

Order, Order.

The Court is now in session, with The Hon. Justice [u/advancedgaming12](#) presiding. Justice [/u/ slothsworth](#) also presiding.

Act: Australian Constitution Sections 92 and 51(xxxi)

Outline of Claim:

- The plaintiff makes their submission under the grounds that such a policy is unconstitutional pursuant to s 92 of the Australian Constitution.
- The plaintiff submits that the Commonwealth has not acquired private property under 'just terms' pursuant to s 51(xxxi) of the Constitution.

Judgment:

The Hon. Justice advancedgaming12:

- *Order is invalid under s92 as being protectionist in nature, and not having a non-protectionist purpose of which the order is a necessary and appropriate measure to achieve*

Regarding the claim under s92, the controlling precedent is *Cole v. Whitfield*, which has established that a policy or law only violates s92 if it subjects interstate trade to discriminatory burdens of a protectionist nature. To determine whether the order is of a protectionist nature we first look to the definition of protectionism. Protectionism is defined as a method of protecting domestic industries from competition via duties or quotas on importation.

The order to acquire 90% of the banks which would presumably eliminate both domestic and foreign competition by placing deposit-taking institutions in the hands of the state meets a protectionist standard. We then apply the test created in *Castlemaine Tooheys Ltd v. South Australia* to determine if the protectionist in nature order contravenes s92. Under *Castlemaine*, If a law or policy is protectionist in nature, but has a non-protectionist purpose the means chosen to attain the non-protectionist purpose must be necessary, or appropriate and adapted.

1. Is there a local interest in need of protection?

No evidence has been supplied indicating an interest in need of protection and nothing has arisen to suggest one exists

2. Are the measures necessary and appropriate, and adapted to protecting the local interest?

The cited cause is the public interest which seems to be misconduct from banks, but measures to address misconduct can be effectively taken through legislation, this nationalization method is therefore not appropriate

3. Is the impact on interstate trade and commerce incidental and not disproportionate to the achievement of the objective of protecting the public interest?

As the objective of the order is to effectively nationalize the banks, the effect on interstate trade and commerce is clearly not incidental to the order, instead being the entire purpose

As the order fails to pass the test, it contravenes s93 and is invalid.

In regards to the claim under s51(xxxi), we must determine whether the Reserve Bank of Australia(RBA) offered compensation in the form of market value for the acquisition of equity and whether or not the transaction took place under fair and just terms considering all parties. In respect to the first question, the plaintiff submits that the market value would have been much lower than what it turned out to be, as before the acquisition an order was issued preventing the sale or transfer of securities.

The plaintiff argues that the price would have been lower than it was as a result of the freeze as investors would desire to sell investments in an asset that was going to be nationalized. This argument does not persuade. One could engage in any number of hypotheticals on what the market value could have possibly been, but the law turns on what it was, and the RBA offered appropriate compensation relating to the known market value.

In respect to the second question, we must consider whether the transaction was on fair and just terms for all parties involved. Considering the evidence and precedent, it was. The only precedential requirement is that the acquisition is made “at or above market value” and the evidence and submissions provided lead to the conclusion that it was.

The claim under s51(xxxi) fails.

Justice _slothsworth: I concur with advancedgaming12