

# PUBLIC LAW REVIEW

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## ARTICLES

### **Federal judicial review jurisdiction after *Griffith University v Tang* – Christos Mantziaris and Leighton McDonald**

In *Griffith University v Tang* (2005) 221 CLR 99, the High Court articulated a new test for determining whether a decision is made “under an enactment”, one of the prerequisites for attracting jurisdiction under the *Administrative Decisions (Judicial Review) Act 1977* (Cth). The phrase was interpreted as extending to decisions which affect “rights or obligations” but not to decisions affecting interests. Three justifications were offered for this new approach. The first two justifications are unconvincing, as they rely on an unspecified interpretive assumption about the nature of administration and invoke prior jurisprudence on the “under an enactment” phrase in a manner not supported by the authorities. The third justification relies on the concept of “matter” under Ch III of the *Constitution*, an interpretative choice which suggests that the decision may have implications for the scope of other “common law” sources of federal jurisdiction. This new justification has slim foundations in constitutional jurisprudence, and its effect is to undercut historical advances in the protection of interests and the broadening of standing. At the very least, it is an unhelpful way to conceptualise what is at stake in the judicial review of administrative action. The article concludes by identifying a number of “gap” situations in which decisions affecting an individual's interests would not attract jurisdiction under the new “rights and obligations” approach. These gaps remain to be adequately explained or justified by the court. A more persuasive approach to the availability of judicial review would have confronted more directly the policy questions relevant to determining the appropriate scope of the judicial supervision of “public” power. .... 22

**Appointing the Governor-General: The case of William McKell – John Waugh**

Disagreements between monarch and Prime Minister over the selection of a Governor-General reveal much about the way the Queen's representative is chosen. One such case is well-known: the appointment of Sir Isaac Isaacs as Governor-General in 1931. Another can only now be confirmed, using archival material long closed to historians. The archives show how George VI tried, unsuccessfully, to get Ben Chifley to reconsider his choice of William McKell, Labor Premier of New South Wales, as Governor-General. They also show that two senior ALP figures strengthened British resistance to the appointment, that the British government was closely involved in the process, and that McKell was not the only candidate Chifley proposed. The incident demonstrates the extent of a Prime Minister's influence in choosing a Governor-General, even against opposition from the monarch and from within the governing party. .... 49

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Editorial inquiries:

**Tel: (02) 8587 7000**

### HEAD OFFICE

100 Harris Street PYRMONT NSW 2009

Tel: (02) 8587 7000 Fax: (02) 8587 7100



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