



Labor MP at risk of eligibility challenge

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Body

Labor MP **Anne Aly** may be ruled ineligible to stand for election -because of ongoing doubts she has effectively renounced her dual Australian-Egyptian citizenship, according to lawyers who question whether the steps she took would meet the strict standards laid down by the High Court.

Dr Aly, who holds the West Australian seat of Cowan on a margin of just 0.9 per cent, faces a potential problem over her citizenship under s. 44 of the Constitution, according to Melbourne Law School professor Jeremy Gans.

"I don't think we can discount the chance of a challenge to Aly and similarly difficult cases, if the election is close enough that a challenge could potentially make a difference," Professor Gans wrote in a social media post.

"**Anne Aly** has a potential - albeit complex and contestable - s. 44 problem," he said.

Dr Aly was born in Egypt and moved to **Australia** as a child. She has never held an Egyptian passport but might be caught by the strict interpretation of foreign citizenship - and its renunciation - applied by the High Court.

In May 2018, the High Court disqualified ACT Labor senator Katy Gallagher because she was a "citizen of a foreign power at the time of her nomination for election to the Senate on May 31, 2016, and was for that reason incapable of being chosen as a senator at the double-dissolution election". The court applied a rigid test, holding that it is not sufficient for a candidate to take "all reasonable steps" if the foreign state itself has not legally adopted the renunciation.

Following that court decision Dr Aly produced a document from the Egyptian embassy stating she relinquished her citizenship on May 6, 2016.

The statement said: "Dr **Anne Aly** renounced Egyptian citizenship on May 6, 2016, having completed all the steps required and, as of that date, had completely renounced her Egyptian citizenship."

However, Professor Gans, a criminal law specialist, said while the document "looks good on its face", Egypt's Nationality Law did not provide for voluntary renunciation of citizenship. Rather, its approach is to permit - but not

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require - the government to strip citizens of citizenship in some circumstances. That would require a decree by the Egyptian Minister of Interior, he said.

Dr Aly had not provided a copy of any decree, and the letter she cited from the embassy made no mention of one. It was unlikely Dr Aly could have obtained such a decree by May 6, 2016 - a month before the close of nominations for the 2016 election, when she was first elected - because she applied only two days before, -Professor Gans says.

The issue would arise only if her eligibility were challenged after the election or she was referred to the court by the House of Representatives at some point.

Professor Gans argues the law is counter-productive and needs to be reformed, a move that would require a referendum to amend s.44 of the Constitution.

"It's outrageous. It's perverse. It exposes MPs to foreign influence. It's a real barrier to a diverse parliament," he said.

Professor Gans says he would be shocked if any Australian court ruled that Dr Aly was ineligible because "the racism of the High Court of **Australia**'s sneering at MPs not doing their homework would be too obvious". "But I still don't think we can discount the chance of a challenge to Aly and similarly difficult cases, if the election is close enough that a challenge could potentially make a difference. And that will produce quite some chaos."

Dr Aly declined to comment on the claims or to reveal whether she had received any decree from the Egyptian Minister of Interior.

Independent candidate Jo Dyer announced she had confirmation she was eligible to run for the South Australian seat of Boothby after concerns she had not renounced her UK citizenship in time.

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