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COMMENTS

ARTICLES

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. .....

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