



MAY JUSTICE ALWAYS PREVAIL®

From: Mr G. H. Schorel-Hlavka O.W.B. 107 Graham Road, Viewbank 3084 Victoria, Australia
Blog: www.scribd.com/inspectorrikati **Email:** admin@inspector-rikati.com **LH-20160921-06**

THE MORALS OF A SOCIETY CAN BE MEASURED AS TO HOW IT LOOKS AFTER THE DISABLED

Please note: *The opinion(s) expressed in this letter by the writer, are stated considering the limited information available to him and may not be the same where further information were made available to him, is not intended and neither must be perceived to be legal advice!*

WARNING Constitutional & Paralegal Independent Consultant & Author **INSPECTOR-RIKATI**® Series of books on certain constitutional and other legal issues

PEOPLES POWER Reclaim our State and Federal constitutional and other legal rights, and hold politicians and judges accountable!

1
2
3 Attorney-General Mark Dreyfus & [AND TO WHOM IT MAY CONCERN](#) 13-1-2023
4 Email via portal: <https://ministers.ag.gov.au/hon-mark-dreyfus-qc-mp/contact>
5

6 **Re Artesian Water Basin Issues and how to properly address it!**

7 Sir,

8 I received a email "Save our Artesian Water Basin - STOP SANTOS COAL SEAM GAS
9 MINING AND FRACKING" on 9 January 2023 which was apparently originated by Darren
10 of <https://constitutionwatch.com.au>.
11

12 Before I address the Artesian Water Basin issue let me briefly explain something.
13

14 I have more than 100,000 outstanding email as some days various people email me attachment
15 that exceeds 1 Gb in one day alone. I seek to keep myself as much as possible to constitutional
16 issues. And quite frankly was not going to get involved in the Artesian Water Basin issues was
17 it not that my late friend (and my wife's late husband) **Mr Jaroslav Hlavka MIE Aust CP Eng**
18 used to work for the Melbourne Board of Works. One day I happen to mention that as an
19 INDEPENDENT candidate I had been communicating with farmers about water issues, and well
20 Jaroslav opened the information tap explaining a lot about Artesian Waters. A lot went over my
21 head, I must admit. However, at a later time when I was called up as the executive of Jaroslav's
22 estate to come to Melbourne I decided that, in my view, his writings should be kept and not just
23 disposed off. After his widow and I became married I was interested to find out more about
24 Jaroslav's work and commenced to read some of his writings. It doesn't mean I became or even
25 could claim to be an expert in regard of artesian Water issues but that I do not need. Anyhow, I
26 decided to not only read the email but also check out the video links so I could perhaps learn
27 something more about it. The video was apparently created in 2007 and that is quite a few years
28 ago, however to my understanding to have any government resolving an issue when even since
29 federation the Commonwealth was unable to resolve certain issues appropriately then I might as
30 well seek to address matters hereby.
31

32 **WATER DOWN UNDER The Great Artesian Basin Story** (32.42 minutes duration)
33

34 **Full Documentary** (34.12 minutes duration)
35

36 Let us now turn Section 100, which deals with rivers and so access to water. What is important
37 about Section 100 is the debates of the Framers of the Constitution about the rights of people
38 living downstream from a water course to have reasonable access to water.
39

40 **Hansard 17-4-1897 Constitution Convention Debates** (Official Record of the Debates of the National
41 Australasian Convention),
42

43 **QUOTE** Mr. DEAKIN:

13-1-2023

Page 1

© Mr G. H. Schorel-Hlavka O.W.B.

INSPECTOR-RIKATI® about the BLACK HOLE in the CONSTITUTION-DVD

A 1st edition limited special numbered book on Data DVD ISBN 978-0-9803712-6-0

PLEASE NOTE: You may order books in the **INSPECTOR-RIKATI®** series by making a reservation, or E-mail
admin@inspector-rikati.com See also www.scribd.com/inspectorrikati

1 To my knowledge they spent a large portion of the time that intervened in making
 2 exhaustive enquiries about the water supply of the Murray basin and what quantity could
 3 be used or diverted. They caused researches to be made which had not up till then been
 4 made, and without which no determination could be arrived at. Mr. Gordon has stated his
 5 case fully and clearly, but he will admit that if there were cast upon him the task of
 6 determining how these waters should be apportioned the task would be almost beyond the
 7 capacity of man. **The position is as Mr. Carruthers has clearly stated. First of all, if it be a**
 8 **legal issue, this is practically a question of international law, and though it may be the**
 9 **custom of adjoining nations in the old world, and also in the new,** to agree to conferences
 10 in regard to the navigation or the use of the waters of rivers, I know of no power to coerce
 11 any self-governing colony into holding such a conference. I am not arguing against the
 12 reasonableness of the hon. member's claim, nor am I contending that New South Wales in
 13 this instance would not be acting a courteous part in agreeing to a conference. It seems to
 14 me highly desirable that some friendly enquiry into this matter and into the circumstances
 15 surrounding it should be entered upon.

16 END QUOTE

17
 18 **Hansard 24-1-1898 Constitution Convention Debates**

19 QUOTE

20 Mr. HIGGINS.-If New South Wales and Victoria were private individuals, there is no
 21 doubt about your right to stop undue interference with these waters.

22 Mr. GORDON.-That is a right founded **on natural justice.**

23 Mr. HIGGINS.-It is a legal right where individuals are concerned, but the difficulty is
 24 that the colony is not an individual.

25 Mr. SYMON.-The only difficulty is, that as between states you cannot have the
 26 advantage of legal process or enforcement of legal decrees. If you are left without that,
 27 what have you to appeal to?

28 Mr. ISAACS.-I would like to see the authority for it being a legal right.

29 END QUOTE

30
 31 **Hansard 7-2-1898 Constitution Convention Debates**

32 QUOTE Mr. HIGGINS.-

33 I should prefer to rest on the fact that the powers of the Federal Parliament are limited
 34 under the Constitution itself, **and that the Federal Parliament has no power to do anything**
 35 **except what is expressly given to it, or what is by implication necessary.**

36 END QUOTE

37
 38 **Hansard 2-3-1898 Constitution Convention Debates**

39 QUOTE

40 Mr. BARTON.-No; I do not think that there is anything in the Bill that takes it away.
 41 Very well, then, if a state law, or the action of the state, or the action of a citizen of a state,
 42 does not contravene Commonwealth legislation under that power of legislation, granted in
 43 this Bill. the state law is still valid, and cannot be touched or interfered with, and that I
 44 conceive is sufficient for the purpose of New South Wales under this Constitution. Now,
 45 my honorable friend (Mr. Isaacs) yesterday, in that remarkably able and statesmanlike
 46 speech which he made-one of the best speeches addressed to this Convention since it began
 47 its sittings in Adelaide-mentioned state laws with regard to irrigation in the United States,
 48 especially state laws passed with reference to the and country, and with reference to
 49 California. Now, while my honorable friend mentioned those in support of his argument,
 50 all those instances are evidences that, under the operation of the trade and commerce
 51 clause in America, the right is retained to the states, under the United States Constitution,
 52 to deal with these matters, and is recognised by the courts. And if there were any doubt

1 about that in our own' case, we have only to refer to clause 99 of this Bill, which tells us
2 that-

3
4 All powers which at the establishment of the Commonwealth are vested in the
5 Parliaments of the several colonies, and which are not by this Constitution exclusively
6 vested in the Parliament of the Commonwealth, or withdrawn from the Parliaments of the
7 several states, are reserved to, and shall remain vested in, the Parliaments of the states
8 respectively.

9 Mr. KINGSTON.-That is the reservation clause.

10 Mr. BARTON.-Yes, the reservation clause. Now, that clause has a twofold operation. It
11 means, first, that the power to deal with water conservation and irrigation, which, if you
12 rely on sub-section (1) alone, finds no mention in this Constitution, and, therefore, is not a
13 power given to the Commonwealth, but a power retained in the states absolutely. And it
14 means, in addition to that, that the states will retain their power of dealing with the
15 navigation of their rivers, except so far as those rivers fall under the domination-if you like
16 to use that large word-of the legislation of the Commonwealth, when the Commonwealth
17 chooses to legislate on the subject of navigation. So that the position of the state is secure
18 as regards the conservation and use of its waters, except to the extent that there may be an
19 actual navigation law passed by the Commonwealth, which may have the effect of limiting
20 the state use of the water of the rivers within that state.

21 END QUOTE

22
23 Hansard 21-1-1898 Constitution Convention Debates

24 QUOTE Mr. GORDON.-

25 If irrigation is a national necessity and a national problem-if it is now a matter of regret
26 that the American Government did not take over the control of the public streams of
27 America-would not the same regret and the same conditions exist here? Irrigation will be
28 ten times more a national necessity here than it is in America, and the regret will be ten
29 times greater if we miss this chance of settling the question, and the Constitution does not
30 provide for the control of these water channels. And, after all, what are we asking for? We
31 are only asking for the right that every riparian proprietor enjoys under British law-the
32 right that the man above him shall neither injure the quality nor diminish the flow of any
33 stream designed for their mutual benefit and enjoyment. **That is a right that is founded**
34 **deep in natural justice.** It cannot be said that we are asking for anything extraordinary or
35 making extreme demands upon our fellow colonists when we simply seek for that right
36 which every riparian proprietor under British law enjoys. The tendency of modern
37 legislation is to go even further than the **common law** doctrine in declaring that there shall
38 be no exclusive property in running streams. The tendency of modern legislation is to say
39 that while the riparian proprietors should have their rights under the law there is a higher, a
40 paramount right, the right of the people who are the dwellers on the banks of these streams.
41 That is an extension of the doctrine of riparian **[start page 38]** rights that is being acted
42 upon by many of the Governments of the United States. It cannot, therefore, be said that
43 we are robbing New South Wales, or making extreme demands on the generosity of that
44 colony, when we are only asking for that which every man in New South Wales enjoys-the
45 right to have the stream which flows through his land undiminished in quantity and
46 uninjured in quality. That is all we are asking for, and how can it be said that the demand is
47 unreasonable?

48 END QUOTE

49
50 Ok, this Section 100 relates to rivers in relation to shipping and not at all regarding the Artesian
51 Water Basin, but let us not despair. As I will lead to how to resolve matters, for so far not yet
52 addressed.

53
13-1-2023

Page 3

© Mr G. H. Schorel-Hlavka O.W.B.

INSPECTOR-RIKATI® about the BLACK HOLE in the CONSTITUTION-DVD

A 1st edition limited special numbered book on Data DVD ISBN 978-0-9803712-6-0

PLEASE NOTE: You may order books in the **INSPECTOR-RIKATI® series** by making a reservation, or E-mail
admin@inspector-rikati.com See also www.scribd.com/inspectorrikati

The statement:

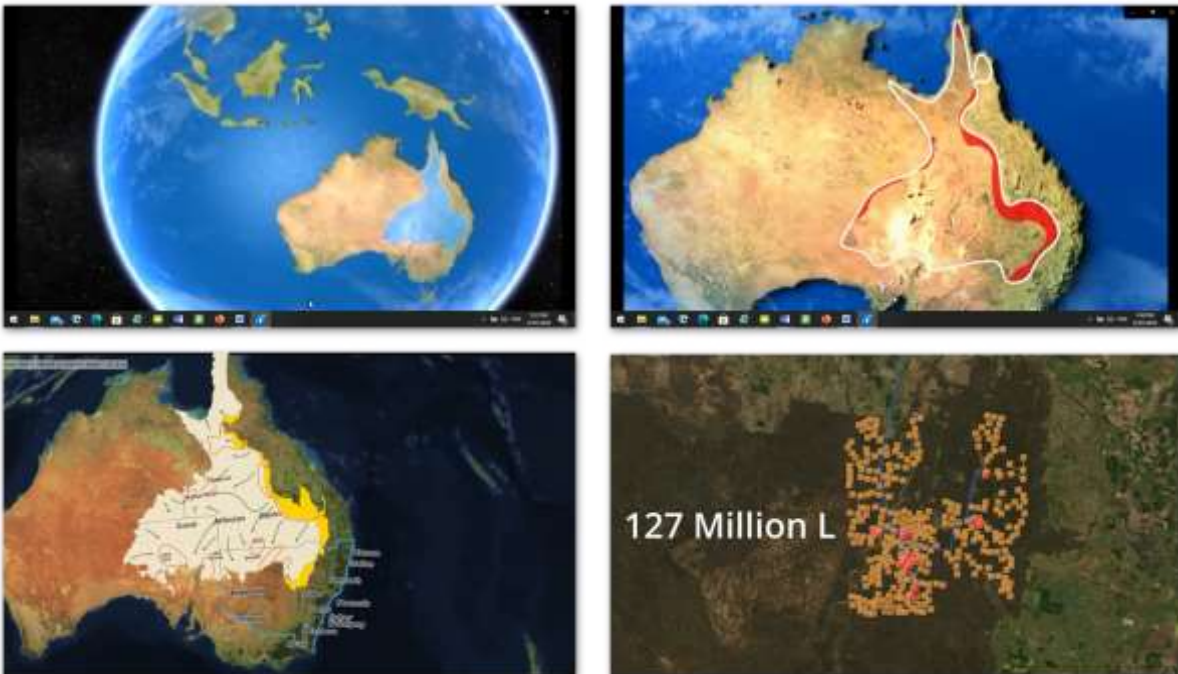
We are only asking for the right that every riparian proprietor enjoys under British law-the right that the man above him shall neither injure the quality nor diminish the flow of any stream designed for their mutual benefit and enjoyment. **That is a right that is founded deep in natural justice.**

in my view the legal principle just quoted should be equally applied to the Artesian Water Basin. Obviously the question is how can this legal principle be enforced at all when so many stakeholders have different interest and many have no control over others, etc.

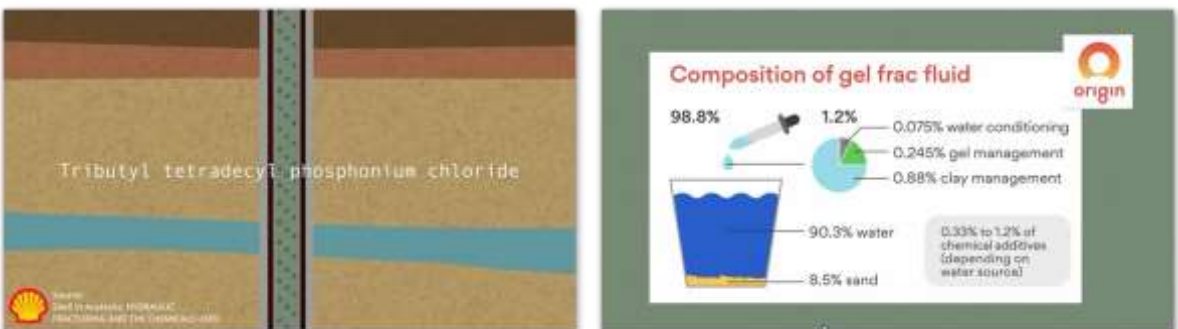
This to me is not really an obstacle at all because the Framers of the Constitution provided us with a system that can address the issues appropriately irrespective who uses what water of the Artesian Water Basis. However having stated this I may also indicate that it is the Commonwealth that badly screwed up the legal system and this needs to be properly addressed.

Images from the videos:

Full Documentary & WATER DOWN UNDER The Great Artesian Basin Story



Allegedly Santos uses about 127 Million Litres of water for 1 drilling alone. I understand it pursued more than 800 wells.





1
2
3 It was claimed that Santos had some major problem that uranium parts ended up contaminating
4 other waters. This to my underline there is insufficient supervision about what is going on.
5

6 Obviously a major problem is often “politicians” as they often couldn’t care less about other
7 area’s not being in the area they represent. Then we have politicians who have ministerial port
8 folios and they then add to the problems being it with pork barrelling or whatever regardless that
9 their ministerial functions require then to be without political bias.
10

11 So, let’s take out the politicians and let us follow the legal principles the Framers of the
12 Constitution embedded in the constitution but in general blatantly ignored by politicians.
13

14 Let us look at some constitutional provisions:
15

16 **Commonwealth of Australia Constitution Act 1900** (UK)
17

18 **100 Nor abridge right to use water**

19 The Commonwealth shall not, **by any law or regulation of trade or commerce**, abridge
20 the right of a State or of the residents therein to the reasonable use of the waters of rivers
21 for conservation or irrigation.
22

23 **101 Inter-State Commission**

24 **There shall be an Inter-State Commission**, with such powers of adjudication and
25 administration as the Parliament deems necessary for the execution and maintenance,
26 within the Commonwealth, of the provisions of this Constitution **relating to trade and**
27 **commerce, and of all laws made thereunder.**
28

29 **102 Parliament may forbid preferences by State**

30 The Parliament may by any law with respect to trade or commerce forbid, as to railways,
31 any preference or discrimination by any State, or by any authority constituted under a State,
32 if such preference or discrimination is undue and unreasonable, or unjust to any State; due
33 regard being had to the financial responsibilities incurred by any State in connexion with
34 the construction and maintenance of its railways. But no preference or discrimination shall,
35 within the meaning of this section, be taken to be undue and unreasonable, or unjust to any
36 State, unless so adjudged by the Inter-State Commission.
37

38 **103 Commissioners’ appointment, tenure, and remuneration**

39 The members of the Inter-State Commission:

- 40 (i) shall be appointed by the Governor-General in Council;
41 (ii) shall hold office for seven years, but may be removed within that time by the Governor-
42 General in Council, on an address from both Houses of the Parliament in the same session
43 praying for such removal on the ground of proved misbehaviour or incapacity;

13-1-2023

Page 5

© Mr G. H. Schorel-Hlavka O.W.B.

INSPECTOR-RIKATI® about the BLACK HOLE in the CONSTITUTION-DVD

A 1st edition limited special numbered book on Data DVD ISBN 978-0-9803712-6-0

PLEASE NOTE: You may order books in the **INSPECTOR-RIKATI® series** by making a reservation, or E-mail
admin@inspector-rikati.com See also www.scribd.com/inspectorrikati

(iii) shall receive such remuneration as the Parliament may fix; but such remuneration shall not be diminished during their continuance in office.

What is clear is that the Inter-State commission is a entity that is created by the constitution itself as such it has its own constitutional validity not depending upon any Commonwealth legislative powers.

101 Inter-State Commission

There shall be an Inter-State Commission, with such powers of adjudication and administration as the Parliament deems necessary for the execution and maintenance, within the Commonwealth, of the provisions of this Constitution **relating to trade and commerce, and of all laws made thereunder**.

Why then is there no “**Inter-State Commission**” when the constitution clearly dictates “**There shall be**”? That is because the politicians were trying to have an “**Inter-State Commission**” that could exercise judicial powers and the High Court of Australia correctly struck this down.

HANSARD 25-2-1898 Constitution Convention Debates

QUOTE

Commission obligatory.

END QUOTE

And

HANSARD 25-2-1898 Constitution Convention Debates

QUOTE

Mr. HIGGINS.-**But the Inter-State Commission must be absolutely independent of Parliament.**

END QUOTE

HANSARD 25-2-1898 Constitution Convention Debates

QUOTE Mr. SYMON.-

When we have done this it follows that as there is an element of policy, the existence of which no one can deny, it will be even more necessary than in the case of the Federal High Court-which is not to deal with matters of policy, or matters tainted with policy, to use the expression of another speaker-that the tribunal which we are creating should be above the breath of political intrigue. To secure this, I think, some provision should be inserted similar to the provisions which we have inserted in regard to the Judges of the High Court. Whatever may have been the case as the Bill left us after the Adelaide session, it seems to be imperative now, to give effect to what has already been done, that we should introduce into the Constitution provisions binding the Federal Parliament to create an Inter-State Commission, and placing the Inter-State Commission, when created, on a level which will raise it above the possibility of the suspicion that its judgments or actions have been in any way influenced by political considerations.

END QUOTE

The next quotation is of some length but if you do desire to grasp what the true meaning and application of the constitution stands for then well just read and consider it.

Hansard 11-3-1898 Constitution Convention Debates

QUOTE

Clause 74.-The High Court shall have jurisdiction, with such exceptions and subject to such regulations as the Parliament may from time to time prescribe, to hear and determine appeals from all judgments, decrees, orders, and sentences:

1 I. Of any other federal court, or court exercising federal jurisdiction: or of the Supreme
2 Court of any state, or of any other court of any state from which an appeal now lies to the
3 Queen in Council, whether any such court is a court of appeal or of original jurisdiction:

4 II. Of the Inter-State Commission:

5 and the judgment of the High Court in all such cases shall be final and conclusive.

6 Until the Parliament otherwise provides, the conditions and restrictions on appeals to the
7 Queen in Council from the Supreme Courts of the several states shall be applicable to
8 appeals from them to the High Court.

9 **Sir GEORGE TURNER** (Victoria).-In clause 74 a provision has been inserted by the
10 Drafting Committee which would allow an appeal to the High Court from the decision of
11 the Inter-State Commission. Now, sir, we had a very good dispute here in regard to railway
12 matters, as to whether the decision of those matters should be left in the hands of the
13 Federal Parliament or should be left in the hands of the High Court. And ultimately the
14 Convention decided that while they would not leave the matter entirely in the hands of the
15 Parliament to decide, they certainly would not place it in the control of the Federal High
16 Court. And we then, in one clause which has been passed, provided that an Inter-State
17 Commission should deal with these matters. But, sir, if this clause is to stand as it is now
18 placed before us, the result will be that in all these cases the Federal High Court will really
19 be the tribunal which will decide the matter. It is true there is an intervening body-the
20 Inter-State Commission-which will hear and deal with the matter, but as in all cases there
21 will be an appeal from the decision of that commission to the High Court we might just as
22 well have allowed the proposal in the first instance to go-that all these matters should be
23 decided directly by the High Court. We were clear that the High Court was not the body to
24 properly decide all these questions; that the members of the High Court could not gain the
25 information necessary to enable them to come to a proper decision on the subject; and,
26 therefore, I am somewhat surprised that these words have been inserted in the clause, **as I**
27 **believe it is not the desire of the Convention that the High Court should deal with**
28 **these matters, which to a very great extent are political matters**, and that the Inter-State
29 Commission shall have power to decide them. I think it would be very unwise indeed to
30 give this general power of appeal, which would apply to all subjects. I therefore beg to
31 move-

32 That the words "Of the Inter-State Commission" be omitted from the clause.

33 The effect of that amendment will be to leave no appeal to the High Court in these
34 matters.

35 **Mr. DOBSON** (Tasmania).-I am not able to accept the amendment of the Right Hon. Sir
36 George Turner, and I think that if he will consider how the Supreme Courts of the states
37 deal with appeals which come before them in cases where the verdicts of juries are in
38 question, he will not have any of the fears he has expressed in regard to appeals to the
39 Supreme Court from decisions of the Inter-State Commission. **When the Inter-State**
40 **Commission, which will be composed of experts on railways, navigation, and trade**
41 **and commerce, have come to a decision, and that decision is appealed against, does**
42 **the right honorable member think that the High Court will ever dream of setting**
43 **aside that decision unless it is contrary to justice or on some question of law which the**
44 **commission had not been able to grasp?** The right honorable gentleman has alluded to
45 the political, industrial, and other questions which may revolve round this matter, but does
46 he not remember **that we have federalized the waters of our rivers for navigation and**
47 **irrigation?** That [start page 2277] being the case, surely no question ought to be more
48 subject to appeals to the High Court than the question of rights to the use of those waters. **I**
49 **quite agree with the Right Hon. Sir George Turner that in simple matters of fact the**
50 **Inter-State Commission should be supreme.**

1 **Mr. ISAACS.**-What questions of law could the Inter-State Commission decide apart
2 from questions of fact?

3 **Mr. DOBSON.**-The Inter-State Commission could decide questions of law arising out of
4 the fact that you have, in spite of our friends from New South Wales, federalized your
5 waters for navigation and irrigation, and I do not believe that the High Court will ever hold
6 that the waters of a river flowing between the boundaries of two colonies belong to one
7 state or the other. The court will say-"You have federalized your waters," and will deal
8 with them accordingly. For these reasons I shall feel bound to oppose the amendment.

9 **Mr. OCONNOR** (New South Wales).-**I hope that the Right Hon. Sir George Turner**
10 **will not press this amendment. I quite assent to the position that this Inter-State**
11 **Commission should have the power of final decision on questions of fact, and that**
12 **there should be no appeal to the High Court on questions of fact.** Therefore what the
13 honorable member fears could not possibly happen. **The High Court ought not to have,**
14 **and could not have, any power to deal with questions of policy.**

15 **Mr. ISAACS.**-Why?

16 **Mr. OCONNOR.**-**Because there ought to be no power in the court to review**
17 **decisions of the commission on any question whatever except a question of law.**

18 **Mr. ISAACS.**-But what is to prevent the High Court reviewing other decisions under
19 this clause?

20 **Mr. OCONNOR.**-**I am speaking of the clause as it ought to be. I am quite willing to**
21 **accept the amendment Mr. Holder suggests that the decisions of the Inter-State**
22 **Commission shall not be reviewable except as to matters of law.** But I would point out
23 to Sir George Turner that if some power is not given over the Inter-State Commission you
24 will make that commission an absolutely irresponsible body.

25 **Sir GEORGE TURNER.**-That power ought to be in the Parliament, and not in the High
26 Court.

27 **Mr. OCONNOR.**-That is going back to the old controversy. I leave aside for a moment
28 the question whether you are to give powers to the Inter-State Commission to decide as to
29 rights. **That question will be raised by-and-by; but even taking the Inter-State**
30 **Commission as now constituted under clause 96, it is necessary there should be some**
31 **power in the High Court to review the decisions of the Inter-State Commission, where**
32 **those decisions have gone beyond the powers which the Constitution has given to the**
33 **commission.**

34 **Mr. ISAACS.**-Would not that come under sub-section (1) of clause 73?

35 **Mr. OCONNOR.**-I think it would, because you want to deal with the decision of the
36 commission. I ask honorable members to look at clause 96, constituting the Inter-State
37 Commission. That clause reads as follows:-

38 There shall be an Inter-State Commission, with such powers of adjudication and
39 administration as the Parliament from time to time deems necessary, but so that the
40 commission shall be charged with the execution and maintenance, within the
41 Commonwealth, of the provisions of this Constitution, and of all laws made thereunder
42 relating to trade and commerce.

43 Now, that is a very necessary limitation of the powers of the Inter-State Commission. **If**
44 **that limitation was not placed in this clause as it is, the Inter-State Commission would**
45 **be constituted a body having powers without limitations and you do not want to do**
46 **that.** How will this body exercise its powers? It may exercise them by judicial acts, by
47 decisions in regard to rights, and a number of other matters. **If in those decisions it goes**
48 **beyond the limits of the Constitution as assigned to it, surely there must be power in**
49 **the High Court to review those decisions.** It must be so, otherwise [start page 2278] you
50 place the Inter-State Commission in an irresponsible position; and all we claim here is,

1 **that if this Inter-State Commission does go beyond the law and decides something**
 2 **that is illegal, there shall be a power of the High Court to review that decision.**

3 **Mr. VENN.**-Prohibition will do that.

4 **Mr. OCONNOR.**-No, prohibition will not do it. Prohibition will do that where the Inter-
 5 State Commission goes entirely outside its jurisdiction in reference to a subject-matter, but
 6 where the commission deals with a matter which is within its jurisdiction, and may have
 7 exceeded its powers or decided contrary to the Constitution in its decision on that subject,
 8 that is a matter which cannot be reached by prohibition. I find myself at a loss to
 9 understand why honorable members who have created the Inter-State Commission, and
 10 have limited its powers, should be afraid to submit the decision of that commission, not on
 11 questions of fact and policy, but on questions of law, to the tribunal which we have set up
 12 to deal with these matters.

13 **Mr. HIGGINS.**-**It is not a court; it is a jury of experts, like our Railways**
 14 **Commissioners.**

15 **Mr O'CONNOR.**-The honorable member says it is not a court. It may or it may not be a
 16 court in the technical sense of the word; but if it has power to give decisions, surely that is
 17 the first essential of a court; **and if it gives decisions which are not in accordance with**
 18 **the Constitution there should be some power of reviewing them.** I do put it to the
 19 committee that, if you place the Inter-State Commission in a position which is absolutely
 20 irresponsible, there is no use whatever in placing limitations on its powers; and if you place
 21 limitations on its powers, and give it certain duties to perform, there must be some way of
 22 providing that it is kept within its powers, otherwise the rights which you give are simply
 23 illusory.

24 **Mr. FRASER.**-It has only the rights given to it by the Federal Parliament.

25 **Mr. OCONNOR.**-Exactly; it has the rights given to it by the Parliament, and those rights
 26 must be given to it under the Constitution.

27 **Sir GEORGE TURNER.**-It gets rights under this Bill.

28 **Mr. ISAACS.**-Independent rights.

29 **Mr. OCONNOR.**-It gets rights under this Bill, but those rights can be of no value at all,
 30 unless the limitations of the rights are fixed by the Parliament.

31 **Sir GEORGE TURNER.**-You said that it got rights under the Parliament.

32 **Mr. OCONNOR.**-Of course it gets, as all these institutions do, **its rights primarily**
 33 **from the Constitution,** but it gets the limitations of those rights from the Parliament, by
 34 clause 96. Of course, it altogether depends on what view the committee take of the powers
 35 which they are going to place in the hands of this body. Considering the powers of
 36 adjudication which you give to the Inter-State Commission, unless you provide that the
 37 decisions which you give it the power to make are to be altogether irresponsible there must
 38 be a power of appeal from such decisions. My honorable friend (Mr. Higgins) interjected
 39 that it is not a court. You are in this difficulty: If it is not a court, if is not a body which has
 40 power to decide, you cannot have a prohibition against it.

41 **Mr. ISAACS.**-Can't you?

42 **Mr. HIGGINS.**-You can get an injunction against the commission for going outside its
 43 powers.

44 **Mr. OCONNOR.**-What is the use of leaving it to a doubtful question of that kind?

45 **Mr. HIGGINS.**-That is not doubtful.

46 **Mr. OCONNOR.**-What is the use of leaving the matter to some learned arguments
 47 between lawyers as to whether an injunction will or will not apply, when you can simply
 48 provide for the whole thing by enacting in the Constitution that from its decisions, where
 49 the decisions go beyond its powers or it decides something which [start page 2279] it has
 50 no right to decide, there should be an appeal?

51 **Mr. HIGGINS.**-Would you allow an appeal from directors of a company?

1 **Mr. OCONNOR.**-I hope the honorable member will ask something relevant and
 2 analogous. What has that to do with the matter we are now dealing with? I do not want to
 3 take up any more time about it. I submit that the matter is perfectly clear, and that under
 4 the Inter-State Commission constitution, which is provided for in clause 96, if you give the
 5 power of decision and adjudication **there must be this power of review in questions of**
 6 **law only.**

7 **Mr. ISAACS** (Victoria).-I understand that my learned friend (Mr. O'Connor) puts it in
 8 this way practically: That under clause 96 the Inter-State Commission is to have powers of
 9 adjudication as well as powers of administration, and amongst those powers to have such
 10 powers of adjudication as the Parliament may from time to time deem necessary; but. that
 11 whatever the Parliament does or does not do the Inter-State Commission is to be charged
 12 with the execution and maintenance of the provisions of the Constitution **as well as all**
 13 **laws made hereafter in regard to trade and commerce.** Then my honorable friend says,
 14 as regards matters of fact, he does not wish to give an appeal to the High Court, **but as to**
 15 **matters of law, so far as relates to adjudication, there is to be an appeal to the High**
 16 **Court.** It seems to me that if we maintained clause 96 in its integrity and other clauses,
 17 then a portion of the objection to putting this in would be taken away; but I cannot see why
 18 you are to put in clause 74 the Inter-State Commission, when you have given the judicial
 19 power of the Commonwealth the extension to all cases arising under this Constitution or
 20 involving its interpretation. Why will not that include any decision of the Inter-State
 21 Commission which is contrary to this Constitution Or, if it does not come under that, it
 22 would come under the next sub-section-"Arising under any laws made by the Parliament."

23 **Mr. OCONNOR.**-For this reason, that in clause 74 you give special powers to the High
 24 Court to entertain certain appeals; it will have no powers beyond that. You have given
 25 power to the High Court to entertain appeals from federal courts and courts invested with
 26 federal jurisdiction, and if you want to include the Inter-State Commission, which is not a
 27 federal court, and is not invested with federal jurisdiction, you must mention it specially.

28 **Mr. ISAACS.**-I find other clauses, for instance, clause 77, which provides that in certain
 29 cases the High Court shall have original as well as appellate jurisdiction. That goes beyond
 30 clause 74. Clause 74 is binding so far as it goes, but it is not exclusive. It does not say that
 31 that appellate jurisdiction shall not be extended if the Parliament chooses to extend it, but it
 32 is all subject to the provisions of that clause, so far as they extend. I base my objection to
 33 this provision not only on the ground which has been urged by my right honorable friend
 34 (Sir George Turner), but also on this ground, that I want to eliminate the constitutional
 35 creation of the Inter-State Commission. I think it is a great mistake that. we should erect
 36 **this body-a fourth branch of the Constitution**-when it ought to be a matter for
 37 consideration by the people of the Commonwealth hereafter, through the Federal
 38 Parliament, to say what they will or will not have.

39 **Mr. OCONNOR.**-Surely that was decided in clause 96. The proper place to reconsider
 40 that question is when we come to that clause.

41 **Mr. ISAACS.**-I was going to say that, when we come to clause 95A onward, I will take
 42 the opportunity to urge the elimination of the Inter-State Commission in its present form,
 43 and to place before the committee the reasons which guide my mind in the direction of
 44 leaving this matter to the Parliament, because it seems to me that if we are to trust it at all
 45 we can trust it in this matter.

46 [start page 2280]

47 **Mr. FRASER** (Victoria).-I see no necessity at all for the High Court to have control over
 48 a departmental matter. It is not a lawsuit. It does not infringe upon rights between parties.

49 **Mr. REID.**-There are parties with very large interests involved.

50 **Mr. FRASER.**-That may be said now in respect to rates charged on the various railways.
 51 There may be a sort of right which we do not quite conceive in our present condition of

1 government; but if the Parliament will create this commission and, at the same time,
 2 prescribe its scope, beyond which it cannot go, surely it is not necessary to give special
 3 powers. You might as well say that the railway managers in the various states should be
 4 subject to the Federal Parliament; that the: commissioners in the various colonies and the
 5 station-masters should be subject to the Federal Parliament. You might run out the thing to
 6 an absurd degree.

7 **Mr. OCONNOR.**-It is only their adjudications where they decide between parties, not
 8 their administrations.

9 **Mr. FRASER.**-Their decisions are not decisions such as a court gives; they simply fix
 10 rates. You can hardly look upon a decision of that sort as a decision in the ordinary
 11 meaning of the word.

12 **Mr. ISAACS.**-They do not fix rates, but they decide as to disputes.

13 **Mr. FRASER.**-They decide as to disputes about rates.

14 **Mr. DOUGLAS.**-May I be permitted, sir, to suggest to Mr. O'Connor that this sub-
 15 section should be postponed until the Attorney-General of Victoria has had an opportunity
 16 to go into the other clause? If it is postponed, as I suggest, we will avoid a good deal of
 17 discussion, because if it remains there it is very evident that the High Court must have
 18 power to decide as to the legality of the decisions of this board.

19 **Mr. OCONNOR.**-I would be very glad to accept the suggestion if I could, but I cannot
 20 do that, because we must really have this thing decided now one way or the other, and if it
 21 is decided not to have an Inter-State Commission, we can strike out the clause afterwards.

22 **Mr. FRASER.**-If the other clause is struck out, this clause can be struck out, as one
 23 hinges on the other; but whether it is struck out or retained, I think there is a possibility of
 24 the view being taken that it is a dangerous provision.

25 **Mr. GLYNN** (South Australia).-In America the Inter-State Commission is not a judicial
 26 body. It gives decisions which are not enforceable by itself that certain rates are good or
 27 bad under the Constitution, but it is not armed with any power to carry out its own
 28 decisions. It has to leave it to the various courts to carry them out. If it decides that a rate is
 29 bad, any person who is aggrieved by its decision may take action, and the decision of the
 30 first court appealed to is subject to review by the High Court. What we seem to do here-I
 31 do not know whether it is actually done by the wording of clause 95-**is to set up an**
 32 **independent federal tribunal, a thing which ought not to be tolerated. We set up a**
 33 **tribunal armed with all powers to carry out its decisions, and which can encroach in**
 34 **its original jurisdiction within a sphere which really belongs to the Judiciary.** For
 35 instance, the whole of the clauses relating to trade and commerce can extend its power to
 36 give decisions to carry them out by the ordinary methods of courts of justice within the
 37 whole of the scope of sub-section (1) of clause 52. Surely it was never intended to set up
 38 an auxiliary federal tribunal like that. I think the proper thing to do is to strike out this
 39 provision from clause 74, and to amend clause 95, so as to make more clear our intention,
 40 and to confine the work of the Inter-State Commission simply to administrative work, and
 41 if it declares a rate to be bad, then leave the party aggrieved, whether it be a state or an
 42 individual, to the same redress as exists in America. If a person refuses to pay the rate let
 43 the state take action. In America moneys cannot be recovered which [start page 2281] are
 44 claimed under a rate which is held to be bad.

45 **Mr. HOLDER.**-In America the Inter-State Commission is impotent.

46 **Mr. GLYNN.**-The Inter-State Commission in America is not impotent except so far as in
 47 certain directions Congress has not gone far enough to arm it with sufficient powers. The
 48 power exists in the Constitution of America to give the Inter-State Commission the most
 49 complete powers of administration, to the extent which has been demanded by the
 50 commission itself; but I fail to see that the Constitution empowers Congress to set up the

1 filter-State Commission as a judicial tribunal, because by doing so it would have been
2 establishing outside the Constitution another federal tribunal.

3 **The CHAIRMAN.**-Does the honorable member think it is relevant to this clause to
4 discuss what the United States has done?

5 **Mr. GLYNN.**-I am pointing out that under this clause an appeal is given to the High
6 Court from the Inter-State Commission as a judicial body, and I say that it ought not to be
7 a judicial body. It was never intended to be a judicial body, and if it is not a judicial body,
8 of course this clause cannot be retained, because there would be no appeal from it.

9 **Mr. REID** (New South Wales).-I can quite understand this amendment as coming from
10 those who subsequently proposed to emit the Inter-State Commission. But if the Inter-State
11 Commission is to be maintained, it does seem strange that just as we are about to give the
12 right of appeal to the Privy-Council, it appears, in all sorts of cases we propose to erect, if
13 this amendment is carried, a tribunal which shall be above the Constitution and shall be
14 able to make decisions absolutely, in point of law, breaches of the Constitution, without
15 any person having any redress. I can understand those who want to destroy the Inter-State
16 Commission taking such a course, but those who do not, I think, will not take that course.

17 **Mr. FRASER.**-Has not the Parliament the right to prescribe its powers?

18 **Mr. REID.**-Yes, but, unfortunately, when you speak of prescribing powers, and set
19 people to discharge powers, you should have some safeguard that if they do not properly
20 discharge their powers, especially if they act illegally, there shall be some power over them
21 to prevent them doing illegal things to either individuals or states. It really hangs upon that.
22 If we are to have an Inter-State Commission, **if the commission goes wrong in points of
23 law, there should be some power in the Constitution to set it right.** I do not for a
24 moment suppose that they would go wrong intentionally, but it is, all the same, well to be
25 on the safe side.

26 **Sir EDWARD BRADDON** (Tasmania).-I think that we ought to remember that the term
27 "Inter-State Commission" was inserted in clause 95A in lieu of the term "Federal
28 Parliament" by a very narrow majority-I think only a majority of one-on the motion of Mr.
29 Grant, who allowed his amendment to be altered in this particular, and against his own
30 wish.

31 **Mr. HOLDER.**-But as a compromise to settle a very great dispute.

32 **Sir EDWARD BRADDON.**-He desired to see these matters referred to the Federal
33 Parliament.

34 **The CHAIRMAN.**-I would suggest that the proper time to discuss clause 96 is when we
35 arrive at it. Assuming that clause 96 is retained in the Bill, the question is: Ought there to
36 be an appeal?

37 **Mr. HIGGINS** (Victoria).-I think the Premier of New South Wales has hardly caught
38 the point which my honorable friend (Mr. Glynn) put just now. The Inter-State
39 Commission is not a body that acts. It is a body that simply decides upon facts-"Is a rate
40 good?" "Is a charge an infringement of the Constitution?" Supposing the decision is
41 outside the Constitution, it is *pro tanto* invalid, [start page 2282] and is not to be acted
42 upon; and if the officers of a state or of the commonwealth act upon such a decision when
43 it is outside the Constitution they are doing an illegal act. That is all the Inter-State
44 Commission has to decide, and I understood Mr. Symon to say that it is a court, and that
45 there should be an appeal.

46 **Mr. SYMON.**-Oh no. **I understood you to say that if the commission did not act; and I
47 say that if the commission has to decide, there has to be an appeal.**

48 **Mr. HIGGINS.**-**They have to decide, but not as a court.**

49 **Mr. REID.**-The commission is to be charged with the execution and maintenance within
50 the Commonwealth of the provisions of this Constitution, and of all laws made thereunder
51 **relating to trade and commerce."**

1 **Mr. HIGGINS.**-It is clumsily expressed, but at the same time I should take that with the
 2 other clauses about adjudication, and I should take the intention to be that they are to see
 3 by their decisions about rates and the rest that the laws are executed but they will not
 4 execute the laws.

5 **Mr. REID.**-It is an idle tribunal if it simply meets and expresses an opinion and cannot
 6 enforce its decisions.

7 **Mr. HIGGINS.**-In America-

8 **Mr. REID.**-I do not mind that; the American conditions are not parallel.

9 **The CHAIRMAN.**-I would ask the honorable member to confine his remarks to the
 10 question whether there should be an appeal from the Inter-State Commission as the Inter-
 11 State Commission is now constituted.

12 **Mr. HIGGINS.**-That is just what I was dealing with, and you will understand the drift of
 13 my observations when I say that the whole basis of my argument is **that this Inter-State**
 14 **Commission is not a court**, and it is absurd to talk of an appeal from a body that is not a
 15 court. That is the essence of my remarks. But in saying that the Inter-State Commission is
 16 not a court, I have to look at what it has to do. It is not an executive body in the sense that
 17 it has to do a thing, but it simply has to follow the analogy of the United States of America,
 18 where the commission gives decisions about rates. Its decisions are taken as final as long
 19 as they are within the limits of the Constitution, and the Commonwealth can enact laws for
 20 the purpose of giving effect to the rules of the commission. The decisions of the
 21 commission are simply the decisions of experts. I interjected, and I think relevantly, when
 22 Mr. O'Connor was speaking, that it is not usual to allow an appeal from directors of a
 23 company if they are acting within the purview of their bylaws; but whenever they act
 24 outside the limits of their by-laws there is an appeal from them to the court.

25 **Mr. REID.**-If Your understanding of the commission is right I quite see the force of
 26 what you say; but we differ as to what the commission is to be.

27 **Mr. HIGGINS.**-I am not at all surprised, having regard to the form of words used in the
 28 clause, that a misapprehension has arisen, and I assure my right honorable friend I am
 29 trusting the Drafting Committee to put this language right.

30 **Mr. HOLDER.**-It is right now; it will be wrong if it is altered.

31 **Mr. HIGGINS.**-I do not think it is the intention of this committee to put the Inter-State
 32 Commission in Australia in a different position to what a similar body is in in America.

33 **Mr. OCONNOR.**-It has been done already in clause 96.

34 **Mr. HIGGINS.**-I understand that Mr. Holder is a stronger advocate of the Inter-State
 35 Commission and its powers than I am. I am not in favour of rendering the Inter-State
 36 Commission absolutely necessary, but I want to give a power to create it.

37 **Mr. HOLDER.**-**We want it permanently.**

38 **Mr. HIGGINS.**-You are giving an appeal to the High Court from all the courts of the
 39 Federation, and I am in favour of that; but, I say, do not give [start page 2283] an appeal
 40 from a business body that merely decides on business principles what is a fair matter of
 41 business. You might as well say that we should give an appeal from the Railways
 42 Commissioner of New South Wales to the Supreme Court of New South Wales. The thing
 43 is not within the purview of the work of the courts. But if the commission should go
 44 outside the ambit of its powers, then without any express provision the decision will be
 45 treated *pro tanto* as void, and things will go on as before.

46 **Mr. HOLDER** (South Australia).-**I want to point out some facts that bear strongly on**
 47 **the question of appeal. I would direct attention to clause 96, where the statement is**
 48 **made that the Inter-State Commission shall be charged "with the execution and**
 49 **maintenance" of two things: First, "of the provisions of this Constitution." That is**
 50 **much more than the Parliament may give it to do. Next, besides "the provisions of**
 51 **this Constitution," it is to be charged with the execution and maintenance "of all laws**

1 made thereunder relating to trade and commerce." So that the Inter-State
 2 Commission is intended both to execute and maintain the provisions of this
 3 Constitution, and, incidentally thereto, the provisions of any Act of Parliament
 4 relating to trade and commerce. I think that such large powers as these might lead to
 5 the Inter-State Commission giving decisions in respect of which there should be a
 6 right of appeal on the mere question of law involved; and I hope the committee will
 7 give that right of appeal on questions of law, while it refuses the right of appeal on
 8 questions of fact within the knowledge of the experts we appoint.

9 **Mr. DOUGLAS** (Tasmania).-If you appoint the Inter-State Commission in the way
 10 described in the Bill, it will discharge no more than the functions of arbitrators. Now, if an
 11 arbitrator exceeds his functions, it would be possible to set aside his award. A decision of
 12 the Inter-State Commission is tantamount to an award. The provisions of clause 96 are so
 13 wide that surely, if the commission makes a mistake and goes beyond its powers, there
 14 must be a power of appeal somewhere. There ought not to be a doubt about that. I cannot
 15 understand the argument against it. I can understand the position of Mr. Isaacs, who wants
 16 to knock out the provision for the Inter-State Commission altogether; but if this body is to
 17 be established, the power of appeal, it seems to me, must be made clear and distinct.

18 **Mr. SYMON** (South Australia).-I wish to make a suggestion. The only doubt which
 19 seems to me to exist is whether under clause 74, if some provision of this kind is not
 20 inserted, there would be jurisdiction in the High Court as an appellate court to entertain an
 21 appeal, supposing the Parliament in establishing the Inter-State Commission decided that
 22 in some matters the adjudication of the commission should be subject to appeal.

23 **Mr. REID**.-Notice the words "with such exceptions and subject to such regulations as
 24 the Parliament may from time to time prescribe." Would not that cover it?

25 **Mr. SYMON**.-I doubt whether that would be sufficient. It might not be. I quite agree
 26 with honorable members that it is not likely that there would be, or that we could
 27 contemplate, appeals in ordinary matters from the decision of experts to the High Court. I
 28 should be sorry to see anything of that kind. It would introduce political questions and
 29 matters of policy that would tend to derogate from the position which the High Court
 30 should occupy under this Constitution. But, at the same time, Parliament might think fit,
 31 and probably would, under the exhaustive powers of clause 96, to say that there were
 32 certain matters on which they would allow an appeal on points of law; and I suggest that
 33 we should put in after the words "Inter-State Commission" the words-"If Parliament allows
 34 such appeal." This would give jurisdiction to the High Court to entertain an appeal, [start
 35 page 2284] and it would leave it to the Parliament in constituting the Inter-State
 36 Commission to say whether, in any particular matter, there should be an appeal on a point
 37 of law. The danger is that whilst the Parliament would give a jurisdiction to the High Court
 38 to entertain an appeal it might not have power to give an appeal from the Inter-State
 39 Commission. That is what should be guarded against. Leave the Parliament to say, when
 40 constituting the Inter-State Commission, upon what there shall be appeals. That would save
 41 any question whether or not this might not involve an appeal at all hazards from the Inter-
 42 State Commission. It would leave the matter to Parliament.

43 **Mr. OCONNOR** (New South Wales).-I would like to say, with reference to the
 44 suggestion of Mr. Symon, that by clause 96 we have already given Parliament power to
 45 confer powers of adjudication upon this Inter-State Commission. I call the attention of Mr.
 46 Glynn and Mr. Fraser to this matter. You have given power to the Parliament to give power
 47 to the Inter-State Commission to adjudicate for the purpose of the maintenance and
 48 execution of the provisions of the Constitution. That enables the Parliament to constitute
 49 the commission in such a way as to get rid of the difficulty that has occurred in America
 50 and it may give power, not only to decide that a rate is illegal, but to enforce that decision,
 51 and also to award damages or compensation to persons who have been injured by the rate.

1 These questions of rates may involve immense sums of money, and immense
 2 considerations regarding damages to the states, to the persons dealing with the railways of
 3 the states, and to the Federal Commonwealth. If powers of adjudication of that kind are
 4 given, surely you will have a court with a power of adjudication which will deal with
 5 matters of infinitely larger concern than your ordinary courts will have to deal with. If you
 6 constitute a body of that kind, surely you are not going to put such a body in an absolutely
 7 irresponsible position. With reference to Mr. Symon's suggestion that it should be left in
 8 the power of the Federal Parliament to declare whether there shall be an appeal or not, if it
 9 is right to do that, it would be equally right to give Parliament power to say whether there
 10 should be an appeal from any of the federal courts, but you do not say that. I do not think
 11 you should give Parliament power to say that there shall be no appeal. They should make
 12 such exceptions and limitations as they think fit, but they should not take the power of
 13 appeal away. Therefore, I do not think Mr. Symon's suggestion should be followed. If so,
 14 Parliament would create an Inter-State Commission with immense powers, and make them
 15 absolute and irresponsible. I am sure that was never intended. If we carry out this proposal
 16 of an Inter-State Commission, as I hope we shall, considering the powers that they will be
 17 endowed with, it certainly ought to be subject to the same review as any other federal
 18 court.

19 **Mr. KINGSTON** (South Australia).-I am disposed to agree with Mr. Fraser that it is not
 20 desirable to provide for a general appeal from the Inter-State Commission, which, it seems
 21 to me, would be a body exercising similar jurisdiction to the Railways Commissioners.

22 **Mr. OCONNOR**.-It is only proposed to give an appeal when they adjudicate, and then
 23 they will not be exercising the same powers as Railways Commissioners.

24 **Mr. KINGSTON**.-I shall support the amendment of Sir George Turner.

25 **Mr. WISE**.-Is not the safeguard provided in clause 96?

26 **Mr. KINGSTON**.-I think the safeguard is in the first part of clause 74. I think it might
 27 be desirable to confer a right of appeal from the decision of the Inter-State Commission,
 28 but I hope, sir, that we will insert the provision suggested by Mr. Holder, that there shall be
 29 no appeal except on matters of law. I also [start page 2285] think we are sufficiently
 30 protected by the first part of clause 74, which, it seems to me, will give full power to
 31 Parliament to declare exceptions from this right of appeal, which will prevent the Inter-
 32 State Commission from being unnecessarily harassed. Under these circumstances, I think it
 33 is hardly necessary to vote for the striking out of the clause.

34 The amendment to strike out the words "Inter-State Commission" was negatived.

35 **Mr. HOLDER** (South Australia).-At the suggestion of the Chairman, I intend to alter the
 36 amendment which I am about to move for what appears to me to be a very sufficient
 37 reason. A desire has been expressed that the debate on appeals to the Privy Council should
 38 not be interfered with, and that would take place if I followed the amendment as it is in
 39 print. I therefore desire to test the feeling of the Convention by moving-

40 That sub-section (2) be amended by adding the following words:-"on questions of law
 41 only."

42 **Mr. BARTON** (New South Wales).-I have no objection to accept the amendment of Mr.
 43 Holder, but he will understand that such questions as to whether there is evidence in favour
 44 of a particular contention are questions of law. I take it that the rules which generally apply
 45 now in considering questions of evidence in England, for instance, in deciding matters
 46 affecting new trial motions, on questions of fact, would apply here. In that case the weight
 47 of evidence is not to be considered if a verdict is demonstrably wrong and such as no
 48 reasonable man would give. I only point this out so that there may be no mistake. I think
 49 my honorable friend will understand that the amendment which he proposes will not allow
 50 mere questions of fact to be considered, except within the limits I have referred to.

1 **Mr. ISAACS.**-Will the honorable member state what would be the effect of this addition
2 upon the previous sub-section?

3 **Mr. BARTON.**-I am very glad my honorable friend has pointed that out. The addition of
4 these words might possibly be taken as affecting the construction of the prior part of the
5 clause, in which case it might be inferred that while appeals from the Inter-State
6 Commission were to be limited to questions of laws, other appeals were not to be confined
7 to questions of law, but might be applied to questions of fact. I think a good deal of
8 argument could be used in favour of such a construction. That will be a matter for Mr.
9 Holder to consider. The ordinary construction of the prior part of the clause would be that
10 these appeals were on questions of law. If my honorable friend introduces into his
11 amendment words which restrict appeals from the Inter-State Commission to mere
12 questions of law, then an implication may arise that in the prior part of the clause, the
13 appeals are not so restricted, and that may raise ugly and difficult questions. Apart from the
14 difficulty of construction, I am quite willing to accept the amendment.

15 **Mr. HOLDER** (South Australia).-I simply propose to move the amendment in the way I
16 suggest to enable the debate presently to proceed uninterruptedly. I can see the difficulty
17 which has been suggested by Mr. Barton, and I am prepared to give an indication of the
18 desire of the Convention, and leave it to the Drafting Committee to carry out our intention.

19 **Mr. WISE** (New South Wales).-I would ask Mr. Holder not to press his amendment. If
20 he looks at clause 96 he will see that it provides a perfectly efficient safeguard by leaving
21 the matter in the hands of the Parliament to prescribe exactly what shall be the functions of
22 the Inter-State Commission. They can provide that any decision shall be final or is subject
23 to appeal. The insertion of the words of the amendment will, by implication, require that
24 the appeals in the first sub-section shall be on questions of fact, which may be very
25 undesirable.

26 [start page 2286]

27 **Mr. OCONNOR.**-The Drafting Committee will put the matter right. We only want a
28 direction from the Convention.

29 The amendment was agreed to.

30 **END QUOTE**

31
32 As such, the Framers of the Constitution made it very clear:

33
34 **Mr. OCONNOR.**-Because there ought to be no power in the court to review
35 decisions of the commission on any question whatever except a question of law.

36
37 Therefore it was the Federal Parliament that erred to try to give the Inter-State Commission in
38 an unconstitutional manner judicial powers and the High Court of Australia correctly declined to
39 allow this.

40
41 I may refer to this part again:

42
43 **Mr. OCONNOR** (New South Wales).-I hope that the Right Hon. Sir George Turner
44 will not press this amendment. I quite assent to the position that this Inter-State
45 Commission should have the power of final decision on questions of fact, and that
46 there should be no appeal to the High Court on questions of fact. Therefore what the
47 honorable member fears could not possibly happen. The High Court ought not to have,
48 and could not have, any power to deal with questions of policy.

49
50 **Not deal with any question of “policy”?**

1 During 2022 I understand that 2 men who were born in New Zealand and had criminal
 2 convictions were ordered by the Australian Minister for Immigration to be deported, however the
 3 High Court of Australia then introduced its own unconstitutional policy to deal with something
 4 to which it had no judicial authority, namely to divert from the rule of law and declare that if
 5 those 2 men were accepted by the Australian Aboriginal community then they could not be
 6 deported. That to me was lunacy because we now have that the High Court of Australia
 7 determined policy.

8
 9 It did so likewise years ago as I understand it a man was deported for having a criminal record
 10 (murder) but then he returned under a false identity and got as woman pregnant. The High Court
 11 of Australia then, I understand, held that the man could not be deported because of the child.
 12 This I view was also lunacy because the High Court of Australia now again transgressed upon
 13 the legislative powers of the Federal Parliament.

14 As much as the High Court of Australia made known that the executive cannot strip a person of
 15 citizenship because it requires a judicial determination then the High Court of Australia should
 16 butt out of exclusive legislative powers and not use its judicial powers to amend the application
 17 of law. I already extensively canvassed the *Sue v Hill* issues in
 18 "<https://www.scribd.com/document/616024508/20221223-Mr-G-H-Schorel-Hlavka-O-W-B-to-R-Kershaw-Chief-Commissioner-of-AFP-Suppl-93-Part13-Electors-candidates-covid-Scam-Etc>" and as such no need to set out
 19 that the High Court of Australia often transgresses upon the powers it is provided with and
 20 commences to make "policy" decisions outside its judicial powers.

21
 22
 23 What we should understand from the above is that the Inter-State Commission does have powers
 24 to decide matters as to "trade and commerce". I above referred to Santos which clearly is within
 25 these provisions. Likewise the farmers and other businesses concerned. Therefore, I conclude
 26 that the Inter-State Commission does have powers to deal with the questions as to **Artesian**
 27 **Water Basin** issues. The above images show that the **Artesian Water Basin** is outside one
 28 particular are being it a State or Territory and as such falls within the provisions of the Inter-
 29 State Commission. Regarding "trade and commerce".

30
 31 In my view the Inter-State Commission therefore could determine how water from the **Artesian**
 32 **Water Basin** could be permitted to be used. It may require that at various locations instruments
 33 are fitted to monitor the water level under the land so that if there is a drop of water level
 34 affecting farmers, etc, then a certain procedure is put in place to limit the drawing of water, being
 35 it from a company such as Santos, etc. It also then could implement Federal/State/Territory
 36 legislative provisions regarding any inappropriate spillage of gel frac fluid/slug, etc.

37 Because the artesian water flows through a number of States/Territories it is essential that this is
 38 therefore under the control of experts in water management who have a understanding what
 39 might be appropriate as to the usage of water. It may mean that any permits being for Santos
 40 and/or other businesses to draw water from the **Artesian Water Basin** may be cancelled where
 41 this would be drawing water that were to deny users in other States/Territories sufficient water
 42 for their usage and/or to lower the water level that harms other users.

43
 44 Hansard 21-1-1898 Constitution Convention Debates

45 QUOTE Mr. GORDON.-

46 **That is a right that is founded deep in natural justice.**

47 END QUOTE

48
 49 And that is as much applicable regarding water drawn from a river as it is for water drawn from
 50 the **Artesian Water Basin**.

51
 52 Essentially all that is needed is to ensure that the Federal executives

13-1-2023

Page 17

© Mr G. H. Schorel-Hlavka O.W.B.

INSPECTOR-RIKATI® about the BLACK HOLE in the CONSTITUTION-DVD

A 1st edition limited special numbered book on Data DVD ISBN 978-0-9803712-6-0

PLEASE NOTE: You may order books in the **INSPECTOR-RIKATI® series** by making a reservation, or E-mail
admin@inspector-rikati.com See also www.scribd.com/inspectorrikati

1
2 **103 Commissioners' appointment, tenure, and remuneration**

3 The members of the Inter-State Commission:

4 (i) shall be appointed by the Governor-General in Council;

5 (ii) shall hold office for seven years, but may be removed within that time by the Governor-
6 General in Council, on an address from both Houses of the Parliament in the same session
7 praying for such removal on the ground of proved misbehaviour or incapacity;

8 (iii) shall receive such remuneration as the Parliament may fix; but such remuneration shall
9 not be diminished during their continuance in office

10
11 A Parliament without Members really is a **ZERO**

12
13 An Inter-State commission without a commissioner also is a **ZERO**

14
15 A federal executive without any Ministers is also a **ZERO**.

16
17 A judicature without any judges also is a **ZERO**

18
19 For the above the constitutional system is in place but it is the failure of each Government of the
20 Day that we do not have a Inter-State Commissioner to deal with matters. This is because
21 regretfully in my view most politicians are more concerned to push their own wheel barrow then
22 to even learn and understand the true meaning and application of the constitution. As for
23 Ministers well keep this in mind:

24
25 **HANSARD 4-3-1891 Constitution Convention Debates**

26 **QUOTE** Sir HENRY PARKES:

27 The resolutions conclude:

28 **An executive, consisting of a governor-general, and such persons as may from time to**
29 **time be appointed as his advisers, such persons sitting in Parliament, and whose term of**
30 **office shall depend upon their possessing the confidence of the house of representatives**
31 **expressed by the support of the majority.**

32 What is meant by that is simply to call into existence a ministry to conduct the affairs of
33 the new nation as similar as it can be to the ministry of England-a **body of constitutional**
34 **advisers** who shall stand as nearly as possible in the same relation to the representative of
35 the Crown here [start page 27] a her Majesty's imperial advisers stand in relation to the
36 Crown directly. These, then, are the principles which my resolutions seek to lay down as a
37 foundation, as I have already stated, for the new super structure, my object being to invite
38 other gentlemen to work upon this foundation so as to best advance the ends we have in
39 view.

40 **END QUOTE**

41
42 **HANSARD 17-2-1898 Constitution Convention Debates**

43 **QUOTE** Mr. OCONNOR.-

44 We must remember that in any legislation of the Commonwealth we are dealing with the
45 Constitution. Our own Parliaments do as they think fit almost within any limits. **In this**
46 **case the Constitution will be above Parliament, and Parliament will have to conform**
47 **to it.**

48 **END QUOTE**

49
50 The following will also make clear that the Framers of the Constitution intended to have **CIVIL**
51 **RIGHTS** and **LIBERTIES** principles embedded in the Constitution;

52
53 **HANSARD 17-3-1898 Constitution Convention Debates**

13-1-2023

Page 18

© Mr G. H. Schorel-Hlavka O.W.B.

INSPECTOR-RIKATI® about the BLACK HOLE in the CONSTITUTION-DVD

A 1st edition limited special numbered book on Data DVD ISBN 978-0-9803712-6-0

PLEASE NOTE: You may order books in the **INSPECTOR-RIKATI® series** by making a reservation, or E-mail
admin@inspector-rikati.com See also www.scribd.com/inspectorrikati

1 QUOTE Mr. CLARK.-

2 **the protection of certain fundamental rights and liberties** which every individual
3 **citizen is entitled to claim that the federal government shall take under its protection**
4 **and secure to him.**

5 END QUOTE

6
7 Hansard 1-3-1898 Constitution Convention Debates

8 QUOTE

9 **Mr. HIGGINS.-Suppose the sentry is asleep, or is in the swim with the other power?**

10
11 **Mr. GORDON.-There will be more than one sentry. In the case of a federal law,**
12 **every member of a state Parliament will be a sentry, and, every constituent of a state**
13 **Parliament will be a sentry.**

14 **As regards a law passed by a state, every man in the Federal Parliament will be a**
15 **sentry, and the whole constituency behind the Federal Parliament will be a sentry.**

16 END QUOTE

17
18 Instead of a State/Territory by self interest or otherwise dictating how it shall blatantly disregard
19 the rights of others to have reasonable access to water from the **Artesian Water Basin** we can
20 and should have the Inter-State Commission deciding matters upon the opinions of experts in
21 water issues.

22
23 **We need to return to the organics and legal principles embed in of our federal**
24 **constitution!**

25
26 **This correspondence is not intended and neither must be perceived to state all issues/details.**

27 Awaiting your response,  **G. H. Schorel-Hlavka O.W.B. (Gerrit)**

28 **MAY JUSTICE ALWAYS PREVAIL®**
29 **(Our name is our motto!)**