

McBain v State of Victoria (2000) 99 FCR 116 Case Factsheet

McBain v Victoria is a case that explores the application of section 109 of the Australian Constitution. This case is particularly relevant for students currently studying VCE Legal Studies Unit 4 AOS 1.



Learning goals:

- ☐ Students will understand the significance of section 109 of the constitution.
- ☐ Be able to explain the significance of section 109



Fact:

In 2000, a single woman wanted to conceive a child through IVF, however her Doctor, Dr McBain was unable to do so as the **Victorian Legislation** — *Infertility Treatment Act* (1995), prohibited single individuals from receiving IVF.



At the same time, there was **Commonwealth legislation** — *Sex Discrimination Act* (1984), that concerned discrimination relating to goods and services. Section 22 of this act, made it unlawful to discriminate based on marital status.

McBain commenced proceedings, arguing that the Victorian Legislation was inconsistent with the Commonwealth Legislation because they were in conflict and that the Commonwealth legislation should prevail.



Issue:

The court had to determine:

- ⚠ Was the Victorian Legislation inconsistent with the Commonwealth Legislation, based on section 109?
- ⚠ There was also a question as to whether IVF and fertility treatments were a 'service'?



Decision:

Justice Sundberg of the Federal Court of Australia held that:

- » Interpretation of the Victorian Legislation led to the conclusion that IVF treatments were contingent on a woman's marital status, however, this conflicted with the Commonwealth legislation that provided you could not discriminate based on marital status.
- » Therefore, section 22 of the Victorian legislation was invalid and unlawful under section 109 of the Constitution.
- » IVF constitutes a service that medical practitioners provide



Significance/ratio:

Applied section 109 of the Constitution and saw an aspect of Victorian Legislation invalid because it was in conflict with commonwealth legislation.

> Section 109 of the Constitution:

When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.



Commonwealth
Legislation



State
Legislation