

# Australian government hit by legal challenges to two senators

By Mike Head  
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Australia's government, already fragile and wracked by in-fighting since its near-defeat at the July 2 election, was thrown into further disarray this week by moves to constitutionally disqualify two senators on whose votes the government was relying to push through its legislation.

Prime Minister Malcolm Turnbull was forced yesterday to postpone key bills because of the uncertainty surrounding the numbers in the Senate, which may not be resolved for many months as the two cases are heard by the High Court, the country's supreme court.

These bills include a draconian measure—the Australian Building and Construction Commission (ABCC) bill—to suppress industrial action by construction workers. The previous blockage of the bill by the Senate was the chief trigger cited by the government to call the July 2 double dissolution election of all members of both houses of parliament.

Such is the popular hostility to the government, and the opposition Labor Party, that the election saw the Liberal-National Coalition barely cling to office with a one-seat majority in the House of Representatives. In the Senate, the upper house, the government now only holds 30 of the 76 seats because a record number of “crossbench” senators were elected, mostly right-wing populists seeking to exploit the widespread disaffection from the rest of the political establishment.

Two of those senators, it appears, may have been legally disqualified from standing for election. Moreover, the government has long known this, but sought to cover-up the issues in the hope of securing the votes of the pair for the ABCC bill and other major legislation, including sweeping cuts to welfare entitlements.

The first case involves Bob Day, a millionaire house builder and former Liberal Party candidate who originally won a South Australian Senate spot in 2013 on the ticket of Family First, a misleadingly named right-wing

Christian party. He is accused of breaching section 44(v) of the Constitution, which declares that a person with “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.”

Documents have revealed that the government was aware, from February 2014 onward, that Day's use of a building in which he held a financial interest as his electoral office, which would be leased by the government, was legally dubious. In fact, a special minister of state overrode a Finance Department recommendation to agree to the deal. After various legal manoeuvres, a formal lease was ultimately signed last December.

This arrangement began to unravel after Day was re-elected on July 2, as his building empire crumbled. His Home Australia Group of companies eventually went into liquidation, owing \$19 million, leaving about 200 angry customers with unfinished homes and throwing hundreds of building workers and contractors out of work.

On August 4, Day approached the current special minister of state, Senator Scott Ryan, about rent on the electoral office. According to the government's account, Ryan then discovered there may be a constitutional breach. But it was not until two months later, on October 7, that Ryan terminated the lease and the government secretly sought legal advice from barrister David Jackson. That advice, delivered on October 27, reportedly said Day's election was possibly invalid, forcing the government to refer the issue to the High Court.

In the meantime, Day announced, on October 17, he would resign from the Senate, supposedly to assist the victims of his corporate collapse. On October 26, Day reversed his position, insisting that the fate of the ABCC bill and other legislation was “too important” to allow a Senate vacancy. On November 1, however, Day quit the

Senate, effective immediately, while still insisting he had not violated the Constitution.

The second High Court challenge, which was revealed within 24 hours of Day's case, seems also to be entangled with a financial collapse. It concerns Rod Culleton, who secured a Western Australian Senate seat as a candidate for Pauline Hanson's anti-immigrant One Nation party.

At the time of the July 2 election, as was reported in the media, Culleton had been convicted of larceny, an offence punishable by more than 12 month's jail. That appeared to place him in breach of section 44(ii) of the Constitution, which disqualifies anyone from standing for election who "has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer."

After the election, Culleton succeeded in having the conviction annulled. That bid to retrospectively dodge the Constitution, however, was challenged in the High Court in September by two former business associates of Culleton, who claim he owes them money. The High Court sent word to the government on September 28, alerting it to the constitutional challenge.

Again, the government, fully aware of the issue, continued to cover it up for as long as possible. According to Attorney-General George Brandis, he finally sought legal advice from Solicitor-General Justin Gleeson on October 13, and that advice, delivered on October 28 was that Culleton had not been "duly elected as a senator."

The High Court action is not Culleton's only legal trouble. One of his companies, Elite Grains, had a creditors' meeting this week, another company is being liquidated and a Perth businessman has filed a bankruptcy petition against Culleton for a \$205,536 debt, which could also disqualify the senator. In addition, Culleton faces a stealing charge over the alleged theft of a hire car from bank-appointed receivers in 2015.

Evidently, Brandis ultimately felt compelled to obtain advice from Gleeson, after previously seeking to block the solicitor-general from giving legal opinions that could potentially expose the illegality of government actions. In May, during the lead-up to the July 2 election, Brandis issued a "Legal Services Direction" prohibiting Gleeson from providing legal advice to anyone else, including the governor-general, the formal head of state, without Brandis's written, signed consent. That conflict, at the highest levels of the state apparatus, eventually forced Gleeson to resign last month.

The outcomes of the two High Court challenges remain uncertain, adding to the political instability. Both cases will hinge on the vagaries of the court's interpretation of the Constitution, as well as the Commonwealth Electoral Act. In the words of one constitutional law academic, the rulings will depend on whether the judges apply the section 44 provisions "strictly."

According to some analysts, if the challenges succeed, the court could order vote recounts for the two Senate seats, possibly resulting in the Labor Party picking up one or both.

This turmoil has intensified the government's precariousness, following the public rifts that erupted last month, triggered by former Prime Minister Tony Abbott, whom Turnbull deposed in September 2015.

Increasingly, doubt is being expressed in the corporate media about the capacity of the government, and the parliamentary system itself, to deliver the agenda of slashing social spending, and cutting wages and workers' conditions, demanded by the financial elite.

Yesterday's editorial in the *Australian Financial Review* concluded as follows: "An environment that was already uncondusive for good government or getting important legislation passed is about to get even worse. As Australia drifts towards losing its AAA sovereign credit rating, which in turn would flow onto a downgrade for our banks, Parliament appears incapable of doing anything about it."

These anti-democratic rumblings are another warning sign that acute political, economic and geo-strategic conflicts lie ahead.

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