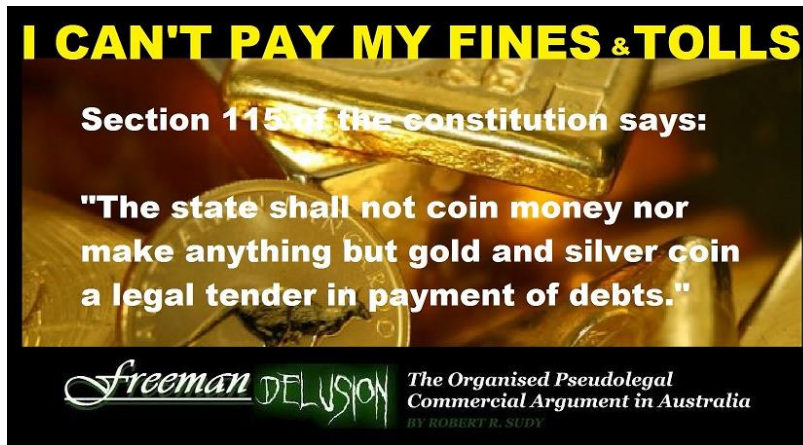


## Cash is no good for debts! - section 115



[Leonard Clampett](#) repeatedly claimed it was impossible for him to pay fines, tolls, and other state debts because section 115 of the *Constitution* states the government can accept only coins made of gold or silver as payment for debts. He last regurgitated his previously rejected theories in 2012, in [Brisbane Magistrates Court](#), after he was snapped by a speed camera. He argued he could not pay the \$200 speeding fine, because "*there is no gold and silver coins in common circulation*". He insisted that "*A state, as opposed to the Commonwealth, cannot compel you to pay in other than gold and silver coin. Fairly simple.*" His argument inevitably failed, with Magistrate Sheryl Cornack finding Mr Clampett guilty and ordering he pay the \$200 fine, and \$76.90 in court costs. She also ordered he pay police prosecution's out of pocket expenses, totaling \$3500, in obtaining an expert witness.

Three weeks later, Mr Clampett fought to have the ruling overturned by the Supreme Court in [Clampett v Magistrate Cornack \[2012\] QSC 123](#) applying for a judicial review on the grounds no court had previously defined the terms of the constitution. He also raised a challenge to the photographic evidence, contending that the speed camera failed to comply with the *National Measurements Act* (Cth). Supreme Court Justice Martin Daubney ruled that the basis of his argument "*has long been discredited*" and dismissed Mr Clampett's application. "*None of the reasons advanced by the applicant amount to any good reason for having instituted the present application.*"

*"To the extent that the applicants justification for bringing the present application in this Court relies on a contention that he was precluded from approaching the District Court because of his assertion that this would require him to make payment in a manner which was not "strictly legal manner, constitutionally" (i.e. the legal tender argument referred to in paragraph 2 of his prayer for relief), it is clear that the argument on which that contention is based has been long discredited. It is sufficient in that regard to refer to the judgment of Deane J in Re Skyring's Application (No 2)."*

<https://freemandelusion.com/wp-content/uploads/2018/07/clampett-v-magistrate-cornack-2012-qsc-123.pdf>

The appellant appealed this decision in [Clampett v Magistrate Cornack & Anor \[2013\] QCA 2](#) and the application was dismissed.

<https://freemandelusion.com/wp-content/uploads/2018/07/clampett-v-magistrate-cornack-anor-2013-qca-2.pdf>

brisbane times

## It's the constitution, no bullion



By Marissa Calligeros  
May 10, 2012 – 3:00am

A Queensland driver has tried in vain to argue it is "impossible" for him to pay a speeding fine because the Australian constitution states the government can accept only coins made of gold or silver as payment for debts.

Indeed, section 115 of the Commonwealth of Australia Constitution Act states: "The state shall not coin money nor make anything but gold and silver coin a legal tender in payment of debts."



The constitution says: 'The state shall not coin money nor make anything but gold and silver coin a legal tender in payment of debts.'

Leonard William Clampett tested the weight of constitutional law in Brisbane Magistrates Court in September last year, after he was snapped by a speed camera driving at 73km/h in a 60km/h zone on Wardell Street, Enoggera.

He argued he could not pay a \$200 speeding fine, because "there is no gold and silver coins in common circulation".

"It's logical when you look at the paramount legislation in this country, that no matter what money they [the police] request or you award them, I can't pay," he told Magistrate Sheryl Cornack.

"I haven't been able to pay a lot of things over the years. Fifteen years, I haven't paid any income tax because it's not possible to pay it.

"I haven't paid for instance a couple of companies. I haven't paid Crown Law Queensland \$12,500 they claimed from me, because of section 115 of the Commonwealth Constitution.

"It is paramount law in this country, but somehow or other, certain people don't seem to catch onto that ...

"A state, as opposed to the Commonwealth, cannot compel you to pay in other than gold and silver coin. Fairly simple."

Police prosecutors called on an expert from Melbourne, who was required to travel to Brisbane and review the evidence, to confirm the roadside camera was working accurately when it photographed Mr Clampett speeding.

Despite his argument, Ms Cornack found Mr Clampett guilty and ordered he pay the \$200 fine, as well as \$76.90 in court costs.

She also ordered Mr Clampett pay police prosecution's out of pocket expenses, totalling \$3500, in obtaining the expert witness.

But, three weeks later, Mr Clampett fought to have Ms Cornack's ruling overturned by the Supreme Court.

He applied for a judicial review on the grounds no court had previously defined the terms of the constitution.

"My claims, and the action sought based thereon, are as well for the Queen as for myself," Mr Clampett wrote in his application.

However, Supreme Court Justice Martin Daubney said the basis of Mr Clampett's argument "has long been discredited".

"None of the reasons advanced by the applicant amount to any good reason for having instituted the present application," he stated in a written judgment, published this week.

He did not comment further on Mr Clampett's argument regarding constitutional law.

Justice Daubney dismissed Mr Clampett's application.

This wasn't the first time Leonard Clampett has raised this defence in paying his debts. The previous time was in [Clampett v Kerslake \(Electoral Commissioner of Queensland\) \[2009\] QCA 104](#), where Fraser JA reminded him of the last time the Supreme Court rejected this argument.

*"In Clampett v Hill [2007] QCA 394 at paragraphs 15 and 16, this Court rejected as vexatious an appeal in which the applicant agitated his argument to the contrary. The applicant nevertheless repeats that rejected argument. In doing so, he adopts Mr Skyring's earlier argument to the same effect even though it was rejected as lacking legal merit in numerous authoritative decisions including a decision of the Full Court of the High Court on 9 July 1985 which affirmed Justice Deane's decision in Re Skyring's Application (No 2) (1985) 59 ALJR 561."*

<https://freemandelusion.com/wp-content/uploads/2018/07/clampett-v-kerslake-electoral-commissioner-of-queensland-2009-qca-104.pdf>

<https://freemandelusion.com/wp-content/uploads/2018/07/clampett-v-hill-ors-2007-qca-394.pdf>

The appellant sought special leave to the High Court in [\*\*Leonard William Clampett v David Kerslake, Electoral Commissioner Of Queensland \[2010\] HCASL 280\*\*](#) which was likewise rejected.

LEONARD WILLIAM CLAMPETT  
v  
DAVID KERSLAKE, ELECTORAL COMMISSIONER OF QUEENSLAND  
[2010] HCASL 280  
B44/2010

1. In March 2009, the applicant commenced a proceeding in the Supreme Court of Queensland in which he sought to argue that the only lawful currency in Australia is gold and silver coins and in which he made allegations described by the primary judge (Mullins J) as allegations about "the legality, constitutionality of the *Electoral Act* Queensland 1992 and questions about the *Queensland Constitution Act*". Mullins J dismissed the proceeding as frivolous, vexatious and an abuse of court.
2. The applicant sought to appeal to the Court of Appeal of the Supreme Court of Queensland but, by operation of s 48(5) of the *Judicial Review Act 1991 (Q)*, no appeal lay except with leave. The Court of Appeal (Keane and Fraser JJA and White J) refused leave and ordered that the notice of appeal be struck out. The applicant was ordered to pay the respondent's costs.
3. The applicant now seeks special leave to appeal to this Court. The application is made well out of time.
4. There is no reason to doubt the correctness of the decision of the Court of Appeal.
5. Pursuant to r 41.10.5 we direct the Registrar to draw up, sign and seal an order dismissing the application.

K.M. Hayne      S.M. Crennan  
8 December 2010

[\*\*Allan Skyring\*\*](#), who also ran this argument persistently after his 1985 High Court rejection, was eventually declared a vexatious litigant by White J in 1995. He raised the argument again in 2013, also defending a speeding fine. After it was rejected by Magistrate Springer in the Brisbane Magistrates Court, Skyring also applied for a judicial review on the grounds that there was never any court determination on the issue, and the 1995 order should be set aside so he could institute proceedings "unencumbered". Mullins J refused leave and dismissed the application.

[\*\*Re Skyring \[2013\] QSC 197:\*\*](#)

*"White J in the course of giving the reasons for the 1995 order referred to the disposition of the applicant's currency issue against the applicant by Deane J in Re Skyring's Application (No 2) (1985) 59 ALJR 561 which decision was upheld by the Full Court of the High Court. That the applicant's argument was disposed on the merits has been recognised in other cases, such as Clampett v Kerslake (Electoral Commissioner of Qld) [2009] QCA 104. It is incontrovertible that the applicant's argument about what is legal tender was authoritatively determined against him in the High Court, as accurately recorded by White J in the reasons for the 1995 order. The applicant's desire to re-agitate an argument that has been settled authoritatively and resulted in the vexatious proceedings order against him."*

<https://freemandelusion.com/wp-content/uploads/2020/06/re-skyring-2013-qsc-197.pdf>

*Re Skyring's Application (No 2) (1985) 59 ALJR 561* is unpublished online, but I did find this statement by Deane J in a report:

*"I have come to the clear conclusion that there is no substance in the argument that there is a constitution bar against the issue by the Commonwealth of paper money as legal tender. Nor in my view would there be any substance in an argument that the provisions of s 36(1) of the Reserve Bank Act 1959 are invalidated or overruled by the provisions of the Currency Act."*

The argument was also raised in [Fyffe v State of Victoria \[2000\] HCA 31](#), in which [Brian Fyffe](#) contended that the state did not, or may not have, lawfully paid for land it acquired in 1989 through the *Ministry for Conservation, Forests and Lands*, because it did not pay in the manner prescribed by s 115 of the Commonwealth Constitution. Hayne J also cited Deane J in *Re Skyring's Application (No 2) (1985) 59 ALJR 561* and ruled that:

*"It is enough to say of this point that, in my opinion, it is wholly without substance."*

<https://freemandelusion.com/wp-content/uploads/2020/10/fyffe-v-state-of-victoria-2000-hca-31.pdf>

[Patrick Cusack](#) also ran the currency argument numerous times before the High Court. It is very rare for an individual to be declared a vexatious litigant by the High Court. Only four people have been declared to be vexatious litigants by the High Court of Australia since its inception, and two of those were regarding this long-debunked currency argument. One was Patrick Cusack in [Jones v Cusack \[1992\] HCA 40](#) and the other was Alan Skyring in [Jones v Skyring \[1992\] HCA 39](#). It was ordered that either "...shall not, without the leave of the Court or a Justice, begin any action, appeal or other proceeding in the Court."

<https://freemandelusion.com/wp-content/uploads/2020/11/jones-v-cusack-1992-hca-40-1992-109-alr-313-1992-66-aljr-815-27-august-1992.pdf>

<https://freemandelusion.com/wp-content/uploads/2020/11/jones-v-skyring-1992-hca-39.pdf>

This contention has been raised very often in the courts. You can read further cases on this website under the Tag "[The Currency Argument](#)".

The following is a published response from the [Tolling Customer Ombudsman](#) responding to the section 115 argument regarding non-payment of tolls.

<https://freemandelusion.com/wp-content/uploads/2018/07/claim-regarding-opportunity-to-pay-tolls-and-fees-in-gold-or-silver-coin-february-2015.pdf>

Most of these arguments are a form of protest against the fractional reserve banking system, however misconceived they are. There have even been some academic papers published on this subject, like the following from Andrew Dahdal, entitled "[The Constitutionality of Fiat Paper Money in Australia: Fidelity or Convenience?](#)"

<https://freemandelusion.com/wp-content/uploads/2018/07/andrew-dahdal-the-constitutionality-of-fiat-paper-money-in-australia-fidelity-or-convenience.pdf>

## Paper money

Many of the preceding litigants arguments revolve around the notion that the Commonwealth has no constitutional source of power to create legal tender other than gold and silver, specifically aimed at the fractional reserve banking system, and often includes the "[Book-entry credits](#)" contention, based on the [US Credit River decisions](#). (*First National Bank of Montgomery v Daly* and *Jerome Daly v Savage State Bank & Anor*).

The power to create currency is provided for under section 51 of the *Constitution* - 51(xii) "*currency, coinage, and legal tender*" and section 51(xiii) "*banking... and the issue of paper money*". Banknotes issued by the Reserve Bank of Australia, and coin up to certain amounts have the status of "legal tender". (See section 36 [Reserve Bank Act 1959](#), and section 16 [Currency Act 1965](#)) A referendum is not required to change the currency, as this is clearly within the legislative powers of the Commonwealth.

The following passages in [The Annotated constitution of the Australian Commonwealth](#) by Quick and Garran explain this source of power.

Page 579 - "The Federal Parliament has power to legalize or prohibit the issue of paper money, in this respect it has received a grant of power conspicuously more liberal than that which was intended, by the framers of the American Constitution, to be conceded to Congress."

Page 572 - "*Currency in this connection means the acceptance, reception, passing or circulation from hand to hand, from person to person, of metallic money, or of government or bank notes as substitute for metallic money.*"

Page 575 - "*By section 114 the States are forbidden to coin any money or to make anything but gold and silver coin a legal tender in payment of debts. The prohibition is similar to Art. I. sec. 10, subs. 1 of the United States Constitution. Hence it appears that under both Constitutions the creation and regulation of the monetary system is a power conferred on the Federal Parliament. It is a general power; the Parliament is not limited in the choice of metals to which it will give the quality of money. It may choose some other metal than gold and silver, and impress upon it a legal tender quality.*"

Page 950 - "*A State is forbidden to coin money; it cannot create a metal currency; it cannot give to metal any more than to paper the quality of money. The combined effect of this negation, coupled with the operation of sec. 51—xii., is that the coinage and legitimation of metal money, and in fact the regulation of the whole of the monetary system of the Commonwealth, is exclusively vested in the Federal Parliament, as against the States. That Parliament alone will be able to create money and regulate its value, as well as create paper money, and regulate its value.*"

### § 183. "The Issue of Paper Money."

The Federal Parliament has power to legalize or prohibit the issue of paper money. In this respect it has received a grant of power conspicuously more liberal than that which was intended, by the framers of the American Constitution, to be conceded to Congress. At the time when that Constitution was framed general apprehension was felt throughout the States at the dangerous strength acquired by the movement in favour of paper money. During the War of Independence the drain on the financial resources

### § 176. "Currency."

Currency in this connection means the acceptance, reception, passing or circulation from hand to hand, from person to person, of metallic money, or of government or bank notes as substitute for metallic money.

COINAGE AND LEGAL TENDER.—By section 114 the States are forbidden to coin any money or to make anything but gold and silver coin a legal tender in payment of debts. The prohibition is similar to Art. I. sec. 10, subs. 1 of the United States Constitution. Hence it appears that under both Constitutions the creation and regulation of the monetary system is a power conferred on the Federal Parliament. It is a general power; the Parliament is not limited in the choice of metals to which it will give the quality of money. It may choose some other metal than gold and silver, and impress upon it a legal tender quality. But if a State endeavoured to compel a person to accept anything but gold or silver as a legal tender, the person aggrieved could appeal to the Courts of the Commonwealth for relief. (Burgess, Political Sci. II. p. 143.)

### § 460. "A State shall not Coin Money."

Coinage is a prerogative of the Crown (see Note, § 177, *supra*). A State is forbidden to coin money; it cannot create a metal currency; it cannot give to metal any more than to paper the quality of money. The combined effect of this negation, coupled with the operation of sec. 51—xii., is that the coinage and legitimation of metal money, and in fact the regulation of the whole of the monetary system of the Commonwealth, is exclusively vested in the Federal Parliament, as against the States. That Parliament alone will be able to create money and regulate its value, as well as create paper money, and regulate its value. Its laws of course will only be operative within the

Ultimately, the purpose of section 115 was specifically to prohibit the States from creating currency, as this power is wholly conferred on the Commonwealth. It is an exclusive legislative power, as opposed to a concurrent power.



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