



HIGH COURT OF AUSTRALIA

21 March 2018

ALLEY v GILLESPIE [2018] HCA 11

Today the High Court unanimously held that the *Common Informers (Parliamentary Disqualifications) Act 1975* (Cth) ("the Common Informers Act") does not confer jurisdiction upon the Court to decide whether a person is a person declared by the Constitution to be incapable of sitting as a senator or as a member of the House of Representatives.

On 20 July 2016 Dr David Gillespie was declared elected as a member of the House of Representatives. On 7 July 2017, Mr Peter Alley commenced proceedings against Dr Gillespie under the Common Informers Act claiming the imposition of penalties on the basis that Dr Gillespie was incapable of being chosen and of sitting as a member of the House of Representatives pursuant to s 44(v) of the Constitution. Section 44(v) relevantly provides that "[a]ny person who ... has any direct or indirect pecuniary interest in any agreement with the Public Service of the Commonwealth ... shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives." Mr Alley alleges that Dr Gillespie had a direct or indirect pecuniary interest in a lease agreement between a company in which Dr Gillespie holds shares and Australia Post.

Whether Dr Gillespie is liable to a penalty under the Common Informers Act requires an anterior determination as to whether he has been or is incapable of sitting as a member of the House of Representatives. On 29 September 2017, Bell J referred the question of whether the High Court has jurisdiction to decide Dr Gillespie's eligibility to the Full Court.

Section 46 of the Constitution provides that "[u]ntil the Parliament otherwise provides, any person declared by this Constitution to be incapable of sitting as a senator or as a member of the House of Representatives shall, for every day on which he so sits, be liable to pay the sum of one hundred pounds to any person who sues for it in any court of competent jurisdiction." The Parliament otherwise provided by enacting the Common Informers Act, which limits the amount a person might have to pay by way of penalty. Section 47 of the Constitution relevantly provides that "[u]ntil the Parliament otherwise provides, any question respecting the qualification of a senator or of a member of the House of Representatives ... shall be determined by the House in which the question arises." The Parliament has also otherwise provided with respect to s 47. Section 376 of the *Commonwealth Electoral Act 1918* (Cth) ("the Electoral Act") provides that either House may refer any question concerning the qualification of a senator or member of the House of Representatives to the Court of Disputed Returns.

The High Court unanimously held that while s 46 of the Constitution allows for the imposition and recovery of a penalty in a common informer action, the anterior question of liability is to be determined by the means provided by s 47. The Court ordered that the proceeding under the Common Informers Act be stayed until the question of whether Dr Gillespie is incapable of sitting as a member of the House of Representatives is determined pursuant to s 47 of the Constitution or s 376 of the Electoral Act.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*