_legal_studies/index.cfm/2013/12/31/samesex-marriage-act-of-act-found-to-be-invalid-by-high-court#comments) Comments (0)](http://blog.sl.nsw.gov.au/hsc_legal_studies/index.cfm/2013/12/31/samesex-marriage-act-of-act-found-to-be-invalid-by-high-court#comments)

On 12 December 2013 the High Court held that the[*Marriage Equality (Same Sex) Act 2013*](http://www.legislation.act.gov.au/a/2013-39/default.asp) (ACT) cannot operate concurrently with the federal [*Marriage Act 1961*](http://www.austlii.edu.au/au/legis/cth/consol_act/ma196185/) (Cth). According to the judges, in a unanimous decision, the Federal Parliament has power under the Australian [Constitution](http://www.austlii.edu.au/au/legis/cth/consol_act/coaca430/) to legislate with respect to same-sex marriage, and that under the Constitution and federal law as it now stands, it is up to the Federal government to make laws covering same-sex marriage not states or territories.

The Court held that 'marriage' in s 51(xxi) of the [Constitution](http://www.austlii.edu.au/au/legis/cth/consol_act/coaca430/) 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 1961*](http://www.austlii.edu.au/au/legis/cth/consol_act/ma196185/)does not now provide for the formation or recognition of marriage between same-sex couples. The [*Marriage Act 1961*](http://www.austlii.edu.au/au/legis/cth/consol_act/ma196185/) 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 Commonwealth 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.

**Source:** M[edia release of the High Court of Australia](http://www.hcourt.gov.au/assets/publications/judgment-summaries/2013/hca55-2013-12-12.pdf), 12 December 2013

**Decision:** [*Commonwealth v Australian Capital Territory*](http://www.austlii.edu.au/au/cases/cth/HCA/2013/55.html) [2013] HCA 55, 12 December 2013.

A number of same-sex couples married in the ACT during the week that this Act was in operation. These marriages are now invalid.

**Media responses to this decision**

* '[ACT law delivers neither marriage nor equality: the High Court's Verdict](http://theconversation.com/act-law-delivers-neither-marriage-nor-equality-the-high-courts-verdict-21406)' by Anne Twomey, *The Conversation*, 12 December 2013
* '[Gay marriage is now only a matter of political will](http://www.smh.com.au/comment/gay-marriage-is-now-only-a-matter-of-political-will-20131216-2zh9h.html)' by George Williams, *SMH*, 17 December 2013
* '[Australia revokes same-sex marriage rights](http://www.theguardian.com/world/video/2013/dec/12/australia-revokes-same-sex-marriage-rights-video)' - video report, *The Guardian Australia*, 13 December 2013

**Find out more**

More information is available on our[Research Guide Family: HSC Legal Studies](http://guides.sl.nsw.gov.au/hsc-legal-studies-family) on the following topics:

* s[ame-sex couples and marriage](http://guides.sl.nsw.gov.au/content.php?pid=316240&sid=2590814)
* m[arriage](http://guides.sl.nsw.gov.au/content.php?pid=316240&sid=2587941)
* s[ame-sex relationships](http://guides.sl.nsw.gov.au/content.php?pid=316240&sid=2587939).

[Same-sex marriage - current status](http://blog.sl.nsw.gov.au/hsc_legal_studies/index.cfm/2013/11/20/samesex-marriage--an-update)

Wednesday, 20 November 2013 **at** 12.05 pm | **Posted by:** Sarah Condie | **Categories:** [Family](http://blog.sl.nsw.gov.au/hsc_legal_studies/index.cfm/Family), [Same-sex couples](http://blog.sl.nsw.gov.au/hsc_legal_studies/index.cfm/Samesex-couples) | [[http://blog.sl.nsw.gov.au/hsc_legal_studies/images/comment.gif](http://blog.sl.nsw.gov.au/hsc_legal_studies/index.cfm/2013/11/20/samesex-marriage--an-update#comments) Comments (0)](http://blog.sl.nsw.gov.au/hsc_legal_studies/index.cfm/2013/11/20/samesex-marriage--an-update#comments)

There have been attempts to legalise same-sex marriage in NSW and the ACT.  Here is an update of what has been happening:

**NSW**

In the last couple of years there has been a number of attempts to legalise same-sex marriage by introducing legislation into the NSW parliament.  The latest attempt is [the *Same-Sex Marriage Bill 2013*](http://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/131a07fa4b8a041cca256e610012de17/40ea0ab05788a1bcca257b5f00105935?OpenDocument) and it also has been unsuccessful.  In the Legislative Council it was voted down by 21 votes to 19 votes on Thursday 14 November 2013.

**ACT**

The ACT passed its [*Marriage Equality Bill 2013*](http://www.legislation.act.gov.au/b/db_48497/default.asp)at the end of October 2013. See [*Marriage Equality (Same Sex) Act 2013*](http://www.legislation.act.gov.au/a/2013-39/default.asp) (ACT).  The Commonwealth Government is challenging the validity of this legislation in the High Court.

The Commonwealth Attorney-General will argue that the power to legislate a single ‘rule for Australian society as to what constitutes a valid marriage’ lies with the Commonwealth Government and that this new Act made by the ACT conflicts with the *Family Law Act 1975* (Cth) and the*Marriage Act 1961* (Cth).

The High Court will hear both sides in early December, just before any marriages take place.

Read more about this issue on our research guide [Family: HSC Legal Studies - Same-sex marriage](http://guides.sl.nsw.gov.au/content.php?pid=316240&sid=2590814)