



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES
PARLIAMENTARY REPRESENTATION
Qualifications of Members
SPEECH

Monday, 14 August 2017

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

Date Monday, 14 August 2017
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Questioner
Speaker Pyne, Christopher, MP

Source House
Proof No
Responder
Question No.

Mr PYNE (Sturt—Leader of the House and Minister for Defence Industry) (12:24): by leave—I move:

That pursuant to section 376 of the *Commonwealth Electoral Act 1918*, the House of Representatives refer the following questions to the Court of Disputed Returns—

- (a) whether, by reason of s44(i) of the Constitution, the place of the Member for New England (Mr Joyce) has become vacant;
- (b) if the answer to Question (a) is “yes”, by what means and in what manner that vacancy should be filled;
- (c) what directions and other orders, if any, the Court should make in order to hear and finally dispose of this reference; and
- (d) what, if any, orders should be made as to the costs of these proceedings.

This is the first time that the House of Representatives has been asked to move such a motion to resolve a matter of the status of one of its members, so in fact we are making history here today in the House of Representatives.

The government remains absolutely confident that the Deputy Prime Minister is not disqualified under section 44(i) of the Constitution. It is the Deputy Prime Minister who has asked for this matter to be referred to the High Court in order to determine his status, his position here in the parliament. He has done that for two reasons in particular. The first is that we have reached the stage where it is necessary for the High Court to determine what section 44(i) means in the modern era for the Australian parliament. There have been many different references and actions taken, over many years, in the High Court, sitting as the Court of Disputed Returns, but clearly—

Opposition members interjecting—

The SPEAKER: I won't be tolerating any interjections on this matter.

Mr PYNE: It would be quite unwise for some members on the other side of the House to be interjecting on this matter.

It is time for the High Court to be given the opportunity to make a determination about what section 44(i) of the Constitution means in the modern era. Just to give an example, as the Deputy Prime Minister said when he made his remarks at 10 o'clock, there was no such thing as Australian citizenship before 1948. Everyone before 1948 was a British subject. Does that mean that every member of the House of Representatives and the Senate before 1948 bore an allegiance to another foreign power, in that case the United Kingdom? These are things that have become very important in the modern era, and it's time the High Court gave us a very clear ruling about what section 44(i) of the Constitution means.

Of course, the second reason the Deputy Prime Minister has asked for this referral to occur is that the government has acted ethically in all these matters. As soon as it came to the attention of the Deputy Prime Minister that this might be an issue, he acted entirely ethically and correctly, as you would expect him to do as a person of upstanding character. When he was informed by the New Zealand High Commission, he took immediate action. The government has had very clear legal advice from the Solicitor-General that the Deputy Prime Minister is not disqualified under section 44(i) of the Constitution, but we wish to test that in the High Court to give them the opportunity to determine that. Because we are so confident of the Deputy Prime Minister's status, he will continue to participate fully in the House as the member for New England and he will continue as the Deputy Prime Minister and Minister for Agriculture and Water Resources.

I thank the Manager of Opposition Business for giving leave for this motion to come forward and I commend the motion to the House.