

# High Court challenge imperils Australian government

Mike Head  
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The Australian Labor Party's national executive announced last Friday it would launch a High Court challenge to the right of a government minister to sit in parliament. Depending on which way the court rules, the case could become a vehicle for bringing down the increasingly fractured government headed by Prime Minister Malcolm Turnbull.

The Liberal-National Coalition government barely scraped back into office at last July's election, and holds just 76 seats in the 150-member House of Representatives. A disqualification of Assistant Health Minister David Gillespie, a National Party MP, could reduce the government to minority status, making its survival even more doubtful than it already is.

The legal issue, which first became known in February, is that Gillespie and his wife own a shopping complex in Port Macquarie, New South Wales, in his electorate of Lyne. Through their company, Goldenboot, they lease a shop to a newsagent who operates an Australia Post outlet as a licensee of the federal government-owned corporation.

This could fall foul of Section 44 (v) of the Constitution, which makes someone ineligible for election to parliament if they have "any direct or indirect pecuniary interest in any agreement with the Public Service of the Commonwealth."

Earlier this year, the High Court radically broadened its interpretation of "indirect pecuniary interest," making the outcome of Gillespie's case highly uncertain.

If the court ousts Gillespie and the government loses a by-election for his seat, the government would have to look for support from the five "crossbench" MPs—the Greens' Adam Bandt, Nick Xenophon Team's Rebekha Sharkie and independents Bob Katter, Cathy McGowan and Andrew Wilkie.

Alternatively, Labor, which currently holds just 69 seats, could try to govern with the backing of this disparate group. Neither outcome would be stable. A third possibility would be the calling of an early election.

Any election, however, would be likely to create further volatility. While media polls currently show Labor leading the Coalition on a two-party-preferred basis, neither party has anywhere near the primary vote support to form a majority government.

For the second time in a month, Australia's political establishment faces a possible constitutional crisis. Just two weeks ago, three Coalition ministers narrowly avoided potential disqualification by belatedly apologising to another top court, the Victorian state Supreme Court, for accusing its judges of being "hard-left activists" who were soft on terrorists.

If found guilty of contempt of court, which can lead to imprisonment, the three ministers could have been removed from parliament by another clause of Section 44, which bars anyone convicted of a crime punishable by a year or more in jail.

The government has tried to play down the prospect of Gillespie being disqualified, with Foreign Minister Julie Bishop labeling the High Court challenge "another Labor Party stunt." But since February, Attorney-General George Brandis has rejected Labor Party requests for him to seek and release official legal advice on the issue.

Moreover, the Labor Party has assembled a high-powered legal team to argue the case, and the High Court has already applied strict interpretations of Section 44 to disqualify two members of parliament this year.

One was Rod Culleton, who had secured a Western Australian Senate seat as a candidate for Pauline

Hanson's anti-immigrant One Nation party. At the time of the election he had been convicted of larceny, an offence punishable by more than 12 month's jail. The court ruled he was in breach of Section 44 even though he later had the conviction set aside.

The other was Bob Day, a former millionaire housing industry entrepreneur who had won a South Australian Senate spot for Family First, a right-wing Christian party. In Day's case, a full court decided unanimously that he had an "indirect pecuniary interest" in an agreement with the Commonwealth. His electorate office was leased from a Day family trust, even though no rent was actually paid to the trust by the federal government.

In Day's case, the judges declared that Section 44 had a "special status" that was "fundamental to the Constitution." They gave the provision a sweeping anti-corruption interpretation, saying it sought to ensure there were no potential conflicts of interest involving members of parliament. A MP would be disqualified wherever there was any expectation of financial gain.

The court overturned its only previous ruling on the section, a 1975 case involving James Webster, a Country Party (now National Party) senator, describing it as "unduly narrow."

Webster's case was highly controversial, being heard amid a developing political crisis that ultimately led to the dismissal of the Whitlam Labor government by the governor-general.

As the result of a ruling by then Chief Justice Garfield Barwick, a former Liberal Party attorney-general, Webster was permitted to remain in the Senate despite being a major shareholder and managing director of a company that supplied timber to two Commonwealth departments. Webster's retention strengthened the hand of the Liberal-Country Party opposition in the Senate, which blocked financial supply to the Whitlam government, triggering the governor-general's intervention.

Now, because the Day case has widened, and effectively left open-ended, the definition of "indirect pecuniary interest," any High Court ruling on Gillespie is unpredictable and likely to be surrounded by political controversy.

Academic constitutional law experts have said Gillespie's arrangement with Australia Post may be a more "remote" financial agreement than Day's lease,

but it was difficult to predict what the High Court would do. Professor Anne Twomey, from the University of Sydney, told Sky News: "Thing is, you can never tell with the High Court."

The legal intervention is occurring under conditions where Turnbull's government is being condemned in corporate circles for its failure to impose severe austerity cutbacks to government spending, out of fear of popular opposition. It is riven by factional conflicts, with its policies under regular criticism by Tony Abbott, the man whom Turnbull toppled as prime minister via a Liberal Party coup in September 2015.

The impasse is symptomatic of a deeper political crisis, which has seen every government, whether Liberal-National or Labor, fall in rapid succession over the past decade. Each election has witnessed a massive backlash against the sitting government over its attacks on the living standards of the working class.

As well as being unable to overcome popular resistance to austerity, Turnbull is attempting to navigate major foreign policy dilemmas. The Trump administration is seeking a greater Australian involvement in military provocations against China—Australia's largest trading partner—and the dispatch of more Australian troops to the widely-opposed US-led wars in the Middle East and Afghanistan.

As in 1975, the involvement of the courts in actions that could change the government outside of an election is a sign of the immense political crisis wracking the entire parliamentary order.



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