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As Safe as Houses?: Commonwealth Continuing Detention of High Risk Terrorist Offenders – *Greg Carne* 191

The "Always Speaking" Principle: Not Always Needed? – *Jacinta Dharmananda* 199

SPEECH

Chapter IV: The Inter-State Commission and the Regulation of Trade and Commerce under the Australian Constitution – *Stephen Gageler*

This article explores the rise and demise of the Inter-State Commission against the backdrop of "New Protection", an economic and social policy which involved protecting Australian industry by criminalising monopolisation and contracts or combinations in restraint of trade. Ch IV of the Constitution provides for the existence of the Inter-State Commission and, as enacted, envisages a Commission with powers to adjudicate and administer the constitutional guarantee of the freedom of inter-state trade and commerce. The *Inter-State Commission Act 1912* (Cth) conferred such jurisdiction on the Commission, which it exercised in its first (and only) adjudication. It held that the *Wheat Acquisition Act 1914* (NSW) was invalid and its administration unconstitutional. On appeal, the High Court found that the provisions conferring jurisdiction on the Commission were contrary to Ch III of the Constitution. This decision left the Commission only with powers of investigation and report. By 1920 it had no members and in 1950 the *Inter-State Commission Act* was repealed. While the outcome in the *Wheat Case* is understandable given the broad powers conferred on the Commission, it was not inevitable. 205

ARTICLES

Inside and Outside Criminal Process: The Comparative Salience of the New Zealand and Victorian Human Rights Charters – *Claudia Geiringer*

Comparative scholarship on the statutory bill of rights model is mesmerised by the question of legislative compliance with human rights (and the respective roles of the three branches of government in ensuring it). This article attempts to step outside of the glare of that spotlight and to invite a more holistic assessment of the statutory bill of rights model. It does so by honing in on a marked (but little remarked) point of contrast between the New Zealand and Victorian exemplars of the statutory bill of rights model: their comparative salience to questions of criminal procedure (versus civil and administrative litigation). By posing the question "how might we account for this marked disparity?" the article seeks to generate a range of comparative insights into the factors that influence both the successes and the failures of the statutory bill of rights model. 219

Executive Power – *K M Hayne*

Sections 1, 61 and 71 of the Constitution vest the legislative, executive and judicial powers of the Commonwealth in separate organs of government. The Constitution does not define any of those forms of power. It effects a division of powers according to

"traditional British conceptions". Too much may be made of the "extends" clause in s 61. It adds to, but also marks an outer boundary to, the executive power of the Commonwealth. The Constitution provides expressly for most exercises of executive power, except the conduct of foreign affairs and some matters of defence. Beyond those two fields, the only scope for "non-statutory executive power" is marked by necessity, not convenience. 236

Mistakes about Mistake of Fact: The New Zealand Story – *Hanna Wilberg*

Mistaken accounts of the state of the law on mistake of law as a ground of judicial review have long been common in New Zealand. The purpose of this article is to correct the mistakes and to assess the extent to which recent authority does establish the ground. The first mistake is the claim that the Supreme Court in *Bryson* imposed severe restrictions on when mistakes of fact qualify for review. This claim confuses two different types of factual errors. The second is the most widespread mistake: a longstanding tradition of claiming that the ground is well established at both High Court and Court of Appeal level. The third mistake is found in the recent Supreme Court decision in *Ririnui*: this appears to confuse a pure error of law with a mistake of fact. Turning to the extent to which the ground is now established, the main point to note is that while the Supreme Court majority was mistaken about the nature of the mistake in *Ririnui*, that decision still clearly indicates the Court's support for the ground. In addition, three Court of Appeal decisions provide some further support for adopting the ground, along with some limited guidance on the applicable materiality test. What we are still waiting for is an authoritative appellate statement of the justification for adopting the ground and of the full set of applicable limits. 248

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