



## HIGH COURT OF AUSTRALIA

14 March 2018

IN THE MATTER OF QUESTIONS REFERRED TO THE COURT OF DISPUTED RETURNS  
PURSUANT TO SECTION 376 OF THE *COMMONWEALTH ELECTORAL ACT* 1918 (CTH)  
CONCERNING MS JACQUI LAMBIE  
[2018] HCA 6

Today the High Court published reasons for orders it made on 6 February 2018. Those orders were that Mr Steven Martin is not incapable of being chosen or of sitting as a senator by reason of s 44(iv) of the Constitution.

On 8 December 2017 the High Court, sitting as the Court of Disputed Returns, answered questions referred to it by the Senate under s 376 of the *Commonwealth Electoral Act* 1918 (Cth) ("the Act") concerning Ms Jacqui Lambie. The answers given by the Court included that, by reason of s 44(i) of the Constitution, there was a vacancy in the representation of Tasmania in the Senate for the place for which Ms Lambie was returned at the federal election held on 2 July 2016, and that the vacancy should be filled by a special count of the ballot papers.

The special count that was conducted identified Mr Martin as one of the candidates who would be elected as a senator for Tasmania as a result of the special count. On 13 December 2017, Nettle J stated for the consideration of the Full Court the question of whether Mr Martin is incapable of being chosen or of sitting as a senator by reason of s 44(iv) of the Constitution.

Mr Martin has at all relevant times held the elected offices of mayor and of councillor of Devonport City Council, a local government corporation established under the *Local Government Act* 1993 (Tas) ("the Local Government Act"). In respect of each office, Mr Martin has a statutory entitlement to be paid a substantial annual allowance by the Council. There was no dispute that the positions which Mr Martin held answered the description of "offices of profit". The issue before the Court was whether the positions were offices of profit "under the Crown" within the meaning of s 44(iv), which would render Mr Martin "incapable of being chosen or of sitting" as a senator.

The Court unanimously held that the offices of mayor and of councillor held by Mr Martin are not offices of profit "under the Crown" within the meaning of s 44(iv). A majority of the Court held that the particular conflict to which s 44(iv) is addressed is that which would arise from a member of Parliament holding at the will of an executive government an office in respect of which he or she receives a financial gain. The majority held that the Local Government Act did not confer on the executive government of Tasmania effective control over the holding of or profiting from the office of mayor or of councillor. The Court unanimously held that Mr Martin is not incapable of being chosen or of sitting as a senator by reason of s 44(iv) of the Constitution.

- *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.*