

CASE SUMMARIES

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CASE	FACTS	ISSUE	HELD	SIGNIFICANCE/RELEVANCE OF CASE
<p>Attorney-General (NSW) v Quin</p>	<ul style="list-style-type: none"> Following concerns about fitness for office, Mr Quin and four other magistrates were not appointed to a new magistrates court system under the <i>Local Courts Act 1982</i> (NSW) After <i>Macrae v Attorney General</i> (NSW) (1987) 9 NSWLR 268 the attorney general announced a new policy of appointing magistrates by merit selection, as contrasted with an earlier policy that existing magistrates be reappointed unless considered unfit for judicial office Mr Quin was not reappointed under the new policy, and successfully sought a declaration from the NSW Court of Appeal that his reappointment be determined in 	<p>Is this decision able to be reviewed by the courts? Or does it breach the legality/merits distinction?</p>	<p>The separation of powers must be upheld through the merits/legality distinction.</p> <p>The courts cannot therefore step outside its jurisdiction even if something is 'unfair' if the decision doesn't concern the limits and the exercise of the repository's power.</p> <ul style="list-style-type: none"> This is due to the fact that the executive does not have the powers/resources to make decisions of the judicature (decisions on the legality) and the judicature does not have the power/resources/expertise to make decisions on the merits The merits of administrative action, to the extent that they can be distinguished from legality, are for the repository of the relevant power and, subject to political control, for the repository alone. <p>This is except in the case of the Wednesbury unreasonableness doctrine.</p> <p><u>Quotes</u></p> <ul style="list-style-type: none"> Brennan J: <i>'the duty and jurisdiction of the court to review administrative action do not go beyond the declaration and enforcing of the law which determines the limits and governs the exercise of the repository's power. If, in doing so, the court avoids administrative justice or</i> 	<p>In this case Brennan J made a series of observations about the appropriate scope and function of judicial review that has reached seminal status in Australian administrative law</p> <p>Concerns merits/review distinction and the separation of powers</p>

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	accordance with the early policy		<p><i>error, so be it; but the court has no jurisdiction simply to cure administrative justice or error'</i></p> <ul style="list-style-type: none"> Brennan J: <i>'the merits of administrative action, to the extent that they can be distinguished from legality, are for the repository of the relevant power and, subject to political control, for the repository alone'</i> Brennan J: <i>'the essential warrant for judicial intervention is the declaration and enforcing of the law affecting the extent and exercise of power: that is the characteristic duty of the judicature as the third branch of government.'</i> 	
Plaintiff M68/2015 v Minister for Immigration and Border Protection	<ul style="list-style-type: none"> Involved a constitutional challenge to the legality of arrangements between the Australian government and the state of Nauru for the offshore processing of asylum seekers 	N/A	<p>Purpose of s75(iii)</p> <ul style="list-style-type: none"> To ensure that the crown is subject to judicial review and also that the commonwealth can be liable in tort for its own actions and for the actions of officers and agents of the Executive government acting within the scope of their authority. Gaegler J: <i>'the inclusion of s75(iii) had the consequence of exposing the Commonwealth from its inception to common law liability, in contract and in tort, for its own actions and for actions of officers and agents of the Executive Government acting within the scope of their authority'</i> Gaegler J in Plaintiff M68: <i>'the inclusion of 75(iii) in the Constitution involved a rejection of any notion which might otherwise have</i> 	<p>This case explores the nature and scope of executive government under the Constitution.</p> <p>Gaegler J discusses the relationship between the Executive and the judiciary reflected in sections 75(iii) and 75(v) of the Constitution.</p>

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			<p><i>been drawn from the common law principle then still prevailing in England that the monarch could 'do no wrong', that the Executive Government of the Commonwealth was to enjoy immunity from suit for its own actions or for the actions of its officers or agents'</i></p> <p>Purpose of s75(v)</p> <ul style="list-style-type: none"> The purpose of s75(v) is to restrain officers of the commonwealth from exceeding federal power 	
Kirk v Industrial Relations Committee	<ul style="list-style-type: none"> On 28 March 2001, Graham Palmer, an employee of Kirk Group Holdings Pty Ltd was killed while working as a farm manager on a farm owned by Graeme Kirk (Kirk). Mr Kirk and the company were convicted in the Industrial Court of NSW under the Occupational Health and Safety Act 1983 (NSW) (the Act). Kirk was not told what he was charged with. The Act contained a privative clause providing that a decision of the Industrial Court is 	<ul style="list-style-type: none"> Was the Industrial Court's decision was affected by jurisdictional error? If so, did the privative clause operate to prevent the Court of Appeal from issuing relief by way of certiorari? 	<p>Was held that the Industrial Court misapprehended the limits of its functions and powers, which led to making orders convicting Mr Kirk and the Kirk company when it had no power to do so because an offence against the OH&S Act had not been proved.</p> <p>Clarified the meaning of 'jurisdictional error' in the context of inferior courts and administrative tribunals after <i>Craig</i></p> <ul style="list-style-type: none"> Somewhat disapproved of the approach taken in <i>Craig</i> In addition to doubting the coherence of a dichotomy between courts and tribunals, it was emphasised that the categories of jurisdictional error associated with <i>Craig's</i> lists were '<i>not a rigid taxonomy of jurisdictional error</i>' The court disapproved of judicial efforts to authoritatively catalogue 'what' will amount to jurisdictional error" it is not 	<p>Considered privative clauses at the state level and confirmed the minimum entrenched judicial review at the state level</p> <p>Also clarified the meaning and application of 'jurisdictional error' in the context of inferior courts and administrative tribunals - disapproving of the approach taken in <i>Craig</i></p> <ul style="list-style-type: none"> Court accepted that the critical issue in determining whether or not to apply a broader or narrower conception of jurisdictional error is one of '<i>function and purpose, not nomenclature</i>' (Re Carey; Ex Pare Exclude

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	<p>"final and may not be appealed against, reviewed, quashed or called into question by any court or tribunal"</p>		<p>possible, the court declared '<i>to make the metes and bounds of jurisdictional error</i>'. Instead emphasis on legislative purpose, i.e. '<i>function and purpose</i>' of the DM in determining whether error goes to jurisdiction (through statutory construction)</p> <ul style="list-style-type: none"> Classifying some errors as jurisdictional "<i>is almost entirely functional it is used to validate review, when review is felt to be necessary.</i>" It simply expresses the gravity of the error. <p>Extended the minimum entrenched provision of judicial review to state supreme courts</p> <p>Upheld the reasoning in <i>Plaintiff s157</i> about privative clauses to the state level</p> <ul style="list-style-type: none"> Statutory construction must be entered into to see whether a privative clause precludes judicial review Privative clauses can be beneficial where they promote finality, but not where they clash with the Constitution. French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ: '<i>finality or privative provisions have been a prominent feature in the Australian legal landscape for many years. The existence and operation of provisions of that kind are important in considering whether the decisions of particular inferior courts or tribunals are intended to be final. They thus bear</i> 	<p>Holdings) i.e. a functional purpose</p>
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