

## Melbourne Corporation v Commonwealth (1947) 74 CLR 31 ("State Banking Case")

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### Facts

- During World War 2, the Commonwealth Bank of Australia (**CBA**) was given powers to oversee and monitor private banks and control the supply of money and credit.
- The *Banking Act 1945* (Cth) (**the Act**) attempted to make this regime permanent.
- The Commonwealth wanted to force the States to bank with the CBA.
- Section 48 of the Act meant that no bank could conduct business with a State or local government authority without express consent from the Treasurer.
- The Melbourne City Council realised that this restriction applied to them and applied to have the law struck down as invalid.

### Issues

- Was section 48 of the Act invalid in that it infringed on the States' rights to govern itself?

### Held

- The High Court held that section 48 was not a valid exercise of the power in relation to "banking" under section 51(xiii) of the Constitution - the power does not authorise legislation that controls or hinders the States in the execution of their governmental functions.
- The High Court majority held that any Commonwealth law that is otherwise valid under a head of power in section 51 or some other part of the Constitution will be invalid if it denies the existence or ability of a State to govern itself or the federal structure of the Commonwealth or singles out any one State.
- The High Court formulated a two part test that renders invalid offending Commonwealth laws. The law is invalid if it:
  - places a special burden on the states; and
  - which significantly impairs, curtails or weakens the capacity of states or state agencies to exercise their constitutional powers or functions.

### Quotes

"...[T]o my mind, the efficacy of the system logically demands that, unless a given legislative power appears from its content, context or subject matter so to intend, it should not be understood as authorising the Commonwealth to make a law aimed at the restriction or control of a State in the exercise of its executive authority. In whatever way it may be expressed an intention of this sort is, in my opinion, to be plainly seen in the very frame of the Constitution."

(Dixon J at page 83)

### **Full Text**

The full text is available here:

<http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1947/26.html>

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