Just Take it on the Chin, AFR  
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One of the oddest things about the Gillard Government is that no-one calls its most obvious feature. It is neither the most brilliant, nor the least competent government in Australia’s history, but it must be close to the unluckiest.

From the global politics of climate change to the kaleidoscopic balance of power in Parliament, if it can go wrong for this Government, it will. If Julia Gillard decreed free pies and beer, the pies would turn up cold and the beer would go tepid.

Now, after months of devising the shaky Malaysian refugee “solution” comes the High Court’s cheerfully prompt decision bowling it over. Like it or loathe it, this is a government you would not stand next to in a thunderstorm, or in a reinforced nuclear bunker.

Typically for Gillard, who now finds even her adamantine calmness stretched to snapping, the Court’s decision will be routinely misunderstood, partly due to her own scratchy reaction. This is a decision of law. It does not say Gillard is a bad person, which she is not. It does not say this is a bad law, which it is. It merely finds that the Act is bad on quite technical legal grounds. Ho hum.

But this is not the way it will be politically presented, nor how it will be popularly understood. To the average punter, an adverse judgement like this is a moral condemnation, just as a .05 conviction carries a withering personal rebuke.

Gillard is not the first, nor will she be the last Prime Minister to feel the sting of such misconception. As Robert Menzies could tell you, the legal invalidation of his anti-communist legislation always is hailed as a victory for liberty, when it actually was a triumph of constitutional mechanics.

Yet by coming out and blasting the Court in an understandable but atypically frustrated way for inconsistency, impracticality and poor dental hygiene, Gillard has reinforced the very perception she must avoid. She has presented the decision as a judgement upon the legitimacy and wisdom of the law, rather than its legal technicalities.

For a government always plagued by accusations of illegitimacy and incompetence, this is like drawing up for battle in the middle of the Great Quaky Bog. Realistically, no matter how furious she is, Gillard should have copped the decision sweet, and pedalled hard to present as a legal hiccup.

Ironically, as an example of judicial activism, this decision is as lively as the average tortoise. Far from inventing new and exciting law, this judgement covers about as much new ground as an edition of New Idea. It is stolidly solid.

Of course, that is not to say that, somewhere in the background, the judges did not share a general distaste for the Malaysian proposal. As Tasmanian Premier Robin Gray discovered when he tried to block the Franklin River, a nasty law is always statistically more likely to get a nasty answer.

At the same time, some of the commentary presenting Gillard as the most vicious detractor of the judiciary since Hermann Goering and the latest outraged Rugby League coach is both over the top and unfair.

From Alfred Deakin – creator of the Court – to John Howard, there have been testy exchanges between the executive and the Court. During the contentious reign of Prime Ministers like Billy
Hughes and Gough Whitlam, these exchanges sometimes more closely resembled artillery duels than correspondence.

As an anti-judicial spack attack, Gillard’s spray measures about 3.1 on the contempt of Court scale. More than a tremor, but no bones broken.

Nor, one suspects, many judicial egos shattered. Chief Justice Robert French is a big boy, and he would have known what he was letting himself in for. He called it as he saw it and, unlike a Prime Minister, he has life tenure.

Yet once again, Gillard’s uncharacteristic if human descent into mild public passion is bad politics. Now, she can be called not only for having her law judged as immoral – which even assuming it is, never happened – but for questioning the umpire.

This is one of those mortal sins against public virtue which are all the more deadly for being practised by nearly every Australian. We rejoice in condemning our politicians when the display a level of petulant disappointment in any way comparable to our own behaviour.

All in all, Julia Gillard probably should not bother taking out Lotto this week.

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