

AUSTRALIAN JOURNAL OF ADMINISTRATIVE LAW

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ARTICLES

The Governor-General as Commander-in-Chief – *Mitchell Jones*

This article seeks to explore the historical basis for the role of the Governor-General as Commander-in-Chief under the Commonwealth Constitution. It questions whether Australia has been left with an anachronistic post which is, in no small part, due to a misalignment of the writing of the Constitution and unfolding events in the United Kingdom at the time of federation. The High Court has taken the view that the role of the Governor-General as Commander-in-Chief is a titular one. There have also been infrequent instances where the High Court has been prepared to emphasise the importance of that office in the maintenance of discipline over the armed forces. While these seemingly incompatible roles can be explained by the doctrine that the Governor-General acts on advice, it does little to assist in understanding why this office was created, the frequent references to the Governor-General in defence legislation, and what role that office has to play. In exploring these issues, this article traces historical events, highlights the views of former Governors-General and other authors and decisions by the High Court.	82
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Can the Executive influence the “independence” of the Auditor-General under the Auditor-General Act 1997 (Cth)? – *Charles Lawson*

This article addresses the “independence” of the Auditor-General under the Auditor-General Act 1997 (Cth), and how the formal regulation (the matrix of legalities) applies to promote the Auditor-General’s role in making the Executive transparent and accountable. The article demonstrates that the “independence” delivered under the Act is essentially symbolic and that avenues remain for the Executive to influence the Auditor-General. The article concludes that the effectiveness of the formal regulation of the Auditor-General’s “independence” under the Act depends on a vigilant Parliament.	90
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MZXOT v Minister for Immigration & Citizenship: Last stop on Route 75(v)?
– *Lisa Burton*

The recent decision in *MZXOT v Minister for Immigration & Citizenship* (2008) 233 CLR 601 upheld the constitutional validity of recent amendments to the Migration Act 1958 (Cth), designed to further the former federal government’s professed agenda of limiting judicial review of migration decisions. The High Court deviated from the course of judicial authority begun by *Plaintiff S157/2002 v Commonwealth* (2003) 211 CLR 476 and *Bodruddaza v Minister for Immigration & Multicultural Affairs* (2007) 228 CLR 651. It refused to extend the scope of the s 75(v) guarantee so as to invalidate provisions which only indirectly affected, and did not substantially impede, the manner in which the High Court exercised its judicial review function. 115

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 - ² Hayton, n 1, p 286.
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